KENDALL COUNTY BOARD AGENDA
SPECIAL MEETING
Kendall County Office Building, Rooms 209 & 210
Monday, December 21, 2015 at 9:00 a.m.

1. Call to Order
2. Roll Call
3. Determination of a Quorum
4. Approval of Agenda
5. Citizens to Be Heard
6. New Business
   A. Approve the Agreement for the Provision of Inmate Health Services with Advanced Correctional Healthcare, Inc. for one year beginning January 1, 2016 to December 31, 2016 in the amount of $168,913.29
7. Old Business
8. Standing Committee Reports
   A. Animal Control
      1. Approval of the Appointment of Laura Pawson as Animal Control Director with an annual salary of $43,000
9. Other Business
10. Chairman’s Report
11. Executive Session
12. Citizens to be Heard
13. Questions from the Press
14. Adjournment
To: Sheriff Baird

From: Deputy Commander Gillespie

Date: 12/15/15

Subject: Advanced Correctional Healthcare

Sheriff Baird,

I am pleased to recommend to you Advanced Correctional Healthcare for Kendall County Sheriff's Office inmate medical services.

The cost proposal from Correct Care Solutions for inmate medical services came in at $176,237.00. The cost proposal from Advanced Correctional Healthcare for inmate medical services came in at $168,913.29. The savings by going with Advanced Correctional Healthcare will be $7,323.72.

I have checked references on Advanced Correctional Healthcare with several jails with approximate size of ours, in the state of Illinois and outside of the state of Illinois. All of the Jail administrators and staff that I've talked with had rave reviews and said that Advanced Correctional Healthcare is willing to work with the agency on cost saving plans and working on keeping inmate medical services to the highest possible standards.

I have reviewed the implementation timeline from Advance Correctional Healthcare and feel that it will work for us.

I have Advanced Correctional Healthcare's commitment to work with the staff at Kendall County Sheriff's Office, operate within our facilities policies and procedure. Advance Correctional Healthcare will assist us in our ACA accreditation and will help us continue to maintain our Prison Rape Elimination Act standards.

I have worked with the States Attorney’s Office and they have reviewed the attached contract. The one issue they had with the contract was with some individual wording in section 5.1.1 additional insureds (below)

5.1.1 ADDITIONAL INSURED. ACH will name the SHERIFF and the COUNTY as an additional insured for the sole negligence of ACH under the commercial automobile, commercial general and professional liability portions of insurance and provide the COUNTY with a Certificate of Insurance specific to correctional facilities evidencing the terms of the insurance coverage and policy limits.
It should be noted that the above language is not a deal breaker as it's been in the previous contracts with previous medical care providers for the last 16 years.

It was the states attorney’s office recommendation to allow the board to vote on the contract I will quote ASA David J. Berault” Moving forward would be a policy decision in regard to their refusal to remove the sole negligence language. I do not like to see limits on a contractor’s negligence, but it appears there is not going to be movement on this issue. As you can see by his comment, he essentially admitted just what we discussed previously – that they could have insurance to cover more. Yet, they are not willing to procure it. As such, I will leave it to the discretion of those voting on the matter whether to accept this language.”

Deputy Commander Joseph Gillespie
AGREEMENT FOR THE PROVISION OF INMATE HEALTH SERVICES
KENDALL COUNTY, ILLINOIS

This Agreement for the Provision of Inmate Health Services (hereinafter referred to as the “AGREEMENT”), effective as of the date of the last signature hereeto, entered into by and between the County of Kendall, located in the State of Illinois (hereinafter referred to as the “COUNTY”) and Kendall County Sheriff in his official capacity (hereinafter referred to as the “SHERIFF”), and Advanced Correctional Healthcare, Inc. (hereinafter referred to as “ACH”), an Illinois corporation.

RECITALS

WHEREAS, the COUNTY desires to provide professional and responsive healthcare services to the inmates of the Kendall County Jail (hereinafter referred to as the “FACILITY”); and

WHEREAS, ACH is a corporation which provides professional and responsive healthcare services in incarceration facilities.

NOW THEREFORE, the parties enter into this AGREEMENT as hereinafter set forth.

DEFINITIONS


COUNTY INMATES - Inmates booked into the custody of the COUNTY or SHERIFF and presently incarcerated in the FACILITY, but not to include NON-COUNTY INMATES.

ELECTIVE CARE - Care which, if not provided, would not, in the opinion of ACH’s practitioner (a licensed practitioner employed by ACH), cause the inmate’s health to deteriorate, or cause harm to the inmate’s well-being.

MID-LEVEL PRACTITIONER - An advanced registered nurse practitioner or physician assistant who has completed an advanced training program. A MID-LEVEL PRACTITIONER will be duly licensed to practice medicine in the appropriate state.

MOBILE SERVICES - Any ancillary medical services in which a provider comes on-site to perform work using the provider's equipment and/or staff, including, but not limited to, laboratory and X-ray services.

NON-COUNTY INMATES - Inmates who are covered by a government health program for American Indians; work release inmates while on work release; inmates during transport to/from outside facilities; and inmates housed in the FACILITY for other counties, State Department of Corrections, U.S. Immigration and Customs Enforcement (ICE), U.S. Marshals, and/or other federal agencies.

OFF-SITE SERVICES - Medical services including, but not limited to, consultation services, dental care not performed on-site, diagnostic testing, hospital services, medically-indicated emergency ground ambulance transportation, mental health services not performed on-site, and specialty services.

