

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

THE UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Robert O. Lindefjeld, Assistant Director, USDOJ, EAL, P.O. Box 386, Washington, D.C. 20044-0386, (202) 451-7488

DEFENDANTS

THE STATE OF NEW MEXICO; MICHELLE LUJAN GRISHAM, in her Official Capacity as Governor of the State

County of Residence of First Listed Defendant Sante Fe County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): U.S. Const. art. 1, sec. 10, cl. 1; U.S. Const. art. VI, cl. 2; 8 U.S.C. § 1101 et seq. Brief description of cause: Action for injunctive relief and declaratory judgment that challenged policies violate the Supremacy and Contract Clauses and are therefore invalid.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE May 8, 2026 SIGNATURE OF ATTORNEY OF RECORD /s/ Robert O. Lindefjeld

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

THE UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 26-cv-1471
	)	
THE STATE OF NEW MEXICO;	)	
MICHELLE LUJAN GRISHAM, in her	)	
Official Capacity as Governor of the State	)	
of New Mexico; RAUL TORREZ, in his	)	
Official Capacity as Attorney General of	)	
the State of New Mexico; CITY OF	)	
ALBUQUERQUE; TIMOTHY KELLER,	)	
in his Official Capacity as Mayor of the	)	
City of Albuquerque;	)	
	)	
Defendants.	)	

**COMPLAINT**

Plaintiff, the United States of America, by and through its undersigned counsel, brings this civil action for declaratory and injunctive relief, and alleges as follows:

**PRELIMINARY STATEMENT**

1. Within hours of assuming the Presidency, President Donald J. Trump took immediate action to fulfill his campaign promise to the American people and declared that a “national emergency exists at the southern border of the United States” from the unprecedented “illegal entry of aliens.” Proclamation 10,886, *Declaring a National Emergency at the Southern Border of the United States*, 90 Fed. Reg. 8327, 8327 (Jan. 20, 2025). This declaration was necessary given the flood of illegal aliens into our Nation under the prior administration’s open border policies incentivizing disregard for laws passed by Congress. As a result, millions of illegal aliens settled in American communities in flagrant violation of federal law, creating “significant

threats to national security and public safety” and resulting in aliens “committing vile and heinous acts against innocent Americans.” Exec. Order 14,159, *Protecting the American People Against Invasion*, 90 Fed. Reg. 8443, 8443 (Jan. 20, 2025). This national crisis underscores the vital importance of the Executive duty to “[e]nforc[e] our Nation’s immigration laws.” *Id.*

2. Under President Trump’s leadership—and in response to the electoral mandate—the Federal Government, through the U.S. Department of Homeland Security and its components U.S. Immigration and Customs Enforcement (“ICE”) and U.S. Customs and Border Protection (“CBP”), is employing all available legal measures to end that crisis, including by identifying and removing criminal illegal aliens from the United States in accordance with its well-established, preeminent, and preemptive authority to regulate immigration matters. This authority derives from the United States Constitution, numerous acts of Congress, and binding United States Supreme Court precedent. *See, e.g.*, U.S. Const. art. VI, cl. 2, art. I § 8, cl. 4; Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163 (codified as amended at 8 U.S.C. § 1101, *et seq.*) (“INA”); *Arizona v. United States*, 567 U.S. 387, 394–95 (2012); *see also Lopez v. U.S. I.N.S.*, 758 F.2d 1390, 1392 (10th Cir. 1985) (“Congress has conferred upon [federal immigration officials] broad authority to address the problem of illegal aliens.”). Indeed, Congress last year strengthened that authority with the enactment of the Laken Riley Act, S. 5, 119th Cong. (2025), which “mandates the federal detention of illegal immigrants who are accused of theft, burglary, assaulting a law enforcement officer, and any crime that causes death or serious bodily injury.”<sup>1</sup>

3. Among the legal measures authorized by Congress and available to the Federal Government to implement federal immigration law are voluntary written agreements between the

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<sup>1</sup> Press Release, DHS, *President Trump Signs the Laken Riley Act into Law* (Jan. 29, 2025), <https://www.dhs.gov/news/2025/01/29/president-trump-signs-laken-riley-act-law>.

Federal Government and state or local governments whereby state or local government officials are trained on and empowered to carry out federal immigration enforcement activities under the color of federal law, including through the investigation, apprehension, transportation, and detention of aliens in the United States. *See* 8 U.S.C. § 1357(g). Congress further authorized the Federal Government to enter into agreements and make arrangements with state and local governments to facilitate the detention of aliens in the United States. *See id.* §§ 1103(a)(11)(B), 1231(g). The Federal Government depends on such agreements to carry out its immigration enforcement objectives. *See generally* 8 U.S.C. § 1231. Local governments and law enforcement agencies in New Mexico have entered into numerous such agreements with the Federal Government without issue for *decades*.

4. Despite the ongoing threat that unvetted illegal aliens pose to American lives and communities and the comprehensive and exclusive authority of the Federal Government over immigration enforcement, the State of New Mexico and City of Albuquerque seek to intentionally obstruct federal law enforcement and thwart the constitutional obligation of the President of the United States to take care that the immigration laws enacted by Congress are enforced. *See* Exec. Order 14,287, *Protecting American Communities From Criminal Aliens*, 90 Fed. Reg. 18761 (Apr. 28, 2025). They seek to do so by effectively preventing cooperation between local governments and the Federal Government to achieve Congress’s immigration objectives and barring immigration detention in New Mexico, all at the expense of the American people, including the people of Otero County.

5. Specifically, on February 5, 2026, New Mexico Governor Michelle Lujan Grisham signed House Bill 9, entitled the “Immigrant Safety Act,” (“HB9”) (Exhibit A) into law, to take effect on May 20, 2026. HB9, which applies broadly to any “public body,” bars future entry into

and requires immediate termination of existing agreements (i) “to detain individuals for federal civil immigration violations, including an intergovernmental services agreement to detain individuals for civil immigration violations[;]” (ii) “to investigate, apprehend, detain or transport individuals pursuant to 8 U.S.C. Section 1357(g) or 8 C.F.R. Section 287.7[;]” or (iii) “that deputize[] officers, employees or agents of the public body to perform a function of an immigration officer in relation to the investigation, apprehension, detention or transportation of noncitizens in the United States or the removal of noncitizens from the United States.” HB9 §§ 3(A), (B), 4(A)–(C). HB9 further prohibits public bodies from “sell[ing], trad[ing], leas[ing] or otherwise dispos[ing] of any real property to be used for the detention of individuals for federal civil immigration violations.” *Id.* § 3(C).

6. Not to be outdone, a month and a half later, on March 23, 2026, City of Albuquerque Mayor Timothy Keller signed O-26-15, entitled the “Safer Community Places Ordinance” (“SCPO”) (Exhibit B) into law. The SCPO provides that “the City, its employees, contractors, or agents acting under the City’s authority shall not approve any permit, contract or other agreement for use of City owned or controlled property or resources if the City, its employees, contractors, or agents have a reasonable belief the property or resources will be used for the purposes of facilitating immigration enforcement.” SCPO § 5-1-5(B)(4).

7. The SCPO goes further than HB9 in its obstruction of federal immigration enforcement by also: (i) barring any use of city-owned property and resources from being used for immigration enforcement purposes, SCPO § 5-1-5(A); (ii) barring the use of city property or resources to “transport individuals for immigration enforcement purposes” or “facilitate custody transfer to federal immigration authorities absent a valid judicial warrant or court order[;]” *id.* § 5-1-5(B)(5); (iii) barring the use of city resources “for immigration enforcement” in specified places,

*id.* § 5-1-5(B)(6), *see also id.* § 13-17-3; (iv) prohibiting certain public and private entities “from providing voluntary consent to law enforcement agents engaged in or supporting immigration enforcement” to have access to certain properties and records, *id.* § 13-17-4(A); and (v) “[i]f a law enforcement agent engaging in or supporting immigration enforcement is present at a place of work,” requiring the business to “provide notice” to all persons “performing work” at the business of the name, date, and nature of the law enforcement activity within 24 hours, *id.* § 13-17-6(C).

8. Through HB9, New Mexico seeks to eliminate decades old voluntary agreements between localities and the Federal Government that are critical to federal immigration law enforcement and facilitate the cooperation envisioned by Congress’s federal immigration system. HB9 and the SCPO go further to prevent federal law enforcement from using government property to fulfill the objectives of Congress. And the SCPO takes affirmative steps to provide aliens with safe harbor from federal law enforcement detection by requiring businesses to tip-off aliens of ongoing federal immigration activities, preventing certain public and private entities from voluntarily providing law enforcement access to certain property and records, and ordering the defiance of administrative warrants and detainers. Such blatant disregard for federal laws and voluntary agreements that have been in place for decades is not merely a political disagreement or passive abstention; it is deliberate, disruptive action that jeopardizes the public safety of all Americans, and violates the United States Constitution in several respects.

9. First, HB9 and the SCPO violate long-settled principles of preemption embodied by the Supremacy Clause that bar state laws from conflicting with and standing as obstacles to the achievement of the goals and objectives of Congress. *See Arizona*, 567 U.S. at 399 (“state laws are preempted when they conflict with federal law” including “those instances where the challenged state law ‘stands as an obstacle to the accomplishment and execution of the full purposes and

objectives of Congress[.]” (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)); *see also Lopez*, 758 F.2d at 1392 (“Congress may entirely pre-empt state authority in immigration matters[.]”).

10. HB9 and the SCPO blatantly obstruct the accomplishment of the purposes and objectives of federal immigration law that are exclusively within the scope of Congressional authority by, for example, barring cooperation between the Federal Government and local governments in the enforcement of federal immigration laws, including by detaining aliens. *See Lopez*, 758 F.2d at 1392 (“This broad grant of authority [to regulate immigration matters] is exclusive to Congress.”); 8 U.S.C. §§ 1103(a)(11)(B), 1231(g), 1357(g). States cannot ban civil immigration detention, yet that is exactly what HB9 and the SCPO seek to accomplish. *See CoreCivic, Inc. v. Governor of N.J.*, 145 F.4th 315, 325 (3d Cir. 2025); *Geo Grp., Inc. v. Newsom*, 50 F.4th 745, 750 (9th Cir. 2022). Nor can they ban and thus defeat Congress’s scheme for cooperative enforcement. *See City of N.Y. v. United States*, 179 F.3d 29, 35 (2d Cir. 1999); *Arizona*, 567 U.S. at 408–09. As stated by HB9 sponsor New Mexico Representative Eleanor Chavez “The Immigrant Safety Act is a straightforward bill. It gets New Mexico out of the business of immigration detention.”<sup>2</sup> The SCPO further prevents certain public and private entities from voluntarily providing immigration law enforcement officials access to certain property and records and requires businesses to tip off aliens of ongoing immigration law enforcement activities, which has no legitimate purpose other than to harbor and conceal these aliens from detection by immigration authorities. *See* 8 U.S.C. § 1324(a). HB9 and the SCPO are preempted because they conflict with federal law by obstructing the achievement of the objectives of Congress expressed in the INA.

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<sup>2</sup> Pat Davis, *Momentum builds in New Mexico legislature to ban ICE facilities statewide*, New Mexico Political Report (Jan. 28, 2026), <https://nmpoliticalreport.com/2026/01/28/momentum-builds-in-new-mexico-legislature-to-ban-ice-facilities-statewide/>

11. Second, HB9 and the SCPO also violate long-settled principles of intergovernmental immunity embodied in the Supremacy Clause, under which States have no power to “in any manner control[] the operations of” the Federal Government. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 436 (1819); *see also Mayo v. United States*, 319 U.S. 441, 445 (1943) (“[T]he activities of the Federal Government are free from regulation by any state.”). HB9 and SCPO seek to regulate the Federal Government by controlling the parties with whom the Federal Government may contract and the property and resources available to the Federal Government to perform the core government function of immigration enforcement and detention, despite express and unambiguous Congressional authorization to the contrary. The purpose and effect of these laws is to stop the Federal Government from detaining aliens and prevent the enforcement of immigration law, which is a central responsibility of the Federal Government.

12. Third, the laws discriminate against the Federal Government because they explicitly regulate civil immigration detention and enforcement while simultaneously permitting law enforcement activity for other purposes. Civil immigration detention and enforcement are regulatory areas governed exclusively by federal law and enforced by the Federal Government. By applying solely to federal immigration enforcement activities, the laws single out federal law enforcement officers for worse treatment than state and local law enforcement officials performing other regulatory functions, including civil enforcement. For example, while contracts may not be formed between the Federal Government and localities for the purpose of civil immigration detention, no such prohibition exists for intergovernmental contracts for any other type of detention, including civil. While private businesses must tip off aliens of immigration enforcement activities and certain public and private entities cannot voluntarily provide immigration law enforcement officials access to property and records, no such notice or prevention of cooperation

is required of the same public and private entities in connection with other law enforcement activities. Put simply, no other law enforcement officials are subjected to the same discriminatory treatment as immigration law enforcement officials. As a result, HB9 and the SCPO unlawfully discriminate against the Federal Government in violation of the principles of intergovernmental immunity.

13. Finally, HB9 violates the Contract Clause, which states “[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts[.]” U.S. Const. art. I, § 10, cl. 1. The Constitution prohibits states from passing laws that operate to impair contractual relationships, particularly if a state actor is a party, without advancing a significant and legitimate public purpose. *See Sveen v. Melin*, 584 U.S. 811, 819 (2018). Mandating that all public bodies terminate their existing cooperative agreements that facilitate the detention of aliens and enforcement of immigration law unequivocally amounts to impairment of those agreements. *See, e.g., Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 247 (1978) (“the statute in question here nullifies express terms of the company’s contractual obligations”). A blanket ban on agreements to detain violators of civil immigration law or to cooperate in the implementation and enforcement of federal immigration law, areas of law that the State of New Mexico has not historically regulated, does not advance any significant or legitimate public purpose. *See U.S. Tr. Co. of N.Y. v. New Jersey*, 431 U.S. 1, 29–32 (1977). And even if HB9 had a legitimate and significant public purpose, a wholesale ban requiring the unconditional termination of an agreement is not a reasonable condition “of a character appropriate to the public purpose justifying [the legislation’s] adoption.” *Energy Rsrvs. Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 412 (1983) (quoting *U.S. Tr. Co.*, 431 U.S. at 22). Thus, HB9 violates the Contract Clause.

14. In sum, HB9 and the SCPO are preempted by the INA due to their obstruction of the achievement of Congress's federal immigration objectives, violate principles of intergovernmental immunity by unlawfully regulating and discriminating against the Federal Government, and violate the Contract Clause and Supremacy Clause of the Constitution.

15. Accordingly, the United States brings this action seeking a declaration that HB9 and the SCPO are unconstitutional and a preliminary and permanent injunction against the enforcement of HB9 and the SCPO.

### **JURISDICTION AND VENUE**

16. This action arises under Article I, Section 10, Clause 1 and Article VI, Clause 2 of the U.S. Constitution, and the INA. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345.

17. Venue is proper in under 28 U.S.C. §§ 1391(b)(1) and (b)(2) because all Defendants reside in the District of New Mexico, and the District of New Mexico is the judicial district in which a substantial part of the events or omissions giving rise to this action occurred. The Court has the authority to provide the relief requested under 28 U.S.C. §§ 1651, 2201, and 2202, the Supremacy Clause, the Contract Clause, and its inherent equitable powers.

18. The United States has standing to bring this lawsuit in accordance with the pre-enforcement standing principles articulated by the Tenth Circuit in *Rocky Mountain Gun Owners v. Polis* because (i) it “intend[s] to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute” and (ii) “there exists a credible threat of prosecution thereunder.” 121 F.4th 96, 110 (10th Cir. 2024) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158, 160 (2014)). The United States actively enforces federal immigration law throughout the State of New Mexico and City of Albuquerque through its use of real property

and its agreements with local government entities concerning, for example, the detention of aliens; and (ii) the State of New Mexico and City of Albuquerque pose a credible threat of enforcement because they have not disavowed any intention of invoking either law against the United States. In fact, the State of New Mexico, through its Attorney General, has demonstrated an affirmative intent to enforce HB9 by petitioning the New Mexico Supreme Court for a writ of mandamus and stay to invalidate an Intergovernmental Services Agreement between Otero County, New Mexico and ICE concerning the civil immigration detention operations of the Otero County Processing Center. *See State of New Mexico ex re. Raul Torrez v. Bd. of Cnty. Comm'rs for Otero Cnty.*, S-1-SC-41362. These laws will terminate and prevent future cooperative contracts and severely hamper immigration enforcement in an important border state.

### **PARTIES**

19. Plaintiff, the United States of America, regulates immigration under its inherent, constitutional, and statutory authorities, and it enforces federal immigration laws through its Executive Branch agencies, including the Department of Justice, Department of State, and Department of Homeland Security (“DHS”), as well as DHS’s component agencies ICE, CBP, and U.S. Citizenship and Immigration Services.

20. Defendant State of New Mexico is a State of the United States.

21. Defendant Michelle Lujan Grisham is the Governor of the State of New Mexico and is sued in her official capacity as the “[t]he supreme executive power of the state” and the officer tasked with “tak[ing] care that the laws be faithfully executed.” N.M. Const. art. V, § 4. Governor Grisham “has control over” Attorney General Torrez “and, therefore, may direct whether and to what extent” HB9 is enforced. *Hernandez v. Grisham*, 499 F. Supp. 3d 1013, 1049 (D.N.M. 2020); *see Petrella v. Brownback*, 697 F.3d 1285, 1293–94 (10th Cir. 2012) (“It cannot seriously

be disputed that the proper vehicle for challenging the constitutionality of a state statute, where only prospective, non-monetary relief is sought, is an action against the state officials responsible for the enforcement of that statute. . . . Nor can it be disputed that the Governor and Attorney General of the state . . . have responsibility for the enforcement of the laws of the state.”).

22. Defendant Raul Torrez is the Attorney General of the State of New Mexico and is sued in his official capacity as the chief law enforcement officer of the State of New Mexico and the officer tasked with enforcement of state laws, including HB9. *See* HB9 § 5(A) (“The attorney general . . . may institute a civil action . . . if the attorney general . . . has reasonable cause to believe that a violation of the Immigrant Safety Act has occurred or to prevent a violation of that act from occurring.”); N.M. Stat. Ann. § 8-5-2.

23. Defendant City of Albuquerque is a city and political and geographical subdivision in the State of New Mexico.

24. Defendant Timothy Keller is the Mayor of the City of Albuquerque and is sued in his official capacity as the director of the executive branch of the City of Albuquerque and the official tasked with the execution of all laws, ordinances, regulations, and regulations of the City of Albuquerque and State of New Mexico, including HB9 and the SCPO. *See* Charter of the City of Albuquerque, Art. V, §§ 3, 4(g); SCPO § 5-1-5(B).

**THE SUPREMACY CLAUSE, FEDERAL PREEMPTION,  
AND INTERGOVERNMENTAL IMMUNITY**

25. HB9 and the SCPO violate the principles embodied in Supremacy Clause because they obstruct the actions necessary to achieve the purposes and goals of federal immigration law, impose regulations on the Federal Government, and discriminate against the Federal Government.

## THE SUPREMACY CLAUSE

26. The Supremacy Clause of the United States Constitution mandates that “[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2.

27. In *McCulloch v. Maryland*, the Supreme Court recognized that the Supremacy Clause restricts states from inhibiting the implementation of federal law, stating that “the States have no power, by taxation or otherwise, to retard, *impede, burden, or in any manner control*, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government.” 17 U.S. 316, 436 (1819) (emphasis added). “Because federal law is supreme, ‘there is a plain repugnance’ in letting states ‘interfer[e] with or control[] the operations of the Federal Government.’” *CoreCivic*, 145 F.4th at 321 (quoting *McCulloch*, 17 U.S. at 431).

28. Thus, legislation of a state or city is invalid if it “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,” *Hines*, 312 U.S. at 67, “regulat[es] the United States directly,” *United States v. Washington*, 596 U.S. 832, 838 (2022) (citation omitted), or “discriminate[s] against the United States or those with whom it deals.” *South Carolina v. Baker*, 485 U.S. 505, 523 (1988). The Supremacy Clause incorporates both preemption and intergovernmental immunity.

29. To implement federal law, federal law enforcement officers work throughout the entire country and are subject to the control of the Federal Government, not each individual state or locality. *See, e.g.*, 8 U.S.C. § 1103(a)(2) (giving the Secretary of DHS the power to “control, direct[], and supervis[e]” all DHS employees); 5 U.S.C. § 301 (authorizing the head of an Executive or military department to “prescribe regulations for the government of his department

[and] the conduct of its employees”); 28 U.S.C. § 509 (vesting all functions of other officers, agencies, and employees of the DOJ in the Attorney General). Likewise, when it comes to liability, Federal law enforcement officers are subject to Federal law, not state law. *See, e.g., Hernandez v. Mesa*, 589 U.S. 93, 101–102, 111 (2020) (explaining limited nature of Bivens and history leading to the Federal Tort Claims Act (FTCA) as the exclusive remedy for most claims against Government employees arising out of their official conduct).

### FEDERAL PREEMPTION

30. The preemption doctrine provides that federal interests overcome state interests when federal and state law “clash.” *North Dakota v. United States*, 495 U.S. 423, 435 (1990) (plurality); *Murphy v. Nat’l Collegiate Athletic Ass’n*, 584 U.S. 453, 477–79 (2018). The Supreme Court has identified two general ways in which federal law can preempt state and local laws.

31. First, a federal statute can *expressly* preempt a state law when Congress includes express language within the federal statute indicating its preemptive intent. *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372 (2000). When Congress explicitly supersedes all state enactments in a particular area by statute, state enactments in that area are deemed expressly preempted. *See Pacific Gas & Elec. Co. v. State Energy Res. Conserv. & Develop. Comm’n*, 461 U.S. 190, 203–04 (1983); *Chamber of Com. of U.S. v. Edmondson*, 594 F.3d 742, 765 (10th Cir. 2010) (“State laws are expressly preempted when they fall within the scope of a federal provision explicitly precluding state action.”); *see also Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992) (finding express preemption where the federal law provided that “[N]o State . . . shall enact or enforce any law . . . relating to rates, routes, or services of any air carrier.”).

32. Second, in the absence of express preemption, federal law can *impliedly* preempt state law when Congress’s preemptive intent is implicit in the relevant federal law’s structure and

purpose. State and local laws must yield to a federal statute when they are impliedly preempted. One form of implied preemption occurs when state or local laws conflict with a federal statute. *Crosby*, 530 U.S. at 372.

33. A state or local law may conflict with a federal statute where the challenged law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 163 (2016); *Crosby*, 530 U.S. at 372–73; *United States v. Locke*, 529 U.S. 89, 109 (2000); *Hines*, 312 U.S. at 67; see *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995); *Edmondson*, 594 F.3d at 767 (If a state law “provision interferes with Congress’ chosen methods” it “is thus conflict preempted.”); *Kidneigh v. Unum Life Ins. Co. of Am.*, 345 F.3d 1182, 1185 (10th Cir. 2003); cf. *Savage v. Jones*, 225 U.S. 501, 533 (1912) (“If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power.”).

#### **INTERGOVERNMENTAL IMMUNITY**

34. The Constitution’s Supremacy Clause also embodies the doctrine of intergovernmental immunity, which “generally immunizes the Federal Government from state laws that directly regulate or discriminate against it.” *Washington*, 596 U.S. at 835 (citing *Baker*, 485 U.S. at 523). A state enactment is invalid under principles of intergovernmental immunity if it “regulat[es] the United States directly or discriminat[es] against the Federal Government or those with whom it deals[.]” *Washington*, 596 U.S. at 838.

35. The doctrine of intergovernmental immunity prohibits regulation by the states of the Federal Government. A state or city law violates this doctrine if it “regulates the United States directly . . .” *North Dakota*, 495 U.S. at 435; *CoreCivic*, 145 F.4th at 327 (stating that when state,

county, city, or other local governments “substantially interfer[e] with [the federal government’s] operations,” they “directly regulate[] the federal government[.]”); *Hancock v. Train*, 426 U.S. 167, 180 (1976) (State governments impermissibly regulate the Federal Government when “the State places a prohibition on the Federal Government.”); *Arizona v. California*, 283 U.S. 423, 451 (1931) (“The United States may perform its functions without conforming to the police regulations of a state.”). “If a state law directly regulates the conduct of the United States, it is void irrespective of whether the regulated activities are essential to federal functions or operations, and irrespective of the degree to which the state law interferes with federal functions or operations.” *United States v. California*, 2026 WL 1088674, at \*5 (9th Cir. Apr. 22, 2026).

36. The doctrine of intergovernmental immunity also prevents discrimination against the Federal Government. “[P]reventing discrimination against the Federal Government lies at the heart of the Constitution’s intergovernmental immunity doctrine.” *Washington*, 596 U.S. at 841. Discrimination occurs when a state or city “treats someone else better than” the federal government or singles out the federal government for “less favorable ‘treatment.’” *Id.* at 839. “Without the prohibition on discrimination, what prevents a State from imposing unduly high costs on the Federal Government for the benefit of the State’s own citizens?” *Id.* at 841.

37. These intergovernmental immunity principles against regulation and discrimination operate even in the absence of a specific conflicting federal law, ensuring that “federal officers are immune from state interference with acts ‘necessary and proper’ to the accomplishment of their federal duties.” *United States v. Ferrara*, 847 F. Supp. 964, 968 (D.D.C. 1993), *aff’d*, 54 F.3d 825 (D.C. Cir. 1995) (citing *In Re Neagle*, 135 U.S. 1, 10 (1890)).

### THE CONTRACT CLAUSE

38. The Contract Clause prohibits states from enacting legislation that disrupts contractual arrangements, providing that “[n]o state shall . . . pass any . . . Law impairing the Obligation of Contracts.” U.S. Const. Art. I, § 10, cl. 1; *see also* N.M. Const. art. II, § 19 (“[n]o . . . law impairing the obligation of contracts shall be enacted by the legislature.”). The Contract Clause seeks to protect contracts from interference by “the fluctuating policy” enacted by temporary legislative majorities and to “banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society.” The Federalist No. 44 (James Madison).

39. The Contract Clause “applies to any kind of contract” and “restricts the power of States to disrupt contractual arrangements.” *Sveen*, 584 U.S. at 818. State legislation violates the Contract Clause if it substantially impairs a contractual relationship and is not an appropriate or reasonable way to advance a significant and legitimate public purpose. *Id.* at 819 (quoting *Energy Rsrvs.*, 459 U.S. at 411–412). “The severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected.” *Energy Rsrvs.*, 459 U.S. at 411.

40. “When a state actor is a party to a contract at issue, typically courts have determined such legislation is subject to ‘stricter scrutiny.’” *A.L. v. Martin*, No. 23-CV-127-WJ-SCY, 2023 WL 7279318, at \*4 (D.N.M. Nov. 3, 2023) (citation omitted); *see U.S. Tr. Co.*, 431 U.S. at 26 (“complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State’s self-interest is at stake. . . . If a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all.”). Under this stricter standard, if the legislation has a sufficient public purpose, “the next inquiry is whether the adjustment of ‘the rights and

responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption.” *Energy Rsrvs.*, 459 U.S. at 412 (quoting *U.S. Tr. Co.*, 431 U.S. at 22).

### **FEDERAL IMMIGRATION LAW AND ENFORCEMENT**

41. As an independent sovereign, the United States has broad inherent authority to conduct relations with foreign nations, establish immigration laws, maintain control over its borders, and ensure the safety and flourishing of its citizens. *See generally Fong Yue Ting v. United States*, 149 U.S. 698, 707 (1893); *Ping v. United States*, 130 U.S. 581, 603–04 (1889); *Landon v. Plasencia*, 459 U.S. 21, 34 (1982); *Arizona*, 567 U.S. at 394–95; *North Dakota*, 495 U.S. at 435; *id.* at 444–47 (Scalia, J., concurring); *Tayyari v. New Mexico State Univ.*, 495 F. Supp. 1365, 1377 (D.N.M. 1980) (“federal power over foreign affairs, including the power to regulate immigration, is an inherent one which antedated the Constitution”).

42. The Constitution also explicitly grants Congress the power to “establish an uniform Rule of Naturalization,” U.S. Const. art. I, § 8, cl. 4, and to “regulate Commerce with foreign Nations,” U.S. Const. art. I, § 8, cl. 3. It also grants the President the authority to “take Care that the Laws be faithfully executed[.]” U.S. Const. art. II, § 3.

43. Based on its enumerated constitutional and sovereign powers to control and conduct relations with foreign nations, “[t]he Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens,” *Arizona*, 567 U.S. at 394, and an inherent obligation and broad authority to establish immigration laws, *see Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952).

44. Congress has exercised its broad authority to make laws governing the entry, presence, status, detention, and removal of aliens within the United States by enacting an

“extensive and complex” statutory scheme for the “governance of immigration and alien status,” as reflected in the various provisions of the INA. *See Arizona*, 567 U.S. at 395. Through the INA, Congress established a regulatory scheme granting the Executive the authority to inspect, investigate, arrest, detain, and remove aliens who are suspected of being, or found to be, unlawfully in the United States. *See, e.g.*, 8 U.S.C. §§ 1182, 1224, 1225, 1226, 1227, 1228, and 1231.

45. Taken together, “Congress has specified which aliens may be removed from the United States and the procedures for doing so.” *Arizona*, 567 U.S. at 396. Indeed, “the Supreme Court has ‘repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.’” *Lopez*, 758 F.2d at 1392 (quoting *Fiallo v. Bell*, 430 U.S. 787, 792 (1977)).

46. The States cannot obstruct or take discriminatory action against the execution of those laws, *see Arizona*, 567 U.S. at 394–95; *North Dakota*, 495 U.S. at 435; *id.* at 444–47 (Scalia, J., concurring), as only the Federal Government maintains the authority to grant an alien the privilege to enter our nation and controls the terms and conditions of such privilege. *See U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950); *Lopez*, 758 F.2d at 1392 (“This broad grant of authority is exclusive to Congress.”); *Tayyari*, 495 F. Supp. at 1376 (discussing “the superior right of the federal government to exercise exclusive power and control over aliens and to dictate foreign policy without interference from the states.”).

47. DHS is authorized to inspect all applicants for admission and take appropriate action against inadmissible aliens, even ones who are transferred to State or local custody pending prosecution. *See* 8 U.S.C. §§ 1182, 1225(b)(2); 8 C.F.R. § 235.2. And ICE is authorized “to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United

States.” 8 U.S.C. § 1357(a)(1). Any state law or policy that prevents federal law enforcement from such inspection or interrogation stands as an obstacle to ICE’s statutory and regulatory mandate.

48. Moreover, because immigration control and management is “a field where flexibility and the adaptation of the congressional policy to infinitely variable conditions constitute the essence of the program,” *Shaughnessy*, 338 U.S. at 543 (internal citations omitted), Congress vested substantial discretion in the President of the United States and the administering federal agencies to adjust the balance of these multiple interests as appropriate—both globally and in individual cases. For example, the Secretary of DHS is vested with the power to “establish such regulations; prescribe such forms of bond, reports, entries, and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out his authority under the [INA].” 8 U.S.C. § 1103(a)(3).

49. Although the Federal Government possesses broad power over immigration, enforcing immigration laws is a formidable challenge with significant complexities. To meet that challenge, Congress recognized that cooperation with state and local law enforcement is *essential* to enable the Federal Government to implement the INA. As a result, Congress codified basic principles of cooperation and comity between state and local authorities and the Federal Government. *See, e.g.*, 8 U.S.C. § 1226(d). The Federal Government regularly works with state and local governments to achieve Congress’s stated immigration objectives.

