

DROIGSA-10-0002
INTERGOVERNMENTAL SERVICE AGREEMENT
BETWEEN THE
UNITED STATES DEPARTMENT OF HOMELAND SECURITY
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
WASHINGTON, DC
AND
WILLIAMSON COUNTY, TEXAS

This Intergovernmental Service Agreement (“Agreement”) is entered into between United States Department of Homeland Security Immigration and Customs Enforcement (“ICE”), and Williamson County, Texas (“Service Provider”) for the Residential care of alien females. The term “Parties” is used in this Agreement to refer jointly to ICE and the Service Provider.

FACILITY LOCATION:

The Service Provider shall provide detention services for residents at the following institution(s):

**T. Don Hutto Correctional Center
1001 Welch Street
Taylor, Texas 96574**

The following constitute the complete agreement:

- INTERGOVERNMENTAL SERVICE AGREEMENT (“IGSA”)
- PROPOSAL, DATED **11/23/09 as revised (Incorporated by reference)**
- ATTACHMENT 1—RESIDENTIAL STATEMENT OF WORK
- ATTACHMENT 2—QUALITY CONTROL PLAN (to be inserted at time of award)
- ATTACHMENT 3—QUALITY ASSURANCE SURVEILLANCE PLAN (w/ PRS, CDR and PMT)
- ATTACHMENT 4—STAFFING PLAN (to be inserted at time of award)
- ATTACHMENT 5—LABOR STANDARDS
- ATTACHMENT 6—WAGE DETERMINATION Number 2007-0549, Rev 1 Dated 29 Oct 2007
- ATTACHMENT 7 – ICE/DRO FAMILY RESIDENTIAL STANDARDS (“FRS”) (as modified) (Incorporated by Reference).

IN WITNESS WHEREOF, the undersigned, duly authorized officers, have subscribed their names on behalf of Williamson County and Department of Homeland Security, U.S. Immigration and Customs Enforcement.

ACCEPTED:
U.S. Immigration and Customs Enforcement

ACCEPTED:
Williamson County, TX

Contracting Officer
Jerald H. Neveleff
Date: _____

[Title]
Print Name: _____
Date: _____

Article I. Purpose

- A. Purpose: The purpose of this Intergovernmental Service Agreement is to establish an Agreement between ICE and the Service Provider for the detention and care of persons detained under the authority of Immigration and Nationality Act, as amended. All persons in the custody of ICE are “Administrative Detainees”. This term recognizes that ICE residents are not charged with criminal violations, have no known violent criminal or drug histories and are only held in custody to assure their presence throughout the administrative hearing process and to assure their presence for removal from the United States pursuant to a lawful final order by the Immigration Court, the Board of Immigration Appeals or other Federal judicial body.
- B. Responsibilities: This Agreement sets forth the responsibilities of ICE and the Service Provider. The Agreement states the services the Service Provider shall perform satisfactorily to receive payment from ICE at the rate prescribed in Article I, C.
- C. Guidance: This is a fixed rate agreement, not a cost reimbursable agreement, with respect to the residential day rate. ICE shall be responsible for reviewing and approving the costs associated with this Agreement and subsequent modifications utilizing all applicable federal procurement laws, regulations and standards in arriving at the residential day rate.

Article II. General

- A. Funding: The obligation of ICE to make payments to the Service Provider is contingent upon the availability of Federal funds. ICE will neither present residents to the Service Provider nor direct performance of any other services until ICE has the appropriate funding or documentation in place to receive services. Orders will be placed under this Agreement when specific requirements have been identified and funding obtained. Performance under this Agreement is not authorized until the Contracting Officer issues an order, in writing. The effective date of the Agreement will be negotiated and specified in an order to this Agreement by the Contracting Officer. This Agreement is neither binding nor effective unless signed by the Contracting Officer. Payments at the approved rate will be paid upon the return of the signed Agreement by the authorized Local Government official to ICE.
- B. Subcontractors: The Service Provider shall notify and obtain approval from the Contracting Officer if it intends to house residents in a facility other than the Facility named in this Agreement. If either that facility or any future facility is operated by an entity other than the Service Provider, ICE shall treat the entity as a subcontractor to the Service Provider. The Service Provider shall obtain the Contracting Officer’s approval before subcontracting the detention and care of residents to another entity. The Contracting Officer has the right to deny, withhold, or withdraw approval of the proposed subcontractor. Upon approval by the Contracting Officer, the Service Provider shall ensure that any subcontract includes all provisions of this Agreement, and shall provide ICE with copies of all subcontracts. The subcontractor will be held to the same terms and conditions as the Service Provider. All payments will be made to the Service Provider. ICE will not accept invoices from, or make payments to a subcontractor.

- C. Consistent with Law: This is a firm fixed rate agreement, not cost reimbursable agreement. This Agreement is permitted under applicable statutes, regulation, policies or judicial mandates. Any provision of this Agreement contrary to applicable statutes, regulation, policies or judicial mandates is null and void and shall not necessarily affect the balance of the Agreement.
- D. Use of Service Provider's Policies and Procedures: The Contracting Officer shall approve Service Provider's policies and procedures for use under this Agreement. Upon approval, the Service Provider can use its policies and procedures in conjunction with the standards (as modified) that are mandated under this Agreement.
- E. Notification and Public Disclosure: No public disclosures (i.e. press releases, press conferences) regarding this IGSA shall be made by the Service Provider or any of its contractors or subcontractors without the review and approval of such disclosure by ICE Public Affairs and express permission granted by the ICE Contracting Officer.

