

Metro Contract Number 15390

**MANAGEMENT SERVICES CONTRACT
BETWEEN
CORRECTIONS CORPORATION OF AMERICA
AND
THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY**

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**MANAGEMENT SERVICES CONTRACT
BETWEEN
CORRECTIONS CORPORATION OF AMERICA
AND
THE METROPOLITAN GOVERNMENT OF NASHVILLE
AND DAVIDSON COUNTY**

This Contract is made on the ____ day of _____, 2004, by and between The Metropolitan Government of Nashville and Davidson County ("Metro") and Corrections Corporation of America ("Contractor"), a Delaware Corporation with its principal corporate offices located at Nashville, Tennessee.

WITNESSETH:

WHEREAS, on the 30th day of August 1990 Metro entered into an amended and restated Grant Contract ("Grant Contract") with the State of Tennessee Department of Correction and the State Funding Board to house locally sentenced felons pursuant to the terms of the Grant Contract; and

WHEREAS, pursuant to the Grant Contract the State agrees to compensate Metro for all reasonable allowable costs associated with the housing of locally sentenced felons; and

WHEREAS, pursuant to the terms of the Grant Contract Metro may sub-contract the operation of the Facility subject to the approval of the State; and

WHEREAS, the Metropolitan Council has authorized the use of a private corrections company to manage the Facility; and

WHEREAS, Metro is authorized by law to enter into this Contract for the private management of correctional facilities; and

WHEREAS, Contractor has been selected to provide management of the Facility.

Now, in consideration of the mutual promises and covenants contained herein, Metro and Contractor hereby agree as follows:

ARTICLE 1. Definitions

ACA – means the American Correctional Association

ACA Standards – means the Standards for Adult Correctional Institutions, 3rd Edition (or as later amended or supplemented.)

Chief Medical Director – means the Chief Medical Director of the Metropolitan Government, Department of Health.

Contract – means this document, together with all written attachments, appendices, exhibits, amendments and modifications, and incorporating by reference herein, (1) The Request For Proposal, including exhibits and amendments; and (2) the Proposal, including amendments and/or written clarifications.

Contract Monitor – means the person(s) appointed by Metro, who shall work for and be paid by Metro, who will be responsible for providing oversight and monitoring of the quantity and quality of services required and the reporting obligations of the Contractor, and for the carrying out of the liaison responsibilities between Metro and the Contractor on all matters pertaining to the operation and management services of the Facility. The Contract Monitor shall be assigned to monitor and oversee the implementation of the Contract and to act as Metro's designee.

Contractor – means Corrections Corporation of America.

Court Orders – means any orders or judgments issued by a court of competent jurisdiction or any stipulations, agreements, or plans entered into in connection with litigation which are applicable to the operation, management or maintenance of the Facility, or relate to the care and custody of Prisoners at the Facility.

Effective Date of Contract – means the date on which this Contract shall begin as set forth in Section 2.1 of this document.

Emergency Hospitalization Expense – means the cost of emergency hospitalization, medical treatment, transportation and security for State Prisoners, provided such Prisoners are admitted to the hospital; all as more fully set out in T.C.A. § 41-4-115(b)&(c).

Emergency Care Expense – means the cost of care provided at a hospital emergency room for medical conditions, either acute or chronic, where delay in rendering treatment could lead to death, disability, or permanent loss of body function of the patient or, in the case of a pregnant female, the fetus, provided the Inmate is not admitted to the hospital. Emergency Care Expense shall also include up to two follow-up visits related to the emergency that occur within thirty (30) days of the initial visit.

Facility – means the correctional facility and jail located at 5115 Harding Place, Nashville, Tennessee, and all support buildings, roads, fences, and utility systems, etc. The Facility is sometimes referred to as the "Metro Detention Center."

FF&E – means furnishings, fixtures and equipment as set out in the Prior Agreement.

Force Majeure – means any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond the parties' control.

General Hospital – means the Metro General Hospital located at 1818 Albion Street, Nashville, Tennessee, or such other locations to which it may be moved during the term of this Contract.

Immediate Area - means the approximate 160 acres of land within the Metropolitan Government of Nashville and Davidson County where the Facility is located, which was deeded to Metro by the State of Tennessee through its contract with TDOC to house locally sentenced felons.

Major Repair Or Replacement – means a repair or replacement of a major component of the Facility which will cost fifty thousand dollars (\$50,000) or more. A major component of the Facility includes, but is not limited to, HVAC equipment/components; fire detection and suppression systems; roof systems; security control systems; plumbing systems, and any other mechanical systems that are an inherent component of the structure of the Facility. A Major Repair Or Replacement shall also include the repair or replacement of components of a major system of the Facility even though the individual units alone may cost less than \$50,000, provided the cost of that single unit when combined with the cost of other repaired or replaced units of that major system of the Facility during a twelve month period add up to \$50,000 or more.

Metro – means The Metropolitan Government of Nashville and Davidson County.

Per Diem Rate – means cost per Prisoner, per Prisoner Day.

Prior Agreement – means the agreement between the parties dated May 20, 2002 and the change orders and amendments to it.

Prisoner, State Prisoner, Metro Prisoner – “Prisoner” means any adult pretrial detainee, convicted misdemeanor or felon who is housed at the Facility. “State Prisoner” means any convicted felon housed at the Facility. “Metro Prisoner” means any pretrial detainee or convicted misdemeanor housed at the facility.

Prisoner Day – means each calendar day or part thereof of which a Prisoner is incarcerated at the Facility. This shall include the first calendar day of confinement, but not the last.

Proposal – means the documents dated April 30, 2003 which were submitted by Contractor in response to Metro’s Request for Proposals No. 03-55. The Proposal is incorporated herein as Exhibit # 2.

RFP – means Metro's Request for Proposals No. 03-55, including all attachments and addendum thereto (Exhibit # 1).

Sheriff – means the Sheriff of the Metropolitan Government of Nashville and Davidson County, Tennessee.

Sheriff's Office – means the department or office of the Sheriff of the Metropolitan Government of Nashville and Davidson County, Tennessee (DCSO).

TDOC – means the Tennessee Department of Correction.

ARTICLE 2 Term

Section 2.1 Term

The term of this Contract shall begin on August 1st, 2003 and end on July 31st, 2006 unless terminated pursuant to the terms of this Contract. Metro may extend the Contract at its sole discretion for two additional one year periods. The option to extend the Contract shall be exercised by and in the discretion of the Metro Purchasing Agent. To be effective, any extension must be approved by Metro's Legal Department and Department of Finance. The base contract and extension options shall not exceed a total of five years.

ARTICLE 3 Facility and Equipment

Section 3.1 Possession of Facility

Metro shall grant to the Contractor exclusive use, possession and control of the land and property comprising the Facility and its grounds, subject to Metro's rights to enter and inspect same.

Section 3.2 Possession of Moveable Equipment

On the Effective Date of Contract, Metro shall grant the Contractor exclusive use and possession, subject to the terms of this Contract, of all movable equipment and perishables purchased by Metro for the Facility. Contractor shall have the exclusive use of any other movable equipment and perishables purchased by Metro for the Facility during the term of the Contract. At the conclusion of the Contract, all equipment will be returned to Metro.

Section 3.3 Additional Property

Contractor shall be responsible for providing and replacing all FF&E, as set forth in the Prior Agreement, and all perishables and supplies during the term of this Contract. Should Contractor purchase any equipment not listed as FF&E on Exhibit C of the Prior Agreement during the term of this Contract, it may be purchased by Metro at the conclusion of this Contract at the Contractor's cost, less depreciation using the straight line method over a five (5) year period. Supplies and perishables purchased by the Contractor during the term of this Contract shall become the property of Metro upon termination of this Contract.

Section 3.4 Inventory

No later than one week following the full execution of Contract, Metro and the Contractor shall conduct a joint inventory to ascertain that the property and FF&E listed in Exhibit C of the Prior Agreement is in place at the Facility.

Section 3.5 Maintenance

Contractor shall maintain the physical structure of the Facility and all movable property and equipment contained therein. Contractor shall provide all maintenance, including a preventive maintenance program, which will maintain, preserve and keep the physical structure, fixtures and equipment in good repair, working order and condition, subject to normal wear and tear. Contractor will meet all warranty and maintenance requirements. Metro shall have the right to review the maintenance program, planned by the Contractor, and to audit the program at any time. The Contractor will comply with reasonable audit recommendations. All maintenance shall be at Contractor's expense.

Metro shall grant Contractor, upon execution of this Contract, exclusive use and possession of the Facility, subject to the terms of this Contract. Contractor takes possession of the Facility in an "as-is" condition, and Contractor shall be liable for all costs of repairs and improvements of the Facility and FF&E subject to the exceptions contained herein. Contractor shall not be liable for the cost of the following:

- a. repairs or replacements covered by a warranty made by a third party to Metro;
- b. repairs or replacements necessary due to design error or omission or improper construction of the facility and not covered by a warranty; and
- c. Major Repairs Or Replacements.

