OPERATIONS, MANAGEMENT, AND MAINTENANCE AGREEMENT

FOR THE

OTERO COUNTY PRISON FACILITY AND OTERO COUNTY PROCESSING CENTER

between

MANAGEMENT & TRAINING CORPORATION

and

OTERO COUNTY, NEW MEXICO

Table of Contents

ARTICLE I 1

Definitions 1

ARTICLE II 4

Representations and Warranties 4

Scope of Services 7

ARTICLE IV 16

Effective Date; Fee Entitlement Dates; Term; and Termination 16

ARTICLE V 18

Compensation, Invoicing, and Fees 18

ARTICLE VI 22

Independent Contractor and Personnel 22

ARTICLE VII 24

Indemnification, Insurance, and Environmental 24

ARTICLE VIII 28

Other Obligations 28

ARTICLE X 31

Miscellaneous Provisions 31

OPERATION, MANAGEMENT, AND MAINTENANCE AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

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

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

ARTICLE I

Definitions

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

A. ACA- the American Correctional Association.

B. ACA Standards - the standards published by the American Correctional Association, as heretofore or hereafter supplemented or amended.

C. Agreement - this document regarding the operation, management, and maintenance of the Facility by MTC. The terms "Agreement" and "Contract" are used interchangeably throughout this document.

D. Bonds -the Phases 1 and 2 Bonds and Phase 3 Bonds.

E. Bond Ordinance - the Ordinances of the County, and all amendments thereto and related resolutions, passed by the County on either June 17, 2002, April 17, 2007, or November 11, 2012, regarding the Facility and the Bonds, specifying the duties, obligations, and responsibilities of the Trustee.

F. Business Day - any day the County Administration Office is open for business.

G. Commencement Date - the date upon which MTC accepted and assumed responsibility for the day-to-day operation of the Facility for the housing of Offenders pursuant to the provisions of the Original Management Contract.

H. Contract Monitor - the person appointed by the County Manager to oversee MTC's compliance with this Agreement, or the County Manager, until such appointment is made.

I. Contract Year - a period of 365 or 366 days, during the term of this Agreement or any extension thereof, beginning on the annual anniversary of the Commencement Date.

J. Court Orders - any existing or future orders or judgments issued by a court of competent jurisdiction or any existing or future settlements, stipulations, agreements, or plans entered into in connection with litigation that are applicable to the operation, management, or maintenance of the Facility or related to the care and custody of Offenders.

K. County Fee – the total monthly fee(s) owed to the County as calculated pursuant to Article V(F).

L. County Housing Rate - the amount of money to be paid by County to the Trustee for each Offender Day that a County Offender is housed in the Facility. The County will direct the Trustee to pay MTC the County Housing Rate from the Revenue Fund.

M. County Offender - a post-conviction Offender, sentenced pursuant to the jurisdiction of the County, assigned to the Facility by County, and not by another User Agency. All County Offenders shall be housed at the Facility pursuant to the terms of this Agreement, and any additional terms negotiated between the Parties.

N. Effective Date – the date of the last signature below subject to execution by the parties and approval by the New Mexico Attorney General, the Department of Finance and Administration (Local Government Division), and the General Services Department (Risk Management Division) of the State of New Mexico, pursuant to N.M.S.A. 1978, Section 33-3-2 (1989) and N.M.S.A. 1978, Section 33-3-27, (2015).

O. Facility - the building constructed using Phases I and 2 Bonds and a second building constructed using Phase 3 Bonds, and all modifications, expansions, and extensions

thereto, individually or collectively.

O. Facility Administrator - the individuals appointed by MTC to administer the Facility in accordance with this Agreement. The terms "Facility Administrator" and "Warden" are used interchangeably throughout this Agreement.

P. Housing Agreement - a contract between the County and a User Agency(ies) establishing the terms for the housing of Offenders at the Facility. In the event of a conflict between this Agreement and a Housing Agreement, the terms of this Agreement shall control.

Q. Non-Violent - persons without a present conviction for a felony offense that involved threatened or use of physical force.

R. Offender - all detainees or inmates housed at the Facility, other than County Offenders.

S. Offender Day - for the purposes of this Agreement, unless otherwise defined by a Housing Agreement, an "Offender Day" shall mean a twenty-four (24) hour time period, or a portion thereof, beginning with twelve o'clock (12:00) midnight and ending twenty-four (24) hours later, during which an Offender or County Offender is housed at the Facility. Unless otherwise required by a Housing Agreement, an Offender must be in the care, custody, and control of MTC at the Facility for more than twenty-four (24) hours before the County will be obligated to pay MTC for housing an Offender or County Offender for more than one Offender Day.

T. Operating Expenses - all reasonable and necessary current expenses, paid or accrued, of opening, equipping, operating, maintaining, and repairing the Facility.

U. Operating Standards - all applicable federal, state and local laws, rules, codes, regulations, and Court Orders, as any of the same may be supplemented or amended, and those rules, regulations, policies, procedures, conditions, provisions, and ordinances made applicable to MTC's operation of the Facility by this Agreement. Operating Standards shall also include operations in accordance with the applicable ACA Standards. If any of the Operating Standards are in conflict with each other or with this Agreement, the more stringent shall apply. Operating Standards shall include the terms and conditions of each Housing Agreement. Operating Standards shall also include the terms and conditions negotiated by the Parties for the housing of County Offenders at the Facility, if any.

V. Parties - Otero County, New Mexico and Management & Training Corporation.

W. Per Diem Rate for Phases 1 and 2 Building - the charge per Offender housed in the building constructed using Phases 1 and 2 Bonds, per Offender Day, as set out in Article V, which the County will direct the Trustee to pay to MTC from the Revenue Fund.

X. Per Diem Rate for Phase 3 Building - the charge per Offender housed in the building constructed using Phase 3 Bonds, per Offender Day, as set out in Article V, which the County will direct the Trustee to pay to MTC from the Revenue Fund.

