

**MEMORANDUM OF AGREEMENT BETWEEN
U.S. BORDER PATROL – SPOKANE SECTOR AND SPOKANE COUNTY JAIL
REGARDING HOUSING OF FEDERAL DETAINEES**

I. Preamble

This Agreement is entered into between the United States Department of Homeland Security, Customs and Border Protection, United States Border Patrol – Spokane Sector (hereinafter referred to as the "Federal Government" or "Parties") and **Spokane County**, State or County Government (hereinafter referred to as "Local Government"), who hereby agree as follows:

II. Purpose of Agreement and Security Provided

A. This Agreement is being entered into by the Parties to facilitate the U.S. Border Patrol's housing of Federal detainees with the Local Government at the **Spokane County Detention Services Jail, 1100 W. Mallon Avenue, Spokane, WA 99260** (hereinafter referred to as "the Facility").

For purposes of this agreement, the term "Federal detainees," includes:

- individuals charged with Federal criminal and administrative offenses and/or who have been detained by the United States Border Patrol (USBP) while awaiting trial or an immigration hearing;
- individuals who have been sentenced and are awaiting designation and transport to a Bureau of Prisons (BOP) facility and;
- individuals who have been lawfully arrested with an arrest warrant and are awaiting a hearing on their immigration status or deportation proceedings.

B. The Local Government agrees to accept and provide for the secure custody, safekeeping, housing, subsistence and care of Federal detainees in accordance with all state and local laws, standards, regulations, policies and court orders applicable to the operation of the Facility.

C. Detainees shall also be housed in a manner that is consistent with Federal law and the Core Detention Standards and/or any other standards required by an authorized agency whose detainees are housed by the Local Government pursuant to this Agreement.

D. The USBP ensures the secure custody, care, and safekeeping of USBP detainees. Accordingly, all housing or work assignments and recreation or other activities for federal detainees are permitted only within secure areas of the building or within the secure external recreational/exercise areas.

III. Period of Performance and Termination

- A. This Agreement shall be effective on the date signed by both parties and shall remain in effect unless terminated pursuant to Section III. B.
- B. Either party may terminate this Agreement for any reason with written notice to the other party at least thirty (30) calendar days in advance of termination, unless an emergency situation requires the immediate relocation of Federal detainees.
- C. This agreement may be immediately terminated by the either party in the event of an emergency situation pursuant to which either party determines that the Federal detainees must be immediately relocated.

IV. Assignment and Outsourcing of Jail Operations

The overall management and operation of the Facility housing Federal detainees may not be contracted out to a Third Party or private corporation without the prior express written consent of the Federal Government.

V. Medical Services

- A. The Local Government is financially responsible for, and will provide Federal detainees with the same level and range of care **inside** the Facility as that provided to state and local detainees.
- B. For purposes of this Agreement, "medical care" includes, but is not limited to the cost of all medical, dental, and mental health care as well as the cost of medical supplies, over-the-counter medications and, any prescription medications routinely stocked by the Facility which are provided to Federal detainees. When possible, generic medications should be prescribed.
- C. The cost of all of the above-referenced medical care is covered by the Federal per diem rate. However, for specialized medical services not routinely provided within the Facility, such as dialysis, the Federal Government will pay for the cost of that service. These costs will be reimbursed through the Federal Government's MEDPAR system and not directly through Spokane Sector's funds.
- D. The Federal Government assumes financial responsibility for all medical care provided **outside** the Facility to Federal detainees. The Federal Government must be billed directly by outside medical care providers pursuant to arrangements made by the Local Government for outside medical care. The Federal Government will be billed directly by the medical care provider **not** the Local Government. If the Local Government receives any bills for medical care provided to Federal detainees outside the Facility, the Local Government will immediately forward those bills to the USBP – Spokane Sector, 10710 N. Newport Hwy, Spokane, WA, 99218 for processing.