50. As the Supreme Court acknowledged, “[c]onsultation between Federal and state officials is an important feature of the immigration system.” *Arizona*, 567 U.S. at 411. Absent any cooperation at all from “local officials,” the immigration system—like other federal programs—“may fail or fall short of [its] goals[.]” *City of NY v. United States*, 179 F.3d 29, 35 (2d Cir. 1999).

51. Cooperative efforts between Federal officials and state and local officials are critical to enabling the Federal Government to identify, process for removal, and thereafter remove the hundreds of thousands of aliens who violate immigration (and other) laws each year.

52. To facilitate the enforcement of federal immigration law, Congress authorized states and localities to “cooperate with the [Federal Government] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.” 8 U.S.C. § 1357(g)(10)(B).

53. Cooperating allows ICE to take into custody aliens convicted of crimes after the completion of their criminal sentence and to detain other aliens pending removal proceedings. *Id.* §§ 1225(b)(2)(A), 1226(c); *see id.* § 1231. And federal authorities must “make available” to state, county, city, and other local authorities “investigative resources ... to determine whether individuals arrested by such authorities for aggravated felonies are aliens[.]” 8 U.S.C. § 1226(d)(1)(A). Likewise, federal officials must also “designate and train officers and employees ... to serve as a liaison to” state, county, city, and other local officials “with respect to the arrest, conviction, and release of any alien charged with an aggravated felony[.]” *Id.* § 1226(d)(1)(B); *see id.* §§ 1226(c), 1231(a). Congress further sought to affirmatively penalize efforts to obstruct immigration enforcement by, among other things, prohibiting the “conceal[ing], harbor[ing], or shield[ing] from detection, or attempts to” accomplish the same, of any “alien in any place, including any building or any means of transportation.” *Id.* § 1324(a)(1)(A)(iii).

54. Cooperation is a key component of the decision Congress made to permit states and localities to impose criminal punishment on an alien, and to have an alien serve that punishment, before the alien is removed from the country. *See* 8 U.S.C. § 1231(a)(1)(B)(iii) (providing that the

removal period does not begin until an alien in state custody is “released from detention or confinement”).

55. Courts have recognized, moreover, that ICE may avail itself of publicly owned property for the purpose of carrying out its statutorily assigned mission. *See, e.g., United States v. King Cnty., Wash.*, 122 F.4th 740, 758 (9th Cir. 2024) (“Requiring this form of non-discriminatory access to [public] property consistent with the intergovernmental immunity doctrine does not create a back-end anti-commandeering problem. [The court] would not perceive a threat of unconstitutional commandeering when ICE uses county highways to transport immigration detainees from one place to another just because the county owns its highways.”).

56. Federal law contemplates and authorizes these cooperative efforts in service of the interests of the Federal Government, states and localities, and the American public. Because the Federal Government has a regulatory relationship with all aliens within the United States, its grant of permission to states and localities to pursue their criminal-enforcement interests does not affect the Federal Government’s ultimate authority over criminal aliens. *Cf. Buckman Co. v. Plaintiffs’ Legal Comm.*, 531 U.S. 341, 347 (2001).

57. To cement the cooperative spirit of the INA and to facilitate the achievement of Congress’s immigration goals, Congress expressly authorized state and federal officials to enter into agreements whereby state officials are given the powers of federal immigration officials to assist in the enforcement of federal immigration law. “Federal law specifies limited circumstances in which state officers may perform the functions of an immigration officer,” a “principal example” of which is “when the Attorney General has granted that authority to specific officers in a formal agreement with a state or local government.” *Arizona*, 567 U.S. at 408–09 (citing 8 U.S.C. § 1357(g)); *see also United States v. Alas*, 63 F.4th 269, 274 (4th Cir. 2023).

58. Section 287(g) of the INA specifically provides that “the Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law.” 8 U.S.C. § 1357(g)(1); *see also id.* § 1231(i)(1)(A).

59. Congress added Section 287(g) to the INA as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Pub. L. No. 104-208, div. C, sec. 113, 110 Stat. 3009, 3009–546 (1996). The law was designed to “strengthen[] the rule of law by cracking down on illegal immigration at the border, in the workplace, and in the criminal justice system—without punishing those living in the United States legally.” President William J. Clinton, *Statement on Signing the Omnibus Appropriations Act*, 1996 U.S.C.C.A.N. 3388, 3391 (Sept. 30, 1996); *see* H.R. Rep. 104-828 (Sept. 24, 1996) (Conf. Rep.) (describing IIRIRA as a bill “to improve deterrence of illegal immigration to the United States” and “to reform the legal immigration system”).

60. Pursuant to Section 287(g) agreements, qualified state and local officers designated by the Secretary of Homeland Security<sup>3</sup> may perform specified immigration-enforcement functions relating to investigating, apprehending, and detaining aliens. 8 U.S.C. § 1357(g)(1)–(9). Section 287(g) requires that the specified officers “have knowledge of, and adhere to, Federal law”

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<sup>3</sup> Following the Homeland Security Act of 2002, many references in the INA to the “Attorney General” are now read to mean the Secretary of DHS. *See Clark v. Suarez Martinez*, 543 U.S. 371, 374 n.1 (2005).

relating to immigration enforcement and that they receive “adequate training regarding the enforcement of relevant Federal immigration laws.” 8 U.S.C. § 1357(g)(2); *see also Alas*, 63 F.4th at 274; *Arizona*, 567 U.S. at 409 (citing § 1357(g)(2); 8 CFR §287.5(c) (arrest power contingent on training), *id.* § 287.1(g) (defining the training)).

61. “In short, Section 287(g) ‘permits ICE to deputize local law enforcement officers to perform immigration enforcement activities pursuant to a written agreement,’ and ‘ICE trains the local law enforcement officers who participate.’” *Alas*, 63 F.4th at 274 (quoting *United States v. Sosa-Carabantes*, 561 F.3d 256, 257 (4th Cir. 2009)); *see id.* at 275 (describing § 287(g) agreement as “crafted to ensure that each HCSO officer or employee tasked with enforcing Federal immigration law is well-trained, tested, and certified.”).

62. Such cooperation occurs under color of Federal authority, not state authority: “An officer or employee of a State or political subdivision of a State acting under color of authority under this subsection, or any agreement entered into under this subsection, shall be considered to be acting under color of Federal authority for purposes of determining the liability, and immunity from suit, of the officer or employee in a civil action brought under Federal or State law.” 8 U.S.C. § 1357(g)(8). Section 1357(g)(1) thus grants local officers the powers and immunities of Federal immigration officials.

63. Congress also authorized “cooperative agreement[s]” between States and the Federal Government necessary to detain aliens. *See* 8 U.S.C. § 1103(a)(11)(B) (“The Attorney General, in support of persons in administrative detention in non-Federal institutions, is authorized- to enter into a cooperative agreement with any State, territory, or political subdivision thereof, for the necessary construction, physical renovation, acquisition of equipment, supplies or materials required to establish acceptable conditions of confinement and detention services in any

State or unit of local government which agrees to provide guaranteed bed space for persons detained by the Service.”).

64. Federal law further contemplates the detention of aliens during removal proceedings. *See* 8 U.S.C. §§ 1226(a) (“[A]n alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.”), (c), 1231(a)(2) (“During the removal period, the [Secretary of DHS] shall detain the alien.”), (g) (“The [Secretary of DHS] shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal.”).

65. Congress vested the Federal Government with broad and exclusive discretion to determine the manner and location of immigration detention, including by authorizing the Executive Branch to “arrange for appropriate places of detention for aliens detained pending removal or a decision on removal,” and, when federal facilities are unavailable to “expend . . . amounts necessary to acquire land and to acquire, build, remodel, repair, and operate facilities . . . necessary for detention.” 8 U.S.C. § 1231(g)(1), *see id.* § 1231(g)(2) (before constructing a facility, DHS shall “consider the availability for purchase or lease of any existing prison, jail, detention center, or other comparable facility suitable for [detention].”).

66. Congress thus expressly contemplated and approved the use of voluntary agreements to implement federal immigration detention operations.

67. To facilitate the federal immigration enforcement scheme, Congress directed that a state, county, city, or other local government official or agency may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, DHS “information regarding the citizenship or immigration status, lawful or unlawful, of any individual.” 8 U.S.C. § 1373(a); *see id.* § 1644 (same); *see also id.* § 1357(g)(10)(A) (providing for state, county, city,

and other local “communicat[ion] with [DHS] regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States”).

68. Likewise, “no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from,” among other things, “[m]aintaining” “information regarding the immigration status, lawful or unlawful, of any individual,” or “[e]xchanging such information with any other Federal, State, or local government entity.” *Id.* § 1373(b).

69. Congress passed § 1373 to fix a specific problem, after it observed “certain states and localities were restricting their officials’ cooperation with federal immigration authorities.” *New York v. U.S. Dep’t of Justice*, 951 F.3d 84, 96 (2d Cir. 2020); *see City of NY*, 179 F.3d at 35. Thus, in enacting Section 1373, “Congress sought to give state and local officials the authority to communicate with [federal immigration authorities] regarding the presence, whereabouts, or activities of illegal aliens, notwithstanding any local laws to the contrary.” *New York*, 951 F.3d at 97 (citations omitted).

## **FACTUAL BACKGROUND**

### **THE STATE OF NEW MEXICO AND HB9**

70. Governor Michelle Lujan Grisham signed HB9 into law on February 5, 2026. HB9 will go into effect 90 days after the Legislature adjourns, currently scheduled for May 20, 2026.

71. HB9 applies to “public bodies,” which is defined expansively to include “a state or local government, a sheriff’s department, an advisory board, a commission, an agency or an entity created by the constitution of New Mexico or any branch of government that receives public funding, including political subdivisions, special tax districts, school districts and institutions of higher education” as well as “an entity or individual acting on behalf of or within the scope of the authority of the public body.” HB9 § 2.

72. HB9 concerns three types of agreements. First, it applies to agreements “to detain individuals for federal civil immigration violations, including an intergovernmental services agreement to detain individuals for civil immigration violations.” HB9 §§ 3(A), (B). Second, it applies to agreements “to investigate, apprehend, detain or transport individuals pursuant to 8 U.S.C. Section 1357(g) or 8 C.F.R. Section 287.7” HB9 §§ 4(A), (C). Third, it applies to agreements “that deputize[] officers, employees or agents of the public body to perform a function of an immigration officer in relation to the investigation, apprehension, detention or transportation of noncitizens in the United States or the removal of noncitizens from the United States.” *Id.* § 4(B).

73. HB9 prevents public bodies from forming new, or extending existing, agreements for any of these federal immigration enforcement purposes, stating that “[a] public body shall not enter into, extend, renew or otherwise agree to be a party” to any type of agreement. HB9 §§ 3(A), 4(A); *see id.* § 4(B) (“A public body shall not agree to be a party to an agreement . . .”).

74. HB9 also requires the termination of existing agreements, stating that “[a] public body that is a party to an existing agreement . . . shall . . . terminate the agreement upon the earliest date permissible under the terms of the agreement” and requires public bodies to “invoke exigent circumstances” to affect such termination. HB9 § 4(C); *see id.* §§ 3(A) (“A public body shall not enter into, extend, renew or otherwise agree to a rider, amendment, supplement or other modification to an agreement . . .”), (B) (“A public body that is a party to an existing agreement . . . shall . . . terminate the agreement upon the earliest date permissible under the terms of the agreement, with respect to all provisions that relate to the detention of individuals for federal civil immigration violations.”).

75. In addition to the restrictions placed on a public body's ability to form a contract for federal immigration enforcement purposes, HB9 imposes restrictions on the real property of public bodies by preventing them from allowing their property to be used to detain aliens for civil immigration violations, stating that "[a] public body shall not sell, trade, lease or otherwise dispose of any real property to be used for the detention of individuals for federal civil immigration violations." HB9 § 3(C).

76. Yet, HB9 does not "limit the ability of law enforcement personnel to detain individuals or to perform brief investigative stops as permitted by state law." HB9 § 3(E).

77. HB9 is enforceable by "[t]he attorney general or a district attorney" who are empowered to "institute a civil action in a district court if" they have "reasonable cause to believe that a violation of [HB9] has occurred or to prevent a violation of [HB9] from occurring." *Id.* § 5(A). In such case, the district court "may award appropriate relief . . . to include declaratory and temporary, preliminary or permanent injunctive relief." *Id.* § 5(B).

#### **THE CITY OF ALBUQUERQUE AND THE SCPO**

78. On March 23, 2026, Albuquerque Mayor Timothy Keller signed the SCPO. On March 25, 2026, the SCPO was published and on March 30, 2026, it became effective. *See* SCPO, § 13-17-7(5).

79. The SCPO broadly prohibits the use of Albuquerque property for federal immigration enforcement purposes, stating "[n]o City-owned and operated structure or venue . . . shall be used for immigration enforcement purposes, including as a staging area, processing location, or operations base." SCPO § 1-5-1(A). The term "staging area" is defined as "an area that is used to assemble, mobilize, and deploy vehicles, equipment, or materials, and related personnel, for the purpose of carrying out immigration enforcement." *Id.* § 1-5-1(A); *see also id.* § 1-5-1(B)(6)

(restricting use of certain “resources to be used for immigration enforcement” on non-City property).

80. To enforce this prohibition, the SCPO requires the “identif[ication of] City-owned and controlled structure[s] or venue[s] . . . that either have been used, or are likely to be used in the future, as a staging area, processing location, or operations base for the purpose of immigration enforcement” and demands that such areas have posted signs stating that they “may not be used for immigration enforcement” and that such areas be physically “secured . . . by means including, but not limited to, locked gates or barriers.” *Id.* §§ 1-5-1(B)(1)–(2). Further, City employees are required to report “the attempted or actual use” of such properties “to their supervisor, who will communicate with the Mayor and the City Attorney.” *Id.* § 1-5-1(B)(3).

81. The SCPO additionally bars the approval of “any permit, contract or other agreement for use of City owned or controlled property or resources if . . . the property or resources will be used for the purposes of facilitating immigration enforcement.” *Id.* § 5-1-5(B)(4).

82. The SCPO restricts the “use” of “any City resources, including, but not limited to, moneys, equipment, personnel, vehicles, or facilities . . . to be used to transport individuals for immigration enforcement purposes,” and prohibits the use of “City property or resources” to “be used to facilitate custody transfer or transport to federal immigration authorities absent a valid judicial warrant or court order.” *Id.* § 5-1-5(B)(5); *see id.* § 5-1-5(B)(6).

83. The SCPO also prohibits certain public and private entities “from providing voluntary consent to law enforcement agents engaged in or supporting immigration enforcement from: (1) Entering non-public areas; or (2) Accessing, reviewing, or obtaining student or patient records.” *Id.* § 13-17-4(A)(1), (2).

84. The SCPO further contains a tip-off requirement that “businesses . . . provide notice to all current employees, contractors, and others performing work for the employer for remuneration . . . within 24 hours of a law enforcement agent engaging in or supporting immigration enforcement being present at a place of work[,]” which notice includes the name of the agency, date the actor was present, and the nature of the actor’s actions. *See id.* §§ 13-7-6(C)(1).

### **THE OTERO-ICE CONTRACT**

85. For nearly two decades, since 2008, Otero County has arranged for the housing of aliens and provision of related civil immigration detention services to ICE through its operation of the Otero County Processing Center (“OCPC”) pursuant to the terms of successive Intergovernmental Service Agreements (“IGSAs”) with ICE. In that time, multiple Attorneys General and other officials have blessed the IGSAs, as well as agreements between Otero County and Management and Training Corporation (“MTC”), a private entity that manages and operates the OCPC.

86. Thanks to the performance of the IGSAs, and consequent operation of the OCPC, ICE has benefited from access to a fully secure 1,096 bed facility that houses male and female detainees. The OCPC is critical to ICE’s civil immigration operations, as it is geographically situated near the El Paso ERO Field Office, multiple Ports of Entry (e.g., OCPC is approximately 21 miles away from Ysleta, 24 miles away from Americas, 42 miles from Tornillo, and 46 miles from Santa Teresa), major highways, and an international airport. OCPC is also the only civil immigration detention facility in New Mexico that can accommodate female detainees and higher risk individuals. Moreover, it is consistently one of the best facilities with the most staff, best conditions, and track records for safely and humanely handling detainees.

87. The most recent IGSA became effective on March 16, 2026 (“Otero-ICE Contract”) (Exhibit C). Under the terms of the Otero-ICE Contract, Otero County is to house ICE detainees and perform related detention services, including 1,096 adult male and female beds. The Otero-ICE Contract is effective for 60 months unless extended by the parties.

88. To operate, manage, and maintain the OCPC, Otero County engages the MTC pursuant to the terms of the related Operations, Management, and Maintenance Agreement (“Otero-MTC Contract”) (Exhibit D). Without the Otero-MTC Contract, Otero County would not be able to fulfill its obligations under the Otero-ICE Contract.

**HB9 AND THE SCPO ARE PREEMPTED BY FEDERAL IMMIGRATION LAW**

89. HB9 and the SCPO are preempted by the INA because they conflict with federal immigration law and stand as an obstacle to the achievement of Congress’s immigration goals and objectives. HB9 and the SCPO impede the access to property and cooperation between local law enforcement and federal immigration authorities necessary to enforce federal immigration law. “Such interference with the discretion that federal law delegates to federal officials goes to the heart of obstacle preemption.” *Geo Grp.*, 50 F.4th at 762. Consequently, the laws are preempted by federal law in numerous respects.

90. First, HB9 and the SCPO prevent the Federal Government from entering into agreements with local entities to facilitate the detention of aliens and the enforcement of federal immigration law. *See* HB9 §§ 3(A)–(C), 4(A)–(C); SCPO 5-1-5(B)(4). As explained *supra*, Congress created a comprehensive immigration system that contemplated cooperation between the Federal Government and states and localities to ensure uniform enforcement of federal law. *See* 8 U.S.C. § 1357(g). Congress also authorized the formation of agreements with localities to facilitate the detention of violators of civil immigration law. *See* 8 U.S.C. § 1103(a)(11)(B); 1231(g). While

states and localities are permitted to choose to work with federal immigration enforcement authorities under this scheme, states are not permitted to hamper federal immigration enforcement efforts, including efforts to accomplish Congress's comprehensive detention goals. *See generally*, e.g., 8 U.S.C. §§ 1231(a)(2)(A), (g), 1226(a)(1), (b), (c).

91. If the Otero County detention agreement is terminated or cannot be extended, DHS will have extremely limited capacity within the state to detain illegal aliens. It will also lose a high-quality facility in the state, the one closest to the border in New Mexico, and the only one that can detain women and high-risk individuals. This will require DHS to transfer aliens to facilities in other states, sometimes hundreds of miles away. Transferring these detainees and having the transport new detainees to far flung facilities will significantly hamper the ability of DHS to enforce immigration law within New Mexico. Thus, banning all detention agreements for immigration detention with public bodies thus creates a significant impediment to the enforcement of immigration laws and defeats the flexibility of Congress's cooperative detention scheme.

92. Part of Congress's immigration enforcement scheme envisioned the formation of Section 287(g) agreements so that state and local officers could assist with national immigration enforcement initiatives under the direction of the Federal Government. Such assistance includes transferring detainees, serving warrants, determining immigration status, or working as part of a task force. *See* 8 U.S.C. § 1357(g). Indeed, that model was discussed in *Arizona*, in which the Supreme Court rejected the State of Arizona's attempt to alter the federal immigration scheme by providing greater immigration enforcement authorities to its officers than Congress envisioned, without Federal oversight. The Court explained that "Federal law specifies limited circumstances in which state officers may perform the functions of an immigration officer" and one such

circumstances is when “the Attorney General has granted that authority to specific officers in a formal agreement with a state or local government.” *Arizona*, 567 U.S. at 408 (citing § 1357(g)).

93. Despite Congress’s comprehensive federal immigration enforcement scheme and stated intent that states and localities have the ability to enter into such agreements, HB9 does not permit *any* agreements to facilitate immigration enforcement, whether currently existing or existing in the future. The SCPO further bars any permit, contract, or other agreement for the use of Albuquerque property or resources to be “used for the purposes of facilitating immigration enforcement.” SCPO § 5-1-5(B)(5). HB9 and the SCPO thus pose an obstacle to the goals and objectives of federal law by preventing cooperation between localities and the Federal Government that are specifically contemplated by Congress. *See* 8 U.S.C. § 1357(g)(2); *see also Alas*, 63 F.4th at 274; *Arizona*, 567 U.S. at 409.

94. Congress wanted local law enforcements to voluntarily cooperate with DHS in the enforcement of immigration laws through 287(g) agreements. By terminating the existing agreement with Curry County and preventing future ones, New Mexico has made it impossible to deputize local law enforcement to help enforce federal law in their communities where they are most trusted. This adds a significant strain on resources and the ability to enforce the law while effectively destroying Congress cooperative scheme.

95. Second, the SCPO prohibits the use of real property for immigration enforcement purposes, including detention of aliens who violate federal immigration law. *See* SCPO §§ 5-1-5(A), (B), 13-17-4(A)(1). As explained *supra*, Congress enacted a statutory scheme that requires the detention of aliens for federal civil immigration violations and specifically authorized the Federal Government to agree with local government entities to provide detention services. *See* 8 U.S.C. §§ 1101(a)(11)(B), (b), 1226(a), (c), 1231(a)(2), (g). By prohibiting real property to be used

for purposes of federal civil immigration detention, the SCPO poses an obstacle to the enforcement of federal immigration law.

96. Third, the SCPO requires “a valid judicial warrant or court order” to justify the use of Albuquerque resources “to transport individuals for immigration enforcement purposes” or “to facilitate custody transfer or transport to federal immigration authorities.” SCPO § 5-1-5(B)(5). The SCPO further requires “a valid judicial warrant . . . or a valid judicial subpoena or judicial order” to permit certain public and private entities to provide “voluntary consent to law enforcement agents engaged in or supporting immigration enforcement” to “[e]nter non-public areas” or “[a]ccess[], review[], or obtain[] student or patient records.” *Id.* § 5-1-5(A). As explained *supra*, Congress specifically contemplated that the Federal Government and state and local governments would share information, coordinate, and cooperate concerning the transfer of removable aliens in state custody to federal custody. *See* 8 U.S.C. §§ 1226(c), (d)(1), 1231(a)(1)(B)(iii), (a)(4), 1357(g). Further, Congress authorized the Federal Government to use administrative warrants and similar requests to obtain access to aliens and related information while in state custody. *See* 8 U.S.C. §§ 1103(a)(3), 1225(d)(4), 1226(a), 1231(a), 1357(a), (c), (d), 8 C.F.R. § 287.7(a). Congress even sought to affirmatively penalize efforts to obstruct immigration enforcement by, among other things, prohibiting the “conceal[ing], harbor[ing], or shield[ing] from detection, or attempts to” accomplish the same, of any “alien in any place, including any building or any means of transportation.” 8 U.S.C. § 1324(a)(1)(A)(iii). By requiring judicial warrants, subpoenas, and orders to compel compliance with Congress’s immigration enforcement objectives, the SCPO is preempted by federal law.

97. Fourth, the SCPO compels private businesses to notify aliens “[i]f a law enforcement agent engaging in or supporting immigration enforcement is present at a place of

work” by providing, within 24 hours, the name of the immigration enforcement agency, date of the immigration enforcement activities, and nature of the immigration enforcement activities. *See* SCPO § 13-17-6(C). By requiring businesses to tip off aliens as to immigration enforcement activities, the SCPO attempts to harbor and shield aliens from detection by federal immigration authorities and poses an obstacle to the enforcement of federal immigration law the enforcement of federal law. *See* 8 U.S.C. § 1324(a)(1)(A). As a result, it is preempted.

**HB9 AND THE SCPO VIOLATE THE PRINCIPLES OF INTERGOVERNMENTAL IMMUNITY**

98. HB9 and the SCPO also violate principles of intergovernmental immunity because they seek to regulate and discriminate against the Federal Government.

**HB9 AND THE SCPO UNLAWFULLY REGULATE THE FEDERAL GOVERNMENT**

99. HB9 seeks to directly regulate the Federal Government by controlling the potential entities with whom the Federal Government may form voluntary agreements to perform the core government function of enforcing civil immigration law, including Section 287(g) agreements and detention agreements. *See CoreCivic*, 145 F.4th at 319 (state “law with the ‘intent’ to forbid new contracts for civil immigration detention” was considered unlawful regulation of the Federal Government because it “interfere[d] with the federal government’s core power to enforce immigration laws.”); *see also Geo Grp.*, 50 F.4th at 757 (state law that “would give California the power to control ICE’s immigration detention operations in the state by preventing ICE from hiring the personnel of its choice” deemed impermissible regulation of the Federal Government). While federal law authorizes the formation of agreements with state and local entities to assist in the enforcement of federal immigration law, the State of New Mexico seeks to limit and narrow the entities available to assist the Federal Government with the enforcement of federal immigration law. HB9 removes potential entities from the pool of entities with whom the Federal Government

may form cooperative agreements. *See CoreCivic*, 145 F.4th at 325 (“The law prevents the federal government from choosing how and through whom it will carry out a core federal function.”). The elimination of potential counterparties to agreements that Congress specifically authorized and contemplated as part of the cooperative civil immigration enforcement scheme amounts to regulation of the Federal Government, as it imposes conditions upon the Federal Government (i.e., limits and controls the state and local entities with which the Federal Government may contract) that are inconsistent with federal immigration law or Congressional intent. *See id.* (“Only the federal government has the power to decide whether, how, and why to hold aliens for violating immigration law. It alone has the power to make these contracts in the first place.”). Congress did not enact a law that stated “the Federal Government may contract with state and local governments to enforce federal immigration law, except state and local governments within New Mexico.” By adding this limitation to federal law, the State of New Mexico seeks to regulate the Federal Government in a manner that conflicts with express congressional intent, which does not limit the Federal Government in this respect. *See id.* at 326 (“this ban is in substance a direct regulation; it destroys the federal government’s marketplace.”); *id.* (“it directly regulates the federal government by telling it how to carry out a core function. It is a direct regulation in everything but name.”); *see also id.* at 327 (“the law directly regulates the federal government twice over by substantially interfering with its operations.”).

100. HB9 and the SCPO also regulate the Federal Government by controlling the property that the Federal Government may use to perform its immigration enforcement operations. While Congress authorized the Federal Government to cooperate with state and local governmental entities to enforce federal immigration law, including by using real property to detain aliens, New Mexico and Albuquerque seek to limit and control the real property available to the

Federal Government to implement federal immigration law and to require judicial warrants to access property when Congress authorized the use of administrative warrants. HB9 and the SCPO also regulate the Federal Government by controlling the personnel available to the Federal Government to enforce federal immigration law. *See* HB9 §§ 4(A)–(C); [SCPO PROVISIONS RE/ USE OF RESOURCES]. This amounts to unlawful regulation of the Federal Government in violation of the principles of intergovernmental immunity.

### **HB9 AND THE SCPO DISCRIMINATE AGAINST THE FEDERAL GOVERNMENT**

101. The challenged laws also unlawfully discriminate against the Federal Government by applying solely to the area of civil immigration enforcement, which is a core federal governmental function by nature, while simultaneously permitting the same law enforcement activities for other purposes. State and local governments throughout New Mexico are not barred from forming agreements to facilitate the detention of individuals for non-immigration purposes and with other entities. Indeed, Otero County has another facility next door that detains individuals on behalf of other local and state entities. HB9 does not affect those arrangements. Chapter 11 of the New Mexico Statutes expressly pertains to Intergovernmental Agreements and Authorities. *See* N.M. Stat. Ann. §§ 1-1-1–11-20-4. In fact, New Mexico law specifically provides that “[i]f authorized by their legislative or other governing bodies, two or more public agencies by agreement may jointly exercise any power common to the contracting parties, even though one or more of the contracting parties may be located outside this state” assuming certain conditions are satisfied. N.M. Stat. Ann. § 11-1-3. Similarly, local law enforcement entities such as the Curry County Sherriff can and do enter into Memoranda of Understanding with other state and local law enforcement to assist with warrants, arrests, information sharing, and detention. They can even do

so for civil matters. MOUs are common between New Mexico Counties and local entities for various law enforcement purposes.

102. Yet state and local governments are strictly barred from forming agreements with the Federal Government for purposes of immigration detention and other immigration enforcement initiatives. The same is true for agreements between local government entities and the Federal Government to use property and to cooperate with federal immigration enforcement initiatives, as local government entities can form agreements to use property and cooperate with other law enforcement initiatives without violating HB9 or the SCPO, while forming the same agreements to facilitate federal immigration law enforcement is prohibited. Indeed, nothing about HB9 or the SCPO would bar New Mexico or Albuquerque law enforcement agencies from contracting with private entities to use a prison for civil detention purposes unrelated to immigration, yet DHS is barred from contracting with New Mexico governmental entities to use detention facilities for civil immigration detention purposes.

103. HB9 specifically singles out federal civil immigration enforcement officers for treatment worse than state and local law enforcement officers by permitting agreements and the use of property for detention and state law enforcement purposes not involving federal immigration detention, adding that “[n]othing in this section shall be construed to limit the ability of law enforcement personnel to detain individuals or to perform brief investigative stops *as permitted by state law.*” HB9 at § 3(E) (emphasis added). By including a carveout that permits detention and investigation for purposes of state law, HB9 embodies New Mexico’s intent to limit law enforcement detention authority in a manner that applies solely to federal immigration law enforcement officials, while permitting detention and investigation for comparable state law purposes.

104. The Federal Government is the sole entity that is tasked with the enforcement of federal immigration law. Among the enforcement mechanisms authorized by Congress are the formation of cooperative agreements between state and local entities and the Federal Government concerning the enforcement of immigration law. By requiring the immediate termination of these agreements and barring all future agreements, and while allowing agreements of other kinds between governmental entities to achieve other goals, HB9 unlawfully discriminates against the Federal Government.

105. The SCPO discriminates against the Federal Government by requiring businesses to notify aliens of federal immigration enforcement operations, while allowing other law enforcement operations to proceed without any notice. This includes state and local criminal enforcement operations and even civil enforcement, such as regulatory actions. The SCPO thus singles out the Federal Government for significantly worse treatment when conducting federal immigration enforcement activities, as private businesses are not required to tip off employees as to other law enforcement activities. The SCPO further discriminates against the Federal Government by permitting certain public and private entities to voluntarily cooperate with law enforcement officials through the provision of access to property and certain records but denies the same public and private entities the right to provide the same voluntary access to immigration law enforcement officials absent a judicial warrant, subpoena, or order. As a result, the SCPO unlawfully discriminates against the Federal Government, in violation of the principles of intergovernmental immunity.

**HB9 VIOLATES THE CONTRACT CLAUSE**

106. HB9 requires local government entities to terminate their existing agreements that are intended to facilitate the detention of aliens who violate federal immigration law and to

facilitate the enforcement of federal immigration law. *See* HB9 §§ 3(B), 4(C). By doing so, instead of permitting the parties to continue to perform their mutually beneficial bargained-for obligations or entering into modifications, extensions, or renewals of existing agreements, HB9 unequivocally impairs existing agreements between county governments, the Federal Government, and other entities made to detain aliens and otherwise enforce federal immigration law.

107. The Federal Government has relied to its detriment in performing and arranging to perform under the mutually beneficial promises made in its agreements to ensure that federal immigration law will be enforced and aliens who violate federal immigration law will be detained in a manner consistent with Congress's statutory scheme and goals. If HB9 is permitted to take effect, the termination of existing agreements intended to further federal immigration enforcement purposes would cause significant financial losses and impose significant operational burdens on the Federal Government.

