

MEMORANDUM OF AGREEMENT REGARDING THE GARFIELD COUNTY JAIL

I. INTRODUCTION

On June 6, 2002, the United States Department of Justice ("DOJ") notified Garfield County ("County") officials of its intent to investigate conditions of confinement at the Garfield County Jail ("Jail") and Garfield County Work Center ("Work Center"), pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997. The DOJ toured the Jail with consultants in the fields of corrections, medical care, fire safety and environmental health and safety on July 23-25, 2002, and September 19-21, 2002.

On April 17, 2003, the DOJ issued a findings letter, pursuant to 42 U.S.C. § 1997(a)(1), which concluded that certain conditions in the Jail violated the constitutional rights of detainees, and recommended remedial measures. At the request of the County, the DOJ conducted an additional tour of the Jail with consultants on October 11-12, 2006. During the course of that tour, the DOJ concluded that certain of the unconstitutional conditions identified in its April 17, 2003 findings letter had been remedied, and that certain other conditions had not been remedied.

The parties enter into this Memorandum of Agreement ("MOA") for the purpose of avoiding the risks and burdens of litigation. The parties agree that this MOA neither constitutes an admission by Garfield County of the truth of the findings contained in the Findings Letter, nor constitutes an admission by Garfield County of the existence of unconstitutional conditions.

Throughout the course of the investigation and inspection of the Jail and the Work Center, the DOJ received complete cooperation from Garfield County officials and unfettered access to all facilities, documents and staff. In addition, the DOJ acknowledges that the County has made substantial improvements in many areas of Jail operations and the physical plant since its initial Jail tours in 2002. Most notably, the County secured funding and constructed a new jail building, which became operational in June 2005. The old jail building has been closed and will not be reused. The County has also been receptive to the comments and technical assistance provided by our consultants during their respective tours, and has been proactive in improving Jail operations. The DOJ applauds the efforts of the County, and looks forward to working with County officials to resolve the remaining required improvements.

In 1999, the County created the Garfield County Criminal Justice Authority ("Trust") pursuant to the provisions of Title

60, Oklahoma statutes 2001, §§ 176 to 180.4, inclusive as amended and supplemented, the Oklahoma Trust Act and other applicable statutes and laws of the State of Oklahoma. The Trust owns and is responsible for the oversight, management and operation of the new Jail. Additionally, Garfield County is responsible for providing necessary support to the Trust and the Jail in order to fulfill the obligations incurred under this MOA.

II. DEFINITIONS

As used in this MOA:

A. "Access charge" shall mean fees for medical care, dental care, or mental health care services debited from the detainee's commissary account during the detainee's incarceration at the Jail.

B. "Cell" shall mean any room or area in which detainees are confined;

C. "Cell check" shall mean direct visual observation of detainees by security staff;

D. "County" shall mean Garfield County, Oklahoma, the Board of Commissioners of Garfield County, in their official capacity, and their agents, assigns, employees, designees and successors in office, the Garfield County Criminal Justice Authority ("Trust"), the Trustees of the Trust, in their official

capacity, and their agents, assigns, employees, designees and successors in office;

E. "Detainee" shall mean an individual sentenced to, incarcerated in, detained at, or otherwise confined at the Jail;

F. "DOJ" shall mean the United States Department of Justice and its employees, consultants and agents;

G. "Effective date" shall mean the day this MOA is signed by all the parties;

H. "Jail" shall mean the Garfield County Detention Center, the correctional facility owned by the County and operated by the Trust located at 1020 S. 10th Street, Enid, Oklahoma, as well as any facility owned and/or operated by or for Garfield County, the Jail Administrator, the Garfield County Sheriff, and/or the Trust that supplements or replaces the Garfield County Jail on a temporary or permanent basis;

I. "Jail Administrator" shall mean the individual responsible to the County for operation, supervision and management of the Jail;

J. "Qualified Medical Professional" shall mean a physician or prescribing-level health care provider who is currently licensed by the State of Oklahoma;

