

**Fayette County Commissioners Agenda Meeting  
Tuesday, June 14, 2022 – 10 a.m.**

1. **Prayer**
2. **Pledge of Allegiance**
3. **Public Comment on Agenda Items:**
4. **Redevelopment Authority:**

Consider placing on the agenda adoption of a resolution which authorizes the Redevelopment Authority to make budget revisions to the County’s Fiscal Year 2019 and 2020 Community Development Block Grant (CDBG) Programs.

5. **Assessment Office:**

Consider placing on the agenda approving the following Veterans for real estate tax exemption as they have been approved by the Pennsylvania Department of Military Affairs having been qualified as 100% disabled veterans.

Austin L Etling 2261 Mill Rd	18-05-0010 Lower Tyrone Township	New Dawson PA	Eff 3/22/2022 15428
Betty Costantino 6 David St	02-06-0075 Brownsville Boro	New Brownsville PA	Eff 2/14/2022 15417-2007
Arthur L Shipley 9 Hill Top Rd	27-01-0058 Perry Township	New Wickhaven PA	Eff 4/22/2022 15492-1020
Thomas J Boyd 7600 National Pike	22-17-0136 Menallen Township		Renewal Uniontown PA 15401
Nancy L Lynch 201 Social St	28-08-0089 Perryopolis Boro	New Perryopolis PA	Eff 3/2/2022 15473-0593

6. **Fayette County Behavioral Health Administration:**

Consider placing on the agenda approval of the following agreements and modifications:

**Base Contract Agreements 2022-2023**

Accessabilities, Inc.	\$75,000	07/01/22-06/30/23
Allegheny Intermediate Unit	\$673,464	07/01/22-06/30/23
Arc of Fayette County	\$245,483	07/01/22-06/30/23
Fayette County Drug and Alcohol Commission	\$49,271	07/01/22-06/30/23
Neurological Therapy Specialists, Inc.	\$5,000	07/01/22-06/30/23
Western PA School for the Deaf	\$10,000	07/01/22-06/30/23

**Professional Service Agreements 2022-2023**

Connellsville Counseling & Psychological Services	\$500	07/01/22-06/30/23
Global Wordsmiths, LLC	\$1,000	07/01/22-06/30/23
John M. Purcell, Esquire	\$175/hr	07/01/22-06/30/23
Keli Reams	\$5,000	07/01/22-06/30/23

**Modification Agreement #1 2021-2022**

Goodwill of Southwestern PA	\$132,842	07/01/21-06/30/22
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**7. Building and Grounds:**

Consider placing on the agenda approval to re-advertise for bids to repair and replace windows at Searights Toll House.

Consider placing on the agenda approval to advertise bids for scrubbing, waxing and buffing floors in the courthouse.

**8. Children and Youth Services:**

Consider placing on the agenda approval of a **FY2022-23** Purchase of Service Agreement between the County of Fayette through Fayette County Children and Youth Services and **Adams and Adams, Attorneys at Law**, 55 E. Church Street, Suite 101, Uniontown, PA 15401 for four parking spaces in the lot of Adams and Adams. The parking spaces are numbers 24, 25, 26 and 27. The rate is Twenty-Five Dollars \$25.00 per parking spot for a total of One Hundred Dollars (\$100.00) per month.

Consider placing on the agenda approval of a **FY2022-23** Purchase of Service Agreement between the County of Fayette, through Fayette County Children & Youth Services and **Combustion Service & Equipment Company** of 2016 Babcock Blvd., Pittsburgh, PA, 15209 from June 1, 2022, through May 31, 2023, for HVAC mechanical equipment preventative maintenance at the CYS office building at a cost of \$2,040.00 annually.