108. Moreover, HB9 requires the termination of existing agreements without a legitimate or significant public purpose, let alone a public purpose sufficient to overcome the imposition of the most severe impairment possible on the existing agreements between the Federal Government, county governments, and other entities.

109. While HB9 does not profess any purported purpose, statements made by New Mexico state legislators make clear that HB9 is intended to eliminate civil immigration detention in New Mexico and to obstruct cooperation between state and federal authorities enforcing federal immigration law. Specifically, New Mexico Representative Eleanor Chavez, a co-sponsor of HB9, expanded on the purpose of HB9, stating that HB9 "is a straightforward bill. It gets New Mexico

out of the business of immigration detention.”<sup>4</sup> Governor Michelle Lujan Grisham’s Director of Communications also elaborated on the purpose of HB9, stating that “Gov. Lujan Grisham wants to ensure New Mexico will not be complicit in discriminatory mass immigration enforcement . . .”<sup>5</sup>

110. Preventing public bodies from continuing to perform under decades-old voluntary agreements that are consistent with, and specifically authorized by, federal law does not advance any significant nor legitimate public purpose. *See* 8 U.S.C. §§ 1357(g), 1103(a)(11)(B). And even if HB9 had a significant and legitimate public purpose, that purpose is not a sufficiently significant or legitimate purpose to justify the severe impairment (i.e., forced termination) of existing agreements with the Federal Government that the federal government has long relied on.

111. Even assuming HB9 had a sufficient public purpose, it is not tailored to address that purpose. HB9 requires the *categorical* termination of existing immigration detention and law enforcement agreements without any conditions, let alone reasonable conditions appropriate to address the ostensible public purpose justifying its enactment. *Cf. U.S. Tr. Co.*, 431 U.S. at 29–30 (“it cannot be said that total repeal . . . was essential; a less drastic modification would have permitted the contemplated plan without entirely removing the . . . limitations . . .”); *id.* at 30 (“the States could have adopted alternative means of achieving their . . . goals”); *id.* at 31 (“a State is

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<sup>4</sup> Pat Davis, *Momentum builds in New Mexico legislature to ban ICE facilities statewide*, New Mexico Political Report (Jan. 28, 2026), <https://nmpoliticalreport.com/2026/01/28/momentum-builds-in-new-mexico-legislature-to-ban-ice-facilities-statewide/>; *see also* Patrick Lohmann, *NM lawmakers add ban on law enforcement agreements with ICE to Immigrant Safety Act*, Source New Mexico (Jan. 28, 2026, at 5:57 AM), <https://sourcenm.com/2026/01/28/nm-lawmakers-add-ban-on-law-enforcement-agreements-with-ice-to-immigrant-safety-act/> (“We want to create a situation where it’s consistent throughout the state, where public entities are not cooperating with ICE enforcement,” [Rep. Chavez] said. “It’s really plain and simple.”).

<sup>5</sup> Alex Ross, *Lujan Grisham to push immigrant detention ban in next legislative session*, New Mexico Political Report (Sept. 8, 2025), <https://nmpoliticalreport.com/2025/09/08/lujan-grisham-to-push-immigrant-detention-ban-in-next-legislative-session/>.

not free to impose a drastic impairment when an evident and more moderate course would serve its purposes equally well.”).

112. On a fundamental level, these agreements are completely voluntary for local governmental entities. If localities viewed them as problematic, lacked sufficient resources, or their constituents disapproved of such arrangements, localities could simply exercise their discretion and decline to enter into them or terminate them on their own initiative. Yet, the State of New Mexico seeks to remove that discretion by instituting a blanket policy requiring the immediate termination of existing agreements and banning all future agreements, regardless of the local circumstances.

113. The sole purpose of HB9 is to express discontent with the federal immigration policies of the current administration. However, immigration is subject to broad federal regulation and is within the ambit of comprehensive federal power and authority. Policy disagreements are not a legitimate or sufficiently significant basis to require termination of all existing agreements and ban all future agreements, much less a basis to frustrate and actively obstruct federal immigration law enforcement.

114. There is simply no significant or legitimate public purpose in passing a law that bars all existing and future agreements to detain violators of civil immigration law or coordinate local enforcement of federal immigration law.

115. Moreover, if Otero County is forced to terminate the Otero-ICE Contract, or if the purpose of the Otero-ICE Contract is frustrated by the termination of the Otero-MTC Contract, and if future agreements are prohibited, DHS will be forced to transfer many detainees hundreds of miles away to other states, such as the Fort Bliss facility in Texas. This forced relocation drains Federal Government resources and will result in the placement of detainees further away from

relatives. Furthermore, New Mexico can conduct some oversight and inspections of the facility in Otero Country through health, safety, and political inspections. New Mexico can also review the agreements and demand various requirements be included and enforced by the County. New Mexico would lack such authority and oversight for facilities in other states where many of the detainees would have to be moved. Otero Country, on the other hand, would lose significant revenue and jobs for its people. It is thus difficult to imagine the legitimate state interest New Mexico has in forcefully terminating this long-standing agreement other than to actively try and obstruct lawful immigration enforcement in the state. That is anything but legitimate and is completely contrary to the public interest.

116. If the State of New Mexico caused the termination of the Otero-ICE Contract or the Otero-MTC Contract, ICE would be significantly and irreparably harmed because ICE would no longer be able to utilize the OCPC to detain and remove illegal aliens in accordance with the mandates of federal immigration law. Loss of the OCPC would be devastating to ICE's operations, as no facilities exist to immediately accommodate the alien population currently housed at the OCPC. Enforcement of HB9 would significantly obstruct ICE's achievement of Congress's immigration objectives and goals by hampering ICE's ability to detain and remove aliens. Again, many aliens would have to be transferred many miles to facilities in other states.

117. Similarly, there are two counties in New Mexico (Curry County and Torrance County) that have engaged with ICE's 287(g) Program with a memorandum of agreement (MOA). The Curry County Sheriff's Office and Torrance County Sheriff's Office have approved MOAs to participate in the 287(g) Warrant Service Officer (WSO) Program. These agreements require DHS to train and certify their officers on immigration enforcement. As a result, their officers are deputized under the color of federal law to help enforce immigration warrants. Having locally

accountable law enforcement operating in their own communities has many benefits and can increase trust and effectiveness in enforcing immigration laws. There is no legitimate reason other than obstruction to require the termination of such voluntary agreements and force federal officers into every county.

118. In effect, HB9 bans all agreements that promote necessary cooperation between state and local governments and federal civil immigration authorities, whether for detention purposes or law enforcement purposes. By requiring the immediate termination of existing immigration detention and cooperation agreements, HB9 interferes with and substantially impairs all civil immigration enforcement and detention agreements between the Federal Government and any local entity in New Mexico. Accordingly, HB9 violates the Contract Clause and is invalid.

**THE IMPACT OF THE ENFORCEMENT OF HB9 AND THE SCPO**

119. The State of New Mexico will enforce HB9. While HB9 will not take effect until May 20, 2026, New Mexico has already manifested animosity to civil immigration detention agreements by attempting to nullify the latest extension of Otero-ICE Contract between ICE and Otero County through its Emergency Petition for Writ of Mandamus. While unsuccessful, the Petition cites HB9 repeatedly and alleges that Otero County entered into the latest Otero-ICE Contract extension to avoid the applicability of HB9, expressing clear frustration with the Otero-ICE Contract. The Attorney General is empowered to sue Otero County to enforce HB9 and seek an injunction requiring the termination of the Otero-ICE Contract or Otero-MTC Contract. HB9 § 5.

120. In addition to its overt attempt to nullify a civil immigration detention agreement between ICE and Otero County, New Mexico has never disclaimed its intent to enforce HB9. Nor has the City of Albuquerque expressed an intent not to enforce the SCPO. The United States

believes that New Mexico will enforce HB9 and Albuquerque will enforce HB9. Both New Mexico and Albuquerque have passed a series of sanctuary policies. Presumably, neither government would pass such laws if they did not plan on enforcing them.

121. Should HB9 be enforced, it will result in the termination of numerous agreements between ICE, New Mexico local governmental entities, and private entities, depriving these local government entities and private companies of revenue, and depriving the communities that they serve of jobs and economic activity. If local governmental entities refuse to comply with HB9, the New Mexico Attorney General is empowered to seek injunctive relief to force compliance with HB9. *See* HB9 § 5.

122. The Federal Government depends on these agreements to operate civil immigration detention facilities and to enforce civil immigration law throughout the State of New Mexico. Consequently, HB9 has the purpose and will have the imminent result of impeding federal immigration enforcement in New Mexico.

123. The United States is irreparably harmed by HB9 and the SCPO because they seek to (i) obstruct and conflict with federal immigration law; (ii) control and regulate federal functions and operations carried out through the Executive agencies of the United States, in violation of the Supremacy Clause; and (iii) void contracts with federal agencies in violation of the Contract Clause.

124. All of these measures make enforcing federal law more difficult and dangerous in the State of New Mexico and divert important law enforcement resources. These laws disrupt important coordination between state and local officials and purposefully make the enforcement of federal law more difficult.

125. States may not adopt laws that violate the Constitution, including laws that upset the federal system and the existing agreements and ongoing cooperation between state and local entities and the Federal Government, nor dictate the parties with whom the Federal Government may contract, particularly in the context of sovereign functions such as immigration enforcement.

126. The United States is further irreparably harmed absent an injunction because a failure to enjoin this law will encourage other states to enact similar unconstitutional laws. There is no adequate remedy at law for such violations of the Constitution.

### **CLAIMS FOR RELIEF**

#### **COUNT I – FEDERAL PREEMPTION OF HB9 AND THE SCPO (AGAINST ALL DEFENDANTS)**

127. Plaintiff hereby incorporates foregoing paragraphs of the Complaint as if fully stated herein.

128. By virtue of the Supremacy Clause of the United States Constitution, HB9 and the SCPO are impliedly preempted, unconstitutional, invalid, and unenforceable because they conflict with federal law by obstructing the accomplishment and execution of Congress’s full immigration purposes and objectives.

129. Through the INA, Congress codified its federal immigration purposes and objectives. To fulfill those purposes and objectives, Congress permitted state and local officials to voluntarily agree with the Federal Government to implement federal immigration law by performing federal immigration functions under the color of federal law as well providing detention facilities and services. *See* 8 U.S.C. §§ 1357(g), 1103(a)(11)(B), 1231(g); *see also* 6 U.S.C. § 112(b)(2).

130. HB9 and the SCPO obstruct the accomplishment and execution of the full purposes and objectives of Congress as codified in the INA by dramatically curtailing the Federal

Government's congressionally delegated discretion to select, locate, and contract with local governments to provide facilities and services for immigration detention. *See* HB9 §§ 3(A)–(C), 4(A)–(C), SCPO §§ 5-1-5(A), (B). By prohibiting or severely restricting the ability of the Federal Government to contract for and to use government property to detain aliens, HB9 and the SCPO stand as an obstacle to the enforcement of federal immigration law. *See* 8 U.S.C. §§ 1231(g), 1103(a)(11)(B).

131. Further, HB9 and the SCPO directly frustrate Congress's delegation of authority to ICE to determine what facilities are appropriate for immigration detention and to secure such facilities through purchase, lease, or contract. *See* HB9 §§ 3(A)–(C); SCPO §§ 5-1-5(B)(4), (5). HB9 substitutes New Mexico's policy judgment in place of the Federal Government's determination of how best to house individuals subject to federal immigration proceedings and with whom the Federal Government can contract to achieve those ends. *See* 8 U.S.C. §§ 1231(g), 1103(a)(11)(B).

132. HB9 and the SCPO likewise conflict with 6 U.S.C. § 112(b)(2) by impermissibly regulating and restricting the Federal Government's ability to carry out its functions through contracts with non-federal parties, including Otero County.

133. HB9 and the SCPO also obstruct the achievement of Congress's federal immigration purposes and objectives by limiting the property and resources accessible and available federal immigration authorities to be used to implement federal immigration law, as well as ordering defiance of administrative warrants and detainers and instead requiring judicial warrants. *See* HB9 §§ 3(A)–(C); SCPO §§ 5-1-5(A), (B), 13-17-4(A)(1); 8 U.S.C. § 1357.

134. The SCPO further obstructs the achievement of Congress's federal immigration purposes and objectives by (i) requiring businesses to notify aliens of ongoing federal immigration

enforcement operations, and (ii) denying certain public and private entities the right to voluntarily cooperate with federal immigration enforcement officials by providing access to property and certain records, both of which are designed to facilitate the evasion of law enforcement. SCPO §§ 13-17-4(A), 13-17-6(C); *see* 8 U.S.C. § 1324(a)(1)(A)(iii) (prohibiting the “conceal[ing], harbor[ing], or shield[ing] from detection, or attempts to” accomplish the same, of any “alien in any place, including any building or any means of transportation.”); *Kearns v. Cuomo*, 981 F.3d 200, 208 (2d Cir. 2020) (“Examples [of harboring] also include attempts to alert undocumented immigrants to the physical approach of immigration authorities.”).

135. Because HB9 and the SCPO stand as obstacles to the full accomplishment and execution of Congress’s objectives in administering a nationwide immigration detention system, they are preempted by federal law and are unconstitutional and invalid.

**COUNT II – VIOLATION OF THE SUPREMACY CLAUSE  
(UNLAWFUL REGULATION OF THE FEDERAL GOVERNMENT  
AGAINST ALL DEFENDANTS)**

136. Plaintiff hereby incorporates foregoing paragraphs of the Complaint as if fully stated herein.

137. HB9 and the SCPO violate basic principles of intergovernmental immunity by unlawfully regulating the Federal Government. Under the Supremacy Clause, “the activities of the Federal Government are free from regulation by any state.” *Mayo*, 319 U.S. at 445.

138. HB9 regulates the Federal Government by imposing restrictions on the parties with whom the Federal Government can contract to detain aliens for civil immigration violations and to implement federal immigration law, including by deputizing state officials.

139. HB9 and the SCPO regulate the Federal Government by imposing restrictions on the property available to be used for federal civil immigration detention purposes.

140. The purpose and design of HB9 and the SCPO are to prevent federal immigration detention by removing local entities and property available to be used for federal immigration detention purposes.

141. HB9 and the SCPO therefore purport to directly regulate the Federal Government in violation of the intergovernmental immunity doctrine and are invalid under the Supremacy Clause.

**COUNT III – VIOLATION OF THE SUPREMACY CLAUSE  
(UNLAWFUL DISCRIMINATION AGAINST THE FEDERAL GOVERNMENT  
AGAINST ALL DEFENDANTS)**

142. Plaintiff hereby incorporates foregoing paragraphs of the Complaint as if fully stated herein.

143. HB9 and the SCPO “single out” federal immigration authorities for disfavored treatment, expressly and impliedly, which is exactly what intergovernmental-immunity principles bar. *Dawson v. Steager*, 586 U.S. 171, 178 (2019).

144. The Federal Government is tasked by Congress with implementing and enforcing federal immigration law.

145. HB9 restricts public bodies from continuing to perform under and from entering into Section 287(g) agreements and agreements to detain aliens for civil immigration enforcement purposes while allowing public bodies to form agreements for other functions unrelated to federal immigration law. This includes detention and cooperation between state and local law enforcement, including for civil purposes.

146. HB9 makes clear that it is meant to solely apply to federal immigration enforcement functions by limiting its application to other law enforcement personnel. *See* HB9 § 3(E) (“Nothing

in this section shall be construed to limit the ability of law enforcement personnel to detain individuals or to perform brief investigative stops as permitted by state law.”).

147. The SCPO restricts public bodies from using government resources and property to assist in federal immigration law enforcement activities, while permitting such resources and property to be used for other law enforcement purposes.

148. The SCPO requires that private businesses provide notice to aliens of active federal immigration enforcement activities, while permitting other law enforcement activities to proceed without requiring any notification. This includes state and local criminal and civil enforcement actions.

149. The SCPO prohibits certain public and private entities from voluntarily cooperating with immigration law enforcement officials through the provision of access to certain property and records, while permitting the same public and private entities to voluntarily cooperate with other law enforcement officials for other law enforcement purposes.

150. HB9 and the SCPO do not require the termination of existing agreements, bar entry into future agreements, restrict the use of property, restrict voluntary cooperation, or require notice to subjects of investigation for other law enforcement functions civil or otherwise. Instead, HB9 and the SCPO single out the Federal Government, responsible for the implementation and enforcement of federal immigration law, for worse treatment.

151. Accordingly, HB9 and the SCPO are invalid because they violate the Supremacy Clause and principles of intergovernmental immunity.

**COUNT IV – VIOLATION OF THE CONTRACT CLAUSE  
(AGAINST DEFENDANTS STATE OF NEW MEXICO, GOVERNOR MICHELLE  
LUJAN GRISHAM, AND ATTORNEY GENERAL RAUL TORREZ)**

152. Plaintiff hereby incorporates foregoing paragraphs of the Complaint as if fully stated herein.

153. The Contract Clause of the United States Constitution provides that “[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts . . .” U.S. Const. art. I, § 10, cl. 1. “The Contracts Clause restricts the power of States to disrupt contractual arrangements.” *Sveen*, 584 U.S. at 818.

154. Federal law authorizes agreements between the Federal Government and state and local governments to facilitate the detention of aliens and the enforcement of federal immigration laws. *See* 8 U.S.C. §§ 1357(g), 1231(g), 1103(a)(11)(B); 6 U.S.C. § 112(b)(2).

155. Congress thus expressly contemplated and approved the use of agreements, such as the Otero-ICE Contract, to implement federal immigration detention operations and enforce federal immigration law.

156. HB9 substantially impairs existing contracts between local governmental entities in New Mexico and the Federal Government concerning the detention of aliens and enforcement of federal immigration laws by requiring the immediate termination of such agreements, by prohibiting the use of county property and facilities to house civil immigration detainees, and by prohibiting intergovernmental services agreements to detain individuals for civil immigration violations and requiring termination of such agreements. HB9 thus nullifies key aspects of agreements to implement federal immigration detention operations and enforce federal immigration law, including the Otero-ICE Contract. The same is true for the existing 287(g) agreement with Curry County.

157. HB9 also impairs and disrupts the Federal Government's ability to freely contract with local government entities in New Mexico to implement federal immigration law, including, for example, to contract with Otero County to use OCPC as a detention facility, thereby violating the Contract Clause.

158. HB9 lacks any sufficiently significant or legitimate public purpose to justify terminating voluntary agreements between local New Mexico entities and the Federal Government made pursuant to federal law.

159. HB9 impairs agreements between local governmental entities in New Mexico and the Federal Government concerning the detention of aliens and enforcement of federal immigration laws in a manner that is neither reasonable nor necessary.

160. HB9 is not a legitimate exercise of State power.

161. HB9 is therefore unconstitutional and invalid under the Contract Clause.

#### **PRAYER FOR RELIEF**

WHEREFORE, the United States respectfully requests that this Court enter a judgment:

A. Declaring that HB9 and the SCPO are preempted by federal law and are therefore unconstitutional, invalid, and unenforceable;

B. Declaring that HB9 and the SCPO violate the Supremacy Clause and principles of intergovernmental immunity by unlawfully regulating and discriminating against and the Federal Government and are therefore unconstitutional, invalid, and unenforceable;

C. Declaring that HB9 violates the Contract Clause and is therefore unconstitutional, invalid, and unenforceable;

D. Preliminarily and permanently enjoining the operation and enforcement of HB9 and the SCPO, including by prohibiting lawsuits, enforcement, actions, investigations, or any other

actions by Defendants or their agents or successors to enforce or achieve the goals of HB9 and the SCPO;

- E. Awarding the United States its costs and fees in this action; and
- F. Awarding any other relief it deems just and proper.

DATED: May 8, 2026

Respectfully Submitted,

TODD BLANCHE  
Acting Attorney General

BRETT A. SHUMATE  
Assistant Attorney General  
Civil Division

TIBERIUS DAVIS  
Counsel to the Assistant Attorney General

RYAN ELLISON  
First Assistant United States Attorney  
District of New Mexico

JACKSON M. STORY  
Trial Attorney  
U.S. Department of Justice, Civil Division  
Enforcement & Affirmative Litigation Branch

/s/ Robert O. Lindefield  
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*Attorneys for the United States of America*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 8, 2026, I served copies of the foregoing Complaint to the following Parties via electronic mail and certified mail (with return receipt):

PARTIES: State of New Mexico and Governor Michelle Lujan Grisham, in her Official Capacity as Governor of New Mexico  
c/o Honorable Holly Agajanian  
Chief General Counsel to Governor Michelle Lujan Grisham  
Office of the Governor  
490 Old Santa Fe Trail, Suite 400  
Sante Fe, NM 87501-2794  
[holly.agajanian@exec.nm.gov](mailto:holly.agajanian@exec.nm.gov)

PARTIES: State of New Mexico and Governor Michelle Lujan Grisham, in her Official Capacity as Governor of New Mexico  
c/o Honorable Kyle P. Duffy  
Deputy General Counsel to Governor Michelle Lujan Grisham  
Office of the Governor  
490 Old Sante Fe Trail, Suite 400  
Sante Fe, NM 87501-2704  
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PARTIES: City of Albuquerque and Timothy Keller, in his Official Capacity as Mayor of the City of Albuquerque  
c/o Honorable Lauren Keefe  
City Attorney for the City of Albuquerque  
P.O. Box 2248  
Albuquerque, NM 87103-2248  
[lkeefe@cabq.gov](mailto:lkeefe@cabq.gov)

PARTIES: City of Albuquerque and Timothy Keller, in his Official Capacity as Mayor of the City of Albuquerque  
c/o Honorable Ethan Watson  
City Clerk for the City of Albuquerque  
P.O. Box 1293  
Albuquerque, NM 87103-1293  
[cityclerk@cabq.gov](mailto:cityclerk@cabq.gov)

PARTY: Honorable Raúl Torrez, in his Official Capacity as Attorney General for the State of New Mexico  
New Mexico Department of Justice  
201 3<sup>rd</sup> Street NW, Suite 300  
Santa Fe, NM 87102  
[rtorrez@nmag.gov](mailto:rtorrez@nmag.gov)

PARTY: Honorable Raúl Torrez, in his Official Capacity as Attorney General for the State of New Mexico  
c/o Honorable James W. Grayson  
Chief Deputy Attorney General  
New Mexico Department of Justice  
P.O. Box 1508  
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[jgrayson@nmdoj.gov](mailto:jgrayson@nmdoj.gov)

PARTY: Honorable Raúl Torrez, in his Official Capacity as Attorney General for the State of New Mexico  
c/o Honorable Billy J. Jimenez  
Deputy Attorney General, Civil Affairs  
New Mexico Department of Justice  
P.O. Box 1508  
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/s/ Robert O. Lindefjeld  
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**Ex. A**

1 AN ACT

2 RELATING TO PUBLIC BODIES; ENACTING THE IMMIGRANT SAFETY ACT;  
3 PROHIBITING PUBLIC BODIES FROM ENTERING INTO AGREEMENTS USED  
4 TO DETAIN INDIVIDUALS FOR FEDERAL CIVIL IMMIGRATION  
5 VIOLATIONS AND REQUIRING THE TERMINATION OF ANY SUCH EXISTING  
6 AGREEMENTS; PROHIBITING PUBLIC BODIES FROM OTHERWISE USING  
7 PUBLIC PROPERTY TO FACILITATE DETAINING INDIVIDUALS FOR  
8 FEDERAL CIVIL IMMIGRATION VIOLATIONS.

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

11 SECTION 1. SHORT TITLE.--This act may be cited as the  
12 "Immigrant Safety Act".

13 SECTION 2. DEFINITION.--As used in the Immigrant Safety  
14 Act, "public body" means a state or local government, a  
15 sheriff's department, an advisory board, a commission, an  
16 agency or an entity created by the constitution of New Mexico  
17 or any branch of government that receives public funding,  
18 including political subdivisions, special tax districts,  
19 school districts and institutions of higher education.

20 "Public body" includes an entity or individual acting on  
21 behalf of or within the scope of the authority of the public  
22 body.

23 SECTION 3. PROHIBITING PUBLIC BODIES FROM ENTERING INTO  
24 AGREEMENTS USED TO DETAIN INDIVIDUALS FOR FEDERAL CIVIL  
25 IMMIGRATION VIOLATIONS AND REQUIRING PUBLIC BODIES TO

1 TERMINATE ANY SUCH EXISTING AGREEMENTS.--

2 A. A public body shall not enter into, extend,  
3 renew or otherwise agree to be a party to an agreement to  
4 detain individuals for federal civil immigration violations,  
5 including an intergovernmental services agreement to detain  
6 individuals for civil immigration violations. A public body  
7 shall not enter into, extend, renew or otherwise agree to a  
8 rider, amendment, supplement or other modification to an  
9 agreement where the rider, amendment, supplement or other  
10 modification is to detain individuals for federal civil  
11 immigration violations.

12 B. A public body that is a party to an existing  
13 agreement that is used to detain individuals for federal  
14 civil immigration violations shall, upon the effective date  
15 of the Immigrant Safety Act, terminate the agreement upon the  
16 earliest date permissible under the terms of the agreement,  
17 with respect to all provisions that relate to the detention  
18 of individuals for federal civil immigration violations.

19 C. A public body shall not sell, trade, lease or  
20 otherwise dispose of any real property to be used for the  
21 detention of individuals for federal civil immigration  
22 violations.

23 D. A public body shall not impose or continue in  
24 effect any law, ordinance, policy or regulation that violates  
25 or conflicts with the provisions of the Immigrant Safety Act.

1 E. Nothing in this section shall be construed to  
2 limit the ability of law enforcement personnel to detain  
3 individuals or to perform brief investigative stops as  
4 permitted by state law.

5 SECTION 4. PROHIBITING PUBLIC BODIES FROM ENTERING INTO  
6 AGREEMENTS TO DEPUTIZE OFFICERS, EMPLOYEES OR AGENTS TO  
7 PERFORM FUNCTIONS OF IMMIGRATION OFFICERS.--

8 A. A public body shall not enter into, extend,  
9 renew or otherwise agree to be a party to an agreement to  
10 investigate, apprehend, detain or transport individuals  
11 pursuant to 8 U.S.C. Section 1357(g) or 8 C.F.R. Section  
12 287.7.

13 B. A public body shall not agree to be a party to  
14 an agreement that deputizes officers, employees or agents of  
15 the public body to perform a function of an immigration  
16 officer in relation to the investigation, apprehension,  
17 detention or transportation of noncitizens in the United  
18 States or the removal of noncitizens from the United States.

19 C. A public body that is a party to an existing  
20 agreement to investigate, apprehend, detain or transport  
21 individuals pursuant to 8 U.S.C. Section 1357(g) or 8 C.F.R.  
22 Section 287.7 shall, upon the effective date of the Immigrant  
23 Safety Act, terminate the agreement upon the earliest date  
24 permissible under the terms of the agreement. Where the  
25 termination clause of the agreement permits the public body

1 to invoke exigent circumstances involving public safety, the  
2 public body shall do so.

3 SECTION 5. ENFORCEMENT.--

4 A. The attorney general or a district attorney may  
5 institute a civil action in district court if the attorney  
6 general or district attorney has reasonable cause to believe  
7 that a violation of the Immigrant Safety Act has occurred or  
8 to prevent a violation of that act from occurring.

9 B. In an action brought under Subsection A of this  
10 section, the court may award appropriate relief, other than  
11 monetary damages, to include declaratory and temporary,  
12 preliminary or permanent injunctive relief.

13 SECTION 6. SEVERABILITY.--If any part or application of  
14 the Immigrant Safety Act is held invalid, the remainder or its  
15 application to other situations or persons shall not be  
16 affected. \_\_\_\_\_

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# Ex. B

# CITY of ALBUQUERQUE TWENTY SEVENTH COUNCIL

COUNCIL BILL NO. O-26-15 ENACTMENT NO. 0.2026.009

SPONSORED BY: Klarissa J. Peña, Stephanie W. Tellez, Joaquín Baca, Nichole Rogers

## ORDINANCE

1  
2 ADOPTING A NEW SECTION IN ROA 1994, CHAPTER 5, ARTICLE 1,  
3 PROHIBITING THE USE OF CITY PROPERTY FOR IMMIGRATION  
4 ENFORCEMENT; ADOPTING NEW ARTICLE IN ROA 1994, CHAPTER 13, TO  
5 BE KNOWN AS THE "SAFER COMMUNITY PLACES ORDINANCE."

6 WHEREAS, pursuant to Article II, Section 10 of the New Mexico  
7 Constitution, the people of New Mexico shall be secure in the persons and  
8 property from unreasonable searches and seizures, and all warrants, whether  
9 for search or seizure, shall be supported by a written showing of probable  
10 cause, supported by oath or affirmation, describing the persons or property  
11 subject to search or seizure; and

12 WHEREAS, pursuant to Article X, Section 6, as a home rule municipality,  
13 the City may exercise all legislative powers and perform all functions not  
14 expressly denied by general law or charter; and

15 WHEREAS, the City may exercise powers to protect the property of its  
16 inhabitants, preserve peace, and preserve order; and

17 WHEREAS, the City of Albuquerque is committed to ensuring the health,  
18 welfare, and safety of all of its residents, regardless of race, religion,  
19 immigration status, or national origin; and

20 WHEREAS, the City of Albuquerque is committed to welcoming and  
21 encouraging immigrants to live, work, and study in Albuquerque and to  
22 participate in community affairs; and

23 WHEREAS, immigration enforcement activity has historically undermined  
24 community trust, spread fear, and created barriers impeding residents from  
25 accessing essential City services; and

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1 WHEREAS, immigration enforcement activity, through federal agents, have  
2 used City property for staging areas, processing locations, and operations  
3 bases; and

4 WHEREAS, the use of these properties is inconsistent with the City’s  
5 support of immigrant communities and its residents, interferes with the City’s  
6 authority over its own resources, property, and personnel, and infringes on  
7 the City’s exercise of home rule authority to safeguard its residents’ health,  
8 welfare, and safety; and

9 WHEREAS, allowing the use of City property for immigration enforcement  
10 further erodes trust between residents and law enforcement, weakening the  
11 relationships that are essential to ensuring public safety and effective  
12 community policing; and

13 WHEREAS, the Bernalillo County Commission passed a “Safer Public  
14 Places” Ordinance in November 2025.

15 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF  
16 ALBUQUERQUE:

17 SECTION 1. A new Section 5 of Chapter 5, Article 1 of the Revised  
18 Ordinances of Albuquerque, 1994 is hereby created as follows:

19 § 5-1-5 PROHIBITING USE OF CITY PROPERTY FOR IMMIGRATION  
20 ENFORCEMENT PURPOSES.

21 (A) No City-owned and operated structure or venue, including but not  
22 limited to parking lots, vacant lots, garages, parks, or similar structures or  
23 venues, shall be used for immigration enforcement purposes, including as a  
24 staging area, processing location, or operations base. For the purposes of this  
25 section, “staging area” means an area that is used to assemble, mobilize, and  
26 deploy vehicles, equipment, or materials, and related personnel, for the  
27 purpose of carrying out immigration enforcement.

28 (B) Implementation and Enforcement.

29 (1) City Departments shall collaborate to identify City-owned and  
30 controlled structure or venue, including but not limited to parking lots, vacant  
31 lots, garages, parks, and similar structures or venues that either have been  
32 used, or are likely to be used in the future, as a staging area, processing  
33 location, or operations base for the purpose of immigration enforcement.