In the event Contractor believes that a Major Repair Or Replacement is needed, Contractor shall initially provide Metro with documentation of the need and anticipated cost of the repair or replacement. Contractor shall engage in competitive bidding procedures satisfactory to TDOC when procuring a Major Repair Or Replacement component. Unless Contractor receives written instruction from Metro not to go forward with the repair or replacement within 14 days of the date the documentation for the procurement is received by Metro, Contractor shall proceed with the repair or replacement.

If Metro has not objected to the Major Repair Or Replacement within the 14 day period, Metro shall reimburse Contractor the cost of the Major Repair Or Replacement component within 30 days of Contractor invoicing Metro for the Major Repair Or Replacement. TDOC shall then reimburse Metro for the cost of the Major Repair or Replacement in accordance with the terms and conditions of the Grant Contract.

If Metro agrees that the repair or replacement is a Major Repair or Replacement, but Metro or TDOC objects to the cost of the Major Repair Or Replacement or the necessity of the Major Repair or Replacement within 14 days of the date that Contractor's documentation is received by Metro, Metro shall have the option to conduct the repair or replacement itself, as it determines is appropriate, but shall relieve Contractor of any liability associated with the repair/failure to repair or any damage or loss resulting there from.

If Metro objects to a proposed repair or replacement, not because of its cost or necessity, but because Metro or TDOC believes that the proposed repair or replacement is not a Major Repair or Replacement, then Contractor shall complete the repair to the Facility or the repair or replacement of the FF&E at Contractor's expense. Contractor may then seek reimbursement of this cost pursuant to the remedy provisions of the Contract.

The parties shall work in good faith to maintain the Facility in good condition and to obtain all necessary repairs in a cost effective manner.

Section 3.6 Repairs and Replacements.

The Contractor shall make all necessary repairs and replacements of equipment at the Facility at its expense, subject to the exceptions contained in Section 3.5, and shall coordinate same with the Contractor Monitor.

Section 3.7 Contract Monitors

The Contract Monitor function shall be staffed by Metro with two positions to be located at the Facility. One position will be an employee designated by the Sheriff and the other position will be an employee designated by the Chief Medical Director. The Contract

Monitors' duties and primary responsibilities shall consist of monitoring for program effectiveness, Contract compliance, and compliance with additional applicable Sheriff's Office, Health Department, and State policies, rules and regulations as specified in writing by Metro. The Contractor shall have no control over the activities of the Monitor(s), supervisory or otherwise.

The Contract Monitor or another employee designated by the Sheriff must approve all transfers to and from the Facility as well as review disciplinary and appeal hearing reports. The Monitors may interview Prisoners and staff and periodically inspect the Facility. The Contractor's performance, including Contract non-compliance, will be discussed in regularly scheduled or called conferences. Time frames and actions for correcting any deficiencies will be discussed at these meetings.

The Contract Monitors will submit a written report to the Contractor specifying deficiencies and request a plan of action to correct the deficiencies and agreed upon time frames for accomplishing such actions. Subsequent contacts, reviews, inspections, etc., will be made by the Contract Monitors to insure compliance and they will generate appropriate documentation for Contractor's files. The aforementioned procedures are only general guidelines for monitoring. Contract and program-specific guidelines will be developed when applicable.

The Contract Monitors may attend any meeting, staffing or hearing pertaining to Facility operation except meetings involving corporate officials and employee disciplinary matters, and may review Facility records, Prisoner files and budget documents, at any time. The Monitors may also review all employee records at any time.

Metro has the right and authority under this Contract to monitor Contractor's performance hereunder. Such monitoring shall include, but not be limited to observing and reporting on the day-to-day operational performance of the Contractor regarding compliance with all terms and conditions of this Contract. Such monitoring or failure to monitor shall not relieve Contractor of its responsibility, obligation and liability under this Contract.

Metro, through its Contract Monitors, shall develop reporting requirements for the Contractor that shall include, but not be limited to, weekly, monthly, and/or quarterly reports on the following subjects: Inmate jobs and education, incident reports, disciplinary reports, Inmate grievances, staff turnover, staff training, employee grievances, employee discipline, delivery of health care services, reclassifications, transfers, furloughs, releases, media contacts, lawsuits, volunteers, drug audits, cell searches, visitation, and maintenance. Also, an emergency reporting process shall be established that shall address, at a minimum, segregation of Prisoners, use of force, and incidents which involve substantial risk to property, life, or institutional security.

Contractor agrees to cooperate with Metro, including any representatives of the State, in the Contract monitoring effort of Metro through such means as may be requested from time to time, including, but not limited to, the reporting of information as requested. Metro and

Contractor agree that the information collecting and monitoring processes described in this Section 3.8, will be defined in the policies and procedures of the Sheriff's Office.

Unless otherwise specified by Metro in writing, the Monitor(s) shall be the designated recipient of all information required of the Contractor. The Contractor shall be notified in writing by Metro of the identity of any Contract Monitor.

The individuals(s) acting as Monitor(s) may be changed during the term of the Contract, at the discretion of Metro.

In addition to the Monitor(s) employed by Metro, Metro may monitor the Contract through other representatives of Metro as it deems appropriate. Such representative(s) shall have the same right of access to information, the facility, Prisoners, and Contractor's employees and agents as set out herein for Monitor(s).

Section 3.7.1 Office Space.

Contractor shall provide adequate office space and local telephone service for the Contract Monitor(s), which may include a secretary, in close proximity to other administrative offices.

Contractor shall also provide the Contract Monitor(s) and staff with access to all major office equipment at Contractor's expense.

Contractor shall not provide the Contract Monitor(s) or staff with gifts or any form of compensation at any time.

Section 3.7.2 Contract Monitor Access.

The Contract Monitors shall have immediate, complete, and unrestricted access to all parts of the Facility at any and all times.

The Contract Monitors shall have immediate, complete, and unrestricted access to all documents in any way pertaining to the obligations of Contractor under this Contract, including but not limited to, Facility records, Inmate files, personnel files, and financial records. In the event that any such document is not located on the facility site, upon request, Contractor agrees to provide the Monitor with a copy of the document within seventy-two (72) hours of the request.

The Monitors, shall have immediate, complete, and unrestricted access to all meetings and hearings which in any way pertain to the obligations of Contractor under this Contract. Contractor agrees to notify the Monitor(s) of the time, place and agenda at least twenty-four (24) hours in advance of any such meeting or hearing, unless it is not reasonable to provide said notice in which case the Monitor(s) shall be notified simultaneously with the other participants; provided, however, the Monitor(s) may not have access to meetings between

the Facility staff and legal counsel retained by Contractor, unless permitted by Contractor, but Contractor shall provide the Monitor(s) with written notice of said meeting identifying the participants within five (5) days after said meeting.

The Monitors, shall have immediate, complete, and unrestricted access to all Prisoners and access at a reasonable time and place to all employees of Contractor, including but not limited to, the Warden or Chief Administrative Officer.

The Contract Monitors shall have complete access at all times, with or without notice, to Prisoners and staff, to all areas of the Facility and to all records concerning the renovation, repair, maintenance and operation of the Facility. Other Metro and State employees, on official business, shall have access to the Facility, equipment and records when necessary.

Section 3.7.3 Meetings with Monitor(s)

Contractor agrees to hold regularly scheduled weekly meetings with the Monitor(s) to report on the operations of the Facility and to respond to any questions raised by the Monitor(s). Said regular meetings shall be in addition to interim meetings requested by the Monitor(s); provided, however, the frequency of such meetings is subject to modification at the sole discretion of Metro. Contractor agrees that a representative of the Contractor having supervisory responsibility and authority to address the issues raised shall be in attendance at said meetings. An agenda shall be developed for said weekly meetings and meeting minutes shall be recorded and filed with the Chief Administrative Officer of the Sheriff's Office. Contractor's health care administrator and lead on site physician shall meet at least quarterly with the Contract Monitor appointed by the Metropolitan Government's Chief Medical Director.

Section 3.7.4 Requests for Information.

The Contractor shall provide the Monitor(s) with written responses to any information requested by the Monitor(s) or Metro concerning any aspect of Contractor's compliance under the Contract within the period prescribed in Metro's request.

The Contractor shall certify that said information is accurate and if Contractor is unable to so certify, then Contractor shall state the reason therefor.

Upon written request by the Monitor(s) or Metro, the Contractor shall compile information in the requested form and provide documentation substantiating said information.

Contractor shall not destroy any document related in any way to the Contractor's performance under the Contract without the prior written consent of the Monitor(s).

The Contractor shall provide the Monitor(s), upon request, with a copy of, or opportunity to review, all routine documents generated by the Contractor contemporaneously with the dissemination of the document. The Monitor shall notify the Contractor in writing of the requested routine documents.