Consider placing on the agenda approval of a **FY2022-23** Fayette County Children & Youth Services Agency **managed foster home board rates**, along with monthly & emergency clothing allowances. The County Board of Commissioners must take this action annually. The rates are as follows:

Emergency clothing allowance - \$250.00

Board/Day	Title IV-E	Non-IV-E	Clothing/Month
Ages 0-12	\$ 17.00	\$ 8.50	\$ 45.00
Ages 13-15	\$ 20.40	\$ 10.20	\$ 60.00
Ages 16-21	\$ 27.40	\$ 13.70	\$ 75.00
* Emergency rate	\$ 50.00	\$ 25.00	
** Specialized rate	\$ 40.00	\$ 20.00	

\*\*\*\* Westmoreland County Foster Home contracted through Fayette County. Rates are as follows or as additionally identified by the Westmoreland County Foster Home:

\$30.00/per day

\$35.00/per day

\$50.00/per day

\*\*\* Agreed upon per diem for foster parents who relocated out of state prior to adoption finalization. The rate is \$27.57 per day.

Consider placing on the agenda approval of a **FY2022-23** Purchase of Service Agreement between the County of Fayette, through Fayette County Juvenile Probation, and **County of Jefferson** on behalf of the Jefferson County Detention Center, a division of Jefferson County Juvenile Court, 16001 State Route 7, Steubenville, Ohio 43952 for placement of delinquent youth on an as needed basis. The rates are as follows:

- a. \$175.00/day/bed. This cost includes education during the school year. Medical, psychological, or other expenses are not included in this rate and would be at an additional cost.
- b. In the event that any transportation costs are deemed by Jefferson to be necessary, such costs shall be based on a rate of \$25.00 per hour, for security and transportation (i.e., outside doctor, dentist, planned parenthood, mental health services, hospital emergency room).

Consider placing on the agenda approval of a **FY2022-23** Purchase of Service Agreement between the County of Fayette, through Fayette County Juvenile Probation, and the **District of Belmont-Harrison**, on behalf of the Belmont-Harrison Juvenile District, 68131 Hammond Rd., St. Clairsville, OH 43950 for placement of delinquent youth on an as needed basis. The rates are as follows:

- a. \$250/day/bed for youthful offender cases and \$220/day/bed for all other cases. This cost includes education during the school year. Medical, psychological, or other expenses are not included in this rate and would be at an additional cost.
- b. In the event that any transportation costs are deemed by the District to be necessary, such costs shall be based on a rate of \$25.00 per hour, for security and transportation (i.e. outside doctor, dentist, planned parenthood, mental health services, hospital emergency room).

#### **9. Election Bureau:**

Consider placing on the agenda approval for the three Election Bureau managerial employees to attend the 2022 Pennsylvania Election Personnel Association Annual Meeting from August 1-8 at an approximate cost of \$2,600.

#### **10. Human Resources:**

##### **ASSESSMENT**

Consider placing on the agenda approval of the transfer of Brenda Shaffer to Assessor I, SEIU, PG 12, \$15.99/hour (\$31,180.50 annually) effective May 23, 2022.

Consider placing on the agenda the ratification of the hiring of Ronald Berish, Assessor I, SEIU, PG 12, \$15.99/hour (\$31,180.50 annually) effective May 25, 2022.

## **BUILDING & GROUNDS**

Consider placing on the agenda ratification of the hiring of Tammy Hall, Custodial Worker I, SEIU, PG 3, SR \$11.87/hour (\$23,146.50 annually) effective June 6, 2022.

### **CYS**

Consider placing on the agenda ratification of the rehire of Ashley Leventry to Caseworker II, SEIU CYS, \$22.34/hour (\$43,563.00 annually), effective May 31, 2022.

Consider placing on the agenda the approval of the resignation of Jamie Grimm, Caseworker I, effective June 3, 2022.

Consider placing on the agenda ratification of the promotion of Tiffany Marghella to Caseworker I, SEIU CYS, \$19.04/hour (\$37,134.15 annually) effective June 6, 2022.

Consider placing on the agenda the approval of the resignation of Lynsey Woodson, Caseworker I, effective June 27, 2022.