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1 Where appropriate, City Departments shall ensure that all such properties  
2 have clear signage stating:

3 This property is owned and controlled by the City of Albuquerque.

4 It may not be used for immigration enforcement as a:

5 Staging Area,

6 Processing Location, or

7 Operations Base.

8 ROA 1994, § 5-1-5.

9 (2) City Departments shall, whenever appropriate and consistent with  
10 this section, secure access to City-owned and controlled structures or venues,  
11 including but not limited to parking lots, vacant lots, garages, or parks by  
12 means including, but not limited to, locked gates or barriers.

13 (3) City Departments shall develop the procedures necessary to  
14 implement this section. These implementing procedures shall provide that any  
15 City employee who becomes aware of the attempted or actual use of a City-  
16 owned and controlled parking lot, vacant lot, or garage as a staging area,  
17 processing location, or operations base for immigration enforcement shall  
18 immediately report to their supervisor, who will communicate with the Mayor  
19 and the City Attorney.

20 (4) In accordance with C/S R-18-7 (Enactment No. R-2018-018), the  
21 Immigrant Friendly City Policy, and this section, the City, its employees,  
22 contractors, or agents acting under the City's authority shall not approve any  
23 permit, contract or other agreement for use of City owned or controlled  
24 property or resources if the City, its employees, contractors, or agents have a  
25 reasonable belief the property or resources will be used for the purposes of  
26 facilitating immigration enforcement.

27 (5) In accordance with C/S R-18-7 (Enactment No. R-2018-018), the  
28 Immigrant Friendly City Policy, and this section, the City shall not use any City  
29 resources, including, but not limited to, moneys, equipment, personnel,  
30 vehicles, or facilities, nor permit any such resources to be used to transport  
31 individuals for immigration enforcement purposes, nor shall City property or  
32 resources be used to facilitate custody transfer or transport to federal  
33 immigration authorities absent a valid judicial warrant or court order.

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1 (6) In accordance with C/S R-18-7 (Enactment No. R-2018-018), the  
2 Immigrant Friendly City Policy, and this section, the City shall not use any City  
3 resources, including, but not limited to, moneys, equipment, personnel,  
4 vehicles, or facilities, nor permit any such resources to be used for  
5 immigration enforcement in spaces covered under the Safer Community  
6 Places Ordinance, ROA 1994, §§ 13-17-1 et seq.

7 SECTION 2. A new Article 17 of Chapter 13 of the Revised Ordinances of  
8 Albuquerque, 1994 is hereby created as follows:

9 § 13-17-1 SHORT TITLE. This Chapter 13, Article 17 shall be known and cited  
10 as the “Safer Community Places Ordinance.”

11 § 13-17-2 DEFINITIONS. For the purpose of this article the following definitions  
12 shall apply unless the context clearly indicates or requires a different  
13 meaning:

14 *AFFECTED EMPLOYEE* is an employee identified by the immigration agency  
15 to be an individual who may lack work authorization, or an individual whose  
16 work authorization documents have been identified by the immigration agency  
17 inspection to have deficiencies.

18 *EMPLOYEE’S AUTHORIZED REPRESENTATIVE* is an exclusive collective  
19 bargaining representative.

20 *SAFETY PLAN* is a plan to protect workers, customers, and other individuals  
21 present at the place of business from unwanted intrusion by law enforcement  
22 into the private spaces of a place of business.

23 § 13-17-3 SAFER COMMUNITY PLACES. Under the City’s authority to ensure  
24 its inhabitants may access the resources and spaces necessary to promote  
25 their health, safety, and welfare in a manner free from discrimination, the City  
26 shall designate at least the following facilities as Safer Community Places:

- 27 (1) Hospitals and other healthcare facilities;  
28 (2) Schools;  
29 (3) Places where children routinely gather, including schools and  
30 daycares;  
31 (4) Designated disaster and emergency response sites;  
32 (5) City owned or operated facilities;

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1 (6) Community resource centers and direct service providers including  
2 legal service providers, homeless shelters, sexual and domestic violence  
3 providers, family justice centers, and human trafficking service providers;

4 (7) Work zones and construction sites on City property and within City  
5 rights of way;

6 (8) Courthouses and judicial facilities;

7 (9) Libraries, community centers, and cultural centers;

8 (10) Public transportation facilities and transit centers;

9 (11) Any location where City services are delivered to the public; or

10 (12) Other similar locations, as determined by the City.

11 **§ 13-17-4 ENTRY INTO A SAFER COMMUNITY PLACE.**

12 (A) The City shall develop the necessary policies within 30 days of the  
13 effective date of this Ordinance to prohibit a Safer Community Place from  
14 providing voluntary consent to law enforcement agents engaged in or  
15 supporting immigration enforcement from:

16 (1) Entering non-public areas; or

17 (2) Accessing, reviewing or obtaining student or patient records.

18 (a) This section does not prevent a Safer Community Place from  
19 complying with a valid judicial warrant authorizing a search of such records or  
20 a valid judicial subpoena or judicial order compelling production of such  
21 records; or

22 (b) This section does not prevent a Safer Community Place from  
23 providing consent to enter a Safer Community Place under exigent  
24 circumstances (involving an imminent threat to bodily harm or where law  
25 enforcement are in immediate pursuit of a suspect who has imminently fled  
26 into a private area).

27 (B) The City shall develop and implement a policy to ensure staff training  
28 and the posting of clear signage marking non-public spaces within City  
29 buildings and City funded facilities.

30 (C) For other facilities the City shall conduct outreach and request to work  
31 with building and location administrators to develop policy and training  
32 around private spaces and fourth amendment protections. The City shall offer  
33 signage and model policy language as part of this outreach.

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1 § 13-17-5 DELINEATING PUBLIC AND PRIVATE SPACES.

2 (A) Within 90 days of the effective date of this Ordinance, the City shall:

3 (1) Develop a policy requiring all businesses applying for or renewing a  
4 City Business License to display signage delineating public and private  
5 spaces.

6 (2) Develop a policy of requiring businesses with five or more  
7 employees seeking to apply for or renew a City Business License to adopt a  
8 safety plan that meets minimum standards for compliance, along with  
9 template policies and informational resources, to be made available by the  
10 City and on the City's website.

11 (3) Develop a policy to request additional information or documentation  
12 as necessary to make a determination about the compliance with the minimum  
13 standards.

14 § 13-17-6 WORKER NOTIFICATION.

15 (A) Notifying Employees of I-9 Inspection.

16 (1) An employer shall provide written notice to all current employees of  
17 an inspection by an immigration agency of I-9 Employment Eligibility  
18 Verification forms or other employment records, except as otherwise required  
19 by federal law.

20 (2) An employer must provide this notice no later than 24 hours after  
21 receiving a notice of inspection by an immigration agency by posting a notice  
22 in a conspicuous and accessible location and by making reasonable attempts  
23 to individually distribute notification to employees in the language the  
24 employer normally uses to communicate employment-related information to  
25 the employee.

26 (3) The notice to employees shall include:

27 (a) The name of the immigration agency conducting the inspection;

28 (b) The date the employer received the notice of inspection;

29 (c) the scope of the federal agency's notice of inspection, to the  
30 extent the employer knows;

31 (d) A website address, prescribed by the City, for a website that  
32 provides information provided by community organizations related to  
33 immigrant and refugee rights or workers' rights;

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1 (e) A copy of the notice of inspection; and

2 (f) Written notice shall also be given within 24 hours to the  
3 employee's authorized representative, if any.

4 (4) The City shall, within 90 days of the enactment of this Ordinance,  
5 make a template notice available on the City website so that it is accessible to  
6 any employer.

7 (B) Notice After I-9 Inspection.

8 (1) Except as otherwise required by federal law, if during an inspection  
9 of the employer's I-9 Employment Eligibility Verification forms by a  
10 government agency, the government agency makes a determination that an  
11 employee's work authorization documents do not establish that the employee  
12 is authorized to work in the United States and provides the employer with  
13 notice of that determination, the employer shall provide written notice to each  
14 affected employee, and to their authorized representative, if any:

15 (a) Written notice containing a description of any and all deficiencies  
16 or other terms identified in the written immigration inspection notice related to  
17 the affected employee;

18 (b) The time period for correcting any potential deficiencies identified  
19 by the immigration agency;

20 (c) The time and date of any meeting with the employer and  
21 employee to correct any identified deficiencies; and

22 (d) Notice that the employee has the right to representation during  
23 any meeting scheduled with the employer.

24 (2) The notice shall relate to the affected employee only and shall be  
25 delivered by hand at the workplace if possible and, if hand delivery is not  
26 possible, by mail and email, if the email address of the employee is known,  
27 and to the employee's authorized representative.

28 (C) Notifying Workers of Immigration Enforcement.

29 (1) If a law enforcement agent engaging in or supporting immigration  
30 enforcement is present at a place of work other than as part of an I-9  
31 inspection, the business shall provide notice to all current employees,  
32 contractors, and others performing work for the employer for remuneration.  
33 The business must provide this notice within 24 hours of a law enforcement

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1 agent engaging in or supporting immigration enforcement being present at a  
2 place of work. The notice to employees, contractors, and others performing  
3 work for the employer for remuneration shall include:

4 (a) The name of the agency;

5 (b) The date the law enforcement agent actor was present at the  
6 place of work; and

7 (c) The nature of the law enforcement agent's actions.

8 (2) These notices shall be provided by the business in the language  
9 normally used by the employer to communicate work-related information to  
10 employees, contractors, or others acting on behalf of the business, and may  
11 be provided by electronic means such as email.

12 (3) The City shall, within 90 days of the enactment of this Ordinance,  
13 make a template notice available on the City website so that it is accessible to  
14 any employer.

15 § 13-17-7 INTERPRETATION WITH OTHER PROVISIONS. This Ordinance is to  
16 be read in conjunction with the C/S R-18-7 (Enactment No. R-2018-018), the  
17 "Immigrant Friendly City Policy" and § 5-1-5 "Prohibiting Use Of City Property  
18 For Immigration Enforcement Purposes."

19 SECTION 3. SEVERABILITY. If any section, paragraph, sentence, clause,  
20 word or phrase of this Ordinance is for any reason held to be invalid or  
21 unenforceable by any court of competent jurisdiction, such decision shall not  
22 affect the validity of the remaining provisions of this Ordinance. The Council  
23 hereby declares that it would have passed this Ordinance and each section,  
24 paragraph, sentence, clause, word or phrase thereof irrespective of any  
25 provision being declared unconstitutional or otherwise invalid.

26 SECTION 4. COMPILATION. SECTION 1 of this Ordinance is to be compiled  
27 as a new Section 5 of Chapter 5, Article 1 of the Revised Ordinances of  
28 Albuquerque, New Mexico, 1994. SECTION 2 of this Ordinance is to be  
29 compiled as a new Article 17 of Chapter 13 of the Revised Ordinances of  
30 Albuquerque, New Mexico, 1994, titled "Safer Community Places Ordinance."

31 SECTION 5. EFFECTIVE DATE. This Ordinance takes effect five days after  
32 publication by title and general summary.

33

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1 PASSED AND ADOPTED THIS 16<sup>th</sup> DAY OF March, 2026  
2 BY A VOTE OF: 5 FOR 4 AGAINST.

3  
4 For: Baca, Fiebelkorn, Peña, Rogers, Telles

5 Against: Bassan, Champine, Grout, Lewis

6  
7 

8  
9 Klarissa J. Rena, President  
10 City Council

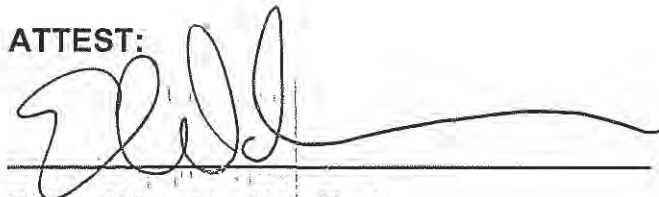
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13 APPROVED THIS 23 DAY OF March, 2026

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21 Timothy M. Keller, Mayor  
22 City of Albuquerque

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25 ATTEST:

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28 Ethan Watson, City Clerk

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70CDCR26DIG000010  
INTERGOVERNMENTAL SERVICE AGREEMENT  
BETWEEN THE  
UNITED STATES DEPARTMENT OF HOMELAND SECURITY  
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
AND  
COUNTY OF OTERO, NM

This Intergovernmental Service Agreement (“**agreement**”) is entered into between United States (US) Department of Homeland Security (“**DHS**”), Immigration and Customs Enforcement (“**ICE**”), and Otero County, NM (“**service provider**” or “**contractor**”) for the detention and care of detained noncitizens (also referred to as “**noncitizens**” and “**detainees**”). The term “**parties**” is used in this agreement to refer jointly to ICE and the service provider.

**AGREEMENT SUMMARY:**

The service provider shall provide detention services for detained noncitizens at the following facility(s):

**Otero County Processing Center  
26 McGregor Range Road  
Chaparral, NM 88081**

The service provider shall house ICE noncitizens and perform related detention services, at a minimum, in accordance with PBNDS 2011 with 2016 revisions or most current version as outlined in a subsequent modification. The standards are available at [www.ice.gov](http://www.ice.gov). The service provider will be required to provide service at the optimal level of the PBNDS.

The service provider shall provide ICE with 1,000 adult male and female beds. The total capacity of the facility is 1,000 adult male and female beds.

The agreement will remain in effect for a period not to exceed 60 months unless extended by bilateral modification or terminated in writing by ICE in accordance with the terms of Article 14 of this agreement.

**Authorized Signatory:** The following individual is appointed as the service provider’s authorized signatory with full authority to bind the service provider regarding this agreement. The authorized signatory must be an employee and/or officer of the service provider (prime).

**Name:** Vickie Marquardt  
**Title:** District 3 Commissioner  
**Email Address:** vmarquardt@co.otero.nm.us  
**Phone:** 575-491-3359

### **Documents**

The following documents constitute the complete agreement and are hereby incorporated directly or by reference:

- A. Standard Form 1449 70CDCR26DIG0000010
- B. Intergovernmental Service Agreement (IGSA) 70CDCR26DIG0000010 (This document)

### **Attachments**

- Attachment 1 – Title 29, Part 4 Labor Standards for Federal Service Contracts
- Attachment 2 – Wage Determination Number: 2015-5455, Rev 29
- Attachment 3 – Quality Assurance Surveillance Plan and Performance Requirements Summary (PBNDS 2011 with 2016 revisions)
  - Attachment 3A –Contract Discrepancy Report (CDR) Template
- Attachment 4 – Quality Control Plan
- Attachment 5 – Prison Rape Elimination Act (PREA) Regulations
- Attachment 6 – Detention-Transportation Invoice Supporting Documentation Template
- Attachment 7 – Combatting Trafficking in Persons
- Attachment 8 – ICE Privacy, Records Management, and Safeguarding of Sensitive Information
- Attachment 9 – Physical Plant Requirements
- Attachment 10 – Transportation Requirements
  - Attachment 10A – Transportation Summary
- Attachment 11 – Virtual Attorney Visitation
- Attachment 12 - Transgender Requirements
- Attachment 13 – Staffing Plan
  - Attachment 13a – Detention Facility Floor Plan
- Attachment 14 – Performance Work Statement (PWS)
- Attachment 15 - Award Value


**IN WITNESS WHEREOF**, the undersigned, duly authorized officers, have subscribed their names on behalf of the Otero County, NM and the Department of Homeland Security, U.S. Immigration and Customs Enforcement.

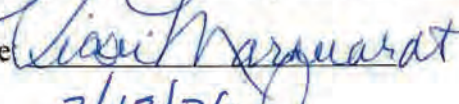
**ACCEPTED:**

**ACCEPTED:**

Brittany Tobias  
Contracting Officer (CO)

Vickie Marquardt  
Chair  
Otero County Board of County Commissioners

Signature:  Digitally signed by  
BRITTANY M TOBIAS  
Date: 2026.03.14  
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Signature:   
Date: 3/13/26

## Intergovernmental Service Agreement

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## REQUIRED WORK PERFORMANCE

### Article 1. Purpose

- A. Purpose: The purpose of this IGSA is to establish an agreement between ICE and the service provider for the provision of the necessary physical structure, equipment, facilities, personnel, and services to provide ICE noncitizen detention in a secure environment under the authority of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1103(a)(11)(A).

All persons in the custody of ICE are noncitizens. This term recognizes that ICE detained noncitizens are not charged with criminal violations and are only held in custody to ensure their presence throughout the administrative hearing process and to assure their presence for removal from the US pursuant to a lawful final order by the Immigration Court, the Board of Immigration Appeals, or other federal judicial bodies.

- B. Responsibilities: This agreement sets forth the responsibilities of ICE and the service provider. The service provider shall provide all personnel, management, equipment, supplies, and services necessary for performance of all aspects of the agreement and ensure that the safekeeping, housing, subsistence, medical, and other program services provided to ICE noncitizens housed in the facility are consistent with ICE's civil detention authority, IGSA requirements, ICE standards incorporated and referenced in this agreement, and all applicable state and local laws. The service provider must perform satisfactorily as described in the QASP to receive payment from ICE at the rate prescribed below.
- C. Rates: This is a fixed rate agreement, not a cost reimbursable agreement, with respect to the bed day rate. ICE will be responsible for reviewing and approving the costs associated with this agreement, and any subsequent modifications, in accordance with all applicable federal procurement laws, regulations and standards in determining the bed day rate.

See SF1449 for pricing details

*\* See Article 4, \*\*See Attachment 10 and 10A*

The "Facility Operating Charge" is defined as all costs that are fixed for providing services to ICE based on the expected usage of the facility. The price shall be firm fixed price and invoiced on a monthly basis.

The "Bed Day" is defined as general costs associated with one person per day. The service provider shall bill for the date of arrival but not the date of departure.

The service provider shall not charge for costs that are not directly related to the housing and detention of noncitizens. Such unallowable costs include but are not limited to:

- 1) Salaries of elected officials
- 2) Salaries of employees not directly engaged in the housing and detention of noncitizens.
- 3) Indirect costs in which a percentage of all local government costs are pro-rated and applied to individual departments unless, those cost are allocated under an approved Cost Allocation Plan
- 4) Noncitizen services which are not provided to, or cannot be used by, Federal detained noncitizens.
- 5) Operating costs of facilities not utilized by federal detained noncitizens.
- 6) Interest on borrowing (however represented), bond discounts, costs of financing/refinancing, except as prescribed by OMB Circular A-87
- 7) Legal or professional fees (specifically legal expenses for prosecution of claims against the Federal Government, legal expenses of individual noncitizens or inmates)

D. ICE will not be responsible for paying any costs if ICE is unable to use the facility and such occurrence arises out of causes beyond the control and without the fault or negligence of ICE. Such causes may include but are not limited to acts of God or the public enemy, fires, flood, court orders, extraordinary severe weather, and failure to perform in accordance with ICE standards incorporated into this agreement.

## **Article 2. ICE Detention Standards and Other Applicable Standards,**

- A. The standards applicable to this agreement are referenced on page 1. DHS and ICE inspectors will conduct periodic inspections of the facility to assure compliance with ICE, DHS and other Federal standards.
- B. The service provider shall comply with the American Correctional Association (ACA) Standards for Adult Local Detention Facilities (ALDF) or Core Jail Standards and supplements, and the National Commission on Correctional Health Care (NCCHC) Standards for Health Services in Jails. Some ACA/NCCHC standards are augmented by ICE policy and/or procedures.
- C. The service provider shall also comply with the requirements of Subpart A and Subpart C of the U.S. Department of Homeland Security Regulation titled "*Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities,*" title 6 Code of Federal Regulation (C.F.R.) part 115 (DHS PREA)/79 Fed. Reg. 13100 (Mar. 7, 2014), and Attachment 5 to this agreement. If any requirements of the DHS PREA standards conflict with the terms of PBNDS 2011 with 2016 revisions, the DHS PREA standards shall prevail.

- D. Order of Precedence: In instances where other standards conflict with ICE policy or standards, ICE policy and standards take precedence. If the service provider believes there is a conflict in standards, the service provider shall immediately seek clarification from the CO.

### **Article 3. Covered Services**

- A. Access: The facility shall be located within proximity and access to emergency services (medical, fire protection, law enforcement, etc.).

If applicable, the service provider shall ensure that adequate administrative space in accordance with the physical plant requirements is provided for ICE. The physical plant requirements are included in the attachments of this agreement.

- B. Basic Needs: The service provider shall provide ICE noncitizens with safekeeping, housing, subsistence, medical and other services in accordance with this agreement. In providing these services, the service provider shall ensure compliance with all applicable laws, regulations, fire and safety codes, policies, and procedures. The types and levels of services shall be consistent with ICE detention standards and policies.

- C. All service providers are required to comply with any Enforcement and Removal Operations (ERO) pandemic guidance or instructions.

- D. Staffing: The service provider shall have a staffing plan to effectively staff the facility in a safe and secure manner. The number, type and distribution of staff as described in the IGSA-staffing plan shall be maintained throughout the term of the IGSA. Written requests to change the number, type and/or distribution of staff described in the staffing plan must be submitted to the CO and the Contracting Officer's Representative (COR), for approval prior to implementation and incorporation into this IGSA. Staffing levels shall not fall below a monthly average of 85% for custody staff, 80% for health services staff, and 85% for all other departments of the approved staffing plan. The approved staffing levels for detention officers shall not fall below a monthly average of 85%. Staffing levels for all departments other than custody and health services will be calculated in the aggregate. If the service provider does not provide health services, the health services staffing level does not apply.

Each month, the service provider shall submit to the COR the current average monthly vacancy rate and indicate any individual positions that have been vacant more than 120 calendar days. Failure to fill any individual position within 120 calendar days of the vacancy may result in a deduction from the monthly invoice.

The service provider shall provide monthly status reports to the COR. Such reports will include a monthly key indicator report, which indicates the key personnel positions of the facility (e.g., position title, name of the employee, vacancies and length of vacancies, dates of service, additional comments). These monthly reports shall be submitted to the COR by the fifth of each month for the previous month's activities and staffing.

As part of the justification package for a FOC, GM or bed rate increase request, along with the staffing plan, the service provider shall submit a detention facility floor plan which shows all detention guard posts and identifies the duration of each guard post and the number of shifts required in a 24-hour day. The detention facility floor plan should be color-coded so that each detention guard post can be easily mapped to the description of the duration of the guard post and the number of daily shifts required.

#### **Article 4. On-Call Guard Services**

- A. The service provider agrees to provide on-call guard services, at a separately agreed hourly rate, on demand by the COR and shall include, but not limited to, escorting and guarding noncitizens to medical or doctor's appointments, hearings, ICE interviews, and any other offsite location as requested by the COR. Qualified detention officers employed by the service provider under its policies, procedures, and practices will perform such services. The service provider agrees to augment such practices as may be requested by CO or COR to enhance specific requirements for security, noncitizen monitoring, visitation, and contraband control. Visitation with ICE noncitizens at offsite locations is prohibited unless authorized in advance by the COR.
- B. The service provider shall provide two officers for each offsite location, unless additional or fewer officers are required, per the direction of the COR or designated ICE officer. Except in cases of an emergency, one of the two above referenced officer(s) shall be of the same sex as the noncitizen being assigned to the offsite location. The service provider shall not pull officers posts in order to fill on-call guard services. All posts shall be staffed and shall not be left vacant in order to meet on demand needs.

#### **Article 5. Receiving and Discharging Noncitizens**

- A. Required Activity: The service provider shall receive and discharge ICE noncitizens only to/ from properly identified ICE/ERO personnel or other properly identified Federal law enforcement officials with written authorization from ICE/ERO. Presentation of U.S. Government identification will constitute "proper identification."
- B. The service provider shall furnish receiving and discharging services twenty-four (24) hours per day, seven days per week. ICE will furnish the service provider with reasonable notice of receiving and discharging ICE noncitizens. The service provider shall ensure positive identification and recording of noncitizens and ICE officers. The service provider shall not permit medical or emergency discharges from the hospital except through coordination with ICE/ERO.
- C. Emergency Situations: ICE noncitizens shall not be released from the facility into the custody of other federal, state, or local officials for any reason, except for medical or emergency situations, without express authorization of ICE.

- D. Restricted Release of ICE Noncitizens: The service provider shall not release ICE noncitizens from its physical custody to any persons other than those described in Paragraph A of this Article, for any reason, except for either medical, other emergency situations (such as a hurricane evacuation or activation or an emergency plan), or in response to a federal writ of habeas corpus. If an ICE noncitizen is required for federal, state, or local proceedings, only ICE/ERO may authorize release of the noncitizen for such purposes. The service provider shall contact the COR or designated ICE official immediately regarding any such requests.
- E. Service Provider Right of Refusal. The service provider retains the right to refuse acceptance of any noncitizen if such refusal is supported by a valid justification and agreed to by the COR. Examples of such justification are any individual exhibiting violent or disruptive behavior, or any noncitizen found to have a medical condition that requires medical care beyond the scope of the service provider. In the case of a noncitizen already in custody, the service provider shall notify ICE and request transfer of the noncitizen from the facility. The service provider shall allow ICE reasonable time to make alternative arrangements for detention of the noncitizen.
- F. Juveniles. If the service provider determines that ICE has delivered a person for custody who is under the age of 18, the service provider shall not house that person with adults and shall immediately notify the COR or designated ICE official. ICE will relocate the juvenile within 72 hours.
- G. Emergency Evacuation: In the event of an emergency requiring evacuation of the facility, the service provider shall evacuate ICE noncitizens in the same manner, and with the same safeguards, as it employs for persons detained under the service provider's authority. The service provider shall notify the ICE COR or designated ICE official within two (2) hours of evacuation.

## **Article 6. Medical Services**

- A. The service provider shall not charge any ICE noncitizens a fee or co-payment for medical services or treatment, including medications and durable medical equipment provided at the facility. The service provider shall ensure that ICE noncitizens receive no lower level of on-site medical care and services than those it provides to local inmates, and as required by the ICE standards incorporated into this agreement as well as all Centers for Disease Prevention and Control (CDC) guidance and recommendations regarding infectious disease prevention and control. All medical-related costs will be included in the applicable rate for this agreement.
- B. The service provider ensures quality health care delivery and accountability in compliance with detention standards through a continuous quality improvement (CQI) system that includes risk management, patient safety, and health services delivery quality assurance programs. The CQI system identifies, addresses, and monitors health care delivery for undesired outcomes and trends, including but not limited to those due to near

miss occurrences, adverse events, sentinel events, and systemic processes or outcomes. Concerns identified from the CQI system risk assessment are addressed through corrective action plans.

- C. The service provider is required to report all incidents, in accordance with ICE Health Service Corps (IHSC) incident reporting criteria, to the IHSC Field Medical Coordinator (FMC) immediately. Noncitizen deaths at the facility are subject to an IHSC directed mortality review, concurrent or subsequent root cause analysis for the purpose of identifying actual and potential process failures and errors.
- D. The service provider shall notify ICE/ERO and the IHSC FMC of noncitizen with serious medical conditions within 48 hours of identification of the case. Examples of cases include, but are not limited to: uncontrolled hypertension; uncontrolled diabetes; unable respiratory disease or any noncitizen requiring oxygen treatment; history of congestive heart failure complaining of shortness of breath; transgender; pregnancy; multiple unstable chronic conditions; liver failure; renal failure; infectious and communicable diseases (i.e., HIV/AIDS, viral hepatitis, varicella, measles, mumps, COVID-19); infectious disease outbreaks; acute mental health conditions (one or more psychiatric symptoms – disorganization, active hallucinations or delusions, severe depressive symptoms, suicidal ideation, marked anxiety or impulsivity); history of more than two psychiatric hospitalizations in the past three months and still presenting moderate to severe symptoms; presently taking psychiatric medications and still presenting active moderate to symptoms; continues to display self-harm to self or others in spite of treatment and/or hospitalization; serious limitations in mental functions due to mental disability or severe medical conditions impairing mental function.
- E. Prescription medications that must be filled at a retail pharmacy location, are available through and paid for by the IHSC pharmacy benefits program. The FMC in conjunction with the IHSC Managed Care Coordinators will be the service provider's point of contact for the IHSC pharmacy benefits program. The service provider is required to follow IHSC processes regarding filling of prescriptions through the pharmacy benefits program including processes for non-formulary medications requiring prior authorization and overrides for travel medications. Vaccines are also provided through the IHSC pharmacy benefits program as per the Non-IHSC Staffed Facility Medication Formulary. Durable medical equipment (DME) identified as medically necessary by a medical provider shall be covered by IHSC Medical Payment Authorization Request (MedPAR) or through coordination with the FMC when/if the facility is unable to provide the DME though existing stock supplies covered in the applicable rate for this agreement.
- F. The service provider is required to follow all MedPAR guidance and requirements available <https://medpar.ice.gov>. If the MedPAR is cancelled, the service provider is required to notify the FMC. The service provider is required to provide the approved authorization to all off-site medical providers (i.e., emergency medical services, hospital, diagnostic or laboratory service provider, independent medical providers who provided care while at the hospital or in the community) to assist with the medical claims processes to ensure payment to the off-site provider for the services rendered. Payment is

made directly to the off-site provider by the Veteran's Affairs Financial Services Center (VAFSC) on behalf of IHSC. VAFSC contact information is below. The VAFSC, ICE and IHSC cannot reimburse the service provider for services rendered by these providers.

IHSC VA Financial Services Center  
PO Box 149345  
Austin, TX 78714-9345  
Phone: (800) 479-0523  
Fax: (512) 460-5538

- G. In the event of a medical emergency, the service provider shall immediately proceed to provide necessary emergency medical treatment, including initial on-site stabilization and off-site transport, if required. The service provider shall notify ICE and the IHSC FMC immediately regarding the nature of the transferred noncitizen illness or injury and the type of treatment provided. The cost of all emergency medical services provided off-site will be the responsibility of IHSC. The IHSC FMC assigned to this facility will be the point of contact for obtaining the approval for the emergency off-site care. Utilizing the IHSC MedPAR system, the request for approval for the emergency care shall be submitted no more than 72 hours from receipt of the care.
- H. Utilizing the IHSC MedPAR, the service provider will request prior approval for all non-emergent off-site medical care and requests for durable medical equipment (DME). The primary POC for obtaining pre-approval will be the IHSC FMC assigned to this location.
- I. The service provider is required to maintain agreements with community providers including hospitals and specialty providers to provide healthcare to ICE noncitizens. The service provider is required to provide a listing of those providers to and to notify the IHSC FMC of new community providers in order for IHSC to begin the new provider recruitment process.
- J. The service provider shall retain, at a minimum, medical staffing levels as approved by IHSC and incorporated into this IGSA in accordance with Article 3 above. The service provider shall ensure that all health care providers utilized for ICE noncitizens hold current licenses, certifications, and/or registrations within the state, county and/or city where they treat the ICE detained noncitizens.
- K. If the service provider determines that an ICE noncitizen has a medical condition which renders the individual unacceptable for detention under this agreement, (for example, serious contagious disease, condition needing life support, uncontrollable violence, or serious mental health condition), the service provider shall notify ICE COR. Upon such notification, the service provider shall allow ICE reasonable time to make the proper arrangements for further detention of that individual.
- L. The service provider shall release all medical information in person, electronically or virtually for ICE noncitizens to IHSC representatives upon request, including but not

limited to: IHSC FMC, IHSC Managed Care Coordinators, Behavioral Health Unit Staff, IHSC Pharmacy Staff, or other IHSC staff as requested.