Metro or Metro's designee(s) shall have the same access as described in Section 3.7.2 Contract Monitor Access, which access shall include, but not be limited to, persons designated by Metro to inspect the facility and/or audit Facility and/or Contractor's performance under the Contract. Contractor is also obligated to provide appropriate access to authorized inspection and regulatory agencies. The Contractor shall exercise due diligence for the safety and welfare of the Monitor(s), any other Metro employee, and any visitor at the Facility.

Section 3.7.5 Immediate Corrective Action.

If Metro determines that the Contractor is operating the Facility in a manner that poses a serious and imminent danger to the health, safety or security of the Prisoners, staff or the public, Metro shall so notify the Contractor in writing (or verbally if it is believed an emergency situation exists). The notice shall direct the Contractor to immediately correct the situation.

The Contractor shall immediately notify Metro of its proposed corrective action. If Metro does not object to the proposed corrective action, the Contractor shall immediately implement said corrective action.

If Metro disagrees with the proposed corrective action or if the Contractor fails to notify Metro immediately of its proposed corrective action, Metro shall specify corrective action and the Contractor shall immediately implement the corrective action.

In the event the Contractor disagrees with the designated corrective action, Contractor may request Metro to reconsider its order, but in no event shall the specified corrective action be delayed pending reconsideration by Metro unless Metro affirmatively states in writing that further delay is acceptable. Upon further reconsideration, if Metro determines that the corrective action required by Metro was excessive, Metro shall authorize payment to the Contractor of the actual expense incurred in taking said corrective action in excess of what was reasonably required, upon receipt of appropriate documentation substantiating said expenses from the Contractor. All directions and actions by Metro and actions by the Contractor shall be recorded and reported in writing as soon as practical and filed with the Contract Monitor.

Section 3.8 Incident Reports.

Contractor shall report all incidents in accordance with designated Sheriff's Office policy regarding the reporting of incidents.

Section 3.9 Expansion

The Contractor agrees that should Metro and/or the State decide to expand the Facility, this Contract will remain in effect. The Per Diem Rate for Prisoner populations beyond that currently provided in Section 6.1 shall be negotiated by the parties.

Section 3.10 Renovations

Contractor shall not renovate the Facility without prior written approval from Metro.

ARTICLE 4 Facility Operation

Section 4.1 Operating Standards

The Contractor shall operate and maintain the Facility in accordance with all applicable constitutional standards, federal, state and local laws, Court Orders, ACA and TCI Standards and those Sheriff's Office and TDOC policies, rules and regulations specified in writing by the Sheriff's Office (hereinafter collectively referred to as the "Standards"). If any applicable federal, state and local laws, Court Orders, Sheriff's Office and TDOC policies, rules or regulations, ACA Standards or provisions of this Contract are in conflict, Metro shall determine which shall govern. The Contractor shall maintain ACA accreditation for the Facility and shall maintain compliance with 100% of the mandatory ACA Standards and a minimum of 90% of the non-mandatory ACA Standards at all times.

The Facility and its programs shall be managed by a single executive officer, referred to as the Facility Administrator, employed by the Contractor. The Contractor shall maintain a central operations center staffed twenty-four (24) hours a day. Access to the center shall be controlled and limited. The operations center shall monitor and be responsible for Prisoner counts, key control and coordination of the internal and perimeter security network. In general, it shall serve as the communications center for the Facility. The Contractor will be responsible for maintaining a permanent log in addition to shift reports that record routine events, unusual incidents, and emergency situations. Each shift shall maintain records of pertinent information regarding individual Prisoners and groups of Prisoners. These records shall be compiled daily and reviewed by appropriate supervisory staff.

Contractor shall implement a system to physically count Prisoners and properly notify appropriate staff of increases and decreases in the population on a shift-by-shift basis in accordance with the Proposal. Up-to-the-minute information shall be available regarding all housing moves, work assignment changes, hospital admissions, releases, etc. Weekly inspections shall be conducted to ensure that all locks, door control devices or systems, communication devices and systems, CCTV and video monitoring or surveillance equipment or systems, windows, and any other security devices or equipment are fully

operational. Emergency keys must be checked at least quarterly to make sure that they function properly. Results of all inspections shall be submitted in writing to the Facility Administrator or the staff member in charge of security and to the Contract Monitors.

Contractor shall publish policies and procedures for searches and the control of contraband in accordance with its Proposal. The procedure must be made available to staff, reviewed at least annually, and updated as the need occurs. Staff shall be trained in effective search techniques that offer protection from bodily harm for both staff and Prisoners. Written guidelines to govern the control and use of tools, culinary and medical equipment, knives, shears and other instruments, which can cause death or serious injury, shall be promulgated in accordance with Contractor's Proposal and consistent with the Policies of the Sheriff's Office.

4.1.1. Contract Documents

This Contract consists of this document and Exhibits 1- 6 attached. In the event of conflicting provisions within the Contract, all documents shall be construed according to the following priorities:

- Any properly executed amendment to the Contract (most recent with first priority),
- This document excluding Exhibits,
- Metro's Request for Proposals (RFP 03- 55),
- Contractor's Response to RFP 03-55,
- County Correctional Incentive Program Participants and Fund Distribution Rules,
- DCSO Policy and Procedures,
- Insurance Requirements.

4.1.2 Policy and Procedures Manual

The Contractor shall provide Metro, within fifteen (15) days of full execution of the Contract, a written Policy and Procedures Manual which shall contain policies and procedures for all services to be rendered by Contractor in accordance with the Standards. Said manual shall establish the policies and procedures the Contractor shall follow in all areas covered by this Contract, including the areas covered by the DCSO policies listed in Exhibit 6. Said manual shall be subject to the written approval of the Sheriff or the Director of Health or their respective designees, except to the extent that safety and emergency procedures are specifically addressed in Section 4.4 of the Contract. Said Manual shall not be altered, amended, modified, revised or supplemented without the prior written approval of the Sheriff or the Director of Health or their designees, as applicable. Unless the Sheriff's Office or the Director of Health or their designees shall provide written notice of acceptance

of the proposed manual changes with 30 days of receiving the proposed changes, Contractor shall consider the proposed changes rejected. If health or security concerns require a more expedited resolution, the parties shall work together to address the issue as soon as reasonable. The Contractor shall implement the provisions of said manual throughout the term of this Contract.

Section 4.2 Assignment and Transfer of Prisoners

Prisoners will be assigned to the Facility by the Sheriff's Office. Contractor may not refuse to accept any prisoners assigned to the Facility, but if the Contractor believes that a Prisoner has been erroneously assigned to the Facility, it may request his transfer through the Contract Monitors. Contractor's requests for transfer of Prisoners from the Facility for medical, psychiatric, disciplinary or administrative reasons will be made through and evaluated by the Contract Monitors. The final decision regarding whether to transfer a prisoner, or whether to petition the Court for permission to transfer a prisoner, will be made by Metro. Metro's approval of Contractor's request regarding assignment and transfer shall not be unreasonably withheld, subject to Court approval, if required. In the event that any State Prisoner requiring dialysis or oncology services is housed at the Facility, Metro shall expeditiously file a motion with the sentencing court to transfer the State Prisoner to the TDOC.

4.2.1 Noncompliance with ACA or TCI Standard(s) Due to Prison Overcrowding

If Contractor's acceptance of Prisoners, as required by Section 4.2, directly results in noncompliance with any applicable ACA or TCI Standard(s), Contractor shall promptly notify the Contract Monitor(s) and TDOC of the ACA or TCI Standard(s) which Contractor cannot meet due to prisoner overcrowding.

If noncompliance with the specified ACA or TCI Standard(s) should result in the notification of the potential or actual loss of the Facility's ACA or TCI accreditation or certification, then Contractor shall not be held in breach or default of the Contract on the basis of such potential or actual loss of accreditation or certification, provided that Metro determines that Contractor is putting forth a good faith effort to comply with the specified ACA and TCI Standard(s). Furthermore, the Contractor shall not be held in breach or default of the Contract for failing to comply with the designated ACA or TCI Standard(s), even if such noncompliance does not ultimately result in loss of the Facility's ACA or TCI accreditation or certification. Contractor's duty to comply with the designated ACA or TCI Standard(s) shall automatically resume when the Facility's Prisoner population is reduced to the level previously designated by Metro that should allow Contractor to comply with such Standard(s).

Section 4.3 Classification

The Contractor will be responsible for providing intake and an objective based classification system similar to Metro's system. The Contractor shall maintain classification information in a format which is compatible with the Sheriff's Office Jail Management System (JMS) reports system. Except in unusual circumstances, initial classification shall be completed within two (2) weeks of admission from court and within one (1) week after transfer from another detention facility.

