

**MIAMI-DADE COUNTY JAIL  
SETTLEMENT AGREEMENT**

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## I. INTRODUCTION AND BACKGROUND

1. This Settlement Agreement ("Agreement") is among and between the United States Department of Justice ("DOJ"); Miami-Dade County; and the Board of County Commissioners of Miami-Dade County, the governing body of Miami-Dade County, a political subdivision of the State of Florida, which operates the County Jail by and through the Miami-Dade County Corrections and Rehabilitation Department ("MDCR") (collectively referred to as "County") to remedy the alleged constitutional violations at the Miami-Dade County Jail identified in the findings letter that the United States issued on August 24, 2011 ("Findings Letter").
2. The MDCR operates correctional facilities in Miami, Florida (collectively known as "MDCR Jail facilities" or "the Jail") and is responsible for providing care, custody, and control of inmates. The Jail currently consists of 6 corrections facilities and currently houses approximately 5,200 inmates in a complex of buildings spread out across the county, below the design capacity of 5,845. The MDCR Jail facilities are an integral part of the public safety system in Miami-Dade County, Florida.
3. On April 2, 2008, the DOJ notified Miami-Dade County officials of its intention to investigate conditions at the MDCR Jail facilities, pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997. The DOJ toured the MDCR Jail facilities with consultants in the fields of corrections, medical and mental health care, suicide prevention, fire safety and environmental health and safety on June 9 – 13 and June 16 – 20, 2008, and on April 7 – 8, 2009.
4. On August 24, 2011, the DOJ issued a Findings Letter, pursuant to 42 U.S.C. § 1997 (a) (1), which concluded that certain conditions in the MDCR Jail facilities violated the constitutional rights of inmates, and recommended remedial measures. Under a cover letter dated September 27, 2011, the County provided to DOJ substantial documentation of changes and measures implemented at the MDCR Jail facilities since the time of the DOJ inspections. On October 4, 2011, County representatives met with DOJ in Washington, D.C., to discuss the aforementioned documentation of remedial measures undertaken by MDCR.
5. At the request of MDCR, the DOJ conducted an additional tour of the MDCR Jail facilities with consultants on November 30 – December 2, 2011. Based upon this inspection, the DOJ concluded that some of the violations identified in its Findings Letter were improved, while other conditions still warranted remedial efforts to be fully implemented.
6. Throughout the course of the investigation and inspection of the MDCR Jail facilities, the DOJ received complete cooperation from the County and unfettered access to all facilities, documents and staff. In addition, DOJ acknowledges that the County made significant improvements in many areas of Jail operations and the physical plant since its initial Jail

tours in 2008. This Agreement is the result of a cooperative effort that evinces a commitment to constitutional conditions at the MDCR Jail facilities on the part of the United States and the County. Through the provisions of this Agreement, the Parties seek to avoid the risks and burdens of litigation while ensuring that the conditions in the Jail are constitutional so as to respect the rights of inmates and provide for the safety of staff.

7. This Agreement only addresses provisions regarding protection from harm, fire and life safety, and inmate grievances. A separate Consent Agreement between the United States, the County and its entities, and the Public Health Trust address medical care, mental health care, and suicide prevention.
8. This Agreement neither constitutes an admission by the County of the truth of the findings contained in the Findings Letter, nor constitutes an admission of liability by the County. Any of the deficiencies, risks, or breach intimated by the language of this Agreement, expressed or implied, are disclaimed by the County. The County enters into this Agreement because it is firmly committed to providing constitutionally and legally compliant conditions in the Jail by effectuating its duties under the Constitution and other applicable law. The County demonstrated this commitment not only by entering into this Agreement but also by pursuing accreditation and auditing by professional correctional organizations, with several of its facilities having achieved accreditation by American Correctional Association and Florida Corrections Accreditation Commission, as well as system-wide compliance with the Florida Model Jail Standards.
9. No person or entity is intended to be a third-party beneficiary of this Agreement for purposes of any civil, criminal, or administrative action. Accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement. This Agreement is not intended to impair or expand the right of any person or entity to seek relief against the County or its officials, employees, or agents, for their conduct. This Agreement is not intended to alter legal standards governing any such claims.

## **II. DEFINITIONS**

1. "Compliance" is discussed throughout this Agreement in the following terms: substantial compliance, partial compliance, and non-compliance. "Substantial Compliance" indicates that MDCR has achieved compliance with most or all components of the relevant provision of the Agreement. "Partial Compliance" indicates that MDCR achieved compliance on some of the components of the relevant provision of the Agreement, but significant work remains. "Non-compliance" indicates that MDCR has not met most or all of the components of the Agreement.
2. "Effective Date" means the date this Agreement is signed by the parties.

