

49554

DATE: November 18, 2015

TO: The Honorable Board of Acquisition and Contract

FROM: Kevin Cheverko  
Commissioner of Correction

RE: **Authority to enter into an agreement with The United States of America, pursuant to which the County, through its Department of Correction, will voluntarily institute certain measures to prevent civil rights violations at the County Jail.**

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Authority is requested for the County of Westchester (the "County") to enter into an agreement with The United States of America, through its Department of Justice ("DOJ"), pursuant to which the County, through its Department of Correction (the "Department"), will voluntarily agree to institute certain measures to prevent civil rights violations at the County Jail (the "Agreement").

By way of background, on August 30, 2007, the DOJ notified then County Executive Andrew J. Spano of its intent to investigate conditions at the Westchester County Jail (the "Jail") pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 ("CRIPA"). Between February 25 and February 28, 2008, DOJ conducted a site visit at the Jail with consultants in the fields of corrections and custodial medical and mental health care. Throughout the course of the investigation, the County cooperated and negotiated in good faith with the DOJ, provided the DOJ and its consultant's with full access to the facility and documents, and was receptive to the on-site recommendations of the DOJ's consultants.

Thereafter, on November 19, 2009, the DOJ issued a Findings Letter pursuant to CRIPA, 42 U.S.C. § 1997(a)(1), which concluded that certain conditions at the Jail violated the constitutional rights of detainees (the "Findings Letter"). Since the time DOJ initiated the investigation and issued the Findings Letter, the County has made progress in addressing several of the conditions described in the Findings Letter. Accordingly, the parties agree that it would be in their mutual interests to avoid litigation and resolve this matter pursuant to the terms of the Agreement.

It should be noted that the Agreement does not constitute a settlement, but rather a voluntary commitment on the part of the County to provide legally sufficient conditions at the Jail by implementing the various measures required by the Agreement.

As this Agreement does not constitute a procurement of goods or services, the provisions of the Westchester County Procurement Policy do not apply.

An appropriate Resolution is herewith attached for your Honorable Board's consideration.

KC/jpg

APPROVED BOARD OF ACQUISITION & CONTRACT - 11/24/2015 - JOAN COCCIARDI, SECRETARY

**RESOLUTION**

Upon a communication from the Commissioner of Correction; be it hereby:

**RESOLVED**, that the Westchester County Commissioner of Correction is hereby authorized to execute an agreement with The United States of America through its Department of Justice, in substantially similar form to that attached hereto; and be it further

**RESOLVED**, that the County Executive or his duly authorized designee is hereby authorized to take such action and execute such documents as may be necessary and proper to effectuate the purposes hereof.

Account to be  
Charged/Credited

Fund	Dept	Major Program, Program & PhaseOr Unit	Object/ Sub- Object	Trust Account	Dollars

Budget Funding Year(s) \_\_\_\_\_ Start Date \_\_\_\_\_ End Date \_\_\_\_\_  
(must match resolution)

Funding Source      Tax Dollars \_\_\_\_\_ N/A \_\_\_\_\_  
                                 State Aid        \_\_\_\_\_ N/A \_\_\_\_\_  
                                 Federal Aid \_\_\_\_\_ N/A \_\_\_\_\_

**\$**  
(must match resolution) Other \_\_\_\_\_

APPROVED BOARD OF ACQUISITION & CONTRACT - 11/24/2015 SPAN OF CARD, SECRETARY

## AGREEMENT

### **AGREEMENT BETWEEN THE UNITED STATES AND THE WESTCHESTER COUNTY DEPARTMENT OF CORRECTION**

WHEREAS, this Agreement resolves the United States' investigation conducted pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), and addresses the corrective measures set forth by the United States in the Findings Letter and in conformity with CRIPA. This Agreement represents a voluntary effort by the County of Westchester and Westchester County Department of Correction ("WCDOC") to address the alleged constitutional violations raised by the United States' investigation. See Civil Rights of Institutionalized Persons Act, 42 U.S.C. §§ 1997b(a)(2)(B), 1997g.

WHEREAS, on August 30, 2007, the United States notified then Westchester County Executive Andrew J. Spano of its intent to investigate conditions at the Westchester County Jail operated by WCDOC pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997;

WHEREAS, between February 25 and February 28, 2008, the United States conducted a site visit at WCDOC with consultants in the field of corrections and custodial medical and mental health care;

WHEREAS, throughout the course of the investigation, Westchester County (the "County") has cooperated and negotiated in good faith with the United States regarding the investigation of WCDOC, provided the United States and its consultants full access to the facility and documents, and was receptive to the on-site recommendations of the United States' consultants;

WHEREAS, on November 19, 2009, the United States issued a Findings Letter pursuant to CRIPA, 42 U.S.C. § 1997(a)(1), which concluded that certain conditions at WCDOC violated the constitutional rights of detainees of the jail (the "Findings Letter");

WHEREAS, since the United States initiated the investigation and issued the Findings Letter, the County has made progress in addressing several of the conditions described in the Letter. The parties agree that it is in their mutual interests to avoid litigation. The parties further agree that resolution of this matter pursuant to this Agreement is in the best interests of the parties and the detainees of WCDOC;

WHEREAS, the parties enter into this Agreement for the purpose of clearly articulating and further complying with WCDOC's duties under the Constitution and agree that no person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for any purpose;