- M. The service provider shall submit a MedPAR to IHSC for payment for offsite medical care (e.g., offsite lab testing, eyeglasses, prosthetics, hospitalizations, emergency visits). The service provider shall enter payment authorization requests electronically as outlined in the MedPAR User Guide.
- N. The service provider shall allow IHSC FMCs, Managed Care Coordinators, Referral Coordinators, IHSC personnel, DHS, ICE personnel reasonable access to its facility, medical records, and electronic health record (EHR) system records of ICE noncitizen for the purpose of liaison activities with the local IGSA Health Authority and associated service provider departments. The access is in accordance with Health Insurance Portability and Accountability Act (HIPAA) privacy exception at 45 C.F.R. §§ 164.512 (k)(5)(i) which allows disclosure without consent to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual if the correctional institution or such law enforcement official represents that such protected health information is necessary for:
- a. The provision of health care to such individuals;
  - b. The health and safety of such individual or other inmates;
  - c. The health and safety of the officers or employees of or others at the correctional institution;
  - d. The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
  - e. Law enforcement on the premises of the correctional institution;
  - f. The administration and maintenance of the safety, security, and good order of the correctional institution; and
  - g. Conducting a quality improvement / quality of care review consistent with an established quality improvement (medical quality management) program and interfacing with the IHSC quality improvement program consistent with federal, state, and local laws.
- O. The service provider shall provide ICE noncitizen medical records to ICE, whether created by the service provider or any medical subcontractor, upon request from the COR or CO within seven business days of the request. The service provider shall respond in a timely manner to ICE requests for reporting, documentation and other data required to respond to pending and current litigation, Congressional inquiries, other Federal, state or local entity request for information.

## **Article 7. Inspections and Audits**

- A. Facility Inspections and Oversight: The service provider shall allow DHS, ICE, DHS Office of the Inspector General, DHS Office of Civil Rights and Civil Liberties, DHS Office of the Detention Ombudsman (OIDO), the Government Accountability Office,

Members of Congress or any entity or organization approved by ICE to conduct inspections of the facility to ensure an acceptable level of service and acceptable conditions of detention. There will be both announced and unannounced inspections. No notice to the service provider is required prior to an unannounced inspection. For ICE-directed inspections or audit, ICE will share findings of the inspection with the authorized signatory.

- B. In accordance with Congressional mandate, ICE cannot house noncitizens in any facility that has received two most recent overall performance evaluations of less than “adequate” or the equivalent median score . Upon notice that the second overall rating is less than “adequate”, ICE will relocate all noncitizens from the facility within 7 calendar days. Should noncitizens be relocated because of two most recent performance evaluations of less than “adequate”, the FOC will no longer be applicable the day after the last noncitizen has been removed. Accordingly, the invoice for the FOC that month will be prorated. A unilateral modification will be processed to memorialize the removal of the FOC.
- C. Possible Termination: Following a DHS or ICE inspection, if the service provider, after being afforded reasonable time to comply, fails to remedy deficient service identified through a DHS or ICE inspection, ICE may terminate this agreement without regard to any other provisions in this agreement.
- D. Share Findings: The service provider shall provide ICE copies of facility inspections, reviews, examinations, and surveys performed by state, local, or accreditation sources.

## **Article 8. Reserved**

## **Article 9. Records Management Obligations**

- A. Applicability: This article applies to all service providers whose employees create, work with, or otherwise handle Federal records, as defined in Section B, regardless of the medium in which the record exists.
- B. Definitions

“Federal record” as defined in 44 U.S.C. § 3301, includes all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the US Government or because of the informational value of data in them.

The term Federal record:

1. includes DHS or ICE records.
2. does not include personal materials.

3. applies to records created, received, or maintained by a service provider pursuant to their ICE agreement.
4. may include deliverables and documentation associated with deliverables.

C. Requirements

1. The service provider shall comply with all applicable records management laws and regulations, as well as National Archives and Records Administration (NARA) records policies, including but not limited to the Federal Records Act (44 U.S.C. chs. 21, 29, 31, 33), NARA regulations at 36 CFR Chapter XII Subchapter B, and those policies associated with the safeguarding of records covered by the Privacy Act of 1974 (5 U.S.C. 552a). These policies include the preservation of all records, regardless of form or characteristics, mode of transmission, or state of completion.
2. In accordance with 36 CFR 1222.32, all data created for Government use and delivered to, or falling under the legal control of, the Government are Federal records subject to the provisions of 44 U.S.C. chapters 21, 29, 31, and 33, the Freedom of Information Act (FOIA) (5 U.S.C. 552), as amended, and the Privacy Act of 1974 (5 U.S.C. 552a), as amended and must be managed and scheduled for disposition only as permitted by statute or regulation.
3. In accordance with 36 CFR 1222.32, service provider shall maintain all records created for Government use or created in the course of performing the agreement and/or delivered to, or under the legal control of the Government and must be managed in accordance with Federal law. Electronic records and associated metadata must be accompanied by sufficient technical documentation to permit understanding and use of the records and data.
4. ICE and its service providers are responsible for preventing the alienation or unauthorized destruction of records, including all forms of mutilation. Records may not be removed from the legal custody of ICE or destroyed except for in accordance with the provisions of the agency records schedules and with the written concurrence of the Head of the Contracting Activity (HCA). Willful and unlawful destruction, damage or alienation of Federal records is subject to the fines and penalties imposed by 18 U.S.C. 2701. In the event of any unlawful or accidental removal, defacing, alteration, or destruction of records, the service provider must report to ICE. The agency must report promptly to NARA in accordance with 36 CFR 1230.
5. The service provider shall immediately notify the appropriate CO upon discovery of any inadvertent or unauthorized disclosures of information, data, documentary materials, records or equipment. Disclosure of non-public information is limited to authorized personnel with a need-to-know as described in the IGSA. The service provider shall ensure that the appropriate personnel, administrative, technical, and physical safeguards are established to ensure the security and confidentiality of this information, data, documentary material, records and/or equipment is properly protected. The service provider shall not remove material from Government facilities

or systems, or facilities or systems operated or maintained on the Government's behalf, without the express written permission of the HCA. When information, data, documentary material, records and/or equipment is no longer required, it shall be returned to ICE control, or the service provider must hold it until otherwise directed. Items returned to the Government shall be hand carried, mailed, emailed, or securely electronically transmitted to the CO or address prescribed in the IGSA. Destruction of records is EXPRESSLY PROHIBITED unless in accordance with Paragraph (4).

6. The service provider is required to obtain the CO's approval prior to engaging in any contractual relationship (sub-contractor) in support of this agreement requiring the disclosure of information, documentary material and/or records generated under, or relating to, contracts. The service provider (and any sub-contractor) is required to abide by Government and ICE guidance for protecting sensitive, proprietary information, classified, and controlled unclassified information.
7. The service provider shall only use Government IT equipment for purposes specifically tied to or authorized by the agreement and in accordance with ICE policy.
8. The service provider shall not create or maintain any records containing any non-public ICE information that are not specifically tied to or authorized by the agreement.
9. The service provider shall not retain, use, sell, or disseminate copies of any deliverable that contains information covered by the Privacy Act of 1974 or that which is generally protected from public disclosure by an exemption to the FOIA.
10. Training. All service provider employees assigned to this agreement who create, work with, or otherwise handle records are required to take ICE-provided records management training. The service provider is responsible for confirming training has been completed according to agency policies, including initial training and any annual or refresher training.

D. Flow down of requirements to subcontractors

1. The service provider shall incorporate the substance of this Article, its terms and requirements including this paragraph, in all subcontracts under this IGSA, and require written subcontractor acknowledgment of same.
2. Violation by a subcontractor of any provision set forth in this Article will be attributed to the service provider.

E. ICE Access to Noncitizen and Facility Records: The service provider shall, upon request, grant ICE access to any record in its possession, regardless of whether the service provider created the record, concerning any ICE noncitizen. This right of access includes, but is not limited to, incident reports, records relating to suicide attempts, and behavioral assessments and other records relating to the noncitizen while in the service provider's

custody; provided, however that access to medical and mental health record information be provided in accordance with Article 6. Retention of records requirements can be found in Attachment 8.

#### **Article 10. Incident Reporting**

- A. The COR shall be immediately notified in the event of all serious incidents. The COR will provide any additional contact information for outside-working-hours to the service provider at the time of award.
- B. Serious incidents include, but are not limited to: activation of disturbance control team(s); disturbances (including gang activities, group demonstrations, food boycotts, work strikes, work-place violence, civil disturbances/protests); staff use of force including use of lethal and less-lethal force (includes noncitizens in restraints more than eight hours); assaults on staff/population resulting in injuries requiring medical attention (does not include routine medical evaluation after the incident); fights resulting in injuries requiring medical attention; fires; full or partial lock down of the facility; escape; weapons discharge; suicide attempts; deaths; declared or non-declared hunger strikes; adverse incidents that attract unusual interest or significant publicity; adverse weather (e.g., hurricanes, floods, ice/snow storms, heat waves, tornadoes); fence damage; power outages; bomb threats; noncitizens admitted to a community hospital; witness security cases taken outside the facility; significant environmental problems that impact the facility operations; transportation accidents (i.e. airlift, bus) resulting in injuries, death or property damage; and sexual assaults.
- C. The service provider agrees to cooperate with any Federal investigation concerning incidents and treatment involving ICE noncitizens to the full extent of its authorities, including providing access to any relevant databases, CCTV recordings, personnel, and documents.
- D. The ICE noncitizen and the public are the ultimate recipients of the services identified in this agreement. Any complaints made known to the COR will be logged and forwarded to the service provider for remedy. Upon notification, the service provider shall be given a pre-specified number of hours after verbal notification from the COR to address the issue. The service provider shall submit documentation to the COR regarding the actions taken to remedy the situation. If the complaint is found to be invalid, the service provider shall document its findings and notify the COR.

#### **Article 11. Noncitizen Communication Services (NCS)**

- A. Video phones, portable electronics or other enhanced telecommunications features provided by the ICE NCS contractor to ICE noncitizens, based upon concurrence between ICE and the service provider, may be utilized at this facility, and their distribution will be coordinated with the service provider. These features may not in any way compromise the safety and security of the inmates/prisoners/noncitizens, staff or the facility. Any new or enhanced telecommunications features will be integrated within the

NCS service and shall NOT be a separate system or software from the NCS service. Such capabilities may include: video visitation; web access for law library; email; kites; commissary ordering; educational tools; news; sports; and video games. Pricing for noncitizen use of these technologies will be set by the NCS provider.

- B. Should ICE determine that ICE will fund phone or tablet costs for ICE noncitizens, the service provider will work with ICE to determine how to best provide, account, track and invoice for these services.
- C. For dedicated Facilities (delete if shared facility): The ICE NCS contractor shall be the exclusive provider of detained noncitizen telephones and electronic media such as tablets at this facility. Any current contract between the service provider and its telecommunications company shall be terminated and replaced by the ICE NCS contractor within 30 calendar days of award of this IGSA. Prior to replacement by the ICE NCS contractor, and notwithstanding any existing telecommunications contract, the service provider shall require its telecommunications company to provide connectivity to the ICE NCS contractor for noncitizen pro bono telephone calls. The service provider is responsible for making all arrangements with the ICE NCS contractor. The ICE NCS contractor shall receive 100 percent of all revenues collected by sale of prepaid debit services. The NCS contractor shall be responsible for furnishing all inventory and supply of all NCS services to the service provider. The NCS contractor shall be responsible for the costs incurred for installation of the equipment, any monthly telephone charges incurred from the operation of the NCS, and the maintenance and operation of the system. The service provider shall not be entitled to any commissions, fees, or revenues generated by the use of the NCS or the noncitizen telephones or electronic media to include tablets.
- D. The service provider shall inspect telephones for serviceability, in accordance with ICE standards, policies and procedures. The service provider shall notify the COR or ICE designee of any inoperable telephones.

ICE NCS Contractor Information:

Talton Communications  
910 Ravenwood Dr.  
Selma, AL 36701

Robin Howell  
Customer Relations Manager  
(214) 293-1793  
[robin@talton.com](mailto:robin@talton.com)

Mike Oslund  
Operations Manager  
334-412-4506  
[mike@talton.com](mailto:mike@talton.com)

**Article 12. Government Use of Wireless Communication Devices**

- A. All personnel possessing a Federally owned wireless communication device, including but not limited to, cellular telephones, pagers or wireless Internet devices, shall be authorized to possess and use those items in all areas of the facility.

### **Article 13. ICE Furnished Property**

- A. ICE Property Furnished to the Service Provider: ICE may furnish Federal property and equipment to the service provider. Accountable property remains titled to ICE and shall be returned to the custody of ICE upon termination of the agreement or as requested. The suspension of use of bed space is grounds for the recall and return of any or all ICE furnished property.
- B. Service Provider Responsibility: The service provider shall not remove ICE property from the facility without the prior written approval of the COR. The service provider shall report any loss or destruction of any ICE property immediately to ICE and may be responsible for replacement costs.

### **Article 14. Termination**

- A. The period of performance for this agreement is referenced on page 1 of the Agreement Summary. This agreement becomes effective upon the date of final signature by the ICE CO, which shall occur after the authorized signatory of the service provider.
- B. Except for as described in Article 7, Inspections & Audits, Paragraph C, ICE may terminate this agreement by providing written notice of intention to terminate the agreement, a minimum of 60 calendar days in advance of the effective date of termination, provided that the parties may agree to a shorter period under the procedures described in Article 17, Modifications and Disputes. The service provider shall not have the right to terminate this agreement. If this agreement is terminated by ICE under this Article, ICE will be under no financial obligation for any costs after the date of termination. The service provider will only be paid for services provided to ICE up to and including the day of termination.

## **ADMINISTRATION**

### **Article 15. Administrative**

- C. Contracting Officer's Representative: The COR will be designated by the CO. When the COR duties are reassigned, an administrative modification will be issued to reflect the changes. This designation does not include authority to sign contractual documents or to otherwise commit to, or issue changes, which could affect the price, quantity, or performance of this agreement.

Should the service provider believe it has received direction that is not within the scope of the agreement; the service provider shall not proceed with any portion that is not

within the scope of the agreement without first contacting the CO. The service provider shall continue performance of efforts that are deemed within the scope.

- D. Commencement of Services: ICE is under no obligation to utilize the beds identified herein until the need for detention services has been identified, funding has been identified and made available, and the facility meets ICE requirements and the applicable ICE standards delineated in this agreement. ICE may perform numerous assessments to ensure compliance prior to housing noncitizens in the facility.

Should there be a need for a ramp-up plan, the effective start date of the plan is the effective date of the award or modification authorizing the ramp up plan.

- E. Funding: The obligation of ICE to make payments to the service provider is contingent upon the availability of Federal funds. ICE will neither present noncitizens to the service provider nor direct performance of any other services until ICE has appropriate funding. Task orders will be placed under this agreement when specific requirements have been identified and funding obligated. Performance under this agreement is not authorized until the CO issues a task order in writing. Task orders issued against this IGSA have a period of performance that extend up to one year after the end of the IGSA period of performance. The effective date of the services will be negotiated and specified in this agreement. The service provider shall be prepared to accept noncitizens immediately upon issuance of task order in accordance with the agreed upon ramp-up plan. In the event of a federal lapse of funding, please consult with the CO .
- F. Subcontractors: The service provider shall obtain the CO's approval before subcontracting the detention and care of noncitizens to another entity. The CO has the right to deny, withhold, or withdraw approval of the proposed subcontractor. Upon approval by the CO, the service provider shall ensure that any subcontract includes all provisions of this agreement. ICE only has privity of contract with the service provider therefore, all payments will be made to the service provider. If the facility, or any future facility, is operated by an entity other than the service provider, ICE will treat the entity as a subcontractor of the service provider. ICE will not accept invoices from, or make payments to, a subcontractor. Subcontractors that perform under this agreement are subject to all terms and conditions of this IGSA.
- G. Consistent with Law: This agreement is permitted under applicable statutes, regulations, policies, and judicial mandates. Any provision of this agreement contrary to applicable statutes, regulation, policies, or judicial mandates is null and void and shall not necessarily affect the balance of the agreement.

#### **Article 16. Adjusting the Agreement Rates**

- A. ICE will reimburse the service provider at the rates shown in Article 1, Paragraph C. except as provided in Article 21, Labor Standards and Wage Determination, the service provider may request a rate adjustment no less than thirty-six (36) months after the effective date of the agreement or subsequent rate increase unless required by law or

otherwise provided herein. After 36 months, the service provider may request a rate adjustment by submitting a new Detention Services Cost Statement (DSCS) with a summary of the rate adjustment, break-out of the requested increase amount, and back-up documentation necessary to support the request. The parties agree to base the cost portion of the rate adjustment on the principles of allowability and allocability as set forth in OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments, Federal procurement law, regulations, and standards in arriving at the rate. If ICE does not receive an official request for a rate adjustment that is supported by the information provided, the fixed rates as stated in this agreement will be in place indefinitely.

- B. ICE reserves the right to audit the actual and/or prospective costs upon which the rate adjustment request is based. All rate adjustments are prospective, there are no retroactive adjustment(s).

#### **Article 17. Modifications and Disputes**

- A. Modifications: Actions, other than those designated in this agreement, will not bind or incur liability on behalf of either party. Either party may request a modification to this agreement by submitting a written request to the other party. A modification will become a part of this agreement only after the CO has approved the modification in writing.
- B. Change Orders:
  - 1. The CO may at any time, by written order, and without notice to the service provider, make changes within the general scope of this agreement:
    - (a) to the description of services to be performed,
  - 2. Should any such change cause an increase or decrease in the cost of the services under the agreement, the service provider may request, and the CO may approve an equitable adjustment and will modify the agreement accordingly.
  - 3. The service provider must assert its right to an adjustment under this article within 30 calendar days from the date of receipt of the written order including a proposal addressing the cost impacts and detailed supporting data.
  - 4. If the service provider's proposal includes costs that are determined unreasonable and/or unsupported, as determined by the CO, the CO will disallow those costs when determining a revised rate, if any.
  - 5. Failure to agree to any adjustment will be a dispute under the Disputes section of this Article. However, nothing in this Article excuses the service provider from proceeding with the agreement as changed.
- C. Disputes: The CO and the authorized signatory of the service provider will settle disputes, questions, and concerns arising from this agreement. Settlement of disputes will

be memorialized in a written modification between the ICE CO and authorized signatory of the service provider. In the event a dispute is not able to be resolved between the service provider and the ICE CO, the ICE CO will make the final decision. If the service provider does not agree with the final decision, the matter may be appealed to the ICE HCA for resolution. The ICE HCA may employ all methods available to resolve the dispute including alternative dispute resolution techniques. The service provider shall proceed diligently with performance of this agreement pending final resolution of any dispute.

#### **Article 18. Enrollment, Invoicing, and Payment**

- A. Enrollment in Electronic Funds Transfer: The service provider shall provide ICE with the information needed to make payments by electronic funds transfer (EFT). The service provider shall identify their financial institution and related information on Standard Form 3881, Automated Clearing House (ACH) Vendor Miscellaneous Payment Enrollment Form <https://www.gsa.gov/forms-library/ach-vendormiscellaneous-payment-enrollment>. The service provider shall submit a completed SF 3881 to ICE payment office prior to submitting its initial request for payment under this agreement. If the EFT data changes, the service provider shall be responsible for providing updated information to the ICE payment office.
- B. SAM Registration: The service provider shall maintain an active registration in System for Award Management (SAM) at the time of award and throughout the life of this agreement. The service provider shall be registered to receive "All Awards" in their SAM registration. The SAM website can be found at [www.sam.gov](http://www.sam.gov).
- C. Consolidated Invoicing: The service provider shall submit a monthly itemized invoice within the first ten (10) business days of the month following the calendar month when it provided the services. Invoice instructions can be found on the SF 1449.
- D. On-call Guard Hours: The itemized monthly invoice for on-call guard services shall state the number of hours being billed, the duration of the billing (times and dates) and the mission/trip number. Such services shall be denoted as a separate item on submitted invoices. ICE agrees to reimburse the service provider for actual on-call guard services provided during the invoiced period.
- E. Payment: ICE will transfer funds electronically through either an Automated Clearing House subject to the banking laws of the US, or the Federal Reserve Wire Transfer System. The Prompt Payment Act applies to this agreement. The Prompt Payment Act requires ICE to make payments under this agreement the thirtieth (30<sup>th</sup>) calendar day after the Burlington Finance Office receives a proper invoice. Either the date on the Government's check, or the date it executes an electronic transfer of funds, constitutes the payment date. The Prompt Payment Act requires ICE to pay interest on overdue payments to the service provider. ICE will determine any interest due in accordance with

the Prompt Payment Act provided the service provider maintains an active registration in the SAM and all information is accurate.

- F. Robotics Process Automation Requirement: The Detention Facility Robotics Process Automation (RPA) process requires that data supporting detention bed space, ground transportation costs and any other additional costs covered by the current agreement will be recorded utilizing the Detention-Transportation Invoice Supporting Documentation Template (Attachment 6). This data template shall be completed in its entirety in the established format once all data supporting the monthly operations is available. Once completed, the Detention-Transportation Template must be submitted to both the COR and the ERO RPA Team Mailbox (erorpa@ice.dhs.gov). Please also note that the requirement for submission of the Detention-Transportation Template is prior to and in addition to the invoice submission requirement already included in this agreement. Any required updates/adjustments will be identified and sent to the service provider within 48 hours of submission to the mailbox. The Detention-Transportation Template updates may be requested by the COR and will require timely resubmission to the COR and the ERO RPA Team Mailbox. For ground transportation services, the G-391 portion of the Detention-Transportation Template must be completed and validated by the service provider on a monthly basis so that there are no errors for each of the trips in the G-391 upload template. Errors are indicated by rows, columns, and cells that are highlighted when the vendor checks the validation using the tool. If the COR identifies errors that have not been corrected, they will resend the report within 48 hours to the vendor to fix and resubmit within 5 business days. All reports must align with invoice amounts and dollar values.

The Government reserves the right to update the detention facility invoice process, templates or other related documents, in order to fix issues, expand capabilities, and improve performance of the reconciliation process.

#### **Article 19. Hold Harmless Provisions**

Unless specifically addressed by the terms of this agreement, the parties agree to be responsible for the negligent or wrongful acts or omissions of their respective employees to the extent authorized under the applicable law.

- A. Service Provider Held Harmless: ICE liability for any injury, damage or loss to persons or property caused by the negligent or tortuous conduct of its own officers, employees, and other persons provided coverage pursuant to Federal law is governed by the Federal Tort Claims Act, 28 USC 2691 *et seq.* (FTCA). Compensation for work related injuries for ICE's officers, employees and covered persons is governed by the Federal Employees Compensation Act (FECA). The service provider shall promptly notify ICE of any claims or lawsuits filed against any ICE employees of which service provider is notified.
- B. Federal Government Held Harmless: Service provider liability for any injury, damage or loss to persons or property arising out of the performance of this agreement and caused by the negligence of its own officers, employees, agents and representatives is governed

by the applicable State and/or local law. ICE will promptly notify the service provider of any claims filed against any of service provider's employees of which ICE is notified. The Federal Government will be held harmless for any injury, damage or loss to persons or property caused by a service provider employee arising in the performance of this agreement.

- C. Defense of Suit: In the event an ICE detained noncitizen files suit against the service provider contesting the legality of the noncitizen's ICE detention under this agreement and/or immigration/citizenship status, or a noncitizen files suit as a result of an administrative error or omission of the Federal Government, ICE will request that the United States Department of Justice (DOJ), as appropriate, move either to have the service provider dismissed from such suit; to have ICE substituted as the proper party defendant; or to have the case removed to a court of proper jurisdiction. Regardless of the decision on any such motion, ICE will request that DOJ be responsible for the defense of any suit on these grounds. Nothing in this agreement limits the discretion of DOJ on any litigation matters.
- D. ICE Recovery Right: The service provider shall do nothing to prejudice ICE's right to recover against third parties for any loss, destruction of, or damage to U.S. Government property. Upon request from the CO, the service provider shall furnish to ICE all reasonable assistance and cooperation, including assistance in the prosecution of suit and execution of the instruments of assignment in favor of ICE in obtaining recovery.
- E. Service Provider Insurance: The service provider and any subcontractor(s) shall maintain insurance and/or be self-insured in an amount not less than \$1,000,000 to protect the service provider from claims under workman's compensation acts and from any other claims for damages for personal injury, including death which may arise from operations under this contract whether such operations by the service provider itself or by any subcontractor or anyone directly or indirectly employed by either business entity. The service provider and its subcontractor(s) shall maintain General Liability insurance: bodily injury liability coverage written on a comprehensive form of policy of at least \$500,000 per occurrence is required.

Additionally, an automobile liability insurance policy and/or self-insurance providing for bodily injury and property damage liability covering automobiles operated in the US shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property coverage. Certificates of such insurance shall be subject to the approval of the CO for adequacy of protection. All insurance certificates required under this contract shall provide 30 days advance notice to the Government of any contemplated cancellation.

## **Article 20. Financial Records**

- A. Retention of Records: All financial records, supporting documents, statistical records, and other records pertinent to contracts or subordinate agreements under this agreement

shall be retained by the service provider in accordance with the NARA records schedule for purposes of federal examinations and audit. The retention period begins at the end of the first year of completion of service under the agreement. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the retention period, the records must be retained until completion of the action and resolution of all issues which arise from it or until the end of the regular NARA record retention period, whichever is later. Retention of records requirements can be found in Attachment 8.

- B. Access to Records: ICE and the Comptroller General of the United States, or any of their authorized representatives, have the right of access to any pertinent books, documents, papers or other records of the service provider or its subcontractors, which are pertinent to this agreement's administration and compliance, to make audits, examinations, excerpts, and transcripts. The rights of access must not be limited to the required retention period but shall last as long as the records are retained.
- C. Delinquent Debt Collection: ICE will hold the service provider accountable for any overpayment, or any breach of this agreement that results in a debt owed to the Federal Government. ICE will apply interest, penalties, and administrative costs to a delinquent debt owed to the Federal government by the service provider pursuant to the Debt Collection Improvement Act of 1982, as amended.

#### **Article 21. Labor Standards and Wage Determination**

- A. The Service Contract Act, 41 U.S.C. 351 et seq., Title 29, Part 4 Labor Standards for Federal Service Contracts, is hereby incorporated as Attachment 1. These standards and provisions are included in every contract and IGSA entered by the United States or the District of Columbia, in excess of \$2,500, or in an indefinite amount, the principal purpose of which is to furnish services through the use of service employees.
- B. Wage Determination: Each service employee employed in the performance of this agreement shall be paid not less than the minimum prevailing wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination applicable under this agreement. The wage determination, issued under the Service Contract Labor Standards statute, by the Administrator, Wage and Hour Division, U.S. Department of Labor, will be updated on the annual anniversary of the IGSA agreement with the most recent applicable wage determination.
- C. The service provider shall notify the CO of any increase claimed within 30 calendar days after receiving a new wage determination unless this notification period is extended in writing by the CO. The contract price will be adjusted to reflect the service provider's actual increase in applicable wages and fringe benefits to the extent the increase is made to comply with the new wage determination. Any adjustment will be limited to increases or decreases in wages and fringe benefits, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but

shall not otherwise include any amount for general and administrative costs, overhead, or profit.

D.

## **Article 22. Notification and Public Disclosures**

- A. Information obtained or developed because of this IGSA is under the control of ICE and is subject to public disclosure only pursuant to the provisions of applicable Federal laws (such as the FOIA), regulations, and Executive Orders or as ordered by a Court. The Service provider is prohibited from disclosing any information relating to ICE noncitizens pursuant to 8 C.F.R § 236.6. If the service provider receives a request for such information through, for example relevant State sunshine laws or another mechanism, the service provider shall promptly notify the ICE FOIA Officer and inform the requester to submit a FOIA request directly to the ICE FOIA Office. To the extent the service provider intends to release the IGSA or any information relating to, or exchanged under, this IGSA, the service provider agrees to coordinate with the ICE FOIA Officer prior to such release. The service provider may, at its discretion, communicate the substance of this IGSA when requested. ICE understands that this IGSA will become a public document when presented to the service provider's governing body for approval.
- B. The CO shall be notified in writing of all litigation pertaining to this IGSA and provided copies of any pleadings filed or said litigation within five business days of the receipt of service. The service provider shall cooperate with government legal staff and/or the United States Attorney regarding any requests pertaining to Federal or service provider litigation.
- C. The service provider shall notify the ICE Office of Congressional Relations when a member of the United States Congress requests information, or the CO and the ICE Office of Congressional Relations when he/she makes a request to visit the facility. The service provider shall coordinate all public information related issues pertaining to ICE noncitizens with ICE. The service provider shall promptly make public announcements stating the facts of unusual or newsworthy incidents to local media. Examples of such events include, but are not limited to deaths, escapes from custody, and facility emergencies. All press statements and releases shall be cleared, in advance, with the ICE Office of Public Affairs.
- D. With respect to public announcements and press statements, the service provider shall ensure employees agree to use appropriate disclaimers clearly stating the employees' opinions do not reflect the position of the United States government in any public presentations they make or articles they write that relate to any aspect of performance or the facility operations.
- E. Facility Access: The facility's perimeter will ensure that public access is denied without proper authorization. Visitation and/or tours of the facility shall be conducted as directed by ICE.

- F. For the safety and privacy of the ICE noncitizens, no videotaping is permitted by visitors or others (including the service provider) without prior approval from ICE, except for CCTV cameras operated by the service provider or the Government for security purposes. No video or audio recording devices will be allowed within the secure perimeter, except in accordance with court order or Federal law. Uses of force are excluded from this provision in accordance with the applicable ICE standards.

### **Article 23. Privacy**

- A. The service provider shall comply with the Privacy Act of 1974 (“the Act”) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the agreement specifically identifies (i) the systems of records; and (ii) the design, development, or operation work that the service provider is to perform. The service provider shall also include the Privacy Act into all subcontracts when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and
- B. In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the agreement is for the operation of a system of records on individuals to accomplish an agency function, the service provider is considered to be an employee of the Agency.
  - 1. “Operation of a system of records,” as used in this article, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.
  - 2. “Record,” as used in this article, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person’s name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.
  - 3. “System of records on individuals,” as used in this article, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

### **Article 24. Attestation of Pricing Data**

- A. Requirements for Attested Pricing Data and Data Other Than Attested Pricing Data

(a) *Exceptions from attested pricing data.*

(1) In lieu of submitting attested pricing data, service providers may submit a written request for exception by submitting the information described in the following subparagraphs. The CO may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document.

(ii) *Commercial item exception.* For a commercial item exception, the service provider shall submit, at minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include –

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The service provider grants the CO or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the service provider's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for attested pricing data.* If the service provider is not granted an exception from the requirement to submit attested pricing data, the following applies:

(1) The service provider shall prepare and submit attested pricing data, and data other than attested pricing data, and supporting attachments.

(2) As soon as practicable after agreement on price, but before IGSA award, the service provider shall submit an Attestation of Current Pricing Data, the format of which is at the end of this article.

#### B. Requirements for Attested Pricing Data and Data Other Than Attested Pricing Data – Modifications

##### (a) *Exceptions from attested pricing data.*

(1) In lieu of submitting attested pricing data for modifications under this IGSA, for price adjustments expected to exceed \$750,000 on the date of the agreement on price or the date of the award, whichever is later, the service provider may submit a written request for exception by submitting the information described in the following subparagraphs. The CO may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable –

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document.

(2) The service provider grants the CO or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this Article, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the service provider's determination of the prices to be offered in the catalog or marketplace.

##### (b) *Requirements for attested pricing data.* If the service provider is not granted an exception from the requirement to submit attested pricing data, the following applies:

(1) The service provider shall submit attested pricing data, data other than attested pricing data, and supporting attachments.

(2) As soon as practicable after agreement on price, but before award, the service provider shall submit an Attestation of Current Pricing Data. The form is included at the end of this Article.