3. "Include" or "including" means "include, but not be limited to" or "including, but not limited to."
4. "Inmates" or "Inmate" broadly refers to one or more individuals detained at, or otherwise housed, held, in the custody of, or confined in the Jail.
5. "Jail " refers to all correctional facilities operated by the Miami-Dade County Corrections and Rehabilitation Department and includes: the Pre-Trial Detention Center ("PTDC"); the Women's Detention Center ("WDC"); the Training and Treatment Center ("Stockade"); the Turner Guilford Knight Correctional Center ("TGK"); the Metro West Detention Center ("MWDC"), and any facility that is built, leased, or otherwise used, to replace or supplement the current MDCR Jail facilities, including the anticipated correctional mental health facility ("Mental Health Treatment Facility"). Additionally, MDCR operates a boot camp program, with a housing facility adjacent to TGK ("Boot Camp").
6. "MDCR" refers to Miami-Dade Corrections and Rehabilitation Department. (See the definition for "Jail").
7. "Monitor" means the individual(s) selected to oversee implementation of the Agreement.
8. "Qualified Health Care Professionals" and "Qualified Medical Staff" refer to Qualified Medical Professionals and Qualified Nursing Staff, as well as other Qualified Health Care Professional staff providing services within the scope of their practice, licensure, training, supervision and qualifications.
9. "Special Management Units" mean those housing units of the Jail designated for inmates in administrative or disciplinary segregation, in protective custody, on suicide precautions, or with mental illness.
10. "Sustain Implementation" means to achieve a prolonged and continuous practice.
11. "Train" means to instruct in the skills addressed to a level that the trainee has demonstrated proficiency. "Trained" means to have achieved such proficiency in the skills and to implement those skills regularly. The majority of training shall be in person, with online training functioning as a supplement rather than a stand-alone option. The County will document and track training of all staff.
12. "Use of force" means the application of physical or mechanical measures to compel compliance by a subject. "Use of force" shall include all force except un-resisted handcuffing or un-resisted shackling of inmates for movement purposes.

### **III. SUBSTANTIVE PROVISIONS**

The County shall take all actions necessary to comply with the substantive provisions of this Agreement detailed below. Compliance with the Agreement will be measured both by whether the technical provisions are implemented and whether the conditions of confinement in the Jail meet the requirements of the United States Constitution.

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

Consistent with constitutional standards, the MDCR Jail facilities shall provide inmates with a reasonably safe and secure environment to ensure that they are protected from harm. MDCR shall ensure that inmates are not subjected to unnecessary or excessive force by the MDCR Jail facilities' staff and are protected from violence by other inmates. The MDCR Jail facilities' efforts to achieve this constitutionally required protection from harm will include the following remedial measures regarding: (1) Safety and Supervision; (2) Security Staffing; (3) Sexual Misconduct; (4) Incidents and Referrals (5) Use of Force by Staff; and (6) Early Warning System.

##### **1. Safety and Supervision**

- a. MDCR will take all reasonable measures to ensure that inmates are not subjected to harm or the risk of harm. While some danger is inherent in a jail setting, MDCR shall implement appropriate measures to minimize these risks, including:
  - (1) Maintain implemented security and control-related policies, procedures, and practices that will ensure a reasonably safe and secure environment for all inmates and staff, in accordance with constitutional standards.
  - (2) Within 90 days of the Effective Date, conduct an inmate bed and classification analysis to ensure the Jail has adequate beds for maximum security and disciplinary segregation inmates. Within 90 days thereafter, MDCR will implement a plan to address the results of the analysis. The Monitor will conduct an annual review to determine whether MDCR's objective classification system continues to accomplish the goal of housing inmates based on level of risk and supervision needs.
  - (3) Develop and implement a policy requiring correctional officers to conduct documented rounds, at irregular intervals, inside each housing unit, to ensure periodic supervision and safety. In the alternative, MDCR may provide direct supervision of inmates by posting a correctional officer inside the day room area of a housing unit to conduct surveillance.

- (4) Document all security rounds on forms or logs that do not contain pre-printed rounding times. Video surveillance may be used to supplement, but not replace, rounds by correctional officers.
- (5) MDCR shall document an objective risk analysis of maximum security inmates before placing them in housing units that do not have direct supervision or video monitoring, which shows that these inmates have no greater risk of violence toward inmates than medium security inmates. MDCR shall continue to increase the use of overhead video surveillance and recording cameras to provide adequate coverage and video monitoring throughout all Jail facilities to include:
  - i. PTDC – 24 safety cells, by July 1, 2013
  - ii. PTDC – 10B disciplinary wing, by December 31, 2013; kitchen, by Jan. 31, 2014;
  - iii. Women’s Detention Center – kitchen, by Sept. 30, 2014;
  - iv. Training and Treatment Center - all inmate housing units areas and kitchen, by Apr. 30, 2014;
  - v. Turner Guilford Knight Correctional Center – kitchen; future intake center; by May 31, 2014; and
  - vi. Metro West Detention Center – throughout all areas; by Aug. 31, 2014.
- (6) In addition to continuing to implement documented half-hour welfare checks pursuant to the “Inmate Administrative and Disciplinary Confinement” policy (DSOP 12.002), for the PTDC safety cells, MDCR shall implement an automated welfare check system by July 1, 2013. MDCR shall ensure that correctional supervisors periodically review system downloads and take appropriate action with officers who fail to complete required checks.
- (7) Security supervisors shall conduct daily rounds on each shift in the inmate housing units, and document the results of their rounds.
- (8) MDCR shall maintain a policy ensuring that security staff conduct sufficient searches of cells to ensure that inmates do not have access to dangerous contraband, including at least the following:
  - i. random daily visual inspections of four to six cells per housing area or cellblock;
  - ii. random daily inspections of common areas of the housing units;
  - iii. regular daily searches of intake cells; and
  - iv. periodic large scale searches of entire housing units.
- (9) MDCR shall require correctional officers who are transferred from one facility to a facility in another division to attend training on