- E. All **outside** medical care provided to Federal detainees must be pre-approved by a USBP point of contact at (509) 353-2747 except in a medical emergency.
- F. In the event of a life-threatening emergency, the Local Government shall proceed immediately with necessary medical treatment to ensure life is preserved. In such an event, the Local Government shall notify the Federal Government as soon as reasonably practicable regarding the nature of the Federal detainee's illness or injury as well as the types of treatment provided. The Local Government is responsible for all associated medical record keeping.
- G. The Facility shall have in place an adequate infectious disease control program which includes, but is not limited to, testing of any Federal detainees for Tuberculosis (TB) that have been flagged as "at risk" by medical personnel within 14 days of intake. In the event that "at risk" Federal detainees are administered TB tests, the Federal Government will pay the approximately \$20 fee for each test. Note: the Federal Government will pay this fee for detainees on U.S. Border Patrol holds only. Testing and other medical care costs associated with detainees still on state and/or local charges shall be borne by the Local Government.
- H. TB testing shall be accomplished in accordance with the latest Centers for Disease Control (CDC) Guidelines and the result promptly documented in the Federal detainee's medical record. Special requests for expedited TB testing and clearance (to include time sensitive moves) will be accomplished through advance coordination by the Federal Government and Local Government.
- I. The Local Government shall immediately notify the Federal Government of any cases of suspected or active TB or any other highly communicable diseases such as Severe Acute Respiratory Syndrome (SARS), Avian Flu, Methicillin-Resistant Staphylococcus Aureus (MRSA), Chicken Pox, etc., which might affect scheduled transports or productions so that protective measures can be taken by the Federal Government.
- J. If a Federal detainee is on prescription medication and is being transferred and/or released from the Facility, the detainee will be provided with seven (7) days of prescription medication which will be dispensed from the Facility. Medical records, to include electronic medical records, must travel with the Federal detainee. If the records are maintained at a medical contractor's facility, it is the Local Government's responsibility to obtain them before a Federal detainee is moved.
- K. Federal detainees may be charged a medical co-payment by the Local Government in accordance with the provisions of Title 18, USC Section 4013(d). The Federal Government is not responsible for medical co-payments and cannot be billed for these costs even for indigent Federal detainees.

VI. Receiving and Discharge of Federal Detainees

- A. The Local Government agrees to accept Federal detainees only upon presentation by a law enforcement officer of the Federal Government or a USBP designee with proper agency credentials.
- B. The Local Government shall not relocate a Federal detainee from one facility under its control to another facility not described in this Agreement without permission of a USBP agent bearing credentials. Additional incarceration facilities within the same Agreement shall be identified in a modification.
- C. The Local Government agrees to release Federal detainees only to law enforcement officers of the authorized Federal Government agency initially committing the Federal detainee (i.e., Drug Enforcement Administration (DEA), Immigration and Customs Enforcement (ICE), etc.) or to a Deputy United States Marshal (DUSM) or USBP designee with proper agency credentials. Those Federal detainees who are remanded to custody by a USBP agent may only be released to a USBP agent.
- D. Given bed space limitations in the Local Government's Facility, the Detention Services Director or his designee shall have the sole discretion to accept a Federal Detainee as that term is defined herein into the Facility.
- E. Additionally, the Director, or his designee shall have the sole discretion to direct that a Federal detainee be returned to USBP's custody. USBP shall take custody of the Federal detainee within twenty-four (24) hours notice by Detention Services.

VII. Optional Guard/Transportation Services to Medical Facility

- A. The Local Government agrees, subject to the availability of its personnel, to provide transportation and escort guard services for Federal detainees housed at the Facility to and from a medical facility for outpatient care, and transportation and stationary guard services for Federal detainees admitted to a medical facility at Local Government expense. As soon as feasibly possible, agents from the USBP will relieve Local Government of guard services at the medical facility.
- B. These services should be performed by at least two (2) armed qualified law enforcement or correctional officer personnel. Criteria as specified by the Spokane County entity running the facility. In all cases these are part of a fulltime Law Enforcement Officer (LEO) or Correctional Officer (CO) that have met the minimum training requirements.
- C. The Local Government agrees to augment the security escort identified in Section VI.B. requested by the USBP for the purposes of enhancing overall security, visitation and contraband control when necessary.