WHEREAS, the County of Westchester, the Westchester County Jail and the Commissioner of Correction in his official capacity continue to be firmly committed to providing legally sufficient conditions at WCDOC by instituting the measures required by this Agreement;

NOW, THEREFORE, the Parties agree to the following:

**I. DEFINITIONS**

1. "WCDOC" means the Westchester County Department of Corrections, the Westchester County Jail (the County-owned and operated correctional facility located in Valhalla, New York), and any facility that is built, leased, or otherwise used, to supplement or replace any portion of the Westchester County Jail.
2. "Adequate" means the level of service required for compliance with the United States Constitution.
3. The term "Corrections Health Care Provider" means the agency or entity that is responsible for providing medical and mental health care services to inmates
4. "Detainee" or "inmate" refers broadly to one or more individuals detained at, or otherwise housed, held, in the custody of, or confined at WCDOC.
5. "Effective date" means January 1, 2016.
6. "Implement" means to give practical effect and reasonably ensure actual fulfillment by concrete measures, including appropriate training of relevant staff.
7. The term "Isolation" means any type of involuntary confinement in a locked room or cell for at least three consecutive hours during the day (excluding overnight lock-in and other lock-in periods that are applicable to the general population, such as lock-ins for count, shift changes, contraband sweeps, or emergency situations involving security concerns).  
"Isolation" shall not include suicide watch, the confinement of an inmate to prevent the spread of disease, or "Seclusion" in compliance with the procedures set forth in 40 NYCRR § 2-06.
8. "Less-lethal" shall mean any device, agent, or weapon, including but not limited to chemical agents, that is less likely to kill a target than conventional devices, agents, or weapons.
9. "Minor" refers to any inmate or detainee who is less than 18 years old.
10. "Qualified Medical Professional" means a physician, nurse or other medical provider licensed and sufficiently trained to provide the services he or she undertakes to provide.
11. "Qualified Mental Health Professional" means an appropriately qualified physician, psychiatrist, psychologist, counselor, therapist, social worker, or nurse who is competent, whether by education, training, licensure, or experience, to make the particular decision, or deliver the particular service, at issue.

12. "Quality Assurance" means a system of self-audit and improvement to assess the implementation and effectiveness of remedies instituted pursuant to this Agreement, to identify deficits that may exist, and to effectuate new measures to cure deficits.
13. The term "Punitive Segregation" means the segregation of an inmate from the general population pursuant to a disciplinary sanction imposed after a hearing.
14. "Restraint" means any physical, chemical, or mechanical device, including oleoresin capsicum spray (commonly known as pepper spray), used to control the behavior of a detainee.
15. Throughout this Agreement, the following terms are used when discussing compliance: substantial compliance, partial compliance, and non-compliance. "Substantial Compliance" shall mean a level of compliance that does not significantly deviate from the terms of this Agreement, provided that any deviation poses no significant risk to detainee health or safety. "Partial Compliance" indicates that compliance has been achieved on some of the components of this Agreement, but significant work remains. "Non-Compliance" indicates that most or all of the components of this Agreement provision have not yet been met.
16. "Sworn Staff" are peace officers as such term is defined in the New York Penal Law, including correction officers and superior correction officers (Sergeants, Captains, Assistant Wardens) employed by WCDOC.
17. "Train" means to sufficiently instruct an individual in the skills addressed herein.
18. "United States" shall mean the United States Department of Justice Civil Rights Division and the United States Attorney's Office for the Southern District of New York.
19. "Use of Force" shall mean the application of physical, mechanical, or chemical measures to compel compliance by an unwilling subject. "Use of force" shall not include unresisted guiding of a subject (using, for example, a touch to the subject's arm or shoulder) or unresisted handcuffing or unresisted shackling of prisoners during movement if no other force is used.

## **II. SUBSTANTIVE REMEDIAL MEASURES**

### **A. PROTECTION FROM HARM**

20. Use of Force. WCDOC shall maintain policies and procedures consistent with current legal standards regarding permissible use of force. To achieve this outcome, WCDOC shall maintain policies and procedures that include, *inter alia*, provisions that:
- a. Define force and excessive or unnecessary force.
  - b. Prohibit the use of excessive or unnecessary force.

- c. Prohibit the use of force as a response to verbal insults or verbal inmate threats
- d. Prohibit the use of force as a response to inmates' failure to follow instructions where there is no immediate threat to the safety of the institution, inmates, or staff, unless WCDOC has attempted a hierarchy of nonphysical alternatives which are documented.
- e. Prohibit the use of force as punishment.
- f. Prohibit the use of crowd control devices on individual inmates.
- g. Direct the appropriate use of chemical agents.