facility-specific safety and security standard operating procedures within 30 days of assignment.

- (10) Correctional officers assigned to special management units, including disciplinary segregation and protective custody, shall receive eight hours of specialized training for working on that unit on at least an annual basis.
- (11) MDCR shall continue its efforts to reduce inmate-on-inmate violence in each Jail facility annually after the Effective Date. If reductions in violence do not occur in any given year, the County shall demonstrate that its systems for minimizing inmate-on-inmate violence are operating effectively.

## 2. Security Staffing

Correctional staffing and supervision must be sufficient to adequately supervise incidents of inmate violence, including sexual violence, fulfill the terms of this Agreement, and allow for the safe operation of the Jail, consistent with constitutional standards. MDCR shall achieve adequate correctional officer staffing in the following manner:

- a. Within 150 days of the Effective Date, MDCR shall conduct a comprehensive staffing analysis and plan to determine the correctional staffing and supervision levels necessary to ensure reasonable safety. Upon completion of the staffing plan and analysis, MDCR will provide its findings to the Monitor for review. The Monitor will have 30 days to raise any objections and recommend revisions to the staffing plan.
- b. MDCR shall ensure that the staffing plan includes staffing an adequate number of correctional officers at all times to escort inmates to and from medical and mental health care units.
- c. MDCR shall staff the facility based on full consideration of the staffing plan and analysis, together with any recommended revisions by the Monitor. The parties shall agree upon the timetable for the hiring of any additional staff.
- d. Every 180 days after completion of the first staffing analysis, MDCR shall conduct and provide to DOJ and the Monitor staffing analyses examining whether the level of staffing recommended by the initial staffing analysis and plan continues to be adequate to implement the requirements of this Agreement. If the level of staffing is inadequate, the parties shall re-evaluate and agree upon the timetable for the hiring of any additional staff.

**3. Sexual Misconduct**

MDCR will develop and implement policies, protocols, trainings, and audits consistent with the requirements of the Prison Rape Elimination Act of 2003, 42 U.S.C. § 15601, *et seq.*, and its implementing regulations, including those related to the prevention, detection, reporting, investigation, data collection of sexual abuse, including inmate-on-inmate and staff-on-inmate sexual abuse, sexual harassment, and sexual touching.

**4. Incidents and Referrals**

- a. MDCR shall ensure that appropriate managers have knowledge of critical incidents in the Jail to take action in a timely manner to prevent additional harm to inmates or take other corrective action. At a minimum, MDCR shall document all reportable incidents by the end of each shift, but no later than 24 hours after the incident. These incidents should include inmate fights, rule violations, inmate injuries, suicide attempts, cell extractions, medical emergencies, contraband, destruction of property, escapes and escape attempts, and fires.
- b. Staff shall report all suicides and other deaths immediately, but no later than one hour after the incident, to a supervisor, Internal Affairs ("IA"), and medical and mental health staff.
- c. MDCR shall employ a system to track, analyze for trends, and take corrective action regarding all reportable incidents. The system should include at least the following information:
  - (1) unique tracking number;
  - (2) inmate(s) name;
  - (3) housing classification;
  - (4) date and time;
  - (5) type of incident;
  - (6) any injuries to staff or inmate;
  - (7) any medical care;
  - (8) primary and secondary staff involved;
  - (9) reviewing supervisor;
  - (10) any external reviews and results;
  - (11) corrective action taken; and
  - (12) administrative sign-off.



- d. MDCR shall develop and implement a policy to screen incident reports, use of force reports, and inmate grievances for allegations of staff misconduct and refer an incident or allegation for investigation if it meets established policy criteria.
- e. Correctional staff shall receive formal pre-service and biennial in-service training on proper incident reporting policies and procedures.
- f. MDCR shall continue to train all corrections officers to immediately inform a member of the Qualified Medical Staff when a serious medical need of an inmate arises.

