

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA,

PLAINTIFF,

v.

ROBERTSON COUNTY;
HOWARD BRADLEY, COUNTY MAYOR
(in his official capacity); ROBERTSON COUNTY
COMMISSIONERS (in their official capacity);
BILL HOLT, ROBERTSON COUNTY SHERIFF
(in his official capacity);

DEFENDANTS.

Civil No. _____

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Robertson County, Robertson County Mayor Howard Bradley, the Robertson County Commissioners, Robertson County Sheriff Bill Holt, ("Defendants") and the United States of America (collectively, "the Parties") enter into this agreement ("Agreement") with the goal of ensuring that prisoners at the Robertson County Detention Facility ("RCDF" or "Jail") are provided with constitutional mental health care.
2. RCDF is an integral part of the public safety system in Robertson County. Through this Agreement, the Parties seek to ensure that prisoners' constitutional rights are protected. By providing for constitutional conditions at RCDF, the Sheriff and County will also provide for the safety of staff and promote public safety in the community. The Parties recognize that the conditions at RCDF and the treatment of prisoners confined there have an impact on prisoners' successful re-integration into the community upon release, the re-offense rates of released prisoners, and public confidence in the criminal justice system.
3. The Civil Rights Division of the United States Department of Justice commenced an investigation of the conditions of confinement at the Robertson County Detention Facility at the request of the United States Attorney's Office for the Middle District of Tennessee ("USAO"). The USAO made the request after receiving complaints from prisoners regarding conditions at RCDF and following a District Court evidentiary hearing to assess a prisoner's claim based on those conditions. *United States v. Williams*, No. 3:09-00090 (M.D. Tenn. 2009). The United States of America, through

the United States Department of Justice (“the United States”), notified the County of Robertson, Tennessee (“County”) of its intention to investigate conditions of confinement at the Jail pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 (“CRIPA”). The United States’ investigation included onsite interviews of Jail staff and prisoners, and a review of relevant Jail policies and procedures, reports, logs, and other relevant documents and data.

4. On August 26, 2011, the United States issued an investigative findings letter which concluded that certain conditions at the Jail violated the constitutional rights of prisoners detained or committed to the Jail (“Findings Letter”) (attached as Appendix A). Specifically, the United States found a pattern or practice of constitutional violations in RCDF’s provision of mental health care.
5. From the beginning, and continuing throughout the United States’ investigation of conditions of confinement at RCDF, Defendants have acted expeditiously to begin addressing concerns the United States has raised with respect to conditions at RCDF, including concerns related to the provision of mental health care. This Agreement memorializes the actions that Defendants will implement to address the United States’ findings related to mental health care.
6. This Agreement shall be filed in the United States District Court, Middle District of Tennessee, and shall resolve the United States’ claims that the County is in violation of the Eighth and Fourteenth Amendments to the Constitution in its operation and management of the Jail.
7. The Court has jurisdiction over this action pursuant to 28 U.S.C. §1331; 28 U.S.C. § 1345; 42 U.S.C. § 1997; and 42 U.S.C. §§ 12131-12132. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).
8. The Agreement shall constitute the entire integrated Agreement of the Parties. Except for the United States’ August 26, 2011, Findings Letter, no prior contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provisions of the Agreement in this litigation or in any other proceeding.

II. DEFINITIONS

As used in this Agreement, the following definitions apply:

- a. “RCDF” or “Jail” shall refer to the Robertson County Detention Facility in Springfield, Tennessee, or any facility that is used to replace or supplement the Jail.
- b. “RCSO” shall refer to the Robertson County Sheriff’s Office, which is responsible for all corrections and security functions at the Jail.

- c. "County" shall refer to the County of Robertson its departments, programs, divisions, and agencies, including RCSO.
- d. "Defendants" shall refer to Robertson County, Howard Bradley, County Mayor (in his official capacity), the Robertson County Commissioners (in their official capacity) and Bill Holt, Robertson County Sheriff (in his official capacity).
- e. "United States" shall refer to the United States Department of Justice, including the Civil Rights Division and the United States Attorney's Office for the Middle District of Tennessee, which represent the United States in this matter.
- f. Consistent with, or in accordance with, the term "generally accepted correctional standards" shall mean those industry standards accepted by correctional professionals or organizations in the relevant subject area.
- g. "Effective Date" shall mean the date the Agreement is signed and entered by the Court.
- h. "Include" or "including" shall mean "include, but not be limited to" or "including, but not limited to."
- i. "Independent Consultant" ("IC") shall mean an individual jointly selected by both Parties to provide technical assistance to Defendants and ensure implementation of the Agreement.
- j. "Interdisciplinary Team" shall refer to a team consisting of treatment staff from various disciplines, including medical, nursing, and mental health and one or more members from corrections.
- k. "LPN" shall mean individuals licensed as Licensed Practical Nurses by the State of Tennessee.
- l. "Prisoners" or "Prisoner" shall be construed broadly to refer to one or more individuals detained at, or otherwise housed, held, in the custody of, or confined at RCDF.
- m. "Psychiatrist" shall mean a medical or osteopathic doctor licensed to practice medicine or osteopathy in the State of Tennessee, who has completed a residency in psychiatry in a program accredited by the American Association of Medical Colleges or the American Osteopathic Association.
- n. "Psychotropic medication" shall mean any medication prescribed by a physician that is used in the treatment of mental illness which exerts an effect on the brain and is capable of modifying mental activity or behavior.
- o. "Qualified Medical Staff" shall mean a physician, physician assistant, nurse practitioner, registered nurse, or licensed practical nurse who is currently licensed by the State of Tennessee and provides medical care and services to prisoners at RCDF.

