

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff,

-against-

NASSAU COUNTY, THOMAS GULOTTA,
Nassau County Executive, NASSAU
COUNTY SHERIFF'S DEPARTMENT, and
EDWARD REILLY, Sheriff of Nassau
County, Defendants.

SETTLEMENT AGREEMENT

I. Introduction

1. On April 19, 1999, the United States, through the Department of Justice ("DOJ") notified Nassau County Executive Thomas Gulotta of its intent to investigate certain conditions at the Nassau County Correctional Center ("NCCC") to determine whether those conditions violated inmates' constitutional rights. The United States conducted this investigation pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. §§ 1997 *et seq.*, and the pattern or practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141.

2. On September 11, 2000, DOJ issued its letter of findings ("Findings Letter") containing evidence that NCCC subjects inmates to unconstitutional conditions that have caused them grievous harm: that staff engage in a pattern or practice of physical abuse of inmates, and that NCCC is deliberately indifferent to inmates' serious medical needs.

3. NCCC cooperated throughout the course of the investigation and indicated a willingness to voluntarily undertake measures to improve conditions at NCCC and to respond to the evidence set forth in DOJ's Findings Letter and to address DOJ's concerns regarding treatment of inmates' serious mental health needs set forth in a letter dated October 4, 2000. Consequently, the parties enter into this Settlement Agreement for the purpose of avoiding the risks and burdens of litigation.

4. The parties agree that this settlement does not constitute an admission by the defendants of the truth of the findings contained in the Findings Letter and does not constitute an admission of liability by the defendants. This settlement is not intended to interfere with rights conferred by any applicable collective bargaining agreements or alter any existing collective bargaining agreements.

5. The parties acknowledge that the Nassau University Medical Center ("NUMC") provides medical care to inmates at the NCCC and that such care is provided pursuant to a contract with the NUMC which sets forth the terms and conditions of the relationship between the County of Nassau and its agencies and NUMC. Nassau County shall be responsible for ensuring that NUMC complies with the terms of this agreement. Nothing in this paragraph shall abrogate Nassau County's responsibility to comply fully with the terms of this agreement.

6. It is expressly understood and acknowledged that, while this agreement makes no distinctions between those issues concerning inmate care, custody and control previously modified and or improved prior to the issuance of the Findings Letter and those which shall be modified and/or improved by virtue of the terms of this agreement, the parties acknowledge that a number of the policies and/or procedures which this agreement addresses were implemented or in the process of being implemented prior to the issuance of the Findings Letter.

II. Medical and Mental Health Care

A. Policies and Procedures

7. NCCC shall cause to be developed and/or implemented appropriate written medical policies, procedures, and protocols that include, but are not limited to the following: (1) initial inmate screening and inmate health assessments; (2) staffing levels, necessary credentials and job descriptions; (3) sick call and other access to medical services; (4) distribution and management of medications; (5) emergency care; (6) dental care; (7) mental health care; (8) substance abuse treatment; (9) treatment of individuals with special needs; (10) communicable disease testing and control; (11) women's health care; (12) routine and chronic disease care; (13) medical records; (14) staff training; (15) quality assurance; (16) mortality reviews; (17) inmate education; (18) medical safety and sanitation; (19) suicide prevention; (20) immunization; and (21) medical grievance procedures. At a minimum, such policies, procedures and protocols shall conform to Standards of the New York State Commission on Correction ("NYSCOC"), all "essential" and 85% of the "important" policies of the National Commission on Correctional Health Care ("NCCHC") and the American Psychiatric Association Standards for Psychiatric Services in Jail and Prisons. For purposes of this provision, "essential" and "important" policies shall be those so described by the NCCHC.

B. Medical Staffing and Professional Credentials

8. All persons providing medical, dental or mental health treatment ("medical staff") shall have written job descriptions and shall meet applicable state licensure and/or certification requirements. For purposes of this agreement, medical staff shall be defined as physicians and "allied health professionals." For purposes of this agreement, "allied health professional" shall be defined only as a licensed physician assistant or licensed nurse practitioner. "Clinical staff" shall be defined as nursing staff and medical staff.

9. All security personnel shall be trained to provide first response assistance in an emergency situation (i.e., CPR, bag valve resuscitation and/or to address serious bleeding.) Security personnel and Emergency Technicians ("EMTs") and Advanced Medical Technicians ("AMTs") shall not provide medical, dental or mental health, evaluation, diagnosis, or treatment, other than as first line emergency medical response. Security personnel may assist a physician or allied health professional in emergencies. Emergencies shall not include situations in which non-emergent medical, dental or mental health care treatment is necessary or is being provided, and medical staff is unavailable to provide such treatment.

10. NCCC shall make reasonable efforts to ensure an inmate's privacy subject to legitimate security concerns and emergency situations.

11. The medical director of the NCCC shall be a qualified, licensed physician. Qualified, licensed physicians shall supervise inmate medical and mental health treatment, and medical policy development. The medical director of the NCCC shall have ultimate responsibility for supervising all medical and clinical staff, although nursing personnel may be responsible for intermediate levels of supervision over such staff. The medical director's office shall be situated in the medical unit of the NCCC. The medical director shall routinely and regularly provide on-site supervision of medical staff. The medical director may also maintain an office at the NUMC.

12. NCCC shall cause its medical provider to verify medical credentials for all medical professionals upon initial hire, and at least every two years thereafter. The verification shall include inquiry into any restrictions or sanctions for each health professional who provides medical care to patients. NUMC shall maintain copies of current professional credential licensing for all medical and mental health professionals, and maintain appropriate records of its credential verifications. NUMC shall make such records available to DOJ upon request.

13. NCCC shall provide twenty-four (24) hour on site full-time physician or allied health professional coverage (under the supervision of a physician) seven (7) days per week, fifty-two (52) weeks per year. NCCC shall provide daily nursing coverage from six (6) a.m. to ten (10) p.m. NCCC shall provide a minimum of forty (40) hours of on site physician coverage (available to see patients) per week, and shall also provide and maintain twenty-four (24) hour daily on-call physician coverage. Staffing levels shall be sufficient to provide adequate treatment of inmates' serious medical needs.

14. NCCC shall ensure that NUMC retains psychiatrists and psychiatric social workers at staffing levels sufficient to provide adequate treatment of inmates' serious mental health needs.

15. NCCC shall ensure that NUMC maintains monthly reports setting forth all medical staffing positions filled and unfilled on the first day of each reporting period. This report shall include all personnel/professional job classifications, as defined above.