Y. Revenue - the gross revenues paid or payable to the County in connection with the operation of the Facility, excluding those items of reimbursement to MTC more particularly described in Articles V.C.2 and V.C.3.

Z. Revenue Fund - the account managed by the Trustee, into which all Revenue is to be deposited.

AA. Sheriff - the Sheriff of Otero County, New Mexico.

BB. Trustee - the entity defined as the Trustee in the Bond Ordinance(s).

CC. User Agency - any governmental entity(ies), including but not limited to the United States Marshal Service ("USMS") or the United States Department of Homeland Security Immigration and Customs Enforcement ("ICE"), with which MTC has negotiated for and on behalf of the County, that has entered into a Housing Agreement with the County to have its Offenders housed at the Facility.

DD. Otero County Prison Facility (OCPF) - The building constructed using Phases 1 and 2 Bonds, and all modifications, expansions, and extensions thereto, individually.

EE. Otero County Processing Center (OCPC) – The building constructed using Phase 3 Bonds, and all modifications, expansions, and extensions thereto, individually.

ARTICLE II

Representations and Warranties

A. MTC Representations and Warranties: MTC represents and warrants to the County, with the intent that the County shall rely thereon in entering into this Agreement as follows:

1. Organization and Qualification. MTC has been duly incorporated and validly exists as a corporation in good standing under the laws of the State of Delaware, with power and authority to conduct its business and operate, manage, and maintain public jail facilities. MTC is duly qualified to do business as a corporation in good standing in the State of New Mexico.

2. Authorization to Contract. This Agreement has been duly authorized, executed, and delivered by MTC and, assuming due execution and delivery by the County, and subject to fulfillment of the requirements of N.M.S.A. 1978, Section 33-3-27 (2015), constitutes a legal, valid, and binding agreement enforceable against MTC in accordance with its terms.

3. No Violation of Agreements, Articles of Incorporation, or Bylaws. The transactions contemplated by this Agreement and the fulfillment of the terms hereof do not conflict with, nor will they result in a breach of any of the terms and provisions of, or constitute a default under any contract, license, permit, or other agreement or instrument to which MTC is a party or by which it is bound, or any order, rule, or regulation of any court, regulatory body, or administrative agency, and do not conflict with, nor will they result in a breach of any of the terms and provisions of, or constitute a default under, MTC's Articles of Incorporation or Bylaws.

4. No Defaults under Existing Contracts. MTC is not in material default, nor is there any event in existence that, with notice or the passage of time or both, would constitute a material default by MTC under any contract, license, permit, or other agreement or instrument to which MTC is a party or by which it is bound, which default would adversely affect MTC's ability to perform under this Agreement.

5. No Violation of the Law. Neither MTC nor its officers or directors has been advised, or has reason to believe, that MTC or its officers or directors has been conducting business in material violation of any applicable laws, rules, or regulations of any of the jurisdictions in which MTC is conducting business, including, but not limited to, safety laws, laws with respect to non-

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

6. No Litigation. There is not now pending or, to the knowledge of MTC, threatened any action, lawsuit, or proceeding to which MTC is a party before or by any court or governmental agency or body or any such action, lawsuit, or proceeding related to environmental or civil rights matters that might result in any material adverse change in MTC's ability to perform under this Agreement, and no labor disturbance by any employees of MTC exists or is imminent that might adversely affect MTC's ability to perform under this Agreement.

7. No Taxes Due. MTC has paid all federal, state, foreign, and local income and other taxes due, and MTC has no knowledge of any material tax deficiency, which has been or might be asserted against MTC, which would adversely affect MTC's ability to perform under this Agreement.

8. No Adverse Change. Since the date of MTC's most recent balance sheet and financial statements provided to the County, there has not been any material adverse change in MTC's business or condition, nor has there been any change in MTC's assets, liabilities, or financial condition from that reflected in such balance sheet that is material to MTC's ability to perform under this Agreement.

9. Maintenance of Corporate Existence and Business. MTC shall at all times maintain its corporate existence and authority to transact business in good standing in New Mexico and in its jurisdiction of incorporation. MTC shall maintain all licenses, permits, and franchises necessary for its businesses where the failure to so maintain may have a material adverse affect on MTC's ability to perform under this Agreement.

10. Disclosure. There is no material fact that adversely affects, or in the future, so far as MTC can now reasonably foresee, could adversely affect MTC's ability to perform under this Agreement that has not been accurately disclosed by MTC.

11. Employment. During the term of this Agreement, or any extension thereof, and for ninety (90) days thereafter, no officer or member of MTC's board of directors is now or will be an employee or member of the governing body of the County.

12. Adherence to Operating Standards. MTC shall operate, maintain, and manage the Facility in accordance with all Operating Standards so long as the Operating Standards are applicable to the type of Offenders housed at the Facility. In the event any waiver or deviation from the Operating Standards is necessary to operate the Facility, a written request for such waiver or deviation shall be submitted to the Contract Monitor to review and make a recommendation to the County Manager, who will either approve or deny the request, in writing, within thirty (30) days of MTC submitting its written request. If such requests are not approved or denied within said thirty (30) day period, said requests shall be conclusively deemed to have been approved.

13. Limitation on Sources of Payment. MTC shall not pursue nor make any claim against the General Fund Revenues of the County for the payment of any obligation owed by County hereunder, and MTC shall look solely to Revenue (as defined herein) for the payment of the obligations owed by County hereunder.

14. MTC Officers Authorized. The officers of MTC executing this Agreement have been duly authorized to execute and deliver this Agreement.