- p. “Qualified Mental Health Professional” or “QMHP” shall mean a registered nurse with education and training in psychiatric nursing, or an individual with a minimum of a master’s level degree and training in psychiatry, psychology, counseling, or social work. The Qualified Mental Health Professional must be currently licensed by the State of Tennessee to deliver those mental health services he or she has undertaken to provide.
- q. “Restraint” shall mean any method that restricts, limits, or directs an individual’s freedom of movement, including mechanical restraints (e.g., restraint chair, handcuffs, belly chains, leg shackles) and physical restraints (e.g., manual holds). The term “restraint” does not include verbal directives, room confinement or use of handcuffs or shackles for and during transport.
- r. “Serious injury” means any injury that requires immediate medical attention or hospitalization other than first aid.
- s. “Serious suicide attempt” means a suicide attempt that is considered to be either potentially life threatening or that requires hospitalization for medical treatment.
- t. “Suicide precautions” means any level of watch, observation, or measures to prevent self-harm.
- u. “Timely” means the provisions of medical or mental health care consistent with generally accepted correctional standards of care, depending on the nature of the situation, such as emergency, urgent, or routine.
- v. “Train” means to instruct in the noted skills to a level that the trainee has the demonstrated proficiency to implement those skills as and when called for. A person is “trained” if he or she is able to describe, demonstrate, and apply the noted skills.
- w. Throughout this Agreement, the following terms are used when discussing compliance: substantial compliance, partial compliance, and non-compliance. “Substantial Compliance” indicates that Defendants have achieved compliance with most or all components of the relevant provision of the Agreement for both the quantitative (i.e., 90% performance measure) and qualitative (i.e., consistent with the larger purpose of the Agreement) measures. “Partial Compliance” indicates that compliance has been achieved on some of the components of the relevant provision of the Agreement, but significant work remains. “Non-compliance” indicates that most or all of the components of the Agreement provision have not yet been met.

III. SUBSTANTIVE PROVISIONS

The County shall take all actions necessary to comply with the substantive provisions of this Agreement listed below. These provisions are intended to ensure that prisoners with mental illness or at risk of suicide receive proper treatment and do not experience unnecessary suffering

or harm while incarcerated. The failure to provide necessary treatment not only harms prisoners, but affects public safety if prisoners' mental health deteriorates during incarceration. Accordingly, the County shall ensure constitutionally adequate intake, assessment, treatment, and monitoring of prisoners with mental health needs or at risk for self-injurious behavior.

A. Suicide Prevention

The County shall protect the safety of prisoners at risk for self-injurious behavior or suicide by providing timely and adequate access to Qualified Mental Health Professionals, including giving priority access to individuals most at risk of harm and who otherwise meet the criteria for being at high risk for suicide.

1. Policies

The County shall implement comprehensive policies and protocols to ensure that prisoners at risk of self harm are identified, protected, and treated in a manner consistent with the Constitution. The County shall continuously track and analyze prisoners' risk of self harm and implement measures to protect prisoners by reducing or eliminating the risk of harm. At a minimum, the policies and protocols shall:

- a. Ensure that all prisoners are appropriately screened for risk of self harm using an appropriately validated screening instrument. At a minimum, the screening instrument should include inquiry regarding the following:
 - (1) past suicidal ideation and/or attempts;
 - (2) current ideation, threat, or plan;
 - (3) prior mental illness treatment or hospitalization;
 - (4) recent significant loss, such as the death of a family member or close friend;
 - (5) history of suicidal behavior by family members and close friends;
 - (6) suicide risk during any prior confinement;
 - (7) any observations of the transporting officer, court, transferring agency, or similar individuals regarding the prisoner's potential suicide risk;
 - (8) medication history; and
 - (9) risk of withdrawal from drugs or alcohol, including whether the prisoner is under the influence of drugs or alcohol, the amounts taken, the date of last dose and history of withdrawal symptoms.
- b. Ensure that all prisoners are screened by Qualified Medical Staff upon arrival to RCDF, but no later than within 24 hours, to identify the prisoner's risk for suicide or self-injurious behavior. If a prisoner will be discharged in less than 24 hours, Qualified Medical Staff should perform a screening prior to the prisoner's release.
- c. Classify prisoners based on the results of the screening factors as low, moderate, or high risk.

