

**MANAGEMENT AND SERVICES CONTRACT
FOR DETENTION FACILITIES
BETWEEN
HERNANDO COUNTY, FLORIDA
AND
CORRECTIONS CORPORATION OF AMERICA**

THIS AMENDED AND RESTATED CONTRACT is made and entered into effect as of the 18th day April, 2006, between *HERNANDO COUNTY, FLORIDA*, hereinafter referred to as "*COUNTY*", a political subdivision of the State of Florida, and *JUVENILE AND JAIL FACILITY MANAGEMENT SERVICES, INC., dba CORRECTIONS CORPORATION OF AMERICA*, hereinafter referred to as "*CCA*", a Tennessee Corporation, with its principal offices located at 10 Burton Hills Boulevard, Nashville, Tennessee 37215. Until such time as this Amended and Restated Contract becomes effective, that certain contract between the parties dated October 1, 2005, as amended, shall remain in full force and effect pursuant to its terms.

WITNESSETH:

NOW, in consideration of the mutual promises and covenants contained herein, the *COUNTY* and *CCA* hereby agree as follows:

DEFINITIONS

ACA Shall mean the American Correctional Association, whose headquarters are currently at 4380 Forbes Boulevard, Lanham, MD 20706-4322.

Additional Beds Shall mean up to six (6) non-permanent beds per housing unit, not to exceed seventy eight (78) beds in total, which CCA shall be able to utilize for housing of inmates, provided that use of these beds does not violate any laws, rules, regulations or procedures established herein.

Adjustment Date Shall be the start of the fiscal year of the COUNTY, specifically October 1st of each year, upon which date adjustments to compensation, pursuant to Section 6.3(a), shall take effect.

Booking Shall mean the process of recording an arrested person's name, age, address and reason for arrest when that person is brought to jail and placed in the custody of CCA. Booking shall include, but not be limited to: incoming pat-down, photographing, fingerprinting, recording identifying data, inventorying and storing the arrestee's clothing and personal effects and assigning the arrestee a permanent bed.

Correctional Officer Shall mean any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel.

Detention Facility Shall mean the Jail, including the present correction facility and the Minimum Security Facility collectively and all future expansions thereof.

Jail Shall mean the *COUNTY'S* jail located at:

**16425 Spring Hill Drive
Spring Hill, FL 34609**

The term "Jail" shall include all area and facilities provided for the detention and/or care of Inmates.

Inmate Shall include, any person arrested, or formally charged with a criminal violation of state, municipal, county or federal law or ordinance and transferred to the Detention Facility for incarceration; whether under criminal or civil authority; all other persons required of the *COUNTY* to be committed pursuant to applicable laws, rules, regulations or court order; and all persons transferred to the Detention Facility by other agencies for incarceration therein, pursuant to an agreement for such incarceration.

Inmate Day Shall mean each calendar day during which an Inmate is incarcerated within the Detention Facility for any portion of such day for which compensation is due pursuant to Section 6 herein. An Inmate Day shall commence upon the initiation of the booking process.

Minimum Security Facility Shall mean the *COUNTY'S* one hundred sixty (160) bed Minimum Security Facility, and all future expansions thereof, located at: 16425 Spring Hill Drive, Spring Hill, FL 34609.

Moveable Equipment Shall mean all personal property which is not a fixture and is designated as such on the joint Property Inventory listing (Section 4.3) .

Permanent Beds Shall mean any of the four hundred ninety two (492) main housing unit regular beds, all medical cell beds, and the one hundred sixty (160) beds located in the Minimum Security Facility and any other additional beds in whatever category that may be authorized now or in the future by the COUNTY or any other authorizing agency. Permanent Beds shall not include any "holding cell" beds in the booking area.

Staffing Compliment A listing of the minimum staff, by position, necessary to operate the Detention Facility according to the terms and conditions of this Contract. The list shall be provided by CCA to the COUNTY at the commencement of this Contract and updated semi-annually.

SECTION 1 **SCOPE OF WORK**

1.1 PURPOSE The purpose of this Amended and Restated Contract is to establish the terms and conditions under which CCA will operate and maintain the Detention Facility.

SECTION 2 **TERM OF THE CONTRACT**

2.1 TERM The term of this Amended and Restated Contract shall begin October 1, 2005, and shall be for a period of five (5) years terminating at 12:01 a.m. on October 1, 2010 unless earlier terminated pursuant to Section 7. This Amended and Restated Contract may be renewed, expanded, extended or renegotiated upon mutual agreement of the COUNTY and CCA.

2.2 REOPENER Each party to this agreement may exercise its right to reopen discussions concerning any provision of this agreement upon providing thirty (30) days written notice to the other party. This Reopener right may only be exercised once each calendar year, unless due to exigent circumstances, the need arises to exercise the right more often, including but not limited to court orders or decisions, or changes in statutes or other law. During the reopener discussions, neither party is obligated to agree to make any changes to any contractual provision unless mutually agreed to.

SECTION 3

DETENTION FACILITY PROPERTY

3.1 POSSESSION OF MOVABLE EQUIPMENT AND PERISHABLES Within one (1) week after the commencement of this Contract, the COUNTY and CCA shall jointly prepare a Property Inventory Listing. CCA shall have the exclusive use of the Movable Equipment and Perishables used in the Detention Facility and CCA shall be responsible for the maintenance, repair or replacement of all Movable Equipment during the occupancy of the Detention Facility. Ownership of the equipment provided by the COUNTY, (including replacement equipment) shall remain with the COUNTY.

3.2 CCA PROPERTY CCA may provide and place in the Detention Facility such other equipment that may be necessary or appropriate for the operation of the Detention Facility, which equipment shall be clearly identified and inventoried. Ownership of the equipment provided by CCA shall remain with CCA and it may be removed from the Detention Facility at any time by CCA.

