

**STATE OF NORTH CAROLINA  
DEPARTMENT OF PUBLIC SAFETY  
AND  
DURHAM COUNTY dba DURHAM COUNTY YOUTH HOME**

**THIS AGREEMENT (MOA)** is entered into between the North Carolina Department of Public Safety, (hereinafter referred to as the "Department,") and Durham County dba Durham County Youth Home, (hereinafter referred to as the "Contractor") for the provision of services described herein; thus

**WITNESSETH:**

**WHEREAS**, the parties hereby desire to put the terms of their agreement to writing;

**NOW THEREFORE**, in consideration of the mutual promises contained herein, the Department and the Contractor agree as follows:

- I. TERM OF AGREEMENT:** The term of this Agreement shall commence on 1 September 2020 and terminate on 31 August, 2021. By mutual agreement, this Agreement may be renewed for two (2) additional years in increments of one (1) year each renewal, provided that, for each renewal the mutual agreement is executed on or before 1 August, immediately preceding the renewal period.

**II. SCOPE OF SERVICES/RESPONSIBILITIES:**

**Part I: Detention Services for Juveniles**

1. **Detention Services:** Pursuant to North Carolina General Statute § 153A-218, contractor will provide adequate housing and detention services for juvenile's ordered to be kept in secure custody while awaiting adjudication of juvenile charges or transfer to Superior Court for trial as an adult. Contractor will ensure that these facilities meet all state and federal standards of a detention or confinement facility as required by law. *See* NCGS § 153A-221, NCGS § 143B-819 and 28 CFR § 115.14.

Contractor will ensure that all federal and state regulations for confinement facilities are followed and that all juveniles are housed in their respective facility. Contractor will ensure that all juveniles are confined separately from adult inmates at all times, to include no sight, sound or contact of any type with adult offenders being housed in other parts of the facility.

Contractor will ensure that the juveniles are properly supervised at all times and that all Department policies and procedures concerning confinement of juveniles are followed by all staff, contractors or volunteers who enter the facilities.

Contractor will ensure that the confidentiality of the juveniles housed within the facility is maintained at all times, and will ensure that juveniles will be kept in locations not accessible to the general public or visitors to the facility, without proper authorization or prior consent.

Contractor will allow Department to visit the location periodically to inspect the facility and will abide by all reasonable requests of the Department in terms of juvenile housing and confinement.

2. **Billing and Compensation:** Contractor will bill Department on the 10<sup>th</sup> of each month for services rendered for the previous month and Department agrees to reimburse Contractor at the rate listed in Attachment "A", attached hereto and incorporated herein by reference. Each bill will be due upon receipt.

### III. MOA ADMINISTRATION:

- A. JAMES SPEIGHT, Director of Juvenile Facilities Operations, North Carolina Department of Public Safety, 3010 Hammond Business Place, Raleigh, NC 27603, 919-324-6425, is designated as the MOA Officer for the Department, with responsibilities for all matters relating to this MOA. This person/position is subject to change with due notice to Contractor.
- B. ANGELA NUNN, Youth Home Director, Durham County Government, 2432 Broad Street, Durham, NC 27704, 919-560-0840, is designated as the MOA Administrator for the Contractor, with responsibilities for all matters relating to this MOA including, but not limited to, timely invoice preparation and reports. This person/position is subject to change with due notice to the Department.
- C. **MOA Monitoring:** The general purpose of monitoring will be to ensure that Contractor is abiding by all state and federal laws and Department, Division, and Section policies and procedures with regard to housing juveniles in their confinement facility. Monitoring will be utilized to identify and resolve problems or concerns at the facility at an early stage.

Specifically, MOA monitoring may include but is not limited to the following areas:

- Verify Contractor performance for purposes of payment;
- Identify material breach of the MOA by assessing the difference between MOA performance and material non-performance;
- Determine if corrective action is necessary and take such action if required;
- Determine if all applicable laws and policies are being adequately followed.

Monitoring Contractor compliance shall be the responsibility of the Department. MOA monitoring shall occur for an on-going basis throughout the term of the MOA.