21. Effective Oversight of the Use of Force. WCDOC shall review all uses of force and use best efforts to ensure that all uses of force are consistent with WCDOC policy and the law. To achieve this outcome, WCDOC shall maintain policies, procedures and practices that include, *inter alia*, provisions that:

- a. Ensure the maintenance and implementation of a standardized use of force reporting system.
- b. Require the training of all Sworn Staff in how to document uses of force. This training shall instruct staff how to provide a complete description of: (1) the events preceding the use of force; (2) a description of the force used; (3) the care given after force was used; (4) the identification of each individual involved in the incident; and (5) witnesses to the incident.
- c. Require all Sworn Staff involved in or witnessing any use of force to report the incident before the end of the shift on which the use of force occurs.
- d. Implement and maintain supervisory review of all use of force incidents to determine whether the use of force was within WCDOC policy and determine whether the use of force was objectively reasonable.
- e. Require that any inmate upon whom physical force is used be offered prompt medical attention by medical personnel and, (i) upon a refusal by the inmate, such refusal be documented by medical personnel in the medical and use of force reporting documents; and (ii) upon acceptance of the offer of medical attention by the inmate, such attention be provided and documented by medical personnel in the medical and use of force reporting documents.
- f. Require that review of incident reports, use of force reports, video recordings of use of force incidents, and inmate grievances involving or alleging use of force by any emergency response team or unit ("ERT") be performed by supervisory staff without direct supervisory authority over ERT members or supervisors.
- g. Require that incident reports, use of force reports, video recordings of use of force incidents, and inmate grievances be screened for allegations of staff misconduct and, where misconduct is reasonably suspected, the incident is referred for investigation.

h. Require that supervisory review of incident reports, use of force reports, video recordings of use of force incidents, and inmate grievances alleging excessive or inappropriate uses of force include a timely review of medical records of inmate injuries as reported by medical professionals in all cases where the inmate has accepted the offer of medical attention (*see supra* paragraph 18(e)).

i. Ensure the maintenance and implementation of policies and practices on the proper use of video recording devices for use of force incidents and storage and retention of such video recordings, including a requirement that planned uses of force such as cell extractions are videotaped.

j. Ensure the maintenance and implementation of policies and practices for the effective and accurate maintenance, inventory and assignment of less-lethal devices.

k. Ensure the maintenance and implementation of a system to track all incidents of use of force that at a minimum includes the following information: the inmate(s) name, housing assignment, date and type of incident, injuries (if applicable), if medical care is provided, primary and secondary staff directly involved, reviewing supervisor, external reviews and results (if applicable), corrective action taken (if appropriate), and administrative sign-off.

22. Effective Use of Force Training. WCDOC shall ensure that all Sworn Staff are provided training consistent with WCDOC policy and applicable law. WCDOC shall:

a. Maintain and implement a training curriculum, consistent with WCDOC policy and applicable laws, for Sworn Staff regarding WCDOC's policies, procedures and practices for use of force, defensive tactics, and investigations. The training shall include an interactive component with sample cases, responses, feedback, and testing to ensure retention.

b. Test Sworn Staff regarding proper and improper uses of force, de-escalation techniques, defensive tactics, and investigations, and require a minimum passing grade that indicates an understanding of all required concepts.

c. Coordinate and review WCDOC use-of-force policy and training to ensure quality, consistency, and compliance with updates to applicable law and WCDOC policy, at least semi-annually.

d. Maintain training records regarding every WCDOC officer for a minimum of three years and in no event less than the times set forth in New York State or other applicable requirements. These records shall be maintained in a central file and, at minimum, include course descriptions, date of courses, notation of course curriculum, and scoring of all testing.

23. Safety and Supervision. WCDOC shall properly supervise inmates at all times. To achieve this outcome, WCDOC shall:

a. Ensure that correctional officer staffing and supervision levels remain consistent with standards regarding classification and supervision as set forth at 9 NYCRR §§ 7003 and 7013 *et seq.*

- b. Ensure that inmate work areas are supervised with proper staffing levels whenever inmates are present.
- c. Implement and maintain frequent and documented security rounds timed at varying intervals by correctional officers inside each housing unit.
- d. Use best efforts to ensure that staff report safety or security related incidents before the end of the shift in which the incident occurs.
- e. Develop a system to track all serious incidents that captures all relevant information, including: location, any injuries, whether medical care is provided, primary and secondary staff involved, reviewing supervisor, external reviews and results (if applicable), remedy taken (if appropriate), and administrative sign-off.
- f. Ensure that inmates placed in the Special Housing Unit (“SHU”), keeplock, disciplinary or administrative segregation, or other nonmedical, facility-directed segregation status are provided with due process that has been developed and implemented in policies, procedures and practices as developed in response to Paragraph 21.
- g. Continue the increased use of overhead recording security cameras throughout the common areas of the facility and, where reasonably necessary, increase such use, and ensure that the use of cameras are to supplement and not replace supervision.
- h. Review, and revise where appropriate, all security policies and Standard Operating Procedures (“SOPs”) on an annual basis, including security post orders.
- i. Provide appropriate training on unit-specific post orders each time a correctional officer is newly assigned to that unit.
- j. Implement specialized, annual, training for officers assigned to special management units, including the SHU, keeplock, disciplinary or administrative segregation, psychiatric, and protective custody units.

24. Disciplinary Process. WCDOC shall develop a functioning disciplinary system that balances institutional security and due process rights. WCDOC shall:

- a. Ensure that inmates are afforded due process for any disciplinary actions against them, including promptly receiving a disciplinary ticket, a written decision detailing the reasons for the decision and length of sentence, and a fair hearing.
- b. Ensure that disciplinary hearings are conducted in a private setting to the greatest extent possible.
- c. Maintain and implement a policy, procedure and practice to review sentences committing inmates to the SHU, keeplock, disciplinary or administrative segregation or other lock down status for longer than 30 consecutive days.

d. Maintain and implement a policy, procedure and practice to ensure that a Qualified Mental Health Professional is involved in developing recommendations concerning possible disciplinary action for inmates with identified mental health conditions.