**5. Use of Force by Staff**

a. Policies and Procedures

- (1) MDCR shall sustain implementation of the "Response to Resistance" policy, adopted October 2009. In accordance with constitutional requirements, the policy shall delineate the use of force continuum and permissible and impermissible uses of force, as well as emphasize the importance of de-escalation and non-force responses to resistance. The Monitor shall provide ongoing assistance and annual evaluation regarding whether the amount and content of use of force training achieves the goal of reducing excessive use of force. The Monitor will review not only training curricula but also relevant data from MDCR's bi-annual reports.
- (2) MDCR shall revise the "Decontamination of Persons" policy section to include mandatory documentation of the actual decontamination time in the response to resistance reports.
- (3) The Jail shall ensure that each Facility Supervisor/Bureau Commander reviews all MDCR incidents reports relating to response to resistance incidents. The Facility Supervisor/Bureau Commander will not rely on the Facility's Executive Officer's review.

b. Use of Restraints

- (1) MDCR shall revise the "Recognizing and Supervising Mentally Ill Inmates" policy regarding restraints (DSOP 12-005) to include the following minimum requirements:
  - i. other than restraints for transport only, mechanical or injectible restraints of inmates with mental illness may only be used after written approval order by a Qualified Health Professional, absent exigent circumstances.

- ii. four-point restraints or restraint chairs may be used only as a last resort and in response to an emergency to protect the inmate or others from imminent serious harm, and only after the Jail attempts or rules out less-intrusive and non-physical interventions.
  - iii. the form of restraint selected shall be the least restrictive level necessary to contain the emerging crisis/dangerous behavior.
  - iv. MDCR shall protect inmates from injury during the restraint application and use. Staff shall use the least physical force necessary to control and protect the inmate.
  - v. restraints shall never be used as punishment or for the convenience of staff. Threatening inmates with restraint or seclusion is prohibited.
  - vi. any standing order for an inmate's restraint is prohibited.
- (2) MDCR shall revise its policy regarding restraint monitoring to ensure that restraints are used for the minimum amount of time clinically necessary, restrained inmates are under 15 minute in-person visual observation by trained custodial staff. For any custody-ordered restraints, Qualified Medical Staff are notified immediately in order to review the health record for any contraindications or accommodations required and to initiate health monitoring.

c. Use of Force Reports

- (1) MDCR shall develop and implement a policy to ensure that staff adequately and promptly report all uses of force within 24 hours of the force.
- (2) MDCR shall ensure that use of force reports:
- i. are written in specific terms and in narrative form to capture the details of the incident in accordance with its policies;
  - ii. describe, in factual terms, the type and amount of force used and precise actions taken in a particular incident, avoiding use of vague or conclusory descriptions for describing force;
  - iii. contain an accurate account of the events leading to the use of force incident;
  - iv. include a description of any weapon or instrument(s) of restraint used, and the manner in which it was used;
  - v. are accompanied with any inmate disciplinary report that prompted the use of force incident;
  - vi. state the nature and extent of injuries sustained both by the inmate and staff member;

- vii. contain the date and time any medical attention was actually provided;
  - viii. include inmate account of the incident; and
  - ix. note whether a use of force was videotaped, and if not, explain why it was not videotaped.
- (3) MDCR shall require initial administrative review by the facility supervisor of use of force reports within three business days of submission. The Shift Commander/Shift Supervisor or designee shall ensure that prior to completion of his/her shift, the incident report package is completed and submitted to the Facility Supervisor/Bureau Commander or designee.
- (4) The Facility Supervisor/Bureau Commander or his/her designee shall submit the MDCR Incident Report (with required attachments) and a copy of the Response to Resistance Summary (memorandum) to his/her Division Chief within 14 calendar days. If the MDCR Incident Report and the Response to Resistance Summary (memorandum) are not submitted within 14 calendar days, the respective Facility Supervisor/Bureau Commander or designee shall provide a memorandum to his/her Division Chief explaining the reason(s) for the delay.
- (5) The Division Chief shall review use of force reports, to include a review of medical documentation of inmate injuries, indicating possible excessive or inappropriate uses of force, within seven business days of submission, excluding weekends. The Division Chief shall forward all original correspondences within seven business days of submission, excluding weekends to Security and Internal Affairs Bureau.
- (6) MDCR shall maintain its criteria to identify use of force incidents that warrant a referral to IA for investigation. This criteria should include documented or known injuries that are extensive or serious; injuries of suspicious nature (including black eyes, injuries to the mouth, injuries to the genitals, etc.); injuries that require treatment at outside hospitals; staff misconduct; complaints by the inmate or someone reporting on his/her behalf, and occasions when use of force reports are inconsistent, conflicting, or suspicious.
- (7) Security supervisors shall continue to ensure that photographs are taken of all involved inmates promptly following a use of force incident, to show the presence of, or lack of, injuries. The photographs will become evidence and be made part of the use of force package and used for investigatory purposes.
- (8) MDCR shall ensure that a supervisor is present during all planned uses of force and that the force is videotaped.