B. The County's Representations and Warranties. The County represents and warrants to MTC, with the intent that MTC shall rely thereon in entering into this Agreement, as follows:

1. Authorization to Contract. This Agreement has been duly authorized, executed, and delivered by the County and, assuming due execution and delivery by MTC, and subject to fulfillment of the requirements of N.M.S.A 1978, Section 33-3-27 (2015), constitutes a legal, valid, and binding agreement enforceable against the County in accordance with its terms.
2. Disclosure. There is no material fact that adversely affects, or in the future, so far as the County can now reasonably foresee, could adversely affect the County's ability to perform under this Agreement that has not been accurately set forth in this Agreement.

3. Public Purpose. The operation, management, and maintenance of the Facility is required by the County solely for a public purpose and public use to house Offenders and County Offenders incarcerated pursuant to the jurisdiction of the State of New Mexico, the political subdivisions thereof, or any other governmental entity.

4. County Duly Formed. The County is a duly formed and validly existing political subdivision of the State of New Mexico, and is governed by the laws of the State of New Mexico.

5. Facility and this Agreement Authorized by Law. N.M.S.A. 1978, Section 33-3-2 (1989) authorizes the County to establish, acquire, construct, operate, and maintain the Facility, to enter into this Agreement and the transactions contemplated hereby, and to carry out its obligations under this Agreement.

6. County Officers Authorized. The officers of the County executing this Agreement have been duly authorized to execute and deliver this Agreement.

7. County Approval of User Agency Agreements. The County shall diligently review, process, and consider approval of all lawful and reasonable agreements with such User Agencies as may be necessary to facilitate the receipt and incarceration of eligible Offenders in the Facility. The County shall not unreasonably withhold its approval of any of such agreements.

8. Employment. During the term of this Agreement, or any extension thereof, and for ninety (90) days thereafter, no member of the governing body of the County is now or will be an owner, employee, officer, or director of MTC or will in any way violate the conflict-of-interest laws of the State of New Mexico.

11. Expansions. This Agreement shall apply to all phases of the Facility and shall include the operation of any improvement, modification, or expansion of the Facility unless expressly agreed by the parties to the contrary.

12. Operating Expenses. County shall require the Trustee to pay Operating Expenses of the Facility each month (including but not limited to the fees due to MTC hereunder) from the Revenue Fund, prior to the payment of any Bond payment, interest, or debt retirement. Each month, County shall fully and promptly comply with all provisions of the Bond Ordinance that constitute conditions precedent to MTC's receipt of payment of the fees due and owing hereunder.

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

ARTICLE III

Scope of Services

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

A. Staffing

1. MTC shall staff the Facility twenty-four (24) hours a day, seven (7) days a week.

2. MTC shall provide adequate staffing of the Facility in compliance with all applicable Operating Standards necessary to maintain a reasonable level of security within the Facility and sufficient to reasonably monitor the activities of the Offenders confined within the Facility.

3. MTC shall provide its security personnel with uniforms and appropriate equipment.

4. MTC shall maintain a trained tactical team on call and a well-equipped armory with appropriate tools, weapons, and ammunition.

5. MTC shall operate a segregation unit.

B. Record Keeping

1. MTC shall maintain records for each Offender assigned to the Facility in accordance with the applicable Operating Standards. Special purpose records, medical records, field files, and visitation records, among others, will be maintained by the respective function within the Facility.

2. All records will be subject to a policy for records security, disclosure, and confidentiality. Such policy shall be in compliance with New Mexico law relative to records retention and disclosure.

3. MTC shall provide a separate records department that is responsible for creating and maintaining all Offender files.

4. MTC acknowledges and agrees that it is required to comply with the New Mexico Public Records Act ("IPRA") to the greatest extent required of it by New Mexico law, and specifically further agrees to:

- designate an employee of MTC as a records custodian to the extent required pursuant to Section 14-2-7 of the New Mexico Public Records Act;
- timely and directly respond to all IPRA requests for public records submitted to MTC; and
- timely respond to any requests for public records forwarded to MTC by the County pursuant to Section 14-2-8(E) of IPRA.

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

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

D. Facility and Records Access

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

E. Training

1. MTC shall provide basic level correctional officer training as applicable for new employees with a minimum of eighty (80) hours preliminary training and thereafter forty (40) hours of in-service training per year for all correctional officers.

2. MTC shall require that all security staff assigned to an emergency unit will successfully complete forty (40) hours of specialized training in addition to new hire orientation and corrections officer basic training as a prerequisite to assuming their duties.

3. County and Sheriff personnel may, at their election, participate in the ongoing training programs provided by MTC to MTC employees at the Facility.

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

F. Medical

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

G. Food Service

1. MTC shall provide food service to the Offenders and County Offenders in accordance with the applicable Operating Standards and Housing Agreement.

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

H. Laundry and Clothing

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

I. Supplies

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

J. Programs & Special Services

1. MTC shall provide a suicide prevention program.

2. MTC shall establish and maintain a mail delivery system for Offenders and County Offenders at the Facility in accordance with the applicable Operating Standards.

3. MTC shall provide outdoor and indoor physical recreation facilities, equipment, and supplies for an Offender recreation program in compliance with the applicable Operating Standards.

4. MTC shall provide a general library containing literary, educational, and reference materials in accordance with the applicable Operating Standards.

5. MTC shall provide appropriate religious programs for Offenders and County Offenders at the Facility in accordance with the applicable Operating Standards. Each Offender and County Offender will be afforded the right to voluntarily practice the requirements of their

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

K. Commissary

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

L. Telephone

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

M. Utilities

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

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

1. Within 120 days after the Commencement Date, and annually thereafter, MTC with the cooperation of and after consultation with the Contract Monitor shall prepare a property inventory, listing and noting the condition of all FF&E in the Facility that was originally supplied with the Facility and purchased with proceeds from the sale of the Bonds. The County shall hold title to all such FF&E, except for that FF&E that is provided by MTC, and MTC shall place a sticker or tag on such FF&E owned by County indicating ownership by the County. All FF&E owned and provided by MTC shall be identified as the property of MTC pursuant to the provisions of Subsection N.3 below. At the termination of this Agreement, MTC shall return to the County all FF&E that belongs to the County in functional, good condition, subject to ordinary wear and tear, life expectancy, and any insured casualty damage. MTC will be responsible for the purchase of any additional FF&E required for the normal operation of the Facility, and such additional FF&E so purchased shall remain the sole property of MTC. Any damage caused to the FF&E owned by County as a result of an Offender or County Offender disturbance or riot shall be repaired and /or replaced at the expense of MTC.