#### IV. GENERAL TERMS AND CONDITIONS:

1. **Performance and Default:** If, through any cause, Contractor shall fail to fulfill in timely and proper manner the obligations under this MOA, the Department shall have the right to terminate this MOA by giving written notice to the Contractor and specifying the effective date thereof. Contractor shall receive payment for proper services rendered up to the date of termination of the MOA; however, Contractor shall not be relieved of liability to the Department for damages sustained by the Department by virtue of any breach of this MOA, and the Department may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the Department from such breach can be determined.
2. **Availability of Funds:** Any and all payments to the Contractor shall be dependent upon and subject to the availability of funds to the Department for the purpose set forth in this MOA.
3. **Taxes:** Any applicable taxes shall be invoiced as a separate item.
4. **Situs:** The place of this MOA, its situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.
5. **Governing Laws:** This MOA is made under and shall be governed, construed and enforced in accordance with the laws of the State of North Carolina, without regard to conflict of laws rules.
6. **Payment:** Payment to Contractor will be made no later than 30 days after receipt of correct invoice for services rendered. The Department is responsible for all payments to the Contractor under the MOA for which service is rendered.
7. **Affirmative Action:** The Contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.
8. **Access to persons and records:** During and after the term hereof, the State Auditor and any internal auditors of the Department shall have access to persons and records related to this Contract to verify accounts and data affecting fees or performance under the MOA, as provided in NCGS §143-49(9).

9. **Assignment:** No assignment of the Contractor's obligations nor the Contractor's right to receive payment hereunder shall be permitted. In no event shall the State be obligated to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all MOA obligations. Any purported assignment made in violation of this provision shall be void and a material breach of this MOA.
10. **Insurance Coverage:** During the term of the MOA, the Contractor at its sole cost and expense shall provide proper insurance of such type and with such terms and limits as may be reasonably associated with the MOA. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. All applicable insurance shall meet all applicable laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this MOA. The limits of coverage under each insurance policy maintained by the contractor shall not be interpreted as limiting the Contractor's liability and obligations under the MOA. As a minimum, the Contractor shall provide and maintain the following coverage and limits:
- a. **Workers' Compensation:** The Contractor shall provide and maintain Workers' Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$500,000.00, covering all of Vendor's employees who are engaged in any work under the MOA. If any work is sub-contracted, the Vendor shall require the sub-Contractor to provide the same coverage for any of his employees engaged in any work under the MOA.
  - b. **Commercial General Liability:** General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)
  - c. **Automobile:** Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the MOA. The minimum combined single limit shall be \$250,000.00 bodily injury and property damage; \$250,000.00 uninsured/under insured motorist; and \$2,500.00 medical payment.
11. **General Indemnity:** To the fullest extent as allowed by law, the Contractor shall hold and save the State, Department, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this MOA, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor

in the performance of this MOA and that are attributable to the negligence or intentionally tortious acts of the Contractor provided that the Contractor is notified in writing within thirty (30) days that the State/Department has knowledge of such claims. Notwithstanding the foregoing, nothing contained in this section shall be deemed to constitute a waiver of the governmental immunity of Contractor, which immunity is hereby reserved to Contractor.

12. **Independent Contractor:** Contractor shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this MOA.
13. **Subcontracting:** Work proposed to be performed under this contract by the Contractor or its employees shall not be subcontracted without prior written approval of the Department's assigned MOA Administrator.
14. **Termination:** Either party may terminate this MOA at any time by providing 180 days' notice in writing to the other party. If the MOA is terminated by the Department as provided in this section, the State shall pay for services satisfactorily completed by the Contractor, less any payment or compensation previously made. The Department or the Contractor may terminate this contract immediately for cause, without prior notice. Material breach of the MOA constitutes just cause for immediate termination.
15. **Confidentiality:** Any State information, data, documents, records or reports given, prepared or assembled by or provided to the Contractor under this MOA shall be kept as confidential, used only for the purpose(s) required to perform this MOA and not divulged or made available to any individual or organization without the prior written approval of the Department.
16. **Care of property:** The Contractor agrees that it shall be responsible for the proper custody and care of any property furnished it by the State for use in connection with the performance of this MOA or purchased by or for the State for this MOA, and Contractor will reimburse the State for loss or damage of such property while in Contractor's custody.
17. **Compliance with laws:** Contractor shall comply with all laws, ordinances, codes, rules, regulations, policies, procedures and requirements that are applicable to the conduct and its performance in accordance with this MOA, including those of federal, state, and local agencies having jurisdiction and/or authority.
18. **Entire agreement:** This MOA and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This MOA, any

addenda thereto, are incorporated herein by reference as though set forth verbatim. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the MOA expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