#### C. Subcontractor Attested Pricing Data

(a) Before awarding any subcontract expected to exceed \$750,000 on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$750,000, the service provider shall require the subcontractor to submit attested pricing data (actually or by specific identification in writing), to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any

contingencies included in the price, unless (1) the prices are based upon adequate price competition, or (2) if a waiver has been granted.

(b) The service provider shall require the subcontractor to attest in substantially the form at the end of this article that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this Article were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds \$750,000, when entered into, the service provider shall insert either -

(1) The substance of this Article, including this paragraph (c), if paragraph (a) of this Article requires submission of attested pricing data for the subcontract; or

(2) The substance of the Section below entitled “Subcontractor Attested Pricing Data - Modifications.”

#### D. Subcontractor Attested Pricing Data – Modifications

(a) The requirements of paragraphs (b) and (c) of this Section shall –

(1) Become operative only for any modification to this IGSA involving a pricing adjustment expected to exceed \$700,000; and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed \$750,000, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$750,000, the service provider shall require the subcontractor to submit attested pricing data (actually or by specific identification in writing), to include any information reasonably required to explain the subcontractor’s estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price, unless (1) prices of the modification are based upon adequate price competition, or (2) if a waiver has been granted.

(c) The service provider shall require the subcontractor to certify in substantially the form at the end of this article that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this Article were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The service provider shall insert the substance of this article, including this paragraph (d), in each subcontract that exceeds \$750,000 on the date of agreement on price or the date of award, whichever is later.

#### E. Price Reduction for Defective Attested Pricing Data

(a) If any price, including profit or fee, negotiated in connection with this IGSA, or any cost reimbursable under this IGSA, was increased by any significant amount because –

- (1) The service provider or a subcontractor furnished attested pricing data that were not complete, accurate, and current as attested in its Attestation of Pricing Data;
- (2) A subcontractor or prospective subcontractor furnished the service provider attested pricing data that were not complete, accurate, and current as attested in the service provider's Attestation of Current Pricing Data; or
- (3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the IGSA shall be modified to reflect the reduction.

(b) Any reduction in the IGSA price under paragraph (a) of this Article due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the service provider, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the service provider; provided, that the actual subcontract price was not itself affected by defective attested pricing data.

(c)

(1) If the CO determines under paragraph (a) of this Article that a price or cost reduction should be made, the service provider agrees not to raise the following matters as a defense:

- (i) The service provider or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the IGSA would not have been modified even if accurate, complete, and current attested pricing data had been submitted.
- (ii) The CO should have known that the attested pricing data in issue were defective even though the service provider or subcontractor took no affirmative action to bring the character of the data to the attention of the CO.
- (iii) The IGSA was based on an agreement about the total cost of the IGSA and there was no agreement about the cost of each item procured under the IGSA.
- (iv) The service provider or subcontractor did not submit a Attestation of Current Pricing Data.

(2)

- (i) Except as prohibited by subdivision (c)(2)(ii) of this Article, an offset in an amount determined appropriate by the CO based upon the facts shall be allowed against the amount of a IGSA price reduction if –

(A) The service provider certifies to the CO that, to the best of the service provider's knowledge and belief, the service provider is entitled to the offset in the amount requested; and

(B) The service provider proves that the attested pricing data were available before the "as of" date specified on its Attestation of Current Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if –

(A) The understated data were known by the service provider to be understated before the "as of" date specified on its Attestation of Current Pricing Data; or

(B) The Government proves that the facts demonstrate that the IGSA price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Attestation of Current Pricing Data.

(d) If any reduction in the IGSA price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the service provider shall be liable to and shall pay the United States at the time such overpayment is repaid

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the service provider to the date the Government is repaid by the service provider at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the service provider or subcontractor knowingly submitted attested pricing data that were incomplete, inaccurate, or noncurrent.

#### F. Price Reduction for Defective Attested Pricing Data - Modifications

(a) Section F shall become operative only for any modification to this IGSA involving a pricing adjustment expected to exceed \$720,000, except that this section does not apply to any modification (1) where prices of the modification are based upon adequate price competition, or (2) when a waiver has been granted.

(b) If any price, including profit or fee, negotiated in connection with any modification under this Article, or any cost reimbursable under this IGSA, was increased by any significant amount because

(1) the service provider or a subcontractor furnished attested pricing data that not complete, accurate, and current as attested in its Attestation of Current Pricing Data,

(2) a subcontractor or prospective subcontractor furnished the service provider attested data that were not complete, accurate, and current as attested in the service provider's Attestation of Current Pricing Data, or

(3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the IGSA shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this Article becomes operative under paragraph (a) of this Article.

(c) Any reduction in the IGSA price under paragraph (b) of this Article due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the service provider, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the service provider; provided, that the actual subcontract price was not itself affected by defective attested pricing data.

(d)

(1) If the CO determines under paragraph (b) of this Article that a price or cost reduction should be made, the service provider agrees not to raise the following matters as a defense:

(i) The service provider or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the IGSA would not have been modified even if accurate, complete, and current attested pricing data had been submitted.

(ii) The CO should have known that the attested pricing data in issue were defective even though the service provider or subcontractor took no affirmative action to bring the character of the data to the attention of the CO.

(iii) The IGSA was based on an agreement about the total cost of the IGSA and there was no agreement about the cost of each item procured under the IGSA.

(iv) The service provider or subcontractor did not submit an Attestation of Current Pricing Data.

(2)

(i) Except as prohibited by subdivision (d)(2)(ii) of this Article, an offset in an amount determined appropriate by the CO based upon the facts shall be allowed against the amount of a IGSA price reduction if -

(A) The service provider certifies to the CO that, to the best of the service provider's knowledge and belief, the service provider is entitled to the offset in the amount requested; and

(B) The service provider proves that the attested pricing data were available before the “as of” date specified on its Attestation of Current Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if -

(A) The understated data were known by the service provider to be understated before the “as of” date specified on its Attestation of Current Pricing Data; or

(B) The Government proves that the facts demonstrate that the IGSA price would not have increased in the amount to be offset even if the available data had been submitted before the “as of” date specified on its Attestation of Current Pricing Data.

(e) If any reduction in the IGSA price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the service provider shall be liable to and shall pay the United States at the time such overpayment is repaid the following:

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the service provider to the date the Government is repaid by the service provider at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the service provider or subcontractor knowingly submitted attested pricing data that were incomplete, inaccurate, or noncurrent.

Prior to the award of any modification exceeding \$750,000.00, the service provider shall submit a signed copy of the following statement to the CO:

\*Note: The initial attestation is found in the RFP letter to the vendor.

**Attestation of Current Pricing Data for Modifications (if applicable)**

This is to attest that, to the best of my knowledge and belief, the pricing data submitted, either actually or by specific identification in writing, to the CO or to the CO’s representative in support of \_\_\_\* are accurate, complete, and current as of \_\_\_\*\*. This attestation includes the pricing data supporting requests for equitable adjustments between the service provider and the Government that are part of the proposal.

Service Provider \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date of execution\*\*\* \_\_\_\_\_

\* Identify the proposal, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

\*\* Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

\*\*\* Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded, and the contract price was agreed to.

## QUALITY CONTROL

### Article 25. Quality Control

- A. The service provider is responsible for management and quality control actions necessary to meet the quality standards set forth in the agreement. The service provider shall provide a Quality Control Plan (QCP) that meets the requirements specified in the Performance Requirements Summary (PRS), (included in Attachment 3) to the CO for concurrence prior to award of the IGSA (or as directed by the CO). The CO will notify the service provider of concurrence or required modifications to the plan before the agreement start date. If a modification to the plan is required, the service provider shall make appropriate modifications and obtain concurrence of the revised plan by the CO before the IGSA start date.
- B. The service provider shall provide a QCP that addresses critical operational performance standards for the services required under this IGSA. The QCP shall ensure that services will be maintained at a uniform and acceptable level. At a minimum, the service provider shall periodically review and update the QCP policies and procedures at least on an annual basis. The service provider shall audit the facility's operations monthly for compliance with the QCP. The service provider shall notify the Government 48 hours in advance of the audit to ensure the COR is available to participate. The service provider's QCP shall identify deficiencies, appropriate corrective action(s), and timely implementation plans to the COR.
- C. If the service provider proposes changes in the QCP after IGSA award, the service provider shall submit them to the COR for review. If the COR concurs with the changes, the COR shall submit the changes to the CO. The CO may modify the contract to include these changes.

### Article 26. Quality Assurance Surveillance Plan (QASP)

- A. The Government's QASP is based on the premise that the service provider, and not the Government, is responsible for management and quality control actions to meet the terms

of the agreement. The QASP procedures recognize that unforeseen problems do occur. Good management and use of an adequate QCP will allow the facility to operate within acceptable quality levels. See Attachment 3 for the Government's QASP.

- B. All services rendered under this agreement are subject to inspection both during the service provider's operations and after completion of the tasks.
- C. When the service provider is advised of any unsatisfactory condition(s), the service provider shall submit a written report to the COR addressing corrective/preventive actions taken. The QASP is not a substitute for quality control by the service provider.
- D. The COR may check the service provider's performance and document any noncompliance; only the CO may take formal action against the service provider for unsatisfactory performance.
- E. The Government may apply various inspection and extrapolation techniques (i.e., 100 % surveillance, random sampling, planned sampling, unscheduled inspections) to determine the quality of services, the appropriate reductions, and the total payment due.
- F. The QASP sets forth the procedures and guidelines that ICE will use to inspect the technical performance of the service provider. It presents the financial values and mechanisms for applying adjustments to the service provider's invoices as dictated by work performance measured to the desired level of accomplishment.
  - 1. The purpose of the QASP is to:
    - a. Define the roles and responsibilities of participating Government officials.
    - b. Define the types of work to be performed.
    - c. Describe the evaluation methods that will be employed by the Government in assessing the service provider's performance.
    - d. Describe the process of performance documentation.
  - 2. Roles and Responsibilities of Participating Government Officials
    - a. The COR(s) will be responsible for monitoring, assessing, recording, and reporting on the technical performance of the service provider on a day-to-day basis. The COR(s) will have primary responsibility for documenting their inspection and evaluation of the service provider's work performance.
    - b. The CO or designee has overall responsibility for evaluating the service provider's performance in areas of contract compliance, contract administration, and cost and property control. The CO shall review the COR's evaluation of the service provider's performance and invoices. If applicable, deductions or withholdings will be assessed in accordance with

the evaluation of the service provider's performance, e.g., monetary adjustments for inadequate performance.

- G. The rights of the Government and remedies described in this section are in addition to all other rights and remedies set forth in this agreement. Any reductions in the service provider's invoice shall reflect the contract's reduced value resulting from the service provider's failure to perform required services. The service provider shall not be relieved of full performance of the services hereunder and may be terminated based upon inadequate performance of services, even if a reduction was previously taken for any inadequate performance.

## **DEDICATED FACILITIES**

### **Article 27. Exclusivity**

- A. The service provider agrees that the facility is to be for the exclusive use of ICE and its detained population. No other agency shall be allowed to use the facility to house its detained noncitizen, prisoners, or inmates without prior approval of the CO. If given approval, a separate bed day rate shall be negotiated with the other agency and ICE shall not be responsible for payment related to beds used by another agency. The other agency shall be separately invoiced for the beds it uses. The duration of the use of beds will be determined on a case-by-case basis.
- B. An appropriate portion of the FOC may be applicable to the other agency and will be negotiated with that agency by the CO before providing approval for use. The applicable portion of the FOC due the other agency will be separately invoiced directly to that agency and reduced from ICE's cost via bilateral contract modification.

### **Article 28. Use of Service Provider's Policies and Procedures**

- A. All policies and procedures shall meet all standards and requirements of this agreement. The COR shall review the service provider's policies and procedures for compliance with the agreement. The COR may seek clarifications, if necessary. Any requested changes shall be negotiated and agreed upon. After COR review, the service provider is authorized to use its policies and procedures in conjunction with Standards mandated under this agreement. The COR will not review the service provider's policies and procedures for compliance with law or regulation, nor will the COR approve the service provider's policies and procedures beyond the minimum requirements as required by the agreement.

### **Article 29. ACA Accreditation**

- A. The service provider shall have eighteen (18) months from issuance of the initial task order to fund this agreement to become ACA accredited. Once full accreditation has been obtained, the service provider shall maintain this accreditation throughout the life of the agreement, inclusive of any extensions. The service provider shall provide the CO with

written proof of ACA application within 5 business days of the application and written proof of its accreditation within 5 business days of notification of accreditation.

# Ex. D

**OPERATIONS, MANAGEMENT, AND MAINTENANCE  
AGREEMENT**

**FOR THE**

**OTERO COUNTY PRISON FACILITY AND OTERO  
COUNTY PROCESSING CENTER**

**between**

**MANAGEMENT & TRAINING CORPORATION**

**and**

**OTERO COUNTY, NEW MEXICO**

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## **OPERATION, MANAGEMENT, AND MAINTENANCE AGREEMENT**

This Agreement is made and entered into by and between MANAGEMENT & TRAINING CORPORATION, a duly formed corporation existing under the laws of the State of Delaware ("MTC"), and OTERO COUNTY, NEW MEXICO, a political subdivision of the State of New Mexico ("County"), effective as of the date of the last signature below.

### **RECITALS**

**WHEREAS**, the County is a political subdivision of the State of New Mexico; and

**WHEREAS**, the County built the Otero County Prison Facility located south of the City of Alamogordo, in Otero County, New Mexico and an expansion ("Phases I and 2") consisting of a total of 1,353 beds, and is constructing a 1,086 bed, multi-classification, Non-Violent detention facility addition consisting of another separate building to Phases I and 2 called the Otero County Processing Center ("Phase 3"); and

**WHEREAS**, Phases 1 and 2 were financed and constructed through the issuance of the Otero County Jail Project Revenue Bonds, Series 2002 ("Phases 1 and 2 Bonds"), and Phase 3 is being financed and constructed through the issuance of the Otero County, New Mexico Jail Project Revenue Bonds, Series 2007 ("Phase 3 Bonds"), all pursuant to the authority of N.M.S.A., Section 4-62-1, et. seq.; and

**WHEREAS**, the County is authorized to enter into contracts with private vendors to provide for the operation, maintenance, or management of the Facility as defined in Article I(N) herein; and

**WHEREAS**, the County has previously contracted with MTC to operate and manage Phases 1, 2 and 3 pursuant to an Operations, Management, and Maintenance Agreement for the Otero County Prison Facility and Otero County Processing Center dated as of June 23, 2008 (the "Original Management Contract") which has expired, and desires to enter into a new contract with MTC on the Effective Date of this Agreement, and MTC desires to enter into this Agreement to continue operate and manage the Facility pursuant to this Agreement; and

**WHEREAS**, MTC acknowledges that it may not look to or pursue the General Fund Revenues of the County for the payment of any obligation owed by County hereunder; and

**WHEREAS**, this Agreement is exempt from the New Mexico Procurement Code pursuant to Section 13-1-98(M), NMSA 1978; and

**WHEREAS**, this Agreement is made subject to the approval of the New Mexico Attorney General, New Mexico Department of Finance and Administration, and the Risk Management Division of the New Mexico General Services Department, as required by N.M.S.A 1978 Section 33-3-27.

**NOW THEREFORE**, for and in consideration of the conditions and covenants set forth herein and on the recitals set forth above, the parties do hereby agree and bind themselves as follows:

### **ARTICLE I**

#### **Definitions**

All capitalized terms in this Agreement not defined below, shall have the same meanings as described in the Bond Ordinance. In addition to those terms defined in the preamble of this Agreement, the following terms contained within this Agreement shall have the meanings hereinafter defined by this Article I:

- A. ACA- the American Correctional Association.
- B. ACA Standards - the standards published by the American Correctional Association, as heretofore or hereafter supplemented or amended.
- C. Agreement - this document regarding the operation, management, and maintenance of the Facility by MTC. The terms "Agreement" and "Contract" are used interchangeably throughout this document.
- D. Bonds -the Phases 1 and 2 Bonds and Phase 3 Bonds.
- E. Bond Ordinance - the Ordinances of the County, and all amendments thereto and related resolutions, passed by the County on either June 17, 2002, April 17, 2007, or November 11, 2012, regarding the Facility and the Bonds, specifying the duties, obligations, and responsibilities of the Trustee.
- F. Business Day - any day the County Administration Office is open for business.
- G. Commencement Date - the date upon which MTC accepted and assumed responsibility for the day-to-day operation of the Facility for the housing of Offenders pursuant to the provisions of the Original Management Contract.
- H. Contract Monitor - the person appointed by the County Manager to oversee MTC's compliance with this Agreement, or the County Manager, until such appointment is made.
- I. Contract Year - a period of 365 or 366 days, during the term of this Agreement or any extension thereof, beginning on the annual anniversary of the Commencement Date.
- J. Court Orders - any existing or future orders or judgments issued by a court of competent jurisdiction or any existing or future settlements, stipulations, agreements, or plans entered into in connection with litigation that are applicable to the operation, management, or maintenance of the Facility or related to the care and custody of Offenders.
- K. County Fee – the total monthly fee(s) owed to the County as calculated pursuant to Article V(F).
- L. County Housing Rate - the amount of money to be paid by County to the Trustee for each Offender Day that a County Offender is housed in the Facility. The County will direct the Trustee to pay MTC the County Housing Rate from the Revenue Fund.
- M. County Offender - a post-conviction Offender, sentenced pursuant to the jurisdiction of the County, assigned to the Facility by County, and not by another User Agency. All County Offenders shall be housed at the Facility pursuant to the terms of this Agreement, and any additional terms negotiated between the Parties.
- N. Effective Date – the date of the last signature below subject to execution by the parties and approval by the New Mexico Attorney General, the Department of Finance and Administration (Local Government Division), and the General Services Department (Risk Management Division) of the State of New Mexico, pursuant to N.M.S.A. 1978, Section 33-3-2 (1989) and N.M.S.A. 1978, Section 33-3-27, (2015).
- O. Facility - the building constructed using Phases I and 2 Bonds and a second building constructed using Phase 3 Bonds, and all modifications, expansions, and extensions

thereto, individually or collectively.

- O. Facility Administrator - the individuals appointed by MTC to administer the Facility in accordance with this Agreement. The terms "Facility Administrator" and "Warden" are used interchangeably throughout this Agreement.
- P. Housing Agreement - a contract between the County and a User Agency(ies) establishing the terms for the housing of Offenders at the Facility. In the event of a conflict between this Agreement and a Housing Agreement, the terms of this Agreement shall control.
- Q. Non-Violent - persons without a present conviction for a felony offense that involved threatened or use of physical force.
- R. Offender - all detainees or inmates housed at the Facility, other than County Offenders.
- S. Offender Day - for the purposes of this Agreement, unless otherwise defined by a Housing Agreement, an "Offender Day" shall mean a twenty-four (24) hour time period, or a portion thereof, beginning with twelve o'clock (12:00) midnight and ending twenty-four (24) hours later, during which an Offender or County Offender is housed at the Facility. Unless otherwise required by a Housing Agreement, an Offender must be in the care, custody, and control of MTC at the Facility for more than twenty-four (24) hours before the County will be obligated to pay MTC for housing an Offender or County Offender for more than one Offender Day.
- T. Operating Expenses - all reasonable and necessary current expenses, paid or accrued, of opening, equipping, operating, maintaining, and repairing the Facility.
- U. Operating Standards - all applicable federal, state and local laws, rules, codes, regulations, and Court Orders, as any of the same may be supplemented or amended, and those rules, regulations, policies, procedures, conditions, provisions, and ordinances made applicable to MTC's operation of the Facility by this Agreement. Operating Standards shall also include operations in accordance with the applicable ACA Standards. If any of the Operating Standards are in conflict with each other or with this Agreement, the more stringent shall apply. Operating Standards shall include the terms and conditions of each Housing Agreement. Operating Standards shall also include the terms and conditions negotiated by the Parties for the housing of County Offenders at the Facility, if any.
- V. Parties - Otero County, New Mexico and Management & Training Corporation.
- W. Per Diem Rate for Phases 1 and 2 Building - the charge per Offender housed in the building constructed using Phases 1 and 2 Bonds, per Offender Day, as set out in Article V, which the County will direct the Trustee to pay to MTC from the Revenue Fund.
- X. Per Diem Rate for Phase 3 Building - the charge per Offender housed in the building constructed using Phase 3 Bonds, per Offender Day, as set out in Article V, which the County will direct the Trustee to pay to MTC from the Revenue Fund.
- Y. Revenue - the gross revenues paid or payable to the County in connection with the operation of the Facility, excluding those items of reimbursement to MTC more particularly described in Articles V.C.2 and V.C.3.
- Z. Revenue Fund - the account managed by the Trustee, into which all Revenue is to be deposited.

- AA. Sheriff - the Sheriff of Otero County, New Mexico.
- BB. Trustee - the entity defined as the Trustee in the Bond Ordinance(s).
- CC. User Agency - any governmental entity(ies), including but not limited to the United States Marshal Service ("USMS") or the United States Department of Homeland Security Immigration and Customs Enforcement ("ICE"), with which MTC has negotiated for and on behalf of the County, that has entered into a Housing Agreement with the County to have its Offenders housed at the Facility.
- DD. Otero County Prison Facility (OCPF) - The building constructed using Phases 1 and 2 Bonds, and all modifications, expansions, and extensions thereto, individually.
- EE. Otero County Processing Center (OCPC) – The building constructed using Phase 3 Bonds, and all modifications, expansions, and extensions thereto, individually.

## **ARTICLE II**

### **Representations and Warranties**

- A. MTC Representations and Warranties: MTC represents and warrants to the County, with the intent that the County shall rely thereon in entering into this Agreement as follows:
  - 1. Organization and Qualification. MTC has been duly incorporated and validly exists as a corporation in good standing under the laws of the State of Delaware, with power and authority to conduct its business and operate, manage, and maintain public jail facilities. MTC is duly qualified to do business as a corporation in good standing in the State of New Mexico.
  - 2. Authorization to Contract. This Agreement has been duly authorized, executed, and delivered by MTC and, assuming due execution and delivery by the County, and subject to fulfillment of the requirements of N.M.S.A. 1978, Section 33-3-27 (2015), constitutes a legal, valid, and binding agreement enforceable against MTC in accordance with its terms.
  - 3. No Violation of Agreements, Articles of Incorporation, or Bylaws. The transactions contemplated by this Agreement and the fulfillment of the terms hereof do not conflict with, nor will they result in a breach of any of the terms and provisions of, or constitute a default under any contract, license, permit, or other agreement or instrument to which MTC is a party or by which it is bound, or any order, rule, or regulation of any court, regulatory body, or administrative agency, and do not conflict with, nor will they result in a breach of any of the terms and provisions of, or constitute a default under, MTC's Articles of Incorporation or Bylaws.
  - 4. No Defaults under Existing Contracts. MTC is not in material default, nor is there any event in existence that, with notice or the passage of time or both, would constitute a material default by MTC under any contract, license, permit, or other agreement or instrument to which MTC is a party or by which it is bound, which default would adversely affect MTC's ability to perform under this Agreement.
  - 5. No Violation of the Law. Neither MTC nor its officers or directors has been advised, or has reason to believe, that MTC or its officers or directors has been conducting business in material violation of any applicable laws, rules, or regulations of any of the jurisdictions in which MTC is conducting business, including, but not limited to, safety laws, laws with respect to non-

discrimination in hiring, promotion, or pay of employees, or other laws affecting employees generally, where such violation would adversely affect MTC's ability to perform under this Agreement.

6. No Litigation. There is not now pending or, to the knowledge of MTC, threatened any action, lawsuit, or proceeding to which MTC is a party before or by any court or governmental agency or body or any such action, lawsuit, or proceeding related to environmental or civil rights matters that might result in any material adverse change in MTC's ability to perform under this Agreement, and no labor disturbance by any employees of MTC exists or is imminent that might adversely affect MTC's ability to perform under this Agreement.
7. No Taxes Due. MTC has paid all federal, state, foreign, and local income and other taxes due, and MTC has no knowledge of any material tax deficiency, which has been or might be asserted against MTC, which would adversely affect MTC's ability to perform under this Agreement.
8. No Adverse Change. Since the date of MTC's most recent balance sheet and financial statements provided to the County, there has not been any material adverse change in MTC's business or condition, nor has there been any change in MTC's assets, liabilities, or financial condition from that reflected in such balance sheet that is material to MTC's ability to perform under this Agreement.
9. Maintenance of Corporate Existence and Business. MTC shall at all times maintain its corporate existence and authority to transact business in good standing in New Mexico and in its jurisdiction of incorporation. MTC shall maintain all licenses, permits, and franchises necessary for its businesses where the failure to so maintain may have a material adverse affect on MTC's ability to perform under this Agreement.
10. Disclosure. There is no material fact that adversely affects, or in the future, so far as MTC can now reasonably foresee, could adversely affect MTC's ability to perform under this Agreement that has not been accurately disclosed by MTC.
11. Employment. During the term of this Agreement, or any extension thereof, and for ninety (90) days thereafter, no officer or member of MTC's board of directors is now or will be an employee or member of the governing body of the County.
12. Adherence to Operating Standards. MTC shall operate, maintain, and manage the Facility in accordance with all Operating Standards so long as the Operating Standards are applicable to the type of Offenders housed at the Facility. In the event any waiver or deviation from the Operating Standards is necessary to operate the Facility, a written request for such waiver or deviation shall be submitted to the Contract Monitor to review and make a recommendation to the County Manager, who will either approve or deny the request, in writing, within thirty (30) days of MTC submitting its written request. If such requests are not approved or denied within said thirty (30) day period, said requests shall be conclusively deemed to have been approved.
13. Limitation on Sources of Payment. MTC shall not pursue nor make any claim against the General Fund Revenues of the County for the payment of any obligation owed by County hereunder, and MTC shall look solely to Revenue (as defined herein) for the payment of the obligations owed by County hereunder.
14. MTC Officers Authorized. The officers of MTC executing this Agreement have been duly authorized to execute and deliver this Agreement.

- B. The County's Representations and Warranties. The County represents and warrants to MTC, with the intent that MTC shall rely thereon in entering into this Agreement, as follows:
1. Authorization to Contract. This Agreement has been duly authorized, executed, and delivered by the County and, assuming due execution and delivery by MTC, and subject to fulfillment of the requirements of N.M.S.A 1978, Section 33-3-27 (2015), constitutes a legal, valid, and binding agreement enforceable against the County in accordance with its terms.
  2. Disclosure. There is no material fact that adversely affects, or in the future, so far as the County can now reasonably foresee, could adversely affect the County's ability to perform under this Agreement that has not been accurately set forth in this Agreement.
  3. Public Purpose. The operation, management, and maintenance of the Facility is required by the County solely for a public purpose and public use to house Offenders and County Offenders incarcerated pursuant to the jurisdiction of the State of New Mexico, the political subdivisions thereof, or any other governmental entity.
  4. County Duly Formed. The County is a duly formed and validly existing political subdivision of the State of New Mexico, and is governed by the laws of the State of New Mexico.
  5. Facility and this Agreement Authorized by Law. N.M.S.A. 1978, Section 33-3-2 (1989) authorizes the County to establish, acquire, construct, operate, and maintain the Facility, to enter into this Agreement and the transactions contemplated hereby, and to carry out its obligations under this Agreement.
  6. County Officers Authorized. The officers of the County executing this Agreement have been duly authorized to execute and deliver this Agreement.
  7. County Approval of User Agency Agreements. The County shall diligently review, process, and consider approval of all lawful and reasonable agreements with such User Agencies as may be necessary to facilitate the receipt and incarceration of eligible Offenders in the Facility. The County shall not unreasonably withhold its approval of any of such agreements.
  8. Employment. During the term of this Agreement, or any extension thereof, and for ninety (90) days thereafter, no member of the governing body of the County is now or will be an owner, employee, officer, or director of MTC or will in any way violate the conflict-of-interest laws of the State of New Mexico.
  11. Expansions. This Agreement shall apply to all phases of the Facility and shall include the operation of any improvement, modification, or expansion of the Facility unless expressly agreed by the parties to the contrary.
  12. Operating Expenses. County shall require the Trustee to pay Operating Expenses of the Facility each month (including but not limited to the fees due to MTC hereunder) from the Revenue Fund, prior to the payment of any Bond payment, interest, or debt retirement. Each month, County shall fully and promptly comply with all provisions of the Bond Ordinance that constitute conditions precedent to MTC's receipt of payment of the fees due and owing hereunder.

13. Marketing of the Facility. The County and MTC agree that it shall be to their mutual benefit and interest for the Facility to be fully utilized by maintaining the maximum Offender population within statutory and regulatory limits. The County understands and agrees that the actions to be performed by MTC to seek maximum utilization of the Facility are not intended by MTC and should not be construed by the County as any type of warranty or guarantee by MTC that its efforts to promote the maximum utilization of the Facility will result in any specified level of utilization of the Facility or in any specified number of Offenders being incarcerated at the Facility. County agrees to use its best efforts to assist MTC in seeking out and thereafter contracting with User Agencies, upon terms reasonably acceptable to County and MTC, so as to efficiently maximize the utilization of the Facility. County shall use its best efforts to participate in and support local activities related to marketing the utilization of the Facility to potential User Agencies, and shall make appropriate County personnel reasonably available for such activities, which include but are not limited to meetings, tours, conferences, and similar marketing activities.

### **ARTICLE III**

#### **Scope of Services**

MTC, at its sole expense, unless otherwise specified herein or in a Housing Agreement, shall operate and maintain the Facility, including the provision of the following at the Facility in accordance with Operating Standards:

A. Staffing

1. MTC shall staff the Facility twenty-four (24) hours a day, seven (7) days a week.
2. MTC shall provide adequate staffing of the Facility in compliance with all applicable Operating Standards necessary to maintain a reasonable level of security within the Facility and sufficient to reasonably monitor the activities of the Offenders confined within the Facility.
3. MTC shall provide its security personnel with uniforms and appropriate equipment.
4. MTC shall maintain a trained tactical team on call and a well-equipped armory with appropriate tools, weapons, and ammunition.
5. MTC shall operate a segregation unit.

B. Record Keeping

1. MTC shall maintain records for each Offender assigned to the Facility in accordance with the applicable Operating Standards. Special purpose records, medical records, field files, and visitation records, among others, will be maintained by the respective function within the Facility.
2. All records will be subject to a policy for records security, disclosure, and confidentiality. Such policy shall be in compliance with New Mexico law relative to records retention and disclosure.
3. MTC shall provide a separate records department that is responsible for creating and maintaining all Offender files.

4. MTC acknowledges and agrees that it is required to comply with the New Mexico Public Records Act ("IPRA") to the greatest extent required of it by New Mexico law, and specifically further agrees to:
  - designate an employee of MTC as a records custodian to the extent required pursuant to Section 14-2-7 of the New Mexico Public Records Act;
  - timely and directly respond to all IPRA requests for public records submitted to MTC; and
  - timely respond to any requests for public records forwarded to MTC by the County pursuant to Section 14-2-8(E) of IPRA.

C. Reporting Requirements to Local, State, and Federal Law Enforcement Agencies

MTC shall comply with all regulations associated with the reporting requirements of other local law enforcement agencies, and state and federal law enforcement agencies.