- (9) Where there is evidence of staff misconduct related to inappropriate or unnecessary force against inmates, the Jail shall initiate personnel actions and systemic remedies, including an IA investigation and report. MDCR shall discipline any correctional officer with any sustained findings of the following:
  - i. engaged in use of unnecessary or excessive force;
  - ii. failed to report or report accurately the use of force; or
  - iii. retaliated against an inmate or other staff member for reporting the use of excessive force; or
  - iv. interfered with an internal investigation regarding use of force.
- (10) The Jail will ensure that inmates receive any required medical care following a use of force.
- (11) Every quarter, MDCR shall review for trends and implement appropriate corrective action all uses of force that required outside emergency medical treatment; a random sampling of at least 10% of uses of force where an injury to the inmate was medically treated at the Jail; and a random sampling of at least 5% of uses of force that did not require medical treatment.
- (12) Every 180 days, MDCR shall evaluate use of force reviews for quality, trends and appropriate corrective action, including the quality of the reports, in accordance with MDCR's use of force policy.
- (13) MDCR shall maintain policies and procedures for the effective and accurate maintenance, inventory and assignment of chemical and other security equipment.
- (14) MDCR shall continue its efforts to reduce excessive or otherwise unauthorized uses of force by each type in each of the Jail's facilities annually. If such reduction does not occur in any given year, MDCR shall demonstrate that its systems for preventing, detecting, and addressing unauthorized uses of force are operating effectively.

d. Use of Force Training

- (1) Through use of force pre-service and in-service training programs for correctional officers and supervisors, MDCR shall ensure that all correctional officers have the knowledge, skills, and abilities to comply with use of force policies and procedures.
- (2) At a minimum, MDCR shall provide correctional officers with pre-service and biennial in-service training in use of force, defensive tactics, and use of force policies and procedures.
- (3) In addition, MDCR shall provide documented training to correctional officers and supervisors on any changes in use of force policies and procedures, as updates occur.

- (4) MDCR will randomly test at least 5% of the correctional officer staff annually to determine their knowledge of the use of force policies and procedures. The testing instrument and policies shall be approved by the Monitor. The results of these assessments shall be evaluated to determine the need for changes in training practices or frequency. MDCR will document the review and conclusions and provide it to the Monitor.

e. Investigations

- (1) MDCR shall sustain implementation of comprehensive policies, procedures, and practices for the timely and thorough investigation of alleged staff misconduct.
- (2) MDCR shall revise its "Complaints, Investigations & Dispositions" policy (DSOP 4-015) to ensure that all internal investigations include timely, thorough, and documented interviews of all relevant staff and inmates who were involved in, or witnessed, the incident in question.
  - i. MDCR shall ensure that internal investigation reports include all supporting evidence, including witness and participant statements, policies and procedures relevant to the incident, physical evidence, video or audio recordings, and relevant logs.
  - ii. MDCR shall ensure that its investigations policy requires that investigators attempt to resolve inconsistencies between witness statements, i.e. inconsistencies between staff and inmate witnesses.
  - iii. MDCR shall ensure that all investigatory staff receives pre-service and in-service training on appropriate investigations policies and procedures, the investigations tracking process, investigatory interviewing techniques, and confidentiality requirements.
  - iv. MDCR shall provide all investigators assigned to conduct investigations of use of force incidents with specialized training in investigating use of force incidents and allegations, including training on the use of force policy.

6. Early Warning System

a. Implementation

- (1) MDCR will develop and implement an Early Warning System ("EWS") that will document and track correctional officers who are involved in use of force incidents and any grievances, complaints, dispositions, and corrective actions related to the inappropriate or excessive use of force. All appropriate supervisors and investigative

staff shall have access to this information and monitor the occurrences.

- (2) At a minimum, the protocol for using the EWS shall include the following components: data storage, data retrieval, reporting, data analysis, pattern identification, supervisory assessment, supervisory intervention, documentation, and audit.
  - (3) MDCR Jail facilities' senior management shall use information from the EWS to improve quality management practices, identify patterns and trends, and take necessary corrective action both on an individual and systemic level.
  - (4) IA will manage and administer the EWS. IA will conduct quarterly audits of the EWS to ensure that analysis and intervention is taken according to the process described below.
  - (5) The EWS will analyze the data according to the following criteria:
    - i. number of incidents for each data category by individual officer and by all officers in a housing unit;
    - ii. average level of activity for each data category by individual officer and by all officers in a housing unit;
    - iii. identification of patterns of activity for each data category by individual officer and by all officers in a housing unit; and
    - iv. identification of any patterns by inmate (either involvement in incidents or filing of grievances).
- b. MDCR will provide to DOJ and the Monitor, within 180 days of the implementation date of its EWS, and on a bi-annual basis, a list of all staff members identified through the EWS, and any corrective action taken.
  - c. On an annual basis, MDCR shall conduct a documented review of the EWS to ensure that it has been effective in identifying concerns regarding policy, training, or the need for discipline.

