APPENDIX I

SETTLEMENT AGREEMENT

I. INTRODUCTION

On August 24, 2000, the United States notified Shelby County officials of its intent to investigate conditions of confinement at the Shelby County Jail, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997. On October 4-6 and December 11-13, 2000, the United States toured the Shelby County Jail with consultants in the fields of penology, correctional health care, environmental health and safety, and mental health care.

Throughout the course of the investigation and inspection of the facilities, the United States received complete cooperation and access to all facilities and documents from Shelby County Sheriff A.C. Gilless and the staff of the Office of the Sheriff and the Sheriff's Legal Advisor, from Chief Jailer Marron Hopkins and his staff, and from County Attorney Donnie E. Wilson and Chief Administrative Officer Jimmy M. Kelly, and staff throughout the Shelby County government.

On June 27, 2001, the United States issued a findings letter ("Findings Letter"), pursuant to 42 U.S.C. § 1997(a)(1), which concluded that certain conditions in the Shelby County Jail violated the constitutional rights of detainees and recommended remedial measures. Attorneys for the United States met with Shelby County officials in July 2001, to begin negotiations on an agreement to address and remedy the concerns raised in the

Findings Letter. County officials subsequently provided a substantive written response to the United States that proposed corrective measures and proposed means of monitoring and documenting those changes, many of which are incorporated in this proposed agreement.

The United States acknowledges that Shelby County has already begun drafting many of the new and revised policies and procedures required by the Settlement Agreement ("Agreement"), some of which may be completed prior to execution of this Agreement.

The parties agree that this Agreement does not constitute an admission by the defendants of the truth of findings contained in the Findings Letter and does not constitute an admission of liability by the defendants. The parties enter into this Agreement solely for the purpose of avoiding the risks and burdens of litigation.

II. DEFINITIONS

1. "County" shall refer to defendants Shelby County, Tennessee, the Sheriff of Shelby County in his official capacity, the Mayor of Shelby County in his official capacity, and their agents and successors in office.

2. "DOJ" shall refer to the United States Department of Justice.

3. "Inmates" or "detainees" shall refer to individuals sentenced to, incarcerated in, detained at, or otherwise confined at Shelby County Jail.

4. "Shelby County Jail" ("SCJ") shall mean the jail facility located at 201 Poplar Avenue in Memphis, Tennessee (the "Jail"), and the facility currently housing female detainees in East Memphis ("Jail East"), as well as any facility that is built to replace or supplement the SCJ. The terms of this Agreement shall apply to all SCJ facilities, unless specifically noted otherwise.

5. "Jail Compliance Unit" shall refer to SCJ's internal unit responsible for conducting, inter alia, security audits, including audits of tool and key control practices, and other inspections and random checks required under this Agreement, except where another entity or staff person is specified by this Agreement to conduct such inspections (e.g., monitoring of gang activity, health care services, food services and maintenance).

6. "Gang Intelligence Unit" shall refer to the staff members with responsibilities related to monitoring and controlling gang activity at SCJ.

7. "Qualified Medical Professional" shall mean an individual with a minimum of masters-level education and training in medicine or nursing, who is currently licensed by the State of

Tennessee to deliver those health care services they have undertaken to provide.

8. "Qualified Medical Workers" and "Qualified Medical Staff" shall refer to individuals who have completed an educational program at an accredited school of nursing, and who have complied with licensing requirements in the State of Tennessee; or, individuals with substantially equivalent education and training, and two years of experience providing health care services.

9. "Qualified Mental Health Professional" shall refer to: a) an individual with a minimum of masters-level education and training in psychiatry, psychology, counseling, social work or psychiatric nursing, who is currently licensed by the State of Tennessee to deliver those mental health services they have undertaken to provide; except that a social worker with masters-level education, training and experience may practice consistent with Tennessee state guidelines without obtaining a license in social work; or, b) a registered nurse with a bachelor's degree in nursing with a minimum of two (2) years psychiatric experience, or a registered nurse with a minimum of five (5) years psychiatric experience.

10. "Qualified Mental Health Workers" and "Qualified Mental Health Staff" shall refer to individuals with a minimum of a bachelor's degree and two years of experience providing mental health services.

11. The term "special needs inmates" shall refer to those inmates who are suicidal, mentally ill, mentally retarded, intoxicated, seriously or chronically ill, physically disabled, or otherwise a danger to themselves.

12. "Security staff" shall mean all employees, irrespective of job title, whose regular duties include supervision of inmates at the SCJ.

13. The term "Semi-annual Report" shall mean reports SCJ will submit to the United States to demonstrate its compliance with this Agreement as specified in paragraph 84 (below).

14. The term "100 Day Report" shall mean a report submitted by Shelby County to the United States within 130 days of execution of this Agreement to demonstrate its compliance with those provisions for which a 100 day report is specified.

