

Intergovernmental Service Agreement

between

U.S. Department of Justice  
Immigration & Naturalization Service  
70 Kimball Avenue  
South Burlington, Vermont 05403-6813

And

County of Sussex  
Administration Building  
Plotts Road  
Newton, NJ 07860

Agreement Number: ACB-8-I-0009

## Agreement Schedule

### Article I - Purpose

1. The purpose of this Intergovernmental Service Agreement (IGSA) is to establish a formal binding relationship between the U.S. Immigration & Naturalization Service (INS) and the Sussex County Jail (Contractor) for the detention of aliens of all nationalities authorized to be detained by INS in accordance with the Code of Federal Regulations, Title 8, Immigration & Nationality Act and related criminal statutes.
2. This Agreement sets forth the responsibilities of both INS and the Contractor regarding services to be performed and reimbursement when those services have been performed. There is no obligation, express or implied, on the part of INS to utilize the Contractor's facility nor on the part of the Contractor to accept detainees.

### Article II - Covered Services

1. The Contractor will provide housing, safekeeping, subsistence and other services for INS detainee(s) within its facility (or facilities) consistent with the types and levels of services and programs routinely afforded its own population, and fully consistent with all applicable laws, standards, policies, procedures and court orders applicable to its facility (or facilities), unless or as specifically modified by this Agreement. The unit of service will be the Detained Day and the cost as agreed to by the parties is \$ 70.00 per Detained Day. The type of detainees will be non-juvenile males and females. The duration of service to be provided will be overnight holds, daily, and long term, not to exceed 120 days unless the Contractor approves a longer stay. The rate covers one (1) person per "Detainee Day". The Contractor shall not bill the INS for two (2) days when a detainee is admitted one evening and removed the following morning. The Contractor may bill for the day of arrival but not for the day of departure. A detainee day is defined as a 24 hour period starting at book-in time.

### Article III - Medical Services

1. The Contractor agrees to accept and provide for the delivery of health care services to INS detainee(s) under the control of a designated health care authority to include on-site health care. On-site health care at the Contractor's facility (or facilities) shall be furnished as part of the Agreement's services at the Contractor's expense. On-site health care services shall include, but not be limited to;

initial medical screening with TB screening, and PPD planting and reading, sick call coverage, all over-the-counter medications and local care and treatment of minor lacerations, sprains, contusions, etc. The contractor shall provide for medical screening upon arrival at the facility, including tuberculosis symptom screening and history of past and present illnesses of each detainee. Screening will be performed by health care personnel or health trained personnel.

2. Health care service providers shall be appropriately licensed, registered or certified with the State. Health care shall be pursuant to orders issued by those persons authorized by law to give such orders. State licensing and certification requirements apply to health care personnel working in the Contractor's facility (or facilities) to the same extent as they apply to equivalent personnel in the community.
3. For health care delivered in the Contractor's facility (or facilities), equipment, supplies and materials shall be provided as determined by the Health Authority. The Health Authority is the employee of the Contractor to whom they have delegated the responsibility for the facility's health care services, including arrangements for all levels of health care and the ensuring of quality and accessibility of all health services provided to all inmates and detainees.
4. The Contractor shall provide detainees written instructions for gaining access to health care services. Procedures shall be explained to all detainees in each detainee's native language with special emphasis given to detainees who are unable to read. The Contractor may utilize commercial telephone language interpretive services to fulfill this requirement. Detainees shall not be used for translation services, in other than emergency situations. The costs for these services shall be itemized as a separate billing from that for detained days on monthly invoices and will be paid in full by INS.
5. The Contractor shall provide on-site medical and health care coverage for all INS detainees at the facility (or facilities). Coverage shall be provided at a minimum by a registered nurse. The Contractor shall ensure that each detainee's written health complaints are solicited and delivered to the medical and health care staff for appropriate follow-up. Sick call shall be conducted on-site at the facility by qualified health personnel (no less than registered nurse) five (5) days per week. Sick calls on a minimum of two (2) of the five (5) days must be conducted by a physician's assistant. Detainees with chronic conditions shall receive appropriate follow-up and treatment. The Contractor shall have an off-site medical provider (or hospital emergency room) available for emergencies.