## **B. FIRE AND LIFE SAFETY**

MDCR shall ensure that the Jail's emergency preparedness and fire and life safety equipment are consistent with constitutional standards and Florida Fire Code standards. To protect inmates from fires and related hazards, MDCR, at a minimum, shall address the following areas:

1. Necessary fire and life safety equipment shall be properly maintained and inspected at least monthly. MDCR shall document these inspections.
2. MDCR shall ensure that fire alarms and sprinkler systems are properly installed, maintained, and inspected. MDCR shall document these inspections.

3. Within 120 days of the Effective Date, emergency keys shall be appropriately marked and identifiable by sight and touch and consistently stored in a quickly accessible location; MDCR shall ensure that staff are adequately trained in the location and use of these emergency keys.
4. Comprehensive fire drills shall be conducted every three months on each shift. MDCR shall document these drills, including start and stop times and the number and location of inmates who were moved as part of the drills.
5. MDCR shall sustain its policies and procedures for the control of chemicals in the Jail, and supervision of inmates who have access to these chemicals.
6. MDCR shall provide competency-based training to correctional staff on proper use of fire and emergency equipment, at least biennially.

### C. INMATE GRIEVANCES

MDCR shall provide inmates with an updated and recent inmate handbook and ensure that inmates have a mechanism to express their grievances and resolve disputes. MDCR shall, at a minimum:

1. Ensure that each grievance receives follow-up within 20 days, including responding to the grievant in writing, and tracking implementation of resolutions.
2. Ensure the grievance process allows grievances to be filed and accessed confidentially, without the intervention of a correctional officer.
3. Ensure that grievance forms are available on all units and are available in English, Spanish, and Creole. MDCR shall ensure that illiterate inmates, inmates who speak other languages, and inmates who have physical or cognitive disabilities have an adequate opportunity to access the grievance system.
4. Ensure priority review for inmate grievances identified as emergency medical or mental health care or alleging excessive use of force.
5. Ensure management review of inmate grievances alleging excessive or inappropriate uses of force includes a review of any medical documentation of inmate injuries.
6. A member of MDCR Jail facilities' management staff shall review the grievance tracking system quarterly to identify trends and systemic areas of concerns. These reviews and any recommendations will be documented and provided to the Monitor and the United States.

## **D. AUDITS AND CONTINUOUS IMPROVEMENT**

### **1. Self Audits**

MDCR shall undertake measures on its own initiative to address inmates' constitutional rights or the risk of constitutional violations. The Agreement is designed to encourage MDCR Jail facilities to self-monitor and to take corrective action to ensure compliance with constitutional mandates in addition to the review and assessment of technical provisions of the Agreement.

- a. On at least a quarterly basis, command staff shall review data concerning inmate safety and security to identify and address potential patterns or trends resulting in harm to inmates in the areas of supervision, staffing, incident reporting, referrals, investigations, classification, and grievances. The review shall include the following information:
  - (1) documented or known injuries requiring more than basic first aid;
  - (2) injuries involving fractures or head trauma;
  - (3) injuries of suspicious nature (including black eyes, injuries to the mouth, injuries to the genitals, etc.);
  - (4) injuries that require treatment at outside hospitals;
  - (5) self-injurious behavior, including suicide and suicide attempts;
  - (6) inmate assaults; and
  - (7) allegations of employee negligence or misconduct.
- b. MDCR shall develop and implement corrective action plans within 60 days of each quarterly review, including changes to policy and changes to and additional training.

### **2. Bi-annual Reports**

- a. Starting within 180 days of the Effective Date, MDCR will provide to the United States and the Monitor bi-annual reports regarding the following:
  - (1) Total number of inmate disciplinary reports
  - (2) Safety and supervision efforts. The report will include:
    - i. a listing of maximum security inmates who continue to be housed in dormitory settings;
    - ii. a listing of all dangerous contraband seized, including the type of contraband, date of seizure, location and shift of seizure; and
    - iii. a listing of inmates transferred to another housing unit because of disciplinary action or misconduct.



- (3) Staffing levels. The report will include:
  - i. a listing of each post and position needed at the Jail;
  - ii. the number of hours needed for each post and position at the Jail;
  - iii. a listing of correctional staff hired to oversee the Jail;
  - iv. a listing of correctional staff working overtime; and
  - v. a listing of supervisors working overtime.
  
- (4) Reportable incidents. The report will include:
  - i. a brief summary of all reportable incidents, by type and date;
  - ii. data on inmates-on-inmate violence and a brief summary of whether there is an increase or decrease in violence;
  - iii. a brief summary of whether inmates involved in violent incidents were properly classified and placed in proper housing;
  - iv. number of reported incidents of sexual abuse, the investigating entity, and the outcome of the investigation;
  - v. a description of all suicides and in-custody deaths, including the date, name of inmate, and housing unit;
  - vi. number of inmate grievances screened for allegations of misconduct and a summary of staff response; and
  - vii. number of grievances referred to IA for investigation.

- b. The County will analyze these reports and take appropriate corrective action within the following quarter, including changes to policy, training, and accountability measures.