### **EMA**

Consider placing on the agenda the promotion of Colton Martin to Dispatcher II, SEIU, PG 12, Step A, \$18.59/hour (\$38,667.20 annually), effective June 19, 2022.

### **FACT**

Consider placing on the agenda ratification of the hiring of Ronni Shuler, Part Time Bus Drive, SEIU, PG 14, SR \$17.13/hour, effective June 9, 2022.

### **FCBHA**

Consider placing on the agenda the approval of the retirement of Lisa Ferris-Kusniar, Director of Behavioral Health, effective May 26, 2022.

### **Public Defender**

Consider placing on the agenda ratification of the hiring of Mia Wissler, Part Time Department Clerk, Non-Union, \$10.75/hour, effective May 31, 2022.

#### **11. Planning, Zoning and Community Development:**

Consider placing on the agenda approval of a grant application for one DJI Mavic 3 Fly More Combo in the amount of \$2,999.00. This is a drone to be used by the Sheriff's Department in search and rescue missions.

**12. Solid Waste/Recycling:**

Consider placing on the agenda approval to accept the grant from Foam Recycling Coalition in the amount of \$49,000 to purchase foam densifier, as attached.

**13. Tax Claim Bureau:**

Consider placing on the agenda approval of the following repository bids that were opened on June 7, 2022, subject to all conditions being met for a total bid amount of \$7,121.79.

Accepted Bids

Bidder Name	Parcel	Twp/City/Boro	Amount
Carl Trimbath	05-17-0018	Connellsville	\$369.70
Carl Trimbath	09-46-0070	Dunbar	\$6,752.09
		Total	\$7,121.79

Rejected

Bidder Name	Parcel	Twp/City/Boro	Reason
Stone Denning	02-07-0182	Brownsville	No Affidavit
Stone Denning	02-11-0002	Brownsville	No Affidavit
Stone Denning	02-10-0158	Brownsville	No Affidavit

**14. Commissioners:**

Consider placing on the agenda approval of the April 19, 2022 commissioners agenda minutes.

Consider placing on the agenda approval of the April 21, 2022 commissioners meeting minutes.

Consider placing on the agenda approval of an agreement with Sitelogiq of Oakmont to provide commissioning services for the Fayette County Prison Project, as attached. The proposed fee for commissioning services is \$68,684.00. Proposed alternate fee for additional commissioning services is \$24,466.00 for a total of \$93,150.00.

Consider placing on the agenda approval of the settlement of the Alison v. Fayette County Litigation as per the settlement agreement, as attached.

Consider placing on the agenda approval of the exoneration of all delinquent county taxes, interest, penalties, and costs on parcel 02-07-0007, 1002 Water Street as it is now owned by the Borough of Brownsville, RB 3510-918 and will be utilized for recreation purposes.

**Public Announcements:**

The Redevelopment Authority of the County of Fayette will have one board position that expires July 8, 2022.

Anyone interested in serving on this board should send a letter of interest to Chief Clerk, Amy Revak at [arevak@fayettepa.org](mailto:arevak@fayettepa.org) or 61 East Main Street, Uniontown, PA 15401. Letters must be received no later than June 30, 2022

**Public Comments:**

**Adjournment**

## FOAM RECOVERY GRANT AGREEMENT

This agreement is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the Foodservice Packaging Institute, Inc. (FPI) and Fayette County Recycling Convenience Center, (Grantee) individually and collectively the “Party” or “Parties”.

FPI desires Grantee to recover post-consumer polystyrene foam, including foodservice packaging, as part of their recycling program and Grantee desires to undertake such efforts, on the terms set forth in this Agreement.

### SECTION 1: RECYCLING OF POST-CONSUMER FOAM

During the term of this Agreement, Grantee shall a) sort or cause to be sorted post-consumer polystyrene foam, including foodservice packaging, at the recycling facility located at 105 Romeo Lane, Uniontown, PA 15401 (“Recycling Facility”); b) offer at no additional charge, post-consumer polystyrene foam, including foodservice packaging, recycling opportunities to all of its residential customers whose material is delivered to the Recycling Facility; and c) sell densified loads of post-consumer polystyrene foam to markets.