SPECIFIED MEDICATIONS - Medications related to the treatment of HIV, AIDS, HIV/AIDS related diseases, hepatitis, cystic fibrosis, multiple sclerosis, cancer, and/or active tuberculosis, as well as medications listed as biological and/or anti-rejection drugs. Medications related to these treatments will be defined in accordance with medical literature.
ARTICLE 1:
DUTIES AND OBLIGATIONS OF ACH

For and in consideration of the compensation to be paid to ACH as hereinafter set forth, ACH agrees as follows:

1.1 ADVANCED TRAINING. The FACILITY is entitled to receive one copy each of the training videos produced and sold by ACH at no additional charge, with the following exception: facilities will not receive training videos which cover topics for which they have already received an ACH training video covering that topic. If a training video is lost or stolen, the FACILITY may be charged a replacement fee to replace the video. ACH training videos are to be viewed by the FACILITY staff only and are not to be reproduced except with the prior written permission of ACH. ACH does not guarantee training credits and is not responsible for obtaining training credits on behalf of the FACILITY staff.

1.2 COLLECTION OF DNA/PHYSICAL EVIDENCE AND FORENSIC INFORMATION. ACH will perform body cavity searches on-site with signed consent from the inmate in accordance with the following guidelines: ACH staff are prohibited from participating in the collection of forensic evidence, except when: (1) complying with state laws that require blood samples from inmates, so long as there is consent of the inmate and ACH staff are not involved in any punitive action taken as a result of an inmate’s nonparticipation in the collection process, (2) conducting body cavity searches, and blood or urine testing for alcohol or other drugs when done for medical purposes by a practitioner’s order, and/or (3) conducting inmate-specific, court-ordered laboratory tests, examinations, oral swabs, or radiology procedures with consent of the inmate. ACH will not pay for any costs associated with any body cavity search or any other collection of forensic information, including, but not limited to, any associated medical fees, laboratory fees, added personnel costs, and/or court costs.

1.2.1 SEXUAL ASSAULT. In the case of sexual assault, the inmate victim will be sent to the hospital for appropriate collection of evidence which includes chain of custody, counseling, and care. Court-ordered body cavity searches will be referred to the appropriate facility or emergency room.

1.3 CQI MEETINGS. ACH will review, at the scheduled Continuous Quality Improvement (CQI) meetings with the SHERIFF or designee, the healthcare reports concerning the overall operation of the healthcare services program and the general health of the inmates of the FACILITY.

1.4 DENTAL CARE. ACH will provide dental hygiene instruction and dental triage screenings for inmates in accordance with criteria established by a licensed dentist for the purpose of identifying inmates in need of serious dental services. When necessary, ACH will coordinate off-site dental care. The COUNTY will pay for any costs associated with dental care.

1.5 ECTOPARASITES. For inmates presenting with symptoms of ectoparasitic infection (as determined by the ACH practitioner), ACH will provide and pay for medically indicated treatment. For inmates without symptoms of ectoparasitic infection, ACH will provide treatment at the SHERIFF’S request, and the COUNTY will be responsible for the cost of the treatment. ACH will not be responsible for facility cleaning for ectoparasites.

1.6 ELECTIVE CARE. ACH will not provide ELECTIVE CARE to inmates. Decisions concerning ELECTIVE CARE will be consistent with the applicable American Medical Association (AMA) standards.

1.7 HEALTH EDUCATION AND EVALUATIONS. ACH will provide health education materials to the SHERIFF for inmate education. ACH will also provide on-site health evaluations and medical care for inmates. Additionally, ACH will provide basic physical examinations for potential inmate workers to ensure the inmates are physically capable of performing assigned work duties.

1.8 INMATE LABOR. Inmates will not be employed or otherwise engaged or utilized by ACH in the direct rendition of any healthcare services.

1.9 MANAGEMENT SERVICES. ACH will provide management services to include: a comprehensive Strategic Plan; Peer Review; CQI; Waste Reduction; Utilization Management; and a Risk Management program specific to the FACILITY’s medical operations.
MEDICAL CLAIMS RE-PRICING. ACH will not be responsible for the re-pricing of medical claims.

MEDICAL RECORDS. Inmate medical records will always be the property of the SHERIFF and will remain with the SHERIFF. ACH will maintain or require being maintained complete and accurate medical records for each inmate who has received healthcare services. The medical records will be kept separate from the inmate's confinement record. A complete copy of the original applicable medical record will be available to accompany each inmate who is transferred from the FACILITY to another location for off-site services or transferred to another institution. Medical records will be kept confidential, subject to applicable laws and exemptions regarding confidentiality of inmate medical records. ACH will comply with the SHERIFF’s policy with regard to access by inmates to their medical records. The SHERIFF will provide ACH with reasonable ongoing access to all medical records, even after the expiration of this AGREEMENT, for the purpose of defending litigation.

MENTAL HEALTH SERVICES - CRISIS INTERVENTION. ACH will refer inmates to crisis intervention services when indicated. The crisis intervention services will be provided by the FACILITY staff in concert with ACH staff. ACH will coordinate with the medical and programming services (e.g., chemical dependence) at the FACILITY so that patient management is appropriately integrated, health needs are met, and the impact of any of these conditions on each other is adequately addressed. ACH will use an integrated and multidisciplinary team (including FACILITY staff) to develop treatment plans for inmates displaying problematic behavior.