- d. Ensure that prisoners are protected from identified risks for suicide or self-injurious behavior commensurate with their level of risk by:
- (1) Ensuring that any prisoner classified as high risk is searched and monitored with constant supervision until the prisoner is transferred to a QMHP for assessment. Constant supervision means in-person observation of the prisoner on a continuous, uninterrupted basis. Other aids, e.g., closed-circuit television, can be used as a supplement to, but never as a substitute for, such observation. If RCDF cannot provide continuous observation, the prisoner should be transferred to an appropriate mental health facility.
 - (2) Ensuring that any prisoner classified as moderate risk is searched and monitored with close supervision until the prisoner is transferred to a QMHP for assessment. Close supervision requires staff to observe prisoners at staggered intervals not to exceed every 15 minutes.
 - (3) Ensuring that any prisoner classified as low risk is searched and monitored until the prisoner is transferred to a QMHP for assessment. Prisoners classified as low risk shall be observed by staff at staggered intervals not to exceed every 30 minutes.
 - (4) Ensuring that a QMHP conducts appropriate mental health assessments within the following periods from the initial screen:
 - i. 14 days, or sooner, if medically necessary, for prisoners classified as low risk;
 - ii. 48 hours, or sooner, if medically necessary, for prisoners classified as moderate risk; and
 - iii. immediately, but no later than two hours from the time the QMHP comes on duty at RCDF, for prisoners classified as high risk. If a prisoner classified at high risk is set to be released prior to a QMHP arriving on duty at RCDF, RCDF shall call the local mobile crisis unit for an on-site assessment prior to release.
- e. Appropriate mental health assessments include an assessment of the following factors:
- (1) Whether the suicide risk screening indicates low, moderate or high risk;
 - (2) Any suicide attempt in the past;
 - (3) Any suicidal ideations, with intent/plan within the past 30 days;
 - (4) Any command hallucinations to harm self within the past 30 days;
 - (5) Any combination of the following:
 - i. Suicidal ideations within the past year with or without intent/plan;
 - ii. Suicidal gestures (current and/or within past year);

iii. One or more of the following diagnoses:

- a. Bipolar Disorder, Depression
- b. Major Depression with or without Psychotic Features
- c. Schizophrenia
- d. Schizoaffective Disorder
- e. Any diagnosis within the Pervasive Developmental Disorder Spectrum
- f. Any other factor(s) determined by the Interdisciplinary Team as contributing to suicide risk (e.g. recent loss, family history of suicide, etc.)

(6) Any history of self-injurious behavior resulting in injury requiring medical attention within the past year.

- f. Ensure that QMHPs perform an appropriate mental health assessment following any adverse triggering event while a prisoner remains in RCDF custody, including any of the following:
 - (1) Any suicide attempt;
 - (2) Any suicidal ideation, with or without a plan; or
 - (3) Any aggression to self resulting in major injury.
- g. Ensure that QMHPs, as part of the prisoner's Interdisciplinary Team, maintain a risk profile for each individual based on the assessment factors identified above and develop and implement interventions to minimize the risk of harm to each individual.
- h. Ensure adequate and timely treatment for prisoners, whose assessments reveal mental illness and/or suicidal ideation, including timely and appropriate referrals for specialty care and visits with QMHPs, as clinically appropriate.
- i. Ensure appropriate levels of supervision, as defined above, of actively suicidal prisoners and prisoners with lower levels of risk. Correctional officers shall document their checks in a format that does not have pre-printed times and staff shall document their visual verification of the prisoner's welfare accurately and completely. A supervisor shall conduct and document a review of all documents related to this provision before the end of the shift during which it occurred to ensure compliance with policy and this Agreement.
- j. Set forth the conditions of the watch, including allowable clothing, property, and utensils, in accordance with generally accepted correctional standards of care. These conditions shall be altered only on the written instruction of a QMHP, except under emergency circumstances.

- k. Ensure that a QMHP or QMS, not including a licensed practical nurse, regularly, but no less than once per day, reassesses prisoners on suicide precautions to determine whether the level of precaution or supervision should be raised or lowered. It is expected this reassessment will be made on-site and in person on Monday through Friday, and will be made by a QMHP or QMS by telephone communication with the assistance of a LPN on the weekends. These reassessments shall be documented and recorded in the prisoner's medical chart.
- l. Ensure that all mental health care staff within the Jail have access to critical information for prisoners on suicide precautions (e.g., progress notes from all treating clinicians). Following each assessment, mental health care staff shall provide correctional staff with pertinent and relevant information regarding a prisoner on suicide precautions to the extent that it affects the correctional staff's duties and responsibilities for supervising prisoners on suicide precautions.
- m. Ensure that only a QMHP may promote, demote, or terminate a prisoner's suicide precaution level or status. LPNs and correctional officers may only modify suicide precautions or remove prisoners from suicide watch upon the documented order of a QMHP.
- n. Ensure that all prisoners discharged from suicide precautions receive a follow-up assessment within eight days, in accordance with a treatment plan developed by a QMHP.

2. Training

- a. The County shall ensure that all staff have the adequate knowledge, skill, and ability to address the needs of prisoners at risk for suicide. Within 180 days of the Effective Date, the County will institute a suicide prevention training program. The County shall review and revise its current suicide prevention training curriculum to include the following topics:
 - (1) suicide prevention policies and procedures (as revised consistent with this Agreement);
 - (2) analysis of facility environments and why they may contribute to suicidal behavior;
 - (3) potential predisposing factors to suicide;
 - (4) high-risk suicide periods;
 - (5) warning signs and symptoms of suicidal behavior;
 - (6) case studies of recent suicides and serious suicide attempts;
 - (7) mock demonstrations regarding the proper response to a suicide attempt; and
 - (8) the proper use of emergency equipment.
- b. Ensure that all correctional, medical, and mental health staff are trained on the suicide screening instrument.