Article III. Covered Services

Below are the general requirements under this Agreement. Specific requirements for the services under this Agreement are stated in the attached Statement of Work. See Attachment 1.

- A. Bedspace: The Service Provider shall provide female beds on a space available basis. The Service Provider shall house all residents as determined within the Service Provider's classification system. The residential daily rate is \$95.20 (minimum guarantee of 461 residents per day). For a population between 462 and 512, the residential bed day rate is \$95.20/bed day. ICE shall not be liable for any failure to meet the population guarantee if such failure directly results from an occurrence that impairs the ability to utilize the facility's capacity, and such occurrence arises out of causes beyond the control and without the fault or negligence of ICE. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, freight embargoes, court orders and extraordinarily severe weather. This provision shall become effective only if ICE immediately notifies the Provider of the extent and nature of the occurrence resulting in the failure and takes all reasonable steps to limit any adverse effects required by the occurrence.
- B. Basic Needs: The Service Provider shall provide residents with safekeeping, housing, subsistence, medical services that are not provided for elsewhere and other services in accordance with this Agreement. In providing these services, the Service Provider shall ensure compliance with all applicable laws, regulations, fire and safety codes, policies and procedures. If the Service Provider determines that ICE has delivered a person for custody to reside in the Facility who is under the age of eighteen (18), the Service Provider shall not house that person with adult residents and shall immediately notify the Contracting Officer's Technical Representative ("COTR").
- C. Interpretive Services: The Service Provider shall make special provisions for non-English speaking, handicapped or illiterate residents. ICE will reimburse the Service Provider for the actual costs associated with providing commercial written or telephone language interpretive services. Upon request, ICE will assist the Service Provider in

obtaining translation services. The Service Provider shall provide all instructions verbally either in English or the residents' language, as appropriate, to residents who cannot read. The Service Provider shall include the actual costs that the Service Provider paid for such services on its monthly invoice. Except in emergency situations, the Service Provider shall not use residents for translation services. If the Service Provider uses a resident for translation service, it shall notify ICE within 24 hours of the translation service.

- D. Escort and Transportation Services: The Service Provider will provide, upon request and as scheduled by the COTR or Contracting Officer, necessary escort and transportation services for residents to and from designated locations. Escort services will be required for escorting residents to court hearings; escorting witnesses to the courtroom and any escort services as requested by an ICE judge during proceedings. Escort and transportation services shall also include providing all such ground transportation services as may be required to transport residents securely and in a timely manner. Transportation and/or escort services may be required to transport residents from the Facility to and from a medical facility for outpatient care. During all transportation activities, at least one (1) transportation officer shall be of the same sex as the residents being transported. The Service Provider shall use a communications system that has direct and immediate contact with all transportation vehicles. Transportation and escort services shall be provided in the most economical and efficient manner. The Service Provider personnel provided for these services shall be of the same qualifications, receive training, complete the same security clearances, and wear the same uniforms as those personnel provided for in other areas of this Agreement. The Statement of Work shall provide specific escort and transportation services unique for this Agreement. Reimbursement will be in accordance with paragraph F below.
- E. Guard Services: The Service Provider agrees to provide stationary guard services on demand by the COTR or Contracting Officer and shall include, but is not limited to, escorting and guarding residents to medical or doctor's appointments, hearings, ICE interviews, and any other location requested by the COTR. Qualified personnel employed by the Service Provider will perform such services. The Service Provider agrees to augment such practices as may be requested by ICE to enhance specific requirements for security, resident monitoring, visitation, and contraband control. Public contact is prohibited unless authorized in advance by the COTR or Contracting Officer. The Service Provider shall be authorized to provide at least one (1) officer for each remote post, as directed by the COTR or Contracting Officer. Reimbursement will be in accordance with paragraph F below.
- F. Guard and transportation services performed under paragraphs D and E above shall be denoted as separate items on submitted invoices. ICE agrees to reimburse the Service Provider for stationary guard services provided at a negotiated rate of **\$15.20** per hour. Any incurred overtime pay for such services will be reimbursed at the applicable overtime rate of **\$20.19** per hour.
- G. Provided there is a separately funded line item in the task order, transportation mileage shall be reimbursed at the mileage rate established pursuant to the General Services Administration (GSA)/federal travel allowance rate in effect at the time the Contracting Officer signs the Agreement. Mileage shall be denoted as a separate item on submitted

invoices. Any adjustments to this rate in accordance with GSA mileage rates will be identified in the task order. Adjustments are not retroactive.

- H. Medical/Mental Health Care – All medical and mental health needs will be provided for through the Division of Immigration Health Services (“DIHS”). The facility is responsible for the provision of appropriate space and offices to support a medical clinic operation. To the extent allowed by applicable federal law, regulation, and DIHS or ICE policies, DIHS may provide medical and mental health records to a state or local law enforcement agency as part of a criminal investigation that the state or local law enforcement agency is conducting.
- I. Dental Care – The Service Provider retains the right to use a medical provider proposed by the contractor or to use its own Medical Provider or it can use DIHS.
- J. On-Site Dental Health Care: The Service Provider shall provide on or off-site access to dental care for all residents 24 hours per day, 7 days per week. The Service Provider shall furnish the residents instructions in his or her native language for gaining access to full dental health services. DIHS is responsible for on-site health care services shall include arrival screening, sick call coverage, provision of over-the-counter medications, treatment of minor injuries (e.g. lacerations, sprains, contusions), treatment of special needs and mental health assessments. The Service Provider shall ensure that its employees solicit each resident for health complaints and deliver the complaints in writing to the DIHS health care staff. The Service Provider is responsible for transportation to and from all off-site appointments.

