



Isabella County Sheriff's Office

Sheriff Michael Main • Undersheriff Tom Burns

207 Court Street Mt. Pleasant, MI 48858
(989) 772-5911 • Fax (989) 773-2739 • Direct Fax (989) 317-4911

Date: Thursday, November 09, 2017
To: Margaret McAvoy
From: Sheriff Michael Main
Re: Wayne County Inmate Contract

BACKGROUND

The ISCO has had an inmate housing contract with Wayne County for several years. The contract allows the Isabella County Jail to house the overflow inmates from Wayne County at daily housing rate of \$40.00. In the last fiscal year Wayne County stopped sending inmates around the month of May, as they were low on inmate's numbers and could house their own. At the same time the contract expired as well. ICSO and Wayne County have been working on a new contract through each counties legal services. At this time the contract language has been agreed upon by both parties and the legal counsel for the counties.

FINANCIAL IMPACT

In the last fiscal year, ICSO generated \$166,000.00 for housing inmates from Wayne County up until May. The fiscal year prior the revenue was \$315,000.00 for the Isabella County Jail

OTHER CONSIDERATIONS

The revenue generated for the daily housing rate does not include the income received from commissary sales.

RECOMMENDATION

Request the BOC review and support the new contract with Wayne County, and allow the BOC chair to sign the contract.

ATTACHMENTS

- 1) Wayne County Contract

Isabella County Sheriff

Michael Main

Requests Due	CJ Committee	Board Meeting	Requests Due	CJ Committee	Board Meeting	Requests Due	CJ Committee	Board Meeting
01/04/17	01/10/17	01/17/17	05/03/17	05/09/17	05/16/17	09/06/17	09/12/17	10/03/17
01/25/17	01/31/17	02/07/17	05/24/17	05/30/17	06/06/17	09/20/17	09/26/17	10/17/17
02/08/17	02/14/17	02/21/17	06/07/17	06/13/17	06/20/17	10/04/17	10/10/17	11/07/17
02/22/17	02/28/17	03/07/17	06/21/17	06/27/17	07/18/17	10/25/17	10/31/17	11/21/17
03/08/17	03/14/17	03/21/17	07/05/17	07/11/17	08/01/17	11/08/17	11/14/17	12/05/17
03/22/17	03/28/17	04/04/17	07/19/17	07/25/17	08/15/17	11/22/17	11/28/17	12/19/17
04/05/17	04/11/17	04/18/17	08/02/17	08/08/17	09/05/17	12/06/17	12/12/17	
04/19/17	04/25/17	05/02/17	08/23/17	08/29/17	09/19/17			

INTERGOVERNMENTAL AGREEMENT

BETWEEN THE

CHARTER COUNTY OF WAYNE
THROUGH THE OFFICE OF THE SHERIFF

AND THE

COUNTY OF ISABELLA
ACTING ON BEHALF OF THE SHERIFF'S OFFICE OF ISABELLA COUNTY

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THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is between the **Charter County of Wayne, Michigan**, a body corporate and a Michigan charter county ("Wayne County"), and the **COUNTY OF ISABELLA**, a municipal corporation and political subdivision of the State of Michigan, (hereinafter referred to as "Isabella County"), acting on behalf of the **SHERIFF OF ISABELLA COUNTY**, who has offices at 207 North Court St# A, Mt. Pleasant, MI 48858 ("Isabella Sheriff"); collectively referred to as the Parties (the "Parties").

1. RECITALS

- 1.1** Isabella County through the Office of the Isabella County Sheriff (the "Isabella Sheriff") is legally authorized to operate the Isabella County Jails (MCLA §§51.75, 801. 1). The Isabella Sheriff is experienced, qualified and staffed to provide detention services to jail inmates including the management and administrative services associated with the detention of jail inmates and, in fact, currently performs those duties consistent with Michigan law. The Isabella Sheriff has experience in managing diverse prisoner populations. The Isabella Sheriff currently has excess jail capacity. The Isabella Sheriff is authorized to and may accept custody of, and lodge, convicted inmates in the county jail.
- 1.2** Wayne County through its Office of the Sheriff currently houses Detainees. Wayne County has requested that Isabella County accept custody of and lodge certain Detainees on Wayne County's behalf. The Parties wish to establish terms under which Isabella County will accept custody of and lodge such Detainees.
- 1.3** The Parties enter this Agreement pursuant to federal and state law, including Section 5 of Article III of the Michigan Constitution of 1963, and the Intergovernmental Contacts Between Municipal Corporations Act, being Michigan Compiled Laws (MCL) §124.1 et seq.