III. SUBSTANTIVE REMEDIAL MEASURES

A. SECURITY, SUPERVISION AND PROTECTION FROM HARM

Security Staffing and Training

15. In order to improve sight and sound supervision of inmates in their housing units, the Jail shall convert the majority of inmate living spaces to a direct model of supervision in which the security staff's work station is located inside the inmate housing unit (either inside a pod or a dormitory). Within 100 days of this Agreement, the County shall provide DOJ with a written schedule for conversion of the living units that remain

to be converted, and shall notify DOJ in writing of any subsequent delays in and/or modifications to that schedule. At a minimum, the plan shall provide for the completion of the conversion within one year from execution of this Agreement. Written notification to DOJ concerning any subsequent delays shall be provided within 30 days of any such delay or modification.

16. The County shall train all security staff in the principles of direct supervision:

a. The County shall ensure that all supervisors and managers complete a course in direct supervision for supervisors and managers no later than January 1, 2003.

b. The County shall report to DOJ on the changes made to its existing pre-service training that changes the focus of this training to direct supervision as the dominant form of supervision at the SCJ.

c. The County shall continue to provide comprehensive pre-service training to all security staff.

d. The County shall develop pre-service training for all non-security staff (including civilians)who have contact with inmates directly to provide services or supervision of inmates. This pre-service training, at a minimum, shall address:

i) emergency and evacuation procedures;

ii) preventing transmission of blood borne pathogens;

iii) recognition and reporting of signs of mental illness and/or suicide risks; and

iv) reporting requirements for use of force.

17. The County shall hire and train sufficient security staff to fill all shifts. In so doing the County shall adhere to the current overtime management policy (Chapter 106, Overtime Management). Additionally, the County shall not make any substantive changes to the Overtime Management Policy without first allowing DOJ to review the proposed substantive changes.

18. Within twelve (12) months of executing this Agreement, the County shall create and maintain individual training records for all staff, documenting the date and topic of all pre-service and in-service training completed, for all training completed on or after September, 2001.

Population Management

19. The County shall continue to engage in proactive population management to prevent a recurrence of excessive crowding, including collection and analysis of data, and implementation of the population management plan, as described in the Population Management Report by consultant A. Gaston, dated March 14, 2002.

Security Policies and Procedures

20. The County shall implement revised key control and tool control procedures. Within 100 days of signing this Agreement, the County shall provide to DOJ revised policies in these areas,

and a schedule for implementation of the revised procedures. At a minimum, the County shall provide for implementation of revised policies within one year from execution of this Agreement. If implementation of the revised policies is not scheduled to begin within six (6) months of the date of the Agreement, then the County shall also provide, with its 100 day report, interim tool and key control plans.

a) At a minimum, the key control policy and interim measures shall:

i) assure maximum safety and security of staff, inmates and civilians in the SCJ;

ii) provide for emergency identification of keys by touch or other non-visual means;

iii) include revised post orders that reflect ongoing training in use of keys and both manual and electronic locking mechanisms;

iv) require routine testing and maintenance of keys and locks; and

v) ongoing inventory, audit and evaluation of key control.

b) At a minimum, the tool control plan and interim measures shall require ongoing inventory, audit and evaluation of tool use at the SCJ.

21. The Jail Compliance Unit shall verify that SCJ conducts and documents random checks of the security staff's familiarity with emergency tool and key procedures on a monthly basis.

22. The County shall provide security audit training for the Jail Compliance Unit and designated supervisory staff. Sufficient staff will be trained in time for the County to initiate an internal security audit within nine months of this Agreement. An internal security audit will be conducted every six months thereafter for the duration of this Agreement.

23. The County shall continue to utilize members of the specially trained Detention Response Team ("DRT") to conduct frequent and random shake-down searches of inmate housing areas, on both day and evening shifts. The County shall add to the shakedown log a section to record a summary of contraband confiscated.

24. The County shall provide timely escort of inmates, as required, to attend necessary programming.

Classification and Inmate Discipline

25. The County shall revise its inmate classification system. The revised system shall, at a minimum, incorporate the following changes:

a) Any revised classification system shall meet professional standards prior to its final implementation;

b) Inmates shall be reviewed periodically for possible re-classification (upward or downward) based on institutional behavior; and

c) The County shall implement a system of warning flags that alert intake workers of specific indicators in the records of an inmate's past incarceration at the SCJ, which, if present, require immediate referral to medical staff before classification is completed or the inmate assigned to housing. The indicators shall include, at a minimum:

i) Diagnosis or treatment for mental illness at any time during a past incarceration;

ii) Diagnosis or treatment for serious chronic illness, including but not limited to diabetes, hypertension, heart disease, seizure disorders, tuberculosis or HIV infection;

iii) Placement on heightened observation for suicide, risk at any time during a past incarceration at the SCJ; and

iv) Any medical contraindications for the use of chemical sprays.

26. The County shall include in its 100 day report a schedule for implementing a revised classification system, and any anticipated changes to the revised system. The County shall also provide an interim plan for implementing periodic re-classification reviews and a system of warning flags based on past history, pending implementation of the new classification

system. At a minimum, the County shall provide for the implementation of the new classification system within one year from execution of this Agreement.