SECTION 4

DETENTION FACILITY

4.1 FACILITY USE AND MAINTENANCE The COUNTY shall grant CCA, upon execution of this Contract, exclusive use and possession, subject to the terms of this Contract, of the Detention Facility. CCA takes possession of the Detention Facility in an "as-is" condition, and CCA shall be liable for all costs of repairs, improvements and maintenance, including appropriate preventative maintenance, of the Detention Facility. The COUNTY shall not be obligated to make any repairs whatsoever to the Detention Facility or Movable Equipment except for major repairs or replacements of major components of the Detention Facility, except where necessitated as a result of CCA's negligence or lack of preventative maintenance, including, but not limited to, HVAC equipment/components; roof systems; elevators; fire detection and suppression systems; security control systems, excluding normal maintenance and repair of position control switches, locks, and sensors, indicator bulbs and any other non-concealed security control systems; plumbing systems, excluding normal repair and replacement of non-permanent items, i.e., washers, shower heads,

faucets, toilet flushing mechanisms and parts, exposed drains and piping and any other non-concealed plumbing apparatus; power generation equipment; refrigeration systems, to the extent that they are an inherent component of the structure of the facility; and stationary mechanical systems which are an inherent component of the structure of the facility.

Notwithstanding the foregoing, CCA shall not be liable for any repairs of the Detention Facility and/or its associated systems and components for which the related work was contracted directly by the COUNTY and is under warranty. The COUNTY shall provide CCA documentation of such warranties and CCA shall assist the COUNTY in pursuing claims for warranty repairs where applicable.

CCA shall maintain a log of all maintenance activities performed at the Detention Facility, including maintenance performed on COUNTY owned Moveable Equipment, and shall provide a copy of said log to the COUNTY on a monthly basis.

4.2 LICENSURE AND PERMITTING It shall be the responsibility of CCA to maintain all licenses, permits and approvals of Local, State, or Federal agencies necessary for the incarceration of Inmates at the Detention Facility.

4.3 POSSESSION OF MOVABLE EQUIPMENT On the date CCA assumes operational control of any of the Detention Facility, the COUNTY will grant CCA exclusive use, possession, and control of all Movable Equipment located in the Detention Facility. CCA may provide such other equipment as it deems necessary or appropriate for the operation of the Detention Facility, which equipment shall be clearly identified and inventoried. Ownership of this equipment shall remain with CCA and it may be removed from the Detention Facility at any time by CCA.

CCA and the COUNTY will jointly maintain a Property Inventory listing of all such Movable Equipment. CCA shall have exclusive use, possession, and control of such property, and shall be responsible for the maintenance, repair, or replacement of all Movable Equipment during its occupancy of the Detention Facility. At the termination of this Contract, CCA shall return to the COUNTY all Movable Equipment listed on the Property Inventory, including all replacement property, normal wear and tear excepted.

4.4 **INSPECTION.** COUNTY reserves the right, at least on a quarterly basis, to thoroughly inspect the Detention Facility to determine whether or not the terms and conditions of this Contract are being met. If, during the course of one of these inspections, deficiencies are noted, CCA and COUNTY agree to meet as soon as possible to determine whether or not these deficiencies constitute a Default of this Contract by CCA, as provided for in Section 7.2, and how that Default, if any, will be resolved.

4.5 **UTILITIES** Notwithstanding any other provisions of this contract, CCA shall be totally responsible for any and all utility service costs associated with the operation of the Detention Facility, including, but not limited to, electricity, gas, water, sewage disposal, solid waste disposal and telephone services (excluding telephone equipment).

SECTION 5 **OPERATION OF COUNTY DETENTION FACILITIES**

5.1 **CUSTODY AND TREATMENT** After Commencement, CCA shall incarcerate and release all Inmates only upon the written direction of an appropriate authority. Incarceration shall include, among other things, fingerprinting, photographing, booking, transportation as hereafter defined, security as hereafter defined, and all acts necessary and incidental thereto.

5.2 **OPERATIONS STANDARDS** CCA shall equip, operate and maintain the Detention Facility and detain Inmates in a good and workmanlike manner that complies with this Contract and all local, state and federal laws, rules and regulations applicable to the operation of the Detention Facility, including but not limited to Chapters 943.133, 950 and 951, Florida Statutes, and will further comply with the Florida Jail Model Standards or any successor standards. Further, should CCA be in violation of any applicable law, rule, regulation, or Florida Model Jail Standards, CCA shall provide written notice to the COUNTY of the violation within forty-eight (48) hours of discovering such violation. The notice shall provide the nature of the violation, how or why such violation occurred, the length of time such violation existed, and what corrective action CCA shall take to cure said violation, and the date and time the corrective action shall effectively negate said violation. Violation of any standards that affect public safety may be subject to liquidated damages

as stipulated in Section 6.

CCA shall also operate and maintain the detention facility by the American Correctional Association standards.

CCA shall develop policies and procedures fully implementing the terms and conditions of this Contract, including the specific standards, rules, regulations and laws referenced herein, and, within thirty (30) days of the commencement of this Contract, forward a copy of those policies and procedures to the COUNTY. Any changes, updates or other modifications to those policies and procedures shall be forwarded to the COUNTY within five (5) days of their effective date.

5.3 ACCREDITATION CCA agrees that it shall seek, receive and maintain re-accreditation, no later than January 31, 2001, of the Detention Facility from the Commission on Accreditation for Corrections, which is associated with the American Correctional Association.

5.4 DETENTION FACILITY CAPACITY The COUNTY shall not require CCA to incarcerate an average of more than seven hundred thirty (730) Inmates per day in the Detention Facility (six hundred fifty two (652) permanent beds plus seventy eight (78) additional beds), calculated on a monthly basis, unless the COUNTY and CCA agree on a higher number of Inmates for the Detention Facility, or unless a final Order of a Court of competent jurisdiction requires the incarceration of a higher number of Inmates in the Detention Facility.