Article IV. Receiving and Discharging Residents

- A. Required Activity: The Service Provider shall receive and discharge residents only to and from properly identified ICE personnel or other properly identified Federal law enforcement officials with prior authorization from DHS/ICE. Presentation of U.S. Government identification shall constitute “proper identification.” The Service Provider shall furnish receiving and discharging services twenty-four (24) hours per day, seven (7) days per week. ICE shall furnish the Service Provider with reasonable notice of receiving and discharging residents. The Service Provider shall ensure positive identification and recording of residents and ICE officers. The Service Provider shall not permit medical or emergency discharges except through coordination with on-duty ICE officers; provided, however, ICE shall in no way delay the provision of medical or emergency attention to a resident in need of such services.
- B. Restricted Release of Residents: The Service Provider shall not release residents from its physical custody to any persons other than those described in Paragraph A of Article IV for any reason, except for either medical, other emergency situations, or in response to a federal writ of habeas corpus. If a resident is sought for federal, state, or local proceedings, only ICE may authorize release of the resident for such purposes. The Service Provider shall contact the COTR immediately regarding any such requests.
- C. Service Provider Right of Refusal: The Service Provider retains the right to refuse acceptance or request removal of any resident exhibiting violent or disruptive behavior, or of any resident found to have a medical condition that requires medical care beyond

the scope of the Service Provider's health care provider. In the case of a resident already in custody, the Service Provider shall notify ICE and request removal of the resident from the facility. The Service Provider shall allow ICE reasonable time to make alternative arrangements for the resident.

- D. Emergency Evacuation: In the event of an emergency requiring evacuation of the facility, the Service Provider shall evacuate residents in the same manner, and with the same safeguards, as it employs for persons detained under the Service Provider's authority. The Service Provider shall notify the Contracting Officer and COTR within two (2) hours of evacuation.

Article V. Applicable Standards

- A. The Service Provider is required to house resident and perform related detention services in accordance with the most current edition of the ICE/DRO FRS (as modified). The links to the ICE/DRO FRS can be found in Attachment 7. ICE Inspectors will conduct periodic inspections of the facility to assure compliance with the ICE/DRO FRS.
- B. The Service Provider shall certify to the Contracting Officer and COTR that its personnel have completed all training as required by the ICE FRS, the Service Provider's own manual (if it is approved for use by the Contracting Officer), and any additional training as required in any manuals or detention standards referenced in this Agreement.

Article VI. No Employment of Unauthorized Aliens

Subject to existing laws, regulations, Executive Orders, and addenda to this Agreement, the Service Provider shall not employ aliens unauthorized to work in the United States. Except for maintaining personal living areas, residents shall not be required to perform manual labor.

Article VII. Period of Performance

This Agreement shall become effective upon the date of final signature by the ICE Contracting Officer and the authorized signatory of the Service Provider and will remain in effect for a period not to exceed sixty (60) months unless extended by bi-lateral modification or terminated in writing by either party. Either party may terminate this Agreement upon ninety (90) calendar day's written notice to the other party, or the Parties may agree to a shorter period under the procedures prescribed in Article X. In the event of a termination, the Service Provider will be paid for services provided to ICE up to and including the date of termination.

Article VIII. Inspections

The Facility and Service Provider's services shall be inspected in accordance with the following procedures:

- A. Definitions. "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- B. The Service Provider shall provide and maintain an inspection system acceptable to the

Government covering the services under this Agreement. Complete records of all inspection work performed by the Service Provider shall be maintained and made available to the Government during performance and for as long afterwards as the Agreement requires.

- C. The Government has the right to inspect and test all services called for by the Agreement, to the extent practicable at all times and places during the term of the Agreement. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- D. If the Government performs inspections or tests on the premises of the Service Provider or its subcontractor, the Service Provider shall furnish, and shall require subcontractors to furnish, at no increase in the Agreement price, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- E. If any of the services do not conform to the Agreement requirements, the Government may require the Service Provider to perform the services again in conformity with the Agreement requirements, at no increase in the Agreement amount. When the defects in services cannot be corrected by re-performance, the Government may (1) require the Service Provider to take necessary action to ensure that future performance conforms to the Agreement requirements and (2) reduce the Agreement price to reflect the reduced value of the services performed.
- F. If the Service Provider fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Agreement requirements, the Government may (1) by contract or otherwise, perform the services and charge to the Service Provider any cost incurred by the Government that is directly related to the performance of such service or (2) terminate the Agreement for default.

Article IX. Inspection Reports

- A. Inspection Report: The Inspection Report stipulates minimum requirements for fire/safety code compliance, supervision, segregation, sleeping utensils, meals, medical care, confidential communication, telephone access, legal counsel, legal library, visitation, and recreation. The Service Provider shall allow ICE to conduct inspections of the facility, as required, to ensure an acceptable level of services and acceptable conditions of confinement as determined by ICE. No notice to the Service Provider is required prior to an inspection. ICE will conduct such inspections in accordance with the Inspection Report. ICE will share findings of the inspection with the Service Provider's facility administrator. The Inspection Report will state any improvements to facility operation, conditions of confinement, and level of service that will be required by the Service Provider.
- B. Possible Termination: If the Service Provider fails to remedy deficient service ICE identifies through inspection, ICE may terminate this Agreement without regard to the provisions of Articles VII and X.
- C. Share Findings: The Service Provider shall provide ICE copies of facility inspections, reviews, examinations, and surveys performed by accreditation sources.