2. MTC shall maintain all FF&E, including but not limited to, the master control and operating system control panels, in accordance with generally accepted maintenance procedures. MTC shall maintain all FF&E in good repair and in good working order at all times during the term of this Contract. Unless conditions reasonably require otherwise, in the discretion of MTC, all replacement parts for equipment shall be new, but shall at all times meet or exceed the original equipment specifications. MTC shall update the maintenance schedule within five days if any replacement part or equipment alters the existing maintenance schedule. MTC shall maintain all FF&E in accordance with the manufacturer's recommendations. MTC shall not alter or change any manufacturer-recommended maintenance item or schedule regarding the FF&E without the prior written approval of the

County.

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

O. Facility Maintenance

1. MTC shall, pursuant to the terms of this Agreement, maintain, preserve, and keep the physical structure of the Facility and all its related systems therein in good condition, repair, and working order, subject to normal wear and tear and any insured casualty, and shall from time to time make or cause to be made all routine repairs and replacements. The County shall be responsible for the cost of repair or replacement of any building system or structural component, including the HVAC system, roof, walls, floors, and fixtures, caused by a design or construction defect or necessitated due to the building system having met its life expectancy or otherwise inoperable due to no fault of MTC; otherwise, MTC shall be responsible for such repairs or replacements. The County will reimburse MTC for any expenditure MTC incurs hereunder provided that the County would have been responsible for such expenditure and the expenditure was urgent and could not be timely referred to the County for consideration and approval in the normal course of business. All warranties related to the Facility shall be extended to MTC. MTC, during the term of this Agreement, shall be authorized to assert on behalf of County, any claim that County could assert relating to any warranty on any furniture, fixtures, equipment, or system installed at or in the Facility.

2. Any damage caused to the physical structure of the Facility as a result of an Offender or County Offender disturbance or riot shall be repaired and /or replaced at MTC's expense.

3. MTC shall not place or erect any structure at the Facility without the prior written approval of the County, which approval shall not be unreasonably withheld. Title to any structures or other improvements to the Facility shall vest in the County.

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

5. MTC shall maintain appropriate Facility maintenance records.

P. Grievance Procedures

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

Q. Discipline

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

R. Third Party Agreements to House Offenders

1. The County has entered into inter-governmental service agreements with the New Mexico Department of Corrections ("NMDC Agreement") and the U.S. Marshal's Service ("USMS Agreement") pursuant to which the County has agreed to operate Phases 1 and 2 and has entered into an inter-governmental service agreement with ICE pursuant to which the County agrees to operate Phase 3 (the "ICE Agreement"). If the County is unable to renew or extend the NMDC Agreement, USMS Agreement and/or the ICE Agreement, MTC, in its sole discretion, may use its best efforts to pursue Housing Agreements to house Offenders from other governmental entities, including any entities under federal, state or tribal jurisdiction, whether in New Mexico or elsewhere. At such time as MTC decides, in its sole discretion, to pursue such Housing Agreements, MTC shall develop a marketing plan and provide regular reports to the County concerning the progress of such marketing efforts.

2. To the extent specifically authorized by User Agencies regarding Offenders housed in the Facility, and subject to the County's prior written approval, which approval shall not be unreasonably withheld, MTC may make separate and independent agreements, the subject of which is beyond the scope of any Housing Agreement, with any agency or organization for the education, treatment, training, or transportation of Offenders or County Offenders, so long as such agency or organization has the legal right, capacity, and

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

3. All Housing Agreements for the housing of Offenders shall be inter-governmental agreements or a similar documented relationship between the County and the jurisdiction seeking to have its Offenders housed at the Facility. MTC shall be responsible for ensuring that all Housing Agreements comply with the terms of this Agreement and will work with the County to ensure compliance with N.M.S.A. 1978, Section 33-15-3 (2001). MTC shall use reasonable good faith efforts to obtain the highest per diem rate from User Agencies, considering the scope of services to be rendered, other sources of offenders to be housed at the Facility, unusual requests or requirements, and other market forces. The County will not accept, approve, or enter into any Housing Agreements for the housing of Offenders at the Facility, containing a per diem rate to be paid to County for the housing of Offenders at the Facility that is lower than the combined amount of: (i) the daily Operating Expenses of the Facility (including but not limited to all fees due and owing to MTC hereunder), and (ii) the daily debt retirement or Bond payment obligations due pursuant to the Bond Ordinance.

4. As requested by MTC, the County shall execute Housing Agreements in the form of an Inter-governmental Agreement ("IGA"), User Agency Agreement, or other similar documents in connection with the housing of Offenders provided that all responsibilities that are placed on the County by the Housing Agreement, IGA, or other documents shall be assumed by MTC. However, no responsibilities of any kind relating to a Housing Agreement shall be assumed by MTC unless and until MTC has approved each of the terms and conditions of said Housing Agreement.

5. Any Housing Agreement requiring the housing of Offenders for governmental entities located outside of the State of New Mexico, other than Housing Agreements with federal agencies, shall require compliance with N.M.S.A 1978 33-15-3 (2001),

6. County's approval of a Housing Agreement may not be unreasonably withheld.

7. MTC shall bill all User Agencies and County (when applicable) monthly and collect all Revenues from all User Agencies for and in the name of Otero County for the housing of Offenders in accordance with the billing and collections procedure developed by MTC. All Revenues for the housing of Offenders or County Offenders shall be deposited in the Revenue Fund held by the Trustee. Interest where permitted by law, at the highest lawful rate, shall be charged on past due invoices.