As provided in Section 6.6, CCA may house non-COUNTY Inmates in the Detention Facility not otherwise occupied by COUNTY Inmates. Should the total number of COUNTY and non-COUNTY Inmates incarcerated by CCA exceed the Detention Facility capacity as noted above, the COUNTY may, in order to ensure the safety and welfare of all concerned, request that CCA remove one or more of its non-COUNTY Inmates

5.5 INMATE DISCIPLINE CCA shall impose discipline upon Inmates only through rules, regulations, and orders meeting or exceeding American Correctional Association (ACA) Standards and all other applicable laws, rules, and regulations.

5.6 USE OF FORCE CCA employees shall be allowed to use non-deadly and deadly force only to the extent allowable by law.

5.7 STAFFING LEVELS

a) CCA shall at all times maintain sufficient levels of Certified Correctional Officers on staff to ensure that the safety and welfare of the Inmates, Facility Staff, and public are assured and that the Detention Facility is operated in accordance with all applicable local, state and federal laws, rules and regulations and ACA standards. At a minimum, CCA shall maintain a ratio of one (1) Correctional Officer per six (6) Inmates.

b) In addition to other staffing required to perform this contract, CCA agrees to maintain a minimum level of three (3) Senior Correctional Officers per shift to, in addition to their normal duties, assure compliance with the operational and certification requirements of this agreement.

5.8 STAFFING CERTIFICATION CCA agrees to fully abide by the provisions of Chapter 943.131 F.S. regarding the certification of Correctional Officers. As such CCA shall:

a) enroll all newly hired non-certified correctional officers in the first training program offered in the geographic area subsequent to their employment; and

b) upon successful completion of the basic recruit training program ensure that said non-certified correctional officers fulfill the requirements of s. 943.13(10) within 180 consecutive days, i.e., achieve an acceptable score on the officer certification examination.

Further, CCA shall furnish on a monthly basis, no later than the 10th day of each month, a complete list of all staff employed by CCA for the previous month. Said list shall include the name and position of each employee and the certification status for each Correctional Officer. CCA shall include with this report a listing of all new and terminated employees.

SECTION 6
COMPENSATION AND ADJUSTMENTS

6.1 CONTRACT PRICE The COUNTY shall pay to CCA, as compensation for CCA'S operation of the Detention Facility, a per diem rate of \$50.84 for each COUNTY Inmate Day (accumulated for all COUNTY Inmates) on a monthly basis.

6.2 PER DIEM ACCOUNTING The COUNTY shall pay CCA for each actual COUNTY Inmate Day (accumulated for all COUNTY Inmates) for the previous month. Said payment to be for all COUNTY Inmates at the established per diem rate, however, the day of the COUNTY Inmates' release from the Detention Facility shall not count as a compensable COUNTY Inmate Day. If the first day of confinement and the release day are the same, the time of confinement will count as a compensable Inmate Day unless the time of confinement is six (6) hours or less, in which case the time will not be counted as a compensable Inmate Day.

6.3 CONTRACT ADJUSTMENTS The compensation due to CCA, or other Contract provisions, shall be adjusted as herein provided:

a) The compensation "per diem" rate shall automatically be adjusted up by four percent (4%) at the start of each fiscal year. The fiscal year shall begin on October 1 of each calendar year.

b) **Change of Law** The parties recognize that they each have entered into this Contract based upon the law, court decisions, governmental regulations, and Detention Facility standards in effect as of the date of execution of this Contract. If any of these are changed so as to materially increase or decrease the direct cost of managing the Detention Facility, or of performing other services contemplated in this Contract, CCA and the COUNTY shall negotiate in good faith a Contract adjustment in order to accommodate such change.

6.4 FAILURE TO AGREE ON ADJUSTMENT If the parties cannot agree on any adjustment pursuant to Paragraph 6.3(b) within sixty (60) days of the date that either CCA'S or COUNTY'S request for such an adjustment is received, then either CCA or COUNTY may initiate an action in the Hernando County Circuit Court, for a determination thereof.

6.5 UTILIZATION OF OTHER FACILITIES The COUNTY agrees it will not house Inmates, eligible for commitment to the Detention Facility, in any jail or facility other than the Detention Facility operated by CCA, so long as the Detention Facility operated by CCA is not at capacity; or so long as the COUNTY does not determine that alternative facilities are needed within Hernando County, including, juvenile and similar facilities. If additional Detention Facility capacity (including, juvenile and similar facilities) is constructed by or for the COUNTY, both CCA and the COUNTY shall have the option to add the management of such additional capacity to this Contract subject to the negotiation of the compensation to be paid therefore; provided, however that upon the exercise of such an option, the other will negotiate reasonably and in good faith with regard to such compensation.

6.6 HOUSING OF OTHER INMATES The parties agree that Inmates other than COUNTY Inmates may be housed in the Detention Facility, upon the following conditions and priorities:

a) **Detention Facility Capacity** The maximum capacity of the Detention Facility shall be seven hundred thirty (730) beds.

b) **Contracts With Other Agencies** COUNTY agrees to enter into separate contracts and agreements with other governmental agencies for the housing of their inmates in the Detention Facility from time to time, provided that those inmates will only occupy those beds in the Detention Facility not occupied by COUNTY Inmates, and, subject to Subsection 6.6(c). For those Inmates housed from other agencies, including Transcor Inmates held in the Detention Facility in excess of twelve (12) hours, CCA and the COUNTY shall divide the proceeds received under said contracts and agreements monthly on a 85% - 15% basis, with CCA retaining eighty five percent (85%) of the amounts received and the COUNTY receiving the remaining fifteen percent (15%).

c) **Priority at Capacity** If at any time the Detention Facility is at capacity, but the number of COUNTY Inmates at such time does not exceed the COUNTY'S maximum capacity, pursuant to Section 6.6(a), and a new COUNTY Inmate is presented for incarceration at the Detention Facility, CCA shall immediately accept that new COUNTY Inmate and, should acceptance of the new COUNTY Inmate increase the total Jail population to the extent that the safety and welfare of all concerned, in the opinion of the COUNTY, may be compromised, then the

COUNTY may request that CCA remove one of its non-**COUNTY** Inmates from the Detention Facility.