- c. Ensure that a minimum of four hours of in-service suicide prevention training is completed annually by all correctional, medical, and mental health staff, to include training on updated policies, procedures, and techniques.
- d. Ensure that correctional staff is trained in observing prisoners on suicide watch and step-down unit status.
- e. Ensure that all correctional staff are certified in cardiopulmonary resuscitation ("CPR").
- f. Ensure that an emergency response bag that includes appropriate equipment, including a first aid kit and emergency rescue tool, shall be in close proximity to all housing units. All staff coming into regular contact with prisoners shall know the location of this emergency response bag and be trained to use its contents.

B. Mental Health Treatment

The County shall ensure that prisoners suffering from mental illness receive treatment appropriate to their condition and adequate to prevent unnecessary suffering or risk of harm. Proper treatment will also assist prisoners in successfully reentering the community upon release. To achieve this outcome, the County shall provide sufficient staffing to meet the demands for timely access to QMHPs and/or QMS and ensure that qualified staff perform comprehensive assessments, provide comprehensive multidisciplinary treatment planning and medication management, and monitor medication side effects.

1. Policies

The County shall implement comprehensive policies and protocols to ensure that RCDF delivers mental health services that include an array of services. These policies and protocols must also provide for necessary and appropriate mental health staff; require a treatment plan for prisoners with serious mental illness; and contain mechanisms sufficient to measure whether care is being provided in a manner consistent with the Constitution. At a minimum, the policies and protocols shall:

- a. Ensure that all prisoners are appropriately screened for mental illness using an appropriately validated screening instrument.
- b. Ensure that treatment plans adequately address prisoners' serious mental health needs and that the plans contain interventions specifically tailored to the prisoners' diagnoses and problems.
- c. Ensure adequate on-site psychiatric coverage for prisoners' serious mental health needs and ensure that psychiatrists see such prisoners in a timely manner.

- d. Ensure that prisoners with chronic mental illness are placed on a chronic mental health list for follow-up every 30, 60, or 90 days, as clinically appropriate. Prisoners with chronic mental illnesses shall not be required to submit a request for mental health services in order to receive such services at regular intervals.
- e. Ensure timely and appropriate therapy, counseling, and other mental health programs for all prisoners with serious mental illness. This includes adequate space for treatment, an adequate number of QMHPs to provide treatment, access to licensed in-patient psychiatric care when clinically appropriate, and an adequate array of structured therapeutic programming.
- f. Ensure an adequate array of crisis services to appropriately manage the psychiatric emergencies that occur among prisoners. Crisis services shall not be limited to administrative segregation or observation status. Prisoners shall have access to appropriate licensed in-patient psychiatric care.
- g. Ensure that the Jail's QMHPs or QMS maintain a log of prisoners receiving mental health services, which shall include both those prisoners who receive counseling and those who receive medication. The log shall be updated every time a prisoner receives mental health services. The log shall include each prisoner's name, diagnosis or complaint, and next scheduled appointment. Each clinician shall have ready access to a current log listing any prescribed medication and dosages for prisoners on psychotropic medications.

2. Training

- a. Ensure that all mental health staff performing mental health assessments receive comprehensive training concerning the policies, procedures, and practices for the delivery of mental health services, including the screening, assessment, and referral processes.
- b. Ensure that all nurses performing health screenings receive comprehensive training concerning the policies, procedures, and practices for the mental health screening process.
- c. Randomly test five percent of relevant staff on an annual basis to determine their knowledge of the policies, procedures, and practices for the mental health screening, assessment, and referral processes. The testing instrument and policies shall be approved by the United States. The results of these assessments shall be evaluated to determine the need for changes in training practices. The review and conclusions will be documented and provided to the IC, the County, and the United States.
- d. Develop and implement written training protocols in the area of mental health for correctional staff, including an introductory training provided to new hires,

which will include training on basic mental health information (e.g., recognizing mental illness, specific problematic behaviors, additional areas of concern); identification, timely referral, and proper supervision of prisoners with serious mental health needs; appropriate responses to behavior symptomatic of mental illness; suicide prevention; and an annual refresher training on relevant topics. The training will be conducted by a QMHP. The County will document and track training and attendance by staff, who must attend the training provided for in this provision in order to continue their employment.

3. Psychotropic Medication Management

The County shall ensure the accurate administration of psychotropic medication and maintenance of medication records. At a minimum, the County shall:

- a. Ensure that prisoners have proper diagnoses made by a psychiatrist, psychologist or medical doctor for each psychotropic medication they receive.
- b. Ensure a medication continuity system so that incoming prisoners receive psychotropic medications for serious mental health needs in a timely manner, as medically appropriate.
- c. Ensure that prescriptions for psychotropic medications are reviewed by a psychiatrist or other qualified prescriber with mental health experience and training on a regular, timely basis to assess whether each prisoner's prescribed regimen continues to be appropriate and effective for his or her condition. Whenever a psychotropic medication is discontinued, added, or changed, the County will ensure that the psychiatrist or other qualified prescriber making such changes contemporaneously documents the reason for such change in the prisoner's health record.
- d. Ensure that individuals receiving psychotropic medication are adequately monitored for potential negative side-effects of such medications.
- e. Ensure that one unified health record is maintained for each prisoner that includes complete records for both physical and mental health and a complete list of medications the prisoner is taking. The County will also ensure that such unified health records are available to all medical and mental health staff who are necessary to facilitate continuity of care.

