

**GRANT CONTRACT  
 BETWEEN THE STATE OF TENNESSEE,  
 DEPARTMENT OF FINANCE AND ADMINISTRATION  
 AND  
 THE METROPOLITAN GOVERNMENT OF  
 NASHVILLE, DAVIDSON COUNTY, TENNESSEE  
 SBC PROJECT NO. 142/011-01-2008**

This Grant Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "STATE" and the Metropolitan Government of Nashville and Davidson County, Tennessee, hereinafter referred to as "METRO," is to expand prison capacity for locally sentenced felons, as further defined in the "SCOPE OF SERVICES."

Whereas, the STATE, acting under the authority of County Correctional Incentives Act, TCA 41-8-101 et. seq. has entered into a contract with METRO to house locally sentenced felons at the Metro Detention Facility; and,

Whereas, additional correctional capacity is needed to house locally sentenced felons in excess of the current capacity of the Metro Detention Facility; and,

Whereas, the STATE desires to grant funds to METRO for the construction of additional correctional capacity at the Metro Detention Facility to house locally sentenced felons;

Now, therefore, in consideration of the mutual promises herein contained, the parties have agreed and do hereby enter into this contract according to the following provisions:

**A. SCOPE OF SERVICES:**

- A.1. METRO agrees to construct additional medium and minimum housing capacity at the Metro Detention Facility in general accord with the location shown on Attachment 1 and the budget outlined in Attachment 2. METRO is only required to construct as much additional housing capacity as this grant will fund. The number and allocation of beds for medium and minimum housing will be determined by METRO and the STATE as part of the architectural and engineering design and prior to the submission of the completed construction plans to the State Building Commission.
- A.2. METRO shall complete architectural and engineering design, drawings and specifications required for this work under the direction and control of professionals currently licensed to practice in Tennessee.
- A.3. METRO shall allow the STATE to review and approve the completed construction documents prior to bidding. All contracts for the improvements of real property in which the State of Tennessee has an interest shall require approval of the plans for such work by the State Building Commission as required under TCA 4-15-101, *et. seq.*



- A.4. METRO shall provide that all contracts for construction, erection or demolition or to install goods or materials that involve the expenditure of any funds derived from the STATE concerning this project or projects require compliance with the prevailing wage laws as provided in TCA 12-4-401 and these projects shall include a performance and payment bond in the amount of 100% of the contact amount. These bonds shall be executed by an insurance company licensed to do business in Tennessee.
- A.5. METRO shall provide surveys, drawings, legal descriptions, legal services, land acquisition, right of way, easements and all other related services required to complete the METRO's work under this Contract.
- A.6. METRO shall follow STATE and local procurement laws, regulations, and ordinances applicable to local government in the award of any contract providing for utility improvements.
- A.7. METRO shall review bid results with the STATE prior to award of construction contract.
- A.8. METRO shall complete all work under this Contract using a Tennessee licensed general contractor.
- A.9. METRO shall complete all work required by this Contract not later than June 30, 2011.
- A.10. METRO shall ensure that all construction conforms to the applicable Tennessee Correction Institute standards and the American Correctional Association standards for the purposes proposed for such facilities.
- B. GRANT CONTRACT TERM:
- B.1. Grant Contract Term. This Grant Contract shall be effective for the period commencing on November 1, 2008 and ending on June 30, 2011. The STATE shall have no obligation for services rendered by the METRO which are not performed within the specified period.
- C. PAYMENT TERMS AND CONDITIONS:
- C.1. Maximum Liability. In no event shall the maximum liability of the STATE under this Grant Contract exceed Ten Million Two Hundred Seventy-Five Thousand dollars (\$10,275,000.00). The Grant Budget, attached and incorporated herein as a part of this Grant as Attachment 2 shall constitute the maximum amount due METRO for the service and all of METRO's obligations hereunder. The Grant Budget line items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by METRO.