27. The County shall implement procedures for assigning vulnerable, assaultive or special management inmates to administrative segregation and shall provide a sufficient number of single-occupancy cells to enable prompt segregation of these inmates.

28. The County shall implement an effective and timely system of inmate discipline and provide a sufficient number of single-occupancy cells for the prompt segregation of all inmates sentenced to the disciplinary segregation unit.

Use of Force Policies

29. The County shall revise its policies on the use of force, including the use of chemical agents and the use of restraints, to provide operational guidance to staff. The revised policy will be provided to DOJ for approval prior to implementation. At a minimum, the revised policies shall ensure that:

a) use of physical force is limited to those situations clearly identified by the policy;

b) SCJ shall conduct periodic inventory of chemical agents, and shall appropriately respond to indications of mis-use or excessive use of chemical agents;

c) mental health professionals are consulted before any planned use of force or non-routine use of restraints on any inmate with a diagnosis of mental illness;

d) all uses of force, including chemical agents and restraints, are reported pursuant to policy and all reports are reviewed by supervisory staff;

e) staff are subject to discipline for failure to report a use of force when policy requires such a report;

f) all uses of force and all failures to report a use of force are investigated thoroughly and appropriately by trained investigators; and

g) inmates may report allegations of the use of excessive force orally to any staff member, who shall reduce the report to writing.

30. The County shall implement an effective system for the prompt discipline of staff who violate policies on reporting and use of force.

31. The County shall revise its policy on use of the restraint chair to require pre-authorization and supervision by mental health staff for any non-emergency use of the restraint chair involving inmates with mental illnesses.

32. No hoods may be used under any circumstances. The County shall submit to DOJ for approval a revised policy to permit the use of a disposable spit cap in limited circumstances; the policy

shall, at a minimum, prohibit the use of spit caps which restrict an inmate's airway.

33. Security staff shall receive special training on all revised use of force policies.

34. The County shall require all security staff to attend annual in-service training on the use of force and de-escalation techniques.

Grievance Procedures

35. Grievance forms shall be available in all housing units at all times without the need to request one from a counselor or other staff member. The County shall provide a secure and confidential method for delivery of grievances, such as a secure lockbox in an area accessible to inmates. The County shall continue to record and maintain records of inmate grievances, including dispositions, for a minimum of one year. The County shall ensure that inmate grievances are investigated and responded to within a reasonable time frame. Inmates shall be provided at least one level of appeal. The County shall not retaliate against inmates who file grievances or appeals, and shall not limit an inmate's ability to file repetitive grievances, except as consistent with state law. In appropriate cases, the SCJ's response to a repetitive filing may be a reference to an earlier response.

36. The SCJ shall periodically review inmate grievances and the disposition of these grievances to identify trends or emergent problems that may require a management response.

Gang Management

37. The County shall identify and control inmates who are members of organized gangs. Illicit gang-related behavior shall be a factor considered in increasing an inmate's classification status.

B. MEDICAL AND MENTAL HEALTH CARE

Screening, Medication, and Specialty Care

38. The County shall comply with its stated policies to provide medical and mental health intake screening to all inmates; shall provide a 14-day health assessment and examination; shall ensure continuation of prescription medications within 24 hours of intake; shall comply with stated policies to screen inmates for infectious disease; shall continue to provide mental health evaluations for all inmates whose histories or whose responses to initial screening questions indicate a need for such an evaluation; shall provide accurate diagnoses for inmates in need of mental health services; and shall continue to provide timely and appropriate referrals for specialty care.

39. The County shall comply with its stated policy for medication administration, particularly in documenting any missed doses of medication.

Sick Call and Staffing

40. The County shall provide access to sick call to all inmates a minimum of five days per week; shall ensure that sick call request forms are reviewed by qualified medical staff within 24 hours; and shall ensure that, for non-emergency requests, inmates are seen by a qualified medical professional no more than 24 hours after submission of the request, or, if requests are first reviewed by qualified staff, within another 24 hours of that review, except that inmates may be seen within 72 hours of submission of a request on weekends.

41. The County shall hire additional staff to ensure that all sick call examinations are conducted by appropriately qualified and licensed medical professionals or medical staff, pursuant to licensing standards for medical professionals and nurses in the State of Tennessee. At a minimum, in its contract with its medical care provider beginning July 1, 2002, the County shall increase the number of medical doctors to a minimum of three (3) full time equivalent ("FTE") positions (one of the FTE medical doctor positions may be satisfied by substituting one and one half (1 ½) FTE mid-level practitioner such as a licensed nurse practitioner or physician's assistant); the County shall also use its best efforts to hire at least ten (10) additional registered nurses to fill the currently authorized nursing positions.

42. The County shall hire additional mental health professionals to ensure delivery of necessary mental health services. At a minimum, the County shall increase psychiatrist staffing to one and one-fifth FTE positions, and shall add a minimum of two FTE positions for mental health professionals to the staffing level authorized through addendum no. 11 to its health care contract.