25. Classification. WCDOC shall house all inmates based on their classification and risk assessment. WCDOC shall:

a. Maintain and implement current policies for a classification system that classifies inmates using objective criteria and separates inmates in housing units by classification levels.

b. Provide classification officers with current cell availability information in each jail unit.

26. Inmate Grievance Procedure. WCDOC shall maintain and implement a functioning grievance system to address inmate concerns. To achieve this outcome, WCDOC shall maintain policies and practices to ensure, *inter alia*, the following:

a. Inmate grievances are processed, addressed, and responded to in writing in a timely manner.

b. Inmates are able to file grievances regarding use of force and access to health and dental care confidentially with the Deputy Commissioner of Operations and shall not be required to confront or in any matter notify any staff member prior to filing a grievance.

c. Grievance forms are available on all units and to all inmates and are available in both English and Spanish.

d. Inmate grievances are screened for allegations of staff misconduct and, if the incident or allegation meets established criteria, referred for investigation within 48 hours.

27. Access to Information. WCDOC shall provide to all inmates the following:

a. Information outlining the facility rules and regulations, notifying them that they need to comply with facility rules and regulations, and advising them, at a minimum, of their rights to be protected from harm, report misconduct, access medical and mental health care, and seek redress of grievances. WCDOC shall provide this information in both English and Spanish, as appropriate. In addition, oral explanations of the facility rules and services to inmates who are not literate shall be provided.

28. Employee Discipline. WCDOC shall ensure that employee discipline policies and practices set forth clear guidelines on acceptable and unacceptable use of force practices. To achieve this outcome, WCDOC shall:

a. Ensure that the WCDOC Employee Code of Conduct includes a prohibition on use of excessive or unnecessary force.

b. Ensure that the WCDOC Use of Force policy includes definitions of excessive or unnecessary force and appropriate sanctions for use of such force.

c. Report to the United States, on a semi-annual basis, a list of all instances where there was a violation of the WCDOC Use of Force policy, and all discipline, training, or corrective action imposed for such violations. Such lists shall only contain the initials of the offending officer. WCDOC acknowledges that the United States or the Monitor may, in their discretion, request additional information about the incidents or offending officers pursuant to this Agreement, and such information shall be promptly provided.

## **B. MEDICAL CARE**

29. Intake Screening. WCDOC shall ensure that all inmates receive medical intake screenings. WCDOC shall:

a. Maintain and implement an appropriate medical intake screening instrument that identifies self-described and reasonably observable medical needs, including infectious diseases, and ensure timely access to a Qualified Medical Professional when presenting symptoms require such care.

b. Ensure that all initial medical intake screenings are performed by a Qualified Medical Professional prior to transfer to initial housing.

30. Treatment and Management of Communicable Diseases. WCDOC shall maintain and implement a functioning care plan for the treatment and management of communicable disease, including, but not limited to guidelines for identification, treatment, wound care, and containment to prevent transmission of Methicillin-resistant Staphylococcus aureus to staff or inmates.

31. Dental Care. WCDOC shall ensure that inmates receive timely dental care and are provided with medically appropriate interim pain relief.

32. Access to Health Care. WCDOC shall provide inmates access to adequate health care in a timely manner. WCDOC shall ensure that medical requests are logged, tracked, and responded to under the appropriate standard of care.

33. Medication Administration. WCDOC shall ensure that treatment and administration of medication to inmates is implemented in a timely manner. WCDOC shall ensure inmates receive medications at the required times, consistent with inmates' prescriptions from a Qualified Medical Professional.

## **C. MENTAL HEALTH CARE**

34. Timely and Appropriately Evaluation of Inmates. WCDOC shall ensure that all inmates requiring mental health services are identified through a robust initial mental health screening upon intake and prior to transfer to initial housing, and in any event no later than 48 hours after admission. Where indicated by the initial screening, WCDOC shall also ensure that inmates receive a structured mental health screening conducted by a Qualified Mental Health Professional within 14 days of admission.

35. Assessment and Treatment. WCDOC shall create and implement treatment plans designed to effectively address inmates' serious mental health needs. WCDOC shall ensure that:

a. Inmate treatment plans contain interventions specifically tailored to the inmates' diagnoses and problems.

b. A Qualified Mental Health Professional be consulted as part of the disciplinary process as it relates to inmates identified as having serious mental health needs and that such professional provide recommendations as to the discipline to be imposed based on the inmate's mental health status.

36. Psychotherapeutic Medication Administration. WCDOC shall ensure that ERTs are not used to administer involuntary medication unless the inmate is clearly uncontrolled and presenting an immediate risk to him/herself or others. WCDOC shall:

a. Document the concurrence and rationale of the attending medical professional. If practicable, the attending medical professional will document the rationale and concurrence contemporaneous with the administration of the involuntary medication, but in any event, no later than by the end of the medical professional's shift.

b. WCDOC shall also document the use of force employed to administer medication, and the inmate's condition following the use of force.