S. Operational Compliance

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

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

T. Drug Testing

1. MTC shall conduct pre-employment drug testing for each job applicant, and random drug testing on all MTC employees working at the Facility.

2. MTC shall conduct random drug testing upon Offenders and County Offenders in accordance with the applicable Housing Agreements and Operating Standards.

3. All employee drug testing results shall be kept confidential by MTC and the County.

U. Classification

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

V. Assignment and Transfer of Prisoners

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

W. Authority

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

X. Use of Force

1. MTC's Designated Employees shall be allowed to use force only as authorized by the applicable Operating Standards, Housing Agreements, and New Mexico and federal law.

2. Unless Operating Standards dictate a shorter time period or additional content, a written report will be prepared and provided within twenty-four (24) hours to the County Manager and Sheriff following all use of force incidents, which shall contain the following:

- A description of the events leading up to and the situation resulting in the use of force.

- An accurate and precise description of the incident and reasons for employing force.

- A description of the injuries suffered, if any, and the treatment given and/or received. After force has been used on an Offender or County Offender, a medical professional shall immediately examine the Offender or County Offender.

- Full names of all participants and witnesses.

Y. Safety and Security Procedures

1. General

   a. MTC shall provide, at a minimum, contingency plans in accordance with the applicable Operating Standards to assure operation of the Facility in the event of an employee labor or Offender or County Offender dispute, riot, fire, civil disaster, or power failure. Safety and emergency procedures shall be updated annually and submitted to the Contract Monitor for approval prior to implementation, which approval shall not be unreasonably withheld.

   b. MTC shall promptly notify the County Manager and Sheriff of any alleged criminal activity in the Facility. MTC shall promptly notify the Otero County Detention Center ("OCDC Director") of any anticipated transport of a 12th Judicial District Offender from the Facility (medical, court appearance, etc.).

2. Emergency Response Assistance.

   a. The Sheriff's Department shall be informed of and shall, consistent with N.M.S.A. 1978, Section 33-15-3 (2001) and all rules promulgated thereunder, assist in controlling any serious disturbance at the Facility, or in apprehending Offenders who escape from the Facility.

   b. The Sheriffs Department and MTC will maintain open lines of communication in order to provide a coordinated response in the event of a disturbance at the Facility.

3. Escapes

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

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

4. Fire Safety

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

ARTICLE IV

Effective Date; Fee Entitlement Dates; Term; and Termination

A. Effective Date

This Agreement is effective on the Effective Date.

B. Fee Entitlement Dates

1. MTC shall be paid the Per Diem Rate for Phases 1 and 2 and 3 immediately upon the Effective Date of this Agreement.

2. The County Fee shall be payable to the County pursuant to the terms of Article V.F regardless of the occupancy level of the Facility.

C. Term

1. The initial term of this Agreement shall be for a period of five (5) years starting on the Effective Date.

2. This Agreement may be renewed for up to ten (10) additional years upon the exercise of

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

D. Termination

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

2. Events of Default

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

   - A material failure by MTC or County to keep, observe, perform, meet or comply with any applicable covenant, agreement, term, or provision of this Agreement including, without limitation, a failure that seriously affects the operation of the jail, pursuant to N.M.S.A. 1978, Section 33-3-27 (F),(2015) or a failure to meet minimum standards and conditions of incarceration, which failure in either case continues for a period of thirty (30) days after the breaching party has received written notice thereof.

   - A material failure to meet or comply with any applicable federal, state, or local law or requirement that continues for a period of thirty (30) days after the breaching party has received written notice thereof.

   - Evidence of MTC's insolvency, including any of the following: MTC's admission of its inability to pay its debts; a general assignment for the benefit of MTC's creditors; a decree or order appointing a receiver or trustee for MTC or for substantially all of MTC's property; the commencement of a proceeding under any law relating to bankruptcy, insolvency, reorganization, or the relief of debtors instituted by or against MTC; and the issuance of any judgment, writ of attachment or execution, or any similar process levied against a substantial part of MTC's property.

   - Evidence that any statement, representation, or warranty in this Agreement is false, misleading, or erroneous in any material respect.

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

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

ARTICLE V

Compensation, Invoicing, and Fees

A. MTC Per Diem Rates

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

(a) at the rate of $119.39 per Offender per Offender Day for the first 500 hundred Offenders or County Offenders per Offender Day, with a guaranteed minimum of 500 Offenders per Offender Day, plus (i) a variable rate of $7.55 per Offender or County Offender, per Offender Day for Offenders 1-500, and (ii) a variable rate of $59.93 per Offender or County Offender, per Offender Day for Offenders 501-740; and (iii) a variable rate of $55.96 per Offender or County Offender, per Offender Day for Offenders 741-1000; and

(b) $29.87 per hour (regular pay) and $35.97 per hour (overtime pay) in the event the total detention dorm officers per shift is required to exceed (a) 12 FTE, where the Offender population at the facility is 500 or less, or (b) 14 FTE, where the Offender population exceeds 500; and

(c) $29.87 per hour (regular pay) and $35.97 per hour (overtime pay) in the event transportation officer staffing is required to exceed (a) 12.80 FTEs for the first 500 Offenders, and (b) 19.20 FTEs for Offenders 501-740, and (c) 25.60 FTEs for Offenders 741-1000; and

(d) Up to a total of $5,000 for miscellaneous charges incurred by MTC, as approved by the ICE Contracting Officer's Representative.

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

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

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

B. Transportation and Guard Services Payment. The County shall direct the Trustee to reimburse MTC for all transportation expenses MTC incurs to transport Offenders or for providing guard services at the rate set out in the Housing Agreements.

