

AGREEMENT between:

Baldwin County Commission on behalf of Regional Juvenile Detention Center, 43405 Nicholsville Rd. Bay Minette, AL 36507 (hereinafter referred to as "Agency")

And

Kimberly C. Bonner, K.C. Bonner PREA Consultant, P.O. Box 28, Selma AL 36702 (hereinafter referred to as "Auditor")

PREA Auditor Contract Provisions

I. PREA Auditing Standards.

The Agency and the Auditor shall comply with the requirements set forth in the PREA auditing standards (28 C.F.R. §§115.401-05). *See* Attachment 1.

II. Auditor

a) **Designated Auditor.** The Auditor may employ or partner with other auditors or staff. However, there shall be one designated Auditor who shall be the responsible auditor for purposes of this Contract and the PREA auditing standards.

b) **Auditor Staff.** In addition to the Auditor, the following individuals may be present during the on-site portion of the audit to assist the auditor: Ms. Tanika N. Brown

c) **Auditor Expenses.** There are no additional expenses.

d) **Auditor Fees.** The Auditor's fees for the initial audit and any required corrective action process as follows: The Auditor shall be compensated \$3500.00 upon receipt of the interim report or final report.

e) **Prohibition on Additional Compensation.** The Auditor shall not accept any compensation for the conduct of the audit not set forth in this Contract.

f) **Ex Parte Communication.** The Auditor shall be permitted to initiate and receive *ex parte* communications with the community stakeholders, the PREA Resource Center, the Department of Justice, inmates, detainees, and residents, and other interested parties.

g) **Auditor Responsibility and Authority.** The Auditor shall have the responsibility and authority to independently observe, assess, review, and report on the Agency's implementation and compliance with the National Standards. In order to accurately assess compliance at the facility, the Auditor shall: conduct an on-site inspection; observe programs and activities; interview pertinent administrators, professional staff, correctional staff, and contractors;

individually interview a sample of inmates; review a sampling of videotapes from housing units; and conduct detailed reviews of inmate records and other pertinent documents and reports. The Auditor shall spend a sufficient amount of time at the facility in order to accurately assess day-to-day operations and conditions. The Auditor shall be responsible for independently verifying representations from the Agency regarding facility compliance.

h) **Delivery of Contract to PRC.** Upon finalization, the Auditor shall provide a copy of this Contract to the PREA Resource Center for purposes of tracking Auditor activity.

i) **Auditing Schedule.** The Auditor shall provide the Agency with a tentative schedule of activities during any on-site visits at least five days prior to arrival at the facility.

j) **Maintenance, Storage, and Return or Destruction of Records.** The Auditor shall take all reasonable steps to safeguard agency records and information retained pursuant to the audit. All electronic files shall be securely password-protected or encrypted. All paper records shall be maintained in a secure room or building, and within a locked case or cabinet for a period of three (3) years. Upon conclusion of the Auditor's document retention period, the Auditor shall securely burn, shred, or otherwise destroy the retained records. The Auditor shall then notify the Agency, in writing, confirmation that such documents have been destroyed.

k) **Public Statements.** Except as required or authorized by the PREA auditing standards; federal, state, or local law; judicial order; this Contract; or as permitted by the Agency, the Auditor shall not make any oral or written public statements—including, but not limited to, statements to the press, conference presentations, lectures, or articles—with regard to: the status of the Agency's compliance or noncompliance with the PREA Standards, or any act or omission of the Agency or its agents, representatives or employees.

l) **Testimony.** Except as required or authorized by the terms of this Contract, or by permission of the Agency, the Auditor shall not testify in any litigation or proceeding with regard to the status of the Agency's compliance or noncompliance with the National Standards; or any act or omission of the Agency or its agents, representatives or employees, unless otherwise lawfully compelled to do so. If the Auditor is lawfully compelled to provide such information, the Auditor shall promptly notify the Agency.

m) **Conflict of Interest.** The Auditor shall not accept employment or provide consulting services that would present a conflict of interest with his or her responsibilities under this Contract, with the PREA auditing standards, or with auditor ethical guidance provided by the PREA Resource Center or the Department of Justice, including, but not limited to, being employed or retained by the Agency for purposes other than PREA auditing during the three-year period prior to the audit, or during the three-year period subsequent to the audit.

n) **Auditor Independence.** Neither the Agency, nor any employee or agent of the Agency, shall have any supervisory authority over the Auditor's activities, reports, findings, or recommendations.