37. Other Mental Health Issues. WCDOC shall ensure that inmates requiring specialized mental health care are provided services meeting the appropriate standards of care. To achieve this outcome, WCDOC shall ensure:

a. A Qualified Mental Health Professional conducts an in-person evaluation of an inmate prior to a seclusion or restraint order, or within eight hours.

b. Restraint orders include sufficient criteria for release. WCDOC represents and warrants that it does not and will not issue seclusion orders.

c. All Sworn Staff who directly interact with inmates receive sufficient training from a licensed medical professional on basic mental health information (e.g., diagnosis, specific problematic behaviors, psychiatric medication, additional areas of concern); recognition of signs and symptoms evidencing a response to trauma; and the appropriate use of force for inmates who suffer from mental illness.

d. Maintain training records for at least three years and in no event less than the times set forth in New York State or other applicable requirements in a central file which, at minimum, includes course descriptions, date of courses, and notation of course curriculum.

e. All inmates housed in isolated confinement areas, such as the SHU, keeplock, disciplinary or administrative segregation, or other lock down status, receive, at a minimum, weekly mental health screenings conducted by Qualified Mental Health Professionals.

f. SHU, keeplock, disciplinary or administrative segregation or other lock down status, including observation status, are not used to punish inmates for symptoms of mental illness and behaviors that are, because of mental illness, beyond their control.

**D. MINORS**

38. Owed Punitive Segregation Time. No inmates under the age of 19 shall be placed in Punitive Segregation based upon the Punitive Segregation time they accumulated during a prior incarceration.

39. Inmates Under the Age of 18

a. WCDOC shall not place inmates under the age of 18 in Punitive Segregation or Isolation.

b. Within 60 days of the Effective Date, WCDOC, in consultation with the Monitor, shall develop and implement systems, policies, and procedures for inmates under the age of 18 that reward and incentivize positive behaviors. These systems, policies, and procedures shall be subject to the approval of the Monitor. Any subsequent changes to these systems, policies, and procedures shall be made in consultation with the Monitor.

c. Within 60 days of the Effective Date, WCDOC, in consultation with the Monitor, shall develop and implement systems, policies, and procedures to discipline inmates under the age of 18 who commit infractions in a manner that is: (a) consistent with their treatment needs; (b) does not deprive them of access to mandated programming, including programming required by WCDOC, standard out of cell time, recreation time, and any services required by law; and (c) does not compromise the safety of other inmates and Staff.

40. 18-Year Old Inmates

a. WCDOC shall not place 18-year old inmates with serious mental illnesses in Punitive Segregation or Isolation. Any 18-year old inmate with a serious mental illness who commits an infraction involving violence shall be housed in an appropriate therapeutic setting staffed by Qualified Mental Health Professionals and operated jointly with the Corrections Health Care Provider.

b. Within 120 days of the Effective Date, WCDOC, in consultation with the Monitor, shall develop and implement an adequate continuum of alternative disciplinary sanctions for infractions in order to reduce reliance on Punitive Segregation as a disciplinary measure for 18-year old inmates. These systems, policies, and procedures shall be subject to the approval of the Monitor. Any subsequent changes to these systems, policies, and procedures shall be made in consultation with the Monitor.

c. WCDOC shall not place any 18-year old inmate in Punitive Segregation unless a Qualified Mental Health Professional determines that the confinement does not present a substantial risk of serious harm to the inmate given his or her health condition, including his or her mental health, and needs. Such determination shall be documented and signed by the Qualified Mental Health Professional.

d. To the extent that an 18-year old inmate is placed in Punitive Segregation or Isolation, a Qualified Mental Health Professional and Qualified Medical Professional shall monitor the inmate's medical and mental health status on a daily basis to assess whether the continued confinement presents a substantial risk of serious harm to the inmate's medical or mental health. The Qualified Mental Health Professional and Qualified Medical Professional will document their daily assessment in the inmate's medical record. If either of the assessments of the Qualified Mental Health Professional and Qualified Medical Professional indicates removing the inmate from Punitive Segregation or Isolation based on the inmate's medical or mental health condition, the inmate shall be promptly transferred out of Punitive Segregation or Isolation.

e. The conditions of any cells used for Punitive Segregation or Isolation housing for 18-year old inmates shall not pose an unreasonable risk to inmates' safety.

#### 41. De-escalation Confinement

a. Nothing in Section D (Minors) shall be construed to prohibit WCDOC from placing inmates under the age of 19 years old in a locked room or cell as a temporary response to behavior that poses a risk of immediate physical injury to the inmate or others ("De-escalation Confinement"). WCDOC shall comply with the following procedures when utilizing De-escalation Confinement:

b. Prior to the confinement, WCDOC shall attempt to control the inmate's behavior through less severe measures, time and circumstances permitting. Such measures shall be documented.

c. The Tour Commander of the Facility shall be notified within 30 minutes of the confinement and provided with the circumstances and facts that justify the confinement.

d. The inmate shall remain in confinement for only so long as he or she continues to pose a risk of immediate physical injury to the inmate or others. A Qualified Mental Health Professional shall assess the inmate at least once every three hours to determine whether the inmate continues to pose a risk of immediate physical injury to the inmate or others. The period of confinement shall not exceed 24 hours, except in extraordinary circumstances which shall be documented, approved in writing by the Warden of the Facility, and approved in writing by the Corrections Health Care Provider supervising psychiatrist or supervising clinical psychologist.