MOBILE SERVICES. When MOBILE SERVICES are required for medical reasons and are available to come to the FACILITY, ACH will arrange for those services for inmates in accordance with the SHERIFF’s policies and procedures. The COUNTY will pay for any costs associated with MOBILE SERVICES.

OFF-SITE SERVICES. When OFF-SITE SERVICES are required for medical reasons, ACH will arrange for those services for inmates and in accordance with the SHERIFF’s policies and procedures. The COUNTY will pay for any costs associated with OFF-SITE SERVICES.

OTHER SERVICES AND EXPENSES. ACH will not provide and will not pay for any services, supplies and/or equipment which are not specifically contained in this AGREEMENT. The providing of staff as factual witnesses when lawsuits involving the facility and ACH’s contracted medical care are litigated, including any factual testimony necessary for litigation purposes regarding inmates treated, will be included in the services supplied to the extent possible by ACH.

PHARMACEUTICALS. ACH will dispense pharmaceuticals in accordance with applicable laws. ACH will not provide or pay for the pharmaceuticals.

PRISON RAPE ELIMINATION ACT OF 2003 (PREA). Should the SHERIFF choose to comply with PREA, ACH will endeavor to comply with PREA, applicable PREA standards, and the FACILITY’s policies related to PREA for preventing, detecting, monitoring, investigating, and eradicating any form of sexual abuse within the FACILITY. ACH acknowledges that, in addition to self-monitoring, the FACILITY may conduct announced or unannounced monitoring to include on-site monitoring.

SHERIFF’S POLICIES, PROCEDURES, AND PROTOCOLS. ACH staff will operate within the requirements of the SHERIFF’s policies, procedures, and protocols as communicated to ACH staff by the SHERIFF or designee. Such policies, procedures, and protocols may change from time to time; if so, the SHERIFF or designee will promptly notify ACH staff, provide them with a written copy of the modified policy, procedure, or protocol, and provide any necessary training to the ACH staff. Upon the SHERIFF’s request, ACH will assist the SHERIFF in drafting and implementing medical policies, procedures, and protocols based upon the National Commission on Correctional Health Care (NCCHC) and/or American Correctional Association (ACA) standards and the FACILITY’s capabilities. All policies, procedures, and protocols regarding operations within the FACILITY will at all times remain the property of the SHERIFF and will remain at the FACILITY after termination of this AGREEMENT.

STAFFING. ACH will provide staffing coverage as described in this staffing section.
1.19.1 MEAL BREAKS. It is understood and agreed that ACH employees are allowed to leave the premises during the work day for meal breaks.

1.19.2 NURSING. ACH will provide on-site licensed practical nursing coverage for sixty (60) hours per week on a schedule approved by the SHERIFF. When approved by the SHERIFF or designee, hours worked in excess of the contracted amount will be billed monthly to the COUNTY at the prevailing wage and benefit rate of the ACH employee. For all absences, ACH endeavors to provide replacement coverage, and if it is unable to do so, ACH’s Director of Medical Operations for the FACILITY and the SHERIFF or designee will negotiate a mutually agreeable remedy.

1.19.3 PRACTITIONER. A physician and/or MID-LEVEL PRACTITIONER will visit the FACILITY weekly or as otherwise agreed by the SHERIFF and ACH, and will stay until all necessary treatment and duties are completed. The practitioner will serve as the facility’s medical director and as such, will be responsible for all medical decisions regarding inmates at the facility subject to the FACILITY’S security restrictions. A MID-LEVEL PRACTITIONER will only be used with the approval of the SHERIFF. The physician and/or MID-LEVEL PRACTITIONER will be available by telephone to the FACILITY and medical staff on an on-call basis, seven (7) days per week, twenty-four (24) hours per day. For scheduled visits that fall on CORPORATE HOLIDAYS, coverage will be provided by telephone only.

1.19.4 QUALIFIED MENTAL HEALTH PROFESSIONAL (QMHIP). ACH will provide an on-site Qualified Mental Health Professional for eight (8) hours per week on a schedule approved by the SHERIFF. When approved by the SHERIFF or designee, hours worked in excess of the contracted amount will be billed monthly to the COUNTY at the prevailing wage and benefit rate of the ACH employee. For all absences, ACH endeavors to provide replacement coverage, and if it is unable to do so, ACH’s Director of Mental Health Services and the SHERIFF or designee will negotiate a mutually agreeable remedy. ACH will provide mental health screenings for inmates. Suicide prevention training for facility staff will also be provided. (Not included in the Eight (8) hour per week schedule above, these hours will be billed to the COUNTY as discussed above). If an inmate has identified mental health issues that exceed the ability of ACH staff or FACILITY staff to manage, ACH will develop a plan for sending the inmate off-site for specialized services. ACH is further responsible for ensuring their medical and mental health staffs collaborate with each other so that patient management is appropriately integrated, health needs are met, and the impact of any medical or mental health condition on each other is adequately addressed.

1.20 PREGNANT INMATES: ACH will provide on-site medical services to pregnant inmates, but will not be responsible for providing medical services to an infant following birth. Pregnant inmates will be sent off-site as needed.

1.21 EMERGENCY CARE: When ACH medical staff is on-site, in addition to providing emergency medical treatment for inmates, ACH’s medical staff must also provide emergency medical treatment for facility staff, who become ill or injured while on the premises.

1.22 HEALTH ASSESSMENT: A health assessment of the inmate/detainee’s shall be performed as soon as possible, but no later than fourteen (14) calendar days after arrival of the inmate/detainee’s at the jail except in rare circumstances where the staff in unable to have access to the inmate. As per Illinois County jail standards and American Correctional Association (ACA) standards.