6.7 **PAYMENT PROCEDURES** Within the first five (5) business days of each calendar month after Commencement, beginning with the first month after Commencement, CCA shall submit an invoice to the **COUNTY** for its services during the previous calendar month and, within fifteen (15) days after its receipt of said invoice, the **COUNTY** shall pay same by direct transfer of collected funds to CCA'S account in a local financial institution. At the same time as the invoice is submitted, CCA shall submit to the **COUNTY** an accounting of all sums due under the Contract both to CCA and to the **COUNTY**. If the amount to be paid to CCA is disputed by the **COUNTY**, then the **COUNTY**, on or before the date the invoice is payable, shall advise CCA of the basis for the dispute and, in the manner provided above, pay the amount of such invoice which is not in dispute. If the parties cannot resolve the dispute within thirty (30) days, either party may initiate an Action for the determination thereof.

6.8 **COUNTY BUDGET APPROPRIATIONS** The funding of this Contract is subject to an annual appropriation by the **COUNTY**. The consideration paid to CCA for any **COUNTY** fiscal year, pursuant to this Contract, shall not exceed the amount appropriated by the **COUNTY** pursuant to the **COUNTY** budget process for that fiscal year; provided, however, that the **COUNTY** shall reasonably and in good faith annually budget or appropriate an amount reasonably calculated to fund this Contract. CCA shall assist the **COUNTY** in making reasonable budget projections for the purpose of determining the amount to be budgeted or appropriated by the **COUNTY** to fund this Contract for each **COUNTY** fiscal year hereunder. In the event the amount due to CCA from the **COUNTY** for any **COUNTY** fiscal year exceeds the amount budgeted or appropriated by the **COUNTY** for that fiscal year, the **COUNTY** shall; either amend its budget to transfer other current year budgeted or appropriated funds to the budget account from which payments to CCA are made; or accumulate the amount of each payment to CCA which is passed because of the budget "shortfall". The **COUNTY shall** provide for said amount in its budget for its next fiscal year, and pay same to CCA on the first day of its next fiscal year, together with interest at six percent (6%) per annum, calculated from the day each passed payment to CCA would otherwise have been due.

6.9 LIQUIDATED DAMAGES The parties agree that the occurrence of certain events at the Facility will cause harm to the COUNTY which is not readily quantifiable. The parties hereby agree that such events are: (1) a hostage situation; (2) a riot in which inmate actions substantially interrupt facility operations; (3) an escape of one or more inmates; (4) an inappropriate release to the public of one or more inmates; (5) inappropriate use of force resulting in serious injury to an inmate; (6) death or injury requiring outside medical care of inmates or County personnel or the public resulting from reckless disregard for the safety and security of persons in the institution and (7) any third party lawsuit arising from Facility operations in which CCA is adjudicated to be grossly negligent and for which the County has not already imposed damages pursuant to this section. The occurrence of any of these events, if said event is proven to arise from the fault of CCA, may result in the payment of liquidated damages by CCA to the COUNTY in the amount of two and one half percent (2.5%) of the compensation due CCA in the month the event(s) occurs, and that sum may be withheld from monies due CCA upon review and approval by the COUNTY Board of County Commissioners, subject only to such judicial review as may now or hereafter be available with respect to such Board action, including but not limited to court action as permitted in section 14.9.

Commencing on the date of the Board's approval of this Amendment, the Board of County Commissioners reserves the option to impose additional liquidated damages, in lieu of the 2.5% withholding, should CCA thereafter be shown to be in violation of the operations standards affecting public safety on a continuing basis. Violations of standards on a continuing basis shall be defined as the occurrence of an event of harm to the County as defined in the first paragraph of this section 6.9 after liquidated damages have been imposed under this section at least twice in the same quarter as the event. The amount of additional liquidated damages the Board of County Commissioners may impose shall be proportionate to the violation and resulting loss but in no event shall the total amount exceed five (5) times the amount of liquidated damages imposed on CCA by the Board of County Commissioners during any one month within the County's fiscal year. Prior to the imposition of these additional liquidated damages, CCA shall receive notice of the possible withholding and the reason therefore and shall have the opportunity to meet with the Contract Monitor and offer input for consideration. CCA shall also have a period of ten working days to file a written response to the County in opposition to the imposition of damages or the amount thereof.

Should CCA desire to appeal the Board's final decision, CCA may submit the matter to the Division of Administrative Hearings (DOAH) for dispute resolution before an administrative law judge. The cost charged by DOAH shall be borne by CCA, and the County shall provide all reasonable cooperation needed to initiate proceedings before the Division, including but not limited to the execution of a contract with DOAH for administrative law judge services. The parties agree to be bound by the DOAH decision.

SECTION 7
DEFAULT PROVISIONS

7.1 COUNTY DEFAULT Each of the following shall constitute an Event of Default on the part of the **COUNTY**:

a) **Non-Payment** Failure by the **COUNTY** to make a payment to **CCA** under this contract within (30) days after such payment is due, except for such payments that may be the subject of a good faith dispute between the parties and *that* either said dispute is being actively and in good faith negotiated by the parties or an action between them for the resolution of same is pending.

b) **Other Material Breaches** The *material* breach by **COUNTY** of any of the terms and conditions of this Contract.

c) **Bankruptcy** The filing by or against the **COUNTY** of a petition seeking relief under the Bankruptcy Act or any federal or state statute intended to provide relief for political subdivisions and public entities which are insolvent or unable to meet their obligations as they mature.