- D. Access to Resident's Records: The Service Provider shall, upon request, grant ICE access to any record in its possession, regardless of whether the Service Provider created the record, concerning any resident held pursuant to this Agreement. This right of access shall include, but is not limited to, incident reports, records relating to suicide attempts, and behavioral assessments and other records relating to the resident's behavior while in the Service Provider's custody. Furthermore, the Service Provider shall retain all records where this right of access applies for a period of two (2) years from the date of the resident's discharge from the Service Provider's custody.
- E. Resident Privacy: The Service Provider agrees to Comply with the Privacy Act of 1974 ("Act") and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the Agreement specifically identifies (i) the systems of records; and (ii) the design, development, or operation work that the Service Provider is to perform. The Service Provider shall also include the Privacy Act into any and all subcontracts when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the agreement is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

1. "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.
2. "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.
3. "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

Article X. Modifications and Disputes

- A. Modifications: Actions other than those designated in this Agreement will not bind or incur liability on behalf of either Party. Either Party may request a modification to this Agreement by submitting a written request to the other Party. A modification will

become a part of this Agreement only after the ICE Contracting Officer and the authorized signatory of the Service Provider have approved the modification in writing.

B. Changes.

(1) The Contracting Officer may at any time, by written order, and without notice to the Service Provider, make changes within the general scope of this Agreement in any one or more of the following:

- (a) Description of services to be performed, including revisions to the detention standards;
- (b) Quantity of services to be provided; or
- (c) Place of performance of the services.

(2) If any such change causes an increase or decrease in the cost of the services under the Agreement, the Contracting Officer shall make an equitable adjustment in the agreement price and shall modify the Agreement accordingly.

(3) The Service Provider must assert its right to an adjustment under this Article within 30 days from the date of receipt of the written order including a proposal addressing the cost impacts and detailed supporting data.

(4) If the Service Provider's proposal includes costs that are determined unreasonable and/or unsupported, as determined by the Contracting Officer, those costs shall be disallowed when determining a revised rate, if any.

(5) Failure to agree to any adjustment shall be a dispute under the Disputes section of the Agreement. However, nothing in this Article shall excuse the Service Provider from proceeding with the Agreement as changed.

C. Disputes: The Contracting Officer and the authorized signatory of the Service Provider will settle disputes, questions and concerns arising from this Agreement. Settlement of disputes shall be memorialized in a written modification between the ICE Contracting Officer and authorized signatory of the Service Provider. In the event a dispute is not able to be resolved between the Service Provider and the Contracting Officer, the Contracting Officer will make a decision. If the Service Provider does not agree with the Contracting Officer's decision, the matter may be appealed to the ICE Head of the Contracting Activity (HCA) for resolution. The ICE HCA may employ all methods available to resolve the dispute including alternative dispute resolution techniques. The Service Provider shall proceed diligently with performance of this Agreement pending final resolution of any dispute. Neither party hereto waives any rights or remedies that it may have under federal or state law or in equity.

Article XI. RESIDENTIAL DAY RATE and ADJUSTMENT to the DAY RATE

A. Residential Day Rate: In consideration for the Service Provider's performance under this Agreement, ICE shall make payment to the Service Provider for each resident accepted and housed by the Service Provider in accordance with the rate under Article III, paragraph A. This "residential day rate" is a per diem rate for the support of one resident per day and shall include the day of arrival but not the day of departure.

- B. The Service Provider, by execution of this Agreement, certifies that the pricing established under this agreement is in compliance with OMB Circular A-87 and includes only allowable costs of performance under this agreement.
- C. Basis for Price Adjustment: Any adjustment will be from the Service Provider's previous fiscal year, based upon actual cost experience in providing the service and other factors (i.e., changes in resident population, staffing changes as a result of this Agreement). Adjustments are not retroactive.
- D. ICE shall reimburse the Service Provider at the residential day rate stated in Article III, paragraph A. The Parties may adjust the rate twelve (12) months after the effective date of the Agreement and no sooner than every twelve (12) months. The Parties shall base the cost portion of the rate adjustment on the principles of allowability and allocability as set forth in OMB Circular A-87, federal procurement laws, regulations, and standards in arriving at the residential day rate. The request for adjustment shall be submitted on an ICE Jail Services Cost Statement. If ICE does not receive an official request for a residential day rate adjustment that is supported by a completed Jail Services Cost Statement, the residential day rate as stated in this Agreement will control.
- E. ICE reserves the right to audit the actual and/or prospective costs upon which the rate adjustment is based. All rate adjustments are prospective. As this is a fixed rate agreement, there are **no** retroactive adjustment(s).
- F. Guard and transportation services shall be denoted as separate items on submitted invoices. ICE agrees to reimburse the Service Provider for actual transportation and stationary guard services at the rates under Article III, paragraph F. Adjustments are not retroactive.
- G. Provided there is a separately funded line item in the task order, transportation mileage shall be reimbursed at the mileage rate established pursuant to the General Services Administration (GSA)/federal travel allowance rate in effect at the time the Contracting Officer signs the Agreement. The mileage rate for this Agreement is listed under Article III, paragraph G. Adjustments are not retroactive.