D. Facility and Records Access

MTC shall permit County commissioners, the Contract Monitor and the County Manager access to the Facility at any time, subject to reasonable security considerations to be determined by MTC. The Sheriff, or the designee of the Sheriff, shall be permitted access to the Facility at any time. Other County officials, employees, and staff will be admitted to the Facility during normal business hours as approved by the County Manager and the Warden. Facility financial records shall be available for inspection by the County and the County's designees at any reasonable time during normal business hours. However, the County acknowledges that certain records maintained by MTC, including but not limited to those documents containing information that is proprietary to MTC, will not be available for inspection by any party, or subject to public access. Such records include, but are not limited to, MTC's proprietary information developed by MTC for its internal use, MTC's medical files relating to MTC employees and Offenders, and MTC's personnel and human resource files. Additionally, User Agencies housing Offenders at the Facility may impose additional confidentiality and security restrictions on certain records maintained by MTC, which may limit the County's and/or Sheriff's access to such records without specific approval by such User Agency. The availability of Facility records for review by the County and/or the Sheriff shall be subject to all requirements and limitations of all applicable state and federal laws and regulations and all applicable court orders. The County, Sheriff, and their respective designees agree not to publish or otherwise distribute any Facility documents to third parties, subject to the requirements of IPRA and any public record requests thereof. Other than the conditions set forth above, this Agreement shall not place any limitation upon the County's access to records maintained by MTC relative to the operation, maintenance, or management of the Facility.

E. Training

1. MTC shall provide basic level correctional officer training as applicable for new employees with a minimum of eighty (80) hours preliminary training and thereafter forty (40) hours of in-service training per year for all correctional officers.
2. MTC shall require that all security staff assigned to an emergency unit will successfully complete forty (40) hours of specialized training in addition to new hire orientation and corrections officer basic training as a prerequisite to assuming their duties.
3. County and Sheriff personnel may, at their election, participate in the ongoing training programs provided by MTC to MTC employees at the Facility.

4. MTC shall require that all non-security staff assigned to the Facility participate in at least twenty-four (24) hours of in-house training annually.

F. Medical

All Offenders shall be provided medical care in accordance with the applicable Housing Agreement. In no case shall the County be responsible for health care related costs, expenses, and charges incurred for Offenders.

G. Food Service

1. MTC shall provide food service to the Offenders and County Offenders in accordance with the applicable Operating Standards and Housing Agreement.
2. All Offenders and County Offenders will be provided meals throughout their stay at the Facility. The cost of this service is included in the applicable daily Per Diem Rate or County Housing Rate. At no time will an Offender or County Offender be required to pay for food. Offenders and County Offenders away from the Facility at meal times shall be provided with bag lunches. Meals shall also be provided at the Facility to Offenders and County Offenders who work irregular hours and are not available at regularly scheduled meal times.

H. Laundry and Clothing

MTC shall provide full laundry services and clothing for Offenders and County Offenders in accordance with the applicable Operating Standards and Housing Agreement.

I. Supplies

MTC shall provide all supplies necessary to meet the requirements of all applicable Operating Standards, Housing Agreements, and commonly accepted correctional practices desirable for the efficient operation and maintenance of the Facility, including, but not limited to, hygiene items, clothing, footwear, office supplies, building support items such as soap, mops, buckets, linens, towels, pillows, sheets, pillow cases, and blankets.

J. Programs & Special Services

1. MTC shall provide a suicide prevention program.
2. MTC shall establish and maintain a mail delivery system for Offenders and County Offenders at the Facility in accordance with the applicable Operating Standards.
3. MTC shall provide outdoor and indoor physical recreation facilities, equipment, and supplies for an Offender recreation program in compliance with the applicable Operating Standards.
4. MTC shall provide a general library containing literary, educational, and reference materials in accordance with the applicable Operating Standards.
5. MTC shall provide appropriate religious programs for Offenders and County Offenders at the Facility in accordance with the applicable Operating Standards. Each Offender and County Offender will be afforded the right to voluntarily practice the requirements of their

faith. MTC shall provide Offenders access to religious activities and materials as well as other legitimate requirements of their faith, subject only to limitations necessary to maintain the order and security of the Facility. Designated Facility staff will coordinate religious activities and serve as the point of contact for all outside religious groups seeking admittance to the Facility.

K. Commissary

MTC shall operate a commissary as a privilege for Offenders and County Offenders in accordance with the applicable Operating Standards and Housing Agreements. Any revenues earned in excess of those needed for the expenses of operating the commissary shall be used for educational, recreational, rehabilitative, training, and treatment of Offenders and/or County Offenders, in accordance with the applicable Operating Standards and Housing Agreements.

L. Telephone

MTC shall provide or cause to be provided a telephone system for Offenders or County Offenders, in accordance with the applicable Operating Standards, the applicable Housing Agreements, and New Mexico State Law.

M. Utilities

MTC shall pay for all utility costs incurred at the Facility after the Commencement Date through the date of termination, including without limitation water, telephone, electricity, and gas.

N. Furniture, Fixtures, and Equipment (FF&E)

1. Within 120 days after the Commencement Date, and annually thereafter, MTC with the cooperation of and after consultation with the Contract Monitor shall prepare a property inventory, listing and noting the condition of all FF&E in the Facility that was originally supplied with the Facility and purchased with proceeds from the sale of the Bonds. The County shall hold title to all such FF&E, except for that FF&E that is provided by MTC, and MTC shall place a sticker or tag on such FF&E owned by County indicating ownership by the County. All FF&E owned and provided by MTC shall be identified as the property of MTC pursuant to the provisions of Subsection N.3 below. At the termination of this Agreement, MTC shall return to the County all FF&E that belongs to the County in functional, good condition, subject to ordinary wear and tear, life expectancy, and any insured casualty damage. MTC will be responsible for the purchase of any additional FF&E required for the normal operation of the Facility, and such additional FF&E so purchased shall remain the sole property of MTC. Any damage caused to the FF&E owned by County as a result of an Offender or County Offender disturbance or riot shall be repaired and /or replaced at the expense of MTC.
2. MTC shall maintain all FF&E, including but not limited to, the master control and operating system control panels, in accordance with generally accepted maintenance procedures. MTC shall maintain all FF&E in good repair and in good working order at all times during the term of this Contract. Unless conditions reasonably require otherwise, in the discretion of MTC, all replacement parts for equipment shall be new, but shall at all times meet or exceed the original equipment specifications. MTC shall update the maintenance schedule within five days if any replacement part or equipment alters the existing maintenance schedule. MTC shall maintain all FF&E in accordance with the manufacturer's recommendations. MTC shall not alter or change any manufacturer-recommended maintenance item or schedule regarding the FF&E without the prior written approval of the

County.

3. Pursuant to MTC's obligations to manage, operate, and maintain the Facility, and in connection with all of MTC's obligations pursuant to this Agreement, during the term of this Agreement, MTC shall have the right, in its sole discretion and at its own expense, to install items of movable machinery and equipment in or upon the Facility, which items shall be identified by tags or other symbols affixed thereto as property of MTC not included within the Facility and not considered or deemed to be property belonging to the County or any other entity. All such items so identified shall remain the sole property of MTC, in which neither the County nor any other party shall have any interest, and all such items may be modified or removed by MTC at any time, provided that MTC shall repair and restore any and all damage to the Facility resulting from the installation, modification, or removal of any such items. All other items of movable machinery and equipment in or upon the Facility shall be deemed to be the sole property of the County. Nothing in this Agreement shall prevent MTC from purchasing or leasing items to be installed in or upon the Facility, pursuant to this provision, under a conditional sale or lease with option to purchase contract, or subject to a vendor's lien or security agreement as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Facility. Any equipment purchased by MTC for use in the Facility, which is not a replacement of existing equipment that MTC is required to provide hereunder, and that was not paid for from the proceeds from the sale of the Bonds or Revenues, shall remain the sole property of MTC. At the termination of MTC's services under this Agreement, the County shall have the right to purchase from MTC any FF&E used in the Facility and owned by MTC at a price to be mutually agreed upon by the parties hereto.

O. Facility Maintenance

1. MTC shall, pursuant to the terms of this Agreement, maintain, preserve, and keep the physical structure of the Facility and all its related systems therein in good condition, repair, and working order, subject to normal wear and tear and any insured casualty, and shall from time to time make or cause to be made all routine repairs and replacements. The County shall be responsible for the cost of repair or replacement of any building system or structural component, including the HVAC system, roof, walls, floors, and fixtures, caused by a design or construction defect or necessitated due to the building system having met its life expectancy or otherwise inoperable due to no fault of MTC; otherwise, MTC shall be responsible for such repairs or replacements. The County will reimburse MTC for any expenditure MTC incurs hereunder provided that the County would have been responsible for such expenditure and the expenditure was urgent and could not be timely referred to the County for consideration and approval in the normal course of business. All warranties related to the Facility shall be extended to MTC. MTC, during the term of this Agreement, shall be authorized to assert on behalf of County, any claim that County could assert relating to any warranty on any furniture, fixtures, equipment, or system installed at or in the Facility.
2. Any damage caused to the physical structure of the Facility as a result of an Offender or County Offender disturbance or riot shall be repaired and /or replaced at MTC's expense.
3. MTC shall not place or erect any structure at the Facility without the prior written approval of the County, which approval shall not be unreasonably withheld. Title to any structures or other improvements to the Facility shall vest in the County.

4. Promptly after the occurrence of any damage to, or loss at, the Facility that materially affects the continued operation of the Facility, MTC shall notify the County of such damage or loss. Within ten (10) days of such notification, County shall determine whether rebuilding, repairing, or restoring the damage or loss is practical or desirable, and County shall proceed accordingly if rebuilding, repairing, or restoring is selected by County. If within said ten (10) day period, the County determines that rebuilding, repairing, or restoring the damage or loss is not practical or desirable, then this Agreement shall automatically terminate as of the date of such determination by County. In the event that County makes no determination as required herein, then this Agreement shall be deemed to be terminated on the next calendar day following said ten (10) day period.
5. MTC shall maintain appropriate Facility maintenance records.

P. Grievance Procedures

MTC shall develop and maintain grievance procedures for Offenders and County Offenders at the Facility. Such procedures shall be provided to the County within thirty (30) days of the Commencement Date of this Agreement, and shall be reasonably acceptable to the County. The grievance procedures shall be in accordance with the applicable Operating Standards and Housing Agreements.

Q. Discipline

1. MTC shall impose discipline pursuant to the applicable Operating Standards and Housing Agreements. Informal resolution of minor disciplinary infractions is preferred and shall always be considered prior to taking formal disciplinary action. MTC's disciplinary hearing officers will conduct disciplinary hearings. MTC shall provide to the County Manager and Contract Monitor an Offender discipline policy within thirty (30) days after the Commencement Date, which shall be reasonably acceptable to the County. This policy shall be provided to Offenders and County Offenders during Facility processing.

R. Third Party Agreements to House Offenders

1. The County has entered into inter-governmental service agreements with the New Mexico Department of Corrections ("NMDC Agreement") and the U.S. Marshal's Service ("USMS Agreement") pursuant to which the County has agreed to operate Phases 1 and 2 and has entered into an inter-governmental service agreement with ICE pursuant to which the County agrees to operate Phase 3 (the "ICE Agreement"). If the County is unable to renew or extend the NMDC Agreement, USMS Agreement and/or the ICE Agreement, MTC, in its sole discretion, may use its best efforts to pursue Housing Agreements to house Offenders from other governmental entities, including any entities under federal, state or tribal jurisdiction, whether in New Mexico or elsewhere. At such time as MTC decides, in its sole discretion, to pursue such Housing Agreements, MTC shall develop a marketing plan and provide regular reports to the County concerning the progress of such marketing efforts.
2. To the extent specifically authorized by User Agencies regarding Offenders housed in the Facility, and subject to the County's prior written approval, which approval shall not be unreasonably withheld, MTC may make separate and independent agreements, the subject of which is beyond the scope of any Housing Agreement, with any agency or organization for the education, treatment, training, or transportation of Offenders or County Offenders, so long as such agency or organization has the legal right, capacity, and

authority to enter into such contracts for such services. The reimbursement of costs or fees for these additional services shall be payable directly to MTC by the appropriate User Agency for the Offenders being educated, treated, trained, and/or transported. The County shall not be a party to these contracts and shall not be responsible for obligations of any type regarding these contracts except for payment of services provided to County Offenders. Notwithstanding anything contained in the previous sentence to the contrary, MTC hereby agrees that all such separate contracts will comply with applicable conditions set forth in Internal Revenue Code, Revenue Procedure 97-13, as such Revenue Procedure may be modified or superseded.

3. All Housing Agreements for the housing of Offenders shall be inter-governmental agreements or a similar documented relationship between the County and the jurisdiction seeking to have its Offenders housed at the Facility. MTC shall be responsible for ensuring that all Housing Agreements comply with the terms of this Agreement and will work with the County to ensure compliance with N.M.S.A. 1978, Section 33-15-3 (2001). MTC shall use reasonable good faith efforts to obtain the highest per diem rate from User Agencies, considering the scope of services to be rendered, other sources of offenders to be housed at the Facility, unusual requests or requirements, and other market forces. The County will not accept, approve, or enter into any Housing Agreements for the housing of Offenders at the Facility, containing a per diem rate to be paid to County for the housing of Offenders at the Facility that is lower than the combined amount of: (i) the daily Operating Expenses of the Facility (including but not limited to all fees due and owing to MTC hereunder), and (ii) the daily debt retirement or Bond payment obligations due pursuant to the Bond Ordinance.
4. As requested by MTC, the County shall execute Housing Agreements in the form of an Inter-governmental Agreement ("IGA"), User Agency Agreement, or other similar documents in connection with the housing of Offenders provided that all responsibilities that are placed on the County by the Housing Agreement, IGA, or other documents shall be assumed by MTC. However, no responsibilities of any kind relating to a Housing Agreement shall be assumed by MTC unless and until MTC has approved each of the terms and conditions of said Housing Agreement.
5. Any Housing Agreement requiring the housing of Offenders for governmental entities located outside of the State of New Mexico, other than Housing Agreements with federal agencies, shall require compliance with N.M.S.A 1978 33-15-3 (2001),
6. County's approval of a Housing Agreement may not be unreasonably withheld.
7. MTC shall bill all User Agencies and County (when applicable) monthly and collect all Revenues from all User Agencies for and in the name of Otero County for the housing of Offenders in accordance with the billing and collections procedure developed by MTC. All Revenues for the housing of Offenders or County Offenders shall be deposited in the Revenue Fund held by the Trustee. Interest where permitted by law, at the highest lawful rate, shall be charged on past due invoices.

S. Operational Compliance

The Facility shall be managed, operated, and maintained by MTC in compliance with all applicable Operating Standards, including but not limited to applicable ACA Standards. MTC shall not be obligated to obtain or maintain certification of Phase 3 by ACA unless the County enters into the ICE Agreement. If the County enters into the ICE Agreement, MTC

shall comply with ACA accreditation requirements and timeframe set forth therein.

T. Drug Testing

1. MTC shall conduct pre-employment drug testing for each job applicant, and random drug testing on all MTC employees working at the Facility.
2. MTC shall conduct random drug testing upon Offenders and County Offenders in accordance with the applicable Housing Agreements and Operating Standards.
3. All employee drug testing results shall be kept confidential by MTC and the County.

U. Classification

MTC shall be responsible for providing intake and classification services in accordance with the applicable Operating Standards and Housing Agreements.

V. Assignment and Transfer of Prisoners

Subject to the terms and provisions of Article III.V, MTC shall accept any Offender assigned to the Facility pursuant to a lawfully executed Housing Agreement by and between County and a User Agency. However, if MTC believes that an Offender or County Offender has been erroneously assigned to the Facility, or if MTC believes there are medical, psychiatric, disciplinary, or administrative reasons why the Offender or County Offender should not be at the Facility, MTC may request the Offender's transfer pursuant to the terms of the applicable Housing Agreement through the applicable User Agency. For County Offenders, the request shall be made to the OCDC Director who will evaluate the request and advise MTC on his/her decision within three (3) working days. The OCDC Director shall not unreasonably delay the response to any such request. Pursuant to MTC's medical procedures, and subject to the terms of any applicable Housing Agreement, MTC's obligation to accept an Offender or County Offender at the Facility is further subject to MTC's right and authority to reject the delivery of any Offender or County Offender that MTC reasonably believes is in need of urgent medical care, including detoxification, mental health, or protective custody due to incapacitation. A hospital or physician must medically clear such Offenders or County Offenders before MTC is required to accept them.

W. Authority

In connection with and in furtherance of MTC's status hereunder as operator of the Facility, MTC's security employees ("Designated Employees") at the Facility have been authorized to act as "jailers" pursuant to N.M.S.A 1978, Section 33-3-28(D)(1) (1985), and shall have the power and authority granted "jailers," to the extent authorized by law, pursuant to N.M.S.A 1978, Section 33-3-28(A). MTC, as operator of the Facility, is hereby authorized to receive federal prisoners in accordance N.M.S.A 1978, Section 33-3-16 (1984).

X. Use of Force

1. MTC's Designated Employees shall be allowed to use force only as authorized by the applicable Operating Standards, Housing Agreements, and New Mexico and federal law.
2. Unless Operating Standards dictate a shorter time period or additional content, a written report will be prepared and provided within twenty-four (24) hours to the County Manager and Sheriff following all use of force incidents, which shall contain the following:

- A description of the events leading up to and the situation resulting in the use of force.
- An accurate and precise description of the incident and reasons for employing force.
- A description of the injuries suffered, if any, and the treatment given and/or received. After force has been used on an Offender or County Offender, a medical professional shall immediately examine the Offender or County Offender.
- Full names of all participants and witnesses.

Y. Safety and Security Procedures

1. General

- a. MTC shall provide, at a minimum, contingency plans in accordance with the applicable Operating Standards to assure operation of the Facility in the event of an employee labor or Offender or County Offender dispute, riot, fire, civil disaster, or power failure. Safety and emergency procedures shall be updated annually and submitted to the Contract Monitor for approval prior to implementation, which approval shall not be unreasonably withheld.
- b. MTC shall promptly notify the County Manager and Sheriff of any alleged criminal activity in the Facility. MTC shall promptly notify the Otero County Detention Center ("OCDC Director") of any anticipated transport of a 12<sup>th</sup> Judicial District Offender from the Facility (medical, court appearance, etc.).

2. Emergency Response Assistance.

- a. The Sheriff's Department shall be informed of and shall, consistent with N.M.S.A. 1978, Section 33-15-3 (2001) and all rules promulgated thereunder, assist in controlling any serious disturbance at the Facility, or in apprehending Offenders who escape from the Facility.
- b. The Sheriffs Department and MTC will maintain open lines of communication in order to provide a coordinated response in the event of a disturbance at the Facility.

3. Escapes

- a. MTC shall exercise its best efforts to prevent escapes from the Facility. If an Offender or County Offender escapes from the Facility, MTC shall comply with the requirements of N.M.S.A. 1978, Section 33-15-3(A)(2) (2001), by making an immediate report thereof by calling the emergency telephone number (911), and will immediately notify the Secretaries of public safety and corrections, the Sheriff and the chief of police of the nearest municipality, the County Manager, and the Contract Monitor or their respective designees. MTC shall also notify the public through a County-approved emergency notification system. If the frequency of escapes from the Facility is substantially in excess of the frequency of escapes from comparable facilities, or MTC evidences a reckless disregard for the safety of the general public, the County may deem the same to be an Event of Default under Article IV.D.2.

- b. The County, the Sheriff, and MTC hereby agree that neither the County, the Sheriff, nor MTC can, despite their experiences, projections, and reasonable efforts, accurately estimate in advance, nor accurately calculate after the fact, the costs and true out of pocket expenses that will be incurred by the County or the Sheriff in pursuing, capturing, and returning any Offenders or County Offenders who escape from the Facility. Some of the factors creating such difficulties in calculations include, but are not limited to, the determination of those costs and expenses that are caused by any escape of an Offender or County Offender from the Facility, rather than items that were previously budgeted and funded by County without regard to such an escape. Because of the extreme difficulty in estimating or calculating such costs and expenses, and in addition to any financial obligations by MTC to the County created by such escape pursuant to the indemnification provisions of Article **VII.A**, below, MTC shall pay to the County the sum of Eight Thousand Five Hundred Dollars (\$8,500), within sixty (60) days, for each incident of escape, without regard to the number of Offenders or County Offenders who escape in any such single incident. These provisions shall not be deemed to be a penalty. An "incident of escape" as used in this provision, shall not include a "walk away" which shall be those circumstances where an Offender or County Offender is determined to be missing from custody while the Offender or County Offender was working outside the secured area of the Facility.

#### 4. Fire Safety

MTC shall implement written fire prevention regulations and practices in accordance with applicable Operating Standards. An administrative level employee shall make weekly fire and safety inspections. A qualified fire and safety officer shall inspect the Facility at least monthly for safety and fire prevention compliance. A copy of the report generated by such monthly inspection shall be provided to the Contract Monitor. Fire protection equipment shall be placed at appropriate locations throughout the Facility and shall be tested at least quarterly. The Facility shall be inspected at least annually by County or state fire officials. The Facility shall have an approved fire alarm system and automatic fire detection system.

### **ARTICLE IV**

#### **Effective Date; Fee Entitlement Dates; Term; and Termination**

##### A. Effective Date

This Agreement is effective on the Effective Date.

##### B. Fee Entitlement Dates

1. MTC shall be paid the Per Diem Rate for Phases 1 and 2 and 3 immediately upon the Effective Date of this Agreement.
2. The County Fee shall be payable to the County pursuant to the terms of Article V.F regardless of the occupancy level of the Facility.

##### C. Term

1. The initial term of this Agreement shall be for a period of five (5) years starting on the Effective Date.
2. This Agreement may be renewed for up to ten (10) additional years upon the exercise of

not more than five (5) two-year extensions. At the end of the initial five (5) year term of this Agreement, or at the end of each of the first four two-year extensions of this Agreement, this Agreement shall be automatically extended for two additional years, unless either party hereto notifies the other in writing that they elect not to extend the Agreement. Such written notification must be given within one hundred eighty (180) days of the end of the initial five (5) year term of this Agreement, or within one hundred eighty (180) days of the end of any of the first four two-year extensions of this Agreement. In no event shall this Contract be extended pursuant to the terms hereof for more than five (5) two-year extensions after the initial term of five (5) years.

D. Termination

1. Pursuant to N.M.S.A. 1978, Section 33-3-27 (2015), either party to this Agreement may terminate this Agreement, with respect to both OCPC and OCPF or either OCPC or OCPF, for Cause upon ninety (90) calendar days advance written notice to the other party. "Cause" as used in this provision shall mean a material breach of the substantive terms of this Agreement, including an Event of Default. "Cause" as used in this provision shall also mean (i) the passing of any state or federal legislation that prevents the County or any User Agency from continuing to contract the operation of OCPF and/or OCPC to MTC as a private operator, or (ii) an impeding or actual termination or modification of any User Agency agreement to the extent MTC, in its discretion, determines such termination or modification will render its continued operation of both OCPC and OCPF or either OCPC or OCPF economically unviable. To the extent this Agreement is terminated pursuant to this Article IV.D.1 only with respect to OCPC or OCPF, and not both, the Agreement will continue in full force and effect with respect to the non-terminated Facility. In such event, the term Facility throughout this Agreement shall refer only the non-terminated Facility.

2. Events of Default

a. Each of the following will constitute an Event of Default under this Agreement:

- A material failure by MTC or County to keep, observe, perform, meet or comply with any applicable covenant, agreement, term, or provision of this Agreement including, without limitation, a failure that seriously affects the operation of the jail, pursuant to N.M.S.A. 1978, Section 33-3-27 (F),(2015) or a failure to meet minimum standards and conditions of incarceration, which failure in either case continues for a period of thirty (30) days after the breaching party has received written notice thereof.
- A material failure to meet or comply with any applicable federal, state, or local law or requirement that continues for a period of thirty (30) days after the breaching party has received written notice thereof.
- Evidence of MTC's insolvency, including any of the following: MTC's admission of its inability to pay its debts; a general assignment for the benefit of MTC's creditors; a decree or order appointing a receiver or trustee for MTC or for substantially all of MTC's property; the commencement of a proceeding under any law relating to bankruptcy, insolvency, reorganization, or the relief of debtors instituted by or against MTC; and the issuance of any judgment, writ of attachment or execution, or any similar process levied against a substantial part of MTC's property.
- Evidence that any statement, representation, or warranty in this Agreement is false, misleading, or erroneous in any material respect.

Upon the occurrence of an Event of Default, and if a breaching party believes that the default specified in the notice cannot be corrected within such thirty (30) day period, and the breaching party, through a diligent, ongoing, and conscientious effort to correct the default, believes the cure will take more than thirty (30) days, the breaching party may submit a plan for cure for the non-breaching party's approval, in the non-breaching party's sole discretion. If the non-breaching party allows the breaching party to pursue its plan to cure the Event of Default, the thirty (30) day cure period shall be tolled during the time the breaching party diligently, conscientiously, and timely undertakes to cure the Event of Default in accordance with the approved plan.

3. Upon the termination of this Agreement for any reason or upon the completion of the term of this Agreement, County shall remain obligated to pay MTC, payable solely from Revenues, all sums due and owing to MTC pursuant to the terms of this Agreement, up to and including the final day during which MTC operates the Facility pursuant to this Agreement. This provision does not limit or affect MTC's rights to recover or be reimbursed all costs and expenses incurred for FF&E and Operating Expenses (which includes working capital purposes) as authorized in the Bond Ordinance. The obligation of MTC to make contributions to Bond payments, as described in Article V.I. below, shall terminate as of the effective date of the termination of this Agreement.

## **ARTICLE V**

### **Compensation, Invoicing, and Fees**

#### **A. MTC Per Diem Rates**

For all Phase 3 Offenders housed in the Phase 3 building, the County shall require and instruct the Trustee to pay MTC compensation for the services provided hereunder as follows:

- (a) at the rate of \$119.39 per Offender per Offender Day for the first 500 hundred Offenders or County Offenders per Offender Day, with a guaranteed minimum of 500 Offenders per Offender Day, plus (i) a variable rate of \$7.55 per Offender or County Offender, per Offender Day for Offenders 1-500, and (ii) a variable rate of \$59.93 per Offender or County Offender, per Offender Day for Offenders 501-740; and (iii) a variable rate of \$55.96 per Offender or County Offender, per Offender Day for Offenders 741-1000; and
- (b) \$29.87 per hour (regular pay) and \$35.97 per hour (overtime pay) in the event the total detention dorm officers per shift is required to exceed (a) 12 FTE, where the Offender population at the facility is 500 or less, or (b) 14 FTE, where the Offender population exceeds 500; and
- (c) \$29.87 per hour (regular pay) and \$35.97 per hour (overtime pay) in the event transportation officer staffing is required to exceed (a) 12.80 FTEs for the first 500 Offenders, and (b) 19.20 FTEs for Offenders 501-740, and (c) 25.60 FTEs for Offenders 741-1000; and
- (d) Up to a total of \$5,000 for miscellaneous charges incurred by MTC, as approved by the ICE Contracting Officer's Representative.

For all Phases 1 and 2 Offenders, except Offenders sent to the facility by the New Mexico Corrections Department ("NMCD Offenders"), housed in the Phases 1 or 2 buildings, the

County shall require and instruct the Trustee to pay MTC compensation for the services provided hereunder at a rate of \$83.28 per Offender or County Offender, per Offender Day.

For all NMCD Offenders, housed in the Phases 1 or 2 buildings, the County shall require and instruct the Trustee to pay MTC at a rate of \$76.42 per NMCD Offender, per Day, with a minimum guarantee of 546 NMCD Offenders, per Day.

- B. Transportation and Guard Services Payment. The County shall direct the Trustee to reimburse MTC for all transportation expenses MTC incurs to transport Offenders or for providing guard services at the rate set out in the Housing Agreements.
- C. Billings and Collections
1. MTC will maintain all records relating to Per Diem Rates, billing rates, and occupancy and shall bill the County, with a copy to the applicable User Agencies, on a monthly basis, in accordance with the billing and collections procedure developed by MTC, by the fifth business day of the following month for the preceding month's services. Production and maintenance of these invoices is the sole responsibility of MTC and MTC assumes all responsibility for the accuracy and veracity of such records and the collection of all payments. Invoices shall include sufficient information to meet the billing requirements of each User Agency and County and shall include, at a minimum, the Offender's start date, release date, number of days at the Facility, booking number, daily contract rate pursuant to the applicable Housing Agreement and relevant totals.
  2. MTC will invoice transportation and guard services as a separate line item within the above invoices. MTC shall also provide to the County and User Agencies copies of back-up documentation when requested to verify invoices. MTC shall also send monthly statements to User Agencies that include charges for late payment of outstanding invoices. No late payment statements shall be sent to a User Agency until payment of an invoice is sixty (60) days past due.
  3. Except as limited herein, all Revenues generated by the operation, management, and maintenance of the Facility shall be deposited in the Revenue Fund. However the following types of revenue are not Revenue (as that term is defined herein and in the Bond Ordinance), shall not be deposited in the Revenue Fund, and are deemed to be the sole and exclusive property of MTC in which the County shall have no interest or claim: Revenues received by MTC relating to: (a) reimbursement to MTC by a third- party for transportation or guard service expenses incurred, (b) reimbursement to MTC by a third-party for health care and related medical expenses incurred, (c) reimbursement to MTC by a third-party for the cost of construction, FF&E, renovations, improvements, or repairs to the Facility completed as a condition precedent to the receipt or housing of Offenders or County Offenders, and (d) reimbursement to MTC by a third-party for Offender or County Offender education, treatment, or training through an agreement entered into pursuant to the terms of Article 111.R.2, above. Additionally, the following types of revenue are not Revenue (as that term is defined herein and in the Bond Ordinance), shall not be deposited in the Revenue Fund, and are subject to other limitations and restrictions by law or this Agreement: Revenues relating to: (i) the operation of the Offender or County Offender commissary, (ii) the operation of the Offender or County Offender telephone system, (iii) the operation of vending machines for the staff and the public, and (iv) the sale of hobby, crafts, and related products created by the Offenders or County Offenders.
  4. When MTC proposes to make an adjustment to a bill or invoice that previously was sent to a User Agency, MTC shall promptly forward a copy of the proposed billing adjustment

to the County.

5. The amounts described or to be determined as Per Diem Rates or County Housing Rates to be paid to MTC, set forth in Article V.A. above, are subject to renegotiation and adjustment so as to fairly compensate MTC for the services it provides to the Offenders or County Offenders. MTC and County agree to adjust the Per Diem Rates to be paid to MTC pursuant to Article V.A. above, so as to fairly compensate MTC, after a review of each of the terms and conditions of each Housing Agreement with each User Agency. With respect to the ICE Agreement, the amounts described in Article V.A. above are based upon the mutual assumption by the Parties that ICE will contract with the County for the housing of its Offenders, with no more than a customary scope of services required. In the event that those assumptions are incorrect, the provisions of this paragraph shall require a change in the amount of Per Diem Rate for Phase 3 to be paid to MTC, so as to fairly compensate MTC for the services required to be provided to the Offenders housed at the Facility.
6. MTC shall pay its employees at the rates required by the Service Contract Act, current Department of Labor Area Wage Determination ("WD"), as set forth in the Housing Agreements, as amended. If a WD is issued under the Housing Agreements that requires MTC to pay increased wages or back wages at any time, MTC is entitled to all amounts paid pursuant to a request for equitable adjustment under the Housing Agreements. If MTC determines that the additional costs and expenses that will be incurred or are likely to be incurred by MTC in complying with a revised WD will not be paid or reimbursed to MTC hereunder, MTC may terminate this Agreement upon thirty days prior written notice to the County. In the event of such termination, the County shall remain liable for such additional costs and expense up through the date of termination.

D. County Housing Rate

County shall pay the Trustee the County Housing Rate for each County Offender housed at the Facility per Offender Day. Such payment shall be made within thirty (30) days of the date that County receives an invoice from MTC for the housing of such County Offenders.