Total Households served by the Recycling Facility: **54,955**

Grantee represents and warrants that upon installation of the equipment described in Section 2 below, that Grantee will have, and therefore will maintain, the facilities and expertise necessary to perform this Agreement. Grantee acknowledges that it is not relying on any expertise of FPI with respect to the suitability of the equipment to be installed pursuant to the grant referenced in Section 2 below for post-consumer polystyrene foam recycling or other recycling purposes, nor has Grantee relied, nor does it expect to rely, on any expertise of FPI with respect to post-consumer polystyrene foam recycling or to the sales or marketing of densified loads of post-consumer foam.

FPI does not, by making grant money available to Grantee as set forth in Section 2 below, make any representation that it has any expertise with respect to post-consumer polystyrene foam recycling, nor warrant the fitness of any recycled post-consumer polystyrene foam product for any particular use nor otherwise endorse such use. The determination to use or not use any such product for a particular purpose shall be made solely by the purchaser of such product.

FPI does not, by making grant money available to Grantee as set forth in Section 2 below, assume any liability for the processes to be used by Grantee in performing its post-consumer polystyrene foam recycling functions hereunder or for the safety of Grantee’s employees, agents or contractors in so doing. Grantee shall have the responsibility of maintaining a safe workplace.



## **SECTION 2: GRANT**

FPI will provide a one-time grant of \$49,000 to the Grantee towards the purchase of equipment that the Grantee shall use in performing its duties under this Agreement. The grant funds shall be paid upon confirmation from the Grantee that a) the equipment is on-site and operational at the Recycling Facility; b) that post-consumer polystyrene foam, including foodservice packaging, recycling is underway; and c) that residential customers have been informed that post-consumer polystyrene foam, including foodservice packaging, can now be delivered to the Recycling Facility. Grantee shall provide a written request for the grant funds that includes documentation that the above conditions have been met by Grantee within 6 months of the execution of this agreement. The date of the grant fund request shall be the effective date for purposes of this Agreement (“Effective Date”).

## **SECTION 3: COMMUNICATION**

FPI and grantee will work in partnership to provide project related communication resources. This will include a sample press releases, web site content, related graphics, and social media messaging. Written communication from the grantee as it relates to the announcement of the FRC grant award, notice to the general-public regarding the addition of polystyrene foam and kickoff of the new collection program, web site content and other press releases related to the collection of polystyrene foam will be approved by FPI prior to its public release.

## **SECTION 4: REPORTING**

For the term of this agreement, Grantee shall provide FPI with a written report each quarter after the equipment is installed that shows a) the total pounds of post-consumer polystyrene foam, including foodservice packaging, recovered and densified for market (both on-site as well as already shipped) at the Recycling Facility during that 3-month period and b) the total tons of all recyclables shipped from the Recycling Facility during that period. Grantee understands that FPI will mention the facility in publicity materials including press release and case study and that data from the Grantee’s reporting will be shared in aggregate as part of those publicity materials. Grantee agrees to cooperate in publicizing the benefits of recycling polystyrene foam.

## **SECTION 5: TERM AND TERMINATION**

The term of this agreement shall be three (3) years from the Effective Date. This Agreement shall automatically terminate upon expiration of the term. This Agreement may be terminated by either Party due to breach by the other Party of any material provision of this Agreement and fails or is unable to cure the breach within 45 days of receipt of notice of breach from the other Party.

## **SECTION 6: HOLD HARMLESS**

Each Party agrees to defend, hold harmless and indemnify the other Party and its officers, directors, employees and representatives from and against all liabilities, damages and costs, including reasonable attorney’s fees, arising out of any third-party claims caused by or resulting from the breach of this Agreement by the other Party.