#### 42. Mental Health Care. WCDOC shall:

- a. Provide appropriate rehabilitative programming for minors, including those who have committed disciplinary infractions.
- b. Ensure that minors undergo mental health evaluations that address their special developmental needs.
- c. Ensure that minors undergo mental health evaluations at intervals of between fourteen and twenty-one days even if they are not receiving psychotropic medications.
- d. Ensure that minors held in the SHU, keeplock, disciplinary or administrative segregation or other lock down status, including observation status, or in the psychiatric unit are checked every 24 hours by a Qualified Mental Health Professional.

43. Housing. WCDOC shall make reasonable efforts to ensure that all minors are provided housing that maintains sight and sound separation from adult inmates; any co-mingling must be supervised by appropriate staff. WCDOC represents and warrants that all minors are and will be housed in separate cells.

44. Medical Care. WCDOC shall obtain signed consent forms from the parent or guardian of any minor receiving prescribed medications or health care treatments unless otherwise permitted by state or local laws. If no consent can be obtained, WCDOC shall have made and shall document diligent attempts to obtain such consent.

### III. MONITORING

45. Monitor Selection. The parties have jointly selected David M. Bogard of Pulitzer/Bogard & Associates, LLC, to serve as the monitor for the WCDOC correctional, medical and mental health provisions of this Agreement ("Monitor"). The Parties agree to equally share the cost of the Federal Mediation and Conciliation Service. Neither party, nor any employee or agent of either party, shall have any supervisory authority over the Monitor's activities, reports, findings, or recommendations. The cost for the Monitor's fees and expenses shall be borne by WCDOC. The Monitor may be terminated only for good cause, unrelated to the Monitor's findings or recommendations, and only with approval of the parties. In the event the selection of a new Monitor becomes necessary, and the Parties are unable to agree upon a selection of a new Monitor within 45 days, each Party shall submit two names along with resumes or curriculum vitae and cost proposals, to a neutral party, selected with the assistance of the Federal Mediation and Conciliation Service, and the neutral party shall appoint the Monitor from among the names submitted. The selection of the Monitor shall be conducted solely pursuant to the procedures set forth in this Agreement, and will not be governed by any formal or legal procurement requirements.

46. Monitor Qualifications. The Monitor shall have appropriate experience and education or training related to the subject areas covered in this Agreement.

47. Monitoring Team. The Monitor may hire or consult with such additional qualified staff as necessary to fulfill the duties required by the Agreement ("Monitoring Team"). The Monitor

is ultimately responsible for the findings regarding compliance. The Monitoring Team will possess and be subject to all the same access rights and confidentiality limitations, listed below, as the Monitor. The parties reserve the right to object for good cause to members of the Monitoring Team.

48. Monitor Access. On notice reasonable under the circumstances, the Monitor shall have full and complete access to the Facility, all Facility records, inmate medical records, staff, and inmates. WCDOC shall direct all employees to cooperate fully with the Monitor. All non-public information obtained by the Monitor shall be maintained in a confidential manner.

49. Monitor Ex Parte Communications. The Monitor shall be permitted to initiate and receive ex parte communications with all parties.

50. Limitations on Public Disclosures by Monitor. Except as required or authorized by the terms of this Agreement or the parties acting together, the Monitor shall not: make any public statements (at a conference or otherwise) or issue findings with regard to any act or omission of WCDOC or its agents, representatives or employees, or disclose nonpublic information provided to the Monitor pursuant to this Agreement. Any press statement made by the Monitor regarding his or her employment must first be approved in writing by all parties. The Monitor shall not testify in any other litigation or proceeding with regard to any act or omission of WCDOC or any of its agents, representatives, or employees related to this Agreement, nor testify regarding any matter or subject that he or she may have learned as a result of his or her performance under this Agreement. Reports issued by the Monitor shall not be admissible against WCDOC in any proceeding other than a proceeding related to the enforcement of this Agreement by WCDOC or the United States. Unless such conflict is waived by the parties, the Monitor shall not accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against WCDOC, its departments, officers, agents or employees. The Monitor is not a State/County or local agency or an agent thereof, and accordingly the records maintained by the Monitor shall not be deemed public records subject to public inspection. Neither the Monitor nor any person or entity hired or otherwise retained by the Monitor to assist in furthering any provision of this Agreement shall be liable for any claim, lawsuit or demand arising out of the Monitor's performance pursuant to this Agreement. This provision does not apply to any proceeding before a court related to performance of contracts or subcontracts for monitoring this Agreement.

51. Monitor's Reports. The Monitor shall provide the parties with reports describing the steps taken by WCDOC to implement this Agreement and evaluate the extent to which WCDOC has complied with each substantive provision of the Agreement. The Monitor shall issue an initial report four months after the effective date of this Agreement, and then every six months thereafter, unless both parties otherwise agree in writing. The reports shall be provided to the parties in draft form for comment at least two weeks prior to their issuance. These reports shall be written with due regard for the privacy interests of individual inmates and staff and the interest of WCDOC in protecting against disclosure of non-public information.

52. Compliance Assessments. In each report, the Monitor shall evaluate the status of compliance for each relevant provision of the Agreement using the following standards: (1)

Substantial Compliance; (2) Partial Compliance, and (3) Non-Compliance. In order to assess compliance, the Monitor shall review a sufficient number of pertinent documents to accurately assess current conditions; interview all pertinent staff; and interview a sufficient number of inmates to accurately assess current conditions. The Monitor shall be responsible for independently verifying representations from WCDOC regarding progress toward compliance, examining supporting documentation, where applicable. Each Monitor's report shall describe the steps taken to analyze conditions and assess compliance, including documents reviewed and individuals interviewed, and the factual basis for each of the Monitor's findings.