o) **Termination of the Auditor.** The Auditor may be terminated if the Agency and the Department of Justice agree and upon good cause shown. Good cause shall include, among other things, any violation of the PREA Standards; or federal, state, or local law, which reasonably calls into question the Auditor's fitness to continue serving as the Auditor.

p) **Audit Report Delivery.** The Auditor shall provide the audit report to the Agency head and the facility superintendent within 30 calendar days of the conclusion of the auditor's on-site visit. If there are no standards requiring corrective action, the audit report shall be considered final.

q) **Corrective Action Process.** If the audit report indicates that corrective action is required, the Auditor and the Agency shall work to promptly and jointly develop a corrective action plan toward achieving compliance with all standards. The corrective action plan shall contain a timeline for specific minimal remedial measures the Agency shall take to achieve compliance within a 180-day corrective action period. The Agency shall deliver, and the auditor shall review and comment upon, deliverables provided to the auditor pursuant to the corrective action timeline. The Auditor shall issue his or her report at the conclusion of the 180-day corrective action period, or earlier if compliance has been achieved before the end of the corrective action period. Under no circumstances shall the final report be issued more 180 days from the original due date.

III. **The Agency**

a) **Tentative Audit Timeline.** The Parties tentatively agree that the initial on-site visit for the audit will occur during the following week: June 12th, 2019

b) **Maintenance of Documentation and Information.** Any and all of the documentation (including electronic documentation) required by the National Standards shall be maintained and secured by the Agency. The Auditor is authorized to request, review, and retain all such documentation prior to, during, and after the on-site visit.

c) **Auditor Access.** The Agency shall ensure that the Auditor have access to the facility, documentation (including electronically-stored information), personnel, and inmates, consistent with the auditing standards, until the issuance of the final report.

d) **Posting of Auditor Contact Information.** The Agency shall ensure that auditor contact information, together with a statement of confidentiality, shall be conspicuously displayed in all inmate housing units of the facility to be audited, for the six-week period prior to the on-site visit.

e) **External Advocacy Organizations.** The Agency shall work in good faith to identify and provide the Auditor with contact information for community-based or victim advocates who may have insight into relevant conditions in the facility, in order to permit the Auditor to fulfill his or her obligations under 28 C.F.R. § 115.401(o).

f) **Access to External Investigative Personnel.** The Agency shall make best efforts to obtain and provide information and personnel from external investigative entities relevant to compliance with the National Standards to the Auditor.

g) **Auditor Workspace and Electronics.** During any on-site visit, the Agency shall provide the auditor with reasonable workspace, and shall permit the auditor to maintain a laptop computer, mobile telephones, and/or a PDA within that workspace.

h) **Publication of Audit Report.** The Agency shall publish the final audit reports on the Agency website within 14 days of receipt of the reports.

i) **Retaliation Safeguards.** The Agency agrees that it shall not retaliate against any person because that person has provided any information or assistance to the Auditor, has filed or will file a complaint, or has participated in any other manner in the conduct of the Audit. The Agency agrees that it shall timely and thoroughly investigate any allegations of retaliation in violation the National Standards or this Contract and take corrective action identified through such investigations.

j) **Mandatory and Discretionary Reporting Information.** The Agency shall determine whether, and to what extent, the Auditor is legally a mandatory or discretionary reporter of inmate abuse in the relevant jurisdiction, and the Agency shall provide such information to the Auditor prior to the on-site visit. The Agency shall also inform the Auditor contact information for the entity or entities that may legally accept any discretionary or mandatory reporting.

k) **Primary Points of Contact.** The Agency shall provide the Auditor with a list of primary points of contact (PPC) with respect to staff of all relevant disciplines within the agency and the facility (e.g., mental health care, investigations, and housing classification).

IV. **Standard Contract Provisions**

a) Conflict with PREA Standards. If any provision of this contract is found to be inconsistent with the PREA auditing standards, the auditing standards shall prevail.

[TERMINATION OF CONTRACT]

August 1, 2019 (unless there is a need for corrective action(s), therefore 180 days after said date or the deliverance of the final report.

Chairman Charles F. Gruber

Date

Certified PREA Auditor

Date

Attachment 1.