Article XII. Enrollment, Invoicing, and Payment

- A. Enrollment in Electronic Funds Transfer: The Service Provider shall provide ICE with the information needed to make all payments by electronic funds transfer (EFT). The Service Provider shall identify its financial institution and related information on Standard Form 3881, Automated Clearing House (ACH) Vendor Miscellaneous Payment Enrollment Form, or by registration in Central Contractor Registration (CCR, www.ccr.gov). The Service Provider shall submit a completed SF 3881 to ICE payment office prior to submitting its initial request for payment under this Agreement. If the EFT data changes, the Service Provider shall be responsible for providing updated information to the ICE payment office.
- B. Consolidated Invoicing – The Service Provider shall submit an original monthly itemized invoice within the first ten (10) working days of the month following the calendar month when it provided the services via one of the following three methods:

- a. **By mail:**
DHS, ICE
Burlington Finance Center
P.O. Box 1620
Williston, VT 05495-1620
Attn: ICE-DRO-FOD-FAO Invoice
- b. **By facsimile (fax): (include a cover sheet with point of contact & # of pages)**
802-288-7658
- c. **By e-mail:**
Invoice.Consolidation@dhs.gov

Invoices submitted by other than these three methods will be returned. The contractor's Taxpayer Identification Number (TIN) must be registered in the Central Contractor Registration (<http://www.ccr.gov>) prior to award and **shall** be notated on every invoice submitted to ICE to ensure prompt payment provisions are met. The ICE program office shall also be notated on every invoice.

Each invoice submitted shall contain the following information:

- a. the name and address of the facility;
- b. Invoice date and number;
- c. Agreement number, line item number and, if applicable, the Task order number;
- d. Terms of any discount for prompt payment offered;
- e. Name, title, and phone number of person to notify in event of defective invoice;
- f. Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this Agreement. (See paragraph 1 above.)
- g. the total number of residential days;
- h. the daily rate;
- i. the total residential days multiplied by the daily rate;
- j. the name of each ICE resident;
- k. resident's A-number;
- l. specific dates of detention for each resident;
- m. an itemized listing of all other charges;
- n. For stationary guard services, the itemized monthly invoice shall state the number of hours being billed, the duration of the billing (times and dates) and the name of the resident(s) that was guarded.

Items a. through i. above must be on the cover page of the invoice. Invoices without the above information may be returned for resubmission.

- C. Payment: ICE will transfer funds electronically through either an Automated Clearing House subject to the banking laws of the United States, or the Federal Reserve Wire Transfer System. The Prompt Payment Act applies to this Agreement. The Prompt Payment Act requires ICE to make payments under this Agreement the thirtieth (30th) calendar day after the ICE Deportation office/COTR receives a complete invoice. Either the date on the Government's check, or the date it executes an electronic transfer of funds, shall constitute the payment date. The Prompt Payment Act requires ICE to pay interest

on overdue payments to the Service Provider. ICE will determine any interest due in accordance with the Prompt Payment Act.

Article XIII. Government Furnished Property

- A. Federal Property Furnished to the Service Provider: ICE may furnish Federal Government property and equipment to the Service Provider. Accountable property remains titled to ICE and shall be returned to the custody of ICE upon termination of the Agreement. The suspension of use of bed space made available to ICE is agreed to be grounds for the recall and return of any or all government furnished property.
- B. Service Provider Responsibility: The Service Provider shall not remove ICE property from the facility without the prior written approval of ICE. The Service Provider shall report any loss or destruction of any Federal Government property immediately to ICE.

Article XIV. Hold Harmless and Indemnification Provisions

Unless specifically addressed by the terms of this Agreement, the parties agree to be responsible for the negligent or wrongful acts or omissions of their respective employees.

- A. Service Provider Held Harmless: ICE liability for any injury, damage or loss to persons or property arising in the performance of this Agreement and caused by the negligence of its own officers, employees, agents and representatives shall be governed by the Federal Tort Claims Act, 28 USC 2691 *et seq.* Service Provider shall promptly notify ICE of any claims or lawsuits filed against any ICE employees of which Service Provider is notified. The Service Provider will be held harmless for any injury, damage or loss to persons or property caused by an ICE employee arising in the performance of this Agreement.
- B. Federal Government Held Harmless: Service Provider liability for any injury, damage or loss to persons or property arising out of the performance of this Agreement and caused by the negligence of its own officers, employees, agents and representatives shall be governed by the Texas Tort Claims Act. ICE shall promptly notify Service Provider of any claims filed against any of Service Providers employees of which ICE is notified. The Federal Government will be held harmless for any injury, damage or loss to persons or property caused by a Service Provider employee arising in the performance of this Agreement .
- C. Defense of Suit: In the event a resident files suit against the Service Provider contesting the legality of the resident's incarceration and/or immigration/citizenship status, ICE shall request that the U.S. Attorney's Office, as appropriate, move either to have the Service Provider dismissed from such suit, to have ICE substituted as the proper party defendant; or to have the case removed to a court of proper jurisdiction. Regardless of the decision on any such motion, ICE shall request that the U.S. Attorney's Office be responsible for the defense of any suit on these grounds.
- D. ICE Recovery Right: The Service Provider shall do nothing to prejudice ICE's right to recover against third parties for any loss, destruction of, or damage to U.S. Government property. Upon request of the Contracting Officer, the Service Provider shall, at ICE's expense, furnish to ICE all reasonable assistance and cooperation, including assistance in

the prosecution of suit and execution of the instruments of assignment in favor of ICE in obtaining recovery.