7.2 CCA DEFAULT Each of the following shall constitute an Event of Default on the part of **CCA**:

a) **Material Breach** The material breach by **CCA** of any of the terms and conditions of this Contract; and

b) **Bankruptcy** The filing by or against the **CCA**, of a petition seeking relief under the Bankruptcy Act or any federal or state statute intended to provide relief for private persons and entities which are insolvent or unable to meet their obligations as they mature.

c) **Escapes and Riots** CCA shall exercise its best efforts to prevent escapes from or riots within the Detention Facility. If, without good cause, the frequency of escapes from or riots within the Detention Facility is either substantially in excess of the frequency of escapes from and riots within comparable facilities or CCA exhibits a reckless disregard for the safety of the general public or of the Inmates of the Detention Facility, the COUNTY may declare CCA to be in default pursuant to Section 7.2(a).

d) **Accounting and Payment to COUNTY** Failure by CCA to make an accounting as required by paragraph 6.7 or to make a payment to the COUNTY under this Contract within thirty (30) days after such payment is due, except for such payments that may be the subject of a good faith dispute between the parties and that either said dispute is being actively and in good faith negotiated by the parties or an Action between them for the resolution of same is pending.

7.3 NOTICE OF BREACH Except for a party's obligations to make payments to the other party (for which notice of non-payment shall not be required), no breach of this Contract on the part of either party shall constitute an Event of Default and no Action with regard to same may be instituted unless and until the party asserting a breach has given prior written notice to the party against which a breach is asserted specifying that a default or defaults exist(s) which, unless corrected or timely cured, will constitute a material breach of this Contract on the part of the party against which a breach is asserted.

7.4 TIME TO CURE If any material breach of this Contract by either party, other than the obligation of a party to make payments to the other party (for which notice of non-payment shall not be required), remains uncured more than thirty (30) days after written notice thereof by the party asserting the breach to the party against which the breach is asserted, such condition shall be an Event of Default; provided, however, for breaches other than a breach of a party's obligation to make payments to the other party (for which notice of non-payment shall not be required), if, within thirty (30) days after such notice, a substantial good faith effort to cure said breach has been undertaken by the party against which the breach has been asserted, said breach shall not be an Event of Default if it is cured within a reasonable time thereafter.

7.5 **FORCE MAJEURE** The failure of performance of any of the terms and conditions of this Contract resulting from acts of God, war, civil insurrection or civil riot shall not be a breach or an Event of Default pursuant hereto.

7.6 **REMEDIES FOR EVENT OF DEFAULT** The signatories to this Contract acknowledge that financial damages may be an inadequate remedy for some Events of Default under this Contract and that, in such event, they each shall have the right to seek any applicable and available equitable remedies for same. Failure of any signatory to exercise its rights in the event of any Event of Default by another signatory shall not constitute a waiver of such rights. No signatory to this Contract shall be deemed to have waived any failure to perform by another signatory hereto, unless such waiver is in writing and signed by the waiving signatory hereto. This paragraph shall be without prejudice to the right of any signatory to this Contract to seek such legal remedy for any Event of Default by either of the other signatories as may be available to it.

7.7 **MINIMUM DAMAGES** If, through its own affirmative act or omission, CCA permits to exist within the Detention Facility any condition constituting material and substantial deviation from the requirements of the Florida Model Jail Standards (other than a deviation related to or caused by exceeding the capacity of the Detention Facility or related to or caused by the number of Inmates detained in the Detention Facility) which would otherwise constitute an "Event of Default" under Section 7, CCA shall pay minimum damages of \$1000.00 to the COUNTY for each day such deviation continues regardless of whether the COUNTY's actual damages are less than such amount, but such minimum damages shall be set-off against any larger amount the COUNTY may be entitled to recover for such deviation.

7.8 **CONTINUATION OF SERVICES** Notwithstanding any other provisions of this agreement, in the event of a default by CCA which precludes its continued operation of the Detention Facilities, CCA shall in no way, either through any non-compete agreements or other contractual conditions with its employees, prevent the COUNTY'S right to employ any current and/or former CCA employee in the operation of the Detention Facility.

SECTION 8

INDEMNIFICATION AND INSURANCE

8.1 INDEMNIFICATION CCA agrees to indemnify, defend, and hold harmless the COUNTY, and the COUNTY's officers, agents, and employees, from any suit, action, claim or demand of any description whatsoever for losses or damages arising directly or indirectly from or in connection with the operation and maintenance of the Detention Facility, including, but not limited to, claims against the COUNTY, CCA, and any of their respective officers, agents, and employees, including any and all claims and actions for alleged violations of civil and constitutional rights. However, nothing herein is intended to deprive the COUNTY, CCA, or any of their respective officers, agents, and employees, of the benefits of any law limiting exposure to liability or setting a ceiling on damages, or both, or of any law establishing any defense to any claim asserted against any of them. Further, the obligation of CCA to indemnify, defend, and hold harmless shall not apply to any suit, action, claim, or demand made by any person with regard to any aspect of the legal efficacy of the arrest, incarceration, trial or sentencing of any Inmate and which arises from any independent action or omission of any person or entity other than CCA.

8.2 INSURANCE CCA shall continuously maintain such insurance policies, with a company or companies acceptable to the COUNTY, as will protect CCA and the COUNTY, as named or certificated insured, from claims under workers' compensation acts, or from any other claims for damages for physical or personal injury, including death, and from claims for civil and constitutional rights violations, which may arise from operations under this Contract; provided, however, that the COUNTY may not refuse to accept a policy written by a company the reserves of which are not otherwise reasonably acceptable to the COUNTY if said policy is otherwise secured to the reasonable satisfaction of the COUNTY; and, provided further, that the structure of the insurance program of CCA that is in place at the time of the execution hereof, which the COUNTY has had the opportunity to thoroughly review, is acknowledged to be satisfactory and acceptable to the COUNTY.

a) **Proof and Continuity of Coverage** CCA shall provide the COUNTY with certificates of insurance evidencing compliance with this Section, the form of which shall be subject to the reasonable approval of the COUNTY, and all of which must provide for no less than thirty (30) days advance notice to the COUNTY of any contemplated cancellation of the policy. The COUNTY shall have the right, but not the obligation, to advance the amount of money required to prevent the insurance policies required herein from lapsing for non-payment of premiums. If the COUNTY advances such amount, then CCA shall be obligated to repay the COUNTY the amount of any such advance, plus interest thereon, at the maximum legal rate, and the COUNTY shall be entitled to set off and deduct such amount from any amounts owed to CCA pursuant to this Contract. No election by the COUNTY to advance funds to pay insurance premiums shall be deemed to cure a default by CCA of its obligation to provide insurance.