43. The County shall assess the impact of the chargeable-care policy on delivery of medical and mental health care, consistent with the recommendations contained in the March 31, 1996 position statement on Charging Inmates a Fee For Health Care Services by the National Commission on Correctional Health Care.

44. The County shall provide to DOJ in its 100 Day Report a copy of all materials through which the SCJ explains the chargeable-care system for health care to inmates, including all materials prepared for non-literate and non-English speaking inmates.

45. Mental health workers shall make regular rounds to all housing units, including administrative segregation, in accord with SCJ stated policy; mental health workers shall speak regularly with pod officers on these rounds to assess whether inmates in general population, who have not self-identified as requiring mental heath care, should be evaluated by a mental health professional.

Mental Health Information and Intervention

46. The County shall provide sufficient qualified medical and mental health staff to respond promptly to requests from security staff for medical information/intervention, including, without limitation, assessment and monitoring of inmates identified at intake by the medical alert (or flag) system described in paragraph 25, above; intervention prior to a planned use of force on an inmate known to suffer from mental illness, as required in paragraph 29, above; and identification of inmates for whom the use of chemical agent sprays is medically contraindicated.

47. The County shall ensure that mental health professionals monitor all use of therapeutic restraints pursuant to its revised use of force policy, and shall ensure that mental health professionals are consulted prior to any planned uses of force involving inmates identified as having a mental illness.

Chronic and Critical Care

48. The County shall implement a system to track inmates with serious and/or chronic illnesses, including mental illnesses, to ensure that these inmates receive necessary diagnosis, monitoring and treatment.

49. The County shall implement a protocol for enhanced communication between medical professionals who transfer any inmate between the SCJ and an outside medical facility, including, but not limited to, transfers between the SCJ and the

Regional Medical Center ("the MED"), and between the SCJ and the Memphis Mental Health Institute ("MMHI"). The protocol shall, at a minimum:

a) be implemented within 6 months of signing this Agreement;

b) shall be monitored as part of the County's quality assurance program;

c) shall expressly authorize a SCJ physician to refuse, on medical grounds, to admit (or refuse to accept a transfer of) an inmate from any outside medical facility (specified above), consistent with state law; and

d) in addition, SCJ internal Policies and Procedures shall be revised to provide direction to staff in accomplishing the transfer inmates to outside medical facilities once a SCJ physician determines, on medical grounds, that the inmate should no longer be housed at the SCJ.

50. The County shall revise its Policies and Procedures on segregation of special needs inmates (currently BK 5201.01-1.04 to BK 52. 02.00-05). At a minimum, the revised policy shall:

a) prescribe a protocol to identify inmates requiring heightened medical and/or mental health monitoring;

b) prescribe a method of triaging these special needs inmates for classification and assigning housing based on assessed need; and

c) specify means of providing enhanced monitoring for inmates who require such close monitoring, pursuant to the County's policies, but for whom no space is available in the housing unit referred to as special needs housing.

Suicide Prevention

51. The County shall continue to provide appropriate clothing, such as paper gowns or suicide smocks, to all inmates placed under suicide precautions.

52. The County shall implement revised policy and procedures for suicide observation cells (currently Pod 2K) to address the lack of direct visual observation for certain of these cells.

53. All SCJ staff shall receive annual training on suicide prevention.

Universal Precautions

54. The County shall, within six months, draft and implement a written infection control program to ensure compliance with universal precaution procedures in all SCJ operations. At a minimum, the program shall ensure provision of appropriate cleaning and personal protective equipment, and shall include training on preventing transmission of blood borne pathogens, as well as general sanitation issues.

Critical Incident Reviews

55. The County shall request an autopsy and shall conduct a critical incident/mortality review for every inmate who

dies while in the SCJ (or at the Jail ward of the MED), as part of the County's ongoing quality improvement program. Critical incident review teams shall involve physicians, nurses and other relevant County personnel, including SCJ security staff, and shall seek to determine whether there was a pattern of symptoms or in the SCJ's response which might have resulted in earlier diagnosis and intervention. The review team shall also examine events immediately surrounding the inmate death to determine if appropriate interventions were undertaken.

C. ENVIRONMENTAL HEALTH AND SAFETY

Food Services

56. Within 150 days of the execution of this Agreement, the County shall have in place a permanent food service provider for SCJ.

57. All food service staff must be trained in food service operations, safe food handling procedures and proper sanitation. The County shall ensure that the temporary food service provider, hired to provide food services during the transition to a private provider, is staffed with a sufficient number of properly supervised and trained personnel.

58. The County shall ensure that its contract with a permanent food service provider contains provisions requiring that all civilian food service staff receive 40 hours of pre-service training in the principles of safe food handling, proper service,

and sanitation. Civilians who will have contact with inmates during food preparation or service shall, in addition, receive pre-service training relating to security, emergency evacuation and blood borne pathogen concerns. Inmate food service workers shall receive training in principles of safe food handling and sanitation, although the SCJ shall retain discretion to provide fewer than 40 hours of such training to inmate workers.