4. Use of Restraints

The County shall prevent the unnecessary or excessive use of restraints on prisoners with mental illness or requiring suicide precautions. At a minimum, the County shall:

- a. Develop and maintain comprehensive policies and procedures for the use of restraints for prisoners with mental illness in accordance with generally accepted standards of care.
- b. Ensure that a QMHP by preference, and if not available, a QMS provides written approval prior to the use of restraints on prisoners suffering from mental illness or requiring suicide precautions. The QMHP or QMS shall document the basis for and duration of the use of restraints and the performance and results of welfare checks on such restrained prisoners. The parties acknowledge that there may be situations which arise of immediate nature where such prior written approval is not practical for the safety of the inmate, other inmates or the facility staff. In such cases, written approval shall be obtained as soon as practicable and the same documentation obtained.
- c. Ensure that restrained mental health prisoners are monitored at least every 15 minutes by a Correctional Officer and further monitored by a Qualified Medical Staff to assess their physical condition every 2 hours.

5. Mental Health Staffing

- a. The County shall ensure that the Jail's mental health staffing is sufficient to provide adequate care for prisoners' serious mental health needs, fulfill constitutional mandates and the terms of this Agreement, and allow for the adequate operation of the Jail, consistent with constitutional standards.
- b. The County will ensure that all persons providing mental health treatment meet applicable state licensure and/or certification requirements, and practice only within the scope of their training and licensure.

6. Release and Transfer

- a. RCDF shall notify a QMS prior to the release or transfer of a prisoner with mental health needs from RCDF custody as soon as information relating to his or her release or transfer becomes available.
- b. When a QMS is notified of the release or transfer of a prisoner with mental health needs, the QMS shall prepare and send with the transferring or released prisoner a summary detailing major mental health concerns and listing current medications and dosages, as well as medication history while at RCDF, in order to ensure continuity of care.
- c. RCDF shall provide released prisoners with a three day supply of appropriate prescription medication. RCDF shall also provide released prisoners with the contact information for local mental health crisis services and schedule if requested an appointment with a mental health provider in the community and/or will offer to schedule the initial appointment. RCDF shall supply sufficient

medication for the period of transit for prisoners who are being transferred to another correctional facility or other institution not to exceed a three day supply.

IV. QUALITY IMPROVEMENT AND RISK MANAGEMENT

The County will develop, implement, and maintain a system to ensure that trends and incidents involving restraint use, psychotropic medications, and avoidable suicides and self-injurious behavior are identified and corrected in a timely manner.

- A. Within 90 days of the Effective Date, the County shall develop and implement written Quality Improvement policies and procedures adequate to identify and address serious deficiencies in prisoner suicide prevention and mental health care.
- B. Within 90 days of the Effective Date, the County will implement monthly quality assurance mechanisms at the individual and system levels to prevent or minimize harm to prisoners. These quality assurance mechanisms shall track and analyze patterns and trends regarding levels of risk for suicide and self-injurious behavior, restraint and psychotropic medication use and, more generally, the provision of mental health care at RCDF. Each monthly report shall include:
 - (1) relevant aggregate data, including:
 - i. number of incidents related to self-harming behavior, including suicide gestures, attempts, or completed suicides, and any purposeful self-injurious act or attempted act that inflicted harm requiring medical attention or likely would have if completed;
 - ii. all uses of restraints of prisoners with mental illness, including instances of self-injurious behavior while restrained, use of restraints on a prisoner on three or more occasions in a 30-day period, and single uses of restraints exceeding one hour in duration;
 - iii. number of prisoners prescribed psychotropic medications;
 - iv. number of prisoners prescribed two or more psychotropic medications;
 - v. the number of prisoners who report having participated in general mental health/therapy counseling;
 - vi. the number of prisoners who have received one-on-one treatment from the psychiatrist;
 - vii. the time elapsed between prisoners' requests for mental health services and the provision of services by a QMHP or QMS;
 - viii. a list of prisoners with chronic mental illnesses, including the dates prisoners were treated by a QMHP or QMS;
 - ix. number of individuals with mental illness who return to RCDF within 30-60 days.

- (2) an assessment of trends and interventions, including:
 - i. trends and/or patterns regarding the self-harm data (i.e., the location and shift during which the majority of self-harm occurred; circumstances surrounding the discovery of the self-harm; the structures, objects, or instruments used to execute the self-harm, prisoners frequently engaged in self-harm);
 - ii. whether prisoners at risk of self-harm are being appropriately identified for care;
 - iii. whether incidents of self-harm are increasing or decreasing;
 - iv. the severity of incidents of self-harm;
 - v. whether restraints are being appropriately used against prisoners with mental illness;
 - vi. whether prisoners are receiving appropriate and adequate mental health counseling and therapy;
 - vii. the timeliness of mental health services provided;
 - viii. referrals to outside care;
 - ix. whether prisoners with chronic mental illnesses are receiving mental health services at regular intervals without requesting such services;
 - x. staff counseling and discipline for violating psychotropic medication policies or restraint use policies; and
 - xi. the effectiveness of interventions undertaken in response to identified trends from previous months.
- (3) Based on these monthly assessments, the County shall recommend and implement changes to policies and procedures.
- (4) The Jail shall ensure that all relevant facts and circumstances surrounding serious suicide attempts and completed suicides are investigated and reviewed by a multidisciplinary team, consisting of medical, mental health, and corrections staff. This team shall identify any areas in which staff performance could be improved or jail procedures that need to be adjusted to improve the ability to protect prisoners from self-harm. All reviews shall be documented and shall include the team's findings, concerns, recommendations and remedial actions.