2. DEFINED TERMS

The following terms have the following definitions in this Agreement:

Cap: The maximum number of Transferred Detainees that the Isabella Sheriff agrees to house at any particular time. The Cap is initially set at up to 20 Detainees, but the Cap may be amended from time to time by agreement of the Parties. However, it is expressly understood and agreed that the Isabella Sheriff shall have the unilateral authority to accept or refuse inmates on the basis of available bed space.

Detainee: A person under the formal custody of the Wayne County Sheriff

Jail: The Isabella County Jail located at 207 North Court St, Mt. Pleasant, MI 48858

Transferred Detainee: A Detainee who has been transferred to the custody of the Isabella Sheriff pursuant to this Agreement.

Wayne County Code: The complete codification of the general and permanent ordinances of the County of Wayne, Michigan, copies of which can be found at the Purchasing Office, 500 Griswold 15th Floor, Detroit, MI 48226 or at municode.com.

3. TERM OF AGREEMENT

This Agreement shall begin when approved by Wayne County Commission and Isabella County and signed by the Wayne County Chief Executive Officer and the Chairperson of the Isabella County Board of Commissioners and the Isabella Sheriff. ("Effective Date"). The Agreement shall continue for two years from the Effective Date, unless terminated earlier under the provisions of this Agreement.

4. TRANSFER AND ACCEPTANCE OF DETAINEES

The Wayne County Sheriff shall determine the number of Detainees to transfer to the custody of the Isabella Sheriff, subject to the Cap. However, it is expressly understood and agreed that the Isabella Sheriff shall have the unilateral authority to accept or refuse inmates on the basis of available bed space. Isabella County and the Isabella Sheriff otherwise agree to accept all Detainees transferred to Isabella County unless one or more of the following conditions exists:

- A. The Cap has been met or exceeded;
- B. The Isabella County Jail is at or over its rated capacity;
- C. The Isabella County Jail is or becomes uninhabitable due to riot, natural disaster, fire, overcrowding, or other factors beyond the Isabella Sheriff's control.
- D. A Transferred Detainee cannot demonstrate that he/she is oriented to time, place and circumstances and/or is not capable of executing the necessary forms indicating whether he/she has any physical injury requiring attention or mental health problems that need to be addressed.
- E. A Transferred Detainee appears to be in need of acute or urgent medical care;
- F. A Transferred Detainee demonstrates a serious behavioral problem.
- G. Wayne County fails to provide the required paperwork to the Isabella Sheriff;
- H. Based upon the opinion of the Isabella Sheriff, it is not in Isabella County's best interest to accept the Detainee; said decision shall be memorialized in writing.

5. LODGING OF TRANSFERRED DETAINEES AND COMPLIANCE WITH LAW.

Transferred Detainees shall be kept in the Sheriff's custody, in the Jail. The Sheriff shall follow all laws and regulations relating to the custody, care, supervision and protection of jail inmates, including but not limited to Michigan Administrative Rules for Jails and Lock-Ups (R791.701-R791.738). To the extent the Isabella County Jail's configuration permits, Isabella County shall comply with the Prison Rape Elimination Act (Pub.L. 108-79, Sept. 4, 2003; 42 USCA §15601) and the PREA standards in 28 CFR Part 115). The Sheriff shall provide LEIN, phone and fax capabilities 24-hours per day, 7-days per week to enable Wayne County to contact the Sheriff without delay on status changes of any Transferred Detainee for the duration of this Agreement. Among other things, the Sheriff undertakes the following obligations with regard to the Transferred Inmates:

- A. Intake- physical and mental health status review and preliminary assessment;
- B. Mandated state testing;
- C. Voluntary testing (e.g. HIV);
- D. Lodging;
- E. Food;
- F. Security;
- G. Additional review for warrants, positive identification, LEIN;
- H. Medical, mental health, and dental care, as set out herein.

All references to the Sheriff in Section 5 refer to the Isabella County Sheriff.

6. INSPECTION.

The Wayne County Sheriff shall have the right to inspect the Jail during all regular hours of operation.

7. TRANSPORTATION AND RETURN OF TRANSFERRED DETAINEES.

The Wayne County Sheriff shall transport all prisoners to be housed at the Jail to the Jail, and shall turn over the Transferred Detainees to the custody of the Isabella Sheriff or his designee. The Wayne County Sheriff may require that a Transferred Detainee be returned to Wayne County at any time, and must return a Transferred Detainee to Wayne County on or before the Transferred Detainee's release date. Wayne County shall transport all Transferred Detainees being returned to Wayne County at its expense. The Wayne County Sheriff shall furnish the Isabella Sheriff with an appropriate transfer order as a legal basis for holding a prisoner at the Isabella County Jail on behalf of Wayne County. Upon return of a Transferred Detainee to Wayne County, the Isabella Sheriff shall provide the Wayne County Sheriff with a copy of the Transferred Detainee's medical records.