53. Monitor's Budget. WCDOC shall provide the Monitor with a budget sufficient to allow the Monitor to carry out the responsibilities described in this Agreement, which shall be implemented in a separate contract between the County and the Monitor. The Monitor shall pay the members of the Monitor Team out of this budget. Prior to selection for the Monitor's positions, each Monitor candidate shall propose a reasonable, estimated budget sufficient to cover the responsibilities described in this Agreement

54. Technical Assistance by the Monitor. The Monitor shall provide WCDOC with technical assistance as requested by WCDOC.

#### **A. COMPLIANCE AND QUALITY ASSURANCE**

55. The parties have agreed upon the Monitor to assist the County in achieving compliance with the provisions of this Agreement, to report those opinions to the parties, and to provide the County with technical assistance in attaining compliance with the Agreement.

56. Within 90 days of the Effective Date of this Agreement, the County shall, where necessary, revise and/or develop policies, procedures, protocols, training curricula, and practices to ensure that they are consistent with, incorporate, address, and implement all provisions of this Agreement. The County shall revise and/or develop as necessary other written documents such as assessment tools, logs, handbooks, manuals, and forms, to effectuate the provisions of this Agreement. The County shall send newly drafted and revised relevant policies and procedures to the United States and the Monitor for review and comment prior to their finalization. The County shall provide initial and refresher training to all Sworn Staff with respect to newly implemented or revised relevant policies and procedures. The County shall document employee review and training in relevant policies and procedures.

57. Within 90 days of the Effective Date of this Agreement, the County shall develop and implement written quality assurance policies and procedures relating to inmate safety, use of force, medical and mental health care, and treatment of minors, and to regularly assess and ensure compliance with the terms of this Agreement.

58. Within 180 days of the Effective Date of this Agreement, the County shall develop and implement policies and procedures to address problems relating to inmate safety, use of force, medical and mental health care, and treatment of minors that may be uncovered during the course of the County's quality assurance activities.

59. The County shall assign and identify a compliance coordinator to oversee compliance with this Agreement and to serve as a point of contact.

60. The County shall submit compliance reports to the United States, the first of which shall be filed within 90 days of the date of this Agreement. Thereafter, the reports shall be on the first business day following April 30 and September 30 until the Agreement is terminated.

61. Each compliance report shall describe the actions the County has taken during the reporting period to implement this Agreement and shall make specific reference to the Agreement provisions being implemented. At a minimum, each Compliance report shall include the following sections:

a. A general narrative summary of WCDOC's compliance with the terms of the Agreement; where applicable, the summary shall specifically note when the County has been unable to meet any requested reporting timeframe specified in the Agreement.

b. A training summary, in which WCDOC reports the number of hours and type of training relating to inmate safety, use of force, medical and mental health care, and treatment of minors provided to Sworn Staff during the reporting period, separately by supervisory and nonsupervisory staff, and, if applicable, separately for security, medical, mental health, and civilian staff.

c. A summary report of all use of force incidents occurring during the preceding ninety days, which shall provide a description of the incident and set forth all actions, including disciplinary actions, taken in response to the use of force incidents.

d. A summary report of all incidents of forced medication occurring during the preceding ninety days, which shall provide a description of the incident and set forth all actions, including disciplinary actions, taken in response to such incidents.

62. The County shall provide written answers to written questions from the United States concerning the County's compliance with this Agreement within 30 days of receipt. The County shall provide access to any requested documents regarding the County's compliance with the requirements of this Agreement. Any dispute regarding the scope or burden of the requests shall be resolved by the Monitor.

## **B. RIGHT OF ACCESS**

63. The United States, the Monitor, and their attorneys, experts, consultants and agents shall, upon reasonable notice under the circumstances, have full and complete access to the facility, facility inmates, facility staff (including contracted staff), and documents as reasonably necessary to address issues affected by this Agreement, including the right to conduct confidential interviews with inmates, and to conduct interviews with facility staff outside the presence of other staff or supervisors. Within the discretion of the United States, its attorneys, and/or the Monitor, reasonable notice will be provided where appropriate prior to accessing the facility.

64. The United States, the Monitor, and their attorneys, experts, consultants and agents may, upon reasonable notice under the circumstances, but in no event less than 24 hours, tour WCDOC to assess compliance with this Agreement. The United States anticipates that it will conduct a tour of WCDOC approximately six (6) months after the Effective Date of the Agreement to determine the status of WCDOC's compliance with the terms of the Agreement.

65. The County shall maintain sufficient records to document that the requirements of this Agreement are being properly implemented and shall make such records available at all reasonable times for inspection and copying by the United States.

In addition, The County shall maintain and submit upon request records or other documents to verify that it has taken such actions as described in its compliance reports (e.g., census summaries, policies, procedures, protocols, training materials, and incident reports) and will also provide all documents reasonably requested by the United States.

66. The County, and its agents, agree that they shall not retaliate against any person because that person has filed or may file a complaint, provided information or assistance, or participated in any other manner in an investigation or proceeding relating to this Agreement. However, nothing in this Agreement shall preclude the County from investigating or disciplining any employee engaged in improper conduct.