59. The County shall ensure that the SCJ's food sanitation practices and procedures comply with state and local health codes.

60. The County shall ensure that the newly-established environmental health and safety manager ("EHM") or his/her designee checks and records on a daily basis the temperatures in the refrigerator, coolers, walk-in-refrigerator, the dishwasher water, and all other equipment with temperature monitors. The EHM shall also verify that the manifold pressure gauge on the dishwasher is checked and recorded on a daily basis. Likewise, to ensure proper sanitation, the EHM shall verify that maintenance personnel check and record on a weekly basis the speed of the dish conveyor to ensure that it conforms to manufacturer specifications. SCJ shall purchase temperature recording strips to measure the accuracy and adequacy of dishwashing machine temperatures (for both wash and final rinse cycles), and shall purchase chemical sanitizing strips and

routinely check to ensure proper sanitizing when food service equipment is washed in sinks.

61. The County shall have inmate meals reviewed annually by a registered dietician to ensure the nutritional adequacy of inmate meals. Menus must be evaluated annually to ensure compliance with nationally recommended basic daily nutritional requirements. A dietician shall also review all special medical diets annually, or more often as necessary. The County shall provide support to its food service manager from a dietician in order to make nutritionally adequate menu substitutions on those occasions when specified menu items are unavailable.

62. The County will construct a new kitchen adjacent to the Jail Annex currently under construction, and will contract for completion of the new kitchen within eighteen to twenty-four months. In the new kitchen, the County shall install new, properly-sized kitchen equipment, i.e., designed to provide food service to the rated capacity of SCJ, including refrigeration units, cooking units and dishwashing and tray washing units.

63. In its 100 day Report the County shall produce an interim plan to DOJ that corrects the problem of broken, malfunctioning, and/or improperly-sized food service equipment. At a minimum, the plan shall designate personnel to perform preventive maintenance and conduct quality assurance checks on all existing food service equipment, including daily checks and documenting of

freezer, cooler, refrigerator and holding oven temperatures and daily checks of all sanitizing equipment.

Housekeeping, Preventative Maintenance and Pest Control

64. The County shall immediately revise its written housekeeping and sanitation plan to ensure the proper routine cleaning of housing and shower areas, which shall include routine housing inspections to assess compliance with its revised plan. The housekeeping plan shall, at a minimum, be revised to specify routine cleaning schedules for the kitchen, medical and other common areas outside inmate housing.

65. The County shall develop a written preventative maintenance plan to improve upon the recently-adopted priority-based work order system, and shall provide a copy of the written plan to DOJ for its comments and approval within 100 days. At a minimum, the plan shall specify a protocol for accurate and timely entry of information into the system, and shall provide for routine audits of the system by the Jail Compliance Unit to assess its efficiency and utility.

66. The County currently utilizes portable eye wash stations. These should be added to SCJ's preventative maintenance plan and inspected annually. To the extent SCJ utilizes any stationary eyewash stations, the County shall ensure that these stations are

inspected and flushed on a weekly basis to prevent blockages and to ensure proper pressure. This task shall be added to the preventative maintenance list.

67. The County shall ensure adequate pest control throughout the housing units, medical intake and food storage areas. The County shall maintain a contract for professional exterminator services for the main Jail and Jail East, and the new Jail Annex when it opens. Services should provide for routine spraying and additional spraying as needed.

Personal hygiene and laundry

68. The County shall ensure that personal hygiene items, including an adequate supply of soap, hair shampoo, toothbrushes, toothpaste, toilet paper, a comb, deodorant, shaving equipment, and feminine hygiene products are made available, as necessary, to every inmate. The Jail Compliance Unit shall review and assess its compliance with this requirement at least twice annually, including a review of inmate grievances concerning hygiene items.

69. The County is currently soliciting bids for an outside contractor to replace the Jail's laundry services which were recently destroyed by a fire. Jail East will continue to do its own laundry. The County shall ensure that its stated policies and procedures regarding the laundering of inmate clothing are implemented by both the temporary and permanent laundry

providers, and that inmates are provided clean clothing, underclothing and bedding in compliance with policy. The County shall revise its laundry exchange schedule to ensure equitable distribution and pickup service to all housing areas. The County shall specify in its laundry policy and/or inmate handbook that it will provide inmates two sets of clothing, at a minimum. The Jail Compliance Unit shall review and assess its compliance with laundry policy at least twice annually, including a review of inmate grievances concerning laundry.

70. The County shall ensure adequate lighting in all inmate housing and work areas to enable inmates to read without eyestrain, to maintain adequate personal hygiene, and to facilitate proper sanitation. The County is currently engaged in a bidding process to procure a contractor to repair the lighting in the SCJ's cells, catwalks and showers. The County shall publish/disseminate the RFP and engage a contractor so as to provide sufficient lighting within six months of this Agreement. The County shall notify DOJ in writing of any delays in and/or modification to these time frames.