6. The Contractor shall not provide eyeglasses, cosmetic dental prosthetics, or other dental care for cosmetic purposes to INS detainees without prior authorization from INS.
7. The Contractor shall notify the INS as soon as possible of emergency medical cases requiring removal of detainee(s) from its facility (or facilities). The Contractor shall obtain prior authorization from INS when removal is required for any other non-emergency medical services.
8. The Contractor shall bill INS for hospital or health care services specifically furnished to any INS detainee(s) outside of the Contractor's facility (or facilities). These bills will be sent with regular monthly billing to the INS for detention services. Such documentation (invoices) must be provided within sixty (60) days of the occurrence in order to support payment of these costs. The Contractor shall ensure that health care supplies/services are provided at rates no greater than those applicable for non-INS prisoners in the custody of the Contractor.
9. At the onset of off-site emergency medical care for an INS detainee, the Contractor shall obtain a report of patient health status and submit it to the INS Supervisory Detention Officer to assist in rendering a determination regarding continuation of patient custody security.
10. The Contractor shall not charge any person detained in the custody of the INS any additional fee for medical services or treatment provided at the Contractor's facility (or facilities).

#### Article IV - Receiving and Discharging

1. The County shall receive and discharge such detainees only from and to either properly identified INS personnel or with other properly identified Federal law enforcement officials with prior authorization from INS. The County shall provide receiving and discharging services twenty-four (24) hours per day, seven (7) days a week. The County shall ensure positive identification and recording of detainee(s) and INS officers. The County shall not permit medical or emergency discharges except through coordination with on-duty INS officers.
2. The County shall not release INS detainees from its physical custody to any persons other than those described in paragraph 1 of this Article for any reason, except for either medical or other emergent situations, or in response to a Federal Writ of Habeas Corpus. If an INS detainee is sought for federal, state or local court proceedings, only the INS may authorize release of the detainee for such purposes. The County shall contact INS immediately regarding any such requests.

3. In the event of an emergency requiring evacuation of the facility, the County shall immediately notify INS. INS shall provide immediate response to evacuate the County's facility by removing the detainees to a site of INS choosing.
4. The County official in charge of the facility, or designee, retains final and absolute right either to refuse acceptance, or request removal, of any detainee exhibiting violent or disruptive behavior, or of any detainee found to have a medical condition that requires medical care beyond the scope of the County's health provider. In the case of a detainee already in custody, the County shall notify the INS and request such removals, and shall allow the INS adequate time to make alternative arrangements for the detainee.

#### ARTICLE V - Minimum Facility Standards

The Contractor agrees to meet the following minimum standards:

1. Twenty-four (24) hour supervision of detainees, either visual or auditory.
2. Meet or exceed all applicable fire and life safety codes, and will have and maintain appropriate smoke and fire detection equipment in the facility (or facilities).
3. A minimum of three (3) nutritionally balanced meals, two (2) of which are hot, in a twenty-four (24) hour period for each detainee. No fewer than 1,500 calories total per 24 hours and, if detention exceeds four (4) days, no fewer than 2,400 calories per day thereafter. There will be no more than fourteen (14) hours or less than four (4) hours between meals.
4. Appropriate twenty-four (24) hour emergency medical care, and emergency evacuation procedures.
5. When detained overnight, each detainee will be provided a mattress, with a mattress cover and a blanket.

#### Article VI - Period of Performance

1. This Agreement shall remain in effect indefinitely until terminated by either party through written notice to the other.
2. Such notice will be provided sixty (60) days in advance of the effective date of termination. Should conditions of an unusual nature occur, making it impractical or impossible to house detainee(s), the Contractor may suspend or restrict the use of the facility by giving written notice to the INS.

Such notice will be provided at least thirty (30) days in advance of a suspension or restriction of use unless an emergency situation requires the immediate relocation of detainee(s). In such an emergency situation the Contractor shall give the maximum possible notice to the INS, and provide reasonable assistance in finding alternative housing and transporting detainees to that site.

#### Article VII - Economic Price Adjustment

1. The parties shall establish payment rates on the basis of actual costs associated with the operation of its facility (or facilities) during the latest annual accounting period for which data is available or for which a formal report or audit was issued, or as provided for in an approved annual operating budget for detention facilities. The initial rate agreed to by the parties is set forth in Article II above.
2. The INS shall reimburse the Contractor at the fixed day rate identified in Article II. The rate may be renegotiated not more than once per year, after the Agreement has been in effect for twelve (12) months. The effective date of any rate adjustment will be negotiated and specified on the IGSA Modification form approved and signed by an INS Contracting Officer. The effective date will be established on the first day of the month for accounting purposes. Payments at the modified rate will be paid upon the return of the signed modification by the authorized local official to the INS.
3. The rate covers one (1) person per "Detainee Day". The Contractor shall not bill the INS for two (2) days when a detainee is admitted one evening and removed the following morning. The Contractor may bill for the day of arrival but not for the day of departure. A detainee day is defined as a 24 hour period starting at book-in time.
4. The parties may revise the rate on the basis of data submitted and action taken by both the INS and the Contractor within ninety (90) calendar days before each annual anniversary of the initial Agreement's execution. The Contractor shall provide the necessary cost information to support the requested rate increase and to permit an audit of accounting records upon request of INS. Criteria used to evaluate the increase or decrease in the per-capita rate shall be those specified in the OMB Circular A-87, Cost Principles for State and Local Governments or other guidance as revised, or in accordance with superseding guidance.
5. Payments at the modified rate will be paid upon return to INS of the signed modification by the authorized local official. Unless other justifiable reasons can be documented by the Contractor, per diem rate increases shall not exceed the National Inflation rate as established by the U.S. Department of Commerce.