VIII. Optional Guard/Transportation Services (Miscellaneous)

- A. The Local Government agrees, subject to the availability of its personnel, to provide transportation and escort guard services for Federal detainees housed at its facility in emergent or unforeseen circumstances.
- B. These services should be performed by at least two (2) armed qualified law enforcement or correctional officer personnel.
- C. The Local Government agrees to augment the security escort identified in Section VI.B. requested by the USBP for the purposes of enhancing overall security, visitation and contraband control when necessary.
- D. Each detainee will be restrained in handcuffs, waist chains and leg irons during transportation unless otherwise specified by the USBP.

IX. Special Notifications

- A. The Local Government shall notify the Federal Government of any activity by a Federal detainee which would likely result in litigation or alleged criminal activity.
- B. The Local Government shall immediately notify the Federal Government of an escape of a Federal detainee. The Local Government shall use all reasonable means to apprehend the escaped Federal detainee and all reasonable costs in connection therewith shall be borne by the Local Government. The Federal Government shall have primary responsibility and authority to direct the pursuit and capture of such escaped Federal detainees. Additionally, the Local Government shall notify the Federal Government as soon as possible when a Federal detainee is involved in an attempted escape or conspiracy to escape from the Facility.
- C. In the event of the death or assault or a medical emergency of a Federal detainee, the Local Government shall immediately notify the Federal Government.

X. Special Management Inmates and Suicide Prevention

- A. The Local Government shall have in place written policy, procedures and practices which require that all special management inmates are personally observed by a correctional officer twice per hour, but no more than 40 minutes apart, on an irregular schedule. Inmates who are violent or mentally incapable of basic reason or who demonstrate unusual or bizarre behavior receive more frequent observation; suicidal inmates are under constant observation.
- B. The Local Government shall have a comprehensive suicide-prevention program in place incorporating all aspects of identification, assessment, evaluation, treatment, preventive intervention, and annual training of all medical, mental health, and correctional staff.

XI. Prisoner Rape Elimination Act (PREA)

The Facility must post the Prisoner Rape Elimination Act brochure/bulletin in each housing unit of the Facility. Where and when logistically and economically feasible, the Facility must abide by all relevant PREA regulations.

XII. Service Contract Act

A. This Agreement incorporates the following clause by reference, with the same force and effect as if it was given in full text. Upon request, the full text will be made available.

Federal Acquisition Regulation Clause(s):

1. 52.222-41 Service Contract Act of 1965, as Amended (July 2005) 52.222-42 Statement of Equivalent Rates for Federal Hires (May 1989)
2. 52.222-43 Fair Labor Standards Act and the Service Contract Act - Price Adjustment (Multiyear and Option Contracts) (May 1989)

XIII. Per-Diem Rate

USBP will pay the same daily rate to Local Government for the detention of its placement of Federal detainees as paid by the United States Marshall's Service for the placement of its detainees at any given time. The per-diem rate covers the support of one (1) federal detainee per "federal detainee day", which shall include the day of arrival, but not the day of departure.

XIV. Billing and Financial Provisions

A. The Local Government shall prepare and submit for certification and payment, original and separate invoices each month to USBP responsible for Federal detainees housed at the Facility. The USBP will not be billed until resolution of state and/or local charges, resulting in Detainees turning over to the custody of the USBP.

Address for this component is:

United States Border Patrol Spokane Sector
10710 N. Newport Hwy
Spokane, WA 99218
(509)468-3801

- B. To constitute a proper monthly invoice, the name and address of the Facility, the name of each Federal detainee, their specific dates of confinement, the total days to be paid, the appropriate per diem rate as approved in the Agreement, and the total amount billed (total days multiplied by the per-diem rate per day) shall be listed, along with the name, title, complete address, and telephone number of the Local Government official responsible for invoice preparation. Additional services provided, such as transportation and guard services, shall be listed separately and itemized.
- C. Nothing contained herein shall be construed to obligate the Federal Government to any expenditure or obligation of funds in excess of, or in advance of, appropriations in accordance with the Anti-Deficiency Act, 31 U.S.C. 1341.

XV. Payment Procedures

The Federal Government will make payments to the Local Government on a monthly basis, promptly, after receipt of an appropriate invoice.