1.23 TUBERCULOSIS (TB) TESTING.

1.23.1 FACILITY STAFF. ACH will provide TB skin tests as directed by the SHERIFF. The COUNTY will pay for the TB serum and related supplies. Upon the SHERIFF’s request, ACH will secure the serum and related supplies through the correctional pharmacy to secure the best possible price, then bill the COUNTY for those costs.

1.23.2 INMATES. ACH will provide TB skin tests as directed by the SHERIFF. ACH will pay for the TB serum and related supplies.
ARTICLE 2:
DUTIES AND OBLIGATIONS OF THE COUNTY

2.1 BIOMEDICAL WASTE DISPOSAL. The COUNTY will be responsible for the provision of and cost of biomedical waste disposal services at the FACILITY consistent with all applicable laws. Typical biomedical waste expected in the medical unit would be bandages, dressings, gloves, hypodermic needles, laboratory containers, sharps, and syringes.

2.2 CO-PAY. The COUNTY agrees to the use of a co-pay system, as permitted by law, for inmate medical requests.

2.3 DUTY TO PROTECT INMATES. The non-delegable duty to protect inmates is, and always will be, vested in the SHERIFF. This AGREEMENT does not result in the assumption of a non-delegable duty by ACH. As such, the SHERIFF specifically retains the duty and obligation for security of the inmates. This duty extends to the control of inmate movement. ACH and its personnel will assume no responsibility for the movement of inmates and assume no responsibility for inmate protection at any time.

2.4 HIRING OF ACH STAFF. While ACH is pleased to provide staffing during this engagement, ACH does not expect the COUNTY to offer permanent employment to ACH employees or independent contractors. ACH has a significant investment in the training and professional development of our employees and independent contractors and they are valued employees and independent contractors of ACH. If the COUNTY should hire any ACH employee or independent contractor during this AGREEMENT term or within one (1) year after this AGREEMENT’s termination, the COUNTY will be billed a professional replacement fee of Ten Thousand Dollars ($10,000) to compensate ACH for each employee or independent contractor, with the following exception: this does not apply to any medical staff member who was employed by the COUNTY prior to this AGREEMENT.

2.5 INMATE INFORMATION. The SHERIFF will provide, as needed, information pertaining to inmates that ACH and the SHERIFF mutually identify as reasonable and necessary for ACH to adequately perform its obligations to the SHERIFF and the COUNTY. Additionally, during this AGREEMENT period, and for a reasonable time thereafter, the SHERIFF will provide ACH, at ACH’s request, the SHERIFF’s records relating to the provision of healthcare services to inmates as may be reasonably requested by ACH in connection with an investigation of, or defense of, any claim by a third party related to ACH’s conduct. As ACH may reasonably request, and consistent with applicable state and federal laws and the foregoing provision, the SHERIFF will also make available to ACH such records as are maintained by the SHERIFF, hospitals, and other off-site healthcare providers involved in the care or treatment of inmates (to the extent the SHERIFF has any control over those records). Any such information provided by the SHERIFF to ACH that the SHERIFF considers confidential will be kept confidential by ACH and will not, except as may be required by law, be distributed to any third party without the prior written approval of the SHERIFF. Notwithstanding any provision of this AGREEMENT to the contrary, the SHERIFF’s internal affairs investigative records will not be required to be provided to ACH or any other person or entity (except as may be required by law).

2.6 MEDICAL EQUIPMENT (DURABLE). Medical equipment remains the responsibility of the SHERIFF. At the SHERIFF’s request, ACH may assist the SHERIFF in securing the equipment at cost-effective pricing. Typical durable medical equipment expected in a medical unit would be: exam table, exam stool, ophthalmic / otoscope, peak flow meter, digital thermometer, stethoscope, X-large and large blood pressure cuffs, emesis basin, CPR AmbuBag (adult & 2-way mask), refrigerator (small), and scales. Upon termination of this AGREEMENT, the medical equipment will be in good working order, with allowances made for reasonable wear and tear.

2.7 MEDICAL SUPPLIES (DISPOSABLE). The COUNTY will pay for and provide disposable medical supplies intended for one-time use, not to include durable or reusable medical supplies. Typical disposable medical supplies expected in a medical unit would be tongue blades, Band-Aids, gauze pads, medical tape, sterile water, saline, pregnancy tests, blood sugar strips, peak flow mouth pieces, O2 tubing, urine test strips, syringes, gloves, med cups, lancets, ammonia ampules, cotton-tip applicators, and alcohol preps.

2.8 NON-MEDICAL CARE OF INMATES. The COUNTY will provide and pay for all other personal (non-medical) needs of the inmates while in the FACILITY, including, but not limited to: daily housekeeping services; dietary
services, including special supplements, liquid diets, or other dietary needs; building maintenance services; personal hygiene supplies and services; clothing; and linen supplies.

2.9 OFFICE EQUIPMENT (DURABLE). The SHERIFF will provide use of COUNTY-owned office equipment and all necessary utilities in place at the FACILITY’s healthcare unit. Typical office equipment expected in a medical unit would be a locking file (recommended four-drawer); paper punch; staple remover; stapler; cabinet for storing medical supplies such as Band-Aids, gauze, etc.; computer; fax machine; copier / printer; and toner. Upon termination of this AGREEMENT, the office equipment will be in good working order, with allowances made for reasonable wear and tear.