K. "Qualified Medical Worker" shall mean an individual who has completed an educational program at an accredited school of

nursing, and who has complied with licensing requirements in the State of Oklahoma;

L. "Special needs detainees" shall mean those detainees who are suicidal, mentally ill, mentally retarded, seriously or chronically ill, physically disabled, or otherwise a danger to themselves;

M. "Security staff" shall mean all detention officers, deputies, law enforcement officers, reserve officers, unsworn civilian employees, and volunteers, irrespective of job title, who supervise detainees on a permanent or temporary basis at the Jail;

N. "Semi-annual Report" shall mean reports the Trust will submit to the United States to demonstrate its compliance with this MOA as specified in paragraphs III(A) and (B); and

O. "Trust" shall mean the Garfield County Criminal Justice Authority created by Declaration of Trust in 1999. The Trust owns and is responsible for the oversight, management and operation of the Jail;

P. "Use of force" shall mean a coercive or aggressive act by security staff performed for the purpose of achieving compliance by a resisting detainee, including but not limited to, the use of physical, chemical, electronic, or impact contact, and

further shall include placement of a resisting detainee in a restraint chair or other restraint device.

III. SUBSTANTIVE REMEDIAL MEASURES

A. SECURITY AND PROTECTION FROM HARM

1. The Trust shall continue to develop and implement policies, procedures and practices to provide a reasonably safe and secure environment for all detainees.

Classification and Housing

2. The Trust shall develop and implement an objective classification system and house detainees accordingly. The Trust shall ensure, at a minimum, that maximum security detainees are not housed with minimum security detainees.

Security and Use of Force

3. The Trust shall hire a sufficient number of security staff to maintain security in the housing units, supervise detainees, provide adequate staff training, and ensure the safety and security of detainees and security staff.

4. The Trust shall develop and implement policies, procedures and practices to ensure the adequate supervision of trustees.

5. The Trust shall draft and implement policies on the use of force to ensure that force is used properly. The policy shall require that security staff document each use of

force and that the Jail Administrator review the documentation and, take any appropriate action.

6. The Trust shall develop and implement policies, procedures and practices for the thorough investigation of detainee injuries requiring greater than first aid, for evidence of assault which may have occurred while in Jail custody. The results of each investigation shall be documented in an investigation report. The Jail Administrator shall review the investigation report, along with the underlying documentation, and take appropriate action.

Suicide Prevention

7. The Trust shall reconfigure or remove known suicide hazards from the cells and living areas, including specifically, handicap hand rails that allow material to be tied through an open area of the railing in cells.

8. The Trust shall fully document irregularly timed cell checks four times per hour for inmates identified as being at heightened risk of suicide. The Trust shall ensure that, where appropriate, such inmates receive constant monitoring.

9. The Trust shall provide security staff with access to readily available, safely secured, suicide cut-down tools.

Training

10. Security staff shall receive pre-service and annual in-service training. Training shall include, but will not be limited to: use of force, including de-escalation techniques; use of restraints; sexual harassment and misconduct; identification of detainees with medical or mental health needs; security staff's role in securing access to care to acute and emergent detainees; CPR and basic first aid; and universal precautions to protect security staff and detainees from possible exposure to blood and bodily fluids.

11. The Trust shall create and maintain individual training records for all security staff, documenting the date and topic of all pre-service and in-service training completed after the effective date of this MOA.

Orientation, Grievances and Discipline

12. The Trust shall develop an orientation video or handbook for new detainees that provides information on the following areas: rules and regulations; the process for obtaining medical and mental health care; emergency procedures; the grievance and disciplinary process; and rules for sending and receiving mail.

13. The Trust shall make available grievance forms. The Trust shall provide a secure and confidential method for

submission of grievances in an area accessible to detainees. The Trust shall record and maintain records of detainee grievances, including dispositions, for a minimum of one year. The Trust shall ensure that detainee grievances are investigated and responded to within a reasonable time frame. Detainees shall be provided at least one level of appeal.

14. The Trust shall develop and implement policies, procedures and practices for a formal disciplinary process, including administrative review and disciplinary reports for alleged minor rule violations, and adequate due process for alleged major rules violations.