XVI. Hold Harmless

- A. Local Government agrees to hold harmless, indemnify, and defend Federal Government, from and against any claims, demands, actions, liens, rights, subrogated or contribution interests, debts, liabilities, judgments, costs, and attorney's fees (also including but not limited to claims related to alleged mistreatment, injury, or death to any prisoner, or loss or damage to prisoner property while in the custody of the Local Government Jail facility) which results from or arise out of the sole negligence of Local Government in connection with or incidental to the performance or non-performance of the Agreement.
- B. Subject to the limitations of the Anti-Deficiency Act, 31 U.S.C. § 1341(a), as noted below, the USBP agrees to hold harmless, indemnify, and defend Local Government, from and against any claims, demands, actions, liens, rights, subrogated or contribution interests, debts, liabilities, judgments, costs, and attorney's fees (including but not limited to any claims brought pursuant to 42 U.S.C. § 1983 for violation of federal or state due process rights, federal or state rights to be free of unreasonable seizure, false arrest, unlawful imprisonment, malicious prosecution based upon or related to prisoners immigration status) which results from or arise out of the sole negligence of the USBP, and is in connection with or incidental to the performance or non-performance of this Agreement.
- C. To the extent that in any of the above circumstances, it has been determined or alleged that both Local Government and the USBP are negligent, each party shall be liable for its contributory share of negligence for any such claims, demands, actions, liens, rights, subrogated or contribution interests, debts, liabilities, judgments, costs, and attorney's fees.
- D. Local government and the USBP acknowledge that, pursuant to the Anti-Deficiency

Act, the USBP is prohibited from agreeing to any indemnity provision or other liability provision which would subject the United States to indefinite or potentially unlimited contingent liability.

XVII. Disputes

Disputes, questions, or concerns pertaining to this Agreement will be resolved between appropriate officials of each party. Both the parties agree that they will use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties.

XVIII. Inspection of Services

Inspection standards for detainees may differ among authorized agency users. The Local Government agrees to allow periodic inspections of the Facility by Federal Government inspectors, to include approved Federal contractors, in accordance with the Core Detention Standards required by any or all of the Federal authorized agency users whose detainees may be housed pursuant to this Agreement Findings of the inspections will be shared with the Facility administrator in order to promote improvements to Facility operations, conditions of confinement, and levels of services.

XIX. Modifications

For all modifications except for full or partial terminations, either party may initiate a request for such modification to this Agreement in writing. All modifications negotiated will be effective only upon written approval of both parties.

XX. Litigation

- A. The Federal Government shall be notified in writing of all litigation which impacts or implicates, in any way, this Agreement and will be provided copies of any pleadings filed with respect to such litigation within five working days of the filing.
- B. The Local Government shall cooperate with the Assistant Chief Counsel, Customs and Border Protection and/or the United States Attorney regarding any requests pertaining to Federal Government or Local Government litigation.



ATTEST:

Ginna Vasquez

Ginna Vasquez, Clerk of the Board

BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

Shelly O'Quinn

SHELLY O'QUINN, CHAIR

ABSENT

AL FRENCH, VICE-CHAIR

Nancy McLaughlin

NANCY MCLAUGHLIN, COMMISSIONER

16 - 0215



ATTEST:

GINNA VASQUEZ
Ginna Vasquez
Clerk of the Board

Dated: _____

Dated: 2/9/16

Dated: 2/10/16

Dated: 2/12/16

OF SPOKANE COUNTY, WASHINGTON

SHELLY O'QUINN
SHELLY O'QUINN, Chair

ABSENT

AL FRENCH, Vice-Chair

ANNE MCGOUGH, Commissioner

JOHN C. McGRATH
John C. McGrath
Detention Services, Director

JERRY B. MARTIN
JERRY B. MARTIN
(Acting) Chief Patrol Agent, Spokane Sector
United States Border Patrol

ADRIAN M. COTSWORTH
ADRIAN M. COTSWORTH
(Acting) Deputy Chief Patrol Agent, Spokane Sector
United States Border Patrol

LONNIE E. MOORE
LONNIE E. MOORE
(Acting) Assistant Chief Patrol Agent
United States Border Patrol