2.10 OFFICE SUPPLIES (DISPOSABLE). The COUNTY will provide disposable office supplies, such as medical charts, paper, pens, staples, and Post-It notes which are required for the provision of inmate healthcare services.

2.11 SECURITY. The SHERIFF will maintain responsibility for the physical security of the FACILITY and the continuing security of the inmates. ACH and the SHERIFF understand that adequate security services are necessary for the safety of the agents, employees, and subcontractors of ACH, as well as for the security of inmates and FACILITY staff, consistent with the correctional setting. The SHERIFF will provide security sufficient to enable ACH and its personnel to safely provide the healthcare services described in this AGREEMENT. The SHERIFF will screen ACH’s proposed staff to ensure that they will not constitute a security risk. The SHERIFF will have final approval of ACH’s employees in regards to security/background clearance.

ARTICLE 3: COMPENSATION/ADJUSTMENTS

3.1 ANNUAL AMOUNT/MONTHLY PAYMENTS. The annualized amount to be paid by the COUNTY to ACH under this AGREEMENT is to be one hundred sixty eight thousand nine hundred thirteen dollars and twenty-eight cents ($168,913.28). The COUNTY will make monthly payments of fourteen thousand seventy-six dollars and eleven cents ($14,076.11), which is equal to 1/12 of the annualized amount, during the term of this AGREEMENT. ACH will bill the COUNTY approximately thirty (30) days prior to the month in which services are to be rendered. Payment shall be made in accordance with the Illinois Local Government Prompt Payment Act, as amended (50 ILCS 505/1 et seq.)

3.1.1 ANNUAL AMOUNT UPON RENEWAL. Upon the annual anniversary date of this AGREEMENT, the annualized amount of increase for compensation will be the 12-Month Consumer Price Index (CPI) for medical care or zero percent (0%), whichever is higher. The CPI will be calculated from the most recent CPI data as published by the Bureau of Labor Statistics.

3.2 QUARTERLY ADJUSTMENTS. Account reconciliation will be completed for variances in the ADP and other expenses, such as equipment or services purchased by ACH (with prior approval of the COUNTY) on behalf of the COUNTY.

3.2.1 AVERAGE DAILY POPULATION (ADP). ADP for a given quarter will be determined from the FACILITY census records. For billing purposes, the ADP will be 140. Inmates who are not presently incarcerated in the FACILITY (i.e., persons on electronic monitoring or probation, or who are hospitalized, or in halfway housing or early release housing) should not be counted in the ADP reported to ACH by the COUNTY. To determine whether a person is counted for the ADP, SHERIFF will use the A.M. head count for the measure of inmates in custody. The ADP reported to ACH should only include those inmates presently incarcerated in the FACILITY.

3.2.2 PER DIEM.

3.2.2.1 GENERAL. Per diem rate(s) are intended to cover additional costs in those instances where minor, short-term changes in the inmate population results in the higher utilization of routine supplies and services. The per diem is not intended to provide for any additional fixed costs, such as new fixed staffing positions that might prove necessary if the inmate population grows significantly and is sustained. In such cases, ACH reserves the right to negotiate for an
increase to its staffing and its contract price in order to continue to provide services to the increased number of inmates and maintain the standard of care. ACH will request the monthly count for these separate populations on a quarterly basis. The per diem rate(s) may be adjusted annually following negotiation with the COUNTY and its prior written approval.

3.2.2.2 INMATE ADP. When the ADP exceeds or falls below the contracted rate in any calendar quarter, the compensation variance will be figured on the average number of inmates above or below the contracted ADP for that quarter multiplied by the per diem rate of $0.11 per inmate per day. (Example: If the ADP for a quarter is 10 above the contracted ADP, additional compensation due will be calculated as follows: 10 x $0.11 x 91). When ADP falls below the contracted rate, then the same formula utilized above will apply to determine the credit or reimbursement due to the COUNTY.

3.2.3 ARREARS. Any contract amount in arrears as well as any credit or reimbursement due to the COUNTY will be settled through reconciliation and adjusted accordingly. Adjustments will be made to the first monthly invoice prepared after reconciliation between ACH and the COUNTY. Payment of the adjusted amount will be due upon receipt of said invoice.

ARTICLE 4:
TERM AND TERMINATION

4.1 TERM. The term of this AGREEMENT will begin on ______________ at 12:01 A.M. and will continue in full force and effect until ______________ at 11:59 P.M., unless earlier terminated, extended, or renewed pursuant to this AGREEMENT. This AGREEMENT may be renewed by written notice from the COUNTY at least thirty (30) days prior to the expiration date for a period not to exceed one (1) year per renewal period..

4.2 TERMINATION.

4.2.1 TERMINATION FOR LACK OF APPROPRIATIONS. It is understood and agreed that this AGREEMENT will be subject to annual appropriations by the COUNTY. If funds are not appropriated for this AGREEMENT, then upon exhaustion of such funding, the COUNTY and the SHERIFF will be entitled to immediately terminate this AGREEMENT without penalty or liability. Recognizing that such termination may entail substantial costs for ACH, the COUNTY and the SHERIFF will act in good faith and make every effort to give ACH reasonable advance notice of any potential problem with funding or appropriations. The COUNTY agrees to pay for services rendered up to the point of termination.