- C.2. Compensation Firm. The maximum liability of the STATE under this Grant Contract is firm for the duration of the Grant Contract and is not subject to escalation for any reason unless amended, except as provided in Section C.4.
- C.3. Payment Methodology. METRO shall be compensated for actual, reasonable, and necessary costs based upon the Scope of Services detailed in Section A and Attachments 1 and 2, not to exceed the maximum liability established in Section C.1.

The STATE Agrees:

To contribute toward the improvements specified in § A.1. The STATE's contribution shall be defined as One Hundred Percent (100%) of total cost, but not to exceed Ten million two hundred seventy-five thousand dollars (\$10,275,000.00).

- a. To pay METRO according to the following payment schedule:
- 1) Two hundred seventy-five thousand dollars (\$275,000.00) within thirty (30) calendar days after this Contract is fully approved and executed for METRO to meet its current obligations on this project.
  - 2) The STATE shall pay two million five hundred thousand dollars when METRO has completed 25% of the required construction work, (\$2,500,000.00)
  - 3) The STATE shall pay two million five hundred thousand dollars when METRO has completed 50% of the required construction work, (\$2,500,000.00)
  - 4) The STATE shall pay two million five hundred thousand dollars when METRO has completed 75% of the required construction work, (\$2,500,000.00)
  - 5) The STATE shall pay two million five hundred thousand dollars when METRO has completed 100% of the required construction work and a certificate of occupancy and a certificate of final completion have been issued (\$2,500,000.00).
- b. Except as specified in C.3.a.1 to pay METRO only after receipt of an invoice for completed work, in form and substance acceptable to the State with all of the necessary supporting documentation, along with the contractor's pay request (for Item A.1.), certified by the METRO Project Manager that the payment is justified. Such invoices shall indicate at a minimum the amount charged by budget line-item for the period invoiced, the amount charged by line-item to date, the total amount charged for the period invoiced, and the total amount charged under this grant contract to date.

- c. To make final payment to METRO only after METRO has completely performed its duties under this Contract.
- C.4. Budget Line-items. Expenditures, reimbursements, and payments under this grant contract shall adhere to the grant budget. The Grantee may request revisions of grant budget line-items by letter, giving full details supporting such request, provided that such revisions do not increase the total grant budget amount. Grant budget line-item revisions may not be made without prior, written approval of the STATE in which the terms of the approved revisions are explicitly set forth; provided, however, that deviations from the grant budget line-items by no more than 10%, within the total grant budget amount, do not require STATE approval. Any increase in the total grant budget amount shall require a grant contract amendment.
- C.5. Expenditures and Accounting. The expenditure of funds made available through this Grant Contract shall adhere to the Scope of Services. Said expenditures shall be made during the Grant Contract period and shall not be carried forward. METRO shall submit a report within thirty (30) days following the end of the Grant Contract. Said report shall demonstrate compliance with the Scope of Services and shall be in form and substance acceptable to the STATE.
- C.6. Payment of Invoice. Payment by the STATE shall not prejudice the STATE's right to object to or question payment. Payment by the STATE shall not be construed as acceptance of any part of the work or service provided, compliance with the Grant Scope of Services, or as approval of any expenditures.
- C.7. Unallowable Expenditures. METRO shall be subject to repayment of Grant amounts which are determined by the STATE, on the basis of audits or monitoring conducted in accordance with the terms of this Grant Contract, not to constitute allowable expenditures.
- C.8. Deductions. The STATE reserves the right to deduct from amounts which are or shall become due and payable to METRO under this or any Contract between METRO and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by METRO.
- D. STANDARD TERMS AND CONDITIONS:
- D.1. Required Approvals. The STATE is not bound by this Grant Contract until it is approved by the appropriate STATE officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Grant Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.