Plumbing

71. The County shall revise its preventative maintenance plan to define plumbing emergencies, and shall specify back-up procedures to address plumbing emergencies on weekends and outside of business hours.

72. The County shall complete outstanding repair requests and maintain in good working order all toilets, lavatories and showers. These items shall be incorporated on the list of items to be addressed in the SCJ's preventative maintenance plan described in paragraph 65, supra.

Ventilation

73. The County shall ensure adequate ventilation throughout the SCJ to ensure that inmates receive an adequate supply of fresh air and reasonable levels of heating and cooling. Maintenance staff shall review and assess compliance with this requirement at least twice annually; the Jail Compliance Unit shall review inmate grievances concerning heating, cooling and ventilation on a semi-annual basis.

Fire Safety and Emergency Preparedness

74. The County shall develop and implement a comprehensive fire safety program and ensure compliance is appropriately documented. The initial fire safety plan shall be approved by the City or County Fire Marshall. The fire safety plan shall be reviewed thereafter by the Fire Marshall at least every two years, or within six (6) months of any revisions to the plan, whichever is sooner.

75. The County shall forthwith provide DOJ with a plan that ensures that comprehensive fire drills are conducted every three (3) months on each shift. The 100 Day Report shall provide

documentation of these drills, including start and stop times and the number and location of inmates who were moved as part of the drills. The County shall ensure that fire safety equipment, including fire extinguishers and self-contained breathing apparatus, is regularly inspected and properly secured, and that inspections are documented.

76. The County shall ensure that staff are able to manually unlock all doors (without use of the manual override in the event of an emergency in which the manual override is broken), including in the event of a power outage or smoke buildup where visual examination of keys is generally impossible. The Jail Compliance Unit shall conduct and document random audits to test staff proficiency in performing this task on all shifts, a minimum of three times per year.

77. The County shall eliminate all electrical hazards, and ensure the proper use of extension cords and proper repair of wiring.

78. The County shall control combustibles and eliminate highly flammable materials throughout the institution and inmate living areas (e.g., inmates' use of paper bags as trash receptacles, ripped fire-retardant mattress covers and, improperly stored and labeled flammable liquids and other chemicals). The County shall remove all impediments compromising

the effectiveness of sprinkler heads including, specifically, those in the food storage units in the kitchen area.

79. The Jail Compliance Unit shall conduct regular security inspections and the County shall provide ongoing maintenance to security devices such as door locks and manual unlocking mechanisms to ensure these devices function properly in the event of an emergency.

80. The County shall revise and implement a specific facility tailored Emergency Response Plan within one year of execution of this Agreement. At a minimum, the Emergency Response Plan shall address fire-related emergencies, other emergencies or crisis situations such as escapes, bomb threats, hostage taking and negotiations; and provide for announced and unannounced bi-annual drills to ensure the staff and inmate population understand their respective roles in specific emergency scenarios. All training drills shall be conducted consistent with the injunctive relief ordered in American Federation of State v. A.C. Gilless, et al., CV.00-2540 (W.D. Tenn.). The County shall produce a copy of the draft plan to DOJ within 100 days.

D. ACCESS TO THE COURTS AND EXERCISE OPPORTUNITIES

81. The County shall provide to DOJ within six months a revised policy regarding access to the law library, which at a minimum, shall ensure:

a) provision of individual storage bins or lockers in which inmates may store legal materials;

b) that inmates on locked units (psychiatric, administrative and disciplinary segregation, protective custody, and other special needs housing) receive access to legal materials and legal assistance equivalent to that of inmates in the general population;

c) that inmates who are illiterate and/or have limited or no English proficiency receive meaningful assistance in order to access legal materials and legal assistance;

d) that a trained aide be available to assist inmates with the law library resources; and

e) in the event SCJ provides computer access to inmates, inmates will be provided reasonable assistance with this resource.

82. All inmates shall be informed of the policies and procedures for accessing legal assistance at the SCJ.

83. The County shall provide inmates with routine access to outside recreational activities, consistent with the recommendations contained in the NIC Recreation/Programs technical assistance report (#02J1078), dated February 18, 2002. At a minimum, the County shall use its best efforts to provide a minimum of two and one-half (2 ½) days of outdoor recreation each week, weather permitting. These efforts are to be documented and

provided to DOJ upon request. The County shall utilize the redesigned outdoor rooftop program area in addition to the gym, seven (7) days a week unless the temperature falls below freezing (32 degrees), rises above 95 degrees, or there is potentially life-threatening inclement weather (e.g., thundershowers or tornados).