28 C.F.R. § 115.401 Frequency and scope of audits.

- (a) During the three-year period starting on August 20, 2013, and during each three-year period thereafter, the agency shall ensure that each facility operated by the agency, or by a private organization on behalf of the agency, is audited at least once.
- (b) During each one-year period starting on August 20, 2013, the agency shall ensure that at least one-third of each facility type operated by the agency, or by a private organization on behalf of the agency, is audited.
- (c) The Department of Justice may send a recommendation to an agency for an expedited audit if the Department has reason to believe that a particular facility may be experiencing problems relating to sexual abuse. The recommendation may also include referrals to resources that may assist the agency with PREA-related issues.
- (d) The Department of Justice shall develop and issue an audit instrument that will provide guidance on the conduct of and contents of the audit.
- (e) The agency shall bear the burden of demonstrating compliance with the standards.
- (f) The auditor shall review all relevant agency-wide policies, procedures, reports, internal and external audits, and accreditations for each facility type.
- (g) The audits shall review, at a minimum, a sampling of relevant documents and other records and information for the most recent one-year period.
- (h) The auditor shall have access to, and shall observe, all areas of the audited facilities.
- (i) The auditor shall be permitted to request and receive copies of any relevant documents (including electronically stored information).
- (j) The auditor shall retain and preserve all documentation (including, e.g., video tapes and interview notes) relied upon in making audit determinations. Such documentation shall be provided to the Department of Justice upon request.
- (k) The auditor shall interview a representative sample of inmates, residents, and detainees, and of staff, supervisors, and administrators.
- (l) The auditor shall review a sampling of any available videotapes and other electronically available data (e.g., Watch tour) that may be relevant to the provisions being audited.
- (m) The auditor shall be permitted to conduct private interviews with inmates, residents, and detainees.

(n) Inmates, residents, and detainees shall be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel.

(o) Auditors shall attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.

28 C.F.R. § 115.402 Auditor qualifications.

(a) An audit shall be conducted by:

(1) A member of a correctional monitoring body that is not part of, or under the authority of, the agency (but may be part of, or authorized by, the relevant State or local government);

(2) A member of an auditing entity such as an inspector general's or ombudsperson's office that is external to the agency; or

(3) Other outside individuals with relevant experience.

(b) All auditors shall be certified by the Department of Justice. The Department of Justice shall develop and issue procedures regarding the certification process, which shall include training requirements.

(c) No audit may be conducted by an auditor who has received financial compensation from the agency being audited (except for compensation received for conducting prior PREA audits) within the three years prior to the agency's retention of the auditor.

(d) The agency shall not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the agency's retention of the auditor, with the exception of contracting for subsequent PREA audits.

28 C.F.R. § 115.403 Audit contents and findings.

(a) Each audit shall include a certification by the auditor that no conflict of interest exists with respect to his or her ability to conduct an audit of the agency under review.

(b) Audit reports shall state whether agency-wide policies and procedures comply with relevant PREA standards.

(c) For each PREA standard, the auditor shall determine whether the audited facility reaches one of the following findings: Exceeds Standard (substantially exceeds requirement of standard); Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period); Does Not Meet Standard (requires corrective action). The audit summary shall indicate, among other things, the number of provisions the facility has achieved at each grade level.

(d) Audit reports shall describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for each audited facility, and shall include recommendations for any required corrective action.

(e) Auditors shall redact any personally identifiable inmate or staff information from their reports, but shall provide such information to the agency upon request, and may provide such information to the Department of Justice.

(f) The agency shall ensure that the auditor's final report is published on the agency's website if it has one, or is otherwise made readily available to the public.

28 C.F.R. § 115.404 Audit corrective action plan.

(a) A finding of "Does Not Meet Standard" with one or more standards shall trigger a 180-day corrective action period.

(b) The auditor and the agency shall jointly develop a corrective action plan to achieve compliance.

(c) The auditor shall take necessary and appropriate steps to verify implementation of the corrective action plan, such as reviewing updated policies and procedures or re-inspecting portions of a facility.

(d) After the 180-day corrective action period ends, the auditor shall issue a final determination as to whether the facility has achieved compliance with those standards requiring corrective action.

(e) If the agency does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it has achieved compliance.

28 C.F.R. § 115.405 Audit appeals.

(a) An agency may lodge an appeal with the Department of Justice regarding any specific audit finding that it believes to be incorrect. Such appeal must be lodged within 90 days of the auditor's final determination.

(b) If the Department determines that the agency has stated good cause for a re-evaluation, the agency may commission a re-audit by an auditor mutually agreed upon by the Department and the agency. The agency shall bear the costs of this re-audit.

(c) The findings of the re-audit shall be considered final.