- D.3. Termination for Cause. If METRO fails to properly perform its obligations under this Grant Contract in a timely or proper manner, or if METRO violates any terms of this Grant Contract, the STATE shall have the right to immediately terminate the Grant Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, METRO shall not be relieved of liability to the STATE for damages sustained by virtue of any breach of this Grant Contract by METRO.
- D.4. Subcontracting. METRO shall not assign this Grant Contract without obtaining the prior written approval of the STATE. If METRO enters into a subcontract for any of the services performed under this Grant Contract such subcontracts shall contain, at a minimum, provisions of this Grant Contract pertaining to Conflicts of Interest, Lobbying, Nondiscrimination, Public Accountability, and Public Notice (Sections D.5, D.6, D.7 and D.8). Notwithstanding any use of approved subcontractors, METRO shall be the prime contractor and shall be responsible for all work performed.
- D.5. Conflicts of Interest. METRO warrants that no part of the total Grant Amount shall be paid directly or indirectly to an employee or official of the STATE of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to METRO in connection with any work contemplated or performed relative to this Grant Contract.
- D.6. Lobbying. METRO certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of METRO, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this grant, loan, or cooperative agreement, METRO shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - c. METRO shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

- D.7. Nondiscrimination. METRO hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of METRO on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee STATE constitutional, or statutory law. METRO shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Public Accountability. If this Grant Contract involves the provision of services to citizens by METRO on behalf of the STATE, METRO agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and METRO agrees to display a sign stating:
- "NOTICE: METRO is a recipient of taxpayer funding. If you observe an employee engaging in any activity which you consider to be illegal or improper, please call the State Comptroller's toll free hotline: 1-800-232-5454"*
- Said sign shall be displayed in a prominent place, located near the passageway(s) through which the public enters in order to receive Grant supported services.
- D.9. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by METRO shall include the Statement, "This project is funded under an agreement with the State of Tennessee." Any such notices by METRO shall be approved by the STATE.
- D.10. Licensure. METRO and its employees and all sub-contractors shall be licensed pursuant to all applicable federal, State, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.11. Records. METRO shall maintain documentation for all expenditures pursuant to this Grant Contract. The books, records, and documents of METRO, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained for a period of three (3) full years following the Grant term and shall be subject to audit at any reasonable time and upon reasonable notice by the STATE agency, the Comptroller of the Treasury, or their duly appointed representatives. The records of not-for-profit entities shall be maintained in accordance with the *Accounting Manual for the Recipients of Grant Funds in the State of Tennessee*, published by the Tennessee Comptroller of the Treasury. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. METRO's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the STATE, the Comptroller of the Treasury, or their duly appointed representatives.

- D.13. Progress Reports. METRO shall submit brief, periodic, progress reports to the STATE as requested.
- D.14. Annual Report and Audit. The Grantee shall prepare and submit, within nine (9) months after the close of the reporting period, an annual report of its activities funded under this Grant Contract to the commissioner or head of the Granting agency, the Tennessee Comptroller of the Treasury, and the Commissioner of Finance and Administration. The annual report for any Grantee that receives five hundred thousand dollars (\$500,000) or more in aggregate federal and state funding for all its programs shall include audited financial statements. All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Grantee may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit contract between the Grantee and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the *Audit Manual for Governmental Units and Recipients of Grant Funds* published by the Tennessee Comptroller of the Treasury. The Grantee shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Grantee shall be subject to the provisions relating to such fees contained in the prescribed contract form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the State Granting Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.
- D.15. Procurement. If the other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, and/or services, such procurement shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. Further, if such reimbursement is to be made with funds derived wholly or partially from federal sources, the determination of cost shall be governed by applicable federal procurement requirements.
- D.16. Strict Performance. Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

- D.17. Independent Contractor. The parties hereto, in the performance of this Grant Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Grant Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Grantee, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101 *et seq.* for causes of action sounding in tort. Further, no contract provision requiring a Tennessee political entity to indemnify or hold harmless the State beyond the liability imposed by law is enforceable because it appropriates public money and nullifies governmental immunity without the authorization of the General Assembly.

- D.18. State Liability. The STATE shall have no liability except as specifically provided in this Grant Contract.
- D.19. Force Majeure. The obligations of the parties to this Grant Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.20. State and Federal Compliance. METRO shall comply with all applicable State and federal laws and regulations in the performance of this Grant Contract.
- D.21. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. METRO agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. METRO acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.22. Completeness. This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Grant Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.23. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof



shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.