C. Intake Screening

16. NCCC shall perform timely initial health screening for new inmates on the day of arrival in accordance with 22 N.Y.C.R.R. § 7010.2 and shall make every good faith effort to record and seek the inmates' cooperation to provide (1) medical, surgical, mental health, and dental history; (2) current injuries, illnesses, evidence of trauma, and vital signs; (3) current medications; (4) allergy information; (5) personal physician(s), dentist(s), and mental health provider(s); (6) immunization history as follows: influenza; pneumococcal vaccine for inmates fifty (50) or over or with chronic disease; hepatitis; (7) mental health screening to include suicide attempt history, history of mental health including hospitalization, suicidal ideation and risk assessment; (8) history of substance abuse and treatment; (9) pregnancy; (10) history or symptoms of tuberculosis, including the date and result of the last TB test; (11) history or symptoms of other communicable diseases. All medical and mental health screening forms shall become part of an inmate's medical record or chart.

17. As part of intake screening, NCCC shall routinely perform on all inmates a tuberculin skin test (i.e. Mantoux "PPD") and shall read the PPD forty-eight (48) to seventy-two (72) hours after placement unless such test is unnecessary (i.e. history of prior positive tests) or medically contra-indicated according to Centers for Disease Control ("CDC") Guidelines. Within 72 hours of determining that an inmate's PPD test is positive, NCCC shall perform and interpret a chest x-ray of the inmate. NCCC shall follow CDC guidelines for management of inmates with TB infection, including prophylactic medication for any patient with an anticipated length of stay of two (2) months or more. Inmates who refuse a TB test shall be placed in segregation.

18. As part of intake screening, NCCC shall routinely screen women inmates for gonorrhea and chlamydia within twenty-four (24) hours of admission, Monday through Friday and within forty-eight (48) hours if the inmate is admitted to NCCC on Saturday or Sunday. NCCC shall provide medically appropriate treatment within ninety-six (96) hours of testing. Screening shall consist of a urine screening test or bacterial culture test.

19. As part of intake screening, NCCC shall routinely administer to all inmates a blood test for syphilis and shall provide medically appropriate treatment within ninety-six (96) hours of testing.

20. Pneumococcal and influenza vaccinations shall be provided to inmates in accordance with CDC guidelines, unless NCCC's physician deems such vaccinations medically inappropriate, in which case, such determination shall be recorded with specificity in the inmate's chart.

21. Inmates with Hepatitis C shall be treated in accordance with CDC guidelines, unless NCCC's physician deems such treatment medically inappropriate, in which case, such determination shall be recorded with specificity in the inmate's chart.

22. In the event an inmate refuses to voluntarily cooperate in the screening and/or test(s) referred to in paragraphs 17-21, after being advised of its importance to the inmate's health needs, then such refusal shall be documented by medical center personnel. In such event, NCCC shall take steps medically appropriate for the health of the individual inmate, other inmates and staff.

23. A physician or allied health professional shall perform full health assessments within seven (7) days of an inmate's arrival at NCCC, unless the intake screening indicates the inmate has a contagious illness, is on medication, has immediate medical needs, is intoxicated, is experiencing alcohol or drug withdrawal, or has been participating in a substance abuse or detoxification program, in which case, the provisions of paragraph 24 shall govern.

24. When the initial health screening indicates that the inmate has a contagious illness, is on medication, has immediate health needs, is intoxicated, is experiencing alcohol or drug withdrawal, or has been participating in a substance abuse or detoxification program, NCCC shall conduct a full health assessment within thirty-six (36) hours of the inmate's arrival, and shall provide treatment consistent with the terms of this Agreement, except that assessment and treatment shall be provided more expeditiously if necessary for the inmate's health and safety. NCCC shall continue the same or comparable medication within twenty-four (24) hours unless it is deemed not medically indicated by NUMC physician staff or not consistent with standard medical practice after diligent efforts are made, and documented, to contact the inmate's treating physician.

25. NCCC shall ensure that the NUMC keeps records, by month, of the number of health assessments performed on new inmates and whether the assessments were performed in a timely or untimely manner.

D. Sick call

26. NCCC shall provide sick call five (5) days a week by the clinical staff. NCCC shall ensure that a licensed physician is on call twenty-four (24) hours a day, seven (7) days a week, for immediate access by allied health professionals. Nurses shall be guided by physician approved nursing protocols.

27. NCCC shall develop and implement written sick call policies, procedures, and practices which shall include, at a minimum, the following: (1) written sick call request slips available in English and Spanish; (2) a confidential collection method in which the request slips go directly to the medical personnel; (3) a logging procedure to record each request for sick call services, the date the inmate was seen, and the disposition (e.g., referral; whether inmate seen at sick call) of the sick call visit; (4) procedures and policies that ensure that all sick call requests are evaluated by clinical staff within 24 hours; (5) procedures and policies that ensure that medical evaluation and treatment occurs in a manner that is timely for the medical complaint; (6) procedures and practices which ensure that illiterate inmates can orally access the sick call system by requesting access through staff, who must, as soon as reasonably possible after the oral request, fill out a request slip for the inmate; (7) procedures and practices which ensure that inmates with visual impairments, who are blind, or who have physical or cognitive disabilities which impair their abilities to complete sick call slips, can orally access the sick call system by requesting access through staff, who must, as soon as reasonably possible after the oral request, fill out a request slip for the inmate; (8) procedures and practices which ensure that all inmates, irrespective of primary language, can access the sick call system; (9) procedures and practices which ensure that results of the sick call visit are recorded in the inmate's medical record consistent with the provisions of this Agreement; (10) procedures and practices which ensure timely referrals, follow-up and provision of medication; (11) procedures which ensure timely receipt of mental health services by inmates requesting such services through the sick call process; and (12) staff training regarding these procedures and policies.

28. No inmate shall be disciplined for or otherwise be discouraged from accessing the health care

delivery system.

29. At least three (3) times a week, documented rounds will be conducted in segregation. Inmates submitting sick call requests in segregation shall access the sick call system and be seen by qualified medical professionals in accordance with the policies and procedures developed and implemented pursuant to paragraph 27.

E. Chronic Diseases

30. NCCC shall develop and implement a written chronic care disease management program. As part of this program, NCCC shall maintain an updated chronic disease registry of inmates suffering from chronic illnesses, including, but not limited to, the following conditions: asthma, cardiac disease, elevated lipids, diabetes, HIV infection, hypertension, and seizure disorder.

31. NCCC shall develop and implement a written updated chronic disease treatment guidelines consistent with nationally accepted guidelines for the diseases, in order to provide appropriate treatment for chronic illnesses, including routine tests, examinations, follow-up, treatment plans and continuity and coordination of care.

32. NCCC shall keep records of all care, including

routine tests and examinations provided to inmates suffering from chronic illnesses. Such records shall be maintained in the inmate's individual file.

F. Medication Management

33. NCCC shall develop and implement written policies and procedures to ensure appropriate delivery and continuity of medication. Such procedures shall include timely distribution of medication to inmates who have visits or are out to court; procedures that ensure access to medication in emergencies and on weekends; contemporaneous documentation and monitoring of dosages dispensed and received and documentation of refusals and no-shows; and procedures that ensure that medication errors are recorded and monitored.