8. MEDICAL, DENTAL AND MENTAL HEALTH SERVICES

Wayne County shall not transfer to the Jail Detainees with known acute medical, surgical, or mental health conditions, or Detainees with known serious behavioral problems. The Isabella Sheriff reserves the right to refuse and/or request the return of any prisoner to Wayne County on the basis of a newly diagnosed acute medical or surgical problem, serious mental health problem or serious behavioral problem.

The Isabella Sheriff shall provide Transferred Detainees with the same level of medical, mental health, and dental services inside the Isabella County Jail as are provided to Isabella County prisoners, at Isabella County's cost. Wayne County shall pay for all medical, dental and mental health services performed outside the Isabella County Jail. Prior to Transferred Detainees receiving such outside services, the Isabella Sheriff shall notify and receive authorization from Wayne County Jail Medical Services in non-emergent cases. In the event that emergency medical, dental or mental health services are required, the Isabella Sheriff may obtain such services immediately, without prior authorization, and Wayne County shall pay for such outside services.

9. DEATH OF TRANSFERRED DETAINEE.

If a Transferred Detainee dies while in the custody of the Isabella Sheriff, the Isabella Sheriff shall immediately notify the Wayne County Sheriff, and shall provide the Wayne County Sheriff with copies of all investigative and/or medical reports concerning the cause or circumstances of death. If the cause of death of the Transferred Detainee is natural, then Wayne County shall be responsible for the disposition of the Transferred Detainee's remains and any costs thereof. If the death of the Transferred Inmate is from unnatural causes, then Wayne County shall be responsible for all costs relating to the death of the Transferred Detainee.

10. PER DIEM

Except as set out in paragraphs 11 and 12, below, in consideration for Programs and Services set forth in this Agreement, Wayne County shall pay Isabella County a per diem rate of \$ 40.00 per day for each Transferred Detainee.

11. BILLING, RECONCILIATION, AND PAYMENT

Each month, Isabella County shall submit an invoice, and an itemized list of outside medical expenses, to Wayne County for payment. Wayne County shall process such invoice in accordance with its procedure for payment for accounts. In the event that any invoice is disputed, the Parties shall work together in good faith to promptly resolve the dispute.

12. COUNTY JAIL REIMBURSEMENT PROGRAM

Where Isabella County is eligible for reimbursement from the State of Michigan under the County Jail Reimbursement Program (MCL 769.35) for housing a Transferred Detainee(s), Wayne County shall on behalf of Isabella County submit an invoice to the State of Michigan for reimbursement to Isabella County. Where Isabella County's reimbursement from the State of Michigan under the Jail Reimbursement Program is the same as or exceeds the per diem rate charged to Wayne County, Wayne County shall not be required to make the per diem payment set out in Paragraph 10 of this Agreement to Isabella County for such Transferred Detainee(s), and Isabella County will not invoice Wayne County for housing said Transferred Detainee(s). Any excess per diem shall be used to offset any balance due from Wayne County. Nothing in this paragraph 12 shall modify Wayne County's obligation to pay for medical, dental or mental health care, as set out in paragraph 8 of this Agreement.

13. TERMINATION

The Parties agree that if there is a material breach of this Agreement by Wayne County or Isabella County prior to its expiration or termination, the party not in breach will have the right, but not the obligation, to terminate this Agreement upon 7 calendar days' prior written notice. Material breach is the breach of an essential component of this Agreement and includes, but is not limited to, the failure of either party to deliver the services identified in this Agreement or upon Wayne County's failure to make timely and complete payment as agreed upon.

Notice of termination for a material breach of this Agreement shall only occur by certified letter or email with a confirmed read receipt from authorized representatives of Wayne County or Isabella County identifying the material breach and providing no less than 7 calendar days' notice of termination from the date of the notice. Notice shall be sent to the individuals identified in the Notice section of this Agreement and shall identify the exact date of Termination. The parties agree to hold good faith discussions of the asserted material breach and the potential for a cure of such breach. The noticed party shall have the notice period to cure the breach, but if unable to cure the breach within that time the initial notice date shall control for termination. The non-breaching party, in its sole discretion, may extend the deadline for cure or termination.

Either Party may terminate this Agreement without cause upon thirty (30) calendar days prior written notice to the individuals identified in the Notice Section of this Agreement; the notice shall identify the exact date of Termination.