Section 4.4 Safety and Emergency Procedures

Within fifteen (15) days of full execution of the Contract the Contractor shall develop and submit written riot and disturbance control contingency plans to the Sheriff and the Metropolitan Government's Chief of Police. Contractor shall also develop and submit written disaster preparedness plans to the Sheriff and the Director of the Metropolitan Mayor's Office of Emergency Management within 15 days of full execution of the Contract. Contractor shall cooperate with the Sheriff in preparing contingent Prisoner relocation plans.

At a minimum, the Contractor shall implement the written guidelines for the prevention of fire, safety inspections, maintenance of fire alarm and smoke detection systems, fire evacuation drills, evacuation plans, a procedure to report job-related injuries, and provisions for testing equipment to maintain essential lighting, power and communications contained in its Proposal. All such procedures will comply with National Fire Protection Association life safety codes, the Metropolitan Code of Laws, any request of the Metro Fire Marshal and DCSO Policies designated by the Sheriff.

Within 15 days of full execution of the Contract the Contractor shall develop and submit to the Sheriff plans for the search and apprehension of any escaped Inmate. Said plans shall address the Contractor searching for any escapee off the grounds of the Facility and coordination with local and State authorities. Contractor shall only implement plans for searches off the grounds of the Facility if requested by the Sheriff to do so.

During the term of the Contract, the Contractor shall develop and submit in writing to the Sheriff, the Metro's Chief of Police and the Director of the Metropolitan Mayor's Office of Emergency Management any other emergency control plans as may be requested in writing by these Metro government officials.

All plans under this Section must be submitted to the applicable Metro officials and approved by such Metro officials in writing. If the Contractor is unsure of which Metro officials must approve the safety and emergency procedures addressed herein, Contractor shall ask the Director of the Metropolitan Department of Law to designate such Metro

officials. Contractor agrees to make any revisions, deletions or additions requested by such Metro officials or their designee. Upon written approval by the Metro government officials, Contractor shall begin immediate implementation of the plans or in the case of contingency plans, certify that Contractor has the ability and shall implement the plan if the contingency occurs. Said plans may not be revised, amended, altered, or supplemented without prior written consent of the appropriate Metro officials. Unless the appropriate Metro officials, or their designees, provide written notice of acceptance of the proposed manual changes within 30 days of having receipted for the proposed changes, Contractor shall consider the proposed changes rejected.

The Contractor shall maintain the safety and emergency procedures set forth in its Proposal and approved under the Prior Agreement. These shall include, but are not limited to, contingency plans to assure operation of the Facility in the event of an employee or Prisoner labor dispute, riot, fire, civil disaster or power failure.

Contractor shall have a qualified fire and safety officer who shall inspect the Facility at least monthly for compliance with safety and fire prevention standards. Additionally, there shall be weekly fire and safety inspections of the Facility by an administrative staff member and written guidelines shall be established by the Contractor that set forth the Facility's fire prevention regulations and practices. These shall include, but are not limited to, liaison with the nearest fire station, availability of fire protection equipment at appropriate locations throughout the Facility which shall be tested at least quarterly, and annual inspection of the Facility by Metro or state fire officials. The Facility shall have an approved fire alarm system and automatic fire detection system. Contractor shall meet with Metro's Fire Marshal annually, or more frequently if requested by Metro's Fire Marshal, to review Contractor's readiness to react to a fire incident at the Facility.

Section 4.5 Counseling/Mental Health

Contractor will provide counseling and mental health programs complying with current ACA Standards and current National Commission on Corrections Health Care Standards for Health Services in Prisons, and its Proposal. The counseling and mental health program will be supported by case management procedures that ensure an ongoing record documenting the inmate's progress.

The Contractor shall develop and have in place a program that shall be reviewed by Metro's Health Department that includes a discharge plan and transfer summary as part of a referral process.

Section 4.6 Medical/Dental

Contractor will provide medical services and a dental program in accordance with current ACA Standards, National Commission on Corrections Health Care Standards for Health Services in Prisons, federal, state, local law, and its Proposal, including 24 hour a day, seven day a week emergency medical, psychiatric and dental care. Contractor shall provide on-site nursing care, 24 hours a day, seven days a week, and medical screening of all Prisoners prior to their being placed in the general population of the Facility. Nursing coverage shall include monitoring and release coordination to ensure continuity of care equal to the Metro Health Department and the Sheriff's Office. The Contractor will provide for routine sick call and chronic clinic care within the Facility and dental care as set forth in its Offer. In addition to full-time staff as set forth in its Proposal, Contractor will provide, at a minimum, health care specialists as follows:

- Physician – 40 hours/week,
- Psychiatrist & Psychologist – a combined 52 hours/week, but psychiatrist no less than 12 hours/week,
- Dentist – 30 hours/week,
- Dental Assistant – 30 hours/week.

If necessary to meet the above specified standards and its Proposal, Contractor shall increase the hours for the above specialists at no additional costs to Metro. Further, Contractor agrees to participate in any utilization review program instituted by Metro or TDOC.

Contractor shall pay for all medical costs, except as set forth in Article 6 of this Contract. The cost Contractor shall pay will include, but not be limited to, the following:

- All care provided within the Facility,
- All outside physician visits and other out-patient treatment, including dental, psychological and psychiatric,
- All medically related transportation,
- All in-patient hospital costs, including hospitalization for psychiatric reasons, except as specified in Article 6, below, or if reimbursed by a third party payee such as TennCare,
- Eyeglasses, hearing aids, dentures and prostheses, when required.

Section 4.7 Prisoner Medical Co-Payment Plan

Contractor shall institute and maintain a system of Prisoner co-payments for medical care which conforms to the provisions of T.C.A. § 41-4-115. Charges to Prisoners under this plan shall be the same as those imposed by the Sheriff's Office. All funds collected shall be retained by Contractor.

Section 4.8 Food Service

Contractor will provide food service in accordance with Metro's RFP and Contractor's Proposal and ACA Standards. The food service operation shall provide special diets for, at a minimum, medical and religious requirements. At least two (2) of the three (3) meals served each day shall be hot, and there shall be no more than fourteen (14) hours between the evening meal and breakfast. Meals will be available for staff and volunteers. The Sheriff's Office reserves the right to review and approve menus.

Section 4.9 Special Operation Response Team (SORT) Assistance

Both the Sheriff's Office and Contractor shall make their SORT teams available to the other for joint training and/or assistance in the event of a disturbance. The Contractor shall be responsible for any injuries to its employees serving on the SORT team or any litigation resulting from its employees participation under this section. Metro shall be responsible for any injuries to its employees serving on the SORT team or any litigation resulting from its employees participation under this section.

Section 4.10 Laundry and Prisoner Clothing.

Contractor will provide full Prisoner laundry services and Prisoner clothing in accordance with its Proposal and ACA Standards which, at a minimum, will provide Prisoners with two complete sets of clean clothing and one set of clean linen and towels each week.

Section 4.11 Recreation

Consistent with ACA Standards and its Proposal, the Contractor shall provide supplies for indoor and outdoor recreational and leisure time programs for the Prisoner population. Written policy and procedure, subject to approval by the Contract Monitor, shall provide for a comprehensive recreational program supervised by a qualified person and shall set forth the number of hours of outdoor recreation available to each Prisoner.

Section 4.12 Library

Contractor will provide a general Prisoner library in accordance with its Proposal and the RFP.

Section 4.13 Transportation

Except as set forth below, Contractor shall provide, at its expense, within Davidson County full transportation services for all Prisoners housed at the Facility beginning with initial transfer of the Prisoner from the Metro Courthouse or any Sheriff's Office facility and ending upon the Inmate's return to the Sheriff's Office or discharge.

Transportation services shall include all emergency transportation, medical or otherwise, in addition to all routine transportation. Metro shall be responsible for providing, at its expense, transportation of all Prisoners assigned to community service work crews.

Section 4.14 Security and Control

Contractor shall provide Prisoner security in accordance with Metro's RFP, Contractor's Proposal, ACA Standards, and Contractor policy and procedure approved by the Contract Monitor, at all times and wherever Prisoners are in Contractor's custody, except when specifically relieved of this responsibility in writing by the Sheriff's Office.

Section 4.15 Prisoner Commissary

Consistent with its Proposal and Metro's RFP, Contractor will provide a commissary for Prisoners which shall supply items or items equivalent to those contained on the Sheriff's Office commissary list. Prices charged may be no greater than those charged by the Sheriff's Office or the Sheriff's commissary contractor, unless otherwise approved by Metro.

Commissary items shall be priced to cover the reasonable direct costs of inventory, taxes, commissary personnel and commissary utilities, which costs, plus any profit, may be retained by Contractor. Contractor shall use any profits from commissary sales for inmate welfare programs. The Contract Monitor shall receive a monthly report on commissary sales, profits, and associated inmate welfare distributions. Contractor's original start-up expenses for the commissary shall be written off at the start of the Contract term.