34. Only trained and qualified medical staff shall administer medications. NCCC shall provide pharmaceutical staffing and coverage sufficient to address inmates' serious medical and mental health needs.

35. NCCC shall develop and implement written policies and procedures providing for patient-specific medication administration records. Such procedures shall include filing of medication administration records in the inmate's medical record. NCCC shall develop and implement written policies and procedures regarding inmates' refusal to take or receive medication. These policies and procedures shall include counseling inmates regarding the value of the proffered medication, documenting such counseling, and recording the basis for the inmate's refusal.

36. NCCC shall implement an automated drug profile system which shall, for example, identify adverse interactions between medications and duplication of therapeutic categories.

37. Upon inmates' release from detention, NCCC shall offer inmates the opportunity to be provided with (1) a seven (7) day supply of appropriate medication for inmates suffering from HIV; (2) a five (5) day supply of psychotropic medication to inmates receiving such medication while incarcerated; and (3) prescriptions for appropriate medication (other than those referred to in (1) and (2), in sufficient quantities to inmates. Upon inmates' release from detention, Nassau County shall continue to provide inmates with TB with prescription medication and treatment in conformity with recognized

standards and protocols applicable to TB prevention and treatment. For purposes of this provision, the number of days shall commence beginning with the day the inmate is released from detention. NCCC shall develop and implement written policies and procedures which facilitate continuity of medication upon release, including, but not limited to assisting inmates with accessing public health benefits and services. Nassau County may seek to recover from individuals with private medical coverage or medical insurance the costs of medication provided pursuant to this provision.

G. Medical Records

38. NCCC shall develop and implement written policies and procedures for maintaining unified and collaborative health records. Such procedures shall include maintenance of a single medical record for each inmate covering all admissions to NCCC, inclusion of current notes from all health care providers, and all medication administration records. All medical records, including laboratory reports, etc., shall be timely filed (i.e., within three (3) days of review, creation, or use).

39. Medical records shall be separate from the inmate's institutional record. Access to individual inmate medical records shall be restricted to medical personnel and to the legal section of the jail and the County when necessary to respond to formal complaints of failure to provide medical care or those alleging injury due to excessive force. Medical information shall be shared with NCCC officers only when the director of the medical unit or the Sheriff or his designee or the Deputy Undersheriff in charge of investigations believes sharing of this information is necessary for the health, safety or security of the institution, staff and inmates. NCCC staff shall be prohibited from divulging inmate medical information to other inmates.

H. Treatment of Female Inmates

40. NCCC shall develop and implement written guidelines for medical care for women, including routine screening for pregnancy, timely screening for sexually transmitted disease, HIV counseling and testing and routine gynecological and obstetric care. NCCC shall write and follow treatment plans for pregnant women, which shall include discharge planning.

I. Drug and Alcohol Treatment

41. NCCC shall develop written policies and procedures establishing a medical detoxification process.

42. Inmates with co-existing disorders shall be permitted to participate in NCCC's substance abuse treatment programs. Exclusion from participation shall be made on a case by case basis.

43. Subject to approval by the New York State Office of Alcohol and Substance Abuse Services ("OASAS"), NCCC shall discontinue its current policy and practice of excluding pre-sentence inmates charged with certain crimes from participating in its substance abuse treatment programs. Exclusion from participation shall be made on a case by case basis.

44. NCCC shall use its best efforts to expand the size of its Drug, Alcohol, Rehabilitation Treatment ("DART") and "Stop DWI" programs to accommodate additional participation.

45. NCCC shall maintain waiting lists for its substance treatment programs and shall document the number of individuals requesting, receiving, and denied such treatment.

J. Mental Health Treatment and Special Needs

46. NCCC shall develop and implement treatment plans for inmates with special needs, such as the

frail elderly, and inmates with mental illness, disabilities, communicable diseases, or terminal illness. Treatment plans shall include discharge planning.

47. NCCC shall develop and implement written policies and procedures to ensure that inmates requesting mental health services, inmates who become suicidal and inmates who develop serious mental illness while incarcerated are evaluated and treated timely, irrespective of the manner in which the services are requested. A sufficient number of hospital beds shall be available for acute mental health inmates who are determined by medical staff to require hospitalization. Mental health staff shall be provided with up to date housing lists of inmates to ensure continuity of care. Inmates with positive suicide screens shall be provided with active supervision and shall be timely seen and evaluated by mental health staff.

48. Community based volunteers shall conduct regular community meetings for inmates in mental health units similar to those provided in NCCC's drug treatment programs.

K. Mortality Reviews

49. NCCC shall cause to be performed an autopsy for every inmate who dies while in the custody of NCCC, as required by New York State law. NCCC shall cause to be performed a mortality review for every inmate who dies while in the custody of NCCC as part of the NCCC's quality improvement program.

50. Mortality reviews shall involve physicians, nurses, and other relevant NCCC personnel (as appropriate) and shall seek to determine whether there was a pattern of symptoms which might have resulted in earlier diagnosis and intervention. All autopsy reports and related medical data shall be provided to SBI. SBI and security staff shall fully cooperate with the New York State Commission of Correction reporting requirement under 9 NYCRR § 7022. In addition, mortality reviews shall examine events immediately surrounding the inmate death to determine if appropriate interventions were undertaken.

L. Medical Safety and Sanitation

51. NCCC shall develop and implement written current site-specific blood borne pathogen and tuberculosis policies and procedures, including control plans consistent with Centers for Disease Control ("CDC") guidelines. Such plans shall include prompt evaluation of diagnostic reports and procedures to eliminate any unreasonable delay between identification and treatment of tuberculosis. NCCC shall train all staff on these plans on an annual basis. Only trained staff shall perform medical waste disposal and clean-up.

52. NCCC shall develop and implement a written exposure control plan that is consistent with OSHA requirements.

53. NCCC shall maintain a clean and safe environment in all medical areas, including establishing and implementing controls regarding dangerous medical instruments and medical waste disposal.

M. Inmate Education

54. NCCC shall implement a regular program for educating inmates on health related issues, including HIV education and counseling, other infectious diseases, diseases with which they have been diagnosed, and birth control education and counseling.

N. Quality Assurance and Improvement

55. NCCC shall develop and implement a written functional quality improvement program for medical and mental health care, which shall include development of a written quality improvement plan that includes annual self-evaluation, the provision of evaluations and recommendations regarding clinical guidelines, the selection of performance indicators, internal peer review and the establishment of a Quality Improvement Committee ("QIC"). The QIC shall be responsible for implementation of the quality improvement plan and shall serve as the conduit for all quality improvement activities.