4.2.2 30-DAY OUT CLAUSE. Notwithstanding anything to the contrary contained in this AGREEMENT, the COUNTY, the SHERIFF, or ACH may, without prejudice to any other rights they may have, terminate this AGREEMENT by giving thirty (30) days’ advance written notice to the other party. If thirty (30) days’ advance written notice is provided, termination will be without penalty to any of the parties. If the SHERIFF or the COUNTY gives ACH less than thirty (30) days’ advance written notice, the COUNTY agrees to pay to ACH a penalty equal to one (1) month’s contract price as an early termination fee.

ARTICLE 5:
GENERAL TERMS AND CONDITIONS

5.1 ADVICE OF COUNSEL. Each of the parties (a) has had the opportunity to seek counsel, legal or otherwise, prior to entering into this AGREEMENT, (b) is freely entering into this AGREEMENT of his/her or its own volition, and (c) understands and agrees that this AGREEMENT will be construed as if drafted by both parties and not by one party solely.

5.2 VENUE; GOVERNING LAW. This Agreement shall be construed in accordance with the law and Constitution of the State of Illinois. The parties agree that the venue for any legal proceedings between them shall be the Circuit Court of Kendall County, Illinois, Twenty-Third Judicial Circuit, State of Illinois (without reference to conflicts of laws principles). No punitive damages may be granted.
5.3 ASSIGNMENT. ACH may not assign this AGREEMENT or any rights hereunder in whole or in part. Subject to the foregoing, this AGREEMENT will inure to the benefit of and be binding upon each of the heirs, permitted assigns, and successors of the respective parties. Any assignment in violation of this section will be null and void.

5.4 ATTORNEY FEES AND COSTS. In any action with respect to this Agreement, the Parties are free to pursue any legal remedies at law or in equity. The prevailing party by 75% or more of damages sought, in any action brought pursuant to this Agreement, shall be entitled to reasonable attorneys' fees and court costs arising out of any action or claim to enforce the provisions of this Agreement. In awarding attorney fees, the Court shall not be bound by any Court fee schedule, but shall, in the interest of justice, award the full amount of costs, expenses, and attorney fees paid or incurred in good faith.

5.5 AUTHORITY. The persons signing below represent that they have the right and authority to execute this AGREEMENT for their respective government and corporate entities and no further approvals are necessary to create a binding AGREEMENT.

5.6 COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS. The SHERIFF, the COUNTY, and ACH agree that no party will require performance of any ACH or COUNTY employee, agent or independent contractor that would violate federal, state and/or local laws, ordinances, rules and/or regulations.

5.7 COUNTERPARTS; HEADINGS. This AGREEMENT may be executed in counterparts, each of which will be an original and all of which will constitute one AGREEMENT. The headings contained in this AGREEMENT are for reference purposes only and will not affect in any way the meaning or interpretation of this AGREEMENT. The terms “inmate” and “detainee” may be used interchangeably throughout this AGREEMENT and will not affect in any way the meaning or interpretation of this AGREEMENT.

5.8 ENTIRE AGREEMENT; AMENDMENT. This AGREEMENT represents the entire understanding of the parties with respect to the subject matter hereof, supersedes and cancels all prior agreements, understandings, arrangements, or representations between the parties with respect to such subject matter, and may only be amended by written agreement of both parties. However, ACH understands that this Agreement has been entered into in compliance with the Kendall County Sheriff's Office's “Request for Proposals to Provide Inmate Medical Services” which was closed on October 30, 2015 and as such, any terms and conditions contained within that RFP must be adhered to. To the extent there is a conflict between the RFP and the Subject Agreement, the terms of the RFP shall dictate. The parties agree that their performances hereunder do not obligate either party to enter into any further agreement or business arrangement.

5.9 EQUAL EMPLOYMENT OPPORTUNITY. It is the policy of ACH to provide equal employment opportunities to all employees and applicants for employment without regard to race, color, religion, sex, national origin, disability, age, or genetics. In addition, it is the policy of ACH to comply with applicable state and local laws governing nondiscrimination in employment in every location in which ACH has facilities and employees. This policy applies to all terms and conditions of employment including, but not limited to, recruitment, hiring, placement, promotion, termination, layoff, recall, transfer, leaves of absence, benefit plans, all forms of compensation, and training. In accordance with the above, ACH, its officers, employees, and agents agree not to commit unlawful discrimination and agree to comply with all applicable provisions of the Illinois Human Rights Act, Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act, Section 504 of the Federal Rehabilitation Act, and all applicable rules and regulations.

5.10 EXCUSED PERFORMANCE. In case performance of any terms of parts hereof will be delayed or prevented because of compliance with any law, decree, or order of any governmental agency or authority of local, state, or federal governments or because of riots, public disturbances, lockouts, differences with workers, fires, floods, Acts of God, or any other reason whatsoever which is not within the control of the parties whose performance is interfered with and which, by the exercise of reasonable diligence, said party is unable to prevent, the party so suffering may at its option, suspend, without liability, the performance of its obligations hereunder during the period such cause continues. A party claiming an excused performance event ("the claiming party") shall promptly notify the other party in writing, describing the nature and estimated duration of the claiming party's
inability to perform due to the event. The cause of such inability to perform will be remedied by the claiming party with all reasonable dispatch.

5.11 FURTHER ACTS. The parties agree to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this AGREEMENT.

5.12 GROUP PURCHASING. The COUNTY authorizes ACH to sign up the FACILITY as a ship-to site under ACH’s group purchasing plan.