In the event that the Tennessee Department of Human Services determines that the Facility is appropriate for a vending facility for blind individuals pursuant to T.C.A. §§ 71-4-501 through 71-4-509, then the commissary shall be operated in accordance with the Rules of the Tennessee Department of Human Services Rules, which will supercede this Section of the Contract.

Section 4.16 Mail

Contractor will provide pick up and delivery of Prisoner mail in compliance with ACA Standards, applicable court decisions and its Proposal. Contractor will furnish first class postage to indigent Prisoners as set forth in Sheriff's Office Policy.

Section 4.17 Religion

Contractor will provide adequate space within the Facility for religious services and provide programs in compliance with applicable ACA Standards and its Proposal.

Section 4.18 Facility Supplies

Contractor will furnish all Facility supplies, including general hygiene items, office supplies and building support items such as soap, mops, buckets, linens, towels, etc.

Section 4.19 Grievance Procedure

Contractor will provide a formal grievance procedure for Prisoners which meets or exceeds federal guidelines. Copies of all grievances shall be available to the Contract Monitor for review at any time.

Section 4.20 Visitation

Contractor shall provide physical space and supervision for visitation in accordance with its Proposal.

Section 4.21 Access to Courts

Contractor shall furnish Prisoners with adequate access to the courts. The Contractor shall have an adequate plan for assuring the Prisoners have access to the Contract lawyer who will only assist Prisoners in petitioning the courts in civil matters related to conditions of confinement and post-conviction relief in compliance with applicable law and ACA standards. The Contract lawyer shall not provide any legal services other than general advice and shall not represent the Prisoners on any matters.

Lawyers and their agents shall have adequate access to visit their clients at any time and on any day of the week. While the administrative functioning of the facility may impact how quickly a client can be made available to a lawyer or the lawyer's agent, Contractor shall provide access to attorney visitation at any time of day or on any day of the week. The Contractor shall provide private and confidential visitation space for attorney-client meetings.

Section 4.22 Prisoner Discipline

Contractor shall impose discipline and provide for disciplinary appeals pursuant to rules and procedures approved in advance by the Contract Monitor.

Section 4.23 Use of Force

Contractor's employees shall be allowed to use force only:

- While on the grounds of the Facility; and
- While transporting Prisoners;
- While participating in joint SORT operations;
- While guarding Prisoners at an offsite location.

Contractor's use of force policy shall be in accordance with the provisions of this Contract and be approved by the Sheriff and the Metropolitan Legal Department.

Contractor's employees shall be authorized to use appropriate non-deadly force as the circumstances require in the following situations:

- To prevent the commission of a felony or misdemeanor, including escape;
- To defend themselves or others against physical assault;
- To prevent serious damage to property
- To enforce institutional regulations and orders; and
- To prevent or quell a riot.

Contractor's employees may only use deadly force as permitted by federal and state law, ACA Standards and Contractor's policy and procedures approved by the Sheriff and Metropolitan Legal Department. Deadly force is to be used only as a last resort and then only to 1) prevent the loss of life, or 2) to protect against the imminent threat of serious bodily harm.

The Contractor and its armed employees shall meet all requirements set forth by state law for carrying handguns, including the licensing and registration requirements set forth in the Private Protective Services Licensing and Regulatory Act (T.C.A. § 62-35-101 et seq.).

Section 4.24 Good Time

Contractor shall provide to the Contract Monitor such information as is necessary for the purposes of award or forfeiture of good time. The final decision on awarding or forfeiture of good time rests with Metro, although Contractor shall be responsible for providing information as to performance and behavior of Prisoners.

Section 4.25 Sentence Computation

Contractor shall provide TDOC and Metro with data and information needed for sentence computations. Copies of all sentence computations shall be furnished to Contractor and Prisoners.

Section 4.26 Records and Reports

Contractor shall utilize a Prisoner record and reporting system which complies with its Proposal and ACA Standards, and is compatible with the Sheriff's Office record keeping systems. Prisoner records shall include, but are not limited to, medical, psychiatric, dental, counseling, disciplinary and classification records. Contractor shall provide Sheriff's Office personnel the necessary information to update a Prisoner's TOMIS records. All computer equipment, software and telecommunications systems used by Contractor to maintain Prisoner records must be capable of interfacing with all Sheriff's Office systems.

Contractor shall establish policies on confidentiality of records in accordance with Metro and TDOC policy and state and federal laws and regulations. Contractor may release information which is deemed public pursuant to TDOC policy to the general public.

Upon request, all records, reports and documents pertaining to Contract performance, will be made immediately available to the Contract Monitors for review.

The Contractor shall annually prepare and distribute to Metro income and expenditure statements and financial reports, and such other reports as Metro may request. All Prisoner records generated by Contractor shall be the property of the Sheriff's Office and upon the transfer or release of a Prisoner, all Prisoner records shall be turned over to the Sheriff's Office.

Section 4.27 Escapes

The Contractor shall exercise its best efforts to prevent escapes and shall notify the Sheriff's Office and Metro Police immediately of any escapes from the Facility. The Contractor shall engage in hot pursuit of escapees within the immediate area of the Facility. Metro shall be responsible for returning escapees to Davidson County from other jurisdictions. However, Contractor shall reimburse Metro for the actual reasonable and necessary cost of doing so upon receipt of documentation of such cost.

Section 4.28 Policies, Procedures and Post Orders

Prior to implementation, the Contractor shall submit to the Contract Monitor all new or revised, policies, procedures and post orders for approval. At least annually, Contractor shall audit, using personnel other than employees of the Facility, implementation of at least those policies and procedures listed in Exhibit D of the Prior Agreement. Copies of completed audit forms shall be forwarded to the Contract Monitor for his/her review upon

completion of each audit together with a report outlining the steps to be taken to correct any deficiencies.

Section 4.29 Prisoner Work

Contractor shall make reasonable efforts to establish work programs which maximize the use of Prisoner labor. Contractor will be allowed to use Prisoner labor for Facility operations and maintenance to the same extent Prisoner labor is utilized in other Metro facilities. However, Contractor shall not benefit financially from the labor of Prisoners, nor shall any Prisoner ever be placed in a position of authority over another Prisoner. Job assignments and reassignments shall be made by the Contractor. However, Prisoner job descriptions must be approved by the Contract Monitor before the position may be filled, and use of Prisoner labor outside the Facility must be approved by the Contract Monitor prior to such use. Any profits realized from the Prisoner work programs shall be paid to Metro on a monthly basis. Metro may utilize Prisoners from the Facility for outside work crews. Transportation and the expenses associated with such programs will be borne by Metro.

Section 4.30 Vocational And Academic Training

The Contractor shall furnish academic and vocational instructors and training as set forth in its Proposal.

Section 4.31 Prisoner Telephones

Contractor shall furnish adequate telephones for Prisoner use in accordance with Metro's telephone contract. Profits, if any, from the Prisoner phones shall be turned over to Metro. Should Metro enter into a telephone contract, it may require Contractor to become a party to it and/or comply with its terms. Even if Contractor becomes a party to such a contract, all profits shall belong to Metro.

Section 4.32 Sanitation and Hygiene

The Contractor shall provide for sanitation and hygiene in accordance with its Proposal and Metro's RFP.

Section 4.33 Work Release

Metro reserves the right to establish a work release program at the Facility.

Section 4.34 Female Parity

Contractor agrees to provide the same or substantially similar educational, work and work release opportunities for female Prisoners as it presently, or in the future, provides for male Prisoners. Contractor shall also provide professional alcohol and drug counseling for female offenders and a therapeutic substance abuse program as set forth in its Proposal.

Section 4.35 Collection of Civil Filing Fees; 28 USC § 1915(b)(1)

Pursuant to 28 USC Section 1915(b)(1)(A)&(B), in the event that a Prisoner files a lawsuit *in forma pauperis* and the United States District Court determines that the lawsuit is frivolous, Contractor shall collect the civil filing fee from the Prisoners' trust account and submit it to the United States District Court Clerk in accordance with the orders of the United States District Court.

ARTICLE 5 PERSONNEL

Section 5.1 Independent Contractor

Contractor is associated with Metro only for the purposes and to the extent set forth in this Contract. With respect to the performance of the management services set out herein, Contractor is and shall be an independent Contractor and, subject to the terms of this Contract, shall have the sole right to manage, control, operate and direct the performance of the details of its duties under this Contract. The Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of Metro vehicles or any other benefit afforded to the employees of Metro as a result of this Contract. Contractor agrees not to purport to bind Metro to any obligation not assumed herein by Metro, unless Contractor has express written authority to do so, and then only within the strict limits of this authority.

Section 5.2 Personnel

Contractor shall provide personnel to deliver twenty-four (24) hour care and supervision to Prisoners, as well as administrative and support service personnel for the overall operation of the Facility according to the staffing pattern set forth in its Proposal, as supplemented. Contracts for all part-time positions shall be furnished to the Contract Monitor on an on-going basis.