IV. REPORTING REQUIREMENTS

84. The County, through its Criminal Justice Coordinator, shall report semi-annually to the United States Department of Justice ("DOJ") concerning its compliance with the terms of the Agreement (the "Semi-annual Report"). The first Semi-annual Report shall be due six months from the date of this Agreement, and every six months thereafter, until the Agreement is terminated as provided in paragraph 98. At a minimum, the Semi-annual Report shall include the following sections:

a. A narrative summary of the County's compliance with the terms of this Agreement; where applicable, the summary shall specifically note when the County has failed to meet any deadline specified in this Agreement.

b. A training summary, in which the County reports the number of hours and type of training provided to staff during the reporting period, separately by supervisory and non-supervisory staff, and, if applicable, separately for security, medical, mental health and civilian staff.

c. A copy of all substantive court filings made during the reporting period by either the County or the Special Master in the case of Little v. Shelby County, No.96-2520(W.D. Tenn.)

d. Copies of supporting data and/or reports as specified within this Agreement and itemized in paragraph 85 below.

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

a. an update on the status of SCJ's conversion from the indirect to direct supervision model as described in paragraph 15, supra.

b. a schedule that ensures completion of the 40 hour direct supervision training by all security staff no later than June, 2003, and a report on the SCJ's compliance with this schedule;

c. an update on steps taken to hire and retain qualified security staff, including: a summary of turnover rates and new hiring; copies of any consultant reports prepared on the issue of staff recruitment and retention; and changes in recruitment or selection procedures, job standards or job descriptions.

d. copies of the Jail Monthly Summary Report.

e. documentation demonstrating the Jail Compliance Unit's monthly random checks of the security staff's familiarity with emergency tool and key procedures as described in paragraph 21, supra.

f. copies of SCJ's audits and a report documenting SCJ's progress in training staff to conduct internal audits as described in paragraph 22, supra.

g. the number and types of inmate disciplinary infractions referred to the disciplinary committee during the report period, a summary of the dispositions, and the total number of cases abandoned for lack of a timely hearing.

h. copies of one week's shakedown-logs summarizing contraband confiscated, as described in paragraph 23, supra, from any week of any month in the reporting period.

i. 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.

j. copies of the monthly medical quality assurance committee minutes, and all audits of medical or mental health services.

k. reports on both medical and mental health staffing described in paragraph 41-42, supra, including the number of vacancies in authorized medical and mental health positions on the first day of each month.

l. copies of all audits concerning the chargeable care policy, and any findings of those audits, as described in paragraph 43, supra, and a review of any inmate grievances

concerning access to or provision of medical or mental health care.

m. copies of any revised or supplemental materials provided to inmates, including a script used by staff to explain the chargeable care policy as described in paragraph 44, supra. The script shall be provided for DOJ's review within 100 days.

n. a copy of SCJ's protocol for enhanced communication between medical professionals who transfer any inmate between the SCJ and an outside medical facility as described in paragraph 49, supra, and a report on compliance with the protocol.

o. documentation of the SCJ's basic blood borne pathogen training and in-service training for all staff as described in paragraph 54, supra.

p. list the personal protective equipment currently available to SCJ staff;

q. copies of quarterly spore count test results for autoclaves;

r. report all mortality statistics for inmates who die in custody or upon transfer to an outside hospital, including the number of deaths; date of death; age; and suspected cause of injury or death. The County shall also describe any quality improvement measures implemented during the reporting period pursuant to the recommendation of the critical incident review committee as described in paragraph 55, supra.

s. a status report summarizing safe food handling, proper service and sanitation training received by food service employees as described in paragraph 57-58, supra.

t. a status report on SCJ's preventive maintenance efforts and documentation regarding the degree of compliance with the plan as described in paragraph 65, supra.

u. documentation describing SCJ's provision of personal hygiene items described in paragraph 68, supra, and a semi-annual review and assessment of inmate grievances concerning hygiene items.

v. documentation describing SCJ's compliance with its laundry policy described in paragraph 69, supra, including a semi-annual review of any inmate grievances concerning laundry.

w. documentation describing SCJ's compliance with the requirement to provide adequate ventilation, including its semi-annual review of any inmate grievances concerning heating, cooling and ventilation.

x. copies of the Fire Marshall's reports regarding SCJ as described in paragraph 74, supra.

y. documentation that the Jail Compliance Unit has verified that the SCJ has conducted random audits to test staff proficiency in unlocking all doors manually as described in paragraph 76, supra.

86. In addition to the Semi-annual Report, the County shall provide to DOJ, within 130 days of this Agreement, a report describing its compliance with those tasks for which a 100 day report is specified.

87. During the term of this Agreement, upon reasonable notice, the United States and its consultants shall have access to all facilities referenced in this Agreement and to the records of inmates and compliance records to the extent necessary to assure compliance with the specific terms of this Agreement. Upon request, the County shall provide to the United States, within a reasonable time, copies of, or access to, SCJ documents or records and/or documents or records created by any agent or contractor authorized by Shelby County to work or to provide services at the SCJ.

88. The United States shall have the right to conduct confidential interviews with inmates. The County shall continue to permit inmates to send and to receive confidential legal mail to attorneys of record, courts and to representatives of the Department of Justice.

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

V. IMPLEMENTATION, ENFORCEMENT and TERMINATION

90. The County shall implement immediately all provisions of this Agreement which involve the continuation of current County policies, procedures, and practices.