C. Billings and Collections

1. MTC will maintain all records relating to Per Diem Rates, billing rates, and occupancy and shall bill the County, with a copy to the applicable User Agencies, on a monthly basis, in accordance with the billing and collections procedure developed by MTC, by the fifth business day of the following month for the preceding month's services. Production and maintenance of these invoices is the sole responsibility of MTC and MTC assumes all responsibility for the accuracy and veracity of such records and the collection of all payments. Invoices shall include sufficient information to meet the billing requirements of each User Agency and County and shall include, at a minimum, the Offender's start date, release date, number of days at the Facility, booking number, daily contract rate pursuant to the applicable Housing Agreement and relevant totals.

2. MTC will invoice transportation and guard services as a separate line item within the above invoices. MTC shall also provide to the County and User Agencies copies of back-up documentation when requested to verify invoices. MTC shall also send monthly statements to User Agencies that include charges for late payment of outstanding invoices. No late payment statements shall be sent to a User Agency until payment of an invoice is sixty (60) days past due.

3. Except as limited herein, all Revenues generated by the operation, management, and maintenance of the Facility shall be deposited in the Revenue Fund. However the following types of revenue are not Revenue (as that term is defined herein and in the Bond Ordinance), shall not be deposited in the Revenue Fund, and are deemed to be the sole and exclusive property of MTC in which the County shall have no interest or claim: Revenues received by MTC relating to: (a) reimbursement to MTC by a third- party for transportation or guard service expenses incurred, (b) reimbursement to MTC by a third-party for health care and related medical expenses incurred, (c) reimbursement to MTC by a third-party for the cost of construction, FF&E, renovations, improvements, or repairs to the Facility completed as a condition precedent to the receipt or housing of Offenders or County Offenders, and (d) reimbursement to MTC by a third-party for Offender or County Offender education, treatment, or training through an agreement entered into pursuant to the terms of Article 111.R.2, above. Additionally, the following types of revenue are not Revenue (as that term is defined herein and in the Bond Ordinance), shall not be deposited in the Revenue Fund, and are subject to other limitations and restrictions by law or this Agreement: Revenues relating to: (i) the operation of the Offender or County Offender commissary, (ii) the operation of the Offender or County Offender telephone system, (iii) the operation of vending machines for the staff and the public, and (iv) the sale of hobby, crafts, and related products created by the Offenders or County Offenders.

4. When MTC proposes to make an adjustment to a bill or invoice that previously was sent to a User Agency, MTC shall promptly forward a copy of the proposed billing adjustment

to the County.

5. The amounts described or to be determined as Per Diem Rates or County Housing Rates to be paid to MTC, set forth in Article V.A. above, are subject to renegotiation and adjustment so as to fairly compensate MTC for the services it provides to the Offenders or County Offenders. MTC and County agree to adjust the Per Diem Rates to be paid to MTC pursuant to Article V.A. above, so as to fairly compensate MTC, after a review of each of the terms and conditions of each Housing Agreement with each User Agency. With respect to the ICE Agreement, the amounts described in Article V.A. above are based upon the mutual assumption by the Parties that ICE will contract with the County for the housing of its Offenders, with no more than a customary scope of services required. In the event that those assumptions are incorrect, the provisions of this paragraph shall require a change in the amount of Per Diem Rate for Phase 3 to be paid to MTC, so as to fairly compensate MTC for the services required to be provided to the Offenders housed at the Facility.

6. MTC shall pay its employees at the rates required by the Service Contract Act, current Department of Labor Area Wage Determination ("WD"), as set forth in the Housing Agreements, as amended. If a WD is issued under the Housing Agreements that requires MTC to pay increased wages or back wages at any time, MTC is entitled to all amounts paid pursuant to a request for equitable adjustment under the Housing Agreements. If MTC determines that the additional costs and expenses that will be incurred or are likely to be incurred by MTC in complying with a revised WD will not be paid or reimbursed to MTC hereunder, MTC may terminate this Agreement upon thirty days prior written notice to the County. In the event of such termination, the County shall remain liable for such additional costs and expense up through the date of termination.

D. County Housing Rate

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

E. Payment of Per Diem Rate

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

F. County Fee

1. Subject to the conditions of this Article V.F.1, MTC shall pay the County the County Fee, calculated as set forth below, for each Offender Day that an Offender is housed at the Facility. The County Fee shall become due and payable for an Offender Day in the calendar month following the month in which the Per Diem Rates described in Article V.A A above are received by MTC for the housing of an Offender for said Offender Day.

2. The County Fee for the Phase 3 building shall be One Dollar and 50/100 ($1.50) per Offender or County Offender, per day Offender Day, with a minimum guarantee of 500 Offenders. The County Fee for the Phases 1 and 2 buildings shall be One Dollar and 55/100 ($1.55) per Offender, County Offender, or NMCD Offender.

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

G. Source of Funds

[Omitted].

H. Release and Authority to Act

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

2. Except as limited herein, County's delivery of the final payment of the amount due under this Agreement shall operate as a release of MTC, its officers and employees from all liabilities, claims, and obligations to refund or return any money paid to MTC pursuant to this Agreement. No other rights of County or obligations of MTC shall be deemed to be released by this Article V.H.2. This Article V.H.2. shall not limit or reduce MTC's liability for its acts or failure to act in accordance with this Agreement or its obligations of providing a defense or indemnification. County agrees not to purport to bind MTC unless County has express written authority to do so, and then only within strict limits of that authority.