V. REPORTING REQUIREMENTS AND RIGHT OF ACCESS

- A. Within 120 days of the Effective Date, the County shall revise and/or develop as necessary other written documents such as screening tools, logs, handbooks, manuals, and forms, to effectuate the provisions of this Agreement. The County shall send newly-drafted and revised policies and procedures, as they are promulgated, to the United States for review, consultation with the Independent Consultant ("IC"), and approval.

The County shall provide initial and in-service training to all facility staff with respect to newly implemented or revised policies and procedures. The County shall document employee review and training in policies and procedures. On an annual basis, the County shall review all policies and procedures for the suicide and mental health issues addressed herein and submit them to the United States for review, consultation with the IC, and approval.

- B. The County shall submit bi-annual compliance reports to the United States and the IC; the first of which shall be filed within 180 days of the date of this Agreement. Thereafter, the bi-annual reports shall be filed 15 days after the termination of each six-month period thereafter until the Agreement is terminated. The report shall summarize Quality Improvement and Risk Management activities and contain the findings and recommendations developed in accordance with Section IV above. The report shall also capture data that is tracked and monitored under the monthly reporting provisions contained in Section IV.
- C. The County shall within 24 hours notify the United States upon the death of, or following the serious suicide attempt of, any prisoner. The County shall forward to the IC and the United States incident reports and medical and/or mental health reports related to deaths, autopsies, and/or death summaries of prisoners.
- D. Each compliance report shall describe the actions the County has taken during the reporting period to implement this Agreement and shall make specific reference to the Agreement provisions being implemented.
- E. The County shall maintain sufficient records to document that the requirements of this Agreement are being properly implemented and shall make such records available to the United States within 48 hours for inspection and copying. In addition, the County shall maintain and provide, upon request, all records or other documents to verify that they have taken such actions as described in their compliance reports (e.g., census summaries, policies, procedures, protocols, training materials, investigations, and incident reports).
- F. The United States and its attorneys, consultants, and agents shall have unrestricted access to the Jail, prisoners, staff, and documents as reasonably necessary to address issues affected by this Agreement.
- G. Within 45 days of receipt of written questions from the United States concerning the County's compliance with the requirements of this Agreement, the County shall provide the United States with written answers and any requested documents.

VI. INDEPENDENT CONSULTANT

In order to facilitate implementation of this Agreement, ensure the Agreement is furthering the Parties' goal of providing constitutional mental health care, and reduce costs

associated with potential disagreements between the Parties, the Parties shall jointly select an Independent Consultant ("IC"). The IC shall provide objective and neutral advice regarding the implementation of the Agreement. Specifically, the IC will provide an assessment of RCDF's current level of compliance to the Parties through an initial baseline visit to RCDF and annual visits and reports. In addition, the IC shall provide Defendants with technical assistance as requested in order to help Defendants achieve compliance as effectively and efficiently as possible. The IC shall also review the provisions of the Agreement and recommend modifications in the event any provision as drafted does not further the purpose of the Agreement. Finally, because providing constitutional conditions at RCDF also promotes public safety in the wider community, the IC's reports will be made available to the public, as well as to the United States and the Court. The Parties agree that the IC is not an agent of the Court, nor does the IC have any authority to act on behalf of the Court.

- A. IC Selection: The parties have jointly selected Lindsay Hayes to serve as the IC. Should the IC position become vacant and the parties cannot agree on a replacement, the parties shall recommend candidates to the Court, and the Court will appoint the IC from the names submitted by the parties. Neither party, nor any employee or agent of either party, shall have any supervisory authority over the IC's activities, reports, findings, or recommendations. The cost for the IC's fees and expenses shall be borne by Defendants. The selection of the IC shall be conducted solely pursuant to the procedures set forth in this Agreement, and will not be governed by any formal or legal procurement requirements. The IC may be terminated only for good cause, unrelated to the IC's findings or recommendations, and only with prior notice to, and approval of, the parties acting jointly or by Court order. Should all of the parties agree that the IC is not fulfilling his or her duties in accordance with this Agreement, the parties may petition the Court for the IC's immediate removal and replacement. One party may unilaterally petition the Court for the IC's removal for good cause, and the other parties will have the opportunity to respond to the petition.
- B. IC Qualifications: The IC shall have appropriate experience and education or training related to the subject areas covered in this Agreement.
- C. IC Access: At a mutually agreeable time at or near the Effective Date, the IC shall visit the Jail to conduct a baseline assessment of the Jail's compliance with this Agreement. The IC shall then visit the Jail annually to conduct a compliance assessment. The Parties anticipate that Defendants may achieve substantial compliance in as little as two years. In order to accelerate termination of this Agreement, however, Defendants may also invite the IC to conduct compliance assessments more frequently than contemplated by this schedule. The IC shall then memorialize his or her findings in a report, described further in paragraphs F and H below. In order to facilitate the IC's visits, the IC shall have full and complete access to the Jail, all Jail records, prisoner medical and mental health records, staff, and prisoners. Defendants shall direct all employees to cooperate fully with the IC. All non-public information obtained by the IC shall be maintained in a confidential manner.