Isabella County acknowledges the right of the Wayne County Commission to terminate the Agreement by a two-thirds vote, under circumstances in which the County's Chief Executive Officer is required by the Michigan Standards of Conduct and Ethics Act, MCLA §5.341 et seq., to recuse himself or herself from acting on a contract, to terminate this agreement for (a) an egregious breach of the terms and conditions hereof or (b) a violation of the ethics and anti-kickback provisions of Article 12 of Chapter 120 of the Wayne County Code.

14. ADDITIONAL DATA TO BE FURNISHED BY WAYNE COUNTY

Wayne County shall take all reasonable steps to confirm the identity of Transferred Detainees and will accurately and completely present this information to the Isabella Sheriff.

Upon request by either Party, the Parties shall meet and confer to ensure that the appropriate protocols are developed and necessary documents are timely transferred. The Parties agree to schedule conferences at mutually convenient times with key administrative personnel to determine if additional information is required before admission to the Isabella County Jail.

15. RELATIONSHIP OF PARTIES

The parties are independent governmental entities. No liability or benefits, such as workers' compensation, pension rights, or insurance rights, arising out of, or related to a contract for hire or employer/employee relationship, accrues to either party or either party's agent, subcontractor or employee as a result of this Agreement. No relationship, other than that of independent contractor will be implied between the parties, or either party's agent, employee, or subcontractor.

16. INSURANCE

Isabella County, at its expense, must maintain during the term of this Contract the following insurance: Comprehensive General Liability Insurance, including Contractual Liability, with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate for both bodily injury and property damage. Workers' Compensation Insurance which meets Michigan statutory requirements and Employer's Liability Insurance with minimum limits of \$500,000. Business Automobile Liability (owned, non-owned, and leased vehicles) with minimum combined single limits of One Million Dollars (\$1,000,000). Excess or Umbrella Liability insurance with a minimum of \$15,000,000 per occurrence, \$15,000,000 aggregate which provides coverage over the commercial general liability, business automobile liability and employer's liability.

All such Insurance shall be from a carrier and be in a manner acceptable to Wayne County; all policies submitted by Isabella County will be provided to the Wayne County Risk Management Director or her designee for review and a determination of acceptability.

Isabella County's insurance policies must name Wayne County as an additional insured and loss payee, and must not be canceled or materially changed without at least 30 days prior notice from Isabella County to Wayne County for the duration of this Agreement.

Isabella County must submit certificates evidencing all required insurance to the Risk Management Division at the time Isabella County executes the Contract, and at least 15 days prior to the expiration dates of expiring policies.

17. LIABILITY

All liability, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities to be carried out pursuant to the obligations of Wayne County under this Agreement are the responsibility of Wayne County, and not the responsibility of Isabella County, if the liability, loss, or damage is caused by, or arises out of, the actions or failure to act on the part of Wayne County, its subcontractor, or its agent or employee.

All liability, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities to be carried out pursuant to the obligations of Isabella County under this Agreement are the responsibility of Isabella County and not the responsibility of Wayne County, if the liability, loss, or damage is caused by, or arises out of, the actions or failure to act on the part of Isabella County, its subcontractor, or its agent or employee.

If liability to third parties, loss, or damage arises as a result of activities conducted jointly by the parties in fulfillment of their responsibilities under this Agreement, the liability, loss, or damage must be borne by parties in relation to each party's responsibilities under these joint activities.

This Section 17 is not to be construed as a waiver of any governmental immunity by either party, its agencies, or employees, has as provided by statute or modified by court decisions.

18. NONDISCRIMINATION PRACTICES

Neither party shall engage in any discriminatory practices; both parties agree to abide by all applicable laws, rules and regulations protecting individual rights, including but not limited to the following:

- A. Titles VI and VII of the Civil Rights Act (42 U.S.C. "2000d et. seq.) and the United States Department of Justice Regulations (28 C.F.R. Part 42) issued pursuant to those Titles.
- B. The Age Discrimination Act of 1985 (42 U.S.C. '6101-07).
- C. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. '794).
- D. The Americans with Disabilities Act of 1990 (42 U.S.C. '12101 et. seq.) and its associated regulations.
- E. The Michigan Civil Rights Act (P.A. 1976 No. 453) and the Michigan Persons With Disabilities Civil Rights Act (P.A. 1976 No. 220).
- F. The Equal Contracting Opportunity Ordinance of the County of Wayne, No. 93-738.

19. NOTICES

All notices, consents, approvals, requests and other communications ("Notices") required or permitted under this Agreement must be given in writing and mailed by first-class mail and addressed as follows:

If to Isabella County:

Contact name
Sheriff Michael Main
207 North Court St
Mt. Pleasant, MI 48858
Telephone: (989) 772-5911
Email: isabellasheriff@isabellacounty.org

With a copy to:

Isabella County Corporation Counsel.