D.24. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, these special terms and conditions shall control.

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Grant Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The STATE:

Steven Westerman, Director  
Real Property Administration  
William R. Snodgrass -Tennessee Tower 22<sup>nd</sup> Floor  
312 8<sup>th</sup> Avenue North  
Nashville, TN 37243

Telephone: 615-741-1563  
Fax: 615-741-7599

METRO:

Karl Dean, Mayor  
Metropolitan Courthouse  
1 Public Square  
Nashville, TN 37219

Telephone: 615-862-6000  
Fax: 615-862-6040

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is confirmed telephonically by the sender if prior to 4:30 p.m. CST. Any communication by facsimile

transmission shall also be sent by United States mail on the same date of the facsimile transmission.

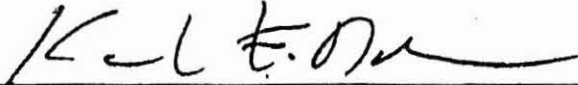
- E.3. Subject to Funds Availability. The Grant is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Grant upon written notice to the Grantee. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Grantee shall cease all work associated with the Grant. Should such an event occur, the Grantee shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date.
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IN WITNESS WHEREOF:

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

 10/22/08  
\_\_\_\_\_  
Karl Dean, Mayor Date

DEPARTMENT OF FINANCE AND ADMINISTRATION:

\_\_\_\_\_  
M. D. Goetz, Jr., Commissioner Date

\_\_\_\_\_  
Mike Fitts, State Architect Date

COMPTROLLER OF THE TREASURY:

\_\_\_\_\_  
John G. Morgan, Comptroller of the Treasury Date

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Robert E. Cooper, Jr., Attorney General Date

SIGNATURE PAGE  
FOR

IN WITNESS WHEREOF, the parties have by their duly authorized representatives set their signatures.

METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY

APPROVED AS TO AVAILABILITY  
OF FUNDS:

*Richard Riebeling*  
Richard Riebeling, Director  
Department of Finance

\_\_\_\_\_  
Date

APPROVED AS TO RISK AND INSURANCE:

*Bob Calkins*  
Director of Insurance

10/10/08  
Date

APPROVED AS TO FORM AND  
LEGALITY:

*Kathryn S. Evans*  
Metropolitan Attorney

10/10/08  
Date

ATTEST:

*Marilyn S. Bowling*  
Metropolitan Clerk *RS2008-494*

10/22/08  
Date



Metropolitan Government of Nashville and Davidson County  
 State of Tennessee Department of Finance and Administration.

Grant Budget  
 Metro Detention Facility Expansion  
 SBC Project Number 142/011-01-2008

Description	Medium Custody Housing	Minimum Custody Housing	Estimate of Cost	Section Subtotals	Funding Source: State of Tennessee Grant
Number Of Beds To Be Built With Grant Funds	256	*			
Master Planning	\$5,000		\$5,000	\$5,000	\$5,000
Architectural & Engineering Design Fees				\$425,000	\$425,000
Architectural & Engineering Construction Documents	\$240,000		\$240,000		
Site & Utility Construction Documents	\$35,000		\$35,000		
Project Management/Construction Administration Services	\$150,000		\$150,000		
Construction				\$8,970,000	\$8,970,000
Buildings	\$8,670,000		\$8,670,000		
Site and Utility	\$100,000		\$100,000		
Furniture, Fixtures & Equipment	\$200,000		\$200,000		
Contingency	\$700,000		\$700,000	\$700,000	\$700,000
Miscellaneous Expenses	\$175,000		\$175,000	\$175,000	\$175,000
<b>Total Project:</b>	<b>\$10,275,000</b>	<b>\$0</b>	<b>\$10,275,000</b>	<b>\$10,275,000</b>	<b>\$10,275,000</b>

\*Minimum custody housing to be built only as grant funding permits.

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