B. MEDICAL, DENTAL AND MENTAL HEALTH CARE

1. The Trust shall ensure that detainees receive constitutionally adequate medical and dental care regardless of their ability to pay. This care shall include treatment for serious medical and dental needs and shall not be limited to emergency or life-threatening conditions.

2. The Trust shall continue to develop and implement written comprehensive site-specific policies and procedures governing medical, dental and mental health care that conform with generally accepted community standards.

3. The policies and procedures developed and implemented pursuant to ¶ 2 of this section shall govern all

aspects of medical and mental health care, including: initial detainee health screening and health assessments; staffing levels and job descriptions; sick call and other access to medical services; housing of special needs detainees; distribution and management of medications; chronic care; emergency care; dental care; mental health care; communicable disease testing and control; medical records; staff training; quality control/improvement; and medical grievance procedures.

4. The Trust shall secure the services of a Qualified Medical Professional to be in charge of medical care at the Jail. The Qualified Medical Professional's duties shall include: supervising all medical care rendered to detainees; supervising physician's assistant sick call or providing physician's sick call; reviewing medical intake screening forms and processes; ensuring that all inmates receive a health assessment, discussed infra; and monitoring care of serious and/or chronic conditions. Inmates shall continue to receive adequate and timely access to dental care.

5. The Trust shall verify annually the license of all medical care providers with whom the Trust contracts. The Trust shall ensure that all medical care providers with whom the Trust contracts provide medical care within the scope of their training and license.

6. The Access Charge for access to medical and dental services shall be minimal. All detainees shall be informed of the medical access program upon admission, and it shall be made clear to detainees, in writing, that the program is not designed to deny them access to care. No Access Charge shall be made for admission health screening or any required follow-up screening; or the required 30-day health assessment. Moreover, no Access Charge shall be made for emergency care, mental health care, or the treatment and care of conditions affecting public health, e.g., Tuberculosis, Methicillin Resistant Staphylococcus Aureus (MRSA), pregnancy, etc. No Access Charge shall be imposed for access to pharmacy medications prescribed in conjunction with any of the above referenced exceptions to the Access Charges. No detainee shall be denied medical care due to inability to pay the Access Charge, nor shall inmates be denied necessary care due to a pre-existing condition requiring immediate or continuing treatment.

Screening and Specialty Care Referrals

7. The Trust shall prepare an adequate initial health screening form and conduct medical health intake screening of all detainees in a timely manner not to exceed twelve hours from the time of initial booking. The completed screening form shall become the first document included in the detainee's medical

record. The screen shall include, among other things, specific questions with respect to current symptoms and history of contagious disease consistent with generally accepted professional standards. The Trust shall make appropriate referrals for evaluation, testing and treatment based on information provided in the screening.

8. For each newly incarcerated detainee, the Trust shall conduct a health assessment within the first 30 days of confinement, preferably within the first 14 days, and make appropriate referrals for treatment or evaluation as indicated. The assessment shall include a comprehensive medical history and a physical examination. Records documenting the assessment shall be made part of the inmate's medical records.

9. In the event a detainee refuses to cooperate in the screening and or health assessment in ¶¶ 7 and 8 of this section, after being advised of its importance to the detainee's health needs, then such refusal shall be documented by medical personnel. In such event, the Trust shall take steps medically necessary for the health of the individual detainee, other detainees, and staff.

Sick Call

10. The Trust shall continue to develop and implement policies, procedures and practices to ensure that all detainees have adequate and timely access to sick call.

11. The Trust shall continue to provide detainees with access to sick call request forms. The Trust shall ensure that a Qualified Medical Professional or Qualified Medical Worker reviews all sick call request forms confidentially and in a timely manner.

12. The Trust shall ensure that detainees are seen by a Qualified Medical Professional or Qualified Medical Worker in a timely manner after submission of a sick call request.