b) **Types of Insurance** At the option of the COUNTY, this Contract shall terminate unless CCA provides the COUNTY, at or before Commencement, with certificates of insurance, and copies of the policies of insurance (if same are reasonably available from the underwriters thereof), of the following types, for the following purposes, and in the following amounts:

1) **Workers' Compensation and Unemployment Compensation** Insurance protecting CCA under, and as required by, workers' compensation and unemployment compensation laws applicable to its operation of the Detention Facility;

2) **General Liability** Insurance for general liability, which shall specifically include civil rights matters, in an amount not less than Five Million Dollars (\$5,000,000) for each occurrence and in the aggregate, including the cost of defense for all COUNTY Commissioners, COUNTY employees, and agents of the COUNTY, whether in their official or individual capacities; and

3) **Automobile** Insurance for automobile and other vehicular liability in an amount not less than One Million Dollars (\$1,000,000) for each occurrence and in the aggregate.

c) **Self-Insurance** The COUNTY acknowledges that general liability insurance for jail and detention facility operations is very difficult to obtain and very expensive when found. Accordingly, the COUNTY agrees that it will not object if CCA wishes to institute a self-insurance program for that and/or other required coverage so long as, to the COUNTY's reasonable satisfaction, the self-insurance program is actuarially sound and the funding thereof is

adequately assured.

d) **Minimum Capital of CCA** CCA agrees that it will maintain a net stockholder's equity, calculated according to generally accepted accounting principles consistently applied, of not less than four million five hundred thousand dollars (\$4,500,000.00).

8.3 COUNTY INSURANCE The COUNTY shall maintain and pay for fire and property insurance coverage on the Detention Facility and COUNTY-owned movable equipment, during the occupancy by CCA.

8.4 NOTICE OF AND COOPERATION REGARDING CLAIMS The COUNTY and CCA shall each promptly give notice to the others of any suit, action, claim, or demand arising out of the operation or maintenance of the Detention Facility, or otherwise, and about which either CCA or the COUNTY becomes aware and for which either may have any liability. Further, each of them agrees to cooperate fully with and assist the others in the defense or other resolution of each such suit, action, claim, or demand, including, but not limited to: producing testimony, documents, and other evidence, each to the other, without need of any Court Order to the fullest extent permitted by law; executing such affidavits, interrogatories or other documents and pleadings as may be necessary or appropriate in the premises; making available any employee having knowledge of such suit, action, claim, or demand for interview or deposition regarding, or for investigation of, such suit, action, claim, or demand; and providing such employees as may be necessary or appropriate to investigate such suit, action, claim, or demand. The failure of CCA or the COUNTY to promptly give notice to, or to timely and fully cooperate with and assist, the others, as hereby required, shall, in addition to any other resulting liability in the premises, result in any indemnification which may be due to the party which failed to so act from any other party being nullified if the failure to so act reasonably might result in prejudice to the defense or other resolution of such suit, action, claim, or demand.

8.5 DEFENSE OF CLAIMS It is understood that CCA or its insurance underwriter will assume the defense of any suit, action, claim or demand contemplated under or covered by Sections 8.1 or 8.2, respectively, above, and that any separate legal representation which the COUNTY may desire to obtain will be at the COUNTY's expense with regard to all legal fees, expenses and costs associated therewith.

8.6 **PRIOR OCCURRENCE** The COUNTY shall remain solely responsible for any losses or costs resulting from all suits, actions, claims or demands either pending as of October 1, 1988 or arising thereafter but relating to events or conditions which occurred or existed prior to October 1, 1988. CCA agrees to cooperate with the COUNTY in the defense of each such suit, action, claim or demand.

8.7 **PERFORMANCE BOND**

a) CCA shall provide to the COUNTY, no later than three (3) months prior to the expiration of the previous year's bond, an annual Performance Bond in the amount of one million (\$1,000,000) dollars, from a Surety acceptable to the COUNTY, guaranteeing the performance of this Agreement and in the breach thereof, upon the COUNTY'S retaking operational control of the Detention Facility, to be bound unto the COUNTY for damages up to one million (\$1,000,000) dollars. This Performance Bond requirement shall be in effect for a period of five (5) years, from the effective date of the agreement, or until such time as the COUNTY may release CCA from this obligation.

b) In order to be acceptable to the COUNTY, a Surety company issuing Performance Bonds shall meet and comply with the following minimum standards:

1. Surety must be admitted to do business in the State of Florida and shall comply with the provisions of Florida Statute 255.05.
2. Surety companies executing Bonds must appear on the United States Treasury Departments most current list (CIRCULAR 570 AS AMENDED).
3. Attorneys-in-fact who sign Performance Bonds must file with such Bond a certified copy of their power of attorney to sign such Bond.
4. Agents of Surety companies must list their name, address and telephone number on all Bonds.
5. If the Surety on any Bond is declared bankrupt or becomes insolvent or its right to do business is terminated, or it ceases to meet the requirements of this section, CCA shall within five (5) Days thereafter, substitute another Bond and Surety, both of which must be acceptable to the COUNTY.

SECTION 9
RECORDS

9.1 INMATE AND OPERATIONAL RECORDS CCA shall establish, operate, and maintain a record and report system regarding Inmates and Detention Facility operations which is consistent with applicable standards for such records. CCA shall make such records available to the COUNTY upon request, and, in any event, shall turn over said records or a copy thereof to the COUNTY upon the termination of this Contract.

9.2 CRIMINAL HISTORY RECORDS The COUNTY, to the extent that it has or can obtain computerized access to same, will obtain and provide to CCA, without charge (except for direct charges, if any, to the COUNTY), all criminal history information regarding Inmates in the Detention Facility (including, but not limited to, information from the National Crime Information Center, the Federal Bureau of Investigation, the United States Department of Corrections, the Florida Department of Law Enforcement, the Florida Division of Criminal Justice Information Systems, and the Florida Department of Corrections) which either or both of them may obtain and provide to CCA pursuant to law.