19. **Amendments:** This MOA may be amended only by a written amendment duly executed by the Department and the Contractor.
20. **Waiver:** The failure to enforce or the waiver by the State of any right or an event of breach or default on one occasion or instance shall not constitute the waiver of such right, breach or default on any subsequent occasion or instance.
21. **Force Majeure:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including but not limited to, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
22. **Sovereign Immunity:** Notwithstanding any other term or provision in this MOA, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity that otherwise would be available to the State under applicable law.
23. **Alcohol/Drug Free Workplace policy:** A copy of the Department's Alcohol/Drug Free Workplace policy is attached (Attachment B) to this solicitation. The Contractor shall use reasonable and good faith efforts to ensure that employees/staff are aware of the Department's policy. The Contractor understands that its employees/staff are required to abide by these standards. The Contractor further understands that possession, use, manufacture, or distribution of illegal drugs or alcohol in violation of this policy, by employees/staff participating in the performance of this MOA, may result in immediate termination of this contract for cause.
24. **PREA:** The Department is committed to a standard of zero-tolerance pertaining to unduly familiar or sexually abusive behavior either by a juvenile detainee or by staff, volunteer, vendor, contractor or party. Staff, volunteers, vendors, contractors or parties are strictly prohibited from engaging in personal dealings or any conduct of a sexual nature with any juvenile. Conversation and conduct with any juvenile must be professional at all times. Sexual acts between a juvenile and staff, volunteer, vendor, contractor or party may violate North Carolina law. Additionally, sexual acts between a juvenile and staff member will contradict the standards of the

Federal Prison Rape Elimination Act of 2003 (PREA). Such acts also may be punishable, at a minimum, as a Class E felony in North Carolina. Under North Carolina law, consent of the juvenile may not be available as a defense for an individual who is charged criminally based on sexual conduct with the juvenile. Also, pursuant to PREA standards, no juvenile can consent to engage in sexual activity with staff, volunteers, vendors, contractors or parties. Any contractual party will comply with the national standards to prevent, detect, and respond to PREA (115.12, 212, 312) and permit the Department to monitor this aspect of the contract to ensure compliance with the PREA standards. It is agreed that Contractor will have 18 months from execution of this MOA to enact all necessary policies and conduct the training required for compliance with PREA.

As a valued partner with the Department, it is important to remember that if you become aware of a report of any incident of unduly familiar or sexually abusive behavior or sexual harassment, you have a duty to report this information immediately to your contact person with the Agency, by email to [prea@ncdps.gov](mailto:prea@ncdps.gov), or the DPS Communications Office at 800-368-1985.

Additionally, it may violate North Carolina law to sell or give an inmate or juvenile any alcoholic beverages, barbiturate or stimulant drug, or any narcotic, poison or poisonous substance, except upon the prescription of a physician; and it may violate North Carolina law to give an inmate or juvenile any tobacco or tobacco products, alcohol, or cell phones. It may also violate Department policy to convey to or take from any juvenile or inmate any letters, or verbal messages; to convey any weapon or instrument by which to effect an escape, or that will aid in an assault or insurrection; to trade with any inmate or juvenile for clothing or stolen goods or to sell any inmate or juvenile any article forbidden by Department policy.

By signing this document, you acknowledge that you understand and will abide by this policy as outlined above.

**V. EXECUTION OF AGREEMENT:**

By executing this MOA, the undersigned Contractor certifies that they have read and understand all terms and conditions set forth in this MOA and agrees to abide by the same. By execution of this MOA, the undersigned certifies, for your entire organization and its employees or agents, that you are authorized to enter into this agreement and that you are not aware that any gift has been offered, accepted, or promised by any employees of your organization.

CONTRACTOR: Durham County dba Durham County Youth Home

STREET ADDRESS: 2432 Broad Street

P.O. BOX:

ZIP:

CITY & STATE & ZIP: Durham, NC 27704

TELEPHONE NUMBER: 919-560-0840

PRINT NAME & TITLE OF PERSON SIGNING: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

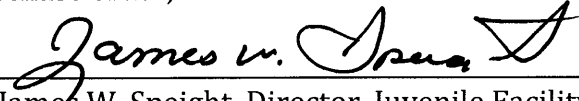
DATE: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

If any or all parts of this MOA are accepted, an authorized representative of the Department of Public Safety shall affix their signature hereto and this document and the provisions and special terms and conditions specific to this MOA, the specifications, and the terms and conditions shall then constitute the written agreement between the parties. A copy of this MOA will be forwarded to the Contractor(s).