56. The QIC shall be chaired by a physician and shall include a multi-disciplinary review necessary to properly review the status of health care provided to inmates and NCCC. The QIC chair may appoint subcommittees for focused work. The QIC shall meet ten (10) out of twelve (12) months each year, and shall record or take minutes of its meetings and maintain records of documents or files reviewed. The NCCC Quality Improvement Coordinator shall report monthly to the Sheriff, and to the chair of the NUMC's Quality Improvement Council.

57. The quality assurance program shall include an annual work description; a work plan; and a program evaluation.

58. The QIC shall develop written protocols for regularly providing workshops regarding the provision of medical and mental health care to clinical and administrative staff.

III. USE OF FORCE

A. Staffing

59. NCCC shall require all Nassau County Sheriff's Department employees assigned to the Nassau County Sheriff's Department Division of Correction ("staff" or "correctional staff") to advise the Sheriff or his designee in writing of any arrest or conviction, plea of guilty or nolo contendere to any felony or misdemeanor charge, or the issuance of any order of protection against the staff member within one week of such event, and shall require the staff member to advise the Sheriff or his designee in writing regarding any change in the status of any such matter. The failure to so report shall result in disciplinary proceedings. NCCC shall independently monitor the status of any matters reported to the facility by staff pursuant to this paragraph and shall evaluate the propriety of such staff's continued contact with inmates and remove staff from such contact where appropriate. All statements required in this paragraph shall be maintained in the files of the investigation unit and/or the employee's personnel file.

60. NCCC shall request in writing that the District Attorneys of Nassau, Suffolk, Kings, Queens, Richmond, New York, and Bronx Counties notify the Sheriff or his designee of NCCC staff convictions or pleas described in paragraph 59. NCCC shall request in writing that the Nassau County Attorney's Office advise NCCC of any judgment, civil adjudication or settlement against a NCCC employee for actions filed pursuant to 42 U.S.C. § 1983 and of any adjudicated administrative determinations against NCCC employees or any administrative settlements entered by NCCC employees related to claims of discrimination. NCCC shall evaluate the propriety of such staff's continued contact with inmates and remove staff from such contact where appropriate.

61. Prior to hiring, it is understood and agreed that the Nassau County Civil Service Commission shall perform all background checks on all candidates for correctional positions and shall evaluate the results of such checks in hiring or placement decisions. Such checks shall include a fingerprint check by the FBI; criminal arrest and conviction record; law enforcement agency check of addresses where the applicant has lived; military discharge status; investigation of any record of, or civil adjudications or settlements revealing assault, improper use of force, domestic violence, bias or discrimination.

B. Training

62. NCCC shall provide at least one-hundred sixty (160) hours of pre-service training to all correctional staff, prior to staff being assigned to a platoon. The training shall include sufficient amounts of time devoted to use of force, use of force reporting, staff professionalism, diversity training, dealing with inmates with mental illness or mental health issues, dealing with female inmates, and potential criminal and civil liability for the use of excessive force. Use of force training shall include the following: (1) when force may be used; (2) alternatives to the use of force; (3) prohibitions against the use of excessive or unnecessary force; (4) control techniques intended to minimize injury to staff and inmates; (5) reporting and report writing; and (6) NCCC's policies and procedures regarding use of force developed and implemented pursuant to this Agreement.

63. Correctional staff shall be interviewed by a committee that shall include a Deputy Undersheriff, psychiatric social worker or qualified health care professional and one member of the Training Academy. Following these interviews, the committee shall select staff members deemed appropriate for assignments to posts in the mental observation units or to specialized units with alcohol or drug dependent inmates. Staff assigned to such posts on a steady basis shall receive special training which shall include topics related to use of force, an overview of treatment issues, and to understanding and dealing effectively with these special populations. NCCC shall make reasonable efforts to make assignment to such posts voluntary.

64. NCCC shall provide at least forty (40) hours of in-service training annually to correctional staff. Training shall include the use of force topics identified in paragraph 62, use of force reporting, staff professionalism, diversity training, potential criminal and civil liability for the use of excessive force, and stress reduction. NCCC shall develop and provide special in-service training to staff assigned to posts in mental observation units and in specialized units with alcohol or drug dependent inmates. Such training shall include the topics described in the preceding paragraph. All correctional staff shall receive in-service training concerning issues related to dealing effectively with women inmates. The hours necessary for such training shall be determined by NCCC with input by DOJ. The training materials and course structure for the in-service training described in this paragraph shall highlight policies and procedures revised or implemented pursuant to this Agreement and shall be submitted to DOJ for review in accordance with the time frames for compliance set forth below.

65. Correctional staff promoted to supervisory positions (sergeants, lieutenants, and captains) shall receive specialized training regarding NCCC's use of force policies and procedures, the role of supervisors in enforcing those policies and the investigation of use of force incidents prior to assumption of supervisory posts. Staff assigned to posts in the Training Academy shall also receive specialized training regarding NCCC's use of force policies and procedures and the subjects identified in paragraph 64, prior to assumption of such posts. The training materials and course structures shall be submitted for review and comment to the New York State Commission on Correction and to DOJ in accordance with the time frames for compliance set forth below. NCCC shall provide any written response by the Commission to DOJ.

66. Within thirty (30) days of execution of this Settlement Agreement, copies of the Agreement shall be distributed to all correctional staff, and its terms shall be explained at roll calls by the Sheriff or his designee.

67. Training academy staff shall develop, on an ongoing basis, scripts for roll call training directed at issues related to effective implementation of this Agreement. Roll call training shall be provided regularly and documented. Roll call scripts shall be provided to DOJ for its review in accordance with the time frames for compliance set forth below.

C. Policies and Procedures

It is acknowledged that NCCC is in the process of developing and implementing a use of force

policy. NCCC's revised procedures and policies regarding the use of force shall include the following provisions:

68. The revised policies and procedures shall define the "use of force" as (1) the use of chemical agents; (2) the non-routine use of restraints (i.e. use of restraints for purposes other than routine purposes such as handcuffing inmates for transport); (3) the use of deadly force; (4) any physical contact with an inmate initiated by a staff member for the purpose of controlling the inmate's movement or behavior, provided, however, that the simple placement of an employee's hands on an inmate shall not constitute a use of force; (5) the use of any weapon (firearm, baton, etc.) even where no contact results (*e.g.* discharge of a firearm) provided, however, that threatening to use a weapon by waving or brandishing it shall not constitute a use of force; and (6) any of the above conduct used by inmates or other individuals against an inmate at the request or direction of correctional staff. The policies and procedures shall provide that (1) correctional staff may use physical force only when necessary and legally permissible; (2) correctional staff must make efforts to resolve inmate misconduct without the use of force, and if force is necessary, to utilize control techniques intended to minimize injuries to both inmates and staff; (3) the amount of force to be used is only the amount necessary to restrain the inmate or bring the situation under control; (4) physical force shall not be used as punishment, discipline, or retaliation against an inmate; (5) use of force shall not be used against an inmate because of the crime committed or alleged to have been committed by the inmate; (6) correctional staff are required to use a graduated response to inmate misconduct except where it would be dangerous or impracticable to do so; (7) K-9 units may be used for drug detection, cell searches, crowd control or escapes, but shall not be used in routine cell extractions or in routine security situations; and (8) the use of excessive or unnecessary force, or failure to properly report same, will not be tolerated and will result in administrative disciplinary action. In addition, when the facts warrant, the unlawful or excessive use of force will be referred for criminal prosecution.