Prior to employment, all potential employees must be subjected to a thorough background investigation, including criminal and employment histories and psychological evaluation. Criminal history checks will be conducted by Metro if requested by Contractor, at Contractor's expense.

Section 5.3 Training

Contractor shall provide orientation and in-service training programs for all employees in accordance with its Proposal, ACA Standards and TCI Standards. Contractor's employees shall receive, at a minimum, the same number of hours of pre-employment and in-service training as are required by ACA & TCI standards. The Contractor shall provide documentation to the Contract Monitor of all completed employee training as soon as possible after its completion. The Contract Monitor shall be permitted to review training curricula and other training-related records and to audit training classes at any time.

Section 5.4 Drug Free Work Force/Employee Assistance Programs

Contractor shall at all times attempt to maintain a drug free work force and shall provide the programs and services set forth in its Proposal for this purpose. Contractor shall provide drug testing for all job applicants prior to employment and shall test employees randomly thereafter.

ARTICLE 6 COMPENSATION AND ADJUSTMENTS

Section 6.1 Regular Payments

Metro shall pay the Contractor a Prisoner Per Diem rate as follows:

Males

Year 1	Year 2	Year 3	Year 4	Year 5
\$36.09	36.75	\$37.42	\$38.11	\$38.81

Females

Year 1	Year 2	Year 3	Year 4	Year 5
\$40.41	\$41.15	\$41.90	\$42.67	\$43.45

The parties will negotiate a per diem rate for male Prisoners in excess of 1122 housed at the Facility.

Section 6.2 Other Payments

Section 6.2.1 State Prisoners

Emergency Hospitalization Expenses shall be incurred at General Hospital, its successor, or at another facility if the Emergency Medical Technicians transporting the State Prisoner determine that the emergency is sufficiently life-threatening that the State Prisoner should be taken to the nearest available emergency care facility or if after the State Prisoner is first taken to General Hospital and General Hospital refers the State Prisoner to another facility. Emergency Hospitalization Expenses shall be billed to Contractor by General Hospital or its successor or the other facility and paid by Contractor. After paying the Emergency Hospitalization Expenses, Contractor shall then bill Metro for these Emergency Hospitalization Expenses separate from the Prisoner Per Diem billings. Metro shall submit Contractor's Emergency Hospitalization Expense bills to TDOC within 30 days of receipt of them from Contractor. TDOC has represented to Contractor and Metro that TDOC will process Emergency Hospitalization Expenses for reimbursement within 30 days of their receipt of them from Metro. Metro shall reimburse Contractor Emergency Hospitalization Expense in the amount that Metro is reimbursed by TDOC for these expenses within 30 days of receipt of payment from TDOC.

Emergency Care Expenses shall be incurred at General Hospital, its successor, or at another facility if the Emergency Medical Technicians transporting the State Prisoner determine that the emergency is sufficiently life-threatening that the State Prisoner should be taken to the nearest available emergency care facility or if the State Prisoner is first taken to General Hospital and General Hospital refers the State Prisoner to another facility. Emergency Care Expenses shall be billed to Contractor by General Hospital or its successor or the other facility and paid by Contractor. After paying the Emergency Care Expenses, Contractor shall then bill Metro for these Emergency Care Expenses separate from the Prisoner Per Diem billings. Metro shall submit Contractor's bill for Emergency Care Expenses to TDOC for reimbursement within 30 days of receipt from Contractor. TDOC has represented to Contractor and Metro that TDOC will process these bills for Emergency Care Expenses for reimbursement within 30 days of receipt. Metro shall reimburse Contractor Emergency Care Expense in the amount that Metro is reimbursed by TDOC for these expenses within 30 days of receipt of payment from TDOC.

State Prisoners who develop AIDS, as that term is defined by the Center for Disease Control, or who by TDOC guidelines qualify for a multi-drug regimen, shall be removed from the Facility by TDOC within 90 days after Contractor has notified and provided documentation of the State Prisoner's medical status to TDOC's Director of Medical Services. Metro shall be responsible for expeditiously filing a motion with the Sentencing

Court requesting the transfer of custody of the State Prisoner to TDOC. TDOC shall reimburse Contractor for the cost of AIDS treatment provided to a State Prisoner from date of notice to TDOC that the prisoner has AIDS or qualifies for a multi-drug regimen until his transfer to TDOC.

State Prisoners who require dialysis or oncology services shall be removed from the Facility by TDOC as soon as Contractor has notified and provided documentation of the State Prisoner's medical status to TDOC's Director of Medical Services. Metro shall be responsible for expeditiously filing a motion with the Sentencing Court requesting the transfer of custody of the State Prisoner to TDOC. Metro shall reimburse Contractor for the cost of dialysis or oncology services to a State Prisoner from the date of the notice to Metro that dialysis or oncology services are required until the State Prisoner is transferred to TDOC. TDOC shall then reimburse Metro these cost in accordance with the terms and conditions of the Grant Contract.

Section 6.2.2 Metro Prisoners

Emergency Care Expenses shall be incurred at General Hospital, its successor, or at another facility if the Emergency Medical Technicians transporting the Metro Prisoner determine that the emergency is sufficiently life-threatening that the Metro Prisoner should be taken to the nearest available emergency care facility or if the Metro Prisoner is first taken to General Hospital and General Hospital refers the Metro Prisoners to another facility. Contractor shall be billed for and shall pay General Hospital for any charges incurred for emergency room services provided to a Metro Prisoner if General Hospital determines that the condition for which the Metro Prisoner was brought to General Hospital, its successor, or another facility was not an Emergency Care Expense.

Metro Prisoners with AIDS, as that term is defined by the Center for Disease Control, or who qualify for a multi-drug regimen by Metro Health Department policy, shall be transported to General Hospital for treatment or treated at the Facility, at Metro's option. In either case, the AIDS or AIDS-related multi-drug regiment treatment shall be at Metro's expense.

Contractor shall not be liable for any medical expense incurred for dialysis or oncology services. Metro shall reimburse Contractor for any such reasonable expenses within 30 days of receipt of documentation of the expenses.

Section 6.3 Limitations & Restrictions

Except during the first 48 hours of a Prisoner's hospitalization, Metro shall not be responsible for paying a Prisoner Per Diem rate for any Prisoner who is not physically

housed at the Facility, unless the male or female population, as the case may be, is at capacity and Metro has instructed Contractor to hold the bed space open pending the Inmate's return to the Facility. Metro shall pay Contractor \$10.00 per hour commencing on the 49th hour, for security provided to prisoners hospitalized for more than 48 hours.

Notwithstanding Section 6.2, above, any Prisoner medical costs resulting from the negligence or willful wrongdoing of the Contractor, its officers, agents or employees, shall be fully paid for by the Contractor.

During the course of the Contract, should the State determine that any portion of the Prisoner Per Diem is not a Reasonable Allowable Cost in accordance with the County Correctional Incentive Program Participation and Fund Distribution Rules 0420-2-3-.01 through .09 effective May 29, 1990 (Exhibit 4), that portion of the Per Diem will not be paid.

Section 6.4 Billings

Within 15 days of the end of each month, Contractor shall provide to Metro the actual number of Prisoner Days which were accrued during the month, on the forms and using the format required by Metro. Invoices shall be given to the Contract Monitor for approval and shall be paid by Metro within 30 days of receipt of the invoice.

Failure of Contractor to submit required information will result in withholding any disputed portion of the Per Diem reimbursement until such time as the information is received and reviewed by appropriate Metro and State officials. If the amount to be paid is disputed by Metro, then Metro, on or before the date the invoice is to be paid, shall advise Contractor of the basis for the dispute and pay the amount of the invoice which is not in dispute. If the parties cannot resolve the dispute within thirty (30) days of such notice, either party may initiate judicial proceedings.

Section 6.5 Compensation Adjustment for Change of Services

The parties recognize that each has entered into this Contract based upon the current law, State and Metro policies, and ACA Standards in effect as of the date of the Contract. If the Contract reduces services required by this Contract or as set forth in its Proposal because of changes to this Contract, or if changes in the ACA Standards, federal, state or local laws, government regulations, Metro or TDOC policies or court orders applicable to Metro or the State, necessitate change in the scope of services furnished hereunder so as to increase or decrease the cost of operating and managing the Facility, the party desiring a change shall provide reasonable notice, in writing, and documentation supporting the requested compensation adjustment to the other party. Once notified, the receiving party shall advise whether or not it agrees to the adjustment in compensation requested. If the parties cannot resolve the dispute within thirty (30) days of such notice, either party may initiate judicial proceedings.

Section 6.6 Taxes and Utilities.

The Contractor shall:

Pay, as the same shall come due, all lawful taxes and assessments levied or assessed by the federal, state or any municipal government on the Facility or any machinery, equipment or other property installed or located by the Contractor therein or thereon, including any taxes levied upon or with respect to the income or revenues of the Contractor. Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to Metro.