**FOR DEPARTMENT OF PUBLIC SAFETY USE ONLY**

Offer accepted on this 23<sup>rd</sup> day of October, 20 20, as indicated on attached certification or purchase order,

By:   
James W. Speight, Director, Juvenile Facility Operations  
(Authorized representative of the Department of Public Safety)



## Attachment A

### **Cfda#**                                      **State Subsidy to County Detention Facilities**

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**State Authorization:**                      **North Carolina General Statutes 143B-820**  
   **State Subsidy to County Detention Facilities**

**Department of Public Safety**  
**Division of Adult Correction and Juvenile Justice**

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<b><u>(a) Agency Contact Person - Program</u></b>	<b><u>Agency Contact Person - Financial</u></b>
James Speight	Tara Williams-Brown
Director of Juvenile Facility Operations	Controller
919-324-6425	919-324-1409

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### **Brief Description of Program:**

#### **I. PROGRAM OBJECTIVES**

In accordance to the North Carolina General Statutes 143B-820, State Subsidy to County Detention Facilities, the Division shall administer a State subsidy program to pay a county that provides juvenile detention services and meets State standards a certain per diem per juvenile. In general, this per diem should be fifty percent (50%) of the total cost of caring for a juvenile from within the county and one hundred percent (100%) of the total cost of caring for a juvenile from another county. Any county placing a juvenile in a detention facility in another county shall pay fifty percent (50%) of the total cost of caring for the juvenile to the Division.

#### **II. PROGRAM PROCEDURES**

Juvenile Detention Subsidy Payment Requests from the county-operated detention facility are to be submitted to the Division of Juvenile Justice/Detention Services section by the 10<sup>th</sup> of each month. The requests are reviewed for any errors in the number of days a juvenile was detained and the county responsible for the bill. The Contractor will be paid by the Division at the rate of \$153.38 per juvenile per day for juveniles housed in the Durham County Youth Home(DCYH) who are residents of Durham County, which rate will change from time to time in order to mirror the rate paid to Contractor by the United States Marshals Service for housing federal prisoners. The Parties agree that any change in the rate to be paid by the Department for Durham County residents housed in the DCYH will be capped at 7% of the previous rate, even if the rate paid Contractor by the United States Marshals Service fluctuates (up or down) more than 7%. The parties agree that the rate paid by the Department for Durham County residents housed in the DCYH will not change more than once in any twelve-month period. The parties further agree that should the United States Marshals Service cease to house federal prisoners with Contractor during the term of this MOA, the Department will continue to pay Contractor the amount it is then paying per County resident for the remaining term of the MOA, or until the United States Marshals Service renews housing federal prisoners with Contractor (and then, based upon the above terms and conditions).

Juveniles housed in the DCYH who are residents of other counties and/or who are charged in other counties and sent by the Department for housing at the DCYH will be charged by the Contractor to the Department at the initial rate of \$244.00 per day, per juvenile, with the appropriate county of residence for the juvenile billed by the Department for one-half this cost. The Parties agree that should the standard rate for juvenile detention services otherwise paid throughout the State by the Department increase above \$244.00 per day, per juvenile, during the term of this MOA, the Department (through the Division) shall pay the Contractor that increased rate for non-Durham County residents housed at DCYH. The Department is responsible for collecting from the juvenile's county of residence all sums owed for housing its juveniles out of county and ensuring that the Contractor, housing such juvenile in the DCYH, receives all sums owed to it by the Department on a timely basis.