Article XV. IGSA/Financial Records

- A. Retention of Records: All IGSA and financial records including, but not limited to, supporting documents, statistical records, and other records, pertinent contracts, or subordinate agreements under this Agreement shall be retained by both parties hereto for three (3) years after the expiration of the Agreement for purposes of either party's examinations and audit. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three (3) year period, the records must be retained until completion of the action and resolution of all issues which arise from it or until the end of the regular three (3) year period, whichever is later.
- B. Access to Records: ICE and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers or other records of the Service Provider or its subcontractors, which are pertinent to the award, in order to make audits, examinations, excerpts, and transcripts. The rights of access are not limited to the required retention period, but shall last as long as the records are retained.
- C. Delinquent Debt Collection: ICE will hold the Service Provider accountable for any overpayment, or any breach of this Agreement that results in a debt owed to the Federal Government. ICE shall apply interest, penalties, and administrative costs to a delinquent debt owed to the Federal Government by the Service Provider pursuant to the Debt Collection Improvement Act of 1982, as amended.

Article XVI. Maintain Institutional Emergency Readiness

- A. The Service Provider shall submit an institutional emergency plan that will be operational prior to start of the Agreement. The plan shall receive the concurrence of the Contracting Officer prior to implementation and shall not be modified without the further written concurrence of the Contracting Officer.
- B. The Service Provider shall have written agreements with appropriate state and local authorities that will allow the Service Provider to make requests for assistance in the event of any emergency incident that would adversely affect the community.
- C. Likewise, the Service Provider shall have in place, an internal corporate nation-wide staff contingency plan consisting of employees who possess the same expertise and skills required of staff working directly on this Agreement. At the discretion of ICE, these employees would be required to respond to an institutional emergency at the Facility, when necessary.
- D. The emergency plans shall include provisions for emergency response by law enforcement agencies. The Facility shall have a plan to provide actions to be taken to ensure an immediate response by the nearest law enforcement agency who can provide emergency services up to and including disturbance control.

- E. Any decision by ICE or other federal agencies to provide and/or direct emergency assistance will be at the discretion of the Government. The Service Provider shall reimburse the Government for any and all expenses incurred in providing such assistance.
- F. The Contracting Officer and COTR shall be notified immediately in the event of all serious incidents. Serious incidents include, but are not limited to the following: activation of disturbance control team(s); disturbances (including gang activities, group demonstrations, food boycotts, work strikes, work-place violence, civil disturbances/protests); staff use of force including use of lethal and less-lethal force (includes inmates in restraints more than eight hours); assaults on staff/residents resulting in injuries requiring medical attention (does not include routine medical evaluation after the incident); fights resulting in injuries requiring medical attention; fires; full or partial lock down of the facility; escape; weapons discharge; suicide attempts; deaths; declared or non-declared hunger strikes; adverse incidents that attract unusual interest or significant publicity; adverse weather (e.g., hurricanes, floods, ice/snow storms, heat waves, tornadoes); fence damage; power outages; bomb threats; central inmate monitoring cases admitted to a community hospital; witness security cases taken outside the facility; significant environmental problems that impact the facility operations; transportation accidents (i.e. airlift, bus) resulting in injuries, death or property damage; and sexual assaults.
- G. Attempts to apprehend escapee(s) shall be in accordance with the Emergency Plan, which should comply with ICE Detention Operations Manual regarding Emergency Plans.
- H. The Service Provider shall submit to the COTR a proposed inventory of intervention equipment (weapons, munitions, chemical agents, electronics/stun technology, etc.) intended for use during performance of this Agreement. Prior to the start of this Agreement, the Contracting Officer shall approve the intervention equipment. The approved intervention equipment inventory shall not be modified without prior written concurrence of the Contracting Officer.
- I. The Service Provider shall obtain the appropriate authority from state or local law enforcement agencies to use force as necessary to maintain the security of the Facility. The use of force by the Service Provider shall at all times be consistent with all applicable policies of ICE Family Residential Standards regarding Use of Force.

XVII. Security Requirements

A. General

The Department of Homeland Security (DHS) has determined that performance of the tasks as described in Agreement DROIGSA-10-0002 requires that the Contractor, subcontractor(s), vendor(s), etc. (herein known as Contractor) have access to sensitive DHS information, and that the Contractor will adhere to the following.

B. Suitability Determination

DHS shall have and exercise full control over granting, denying, withholding or terminating unescorted government facility and/or sensitive Government information access for Contractor employees, based upon the results of a background investigation. DHS may, as it deems appropriate, authorize and make a favorable entry on duty (EOD) decision based on

preliminary security checks. The favorable EOD decision would allow the employees to commence work temporarily prior to the completion of the full investigation. The granting of a favorable EOD decision shall not be considered as assurance that a full employment suitability authorization will follow as a result thereof. The granting of a favorable EOD decision or a full employment suitability determination shall in no way prevent, preclude, or bar the withdrawal or termination of any such access by DHS, at any time during the term of the contract. No employee of the Contractor shall be allowed to EOD and/or access sensitive information or systems without a favorable EOD decision or suitability determination by the Office of Professional Responsibility, Personnel Security Unit (OPR-PSU). No employee of the Contractor shall be allowed unescorted access to a Government facility without a favorable EOD decision or suitability determination by the OPR-PSU. Contract employees assigned to the contract not needing access to sensitive DHS information or recurring access to DHS ' facilities will not be subject to security suitability screening.