#### **IV. COMPLIANCE AND QUALITY IMPROVEMENT**

- A. Within 180 days of the Effective Date, the County shall revise and 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 develop, as necessary, other written documents such as screening tools, logs, handbooks, manuals, and forms, to effectuate the provisions of this Agreement. The County shall send any newly-adopted and revised policies and procedures to the Monitor and DOJ for review and approval as they are promulgated. MDCR shall provide initial and in-service training to all Jail staff in direct contact with inmates, with respect to newly implemented or revised policies and procedures. The County shall document employee review and training in policies and procedures.
  
- B. The County shall develop and implement written Quality Improvement policies and procedures adequate to identify and address serious deficiencies in protection from harm

and fire and life safety to assess and ensure compliance with the terms of this Agreement on an ongoing basis.

- C. On an annual basis, the County shall review all policies and procedures for any changes needed to fully implement the terms of this Agreement and submit to the Monitor and DOJ for review any changed policies and procedures.
- D. The Monitor may review and suggest revisions on MDCR policies and procedures on protection from harm and fire and life safety, including currently implemented policies and procedures, to ensure such documents are in compliance with this Agreement.

#### V. REPORTING REQUIREMENTS AND RIGHT OF ACCESS

- A. The County shall submit compliance reports to the DOJ and the Monitor every six months, the first of which shall be submitted within 180 days of the Effective Date. Thereafter, these compliance reports shall be submitted 15 days after the termination of each 180 day period thereafter until the Agreement is terminated. The report shall summarize audits and continuous improvement and quality assurance activities and contain findings and recommendations that would be used to track and trend data compiled at the Jail. The report shall also capture data that is tracked and monitored outlined in "Substantive Provisions" (Section III.) of this Agreement.
- B. 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.
- C. The County shall maintain sufficient records to document that the requirements of this Agreement are being properly implemented and shall make such records available to DOJ for inspection and copying. In addition, the County shall maintain, and provide upon request, all records or other documents to verify that they have taken such actions as described in their compliance reports (e.g., census summaries, policies, procedures, protocols, training materials, investigations, and incident reports).
- D. The County shall promptly notify the Monitor and DOJ upon the death or serious suicide attempt of any inmate. The County shall forward to the Monitor and DOJ incident reports and medical and/or mental health reports related to deaths, autopsies, and/or death summaries of inmates as well as all final Internal Affairs Division investigations reports that involve inmates.

- E. DOJ and its attorneys, consultants, and agents shall have unrestricted access to the Jail, inmates, staff and documents as reasonably necessary to address issues affected by this Agreement.
- F. Within 45 days of receipt of written questions from DOJ concerning the County's compliance with the requirements of this Agreement, the County shall provide DOJ with written answers and any requested documents.
- G. The County shall appoint a full-time compliance coordinator to oversee compliance with this Agreement and to serve as a point of contact.

## **VI. MONITORING**

- A. **Monitor Selection:** The Parties agree to use the same Monitor selected/appointed under the Consent Agreement, referenced in Section I.7., to oversee implementation of this Agreement. 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 the County. 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. The Monitor may be terminated only for good cause, unrelated to the Monitor's findings or recommendations.
- B. **Monitor Qualifications:** The Monitor and his or her staff shall have experience and education or training related to the subject areas covered in this Agreement.
- C. **Monitoring Team:** The Monitor may hire or consult with such additional qualified staff as necessary to fulfill the duties required by the Agreement ("Monitoring Teams"). The Monitor is ultimately responsible for the findings regarding compliance. The Monitoring Teams will be subject to all the same access rights and confidentiality limitations as the Monitor. The Parties reserve the right to object for good cause to members of the Monitoring Teams.
- D. **Monitor Access:** The Monitor shall have full and complete access to the Jail, staff and inmates, and all Jail records. The County 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.
- E. **Monitor Ex Parte Communications:** In monitoring the implementation of this Agreement, the Monitor shall maintain regular contact with MDCR and DOJ. The Monitor shall be permitted to initiate and receive ex parte communications with all Parties.
- F. **Limitations on Public Disclosures by the 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, except as required under paragraph G, *infra*, with regard to any act or omission of MDCR or its agents, representatives or employees. Any press statement made by the Monitor regarding the monitoring of this Agreement or his or her employment as Monitor 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 the County or any of their 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 the County in any proceeding other than a proceeding related to the enforcement of this Agreement by the County or DOJ. 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. 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.