9.3 CLASSIFICATION OF INMATES CCA shall maintain a system of Inmate classification as required by applicable law, rule or regulation or approved by the County's Contract Monitor.

SECTION 10
SENTENCE COMPUTATION AND GAIN TIME

10.1 SENTENCE COMPUTATION The COUNTY's Contract Monitor (to be appointed pursuant to Section 12, below) shall be responsible for and shall compute Inmate sentences, or periods of custody, including the computation of gain time awards and discharge dates.

10.2 GAIN TIME Inmates shall receive gain time awards from the COUNTY pursuant to state law and pursuant to policies adopted and administered by the COUNTY, and CCA shall have no responsibility for same.

10.3 CCA TO FURNISH GUIDELINES At or prior to Commencement, CCA shall provide to the COUNTY and continuously update copies of all laws, rules, and regulations governing such computations and, thereafter, shall fully cooperate with the Contract Monitor in making such computations.

SECTION 11
ADDITIONAL RESPONSIBILITIES OF THE PARTIES

11.1 TRANSPORTATION Responsibility for Inmate transportation shall be as follows:

- a) **Medical** CCA shall be responsible for Inmate transportation to and from medical appointments and treatments at hospitals or other locations of physicians and other health care providers;
- b) **Judicial** The COUNTY, whether through the Sheriff or otherwise, shall be responsible for Inmate transportation, for whatever purpose, to and from Court, other counties, other states, and all locations of the Department; and
- c) **Inmate Work** The COUNTY shall be responsible for all transportation related to Inmate work for the COUNTY pursuant to Section 13-3.
- d) **Other** CCA shall be responsible for all other legally required intra-COUNTY Inmate transportation.

11.2 SECURITY CCA shall be responsible for providing security for all Inmates while they are inside the Detention Facility, when they are being transported by CCA, and while they are hospitalized or obtaining medical treatment. While any Inmate is in the custody of either the COUNTY, the Sheriff, or a bailiff, CCA shall not be responsible for providing security for such Inmate, and such security shall be the responsibility of such custodial entity or officer.

11.3 MEDICAL CARE Responsibility for Inmate Medical Care shall be as follows:

- a) CCA shall be responsible for obtaining and paying for all routine physical examinations, lab tests, and sick calls performed and all medications administered within the Detention Facility. CCA shall provide all medical care and treatment reasonably necessary and

customarily provided within Detention Facilities within the State of Florida and which are not reasonably required to be treated at an outside facility.

b) To the extent other sources of payment are not available, the **COUNTY**, and not **CCA**, shall be responsible for all charges incurred by Inmates for medical treatment, care, and attendance performed outside the Detention Facility; hospitalization; all medications administered outside the Detention Facility; and ambulance service; provided that such charges for treatment or care in an outside facility are reasonably necessary.

c) The CCA Hernando County Jail physician will be selected by CCA subject to the approval of the County's Administrator. The minimum qualifications for the selected physician shall include:

- Licensed to practice medicine (M.D. or D.O.) in the State of Florida
- Board Certified/eligible in area of practice;
- Ten (10) years of providing direct patient care;
- Two (2) years experience in providing direct patient care in a correctional environment;
- Hospital privileges with a minimum of two (2) full service hospitals located within the geographical borders of Hernando County, Florida.
- Education/Experience in pre-hospital care;
- Has a current ACLS certificate of successful course completion.

CCA will contract with approved physician to perform on-site medical functions and shall be liable for his/her compensation.

11.4 INMATE COMMISSARY CCA shall be permitted to operate an Inmate commissary; provided, however, that any profits therefrom shall only be used to purchase equipment and materials for the exercise and leisure time use of Inmates or for other expenses allowed by law. All items purchased with such funds which are neither perishable nor ordinarily disposable shall remain in the Detention Facility in the event this Contract is terminated; provided, however that **CCA** shall have no responsibility for either ordinary wear and tear or Inmate caused damage to such items.

11.5 CRIMES COMMITTED WITHIN DETENTION FACILITY CCA shall report to the proper authorities any act or omission of any person within the Detention Facility which, in the reasonable judgment of CCA, constitutes a criminal act which cannot be reasonably dealt with as a matter of internal Detention Facility discipline. In addition, CCA agrees to use reasonable care to prevent the destruction of any physical evidence which may be present as the result of such act or omission.

11.6 EVIDENCE CCA shall turn over to the appropriate law enforcement agency any evidence related to criminal investigations which has been confiscated from any inmate either before or after their commitment to the Detention Facility.

11.7 SHERIFF USE OF SPACE CCA shall provide an office for use by Sheriff's Staff for the NCIC/Warrants Division and other ancillary services as requested by the Sheriff.

SECTION 12
CONTRACT MONITOR AND
CHIEF CORRECTIONS OFFICER

12.1 CONTRACT MONITOR The COUNTY shall appoint a Contract Monitor who shall be responsible for documenting adherence to the Contract and compliance with any rules, policies, procedures, and performance standards applicable thereto. The Contract Monitor shall be the official liaison between the COUNTY and CCA. The parties agree that the Contract Monitor shall be subject to Florida Statute 112.313 and any material violation thereof shall result in termination and replacement of the then current Monitor. CCA agrees to provide an office for the Contract Monitor's use and to abide by the monitoring procedures established by the Contract Monitor subject to the restrictions of Florida open records laws, and, as such, shall have access, at all times, to all areas of the Detention Facility.

The COUNTY and CCA agree that the Contract Monitor position is vital to public health, safety and welfare and to insure that CCA is in compliance with the terms and conditions of the Agreement. Therefore, CCA agrees to fund this position through the withholding of the actual cost

for the position, inclusive of all salary and benefits, but in no event to exceed \$70,000.00 annually, from funds due CCA for the services to be provided under the Agreement. Said cost shall be prorated monthly during each County Fiscal year. The cost shall be adjusted annually to reflect any salary and benefit increases but said increases shall not exceed the applicable compensation increases given to County employees.