**Organizations Funded:**    ☐ Private    ☒ Local Government    ☐ Both  
**Source of Funds:**    ☒ State    ☐ Federal

### **III. COMPLIANCE REQUIREMENTS**

1. Activities Allowed or Unallowed: N/A
2. Allowable Costs/Cost Principles: N/A
3. Cash Management: N/A
4. Conflict of Interest: N/A
5. Eligibility: N/A
6. Equipment and Real Property Management: N/A
7. Matching, Level of Effort, Earmarking: N/A
8. Period of Availability of Federal Funds: N/A
9. Procurement and Suspension and Debarment: N/A
10. Program Income: N/A
11. Real Property Acquisition and Relocation Assistance: N/A
12. Reporting: N/A
  
13. Sub-Recipient Monitoring  
NC-JOIN is a program/system and is the sub-recipient monitoring tool used to enter juveniles as they enter DPS Juvenile Detention Centers, Youth Development Centers, or any other applicable treatment program. Admissions and releases, as well as other vital information concerning juveniles, are entered into NC-JOIN. This enables those individuals authorized to use the program access to any information that is vital to the placement of a juvenile.
  
14. Special Tests and Provisions:
  - a) Verify that checks received from DPS are for actual resident days.
  - b) Does the amount of check received balance to the amount invoiced?
  - c) Test actual data from NC-JOIN to the facility data. (Verify names and dates)
  - d) Verify the amount billed reconciles to the approved rate for the facility.

**The North Carolina Department of Public Safety**

By: James W. Speight (signature)

Printed Name: James W. Speight

Title: Director of Juvenile Facility Operations

Date: 10-23-2020

**Durham County dba Durham County Youth Home**

By: \_\_\_\_\_ (signature)

Printed Name: Wendell Davis

Title: County Manager

Date: \_\_\_\_\_

## **Attachment B: DPS Alcohol / Drug Free Work Place Policy**

### **POLICY**

It is the policy of the Department of Public Safety to provide a work environment free of alcohol and drugs in order to ensure the safety and well-being of employees, correctional clientele, and the general public. All employees of the Department of Public Safety, including permanent full-time, trainee, permanent part-time, permanent hourly, probationary, and temporary shall abide by this policy.

### **PURPOSE**

This document is intended to advise managers and employees of the guidelines of an alcohol/drug free work place, and to set out the penalties for violation(s) of the guidelines.

### **PROCEDURES/OPERATIONAL GUIDELINES**

All employees of the Department of Public Safety are expected to be physically and mentally prepared and able to perform their assigned duties throughout the workday. No employee shall report to the work site impaired by or suffering from the effects of drugs or alcohol.

Individuals reporting for work under the influence or the effects of alcohol and/or drugs shall be issued discipline, up to and including dismissal, consistent with the policy governing personal conduct.

No employee shall manufacture, distribute, or dispense controlled substances (drugs/alcohol) at the work site or away from the work site. No employee shall use "across the counter" medication to the point of impairment while at the work site, or in any situation which may bring discredit to the Department. Use or abuse shall be viewed as personal misconduct and shall be cause for immediate disciplinary action up to and including dismissal.

Possession of an illegal substance in any situation, at work or away from the work site shall be cause for discipline. Possession of controlled substances, i.e. Prescription medication or alcohol, must be in compliance with existing laws. Violations will result in discipline up to and including dismissal based on personal misconduct. Employees who are arrested, detained, or served a warrant for any alcohol/drug related incident, at the work site or away from the work site have 24 hours to file a written report of the situation with the work unit supervisor/manager, i.e. Warden, Superintendent, Branch Manager. The work unit supervisor/manager shall make a recommendation for appropriate disciplinary action based on the facts of the case after conducting a thorough investigation.

If sufficient facts cannot be obtained due to pending litigation, the work unit supervisor/manager shall request, in writing, that any recommendation for disciplinary action be delayed until the court has disposed of the matter. Once the legal proceedings have been completed, the employee shall furnish a certified copy of the court disposition within 48 hours of the judgment. The recommendation for discipline shall be made at this time, if not previously addressed.

Any conviction of a drug or alcohol related offense, which occurred at the work site, shall be reported to the federal government by the Personnel Office; therefore, such offenses shall be reported to the Personnel Office by the appropriate manager so that the Personnel Office may comply with the requirement.

The Department of Public Safety utilizes the State Employee Assistance Program (EAP) administered through the Office of State Personnel. The EAP provides employees with a comprehensive referral service to aid in coping with or overcoming personal problems, including drug and alcohol problems. Consultants with the State EAP will provide managerial/supervisory training and coordinate employee orientation.

This policy shall be posted in an accessible area for employee review and shall be periodically reviewed in staff meetings and at line up. In addition, each present employee and all new employees shall be given a copy of this policy for their information.