ARTICLE VIII - Invoicing and Payment

1. Contractor shall submit invoices to:

U.S Immigration & Naturalization Service  
Newark District Office  
970 Broad Street  
Newark, NJ 07102-2506  
Attn: Deportation Unit  
Phone: (973) 645-5957  
Fax: (973) 645-4909

After certified true and correct by the above office, INS will forward relating invoices to the following address for payment.

U.S. Immigration & Naturalization Service  
70 Kimball Avenue  
South Burlington, VT 05403-6813  
Attn: Finance  
Phone: (802) 660-1127  
Fax: (802) 660-1179

2. The Prompt Payment Act, Public Law 97-177 (96 Stat. 85, 31 USC 1801) is applicable to payments under this Agreement and requires the payment to the Contractor of interest on overdue payments. Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and the Office of Management and Budget Circular A-125.
3. In accordance with the Prompt Payment Act, INS will make payments under this Agreement thirty (30) calendar days after the receipt of a proper invoice in the office designated to receive invoices (paragraph 1, above). The date of the check issued in payment shall be considered the date of the payment.
4. The Contractor shall submit a proper invoice monthly. For services rendered in the prior month, to the office identified in Paragraph 1, above. To constitute a proper invoice, it must include the name, address, and phone number of the official designated payment office. It shall list each detainee, the specific dates of custody for each, the total number of days for which reimbursement is sought, the agreed-upon detainee-day rate, and the total amount billed. The Agreement number shall be stated on all invoices submitted to INS for final payment.

ARTICLE IX - Modifications and Disputes

1. Either party may initiate a request for modification to this Agreement. Such requests must be submitted in writing, and will not take effect until approved in writing by a Regional Contracting Officer and the Contractor. The IGSA constitutes the entire agreement between the two parties,

and actions by parties other than those identified or designated within the Agreement will not serve to bind, or incur liability on behalf of, either party.

2. Disputes, questions, or concerns pertaining to this Agreement shall be resolved between the INS and the appropriate Contractor official. No resolution may explicitly or implicitly alter the terms and rates contained in this Agreement unless approved by formal modification by a Regional Contracting Officer. Unresolved issues are to be directed to the Contracting Officer.

#### ARTICLE X - Inspection and Technical Assistance

1. The Contractor agrees to allow periodic inspections of the facility by INS. The sole purpose of said inspections will be to insure a minimally acceptable level of services and acceptable conditions of confinement under this Agreement. See Article V. Findings of the inspection will be shared with the facility administrator in order to promote improvements to facility operations, conditions of confinement and levels of services. If the Contractor fails to remedy deficient levels of services or conditions of confinement as identified by INS inspection, the INS may terminate this Agreement in accordance with Article VI. The Contractor is required to disclose promptly any and all public results or copies of facility (or facilities) inspections, reviews, surveys or other forms of examinations.

#### ARTICLE XI - Availability of Funds

1. The INS' obligation under this Agreement is contingent upon the availability of appropriated funds from which payment can be made. No legal liability on the part of the INS for any payment may arise until such funds are made available.
2. INS shall not present persons to the Contractor for detention until appropriate funding has been obtained.

#### ARTICLE XII - Employment of Unauthorized Aliens

1. Subject to existing laws, regulations, Executive Orders, and other provisions of this Agreement, aliens unauthorized to be employed in the United States shall not be employed by the Contractor, or its subcontractors, to work on, under, or with this Agreement. The Contractor shall ensure that this provision is expressly incorporated into and all subcontracts or subordinate agreements issued in support of this Agreement.

#### ARTICLE XIII - Insurance, Indemnification and Hold Harmless

1. The Contractor shall save and hold harmless the INS against any and all liability claims and costs of whatever kind and nature, for (1) injury to, or death of, any person or persons, and (2) loss or damage to any property, occurring in connection with, or in any way either incident to or arising out of the performance of work under the terms of this Agreement, and resulting from the negligent acts or omissions of any of its (the Contractor's) employees or agents.
2. The INS, which is self-insured, shall save and hold harmless and indemnify the Contractor against any and all liability claims and costs of whatsoever kind and nature, for (1) injury to, or death of, any person or persons, and (2) loss or damage to any property, occurring in connection with, or in any way either incident to or arising out of the performance of work under the terms of this Agreement, and resulting from the negligent acts or omissions of its (the INS's) officers or employees, to the extent that it would be liable for such negligent acts or omissions under the Federal Tort Claims Act, 28 U.S.C. 2671 et seq.
3. Neither the Contractor nor the INS waive any defenses, immunities, or limits of liability available under applicable law.