69. The revised policies and procedures shall specifically allow the use of force to maintain order and discipline only in the following situations: (1) inmate attempting suicide or self-mutilation; (2) inmate engaging in destruction of valuable county property; (3) inmate engaging in injurious assault of another person; (4) inmate engaging in conduct that constitutes a threat of serious physical harm to another person; (5) inmate in the possession of a weapon; (6) inmate in the process of escaping; (7) correctional staff acting in self-defense, if the staff member cannot maintain a safe distance in complete safety without compromising security; (8) enforcement of institutional regulations in order to temporarily isolate or otherwise confine or secure an inmate where lesser means have proven ineffective; (9) prevention of a serious or violent crime or apprehension of an inmate who has committed such a crime; (10) quelling riots; (11) inmate disobeying an order where that disobedience is likely to cause serious bodily injury or threatens to escalate into a general disturbance; and (12) inmate engaged in conduct that causes a reasonable person to believe that the inmate is about to commit any offense listed in this paragraph.

70. The revised policies and procedures shall prohibit the use of force: (1) where the inmate is engaged in verbal outbursts or verbal abuse of staff members, unless such verbal outburst is likely to incite a general disturbance which may cause injury to inmates, staff or visitors; (2) where the inmate is destroying his or her own property; (3) where the inmate is engaged in destruction of county property of insubstantial value; (4) to punish or retaliate against an inmate; (5) to discipline an inmate for failing to obey an order; (6) after an inmate has ceased to offer resistance warranting an initial use of force; and (7) where an inmate is restrained in a mechanical device, unless such force is the only available means of preventing serious physical injury to the inmate, staff or others.

71. NCCC shall not extract an inmate from his cell ("cell extraction") unless necessary for the security, health and safety of inmates and staff. Force shall not be used in such situations unless the conduct is such that it is threatening the safety, security, health and safety of inmates and staff and all graduated responses to such conduct have been exhausted, or are deemed infeasible or impracticable.

72. The revised policies and procedures shall prohibit the use of the following types of use of force: (1) employing a lateral neck restraint or choke hold; (2) intentionally causing an inmate to collide with or hit against a wall, floor or other object; (3) inappropriate use of otherwise appropriate weaponry or mechanical devices; and (4) striking an inmate with institutional equipment, including, but not limited to, keys, handcuffs and flashlights, except when there is no practical alternative to prevent imminent serious physical injury to staff, visitors or inmates. The revised policies and procedures shall emphasize that unless there is no practical alternative to prevent imminent physical injury to staff, visitors or inmates, kicks and blows to vital body parts (i.e., all parts of the head, solar plexis, groin, back of the neck, kidney and tailbone) shall be avoided, even when force is justified.

73. The revised policies and procedures shall establish a use of force continuum that includes, at a minimum, the following categories of graduated responses and detailed procedures relating to the application of each type of response: (1) dialogue; (2) verbal commands; (3) non-impact, soft or passive control techniques; (4) chemical agents; (5) mechanical devices, such as electronic immobilization devices; (6) physical restraints; (7) impact weapons; (8) impact strikes; and (9) lethal force and dangerous weapons. NCCC shall develop and/or implement specific policies and procedures governing each type of force (e.g., chemical agents, mechanical devices, etc.) The use of force policy shall reference all policies and procedures governing each type of force. All policies and procedures relating to types of force shall be submitted to DOJ for its review in accordance with Section IV, paragraphs 121-123.

74. The revised policies and procedures shall require correctional staff to notify his/her superior officer, who shall thereafter notify the Tour Commander, prior to using force, absent circumstances in which an immediate resort to the use of force is necessary. Such planned uses of force shall be under the direction of the Tour Commander and shall be videotaped. The revised policies and procedures shall provide that any correctional staff member using force without first notifying the Tour Commander must explain in detail why such notification was impracticable, describing with specificity the immediate threat of serious bodily injury to inmate(s), staff or visitor(s); immediate threat of inmate escape; or immediate threat of destruction of valuable property which preceded the use of force. The correctional staff member must describe the type of force used and why such force was necessary, and if the force used included or consisted of kicks and blows to the body (particularly to any vital body part), the correctional staff member shall explain why there were no alternatives to prevent serious imminent physical injury to staff, visitors or inmates. Upon a staff member's failure to follow the NCCC use of force policy, NCCC shall take appropriate action, which may include, but is not limited to, counseling, retraining, disciplinary action or referral to the District Attorney for criminal prosecution.

D. Videotaping

75. NCCC shall maintain sufficient hand-held video equipment to record all planned uses of force and sufficient equipment for investigators and supervisors to view such videotapes. The Deputy Undersheriff of Operations shall be responsible for ensuring that videotape equipment is properly maintained. NCCC shall develop and implement policies and procedures for recording all planned uses of force to the extent practicable; for training personnel assigned to film uses of force in the use and maintenance of such equipment; for disciplining staff who fail to videotape incidents as required; for disciplining staff who tamper with the videotape machines or tapes; and for reviewing regularly the tapes. NCCC shall maintain the used tapes for three years to ensure that evidence is not destroyed or lost. No tapes containing relevant evidence shall be destroyed during the pendency of any civil, criminal, or administrative investigation, prosecution, or litigation.

E. Reporting, Medical Examinations and Preservation of Evidence

76. Unless the Tour Commander has been notified of a use of force pursuant to paragraph 74, the sergeant who is responsible for supervising the area where a use of force incident occurred shall page

and notify the Tour Commander of the incident within thirty (30) minutes of the use of force. Upon receiving such notice, or when the incident has ended, the Tour Commander shall report all known facts to the Core Control Desk, i.e., the control center for the security staff on duty in the core facility. The Core Control Desk shall have the Undersheriff and/or Deputy Undersheriff responsible for investigations, or designee, paged and notified of the incident within sixty (60) minutes of notice of the incident. NCCC shall develop and implement a form for the contemporaneous recording of all notifications required in this paragraph.

77. NCCC shall continue to require each correctional staff member involved in a use of force and each staff member who witnessed the use of force to complete a use of force report form, unless the staff member is incapacitated, in which case, he/she shall produce the report as soon as practicable, but no later than the staff member's completion of his/her first tour of duty upon resuming his/her duties. NCCC shall develop and implement policies and procedures requiring reports to be completed prior to the staff's member completion of his/her tour, and before the staff member leaves the facility, independently, based on the reporter's personal knowledge, without collusion with any other witness and without use of conclusory phrases (*e.g.*, "only the minimum and necessary amount of force was used").