I. Bond Payment Contributions

Subject to the provisions of this Article V.I during the term of this Agreement, after the Commencement Date, if there are insufficient Revenues in a given calendar month to cause to be deposited in the Bond account (maintained by the Trustee pursuant to the Bond Ordinance) an amount equal to one-sixth (116th) of the interest portion of the Bond payment due under the Bond Ordinance on the next succeeding payment date and one-twelfth (1/12th) of the principal portion of the Bond payments due under the Bond Ordinance on the next two succeeding payment dates from Revenues, then MTC shall pay to the Trustee for deposit in the Bond account an amount equal to the additional funds necessary to fulfill such obligations. This obligation of MTC to make payments to the Trustee, shall be reduced by amounts available for payment in the Bond account for a given month and accrued interest on the debt service reserve. This obligation shall arise in a given calendar month, only after the Trustee has transferred into the

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

ARTICLE VI

Independent Contractor and Personnel

A Independent Contractor

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

2. MTC, its agents and employees are independent contractors performing services for the County, and are not employees or agents of the County. MTC and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles (except as expressly permitted in this Agreement), or participate in any other benefits afforded to employees of the County.

B. Local Hiring Preferences

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

2. MTC shall also encourage its subcontractors to similarly advertise for and hire local personnel and purchase goods and services locally, in Otero County, New Mexico.

C. Subcontracting and Assignment

1. The County acknowledges and agrees that MTC may subcontract the food service without prior authorization by the County. No other portions of this Agreement shall be assignable or subcontracted by MTC without the express written approval of the County, provided that the County shall be deemed to have approved all subcontractors working at the Facility as of the effective date of this Agreement. In no event shall MTC thereby be relieved of any of its obligations set forth herein. Notwithstanding any such subcontract or assignment, MTC shall remain liable for the performance of its duties and obligations under this Agreement. MTC may, upon notice to the County, assign the proceeds of this Agreement.

2. No contractual relationship shall exist between the County and any of MTC's subcontractors, and the County shall accept no responsibility whatsoever for the conduct, actions, or omissions of any subcontractor selected by MTC. MTC shall be responsible for the management of its subcontractors in the performance of their work.

D. Employee Background Investigations

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

E. Non-Discrimination

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

F. Warden

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

ARTICLE VII

Indemnification, Insurance, and Environmental

A. Indemnification

1. MTC shall indemnify, defend, and hold harmless the County, the Sheriff, the OCDC Director, and their respective agents, officials and employees, (the "Indemnitees") from any and all claims, demands, suits, causes of action, proceedings, loss, cost, expenses, liabilities or damages of every kind and description ("Claim"), including, but not limited to, all attorney fees and/or litigation expenses, that may be brought or made against or incurred by the Indemnitees on account of loss of, or damage to any property or for injuries to or death of any person, caused by, arising out of, or by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of MTC, MTC's employees, agents, representatives, or subcontractors, their employees, agents, or representatives, in connection with or incident to the performance of this Agreement, or arising out of workers compensation claims or claims under similar such laws or obligations. MTC's obligation under this Article VII.A.1 shall not extend to any liability caused by the negligence, misconduct or directives of the County, the Sheriff or their respective agents, officials or employees.

2. Subject to paragraph 1, above, the County shall be obligated to provide its own defense as to all Claims that may be brought or made against the County, the Sheriff, or the OCDC Director, their employees, agents, representatives, or subcontractors, on account of loss of, or damage to any property or for injuries to or death of any person, caused by, arising out of, or by reason of any act, omission, professional error, fault, mistake, or negligence of the County, the Sheriff, the OCDC Director or their employees, agents, or representatives, in connection with or incident to their performance of this Agreement, the Facility or the Offenders housed in or about the Facility. Subject to paragraph 1, above, and subject to the Tort Claims Act and sufficient funds available, the County and the Sheriff shall remain responsible for their respective obligations of contribution to pay for that portion of any damages, costs, fees or expenses or other monies or relief, determined by a final judgment to be the responsibility of the County or the Sheriff.

3. When MTC has a duty to defend under Article VII.A.1 above, MTC may proceed with counsel of its own choosing upon the approval of said counsel by the County, which approval shall not be unreasonably withheld. The County, at its sole discretion and expense, shall have the right to separate counsel in any such action or proceeding. Additionally, if by operation of law, County becomes obligated to provide a defense and separate counsel for a co-defendant in an action for which MTC is obligated to provide a defense for County pursuant to Article VII.A.1 above, then MTC, at its sole cost and expense, shall provide separate counsel of its own choosing for such co- defendant, subject to the approval of said counsel by the County, which approval shall not be unreasonably withheld. If counsel for County is provided by an insurer of MTC, and MTC has no authority over the selection or approval of such Counsel, then, concomitantly, County shall have no power of selection or approval of such counsel.

4. In the event the County is not fully or timely indemnified as required hereunder, it shall have the right, in addition to any other remedies available to it by law or under this Agreement, to set off against any monies owed by the County to MTC an amount sufficient to be fully indemnified by MTC, including costs of defense. However, wrongfully withholding or offsetting funds owed to MTC pursuant to this provision, or withholding or

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

5. The County shall promptly notify MTC of a summons or notice of claim subject to indemnification by MTC as promptly as possible after receipt of such summons or notice of claim by the County Manager, to allow MTC the opportunity to timely respond thereto.

6. Notwithstanding any provision of this contract, MTC shall have no obligation to insure, defend, indemnify, or hold harmless the County from any Claim (including attorney fees and other costs of litigation) arising out of or relating to MTC's acts if directed by application or enforcement of any County policy or County order, provided that nothing in this paragraph shall otherwise affect MTC's obligation to indemnify the County for any Claims arising out or relating to any alleged act, omission, professional error, fault, mistake, or negligence in the application or enforcement of such Imposed Requirements.

B. Waiver of Defenses

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

C. County Insurance

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

D. MTC Insurance

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

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

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

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

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

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

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

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

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

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

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

E. Indemnification Still Required

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

F. Certificates of Insurance and Cancellation

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

G. Performance Bond

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

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

H. Hazardous Materials; Compliance with Laws; Environmental Indemnity

1. MTC's obligations expressly exclude any work or obligations of any nature associated or connected with the identification, abatement, cleanup, control, removal, or disposal of any Hazardous Materials that are or may be included in the structures and equipment or into the environment at and adjacent to the Facility, or that may be released into the structures and equipment at and adjacent to the Facility as a result of activities at the Facility.