#### ARTICLE XIV - Defense of Suits

1. In the event a detainee files suit against the Contractor or its employees contesting the legality of that detainee's incarceration and/or immigration/citizenship status, the INS shall, as appropriate move either to have the Contractor dismissed from such suit, to have itself 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, the INS shall be responsible for the defense of any suit based on those grounds.
2. In the event any person files suit against the Contractor or its employees based on alleged negligent acts or omissions of an INS officer or employee, the INS shall contact such person and advise them of the procedures set forth in the Federal Tort Claims Act for the administrative resolution of such claims. If the person filing suit does not agree to pursue these remedies, the INS shall move to have itself substituted as the proper party defendant, and, if appropriate, to have the case removed to a court of competent jurisdiction.
3. The Contractor reserves all rights to pursue legal remedies against the INS for all claims, losses, damages, charges, or expenses to which the Contractor may be put or subjected by

reason of, arising from, or in any way connected by the Contractor's performance of this Agreement, and resulting from the conduct of any INS officer or employee.

**ARTICLE XV - Contracting Officer's Technical Representative**

1. The Contracting Officer's Technical Representative (COTR) will be designated after the Agreement becomes effective and notification to the Contractor will be made at this time.
2. The COTR is responsible for: receiving all deliverables; inspecting and accepting the services provided hereunder in accordance with the terms and conditions of this Agreement; providing direction to the Contractor which clarifies the Agreement's effort, fills in details or otherwise serves to accomplish the Agreement's requirements; evaluating performance; and certifying all invoices/vouchers for acceptance of the services furnished for payment prior to forwarding the original invoice to the payment office.
3. The COTR does not have the authority to alter the Contractor's obligations under the Agreement, direct changes that fall within the purview of the Contracting Officer and/or modify any of the expressed terms, conditions, specifications, or cost of the Agreement. If as a result of technical discussions it is desirable to alter/change obligations or requirements, the Contracting Officer shall issue such changes in writing and sign.

**ARTICLE XVI - Representations**

1. This Agreement constitutes the sole agreement between the parties. No representations oral or written not incorporated herein shall be binding on the parties. No amendment or modifications of this Agreement shall be enforceable unless approved by action of the Contractor. If any words, clause, sentence or portion of this Agreement is held to be unenforceable or otherwise invalid, then the remaining portions shall remain in full force and effect.

For the Immigration & Naturalization Service:

Roger E. Fregeau  
Roger E. Fregeau

Date: 6/15/98

Contracting Officer  
U.S. Department of Justice  
Immigration & Naturalization Service  
Eastern Region  
70 Kimball Avenue  
South Burlington, Vermont 05403-6813  
Phone: 802-951-6428  
Fax: 802-951-6455

For the Contractor:

Richard A. Durina  
Signature

Date: 6/9/98

Richard A. Durina

Name

Freeholder Director

Title

ATTEST:

Elaine A. Morgan  
Elaine A. Morgan, Clerk  
Board of Chosen Freeholders  
County of Sussex

Date: 6/9/98

County of Sussex  
Board of Chosen Freeholders  
Administration Building  
Plotts Road  
Newton, NJ 07860  
Phone: 973-579-0210  
Fax: 973-383-1124

## Addendum

This addendum is being effected due to the urgent need of INS and to allow time for both parties to negotiate final terms of the agreement.

This addendum is effective for an interim thirty (30) day period from date of signature of Agreement. This addendum will become void at the end of this period of time.

### Article VI - Period of Performance

The period of performance for this interim period will be for thirty (30) days.

### Article II - Covered Services

The rate per detained day is \$68.00 for this interim thirty (30) day period. After the Agreement has been negotiated between both parties and a final detainee day rate established an adjustment will be made up or down to reflect the difference in costs for the thirty (30) day period.

**For the Immigration & Naturalization Service:**

Roger E. Fregan

Date: 5/22/98

Roger E. Fregan  
Contracting Officer  
U.S. Department of Justice  
Immigration & Naturalization Service  
Eastern Region  
70 Kimball Avenue  
South Burlington, Vermont 05403-6813  
Phone: 802-951-6428  
Fax: 802-951-6455

**For the Contractor:**

Patrick W. Bailey  
Signature

Date: 22 May 98

Patrick W. Bailey  
Name

Budget Director  
Title

Acting As Authorized Agent for County of Sussex Administration  
Sussex County Jail  
41 High Street  
Newton, NJ 07860  
Phone: 973-579-0880  
Fax: 973-579-0893