78. NCCC shall develop and implement a revised use of force reporting form that (1) requires a detailed and descriptive account of the incident based on the reporter's first hand observation and knowledge and (2) includes spaces for relevant standardized information such as the name and badge number of involved staff, the location of the incident; a description of the inmate's conduct that precipitated the use of force; a description of the actions of all other individuals observed by the reporter; a description of the verbal persuasion or warning preceding the use of force and the inmate's response; whether the Tour Commander was notified prior to the use of force, and if not, an explanation for the failure to do so; whether the use of force was videotaped; whether the inmate was armed, and if so, the type of arms; whether injuries were sustained, and by whom; whether control holds were employed; the specific type of force that was used; whether chemical spray or any other force or restraint device was used; the time that medical staff examined the inmate and staff; and the names of all inmate and staff witnesses.

79. NCCC shall develop and implement policies and procedures that require the Tour Commanders to assign a "designated sergeant" to review the use of force reports. The sergeant responsible for supervising the area where the use of force incident occurred shall be so designated unless he/she authorized, witnessed, or participated in the use of force incident. In such cases, the Tour Commander shall assign another sergeant on duty to review the reports. The designated sergeant shall review the report for completeness and accuracy. If the designated sergeant determines that the report(s) is not complete or accurate, the sergeant will direct the writer of the report to submit an addendum to the report. The designated sergeant shall review the use of force report within four (4) hours of receipt and shall forward it, and any addendum, to the Tour Commander.

80. The designated sergeant shall conduct an initial investigation of the use of force which shall include interviews of staff and inmates. During this review, the designated sergeant shall take appropriate steps to ensure that physical evidence subject to destruction or loss or medical evidence subject to change is or has been investigated. The NCCC shall develop and implement a reporting form to be completed by the designated sergeant. The form shall be provided to DOJ for review and input in accordance with the time frames set forth below. The designated sergeant shall complete and forward the report to the Tour Commander.

81. In addition to filing the required reports, participants and witnesses to a use of force who believe that they observed a violation of institutional policy shall be required to timely report this information directly to the Sheriff's Bureau of Investigations ("SBI"), either orally or by separate memorandum.

82. Staff claiming injury shall be provided an opportunity to be examined and treated by NCCC medical staff. The use of force form shall describe such examination and treatment, if any.

83. Immediately after a use of force, staff who neither participated in, nor witnessed the incident shall escort the inmate who was the subject of such force to the medical unit (or NUMC) for examination by medical staff and for appropriate medical treatment except in those situations requiring employment of the Sheriff's Emergency Response Team ("SERT") where member of the SERT team shall escort the inmate to the medical unit (or NUMC).

84. NCCC shall develop and implement written policies and procedures for investigating and tracking injuries to inmates. Such procedures shall include, at a minimum, requirements that designated correctional personnel: review each such injury report; interview inmates who refuse or are unable to sign the section of the form describing the cause of the injury; conduct full investigation where an inmate's injuries are inconsistent with the claimed basis for the injury; and conduct full investigation where the reporting correctional staff member is one whose name is reported on the quarterly report described in paragraph 107.

85. NCCC shall require medical personnel to record all injuries and report suspicious injuries (*e.g.*, unexplained, serious or multiple injuries to an inmate; injuries resulting in the inmate being hospitalized and injuries involving the inmate's head or genital areas; body welts) directly to the Sheriff or his designee. In such instances, the Sheriff or his designee shall take prompt steps to document the injury through photographic or recording devices. NCCC shall maintain enough working cameras to record such injuries, and shall identify and preserve all such evidence as part of the investigative package, *i.e.*, all reports and evidence.

86. Immediately following a use of force, the Tour Commander shall ensure that all relevant evidence, including weapons and contraband, is collected, tagged, identified and stored, and that, where necessary, the scene of the incident is photographed. All evidence relating to the incident shall be properly stored and preserved for three (3) years.

87. The Tour Commander will review all use of force reports, including the videotape, if the incident was recorded. The Tour Commander will submit a use of force report to the appropriate captain. The captain will review the use of force reports and record his or her conclusions or recommendations on a form to be forwarded to the appropriate Deputy Undersheriff and the SBI within seven (7) business days of the incident.

88. The Deputy Undersheriff for Investigations or his designee shall conduct an initial review of each report within twenty-four (24) hours of receipt to ensure thoroughness and completeness. The Deputy Undersheriff for Investigations shall direct the report's author(s) to promptly complete incomplete reports, or shall conduct an interview and note the party's responses where clarification or additional information is needed. SBI shall maintain all versions of the report. During this review, the Deputy Undersheriff for Investigations or his designee shall take appropriate steps to ensure that physical evidence subject to destruction or loss or medical evidence subject to change is or has been investigated and to check the possible discharge dates of inmate witnesses to ensure that such witnesses are interviewed timely.

89. NCCC shall develop and implement policies and procedures for promptly removing staff from contact posts, where appropriate, following a use of force incident which indicates that the use of force may have been excessive or unnecessary.

90. A committee including the Deputy Undersheriff for Investigations, the Deputy Undersheriff for Security, the Deputy Undersheriff for Operations, the Sheriff or his designee, a representative from the Training Academy and a representative of the medical staff, when indicated, shall review all use of force

reports on a monthly basis. The committee shall (1) write a report of each review; (2) timely refer all suspicious use of force reports to the SBI for investigation including, but not limited to, incidents involving unexplained, serious or multiple injuries to an inmate; incidents resulting in the inmate being hospitalized and incidents involving impact strikes to the inmate's head or genital areas; and (3) for any use of force not compliant with policy, recommend taking appropriate steps to impose discipline, training, or other remedial measures.

F. Investigations

91. SBI shall review all use of force investigative packages to determine whether further investigation by SBI is necessary. NCCC shall develop and implement reasonable criteria by which SBI shall make this determination, including, but not limited to, whether the use of force: (1) suggests a possible violation of NCCC policy; (2) involved staff who have been disciplined or are or have been the subject of any disciplinary, criminal or civil proceedings based on an alleged use of excessive force or failure to properly report such incidents or, have previously had two or more complaints of unnecessary or excessive use of force filed against them; (3) involved an inmate charged with or convicted of a sex crime or crimes against law enforcement personnel or children; (4) involved retaliation against an inmate who previously filed a use of force complaint; (5) involved kicks, strikes or blows to the head or other vital areas of an inmate's body; and (6) involved injuries to an inmate that are inconsistent with the claimed basis for the injury. Where SBI determines that no further investigation is necessary, it shall set forth the reason(s) for that decision in writing. To the extent that SBI determines that any investigation reveals issues that should be addressed through additional training or otherwise, it shall make appropriate referrals of the matter to NCCC supervisory and/or training staff. Notwithstanding the foregoing, SBI shall investigate all allegations of unnecessary or excessive use of force: (1) reported to SBI by inmates or third parties that were not previously reported to the facility; (2) found to be substantiated by the investigating Sergeant or Tour Commander; and (3) referred to SBI by the committee described in paragraph 90.