Cohl, Stoker & Toskey, P.C.
Attn: Bonnie Toskey
601 North Capitol Ave
Lansing, MI 48933
btoskey@cstmlaw.com

If to Wayne County:

Chief Robert Dunlap
Wayne County Sheriff's Office
3501 Hamtramck Drive
Hamtramck, MI 48211
313-875-7020
Telephone: 313-213-0482
Email: rdunlap@waynecounty.com

With a copy to:

Michael Turner, Chief of Staff
mturner6@waynecounty.com

All notices are deemed given on the day of mailing. Either party to this Agreement may change its address for the receipt of notices at any time by giving notice to the other as provided. Any notice

given by a party must be signed by an authorized representative of such party.

Termination notices, change of address notices, and other notices of a legal nature, are an exception and must be sent by registered or certified mail, postage prepaid, return receipt requested or via email with a confirmed read receipt.

20. JURISDICTION AND LAW

This Agreement, and all actions arising from it, is governed by, subject to, and construed according to the laws of the State of Michigan. Service of process at the address and in the manner, specified in this Agreement will be sufficient to put each party on notice of any claim against it

21. MISCELLANEOUS

- A. Nothing in this Agreement is intended to be nor shall be construed as a waiver of any governmental immunity by the Parties, their agencies, or employees.
- B. All the provisions of this Agreement are "covenants" and "conditions" as though the words specifically expressing or imparting covenants and conditions are used in each provision.
- C. The headings of the articles in this Agreement are for convenience only and must not be used to construe or interpret the scope or intent of this Agreement or in any way affect the Agreement.
- D. As used, the singular includes the plural, the plural includes the singular, and the use of any gender is applicable to all genders.
- E. Neither party shall be responsible for a force majeure event, but if such an event occurs or area wide emergency develops, Isabella County in its discretion, may take reasonable steps to address the situation including, but not limited to temporarily expanding the number of arrestees accepted under this agreement or if the situation requires it to, temporarily reducing the number of convicted inmates accepted into the Jail under the terms of this Agreement.
- F. This Agreement is not intended to create beneficial rights in any third party. This Agreement is entered into for the sole benefit of Isabella County and the County of Wayne. No third party rights are created by this Agreement.
- G. Neither party may assign this Agreement, or any part, without the other party's prior written approval. The parties acknowledge that the services provided by Isabella County, may require Isabella County to enter into sub-contractual agreements with health care providers or subcontractors.
- H. Each party must comply with and must require its employees to comply with all applicable laws and regulations.
- I. No amendment to this Agreement is effective unless it references this Agreement, is written, is signed and acknowledged by duly authorized representatives of both parties.
- J. Any failure by a party to insist upon the strict performance of any term of this Agreement or to exercise any term after a breach does not constitute a waiver of any breach of term. No waiver of any breach affects or alters this Agreement, but every term of this Agreement remains effective with respect to any other when existing or subsequent breach.
- K. If any provision of this Agreement or the application to any person or circumstance is, to any extent, judicially determined to be invalid or unenforceable, the remainder of the Agreement, or the application of the provision to persons or circumstances other than those as to which it is invalid or unenforceable, is not affected and is enforceable. No presumptions may be assumed regarding the drafter of this Agreement as both parties have an equal right and opportunity to contribute to or draft the document.
- L. This document contains the entire agreement between the parties and all prior negotiations and agreements are merged in this document. Neither party has made any representations except those expressly set forth. No rights or remedies are, or will be acquired by either party by implication or otherwise unless set forth herein.

22. AUTHORIZATIONS AND CAPACITY

Each party warrants that the person signing this Agreement is authorized to do so on behalf its principal and is empowered to bind its principal to this Agreement.

This Agreement is effective only upon review and approval by the Wayne County Commission, the Wayne County Chief Executive Officer or his designate, and the Isabella County Board of commissioners.

23. SIGNATURE

Wayne County and Isabella County, by their authorized officers and representatives have executed this Agreement as of the date indicated below.

COUNTY OF ISABELLA

By: _____
George Green, Chairman Date _____
County Board of Commissioners

By: _____
Michael Main Date _____
Its: Sheriff

APPROVED AS TO FORM
FOR COUNTY OF ISABELLA
COHL STOKER & TOSKEY, PC

BY: _____

COUNTY OF WAYNE

By: _____
Warren C. Evans Date _____
Its: County Executive

By: _____
Benny N. Napoleon, Date _____
Its: Sheriff

APPROVED AS TO FORM

 10/30/17
Department of Corporation Counsel