**SECTION 7: MISCELLANEOUS**

- 7.1 This Agreement embodies the entire agreement and understanding between the Parties hereto with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements and understandings other than this Agreement relating to the subject matter.
- 7.2 This Agreement will be governed exclusively by, and construed exclusively in accordance with, the laws of the State of New York.
- 7.3 In the event that any provision of this Agreement is held to be unenforceable under applicable law, this Agreement will continue in full force and effect without such provision and will be enforceable in accordance with its term.
- 7.4 All notices and other communications required or permitted hereunder will be in writing and will be delivered by hand or sent via courier, fax or email to (Grantee) Sheila Shea, Recycling Coordinator; and (FPI) Natha Dempsey.
- 7.5 This Agreement may be amended only by a written agreement executed by the Parties hereto. No provision of this Agreement may be waived except by a written document executed by the Party entitled to the benefits of the provision. No waiver of a provision will be deemed to be or will constitute a waiver of any other provision of this Agreement. A waiver will be effective only in the specific instance and for the purpose for which it was given and will not constitute a continuing waiver.
- 7.6 This Agreement may be in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

FOODSERVICE PACKAGING INSTITUTE, INC.      FAYETTE COUNTY RECYCLING CONVENIENCE CENTER

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_





November 22, 2021

Chairman Lohr  
First Vice-Chair Vicites  
Second Vice-Chair Dunn  
Fayette County  
61 East Main Street  
Uniontown, PA 15401

Re: Commissioning Services for Fayette County Prison

Dear Commissioners:

Thank you for the opportunity to submit our proposal for commissioning services for the new County Prison. Below, we have provided a description of the services being provided through this proposal.

Systems to Commission:

- HVAC systems and equipment
- Building Automation System

Construction Phase Responsibilities

- **Coordinate and Direct the Commissioning Process and Work** – SitelogIQ will logically, efficiently and sequentially communicate the commissioning process with the Owner and contractors using protocols and forms on the project's web-based management system. This will ensure that all commissioning activities are incorporated into the project schedule.
- **Plan and Conduct Commissioning Meetings** – As needed, SitelogIQ will plan and conduct any commissioning meetings between the Owner, design team, and contractors. We will also prepare and distribute the meeting minutes.
- **Receive and Review O&M Manuals, Contractor Start-up and Checkout Procedures** – The operation and maintenance manuals are very important in the long-term usage of the building. We review the set of manuals and ensure that the start-up, maintenance schedules, warranties, operations, etc. are included and correct for the project. SitelogIQ will work with contractors and design engineers until clarity has been obtained in writing. This information will be used to write detailed testing procedures before start-up.

- **Perform Site Visits** – SitelogIQ will perform site visits as necessary to observe system installations, attend job-site meetings as required and assist with discrepancy resolution.
- **Review Pre-functional Tests and Checklists** – SitelogIQ will review the detailed, step-by-step start-up procedure and pre-functional performance tests on each piece of equipment and system and verify completed contractor documentation.
- **Perform Functional Testing Procedures for Specified Systems and Equipment** – With input from specialty subcontractors, SitelogIQ will design a detailed, step-by-step procedure for the functional performance tests on each piece of equipment and system. Each test procedure is unique to the project and is based on the actual design and control sequences that are to be used for this project. SitelogIQ will review any system that fails to pass the functional test phase of the commissioning program. Any necessary retesting will be performed until satisfactory results are achieved.
- **Maintain Master Deficiency and Resolution Log** – SitelogIQ will maintain a commissioning concern list throughout the course of the project. This list will document any issues discovered, responsible party, actions taken, and final resolution. The log will be distributed to the Owner, design team, and the contractors and be reviewed on a regular basis with all involved parties.
- **Oversee and Verify Training** – We will oversee the operation and maintenance training to make sure that all key personnel (Owner, maintenance/facility personnel, and contractor) and items are included and adequately covered. The format for the O&M training sessions will follow the outlines provided in the O&M manuals.