- G. **Monitor's Reports:** The Monitor shall provide the Parties reports describing the steps taken by the County to implement this Agreement and evaluate the extent to which Defendants have complied with each substantive provision of the Agreement. The Monitor's Reports shall indicate a compliance rating for each provision and provide recommendations for achieving compliance with any provisions not in compliance at the time of the Report. The Monitor shall issue an initial report 120 days after the Effective Date, and then every 180 days thereafter. The reports shall be provided to the Parties in draft form for comment at least 15 business days prior to their issuance. These reports shall be written with due regard for the privacy interests of individual inmates and staff.
- H. **Compliance Assessments:** In the Monitor's 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. To assess compliance, the Monitor shall review a sufficient number of pertinent documents to accurately assess current conditions; interview all necessary staff; and interview a sufficient number of inmates to accurately assess current conditions. The Monitor shall be responsible for independently verifying representations from the County regarding progress toward compliance, including the examination of supporting documentation. Each Monitor's report shall describe the steps taken by each member of the Monitoring Team to analyze conditions and assess compliance, including documents reviewed and individuals interviewed, and the factual basis for each of the Monitor's findings.
- I. **Monitor's Budget:** The County shall provide the Monitor with a budget sufficient to allow the Monitor to carry out the responsibilities described in this Agreement. The Monitor shall pay the members of the Monitoring Team out of this budget.

- J. Technical Assistance by the Monitor: The Monitor shall provide the County with technical assistance as requested by the County. Technical assistance should be reasonable and should not interfere with the Monitor's ability to assess compliance.

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

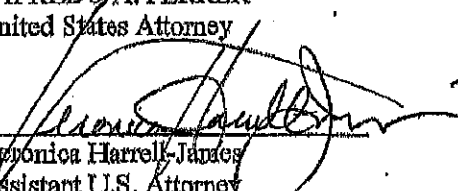
- A. The County shall implement all reforms within their areas of responsibility, as designated within the provisions of this Agreement that are necessary to effectuate this Agreement. The implementation of this Agreement will begin immediately upon the Effective Date.
- B. Except where otherwise agreed to under a specific provision of this Agreement, the County shall implement all provisions of this Agreement within 180 days of the Effective Date.
- C. An individual substantive provision in this Agreement shall terminate after DOJ finds that the County maintained sustained substantial compliance of that provision for a period of 18 months. Non-compliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, will not constitute failure to maintain substantial compliance. Temporary compliance during a period of otherwise sustained non-compliance will not constitute substantial compliance.
- D. If, after reasonable notice to the County and a reasonable opportunity to cure any deficiencies identified in writing, the DOJ determines that the County has not substantially complied with this Agreement the DOJ may pursue litigation against the County. Notwithstanding the foregoing, the United States reserves the right to file an action under CRIPA alleging a pattern or practice of unconstitutional conditions at the Jail at any time if it believes that the County is not making a good faith effort to substantially comply with this Agreement or if there is an emergent situation involving an imminent, serious threat to the life, health, or safety of inmates or staff. In the event that the allegations in such an action under CRIPA are litigated, this Agreement shall not be introduced or used as evidence.
- E. Where there is a disagreement about whether compliance with any provision has been met, the burden shall be on the County to demonstrate compliance. Individual requirements of this Agreement shall terminate prior to the full termination of this Agreement if the parties agree that the County has maintained compliance with the individual requirement for a period of 18 months. Absent indication that the County has fallen out of compliance, the Monitor will no longer monitor or assess that requirement, and the County will be deemed to have met the terms of this Agreement as to that requirement.
- F. If any unforeseen circumstance occurs that causes a failure to timely carry out any requirements of this Agreement, the County shall notify DOJ in writing within 20 calendar days after the County becomes aware of the unforeseen circumstance and its impact on the County's ability to perform under the 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.


- G.** This Agreement constitutes the entire integrated Agreement of the Parties, as it relates to provisions regarding protection from harm, inmate grievances, and fire and life safety (see Section I.7.). With the exception of DOJ's Findings Letter, no prior or contemporaneous communications, oral or written, will be relevant or admissible for purposes of determining the meaning of any provisions herein in any proceeding.
- H.** The Agreement shall be applicable to, and binding upon, all Parties, their officers, agents, employees, assigns, and their successors in office.
- I.** Each Party shall bear the cost of its fees and expenses incurred in connection with this cause.
- J.** This Agreement may be posted on the web site of the U.S. Department of Justice, Civil Rights Division, Special Litigation Section and the United States Attorney's Office for the Southern District of Florida.

FOR THE UNITED STATES:

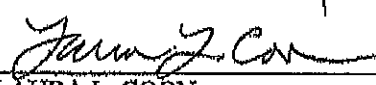
WIFREDO A. FERRER  
United States Attorney

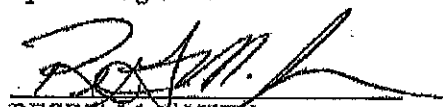
By:

  
Veronica Harrell-James  
Assistant U.S. Attorney  
Southern District of Florida

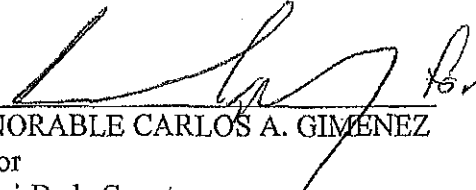
  
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Chief  
Special Litigation Section

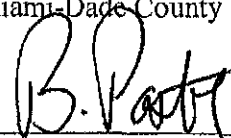
  
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FOR MIAMI-DADE COUNTY:

  
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Miami-Dade County

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Dated: April 30, 2013