Chronic and Critical Care

13. The Trust shall ensure that detainees with serious and/or chronic illnesses, including mental illnesses, receive necessary diagnosis, monitoring, and treatment. The Trust shall provide mentally ill detainees with appropriate oral psychotropic medication treatment, and shall refer detainees with serious mental illnesses for treatment by appropriate external providers. The Trust shall provide and document routine tests and follow-up appointments for all detainees with serious and/or chronic illnesses.

14. The Trust shall develop and implement a written policy on housing special needs detainees.

Medication Administration

15. The Trust shall document the administration of medication, particularly any missed or refused doses of medication. A Qualified Medical Professional shall review all medication administration records on a regular and periodic basis.

16. The Trust shall develop and implement policies, procedures and practices to ensure that detainees in need of prescription medications receive them within a reasonable time after intake as medically necessary.

Medical Records

17. The Trust shall maintain on-site complete, confidential, and appropriately organized medical and mental health records for each detainee.

Mental Health Care

18. The Trust shall provide detainees with timely and appropriate mental health care consistent with generally accepted community standards.

19. The Trust shall continue to provide every detainee with an initial mental health screening within a reasonable time after intake at the Jail. The Trust shall continue to perform mental health evaluations for all detainees whose histories or

whose responses to initial screening questions indicate a need for such an evaluation.

C. OUT OF CELL TIME

Detainees on disciplinary restriction, administrative segregation, or protective custody status shall, at minimum, receive one hour of out-of-cell exercise three times a week. Other detainees shall receive adequate opportunities for out-of-cell exercise equal or greater than that provided to segregation status inmates.

D. LEGAL CORRESPONDENCE

Detainees shall not be restricted in their ability to send and receive legal correspondence.

IV. REPORTING REQUIREMENTS

A. The Trust shall report semi-annually to the DOJ concerning its compliance with the terms of the MOA (the "Semi-annual Report"). The first Semi-annual Report shall be due three months from the effective date of this MOA, and every six months thereafter, until the MOA is terminated as provided herein. At a minimum, the Semi-annual Report shall include the following sections:

1. a narrative summary of the Trust's compliance with the terms of this MOA;

2. where applicable, the summary shall specifically note when the Trust has failed to meet any deadline specified in this MOA;

3. a training summary, in which the Trust reports the number of hours and type of training provided to staff during the reporting period, identifying each staff member by rank and shift; and

4. copies of supporting data and/or reports as specified within this MOA and itemized in paragraph B of this section.

B. The Semi-annual Report shall include the following documentation and reports:

1. reports on both medical and mental health staffing and contracts;

2. detainee grievances concerning access to or provision of medical, dental or mental health care;

3. a summary of the number and types of force used during the reporting period and the results of the reviews conducted on the uses of force during the reporting period, including any staff discipline imposed, and a review of any detainee grievances concerning excessive force; and

4. a summary of the number and type of detainee-on-detainee assaults, including any injuries that occur, medical treatment provided to detainees involved in such assaults, a review of any detainee grievances concerning detainee-on-detainee violence, and any detainee discipline imposed.

5. All incident reports.

V. COMPLIANCE AND MONITORING

A. Within six months of the effective date, DOJ shall conduct an on-site tour of the Jail to monitor compliance with the specific terms of this MOA and to provide technical assistance to the Trust.

B. During the term of this MOA, upon reasonable notice, the DOJ and its consultants shall have access to the Jail and to Jail documents and records to monitor compliance with the terms of this MOA. Upon request, the Trust shall provide to the DOJ, within a reasonable time, copies of, or access to, Jail documents and records as well as documents or records created by any agent or contractor authorized to provide services at the Jail.

C. The DOJ shall have the right to conduct confidential interviews with detainees. The Trust shall continue to permit detainees to send and to receive confidential legal mail to attorneys of record, courts and to representatives of the DOJ.

D. Nothing in this MOA shall be construed to limit DOJ's right to request additional documentation and/or conduct inspections in addition to those specified herein.