5.13 HOLD HARMLESS AND INDEMNIFY.

5.13.1 ACH will hold harmless and indemnify the COUNTY and SHERIFF (together with their respective employees, officials and officers, including their past, present, and future board members and elected officials) against any claims, loss or damage, including reasonable attorneys’ fees and other costs of litigation, solely caused or necessitated by the negligent, reckless, intentional, or deliberately indifferent conduct of ACH or its employees, which is related to medical treatment or care provided by ACH or to the extent such Claims result from ACH’s performance or failure to perform its obligations under this contract. With respect to any claim for indemnification, the COUNTY will (i) give written notice thereof to ACH within a reasonable period following the event or occurrence as to which the right to indemnification is or may be asserted and (ii) allow ACH (including the employees, agents, and counsel) reasonable access to any of its employees, property, and records for the purposes of conducting an investigation of such claim and for the purpose of obtaining statements, photographs, and taking such other steps as may be necessary to preserve evidence of the occurrence on which the claim is based. If the COUNTY denies ACH reasonable access as set forth in writing, after written request therefore, the COUNTY will assume sole responsibility for the claim for which indemnification is sought and will not be entitled to indemnity. Nothing contained herein shall be construed as prohibiting the COUNTY and SHERIFF, its officials, directors, officers, agents and employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. Pursuant to Illinois law, 55 ILCS 5/3-9005, any attorney representing the COUNTY, under this paragraph, shall be approved by the Kendall County State’s Attorney and shall be appointed a Special Assistant State’s Attorney. The COUNTY and SHERIFF’S participation in its defense shall not remove ACH’S duty to indemnify, defend, and hold the COUNTY and SHERIFF harmless, as set forth above. The COUNTY and SHERIFF do not waive its defenses or immunities under the Local Government and Governmental Employees Tort Immunity Act (745 ILCS 1/1 et seq.) or any other law by reason of indemnification or insurance.

5.13.2 To the extent allowable by law, the COUNTY will hold harmless ACH (together with its respective employees) against any loss or damage, including reasonable attorneys’ fees and other costs of litigation, solely caused or necessitated by the negligent, reckless, intentional, or deliberately indifferent conduct of the COUNTY or its employees, which is related to medical treatment or care provided by ACH.

5.14 INDEPENDENT CONTRACTORS. In order to discharge its obligations hereunder, ACH may engage certain healthcare professionals as independent contractors rather than employees.

5.15 INSURANCE.

5.15.1 ACH will maintain commercial automobile liability insurance with minimum limits of One Million Dollars ($1,000,000) per occurrence, covering owned, hired, and non-owned automobiles.

5.15.2 ACH will maintain one or more commercial general liability insurance policies with minimum limits of bodily injury and/or property damage: One Million Dollars ($1,000,000) each occurrence and an annual policy aggregate of Two Million Dollars ($2,000,000).

5.15.3 ACH will maintain professional liability insurance, including civil rights liability, with minimum limits of One Million Dollars ($1,000,000) each occurrence, Three Million Dollars ($3,000,000) annual aggregate.
ACH will maintain workers’ compensation and employer’s liability insurance covering its employees while on the FACILITY’s premises that complies with the statutory minimum requirements in the applicable state(s).

ADDITIONAL INSUREDS. ACH will name the SHERIFF and the COUNTY as an additional insured for the sole negligence of ACH under the commercial automobile, commercial general and professional liability portions of insurance and provide the COUNTY with a Certificate of Insurance specific to correctional facilities evidencing the terms of the insurance coverage and policy limits.

NEW LEGISLATION. Should new legislation require substantial new medical treatment, the COUNTY will pay for it, unless specifically agreed upon between ACH and the COUNTY. Any such costs for substantial new medical treatment shall be negotiated between the parties and agreed to prior to the implementation of such treatment and/or invoicing for same.

NO GRANT OF RIGHTS. Each of the parties understands and agrees that no grant or license of a party’s rights in any patent, trademark, trade secret, copyright and/or other intellectual property right is made hereby, expressly or by implication.

NO RELATIONSHIP OR AUTHORITY. The parties agree that ACH will at all times be an independent contractor in the performance of the services hereunder, and that nothing in this AGREEMENT will be construed as or have the effect of constituting any relationship of employer/employee, partnership, or joint venture between the COUNTY and ACH. ACH does not have the power or authority to bind the COUNTY or to assume or create any obligation or responsibility on the COUNTY’s behalf or in the COUNTY’s name, except as otherwise explicitly detailed in this AGREEMENT, and ACH will not represent to any person or entity that ACH has such power or authority. ACH will not act as an agent nor will ACH be deemed to be an employee of the COUNTY for the purposes of any employee benefit program. ACH understands and agrees that ACH is solely responsible for paying all wages, benefits and any other compensation due and owing to ACH’s officers, employees, and agents for the performance of services set forth in the Agreement. ACH further understands and agrees that ACH is solely responsible for making all required payroll deductions and other tax and wage withholdings pursuant to state and federal law for ACH’s officers, employees and/or agents who perform services as set forth in the Agreement. ACH also acknowledges its obligation to obtain appropriate insurance coverage for the benefit of ACH, ACH’s officers, employees and agents and agrees that Kendall County is not responsible for providing any insurance coverage for the benefit of ACH, ACH’s officers, employees and agents.