E. Payment of Per Diem Rate

MTC is not entitled to receive payment of the Per Diem Rates or County Housing Rate until the payment from a User Agency or County has been deposited into the Revenue Fund for the respective Offender Day. On the 1st and 15th day of each month, the County, in cooperation with MTC, will review the Revenue Fund for payments received from User Agencies and County, and instruct the Trustee to pay MTC all relevant Per Diem Rates and/or County Housing Rates immediately.

F. County Fee

1. Subject to the conditions of this Article V.F.1, MTC shall pay the County the County Fee, calculated as set forth below, for each Offender Day that an Offender is housed at the Facility. The County Fee shall become due and payable for an Offender Day in the calendar month following the month in which the Per Diem Rates described in Article V.A. A above are received by MTC for the housing of an Offender for said Offender Day.
2. The County Fee for the Phase 3 building shall be One Dollar and 50/100 (\$1.50) per Offender or County Offender, per day Offender Day, with a minimum guarantee of 500 Offenders. The County Fee for the Phases 1 and 2 buildings shall be One Dollar and 55/100 (\$1.55) per Offender, County Offender, or NMCD Offender.

3. Pursuant to N.M.S.A. 1978, Section 33-15-4B (2003), with respect to any Housing Agreement that may be executed to facilitate the housing of Offenders on behalf of any User Agency outside of the State of New Mexico the County Fee shall be a minimum of Two Dollars (\$2.00) per Offender, provided that this Article V.F.3 shall not apply to Offenders housed pursuant to Housing Agreements with federal agencies or tribal jurisdictions.

G. Source of Funds

[Omitted].

H. Release and Authority to Act

1. Except as limited herein, MTC's acceptance of final payment of the amount due under this Agreement shall operate as a release of the County, its officers and employees from all liabilities, claims and obligations to pay any further or additional sums for the performance of this Agreement by MTC. No other rights of MTC or obligations of County shall be deemed to be released by this Article V.H.1. This provision shall not release, reduce or in any way limit the County's obligations to assume responsibility for its conduct, including, but not limited to those described in Article VII.A.2. and 6. below. This Section V.H.1. shall not limit or reduce the County's liability for its acts or failure to act in accordance with this Agreement, subject to the immunities and limitations of the New Mexico Tort Claims Act. MTC agrees not to purport to bind the County unless MTC has express written authority to do so, and then only within strict limits of that authority.
2. Except as limited herein, County's delivery of the final payment of the amount due under this Agreement shall operate as a release of MTC, its officers and employees from all liabilities, claims, and obligations to refund or return any money paid to MTC pursuant to this Agreement. No other rights of County or obligations of MTC shall be deemed to be released by this Article V.H.2. This Article V.H.2. shall not limit or reduce MTC's liability for its acts or failure to act in accordance with this Agreement or its obligations of providing a defense or indemnification. County agrees not to purport to bind MTC unless County has express written authority to do so, and then only within strict limits of that authority.

I. Bond Payment Contributions

Subject to the provisions of this Article V.I during the term of this Agreement, after the Commencement Date, if there are insufficient Revenues in a given calendar month to cause to be deposited in the Bond account (maintained by the Trustee pursuant to the Bond Ordinance) an amount equal to one-sixth (1/6th) of the interest portion of the Bond payment due under the Bond Ordinance on the next succeeding payment date and one-twelfth (1/12th) of the principal portion of the Bond payments due under the Bond Ordinance on the next two succeeding payment dates from Revenues, then MTC shall pay to the Trustee for deposit in the Bond account an amount equal to the additional funds necessary to fulfill such obligations. This obligation of MTC to make payments to the Trustee, shall be reduced by amounts available for payment in the Bond account for a given month and accrued interest on the debt service reserve. This obligation shall arise in a given calendar month, only after the Trustee has transferred into the

Bond account all funds available for such transfer pursuant to Sections 18.D ("Acquisition Account"), 16.E ("Revenue Fund"), and 23.E. ("Surplus Fund") of the Bond Ordinance. MTC's obligation to make a payment to the Trustee pursuant to the provisions of this Article V.I, is not conditioned upon any transfer of funds by the Trustee from the reserve fund. This commitment of MTC shall remain in full force and effect only so long as the County is doing all things reasonably necessary and prudent to: (a) support the efforts of MTC to seek out and provide to the County sources of Offenders to be housed at the Facility; and pursuant to the terms of this Agreement, enter into contracts with other governmental entities for the housing of Offenders at the Facility upon such reasonable terms as the County shall deem proper. MTC's obligation under this Section will terminate as of the effective date of termination of this Agreement.

## **ARTICLE VI**

### **Independent Contractor and Personnel**

#### **A. Independent Contractor**

1. MTC is associated with the County only for the purposes and to the extent set forth in this Agreement and, with respect to the performance of the services set forth herein, MTC is and shall be an independent contractor and, subject to the terms of this Agreement, shall have the sole right to supervise, manage, operate, control, and direct the performance of the services to be provided under this Agreement. Nothing in this Agreement shall be deemed or construed to create a partnership or joint venture, to create a relationship of employer, employee, or principal agent, or to otherwise create any liability for the County whatsoever with respect to the indebtedness, liabilities, or obligations of MTC or any other entity. MTC shall be solely responsible for (and the County shall not have obligation with respect to) the interviewing, hiring, training, assignment, control, management, compensation, promotion, or termination of MTC's employees who constitute the Facility's administration and staff. However, such activities of MTC shall be subject to on-site monitoring by the County.
2. MTC, its agents and employees are independent contractors performing services for the County, and are not employees or agents of the County. MTC and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles (except as expressly permitted in this Agreement), or participate in any other benefits afforded to employees of the County.

#### **B. Local Hiring Preferences**

1. MTC shall use reasonable efforts to advertise for and hire local personnel as employees at the Facility. Such efforts shall include, but are not limited to advertising for prospective employees in the Alamogordo Daily News, being a newspaper of general distribution in the City of Alamogordo, New Mexico, and Otero County, New Mexico. Additionally, MTC shall use reasonable efforts to purchase goods and services in connection with the operation, maintenance, and management of the Facility from local vendors in Otero County, New Mexico, and the City of Alamogordo, New Mexico when economically feasible and responsible.
2. MTC shall also encourage its subcontractors to similarly advertise for and hire local personnel and purchase goods and services locally, in Otero County, New Mexico.

C. Subcontracting and Assignment

1. The County acknowledges and agrees that MTC may subcontract the food service without prior authorization by the County. No other portions of this Agreement shall be assignable or subcontracted by MTC without the express written approval of the County, provided that the County shall be deemed to have approved all subcontractors working at the Facility as of the effective date of this Agreement. In no event shall MTC thereby be relieved of any of its obligations set forth herein. Notwithstanding any such subcontract or assignment, MTC shall remain liable for the performance of its duties and obligations under this Agreement. MTC may, upon notice to the County, assign the proceeds of this Agreement.
2. No contractual relationship shall exist between the County and any of MTC's subcontractors, and the County shall accept no responsibility whatsoever for the conduct, actions, or omissions of any subcontractor selected by MTC. MTC shall be responsible for the management of its subcontractors in the performance of their work.

D. Employee Background Investigations

Prior to hiring an employee to be assigned to the Facility, MTC shall conduct a background investigation for each such prospective employee. Background investigations shall consist of, verification of the employee's prior employment history and Triple I (NCIC) background checks obtained in a manner consistent with state and Federal regulation. The results of the employee background investigation shall be made available to the County Manager and shall be kept in each employee's file. In addition to the background investigation reports, MTC shall maintain on file for each employee one complete fingerprint chart. Individuals with prior felony convictions or misdemeanor convictions for crimes of dishonesty (defined as larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, willful misapplication or fraud) or domestic violence, shall not be employed by MTC at the Facility except to the extent that such employment is subject to the Criminal Offender Employment Act at Section 28-2-1 et seq., NMSA 1978. A Security Addendum required by Title 28, Code of Federal Regulations Part 20, is appended hereto and incorporated by reference herein.

E. Non-Discrimination

MTC shall at all times operate the Facility in compliance with all applicable State and federal laws with respect to non-discrimination in hiring, promotion, or pay of employees. MTC shall post in a conspicuous place visible to employees and job applicants notice of such non-discrimination policy. Upon request, MTC shall provide the County with proof of its efforts to promote non-discrimination and with copies of all discrimination reports it is required to file with the Equal Employment Opportunity Commission, the New Mexico Human Rights Bureau or with any other governmental agency.

F. Warden

Prior to hiring the Warden and Second-in-Command at the Facility, MTC shall submit the names of such prospective employees to the County Manager along with all relevant paperwork (i.e., resumes, job duties, past experience, background check, interview notes, employment application, etc.). MTC shall not hire such individuals without prior written approval of the County manager, which approvals shall not be unreasonably withheld. County manager shall approve or reject the proposed employees within five (5) working days of the date that they receive the relevant paperwork. If such acceptance or rejection is not received within said five (5) working day period, the employment of said proposed employees by MTC shall be conclusively deemed to have been approved.

## **ARTICLE VII**

### **Indemnification, Insurance, and Environmental**

#### **A. Indemnification**

1. MTC shall indemnify, defend, and hold harmless the County, the Sheriff, the OCDC Director, and their respective agents, officials and employees, (the "Indemnitees") from any and all claims, demands, suits, causes of action, proceedings, loss, cost, expenses, liabilities or damages of every kind and description ("Claim"), including, but not limited to, all attorney fees and/or litigation expenses, that may be brought or made against or incurred by the Indemnitees on account of loss of, or damage to any property or for injuries to or death of any person, caused by, arising out of, or by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of MTC, MTC's employees, agents, representatives, or subcontractors, their employees, agents, or representatives, in connection with or incident to the performance of this Agreement, or arising out of workers compensation claims or claims under similar such laws or obligations. MTC's obligation under this Article VII.A.1 shall not extend to any liability caused by the negligence, misconduct or directives of the County, the Sheriff or their respective agents, officials or employees.
2. Subject to paragraph 1, above, the County shall be obligated to provide its own defense as to all Claims that may be brought or made against the County, the Sheriff, or the OCDC Director, their employees, agents, representatives, or subcontractors, on account of loss of, or damage to any property or for injuries to or death of any person, caused by, arising out of, or by reason of any act, omission, professional error, fault, mistake, or negligence of the County, the Sheriff, the OCDC Director or their employees, agents, or representatives, in connection with or incident to their performance of this Agreement, the Facility or the Offenders housed in or about the Facility. Subject to paragraph 1, above, and subject to the Tort Claims Act and sufficient funds available, the County and the Sheriff shall remain responsible for their respective obligations of contribution to pay for that portion of any damages, costs, fees or expenses or other monies or relief, determined by a final judgment to be the responsibility of the County or the Sheriff.
3. When MTC has a duty to defend under Article VII.A.1 above, MTC may proceed with counsel of its own choosing upon the approval of said counsel by the County, which approval shall not be unreasonably withheld. The County, at its sole discretion and expense, shall have the right to separate counsel in any such action or proceeding. Additionally, if by operation of law, County becomes obligated to provide a defense and separate counsel for a co-defendant in an action for which MTC is obligated to provide a defense for County pursuant to Article VII.A.1 above, then MTC, at its sole cost and expense, shall provide separate counsel of its own choosing for such co- defendant, subject to the approval of said counsel by the County, which approval shall not be unreasonably withheld. If counsel for County is provided by an insurer of MTC, and MTC has no authority over the selection or approval of such Counsel, then, concomitantly, County shall have no power of selection or approval of such counsel.
4. In the event the County is not fully or timely indemnified as required hereunder, it shall have the right, in addition to any other remedies available to it by law or under this Agreement, to set off against any monies owed by the County to MTC an amount sufficient to be fully indemnified by MTC, including costs of defense. However, wrongfully withholding or offsetting funds owed to MTC pursuant to this provision, or withholding or

offsetting an incorrect amount, shall be deemed to be a failure to timely pay a sum due to MTC, and shall constitute an Event of Default under this Agreement. County acknowledges and agrees that any reasonable delay of any MTC insurer to make a payment due for indemnification, shall not permit or authorize County to withhold or offset against funds owed to MTC, or otherwise be considered to be a breach of this Agreement.

5. The County shall promptly notify MTC of a summons or notice of claim subject to indemnification by MTC as promptly as possible after receipt of such summons or notice of claim by the County Manager, to allow MTC the opportunity to timely respond thereto.
6. Notwithstanding any provision of this contract, MTC shall have no obligation to insure, defend, indemnify, or hold harmless the County from any Claim (including attorney fees and other costs of litigation) arising out of or relating to MTC's acts if directed by application or enforcement of any County policy or County order, provided that nothing in this paragraph shall otherwise affect MTC's obligation to indemnify the County for any Claims arising out of or relating to any alleged act, omission, professional error, fault, mistake, or negligence in the application or enforcement of such Imposed Requirements.

B. Waiver of Defenses

Neither the County nor MTC shall waive, release, or otherwise forfeit any possible defense either may have regarding claims arising from or made in connection with the operation of the Facility without the consent of the other party, which consent shall not be unreasonably withheld. The County and MTC shall preserve all such available defenses and cooperate with each other to make such defenses available for each other's benefit to the maximum extent allowed by law. This provision shall include any defenses the County may have regarding litigation, losses, and costs resulting from claims or litigation pending on the Effective Date of this Agreement or arising thereafter from occurrences prior to the Effective Date of this Agreement.

C. County Insurance

Subject to the provisions of paragraph III(O), above, the County shall insure or self-insure the Facility against any and all damage or loss to the buildings and fixtures in an amount adequate to replace or restore the building and fixtures.

D. MTC Insurance

During the performance of services under this Agreement, MTC shall maintain an insurance policy for the mutual protection and benefit of it and the County, naming the County and its agents and employees as additional named insureds (by endorsement and unless prohibited by law) to cover claims that may arise out of or result from MTC's services under this Agreement, whether performed by MTC or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The insurance policy required shall be for not less than any limits of liability set forth below or imposed by law, whichever is greater, and shall include general liability coverage for all expenses and liabilities assumed under this Agreement by MTC. Such insurance shall be issued by a company that is permitted to conduct business in the state of New Mexico and that shall maintain a rating of not less than "A:7" in Best's Key Rating Guide. Such insurance shall provide coverage as follows:

For claims under worker's compensation, disability benefit, and other similar employee benefit acts in accordance with New Mexico law;

For claims for damages because of bodily injury, occupational illness or disease, death of

employees, and other similar employee benefit insurance customarily carried by private operators of facilities similar to the Facility;

For claims for damages because of bodily injury, illness or disease, or death of any person other than an employee;

For claims for damages sustained by any person as a result of an act directly or indirectly related to the employment of such person by MTC;

For claims for damages because of injury to or destruction of tangible personal property, including loss of use resulting therefrom;

For claims for bodily injury, including without limitation claims for vehicular liability, with the following limits: ten million dollars (\$10,000,000.00) each occurrence and twenty million dollars (\$20,000,000.00) in the aggregate;

For claims based on civil rights violations with the following limits: ten million dollars (\$10,000,000.00) each occurrence and twenty million dollars (\$20,000,000.00) in the aggregate;

For claims based on damage to property owned by third parties, product liability, defamation of character, libel, and slander with the following limits: ten million dollars (\$10,000,000.00) each occurrence and twenty million dollars (\$20,000,000.00) aggregate.

For claims related to Business Interruption in an amount sufficient to cover MTC's fixed operating costs, which shall pay, first, all MTC's costs incurred in carrying out this Agreement and, second, to the County for any expenses incurred by it due to the interruption of the operation of the Facility. The proceeds of any business interruption insurance are to be paid to the Trustee for deposit in the Revenue Fund. MTC shall cause its medical subcontractors to carry medical malpractice insurance in an amount no less than that required in the New Mexico Medical Malpractice Act, N.M.S.A. 1978, Sections 41-5-1 et seq. (1992), or the amount required to meet the maximum liability under the New Mexico Tort Claims Act, N.M.S.A. 1978, Section 41-4-19 (2007), whichever amount is greater.

E. Indemnification Still Required

Compliance with the foregoing insurance requirements shall not relieve MTC from any liability under the indemnity requirements of this Agreement.

F. Certificates of Insurance and Cancellation

All insurance policies required under this Agreement shall be procured and maintained with a financially sound insurance company or companies as described above. MTC shall provide insurance policies and endorsements, with the County as additional named insured, entitled to all notices issued thereunder, in a form and for terms satisfactory to the County. Within thirty (30) days of the Commencement Date, copies of such insurance policies shall be provided to the County.

G. Performance Bond

Pursuant to the requirements of N.M.S.A. 1978, Section 33-3-27 (2015), MTC shall provide the County with a performance bond in the amount of One Million and No/100 Dollars (\$1,000,000.00) covering the Term of the Contract. All sureties providing said Performance Bond shall be registered to do business in the state of New Mexico. The Performance Bond shall reimburse the County for damages incurred in contracting with a replacement operator of

the Facility, in the event that County terminates this Agreement for cause.

H. Hazardous Materials; Compliance with Laws; Environmental Indemnity

1. MTC's obligations expressly exclude any work or obligations of any nature associated or connected with the identification, abatement, cleanup, control, removal, or disposal of any Hazardous Materials that are or may be included in the structures and equipment or into the environment at and adjacent to the Facility, or that may be released into the structures and equipment at and adjacent to the Facility as a result of activities at the Facility.
2. The County makes the following representations to MTC, with the intent and expectation that MTC will rely upon these representations in entering into this Agreement.
  - a. County has no actual knowledge of any Hazardous Materials at the site of the Facility before or during construction of the Facility.
  - b. County has never occupied the Facility.
  - c. County has not received any report or notice of any problem or condition relating to Hazardous Materials at the Facility.
  - d. To the best of its actual knowledge, County represents that there are no Hazardous Materials at, in, on, under or about the Facility (or adjacent thereto) that will in any way affect the performance of this Agreement or delivery of the services required hereunder and that the Facility does and shall comply with all applicable Environmental Requirements.
3. The County shall use commercially reasonable efforts to advise MTC of the presence of asbestos or other hazardous materials at, in, on, under, or about the Facility of which the County is aware.
4. Should MTC become aware of or suspect the presence of Hazardous Materials and reasonable precautions will be inadequate to prevent bodily injury or death to persons resulting from or related to such Hazardous Materials, MTC shall notify the County and shall stop the services in the affected area immediately without incurring penalties under this Agreement. The County will be responsible for doing whatever is necessary to correct the condition or render such materials or substances harmless in accordance with all applicable laws. Such a suspension of work shall be considered an excusable event of non-performance because of Force Majeure.
5. MTC shall not be obligated to reinstate the delivery of any services under this Agreement or other work suspended pursuant to this Article VII.H.5 until it receives verification from the County that such condition has been corrected or such Hazardous Materials have been rendered harmless and a reinstatement fee has been paid in such amount or amounts, and payable on such date or dates, as shall be reasonably acceptable to MTC, as will reimburse MTC for its actual costs (including overhead) that will be incurred in reinstating delivery of the services.
6. Though MTC has obligations to defend or indemnify County under certain circumstances herein, such obligations are limited by the provisions of this Article VII. The County shall remain solely responsible for, and shall make no demand for any defense, contribution, or indemnification from MTC, any subcontractor of MTC, their respective directors, officers, employees, agents, assigns, and successors, from and against any and all losses, costs, damages, expenses (including reasonable attorney's fees), claims, causes of action, or liability, directly or indirectly, relating to or arising from the County's use, storage, release,

discharge, or of Hazardous Materials on, under, or about the Facility, or the noncompliance with this Article VII.H.6.

7. As used herein the term "Hazardous Material" means any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste, hazardous substance, pollutant or contaminant under any Environmental Requirement, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel, fuel, another petroleum hydrocarbon product, asbestos, asbestos- containing materials or polychlorinated biphenyls.
8. As used herein, the term "Environmental Requirements" shall collectively mean all present and future laws or the equivalent of or by any governmental authority and relating to or addressing the protection of the environment or human health.

The obligations set forth in Article VII, except insurance coverage shall survive the termination or expiration of this Agreement.

## **ARTICLE VIII**

### **Other Obligations**

#### A. Offender Report

MTC shall provide County with the Offender Report, as required herein. MTC shall provide County with the Offender Report for all Offenders upon a quarterly basis, containing the required information for the immediately preceding quarter. The Offender Report shall include at least the following:

1. Average Offender population for the month
2. Average Offender population by source
3. Per Diem rate, per population source
4. Debt service coverage rate

#### B. Offender Records Confidentiality

Subject to MTC's obligations under Article III(B)(IV), above, MTC shall establish appropriate safeguards to protect the confidentiality of Offender and County Offender records to the extent required under New Mexico law, and to minimize the possibility of theft. Any and all records provided to MTC employees at the Facility are deemed confidential and privileged. These records shall not be disclosed to Offenders, County Offenders, or to any other person, other than authorized County employees who have a need to access such information. For the purpose of requests for information submitted by third parties to MTC under the IPRA, the parties agree that the official custodian of all confidential Offender and County Offender information shall be MTC to the extent required by IPRA. Upon receiving any request for Offender or County Offender information, MTC shall immediately forward the request to the Contract Monitor and will notify the requesting party in writing within three (3) business days that it has so forwarded the request. Forwarding such request does not relieve MTC of its obligations under Article III(B)(IV), above.

#### C. Transition at Termination Date

In the event this Agreement is terminated, MTC shall cooperate fully with the County to insure a smooth, effective, and economical transition of the operation and maintenance of the Facility. This obligation shall survive the termination of this Agreement or any part of this Agreement.

D. Obligation of Specific Performance

In the event a dispute arises between the County and MTC regarding this Agreement or any of the provisions hereof, the County and MTC shall be required to continue performance of their respective obligations during the pendency of any such dispute. The County shall continue to require and instruct Trustee to make all payments to MTC as required hereunder, and any other actions required hereunder in a timely manner as set forth in this Agreement. Likewise, MTC shall continue to perform its obligations in accordance with the terms of this Agreement notwithstanding the existence of any dispute between the parties. Both the County and MTC shall have the right to compel specific performance by the other party of its respective contractual obligations and to institute any legal action necessary to compel such specific performance. The obligation of either party to perform its respective obligations hereunder may only be terminated as provided for in Article IV of this Agreement or applicable law.

**ARTICLE IX**

**Monitoring & Reporting**

A. Contract Monitor

The County Manager shall appoint a Contract Monitor, who shall be the employee of, or independent contractor working for, the County. Until such time as a Contract Monitor is appointed, the County Manager shall serve as the Contract Monitor. The Contract Monitor shall be the official liaison between the County and MTC on all matters pertaining to this Agreement and the provision of services hereunder. MTC shall provide basic office supplies to the Contract Monitor including a telephone line and reasonable use of copiers and facsimile machines.

B. Reporting

MTC shall provide monthly summary reports by the 15th day of each month, relating to the immediately preceding month, and such reports shall include without limitation:

- An overview on disciplinary matters including disciplinary actions and the results of disciplinary hearings.
- Number and type of Offender grievances.
- Incident reports including without limitation those incidents that require the use of force.
- Offender progress reports.
- Staff turnover rates.
- Sick leave usage.
- Leaving custody reports.

- Reports on level of Offender participation in all programs including, but not limited to, education, counseling, and recreation programs.

C. Policies and Procedures Manual

MTC shall prepare a detailed policy and procedures manual that includes all aspects of the Facility operations, in compliance with the requirements of the User Agencies. This includes without limitation procedures to facilitate monitoring the Facility, use of force, visitation, disciplinary action, personnel policy, medical care, Offender grievance, staff training, emergency procedures, and security. Post orders for all Facility staff positions shall be submitted to the County at least thirty (30) days prior to the Commencement Date.

D. Quality Control Program

MTC shall develop and implement a Quality Control Program to ensure all contractual requirements are met. MTC shall submit Quality Control and self-compliance reports to the County quarterly.

E. Statistics

MTC shall provide the County with statistical information on the Facility population, including without limitation, average length of stay, number of sentenced Offenders, number of pre-adjudicated Offenders and type of charges, composition of Offender population by age, race, sex, and crime.

F. Relationship with User Agencies

MTC shall develop policies and procedures that promote a positive relationship with all User Agencies, law enforcement officials, and all levels of the judiciary.

G. Outside Reports

MTC shall provide to County copies of reports related to the Facility drafted by outside agencies, including without limitation, the Department of Health, the Department of Corrections, the American Corrections Association, Bureau of Prisons, and any other federal agencies.

H. Financial Statements

MTC will provide to the County copies of MTC's annual year-end audited financial statements within forty-five (45) days of the date that such statements are delivered to the management of MTC.

I. Compliance with Agreement

1. The Contract Monitor, or any State entity pursuant to authority granted under State law, may audit MTC's effectiveness and compliance with this Agreement by reviewing budget documents, books, records and reports maintained by MTC relating to the repair, maintenance and operation of the Facility, by visual observation of the Facility, and through interviews with MTC employees and Offenders.
2. The Contract Monitor shall not attend meetings involving individual employee disciplinary matters, employee reviews and other personnel or human resource matters, meetings with attorneys for MTC or their agents or representatives, or other

privileged proceedings or meetings with employees or officers of MTC's corporate offices. MTC shall notify the County Manager and the Contract Monitor of the outcome of any employee disciplinary matters.

3. The Contract Monitor shall not be involved in any maintenance of the Facility.

J. Self-Monitoring

MTC shall develop and submit to the County for its approval (not to be unreasonably withheld) a detailed plan illustrating how MTC intends to monitor operations of the Facility to ensure compliance with the terms of this Agreement. MTC shall conduct an internal, written operational audit based on ACA standards at least annually with the results forwarded to the County Manager via the Contract Monitor.

**ARTICLE X**

**Miscellaneous Provisions**

A. Binding Agreement

After the Effective Date, this Agreement shall inure to the benefit of the County and MTC and shall be binding on them and their respective successors and assigns, subject to the limitations set forth elsewhere in this Agreement.

B. Invalidity and Severability

Except in the case of a provision required by state law, if any other provision of this Agreement is declared null and void, the validity of the remaining provisions shall not in any way be affected thereby.

C. Terminology and Definitions

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

D. Governing Law

This Agreement shall be governed by the laws of the State of New Mexico.

E. Notices

All notices called for or contemplated under this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or three days after mailing to each party by certified mail, return receipt requested, postage prepaid, addressed as set forth below:

If Notice is to be given to the County:

Otero County  
Attn: County Manager and Contract Monitor  
1101 New York Avenue Alamogordo,  
NM 88310

If notice is to be given to Management & Training Corporation:

Management & Training Corporation  
Attention: Senior Vice President, Corrections  
500 North Marketplace Drive  
P.O. Box 10  
Centerville, Utah 84014

F. Entire Agreement

This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all prior and contemporaneous discussions, agreements, covenants, and understandings have been merged into this written Agreement. No other prior or contemporaneous discussion, agreement, covenant, or understanding, verbal or otherwise, of the parties or their agents shall be valid and enforceable unless embodied herein.

G. Prohibition Against Assignment

It is hereby agreed by the parties that there shall be no assignment or transfer of this Agreement, except as pre-approved herein at Article VI.C.1., without the prior written approval of the County, which shall not be unreasonably withheld.

H. Amendment

No changes to this Agreement shall be effective unless made upon written agreement of both parties and approved by the New Mexico Attorney General, the Department of Finance and Administration Local Government Division, and the General Services Department Risk Management Division of the State of New Mexico.

I. Confidentiality

Any confidential information provided to or developed by either party in the performance of this Agreement shall be kept confidential, unless otherwise required by law, and shall not be made available to any individual or organization without the prior written approval of the other party, which approval shall not be unreasonably withheld. This Article X.I will survive the termination or expiration of this Agreement.

J. Headings

The headings used herein are for convenience of reference only and shall not constitute a part hereof or affect the construction or interpretation of this Agreement.

K. Waiver

No failure on the part of either party to exercise, and no delay in exercising, and no course of dealing with respect to any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in this Agreement are cumulative and non-exclusive of any remedies otherwise provided by law or in equity, except as expressly set forth herein.

L. Force Majeure

The failure to perform any of the terms and conditions of this Agreement resulting from Force Majeure shall not be considered a breach or an Event of Default. As used herein, the term "Force Majeure" shall mean natural and other disasters, including by not limited to, floods, earthquakes, wars, epidemics, landslides, lightning, storms, explosions, and any other act of God, not within the control of the party.

M. Counterparts

This Agreement may be executed in any number of, and by the different parties hereto on, separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

N. Venue

Venue for all claims arising under or related to this Agreement shall be in a Judicial District Court for the County of Otero, New Mexico.

O. Third Party Rights

The provisions of this Agreement are for the sole benefit of the parties hereto and shall not be construed as conferring any rights on any third person.

P. Inspection of Public Records

Every person has a right to inspect any public record unless the record is otherwise exempted by the Inspection of Public Records Act, N.M.S.A. 1978, Sections 14-2-1, 14-2-1.1, 14-2-1.2, (2023).

Q. Appropriations and Authorizations

Notwithstanding any other provision of this Agreement, the terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the County commission for the performance of this Agreement. If sufficient appropriations and authorization are not made by County Commission, this Agreement shall terminate upon written notice being given by the County to MTC. The County's decision as to whether sufficient appropriations are available shall be accepted by MTC and shall be final.

R. Forbearance Agreement

This Agreement shall be subject to the terms of the Second Forbearance Agreement entered into effective as of April 1, 2022, by and among (i) U.S. Bank Trust Company, National Association, not individually, but as Trustee in respect of the Building 3 Bonds, (ii) Otero County, New Mexico (the "Issuer") and (iii) Management & Training Corporation, a Delaware corporation ("Forbearance Agreement"). All references to the "Management Contract" in the Forbearance Agreement shall be understood to refer to both this Agreement and the Original Management Contract.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as follows:

"MTC"

ATTEST:

Management & Training Corporation

By: Leann K Bertsch  
Leann Bertsch  
Senior Vice President, Corrections

"County"

Otero County, New Mexico

By: Vickie Marquardt  
Vickie Marquardt, BOCC Chairwoman

ATTEST:

Robyn Holmes  
Robyn Holmes, Otero County Clerk  
Deputy Clerk

APPROVED AS TO FORM:

R.B. Nichols  
RB Nichols, Otero County, Attorney



APPROVED PURSUANT TO N.M.S.A. 1978, SECTION 33-3-27 (2015):

Attorney General, State of New Mexico

By: Daniel R. Rubin Date: Feb 9, 2024

Department of Finance and Administration  
for The State of New Mexico

By: Wesley Billingsley Date: Feb 14, 2024

State of New Mexico, Risk Management Division

By: Jeannette Chavez Date: Feb 9, 2024

Security Addendum

Title 28, Code of Federal Regulations Part 20

**Signature:** *Daniel Rubin*  
Daniel Rubin (Feb 9, 2024 12:46 MST)

**Email:** drubin@nmag.gov

**Signature:**

**Email:**

**Signature:** *Jeannette Chavez*  
Jeannette Chavez (Feb 9, 2024 12:50 MST)

**Email:** jeannette.chavez@gsd.nm.gov

**Signature:** *Leann Bertsch*

**Email:** leann.bertsch@mtctrains.com

**Signature:** *Wesley J. Billingsley*

**Email:** Wesley.Billingsley@dfa.nm.gov



# Otero County MTC Contract Final approved 02.14.2023 (1)

Final Audit Report

2024-02-15

Created:	2024-02-15
By:	Roy Nichols (rnichols@co.otero.nm.us)
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-  Document created by Roy Nichols (rnichols@co.otero.nm.us)  
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