92. SBI shall review all grievances alleging unnecessary or excessive force and transmit such grievances to the appropriate correctional staff, *e.g.*, supervisory sergeant or Tour Commander, for investigation. The investigation shall be conducted pursuant to the procedure set forth in paragraph 80, including, but not limited to, the assignment of an uninvolved sergeant to conduct the investigation. SBI shall thereafter review the investigatory package generated from the grievance in accordance with the procedure set forth in paragraph 91.

93. All SBI investigations of the use of unnecessary or excessive force shall be completed within sixty (60) days. The basis for any delays exceeding sixty (60) days shall be documented. The Undersheriff for Investigations shall maintain records tracking the timing of investigations.

94. SBI shall interview all staff and inmate participants and witnesses. Exceptions to this requirement shall be contained in a detailed written protocol established by the NCCC and the Nassau County District Attorney's Office. If the matter becomes the subject of a criminal investigation SBI shall interview the correctional staff member(s) within ten (10) working days of notification of the closing of the criminal investigation and shall gather all non-grand jury evidence collected or obtained during the District Attorney's investigation.

95. SBI shall produce explicit and comprehensive findings as to each use of force investigation initiated pursuant to paragraph 91, resolving, when possible, disputed matters with reference to particular evidence in the investigative file.

96. All "Injury to Inmate" forms shall be reviewed by SBI to determine whether investigation is necessary in accordance with the policies and procedures set forth in paragraph 91 of this Agreement.

97. Within sixty (60) days after the execution of this Agreement, NCCC shall provide DOJ with a list and description of its pending investigations regarding use of unnecessary or excessive force identifying which cases have been pending for more than sixty (60) days ("backlogged matters"). NCCC shall make good faith efforts to resolve all backlogged matters within ninety (90) days of the completion of this Agreement.

G. Investigators' Training and Procedures

98. NCCC shall staff the SBI with sufficient personnel to complete the responsibilities outlined in this Agreement. NCCC shall use its best efforts to assign staff to SBI who volunteer for such posts. NCCC shall use its best efforts to assure that a minimum of forty (40) hours of specialized training in investigations shall be provided to all current SBI investigators within sixty (60) days of the execution of this Agreement and to all future SBI investigators within thirty (30) days of assignment to the post, unless impracticable.

99. NCCC shall develop and implement written procedures outlining steps and methods for investigating allegations of improper uses of force. Such procedures shall include: timetables for conducting investigations; procedures for interviewing witnesses; procedures for evaluating physical, medical and witness testimony; requirements for utilizing medical and other experts; procedures for utilizing the data base described in this Agreement; witness and evidence checklists and a format for reporting the results of investigation. Among other things, the procedures shall provide that special weight shall not be given to information from witnesses because of their status as inmates or staff. The procedures shall be provided to DOJ for its review and approval in accordance with the procedures and time frames set forth below in Section IV, paragraphs 121 and 123.

100. Where appropriate or necessary, SBI shall work with experts to evaluate forensic and medical evidence.

101. Based upon the information obtained or provided to the Sheriff in compliance with the requirements set forth in paragraphs 59 and 60, SBI shall determine whether a staff member who is the subject of an unnecessary or excessive use of force investigation was arrested, convicted or pled guilty or nolo contendere to any felony or misdemeanor charge, or the issuance of any order of protection or whether that individual has been the subject of any judgment, civil adjudication or settlement of actions filed pursuant to 42 U.S.C. § 1983 or the subject of any settlement or adjudicated administrative determination by the Suffolk County Commission of Human Rights, Nassau County Commission of Human Rights, New York State Division of Human Rights and/or Equal Employment Opportunity Commissions.

102. NCCC shall develop and implement written policies and procedures for maintaining and completing logbooks to ensure that they are accurate, complete and sufficiently descriptive. Such policies and procedures shall require that staff log injuries to inmates, accidents, unusual incidents, and accurately record which staff members are on duty.

103. SBI shall develop and implement procedures to identify possible complaints of alleged staff retaliation against inmates who have filed use of force complaints. Such procedures shall include reviewing regularly inmate disciplinary forms, inmate grievances and complaints filed by staff with the Nassau County District Attorney alleging criminal conduct by inmates reportedly resulting in injury to staff. SBI shall take appropriate steps to input such data in the computerized data base referred to in paragraph 104, or in another trackable data base.

104. SBI shall develop and implement a comprehensive and up to date computerized data base tracking complaints, grievances, incident reports, civil litigations, criminal prosecutions, and notices of claim involving the use of force, inaccurate reporting of use of force or failure to report use of force,

whether substantiated or not. The data base shall also include complaints and grievances alleging bias against inmates based on gender, race, religion, age, ethnicity, sexual orientation, national origin or disability. The data base shall include the dates the investigation was commenced and completed, the names of assigned investigators, the date, outcome of the investigation, time and location of incidents, names and identification numbers of all witnesses and participants, names of supervisors on duty, injuries to staff or inmates, type of force used, reason given by staff for use of force, experts utilized, discipline and informal management responses to reported allegations. The data base shall also include injuries to inmates reported as slips and falls, or collisions with doors, walls or cell gates. The data base shall also include injuries to inmates charged with or convicted of sex crimes or crimes against law enforcement personnel or children. The data base shall be searchable by any of the elements included. Investigators, management and personnel officers shall have access to this data base. NCCC shall make diligent efforts to include in the computerized data base information from January 1997 forward and shall document its efforts to obtain such information.

H. Discipline and Management Responses

105. NCCC shall discipline appropriately any correctional staff found to have (1) engaged in use of unnecessary or excessive force; (2) failed to report or report accurately the use of force; (3) retaliated against an inmate or other staff member for reporting the use of excessive force; or (4) interfered or failed to cooperate with an investigation regarding use of force.

106. NCCC shall utilize informal management responses to address unacceptable staff behavior (*e.g.*, making gratuitous remarks to inmates or goading inmates) which does not warrant the imposition of penalties referred to in paragraph 110 including counseling, increased supervision, referral to an employee assistance program, additional training or reassignment to different posts. To address conduct described in paragraph 105, defendants shall impose penalties referred to in paragraph 110 and shall consider utilizing informal management responses described in this paragraph.

107. Using the data base described in paragraph 104, NCCC shall track and monitor allegations regarding use of force by staff. At least quarterly, NCCC shall search the data base. All staff who are shown in a quarterly review to have been the participant in more than two (2) use of force or improper reporting allegations within the past five (5) years shall be the subject of a management review. Informal management responses shall be taken with regard to such staff, if appropriate. Quarterly reviews and all action taken pursuant to this provision shall be documented.