- D. IC Ex Parte Communications: The IC shall be permitted to initiate and receive ex parte communications with all parties.
- E. Limitations on Public Disclosures by the IC: Except as required or authorized by the terms of this Agreement or the parties acting together, the IC shall not: make any public statements (at a conference or otherwise) or issue findings, except as required under paragraph F, listed below, with regard to any act or omission of Defendants or their agents, representatives, or employees, or disclose nonpublic information provided to the IC pursuant to this Agreement. Any press statement made by the IC regarding the oversight of this Agreement or his or her employment as IC must first be approved in writing by all parties. The IC shall not testify in any other litigation or proceeding with regard to any act or omission of Defendants or any of their agents, representatives, or employees related to this Agreement, nor testify regarding any matter or subject that he or she may have learned as a result of his or her performance under this Agreement. Reports issued by the IC shall not be admissible against Defendants in any proceeding other than a proceeding related to the enforcement of this Agreement by Defendants or the United States. Unless such conflict is waived by the parties, the IC shall not accept employment or provide consulting services that would present a conflict of interest with the IC's responsibilities under this Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against Defendants, their departments, officers, agents, or employees. The IC is not a State/County or local agency or an agent thereof, and accordingly the records maintained by the IC shall not be deemed public records subject to public inspection. Neither the IC nor any person or entity hired or otherwise retained by the IC to assist in furthering any provision of this Agreement shall be liable for any claim, lawsuit or demand arising out of the IC's performance pursuant to this Agreement. This provision does not apply to any proceeding before a court related to performance of contracts or subcontracts for oversight of this Agreement.
- F. IC's Reports: The IC shall file with the Court and provide the Parties with reports describing the steps taken by Defendants to implement this Agreement and evaluate the extent to which Defendants have complied with each substantive provision of the Agreement. In the report, the IC shall also evaluate whether Defendants' compliance with the substantive provisions of the Agreement has resulted in the achievement of the Agreement's goal of providing constitutional mental health care. The IC shall issue an initial report after the IC's baseline visit, and then within a reasonable time following each compliance visit thereafter. The reports shall be provided to the parties in draft form for comment at least 14 days prior to their issuance. These reports shall be written with due regard for the privacy interests of individual prisoners and staff and the interest of Defendants in protecting against disclosure of non-public information.
- G. Assessing Compliance with Goals of Agreement: In order to assess Defendants' progress toward achieving the Agreement's goal of ensuring that RCDF provides prisoners with constitutional mental health care, the IC shall develop qualitative and quantitative outcome measures. The IC shall analyze the data contained in Defendants'

monthly quality assurance reports produced pursuant to Section IV of this Agreement, as well as other relevant data, to evaluate the constitutionality of RCDF's suicide prevention measures and mental health treatment. The IC shall include the outcome measures used, the data relied upon, and the IC's ultimate conclusions in the IC's report.

- H. **Assessing Compliance with Agreement Provisions:** In the IC's report, the IC shall evaluate the status of compliance for each relevant provision of the Agreement using the following standards: (1) Substantial Compliance; (2) Partial Compliance, and (3) Non-compliance. In order to assess compliance, the IC shall review a sufficient number of pertinent documents to accurately assess current conditions; interview all necessary staff; and interview a sufficient number of prisoners to accurately assess current conditions. The IC shall be responsible for independently verifying representations from Defendants regarding progress toward compliance and examining supporting documentation. Each IC's report shall describe the steps taken by the IC to analyze conditions and assess compliance, including documents reviewed and individuals interviewed, and the factual basis for each of the IC's findings.
- I. **Periodic Review of Agreement:** The IC shall also review the provisions of the Agreement and assess whether any Agreement provision as drafted is not furthering the purpose of the Agreement or whether there is a preferable alternative that will achieve the same purpose. If so, the IC shall identify such provisions to the Parties. Where the Parties or the IC are uncertain whether a change to the Agreement is advisable, the Parties may agree to suspend the current Agreement requirement for a time period agreed upon at the outset of the suspension. During this suspension, the Parties may agree to temporarily implement an alternative requirement. The IC shall assess whether the suspension of the requirement, and the implementation of any alternative provision, is as or more effective at achieving the purpose of the original Agreement requirement and the Parties shall consider this assessment in determining whether to jointly stipulate to make the suggested change, modification, or amendment. The Parties shall then confer and, if necessary, modify the Agreement by mutual consent. The Parties shall submit any modifications to the Court for its approval.
- J. **Availability of Reports:** The Defendants agree to make the IC's Final Reports, which are filed with the Court, publicly available by electronic means on the Robertson County Sheriff's Office website within 10 days after the Reports are filed.
- K. **Compliance Coordinator:** The Parties agree that the County will assign a current RCSO employee to serve as the RCSO Compliance Coordinator for the duration of this Agreement. The Compliance Coordinator will serve as a liaison between the Defendants and the IC and will assist with the Defendants' compliance with this Agreement. At a minimum, the Compliance Coordinator will: coordinate the Defendants' compliance and implementation activities; facilitate the provision of data, documents, materials, and access to the Defendants' personnel to the IC, the United States, and the public, as needed; ensure that all documents and records are maintained as provided in this Agreement; and assist in assigning compliance tasks to RCSO personnel, as directed by the Sheriff or his designee. The Compliance Coordinator will

take primary responsibility for collecting information the IC requires to carry out the duties assigned to the IC.