Pay, within sixty (60) days after the same shall come into force, any lien or charge upon the Facility or any part thereof which has been incurred as a result of non-payment by the Contractor and all lawful claims or demands for labor, materials, supplies or other charges against the Contractor which, if unpaid, might be or become a lien upon the Facility or any part thereof, except encumbrances permitted by Metro; and

Pay all utility charges and deposits incurred or imposed with respect to the Facility.

ARTICLE 7 INDEMNIFICATION, INSURANCE AND DEFENSE OF CLAIMS

Section 7.1 Indemnification

The Contractor shall protect, defend, indemnify, save and hold harmless Metro, all Metro Departments, agencies, boards and commissions, its officers, agents, servants and employees, including volunteers, from and against any and all claims, demands, expenses and liability arising out of acts or omissions of the Contractor, its agents, servants, subcontractors and employees and any and all costs, expenses and attorney's fees incurred as a result of any such claim, demand or cause of action including, but not limited to, matters arising from:

- Any breach or default on the part of Contractor in the performance of this Contract;
- Any claims or losses for services rendered by Contractor, or by any subcontractor or other person or firm performing or supplying services, materials or supplies in connection with the performance of this Contract;
- Any claims or losses to any person injured or property damaged from the acts or omissions of Contractor, its officers, agents, or employees in the performance of this Contract;
- Any claims or losses by any person arising from exposure to HIV or AIDS in connection with Contractor's performance of this Contract;

- Any claims or losses by any person or firm injured or damaged by Contractor, its officers, agents, or employees by the publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under this Contract in a manner not authorized by this Contract, or by federal, state, or local statutes or regulations; and
- Any failure of Contractor, its officers, agents, or employees to observe the laws of the United States and the State of Tennessee, including but not limited to labor laws and minimum wage laws.

This indemnification provision shall not be applicable to injury, death or damage to property arising out of the sole negligence or sole willful misconduct of Metro, its officers, agents, servants or independent Contractors (other than Contractor) who are directly responsible to Metro. Contractor shall not waive, release or otherwise forfeit any possible defense Metro may have regarding claims arising from or made in connection with the operation of the Facility by Contractor without the consent of Metro. Contractor shall preserve all such available defenses and cooperate with Metro to make such defenses available to the maximum extent allowed by law.

In case any action or proceeding is brought against Metro by reason of any such claim, Contractor, upon notice from Metro, shall defend against such action by counsel satisfactory to Metro, unless such action or proceeding is defended against by counsel provided or retained by any carrier of liability insurance provided for herein.

Section 7.2 Insurance

The Contractor shall provide insurance as set forth in EXHIBIT C to this Contract (Attachment No. 8 to RFP 03-55, as amended) except that :

- Physicians and psychologists can carry individual medical professional liability policies in the amount of \$1,000,000.00/\$3,000,000.00
- Metro will accept a Best Rating of A + VIII.

Contractor shall provide an employee dishonesty bond, acceptable to Metro's Director of Insurance, in an amount of \$50, 000.00, for all of its employees maintaining Prisoners' trust accounts.

Section 7.3 Fire and Property Insurance

Metro shall maintain fire and property insurance on Metro's buildings and equipment located at the Facility site.

Section 7.4 Defense/Immunity

By entering into this Contract, neither Metro nor the Contractor waives any immunity or defenses which may be extended to either of them by operation of law, including limitations on the amount of damages which may be awarded or paid.

Section 7.5 Notice of Claims

Within ten (10) working days after receipt of summons or petition in any action against Metro or Contractor, or within ten (10) working days of receipt of notice of claim, Metro or Contractor shall notify Contractor or Metro in writing of the commencement thereof. In the event that either party receives notice that any of its officers, agents or employees have been sued or otherwise presented with notice of a claim that arises in connection with this Contract, notice shall be given to the other party in writing within ten (10) working days.

Section 7.6 Financial Strength

The Contractor shall, prior to signing this Contract, file with Metro a financial statement showing a net stockholders equity, calculated according to generally accepted accounting principles consistently applied, of not less than five million dollars (\$5,000,000). Contractor shall affirm that there has been no occurrence since the date of its last audited financial statement materially affecting the ability of Contractor to perform its obligations under this Contract.

On or before April 1 of each year during the term of this Contract, Contractor shall provide Metro with a copy of its previous fiscal year's audited annual financial statements. Contractor shall also provide Metro quarterly financial statements, reviewed by a nationally recognized and reputable independent certified public accounting firm. These quarterly financial statements shall be reasonably acceptable to Metro's Director of Finance that Contractor can perform its obligations under the Contract.

Section 7.7 Payment and Performance Bond

Within fifteen (15) days of full execution of this Contract, Contractor shall provide Metro with a performance bond in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00). Said performance bond shall be in force for the operational years of this Contract. Should Metro terminate this Contract for cause, Contractor shall continue to fully provide the services required under this Contract pending final termination. Notwithstanding this provision, Contractor shall not be relieved of any liability to Metro for damages sustained by virtue of any breach of this Contract by Contractor.

ARTICLE 8 DEFAULT AND TERMINATION

Section 8.1 Metro Default

The following shall constitute an Event of Default on the part of Metro:

- **Non-Payment.** Failure by Metro to make payments to Contractor under this Contract within thirty (30) days after such payment is due, except for such payments as may be the subject of a valid dispute between the parties and said dispute is being actively negotiated or attempted to be resolved.
- **Other Material Breach.** Except for the obligation to make payments to Contractor, the persistent or repeated failure or refusal by Metro to substantially fulfill obligations under this Contract, unless justified by Force Majeure or unless excused by Contract or by Contractor's default.

Section 8.2 Notice of Metro Breach

No breach of this Contract on the part of Metro shall constitute an Event of Default and no action with regard to same may be instituted unless and until the Contractor specifies in writing that a default or defaults exist(s) which, unless corrected or timely cured, will constitute a material breach of this Contract on the part of Metro.

Section 8.3 Contractor Default

An Event of Default on the part of Contractor is a material breach, which is the persistent failure or refusal by Contractor to substantially fulfill any of its obligations under this Contract, unless justified by Force Majeure or unless excused by default of Metro.

Section 8.4 Time to Cure

If any material breach of this Contract by either party remains uncured more than thirty (30) days after written notice thereof by the party asserting the breach to the party against which the breach is asserted, such condition shall be an Event of Default. If the breach cannot be cured within thirty (30) days after notice and such breach can be cured through an on-going effort on the part of the breaching party, the breaching party may, within the thirty (30) day period following the notice of the breach, submit a plan for curing the breach within a reasonable period of time, not to exceed six (6) months, unless extended by the non-breaching party. If the plan is approved by the non-breaching party, and such approval is not to be unreasonably withheld, the non-breaching party will not pursue remedies hereunder as long as the breaching party timely undertakes to cure the breach in accordance with the approved plan.

Section 8.5 Remedy

Upon the occurrence of an Event of Default either party shall have the right to pursue any remedy it may have at law or in equity, including but not limited to: (a) reducing its claim to judgment, (b) taking action to cure the Event of Default, and (c) termination of the Contract.

Section 8.6 Termination of Contract

The Contract resulting from the RFP shall be subject to the following termination provisions:

Section 8.6.1 Termination for Default

Metro may terminate this Contract for cause immediately whenever Metro determines that the Contractor has failed to perform its contractual duties and responsibilities in a timely and proper manner and such material breach is not subject to the cure provisions set out in Section 8.4 of the Contract because Contractor cannot cure said breach in sufficient time to prevent serious harm to the inmates, staff or the public. Metro may also terminate this Contract for cause whenever Metro determines that the Contractor has failed to perform its contractual duties and responsibilities in a timely and proper manner and, having allowed Contractor to attempt to cure its material breach in accordance with Section 8.4 of the Contract, Contractor has failed to do so.

Either termination shall be referred to herein as a "Termination for Default". Metro shall withhold payments in excess of fair compensation for work completed, and shall require the Contractor to repay to Metro any funds expended in contravention of the Contract. If, after notice of termination for default, it is determined by Metro or a court that the Contractor was not in default or that the Contractor's failure to perform or make progress in performance was due to causes beyond the control and without the error or negligence of the Contractor or any subcontractor, the notice of termination shall be deemed to have been issued as a termination for the convenience of Metro, and the rights and obligations of the parties shall govern accordingly.

In the event of termination for default as provided by this paragraph, Metro may procure, upon such terms and in such manner as Metro shall deem appropriate, supplies or services similar to those terminated, and the Contractor shall be liable to Metro for any excess costs for such similar supplies or services. In addition, the Contractor shall be liable to Metro for Administrative costs or other damages incurred by Metro in procuring such similar supplies or services.