108. In connection with staff promotions, the Sheriff will consider all items in staff personnel files and in all records maintained by the Nassau County Sheriff's Department.

109. The committee described in paragraph 90 shall review on a quarterly basis the quarterly reviews described in paragraph 107, shall discuss substantiated uses of excessive force, and shall make recommendations, if appropriate, concerning modifications in policy, training, discipline, or other remedial measures.

110. NCCC shall develop and implement guidelines for the imposition of discipline. Such guidelines shall set forth the type of discipline (*i.e.* fine; reprimand; denial of the next year's increment; loss of leave entitlement; suspension without pay; demotion in grade and/or step; dismissal) to be imposed for violations of the policies and procedures established pursuant to this Agreement, and if applicable, the duration and/or amount of such discipline, not inconsistent with New York State Civil Service Law and any applicable collective bargaining agreement(s).

I. Inmate Education and Inmate Reporting

111. NCCC shall permit inmates to report allegations of the use of excessive force orally, through

grievance forms (which shall be available in all housing units at all times without the need to request one from a staff member) or letters which may be submitted to any staff member or placed in the mail. NCCC shall provide a secure and confidential method for delivery of such grievances or letters such as a secure lockbox in an area accessible to inmates. NCCC shall notify inmates of receipt of their grievances or letters in writing.

112. As part of inmates' orientation process, NCCC shall provide inmates with an inmate handbook which includes (1) a statement that NCCC prohibits use of excessive force by correctional staff; (2) a general description of when and how force may be used, including the use of chemical agents; (3) a description of how to report the excessive use of force, including when, how, and to whom it should be reported; (4) a statement that NCCC prohibits retaliation for reporting the use of excessive force; (5) an explanation of staff members' duty to report the use of excessive force; and (6) procedures for sick call and for obtaining mental health, dental, and substance abuse treatment. Such materials shall be available in English, Spanish, and Braille and shall be distributed to all current inmates. The handbook shall be subject to DOJ review and approval in accordance with the procedures and time frames set forth below in Section IV, paragraphs 121-123. NCCC shall add to the orientation video shown to incoming inmates the information described in this paragraph. To the extent practicable, the video shall be available in the above languages and with closed captioning.

113. NCCC shall post and maintain in all living areas and in other areas in which inmates spend significant time (such as library and recreation), visible posters in English and Spanish setting forth the procedures and telephone numbers for reporting complaints. This information shall be available in Braille to blind inmates.

114. A summary of this Agreement shall be created by the Joint Expert, reviewed by the parties and made available to inmates in the law library.

J. Quality Assurance

115. The Deputy Undersheriff for Investigations shall report on a bi-weekly basis to the Sheriff regarding SBI's work, including the timeliness of investigations, findings and patterns.

116. NCCC shall develop policies and procedures for conducting periodic, confidential, random interviews of inmates regarding conditions of confinement, including provision of medical and mental health care and the use of force. Inmates shall be advised that participation is voluntary and that they will not be subject to retaliation for information provided. All information shall be recorded and maintained.

117. NCCC shall develop written quality assurance policies and procedures to ensure complete, effective, and unbiased investigations and to regularly assess compliance with the terms of this Agreement pertaining to use of force and investigations.

IV. Compliance

118. Upon execution of this Settlement Agreement, the United States shall file a Complaint in District Court contemporaneously with the parties' joint motion for entry of an Order conditionally dismissing the action, pursuant to Fed. R. Civ. P. 41(a)(2), conditioned upon NCCC achieving substantial compliance with its terms. This Settlement Agreement shall be attached to such motion. The motion will request that the case be placed on the Court's inactive docket, though the Court shall retain jurisdiction over the case until a final dismissal.

119. "Substantial Compliance" with the terms of the Settlement Agreement shall fully satisfy the Settlement Agreement.

120. DOJ shall have reasonable access to NCCC inmates and staff, NCCC documents and information relating to implementation of this Settlement Agreement for the purpose of monitoring the implementation of this Agreement.

121. All written policies and procedures relating to the use of force required under this Agreement to be reviewed and/or approved by DOJ shall be submitted to DOJ and an expert to be agreed upon by DOJ and NCCC (the "Joint Expert") within ninety (90) days of the execution of this Agreement.

122. All written policies and procedures relating to medical care required under this Agreement to be approved by DOJ shall be submitted to DOJ within ninety (90) days of the execution of this Agreement. DOJ shall notify NCCC in writing as to whether it approves the revised policies and procedures.

123. In the event that DOJ or the joint expert do not approve policies and procedures required to be approved pursuant to the terms of this Agreement, the parties will agree to a schedule for NCCC to submit revisions for appropriate approval.

124. NCCC shall implement policies and procedures approved by DOJ within forty-five (45) days of approval.

125. Upon fifteen (15) days notice, NCCC shall provide DOJ and the Joint Expert with any documentation requested that is not subject to the attorney-client privilege. The Joint Expert and representatives for DOJ, including its experts, shall conduct an initial on-site compliance monitoring tour: i) regarding medical issues approximately four months after execution of this Agreement; and ii) regarding use of force issues approximately six (6) months after execution of this Agreement. The duration of the on-site compliance monitoring shall be determined by DOJ. NCCC shall provide the Joint Expert and DOJ with reasonable access to inmates and staff, NCCC and NUMC documents, and information relating to implementation of this Settlement Agreement.

126. Within twelve (12) months after execution of this Agreement, DOJ shall conduct a second on-site compliance monitoring tour of NCCC.

127. DOJ shall conduct a third on-site compliance monitoring tour of NCCC to evaluate NCCC's compliance with this Agreement approximately twenty-four (24) months after execution of this Agreement. Upon the reasonable request of DOJ or the Joint Expert, NCCC shall permit site visits on a more frequent basis than set forth in Paragraphs 125 through 127. If NCCC has substantially complied with the Settlement Agreement, DOJ and NCCC will file a joint motion to dismiss the case.

128. If DOJ determines that NCCC has not substantially complied with this Agreement, the United States may file a motion to restore the case to the Court's active docket for purposes of litigating the allegations in the Complaint.

129. The United States reserves the right to file a motion to restore this case to the Court's active docket for purposes of litigating the allegations in the Complaint at any time if it believes NCCC is not making a good faith effort to substantially comply with the Settlement Agreement. The United States shall give NCCC fourteen (14) calendar days' written notice before the filing of such motion.

130. In the event that the allegations in the underlying complaint are litigated (i.e. through a trial or dispositive motions), this Settlement Agreement shall not be introduced or used as evidence.

131. This Agreement shall be binding on all successors, assignees, employees, and all those working for or on behalf of the defendants to this action.

132. Notice under this agreement shall be provided by Federal Express overnight delivery and shall be provided to the Sheriff of Nassau County and to NCCC's counsel as designated by written notice to DOJ.

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