C. Background Investigations

Contract employees (to include applicants, temporaries, part-time and replacement employees) under the contract, needing access to sensitive information, shall undergo a position sensitivity analysis based on the duties each individual will perform on the contract. The results of the position sensitivity analysis shall identify the appropriate background investigation to be conducted. Background investigations will be processed through the Personnel Security Unit. Prospective Contractor employees with adequate security clearances issued by the Defense Industrial Security Clearance Office (DISCO) may not be required to submit complete security packages, as the clearance issued by DISCO may be accepted. Prospective Contractor employees without adequate security clearances issued by DISCO shall submit the following completed forms to the Personnel Security Unit through the COTR, no less than 5 days before the starting date of the contract or 5 days prior to the expected entry on duty of any employees, whether a replacement, addition, subcontractor employee, or vendor:

1. Standard Form 85P, "Questionnaire for Public Trust Positions" Form
will be submitted via e-QIP (electronic Questionnaires for
Investigation Processing) **(2 copies)**
2. FD Form 258, "Fingerprint Card" **(2 copies)**
3. Foreign National Relatives or Associates Statement
4. DHS 11000-9, "Disclosure and Authorization Pertaining to Consumer Reports
Pursuant to the Fair Credit Reporting Act"
5. Optional Form 306 Declaration for Federal Employment (applies to contractors as
well)
6. Authorization for Release of Medical Information

Required forms will be provided by DHS at the time of award of the contract. Only complete packages will be accepted by the OPR-PSU. Specific instructions on submission of packages will be provided upon award of the contract.

Be advised that unless an applicant requiring access to sensitive information has resided in the US for three of the past five years, the Government may not be able to complete a satisfactory background investigation. In such cases, DHS retains the right to deem an applicant as ineligible due to insufficient background information.

The use of Non-U.S. citizens, including Lawful Permanent Residents (LPRs), is not permitted in the performance of this contract for any position that involves access to DHS IT systems and the information contained therein, to include, the development and / or maintenance of DHS IT systems; or access to information contained in and / or derived from any DHS IT system.

D. Continued Eligibility

If a prospective employee is found to be ineligible for access to Government facilities or information, the COTR will advise the Contractor that the employee shall not continue to work or to be assigned to work under the contract.

The OPR-PSU may require drug screening for probable cause at any time and/ or when the contractor independently identifies, circumstances where probable cause exists.

The OPR-PSU may require reinvestigations when derogatory information is received and/or every 5 years.

DHS reserves the right and prerogative to deny and/ or restrict the facility and information access of any Contractor employee whose actions are in conflict with the standards of conduct, 5 CFR 2635 and 5 CFR 3801, or whom DHS determines to present a risk of compromising sensitive Government information to which he or she would have access under this contract.

The Contractor will report any adverse information coming to their attention concerning contract employees under the contract to the OPR-PSU through the COTR. Reports based on rumor or innuendo should not be made. The subsequent termination of employment of an employee does not obviate the requirement to submit this report. The report shall include the employees' name and social security number, along with the adverse information being reported.

The OPR-PSU must be notified of all terminations/ resignations within five days of occurrence. The Contractor will return any expired DHS issued identification cards and building passes, or those of terminated employees to the COTR. If an identification card or building pass is not available to be returned, a report must be submitted to the COTR, referencing the pass or card number, name of individual to whom issued, the last known location and disposition of the pass or card. The COTR will return the identification cards and building passes to the responsible ID Unit.

E. Employment Eligibility

The contractor shall agree that each employee working on this contract will successfully pass the DHS Employment Eligibility Verification (E-Verify) program operated by USCIS to establish work authorization.

The E-Verify system, formerly known as the Basic Pilot/Employment Eligibility verification Program, is an Internet-based system operated by DHS USCIS, in partnership with the Social Security Administration (SSA) that allows participating employers to electronically verify the employment eligibility of their newly hired employees. E-Verify represents the best means currently available for employers to verify the work authorization of their employees.

The Contractor must agree that each employee working on this contract will have a Social Security Card issued and approved by the Social Security Administration. The Contractor shall be responsible to the Government for acts and omissions of his own employees and for any Subcontractor(s) and their employees.

Subject to existing law, regulations and/ or other provisions of this contract, illegal or undocumented aliens will not be employed by the Contractor, or with this contract. The Contractor will ensure that this provision is expressly incorporated into any and all Subcontracts or subordinate agreements issued in support of this contract.

F. Security Management

The Contractor shall appoint a senior official to act as the Corporate Security Officer. The individual will interface with the OPR-PSU through the COTR on all security matters, to include physical, personnel, and protection of all Government information and data accessed by the Contractor.

The COTR and the OPR-PSU shall have the right to inspect the procedures, methods, and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the COTR determine that the Contractor is not complying with the security requirements of this contract, the Contractor will be informed in writing by the Contracting Officer of the proper action to be taken in order to effect compliance with such requirements.

The following computer security requirements apply to both Department of Homeland Security (DHS) operations and to the former Immigration and Naturalization Service operations (FINS). These entities are hereafter referred to as the Department.