91. The County shall provide to DOJ each plan, policy, form and/or training materials revised pursuant to this Agreement within the time specified herein. Any subsequent revisions to these materials shall also be submitted to DOJ during the term of this Agreement. The United States shall expeditiously review all plans, policies, procedures, forms and/or training materials for which this Agreement requires approval from the United States prior to implementation.

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

93. The parties agree to file this Agreement with the Court in conjunction with a joint motion, pursuant to Fed. R. Civ. P. 41(a)(2), for the dismissal of this case. The dismissal shall be conditioned upon the County's achieving substantial compliance with the entire agreement and maintaining compliance

for at least one year thereafter. The motion shall request that the case be placed on the Court's inactive docket.

94. Substantial Compliance with each term of this Agreement shall fully satisfy the Agreement. The burden shall be on the County to demonstrate that it is in substantial compliance with each of the provisions of the Agreement. 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.

95. Substantial compliance may be achieved separately in any of the four substantive areas addressed in this settlement agreement (medical and mental health care, security and protection from harm, environmental health and safety, and/or access to exercise and to the courts). If the County achieves substantial compliance in any of the four substantive areas of the Agreement, prior to achieving full compliance with the entire Agreement, and then maintains that compliance for a period of one year, then the County may discontinue those portions of the Semi-annual report which concern compliance with that substantive area of the Agreement. The County shall remain obliged, however, to provide this information, or other specific information requested by the Department, upon request.

96. The United States reserves the right to file a motion to restore this case to the Court's active docket for purposes of litigating the allegations in the Complaint if it believes Shelby County is not in substantial compliance with the Agreement. The United States shall give Shelby County thirty (30) calendar days' written notice before the filing of such motion and will attempt to resolve such disputes cooperatively.

97. In the event the United States believes that the County has failed to substantially comply with the terms of this Agreement, in whole or in part, and such non-compliance threatens the immediate health and safety of inmates, the United States may, without further notice, file a motion to restore the case to the Court's active docket.

98. Once the County has determined that it is in substantial compliance with this Agreement or any of its four substantive areas, the County shall notify the United States in writing, by certified mail, return receipt requested. If the United States does not provide a written objection to such determination within forty-five (45) days of receipt of said notice, the County will be deemed to be in substantial compliance beginning on the date of the notice. If the United States provides a written objection to such determination, in whole or in part, the parties shall make good faith efforts to resolve the dispute. One (1) year from the date the County has reached and maintained substantial

compliance with the terms of the entire agreement, the parties shall file a joint motion for final dismissal of this action.

99. In the event that the allegations in the underlying complaint are litigated (i.e., through a trial or dispositive motions), this Agreement shall not be introduced or used as evidence.

100. Notice under this Agreement shall be provided by Federal Express overnight delivery and shall be provided to the Shelby County Sheriff's Legal Advisor, the Shelby County Attorney, and the United States Department of Justice, at the addresses used in the signature pages of this Agreement, or as otherwise designated in written notice to all signers of the Agreement.

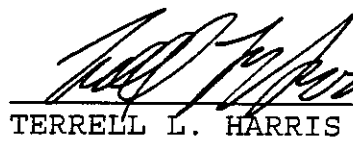
101. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the parties to the Agreement, and shall inure solely to the benefit of the parties to this Agreement. This Agreement is not intended to impair or expand the right of any person or organization to seek relief against the County for its conduct or the conduct of County employees or agents; accordingly, it does not alter legal standards governing any such claims.

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

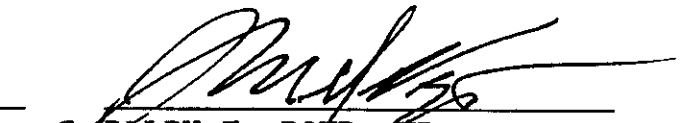
103. This Agreement shall be applicable to and binding upon all parties, their officers, agents, employees, assigns, and their successors in office, all in their official capacities.

104. The County shall make the substantive terms of this Agreement available to all inmates by maintaining a complete copy of the Agreement in the law library, and providing a complete copy to any inmate upon request.

FOR THE UNITED STATES:

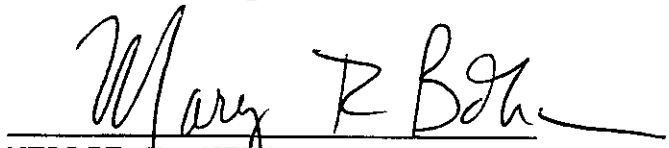


TERRELL L. HARRIS
United States Attorney
Western District of
Tennessee



For RALPH F. BOYD, JR.
Assistant Attorney General
Civil Rights Division

STEVEN H. ROSENBAUM
Chief
Special Litigation Section



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in his official capacity

DONNIE WILSON
Shelby County Attorney
in his official capacity

FOR THE SHERIFF OF SHELBY COUNTY:

A.C. GILLESS
Sheriff of Shelby County
in his official capacity

Dated: 8-8-02