VI. IMPLEMENTATION AND TERMINATION

A. This MOA, and all paragraphs herein, shall become effective upon signature by all parties.

B. The Trust shall provide to DOJ each plan, policy, form and/or training materials either drafted or revised pursuant to this MOA within 90 days of the effective date. Any subsequent revisions to these materials shall also be submitted to DOJ during the term of this MOA. The DOJ shall expeditiously review all plans, policies, procedures, forms and/or training materials for which this MOA requires approval from the DOJ prior to implementation. The Trust shall implement policies and procedures approved by DOJ within 30 days of approval.

C. In the event that DOJ does not approve policies and procedures required to be approved pursuant to the terms of this MOA, the parties will agree to a schedule for the Trust to submit additional revisions for appropriate approval. In any matter requiring its approval under this MOA, DOJ shall not unreasonably withhold any such approval.

D. This MOA shall terminate two years from the effective date. The MOA also may terminate earlier if the parties agree

that the County has been in substantial compliance with each paragraph in this MOA for at least one year. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance shall not constitute substantial compliance.

E. If DOJ believes that the County has failed to substantially comply with this MOA, DOJ will give written notice, prior to initiating any court proceeding. The County will have 30 days from receipt of such notice to cure the failure. At the end of the 30-day period, in the event DOJ determines that the failure has not been cured, DOJ may, without further notice to the County, initiate a lawsuit.

F. Except as otherwise provided by law, nothing in this MOA shall preclude the United States from filing an action against any of the defendants under any other applicable provision of law.

G. This MOA is binding upon the parties, by and through their officials, agents, employees, and successors. This MOA does not authorize, nor shall it be construed to authorize, access to any County or DOJ records and/or documents by persons or entities other than the DOJ and the County.

H. The Trust shall make the substantive terms of this MOA available to all detainees by maintaining a complete copy of the MOA in the jailer's office, and providing a complete copy to any detainee upon request.

FOR THE UNITED STATES:

/s/ Grace Chung Becker

~~GRACE CHUNG BECKER~~
Acting Assistant Attorney
General
Civil Rights Division

/s/ Shanetta Y. Cutlar

~~SHANETTA Y. CUTLAR~~
Chief
Special Litigation Section
Civil Rights Division

/s/ Tammie M. Gregg

~~TAMMIE M. GREGG~~
Deputy Chief
Special Litigation Section
Civil Rights Division

/s/ Joshua C. Delaney

~~JOSHUA C. DELANEY~~ ✓
~~ANDREW J. BARRICK~~
Trial Attorneys
U.S. Department of Justice
Civil Rights Division
Special Litigation Section
950 Pennsylvania Avenue NW
SPL - 601 D St, NW
Washington, D.C. 20530
Telephone: (202) 514-6255
Fax: (202) 514-0212

Date: 4/29/2008

FOR GARFIELD COUNTY AND THE GARFIELD COUNTY
CRIMINAL JUSTICE AUTHORITY:

/s/ Steve Hobson

/s/ Cathy Stocker

~~STEVE HOBSON~~
STEVE HOBSON
Chairman, Garfield County
Board of Commissioners;
Trustee, Garfield County
Criminal Justice Authority
in his official capacities
114 W. Broadway
Enid, Oklahoma 73701

~~CATHY STOCKER~~
CATHY STOCKER
District Attorney
District 4
State of Oklahoma
in her official capacity
114 W. Broadway
Enid, Oklahoma 73701

Date: 4-21-08

Date: 4/21/8

/s/ Mike Postier

/s/ David Henneke

~~MIKE POSTIER~~
MIKE POSTIER
Commissioner, Garfield
County Board of
Commissioners;
Trustee, Garfield County
Criminal Justice Authority
in his official capacities

~~DAVID HENNEKE~~
DAVID HENNEKE
Counsel, Garfield County
Criminal Justice Authority
in his official capacity
P.O. Box 3624
Enid, Oklahoma 73702

Date: 4-21-08

Date: _____

/s/ Scott Savage

~~SCOTT SAVAGE~~
SCOTT SAVAGE
Commissioner, Garfield
County Board of
Commissioners;
Trustee, Garfield County
Criminal Justice Authority
in his official capacities

Date: 4-21-08