G. Information Technology Security Clearance

When sensitive government information is processed on Department telecommunications and automated information systems, the Contractor agrees to provide for the administrative control of sensitive data being processed and to adhere to the procedures governing such data as outlined in *DHS IT Security Program Publication DHS MD 4300.Pub. or its replacement*. Contractor personnel must have favorably adjudicated background investigations commensurate with the defined sensitivity level.

Contractors who fail to comply with Department security policy are subject to having their access to Department IT systems and facilities terminated, whether or not the failure results in criminal prosecution. Any person who improperly discloses sensitive information is subject to criminal and civil penalties and sanctions under a variety of laws (e.g., Privacy Act).

H. Information Technology Security Training and Oversight

All contractor employees using Department automated systems or processing Department sensitive data will be required to receive Security Awareness Training. This training will be provided by the appropriate component agency of DHS.

Contractors who are involved with management, use, or operation of any IT systems that handle sensitive information within or under the supervision of the Department, shall receive periodic training at least annually in security awareness and accepted security practices and systems rules of behavior. Department contractors, with significant security responsibilities, shall receive specialized training specific to their security responsibilities annually. The level of training shall be commensurate with the individual's duties and responsibilities and is intended to promote a consistent understanding of the principles and concepts of telecommunications and IT systems security.

All personnel who access Department information systems will be continually evaluated while performing these duties. Supervisors should be aware of any unusual or inappropriate behavior by personnel accessing systems. Any unauthorized access, sharing of passwords, or other questionable security procedures should be reported to the local Security Office or Information System Security Officer (ISSO).

XVIII. Quality Control (to be incorporated as Attachment 2 of the Agreement)

A. The Service Provider shall establish and maintain a complete Quality Control Program (QCP) acceptable to the Contracting Officer, in consultation with the COTR, to assure the requirements of this Agreement are provided as specified in the Performance Requirement Summary (PRS)—Attachment 3.

The QCP shall:

1. Be implemented prior to the start of performance.
2. Provide quality control services that cover the scope of the Agreement and implement proactive actions to prevent non-performance issues.

B. A complete QCP addressing all areas of Agreement performance shall be submitted to the COTR no later than 30 days after the Agreement effective date. All proposed changes to the QCP must be approved by the Contracting Officer. The Service Provider shall submit a resume of the proposed individual(s) responsible for the QCP to the Contracting Officer for approval. The Service Provider shall not change the individual(s) responsible for the QCP without prior approval of the Contracting Officer.

C. The QCP shall include, at a minimum:

1. Specific areas to be inspected on both a scheduled or unscheduled basis and the method of inspection.
2. Procedures for written and verbal communication with the Government regarding the performance of the Agreement.

3. Specific surveillance techniques for each service identified in the Agreement and each functional area identified in the PRS.
 4. The QCP shall contain procedures for investigation of complaints by the Service Provider and Government staff and feedback to the Government on the actions taken to resolve such complaints.
- D. A file of all inspections, inspection results, and any corrective action required, shall be maintained by the Service Provider during the term of this Agreement. The Service Provider shall provide copies of all inspections, inspection results, and any corrective action taken to the COTR and Contracting Officer.
- E. Failure by the Service Provider to maintain adequate quality control can result in monetary deductions based upon the schedule of deductions incorporated herein.

XIX. Contracting Officer's Technical Representative (COTR)

- A. The COTR shall be designated by the Contracting Officer. When and if the COTR duties are reassigned, an administrative modification will be issued to reflect the changes. This designation does not include authority to sign contractual documents or to otherwise commit to, or issue changes, which could affect the price, quantity, or performance of this Agreement.
- B. Should the Service Provider believe they have received direction that is not within scope of the Agreement; the Service Provider shall not proceed with any portion that is not within the scope of the Agreement without first contacting the Contracting Officer. The Service Provider shall continue performance of efforts that are deemed within scope.

XX. Labor Standards and Wage Determination

- A. The Service Contract Act, 41 U.S.C. 351 et seq., Title 29, Part 4 Labor Standards for Federal Service Contracts, is hereby incorporated into this Agreement at Attachment 5. These standards and provisions are included in every contract over \$2,500, or in an indefinite amount, that is entered into by the United States, the principal purpose of which is to furnish services through the use of service employees.
- B. Wage Determination: Each service employee employed in the performance of this Agreement shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this Agreement at Attachment 6.

XXI. Texas Public Information Act

Texas Public Information Act. The Service Provider agrees to coordinate with ICE prior to releasing any information relating to, or exchanged under this IGSA.

Information obtained or created under this IGSA shall be subject to public disclosure only pursuant to the provisions of applicable local, state and federal laws and regulations. Insofar as any documents created by the Service Provider contain information developed or obtained as a result of this MOA, such documents shall be deemed public or non-public in accordance with all local, state and federal laws and regulations. The Service Provider will provide ICE five business days, excluding Federal holidays, prior notice before releasing documents pursuant to this paragraph.

XXII. Criminal Investigations by Service Provider

In the event a criminal investigation is conducted solely by the Williamson County Sheriff's Office or any other local or state law enforcement agency, ICE may provide access to records to the extent allowed by applicable federal law, regulation, and ICE policies and procedures. The Williamson County Sheriff's Office, in coordination with the Service Provider, shall contact ICE regarding access to individuals involved in any way with the underlying crime or the pending criminal investigation.

END OF DOCUMENT