2. The County makes the following representations to MTC, with the intent and expectation that MTC will rely upon these representations in entering into this Agreement.

   a. County has no actual knowledge of any Hazardous Materials at the site of the Facility before or during construction of the Facility.

   b. County has never occupied the Facility.
   c. County has not received any report or notice of any problem or condition relating to Hazardous Materials at the Facility.

   d. To the best of its actual knowledge, County represents that there are no Hazardous Materials at, in, on, under or about the Facility (or adjacent thereto) that will in any way affect the performance of this Agreement or delivery of the services required hereunder and that the Facility does and shall comply with all applicable Environmental Requirements.

3. The County shall use commercially reasonable efforts to advise MTC of the presence of asbestos or other hazardous materials at, in, on, under, or about the Facility of which the County is aware.

4. Should MTC become aware of or suspect the presence of Hazardous Materials and reasonable precautions will be inadequate to prevent bodily injury or death to persons resulting from or related to such Hazardous Materials, MTC shall notify the County and shall stop the services in the affected area immediately without incurring penalties under this Agreement. The County will be responsible for doing whatever is necessary to correct the condition or render such materials or substances harmless in accordance with all applicable laws. Such a suspension of work shall be considered an excusable event of non-performance because of Force Majeure.

5. MTC shall not be obligated to reinstate the delivery of any services under this Agreement or other work suspended pursuant to this Article VII.H.5 until it receives verification from the County that such condition has been corrected or such Hazardous Materials have been rendered harmless and a reinstatement fee has been paid in such amount or amounts, and payable on such date or dates, as shall be reasonably acceptable to MTC, as will reimburse MTC for its actual costs (including overhead) that will be incurred in reinstating delivery of the services.

6. Though MTC has obligations to defend or indemnify County under certain circumstances herein, such obligations are limited by the provisions of this Article VII. The County shall remain solely responsible for, and shall make no demand for any defense, contribution, or indemnification from MTC, any subcontractor of MTC, their respective directors, officers, employees, agents, assigns, and successors, from and against any and all losses, costs, damages, expenses (including reasonable attorney's fees), claims, causes of action, or liability, directly or indirectly, relating to or arising from the County's use, storage, release,

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

7. As used herein the term "Hazardous Material" means any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste, hazardous substance, pollutant or contaminant under any Environmental Requirement, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel, fuel, another petroleum hydrocarbon product, asbestos, asbestos- containing materials or polychlorinated biphenyls.

8. As used herein, the term "Environmental Requirements" shall collectively mean all present and future laws or the equivalent of or by any governmental authority and relating to or addressing the protection of the environment or human health.

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

ARTICLE VIII

Other Obligations

A Offender Report

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

1. Average Offender population for the month

2. Average Offender population by source

3. Per Diem rate, per population source

4. Debt service coverage rate

B. Offender Records Confidentiality

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

C. Transition at Termination Date

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

D. Obligation of Specific Performance

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

ARTICLE IX

Monitoring & Reporting

A. Contract Monitor

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

B. Reporting

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

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

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

C. Policies and Procedures Manual

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

D. Quality Control Program

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

E. Statistics

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

F. Relationship with User Agencies

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

G. Outside Reports

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

H. Financial Statements

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

I. Compliance with Agreement

1. The Contract Monitor, or any State entity pursuant to authority granted under State law, may audit MTC's effectiveness and compliance with this Agreement by reviewing budget documents, books, records and reports maintained by MTC relating to the repair, maintenance and operation of the Facility, by visual observation of the Facility, and through interviews with MTC employees and Offenders.

2. The Contract Monitor shall not attend meetings involving individual employee disciplinary matters, employee reviews and other personnel or human resource matters, meetings with attorneys for MTC or their agents or representatives, or other

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

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

J. Self-Monitoring

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

ARTICLE X

Miscellaneous Provisions

A. Binding Agreement

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

B. Invalidity and Severability

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

C. Terminology and Definitions

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

D. Governing Law

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

E. Notices

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

If Notice is to be given to the County:

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

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

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

F. Entire Agreement

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

G. Prohibition Against Assignment

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

H. Amendment

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

I. Confidentiality

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

J. Headings

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

K. Waiver

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

L. Force Majeure

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

M. Counterparts

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

N. Venue

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

0. Third Party Rights

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

P. Inspection of Public Records

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

Q. Appropriations and Authorizations

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

R. Forbearance Agreement

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

[SIGNATURES ON NEXT PAGE]

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

"MTC"

ATTEST:

Management & Training Corporation

By: IRW

IRW

Senior Vice President, Corrections

IRW

IRW

APPROVED AS TO FORM:

IRW

IRW Otero County, Attorney

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

Attorney General, State of New Mexico

By: IRW Date: Feb 9, 2024

Department of Finance and Administration
for The State of New Mexico

By IRW Date: Feb 14, 2024

State of New Mexico, Risk Management Division

By: IRW Date: Feb 9, 2024

Security Addendum

Title 28, Code of Federal Regulations Part 20

Signature: IRW

Email: IRW

Signature:

Email:

Signature: IRW

Email: IRW

Signature: IRW

Email: IRW

Signature: IRW

Email: IRW

Otero County MTC Contract Final approved 02.14.2023 (1)

Final Audit Report 2024-02-15

Created:	2024-02-15
By:	IRW IRW [redacted]
Status:	Signed
Transaction ID:	CBJCHBCAABAAtVlJkaO4MUwLA0CyQRjXDy9d3TAS0lWD

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Document created by IRW IRW [redacted]
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Document e-signed by IRW [redacted] IRW [redacted]
Signature Date: 2024-02-15 - 1:35:05 AM GMT - Time Source: server

Agreement completed.
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