- L. IC's Budget: Defendants shall provide the IC with a budget not to exceed \$15,000 per year for the first year, which includes the required baseline assessment, and in a yearly amount thereafter to be agreed by the parties to allow the IC to carry out the responsibilities described in this Agreement.
- M. Technical Assistance by the IC: The IC shall provide Defendants with technical assistance as requested by Defendants. Technical assistance should be reasonable and should not interfere with the IC's ability to assess compliance. If requested by Defendants, the IC may visit the Jail to provide technical assistance at times other than the baseline and annual compliance visits. The IC may memorialize any technical assistance provided in a letter or report.

VII. ENFORCEMENT

- A. During the period that the Agreement is in force, if the IC or the United States determines that Defendants have not made material progress toward substantial compliance with a significant obligation under the Agreement, and such failure constitutes a violation of prisoners' constitutional rights, the United States may initiate contempt or enforcement proceedings for an alleged failure to fulfill an obligation under the Substantive Provisions of this Agreement in Court.
- B. During the period that the Agreement is in force, the County will provide the United States with a copy of revised RCDF policies and procedures for review and approval. The United States will review revised policies and procedures within 30 days of submission. The United States reserves the right to withhold consent to any policies or procedures that are inconsistent with this Agreement. The United States will not unreasonably withhold approval. The County will re-submit revised policies or procedures to the United States within 30 days. When disputes arise regarding policies and procedures, the United States may initiate judicial enforcement proceedings.
- C. Prior to taking judicial action to initiate contempt or other enforcement proceedings, the United States shall give Defendants written notice of its intent to initiate such proceedings, and the parties shall engage in good-faith discussions to resolve the dispute.
- D. The relevant Defendants shall have 30 days from the date of such notice to cure the failure (or such additional time as is reasonable due to the nature of the issue and agreed upon by the parties) and provide the United States with sufficient proof of its cure. At the end of the 30-day period (or such additional time as is reasonable due to the nature of the issue and agreed upon by the parties), in the event that the United States determines that the failure has not been cured, the United States may initiate contempt

proceedings without further notice. The United States commits to work in good faith with Defendants to avoid enforcement actions.

- E. In case of an emergency posing an immediate threat to the health or safety of any prisoner or staff member at the Jail, however, the United States may omit the notice and cure requirements and seek immediate enforcement of the Agreement.

VIII. CONSTRUCTION, IMPLEMENTATION, AND TERMINATION

- A. Defendants shall implement all reforms within their areas of responsibility, as designated within the provisions of this Agreement. The implementation of this Agreement will begin immediately upon the Effective Date.
- B. Except where otherwise agreed to under a specific provision of this Agreement, Defendants shall implement all provisions of this Agreement within 180 days of the Effective Date.
- C. The Court shall retain jurisdiction of this action for all purposes until the County has achieved substantial compliance with each provision of the Agreement, provides constitutional mental health care to prisoners, and has maintained substantial compliance and provided constitutional mental health care for a period of one year.
- D. Failure by any party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines or provisions of this Agreement.
- E. If any unforeseen circumstance occurs that causes a failure to comply with any requirements of this Agreement in a timely manner, Defendants shall notify the United States in writing within ten days after Defendants become aware of the unforeseen circumstance and its impact on the Defendant's ability to perform under the Agreement. The notice shall describe the cause of the failure to perform and the measures taken to prevent or minimize the failure. Defendants shall implement all reasonable measures to avoid or minimize any such failure.
- F. The Agreement shall be applicable to, and binding upon, all parties, their officers, agents, employees, assigns, and their successors in office.
- G. Each party shall bear the cost of its fees and expenses incurred in connection with this cause.
- H. If any provision of this Agreement is declared invalid for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this Agreement.

- I. No person or entity is intended to or shall be a third-party beneficiary of the provisions of this Settlement Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Settlement Agreement. This Settlement Agreement is not intended to impair or expand the right of any person or organization to seek relief against the County, its elected officials, employees, or agents for their past or future conduct; accordingly, this Agreement does not alter any legal standards governing any such claims, including those under any federal or Tennessee law.
- J. The Parties agree that litigation in this matter is not reasonably foreseeable or anticipated. Accordingly, the Parties agree that they are not obligated to preserve potentially discoverable information.

**IX. STIPULATION PURSUANT TO THE PRISON LITIGATION
REFORM ACT, 18 U.S.C. § 3626**

- A. The parties stipulate that this Agreement complies in all respects with the provisions of 18 U.S.C. § 3626(a). The parties further stipulate and agree and the Court finds that the prospective relief in this Agreement is narrowly drawn, extends no further than necessary to correct the violations of federal rights as alleged by the United States in its Complaint and Findings Letter, is the least intrusive means necessary to correct these violations, and will not have an adverse impact on public safety or the operation of a criminal justice system. Accordingly, the parties agree and represent that the Agreement complies in all respects with the provisions of 18 U.S.C. § 3626(a).

So ORDERED this W day of \$SUO, 2012

VI. Honorable Kevin H. Sharp United States District Court Judge

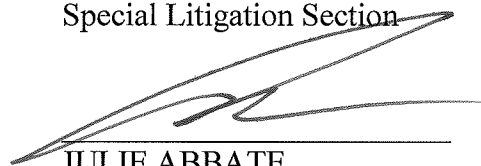
AGREED TO BY THE UNDERSIGNED:

Dated this 16th day of April, 2013.

FOR THE UNITED STATES:



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Chief
Special Litigation Section



JULIE ABBATE
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Special Litigation Section



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BILL HOLT
Robertson County Sheriff



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