The rights and remedies of Metro provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. The Contractor shall not be relieved of its liability to Metro for damages sustained by virtue of breach of the Contract.

Section 8.7 Other Grounds for Termination

Termination for Convenience

Metro may terminate this Contract for convenience without cause by giving written notice to the Contractor, at least 90 days before the effective date of such termination, if for any reason Metro determines that such termination is in the best interest of Metro.

In the event of termination of this Contract for convenience, the Contractor shall be entitled to receive, and shall be limited to, just and equitable compensation for any satisfactory

authorized work completed as of the termination date. Such compensation may include reasonable start-up costs.

Termination for Contractor Bankruptcy

In the event of the filing of a petition for bankruptcy by or against Contractor or a principal subcontractor, the Contractor shall immediately so advise Metro. The Contractor shall assure that all tasks related to the Contractor or subcontractor are performed in accordance with terms of this Contract. In the event of the filing of a petition in bankruptcy by or against the Contractor, Metro shall have the right to terminate this Contract upon the same terms and conditions as a termination for default.

Termination for Unavailability of Funds

In the event that local or state funds for this Contract become unavailable, Metro shall have the right to terminate the Contract without penalty. Availability of funds shall be determined at the sole discretion of Metro.

Termination for Destruction/Damage

In the event that the Facility is damaged by fire or other casualty and as a result of the damage any threat is posed to the safety, health or security of the Prisoners, staff and/or the public, Metro shall have the right to terminate the Contract without penalty.

Section 8.8 Termination Procedure

Upon delivery by certified mail to the Contractor of a Notice of Termination specifying the nature of the termination, the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective, the Contractor shall:

- Stop work under the Contract on the date and to the extent specified in the Notice of Termination and, if requested, permit Metro to assume physical custody and control over the Facility and Prisoners.
- Place no further orders for materials, services or facilities, except as may be necessary for completion of such portion of the work under this Contract as is not terminated.
- Terminate all orders to the extent that they relate to the performance of work terminated by the Notice of Termination.
- Assign to Metro in the manner and to the extent directed by Metro all of the right, title and interest of the Contractor under the orders so terminated, in which case Metro shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders.
- With the approval or ratification of Metro, settle all outstanding liabilities and all claims arising out of such termination of orders, the cost of which would be reimbursable in whole or in part under the provisions of this Contract.

- Transfer title to Metro (to the extent that title has not already been transferred) and deliver in the manner, at the times and extents directed by Metro, all Prisoner files, fiscal records, and any other documentation or records in any form that Metro deems necessary to continue operation of the Facility and/or that relate to work terminated by the Notice of Termination.
- Continue the performance of such parts of the work as shall not have been terminated by the notice of Termination.
- Take such action as Metro may direct for the protection, preservation and/or return of the property related to this Contract which is in the possession of the Contractor and in which Metro has or may acquire an interest.

Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item of reimbursable price under this Contract.

Section 8.9 Repair or Replacement

At the conclusion or termination of this Contract, Metro may deduct from moneys owed the Contractor or otherwise obtain from Contractor sums sufficient to reimburse Metro for the repair or replacement of any equipment or perishables as set forth in Exhibit C which is in need of repair, normal wear and tear excepted, or is missing.

Section 8.10 Waiver

No waiver of any breach of any of the terms or conditions of this Contract shall be held to be a waiver of any other or subsequent breach; nor shall any waiver be valid or binding unless the same shall be in writing and signed by the party alleged to have granted the waiver.

ARTICLE 9 MISCELLANEOUS

Section 9.1 Maintenance of Records

The Contractor shall maintain documentation for all charges against Metro under this Contract. The books, records, and documents of the Contractor insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three full years from the date of the final payment under this Contract or any extension to it, and shall be subject to audit, at any reasonable time and upon reasonable notice by Metro or the Comptroller of the Treasury or their duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles no less stringent than those recommended in the Accounting Manual for Recipients of Grant Funds in Tennessee, published by the Comptroller of the Treasury, State of Tennessee.

Section 9.2 Publication

The Contractor shall not publish any finding based upon data obtained from the operation of this Contract without the prior written consent of Metro. This shall not prohibit Contractor from publishing or reporting information without Metro's consent as may be required to comply with any law or regulation.

Section 9.3 Sovereign Immunity

The sovereign immunity of Metro shall not apply to the Contractor nor any subcontractor, agent, employee or insurer of the Contractor. Neither Contractor, nor any subcontractor, agent, employee or insurer of the Contractor may plead the defense of sovereign immunity in any action arising out of the performance of or failure to perform any responsibility or duty under this Contract.

Section 9.4 Contract Modification

This Contract may be modified only by written amendment executed by all parties hereunto and approved by Metro's Director of Law, Director of Finance, and Mayor. Significant amendments to this Contract will require approval by the State of Tennessee. Metro shall file all proposed amendments with the State of Tennessee to determine whether the proposed amendment is significant. The State of Tennessee shall have ten (10) days to respond as to whether the State of Tennessee considers the amendment significant. Failure of the State of Tennessee to respond to Metro within ten (10) days of receipt of the proposed amendment shall mean that the State of Tennessee considers the proposed amendment insignificant.

Section 9.5 Audits

Contractor agrees to make available upon request of the State or Metro or persons designated by them all records, reports, worksheets or other material related to this Contract for audit purposes.

Section 9.6 Non-Discrimination

It is the policy of the Metropolitan Government not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this contract, Contractor certifies and warrants it will comply with this policy.

No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in Metro's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be

excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with Metro or in the employment practices of Metro's Contractors.

Contractor shall not subscribe to any personnel policy which permits or allows the promotion, demotion, employment, dismissal or laying off of any individual due to his race, creed, color, national origin, age or sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.

Contractor, upon request, shall be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

Section 9.7 Invalidity and Severability

In the event that any provision of this Contract shall be held to be invalid, the validity of the remaining provisions of the Contract shall not in any way be affected thereby.

Section 9.8 Counterparts

This Contract may be executed in multiple counterpart, each of which shall be deemed to be an original and all of which shall constitute one Contract, notwithstanding that all parties are not signatories to the original or the same counterpart, or that signature pages form different counterpart are combined, and the signature of any party to any counterpart shall be deemed to be a signature also and may be appended to any other counterpart.

Section 9.9 Interpretation

The headings contained in the Contract are for reference purposes only and shall not affect the meaning or interpretation of this Contract.

Section 9.10 Terminology

All personal pronouns used in the Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural and plural shall include the singular.

Section 9.11 Interpretation and Venue

The Contract shall be interpreted by the laws of the State of Tennessee. Davidson County, Tennessee shall be the venue in the event any action is filed to enforce or interpret provisions of this Contract.

Section 9.12 Release

Contractor and Metro, upon final payment of the amount due under this Contract, releases each other and their officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Contract, except as set forth in Article 7 of this Contract.

Section 9.13 Merger

This Contract and its appendices incorporates all the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract.

Section 9.14 Subcontracting and Assignment

The Contractor may, upon notice Metro, assign the proceeds of this Contract. Except as set forth in its Proposal, the Contractor shall not subcontract without the consent, guidance and prior express written approval of Metro. In the event that approval is granted, the Contractor shall guarantee that the subcontractor will comply with all the provisions of this Contract. Metro shall be provided with copies of all contracts with sub-contractors upon request.

Section 9.15 Annual Appropriation

This Contract and payments required pursuant hereto are subject to annual appropriation by the State for capital and operating costs. If sufficient funding is not made available, this Contract may be terminated upon expenditure of all appropriated funds.

Section 9.16 Gratuities and Kickbacks

Gratuities

It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore.

- 1. Request for Proposal 03-55**
- 2. CCA Proposal**
- 3. Insurance Requirements**
- 4. County Correctional Incentive Program Participation and Fund Distribution Rules**
- 5. FF&E Inventory**
- 6. DCSO Policy and Procedures**

IN WITNESS WHEREOF, intending to be legally bound, the parties have caused their authorized representatives to execute this Contract on the 25 day of March, 2004.

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Recommended By:

[Signature]
Metropolitan Sheriff

Recommended By:

[Signature]
Director of Health Department

Approved By:

[Signature] 2/23/04
Metropolitan Purchasing Agent

Approved as to Availability of Funds:

[Signature]
Director of Finance

Approved as to Form and Legality:

[Signature] 3/24/04
Associate Director of Law

Filed in the Office of the Metropolitan Clerk:

[Signature]
Metropolitan Clerk

Date Filed: MAR 25 2004

Approved as to Insurance:

[Signature]
Director of Insurance

CORRECTIONS CORPORATION OF AMERICA:

By: [Signature]
Title: President/CEO

Sworn to and subscribed by John D. Ferguson

CEO of Corrections Corporation of

America, before me, the undersigned Notary Public, on this 17 day of Feb 2003.

[Signature]
Notary Public
My Commission Expires: 11-27-04