#### **IV. CONSTRUCTION, IMPLEMENTATION, AND TERMINATION**

67. The County shall implement all measures necessary to effectuate this Agreement. The implementation of this Agreement will begin immediately upon its Effective Date.

68. Except where otherwise specifically provided, the County shall complete implementation of all provisions of this Agreement within 180 days of its Effective Date.

69. This Agreement shall terminate three years from its Effective Date, if the Parties agree that the County is in substantial compliance with all provisions of this Agreement and have maintained substantial compliance of all provisions for 24 months. The burden shall be on the County to demonstrate that it has maintained substantial compliance with each of the provisions of this Agreement. If the Parties agree that the County is in substantial compliance with any of the substantive provisions set out in this Agreement earlier than three years from the Effective Date of this Agreement and maintain compliance for at least 24 months, the compliant provision or provisions are no longer subject to monitoring and assessment by the United States and the County will be deemed to have met the terms of this Agreement as to those measures. The burden will be on the County to demonstrate such compliance.

70. If the United States believes that the County has failed to comply with any obligation under this Agreement, United States will, prior to seeking judicial action to enforce the terms of this Agreement, give written notice of the failure to the County. The Parties shall engage in good faith negotiations to attempt to resolve the dispute. These negotiations will last for a maximum of 30 days from the date of the United States' written notice. The United States commits to work in good faith with the County to avoid enforcement actions. However, in the case of an emergency posing an immediate threat to the health and safety of inmates, the United States may seek enforcement action without regard to the notice and negotiation requirements

herein. The parties consent to the jurisdiction of the United States District Court for the Southern District of New York for any actions to enforce the terms of this Agreement.

71. Failure by either party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines or provisions of this Agreement.

72. If any unforeseen circumstance occurs that causes a failure to timely carry out any requirements of this Agreement, the County shall notify the United States in writing within twenty (20) calendar days after the County becomes aware of the unforeseen circumstance and its impact on the County's ability to perform under this Agreement. The notice shall describe the cause of the failure to perform and the measures taken to prevent or minimize the failure. The County shall implement all reasonable measures to avoid or minimize any such failure.

73. Nothing herein shall be deemed, construed, or interpreted as an admission of liability by the County. Neither this Agreement, nor any part thereof, shall be admissible against the County except in a proceeding to enforce this agreement involving the parties to this Agreement.

74. This Agreement is for the benefit of the County and the United States and no other parties shall have any rights under this Agreement.

75. No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for the purposes of civil, criminal or administrative action. This Agreement is not intended to impair or extend the right of any person or entity to seek relief against the County, WCDOC or its officials, employees or agents for their past or future conduct; accordingly, this Agreement does not purport to alter legal standards governing any such claims, including those under federal, state and/or local law. Similarly, this Agreement does not authorize, nor shall be construed to authorize, access to WCDOC documents or prior or future communications between the parties, by persons or entities not a party to this Agreement.

76. Nothing in this Agreement shall be construed as preventing the County and/or WCDOC from revising existing or creating new policies/practices in a manner consistent with this Agreement. This Agreement allows WCDOC to modify its facilities, including developing alternative placement programs for the detainees currently at the WCDOC facilities in a manner consistent with this Agreement. This Agreement does not prohibit the County and/or WCDOC from engaging a third party to perform any of the responsibilities required of Westchester County and/or WCDOC under this Agreement.

77. The issue of liability has not been litigated.

78. This Agreement constitutes the entire integrated agreement of the Parties. With the exception of the United States' findings letter referenced in Section I.B. herein, no prior or contemporaneous communications, oral or written, will be relevant or admissible for purposes of determining the meaning of any provisions herein, in litigation, or in any other proceeding.

79. This Agreement shall be applicable to, and binding upon, the parties, their officers, agents, employees, assigns, and their successors in office. The County shall ensure that all current and future relevant County employees receive appropriate training to understand the

terms of this Agreement (to the extent necessary to carry out their job duties and responsibilities) and implement the terms of this Agreement.

80. Each party shall bear the cost of its fees and expenses incurred in connection with this Agreement.

81. In the event that any provision of this Agreement is declared invalid for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this Agreement.

82. The parties agree to defend the provisions of this Agreement. The parties shall notify each other of any court challenge to this Agreement. In the event any provision of this Agreement is challenged in any local or state court, removal to federal court shall be sought. In the event of a dispute between the parties, the parties shall first meet and confer before seeking judicial intervention. If the parties are unable to resolve their dispute, they may seek relief in the United States District Court for the Southern District of New York.

83. The signatures below of officials representing the United States and the County signify that these parties have given their final approval to this Agreement.

AGREED TO:

FOR THE UNITED STATES:

PREET BHARARA  
United States Attorney for the  
Southern District of New York

VANITA GUPTA  
Principal Deputy Assistant Attorney General  
Civil Rights Division

By:

REBECCA C. MARTIN  
TARA La MORTE  
Assistant United States Attorneys  
United States Attorney's Office  
Southern District of New York  
86 Chambers St. 3rd Fl.  
New York, New York 10007  
(212) 637-2714/2746

CATHLEEN TRAINOR  
Trial Attorney  
Special Litigation Section  
601 D Street, NW – Room 5912  
Washington, D.C. 20004

FOR THE COUNTY

KEVIN CHEVERKO  
Commissioner of Correction  
Westchester County Department of Correction  
P.O. Box 389  
Headquarters Building  
Valhalla, NY 10595