12.2 CHIEF CORRECTIONAL OFFICER Upon concurrence of the COUNTY's administrator, CCA shall appoint a Chief Correctional Officer and Assistant Chief Correctional Officer, respectively, of the COUNTY, to have such duties and responsibilities, among others, as may be required by Subsection 951.062(1), Florida Statutes, as amended. The COUNTY shall have the right to request the removal of the Chief Correctional Officer and/or the Assistant Chief Correctional Officer, if the COUNTY reasonably considers either to be unacceptable provided that, the COUNTY so requests in writing that CCA effectuate a change in the Chief Correctional Officer and/or the Assistant Chief Correctional Officer position, describing in detail the reason for the COUNTY's decision.

SECTION 13
INMATE WORK

13.1 COUNTY LABOR CCA agrees to provide such numbers of eligible Inmates at such times and on such days as might be requested by the COUNTY for use as labor on COUNTY projects. The COUNTY agrees to accept full and complete responsibility for the transportation, security, and care of all Inmates transferred from the Detention Facility to the control and custody of the COUNTY for labor on COUNTY projects or for any other purpose. The COUNTY shall relieve CCA from all responsibility for injuries suffered by Inmates while in COUNTY custody, except liability for routine medical care provided within the Detention Facility. CCA will remain responsible for the security of all Inmates working within the Detention Facility.

13.2 INTERNAL WORK The parties agree that all Inmates shall be required to keep their living areas clean and may be required by CCA to perform such other work within the Detention Facility as is permissible under applicable laws and regulations.

13.3 WORK RELEASE PROGRAM CCA agrees to operate a work release program, at no cost to the COUNTY, for up to twenty-four (24) inmates assigned to said program by the Court as a condition of the Inmates' sentence. The program may be increased upon mutual written agreement of the parties regarding the number of inmates and additional compensation.

SECTION 14
MISCELLANEOUS PROVISIONS

14.1 PROPERTY TAX The COUNTY shall be responsible for payment of any ad valorem taxes or assessments, if any, that may be assessed against the Detention Facility.

14.2 TELEPHONE REVENUE CCA agrees to pay COUNTY fifty percent (50%) of the commissions received by CCA for provision of the Detention Facility Inmate telephone system. CCA shall forward said payments to the COUNTY on a quarterly basis. Provided, however, that CCA may also reflect that quarterly payment through a credit applied to the invoice submitted by CCA under Section 6.7 Payment Procedures of this Contract.

14.3 NON-DISCRIMINATION CCA shall not discriminate against any person in the performance of this Contract, on the grounds of handicap, race, color, religion, sex, age, or national origin. Upon request, CCA shall show proof of such non-discrimination, and shall post, in a conspicuous place, accessible to all employees and applicants for employment, notice of its policy of non-discrimination.

14.4 BINDING NATURE This contract shall not be binding upon any of the signatories hereto until it is approved and signed by all signatories, and, thereafter, it shall be binding upon and inure to the benefit of each of their respective successors and assigns.

14.5 INVALIDITY AND SEVERABILITY In the event any provision to this Contract is held by a Court of competent jurisdiction to be invalid, such provision shall be null and void, and, so long as the underlying purpose of the contract can still be fulfilled, the validity of the

remaining provisions of the Contract shall not in any way be affected thereby. However, if said judicial decision results in the underlying purpose of this Contract being incapable of fulfillment, then the parties shall settle all then current accounts between them and this Contract shall be terminated without any further or other liability hereunder to each other.

14.6 COUNTERPARTS This Contract may be executed in multiple copies, each of which shall be deemed to be an original and all of which shall constitute one Contract, notwithstanding that all parties are not signatories to the original or to the same copy, or that signature pages from different copies are combined, and the signature of any party of any copy shall be deemed to be a signature to and may be appended to any other copy.

14.7 INTERPRETATION The headings contained in this Contract are for reference purposes only and shall not affect the meaning or interpretation of any portion or all of this Contract.

14.8 TERMINOLOGY AND DEFINITIONS All personal pronouns used in this Contract, whether of 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.

14.9 LAW AND VENUE This Contract shall be interpreted according to the laws of the State of Florida, and Hernando County, Florida, shall be the venue in the event any litigation is filed to enforce or interpret any provision of this Contract. In any litigation arising from or concerning this contract, as between the parties hereto, each party to such litigation shall bear its own attorneys' fees and costs.

14.10 NOTICES All notices required or permitted under this Contract shall be sent Certified Mail, Return Receipt Requested, to the signatories.

14.11 AUDIT CCA shall, no later than April 30th of each calendar year, provide the County with the following:

- a) an annual audit of the previous fiscal year's (October 1 through September 30) operation of the Detention Facility as required by Subsection 951.062(8), Florida Statutes. Nothing herein shall exclude the **COUNTY** from performing an independent audit of CCA's operations of the Detention Facility.
- b) an annual audit performed by an independent auditing agency of CCA's financial status.
- c) a periodic survey of the comparable salaries/wages for corrections staff personnel in the Tampa Bay region. The survey shall be conducted no less than every two (2) years.

14.12 TERMINATION Either party shall have the right to terminate this Contract by providing the other party one hundred twenty (120) days written notice of its intent to terminate this Contract.

14.13 COMPLETE AGREEMENT This contract represents the complete agreement of the parties, and there are no other agreements or understandings between the parties except as set forth herein.

(SEAL)

CORRECTIONS CORPORATION OF AMERICA

Attest: _____

By: *[Signature]*

Title: _____

Title: EVP

(SEAL)

**BOARD OF COUNTY COMMISSIONERS
HERNANDO COUNTY, FLORIDA**

Attest: *[Signature]*

By: *[Signature]*

KAREN NICOLAI *Deputy*
Clerk

DIANE ROWDEN
Chairperson

For the use and reliance of Hernando County only.
Approved as to form only.

[Signature]
Garth C. Coller, Esq.
County Attorney