NOTICE. Any notice required or permitted to be given hereunder will be in writing and delivered by overnight courier (e.g., FedEx), or by facsimile (receipt confirmed), to the respective addresses in this section or such other addresses as may be designated in writing by the applicable party from time to time, and will be deemed to have been given when sent. To the SHERIFF and/or the COUNTY: Kendall County Jail, 1102 Cornell Lane, Yorkville, IL 60560; email: jgillespie@co.kendall.il.us. With copy to Kendall County State’s Attorney, 807 John Street, Yorkville, Illinois, 60560, fax (630) 553-4204. To ACH: Advanced Correctional Healthcare, Inc., Attn: Contract Attorney, 3922 West Baring Trace, Peoria, IL 61615; facsimile: 309.214.9977; email: jkolberg@advancedch.com.

OTHER CONTRACTS AND THIRD PARTY BENEFICIARIES. The parties acknowledge that ACH is not bound by or aware of any other existing contracts to which either the SHERIFF or the COUNTY are a party and which relate to the provision of healthcare to inmates at the FACILITY. The parties agree that they have not entered into this AGREEMENT for the benefit of any third person(s) and it is their express intention that this AGREEMENT is intended to be for their respective benefits only and not for the benefits of others who might otherwise be deemed to constitute third party beneficiaries thereof.

SEVERABILITY. If any provision of this AGREEMENT, or any portion thereof, is found to be invalid, unlawful, or unenforceable to any extent, such provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this AGREEMENT will continue unaffected in full force and effect. The parties will negotiate in good faith an enforceable substitute provision for such invalid provision that most nearly achieves the same intent and economic effect.
5.22 SUBCONTRACTING. In order to discharge its obligations hereunder, ACH may subcontract services including, but not limited to, pharmaceutical services, biomedical waste disposal, and mobile services after first complying with the obligations contained within Section 5.29 below, notifying the Kendall County Sheriff's Office and obtaining prior written consent.

5.23 USE BY OTHER PUBLIC AGENCIES (PIGGYBACK). ACH agrees to allow the COUNTY to authorize other public agencies in the COUNTY to purchase the proposed items by issuance of a purchase order at the same terms and conditions as this AGREEMENT, and to make payments directly to ACH during the period of time that this AGREEMENT is in effect.

5.24 USE OF NAME. It is understood and agreed by ACH that ACH's name may appear in certain COUNTY disclosure documents, including those required by law and in other regulatory and administrative filings in the ordinary course of the COUNTY's operations.

5.25 WAIVER. Any waiver of the provisions of this AGREEMENT or of a party’s rights or remedies under this AGREEMENT must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions hereof or its rights or remedies at any time, will not be construed as a waiver of such party’s rights or remedies hereunder and will not in any way affect the validity of this AGREEMENT or prejudice such party’s right to take subsequent action.

5.26 WARRANTY. All services to be undertaken by ACH shall be carried out by competent and properly trained personnel of ACH to the satisfaction of Kendall County.

5.27 CERTIFICATION. ACH certifies that ACH, its parent companies, subsidiaries, and affiliates are not barred from entering into this Agreement as a result of a violation of either 720 ILCS 5/33E-3 or 5/33E-4 (bid rigging or bid rotating) or as a result of a violation of 820 ILCS 130/1 et seq. (the Illinois Prevailing Wage Act).

5.28 CONFLICT OF INTEREST. Both parties affirm no Kendall County officer or elected official has a direct or indirect pecuniary interest in ACH or this Agreement, or, if any Kendall County officer or elected official does have a direct or indirect pecuniary interest in ACH or this Agreement, that interest, and the procedure followed to effectuate this Agreement has and will comply with 50 ILCS 105/3.

5.29 BACKGROUND CHECKS/SECURITY. ACH shall exercise general and overall control of its officers, employees and/or agents. ACH agrees that no one shall be assigned to perform work at Kendall County’s facilities on behalf of ACH, ACH’s consultants, subcontractors and their respective officers, employees, agents and assigns unless ACH has allowed Kendall County to first complete a criminal background investigation for each individual to be performing work at the site. In the event that the individual’s criminal background investigation reveals that the individual has a conviction record that has not been sealed, expunged or impounded under Section 5.2 of the Criminal Identification Act, ACH agrees that the individual shall not be assigned to perform work on or at Kendall County’s facilities absent prior written consent from the Kendall County Sheriff. The Kendall County Sheriff, at any time, for any reason and in the Kendall County Sheriff’s sole discretion, may require ACH and/or ACH’s consultants, and/or subcontractors to remove any individual from performing any further work under this Agreement.

ACH understands, and agrees, that any person who takes into, or out of, or attempts to take into, or out of, a correctional facility, or the grounds belonging to or adjacent to the correctional facility, any item not specifically authorized by the correctional facility, such as contraband, shall be prosecuted. All persons, including employees and visitors, entering upon such premises are subject to routine searches of their persons, vehicles, property and/or packages. Contraband shall include, but not be limited to, any dangerous drug, narcotic drug, intoxicating liquor, deadly weapon, dangerous instrument, ammunition, explosive or any other article whose use or possession of would endanger the safety, security or preservation of order in a correctional facility or any persons therein. Contraband shall not include those prescriptions and over the counter medications that are necessary for the care of inmates as is otherwise directed within this Agreement. ACH further agrees that it shall notify correctional facility personnel of the loss or breakage of any equipment while within the facility.
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the date and year written below.

ADVANCED CORRECTIONAL HEALTHCARE, INC.

Sherri Miller
President & Chief Operations Officer

CountY OF KENDALL, ILLINOIS

Kendall County Board Chairman

Kendall County Clerk

Kendall County Sheriff

Date

Date

Date

Please complete and return via fax to 309.214.9977 or email to jkolberg@advancedch.com.