#### Warranty and Documentation Phase Responsibilities

- **Prepare the Final Commissioning Report** – A copy of the finalized Commissioning Report, including a list of participants and roles, brief building description, overview of commissioning and testing scope, and a general description of testing and verification methods. SitelogIQ will include a signed letter of certification verifying the adequacy of the equipment, documentation and training meeting the contract documents in the

following areas. For each piece of commissioned equipment, the report will contain the disposition of the Commissioning Authority regarding:

- Equipment Meeting the Equipment Specifications
- Equipment Installation
- Functional Performance and Efficiency
- Equipment Documentation
- Operator Training
- **Review Outstanding Commissioning Issues** – Prior to turning over the final commissioning documents we will review the status of the commissioning concern list with the Owner and reference the status of all outstanding commissioning concerns and their disposition.
- **Near-warranty End Period Review** – SitelogIQ will return to the site 10 months into the 12-month warranty period to review any issues or concerns related to the original and seasonal commissioning. We also interview facilities staff and identify issues or concerns with the operation of the building. SitelogIQ will assist facility staff in developing reports and documents. We will provide suggestions for improvement and record any changes in the O&M manual. Any issues that may fall under warranty or the original construction contract will be identified.

Proposed Fee for Commissioning Services

For the above services, SitelogIQ proposes the following hourly, not-to-exceed fee. We will invoice on a monthly basis commensurate with the work having been performed. We have included a fee breakdown as well as our hourly rate schedule for reference.

● MEP Commissioning .....	\$62,284
● Reimbursables .....	\$6,400
<b>TOTAL .....</b>	<b>\$68,684</b>

Hourly Rates

MEP Engineer / Commissioning Agent .....	\$156
Commissioning Technician .....	\$98
Clerical .....	\$72

Proposed Alternate Fee for Additional Commissioning Services

In addition to commissioning HVAC equipment and building automation systems, SitelogIQ is often asked to commission other systems, such as domestic hot water, lighting, emergency power, communication, and surge protection devices.

For the aforementioned systems, SitelogIQ proposes the following hourly, not-to-exceed fee. We have also included a fee breakdown for these additional systems to commission, if desired by Fayette County.

- MEP Commissioning..... \$21,966
- Reimbursables.....\$2,500
- TOTAL.....\$24,466**

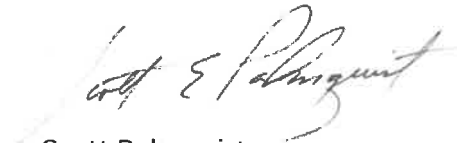
We thank you again for the opportunity to present this proposal for your consideration. If you have any questions or concerns, please do not hesitate to contact me to further discuss. If you agree with the scope and cost of this proposal, please sign below.

Sincerely,

SITELOGIQ CONSULTING ENGINEERS, INC.



Michael J. Arnold  
Vice President/Program Executive



Scott Palmquist  
Director of Business Development

By my signature below I indicate acceptance of this proposal on behalf of Fayette County.
_____
Name & Title
_____
Signature
_____
Date

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MIRANDA ARISON, MALCOLM DYER,  
DANTE RIPLEY, and CHARLES SMITH,  
JR., on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

FAYETTE COUNTY, PENNSYLVANIA,

Defendant.

Civil Action No. 2:18-cv-00845-MPK

MAGISTRATE JUDGE MAUREEN P.  
KELLY

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_ 2022 (the “Effective Date”) by and between Plaintiffs Miranda Arison, Malcolm Dyer, Dante Ripley, and Charles Smith, Jr. (collectively, “Plaintiffs”) and Defendant Fayette County, Pennsylvania (“County”).

WHEREAS, on June 26, 2018, Plaintiffs filed the above-captioned lawsuit (the “Lawsuit”) alleging that the County was violating their Fourteenth Amendment rights by subjecting them to unlawful conditions of confinement at the Fayette County Prison (“FCP,” defined below).

WHEREAS, the County denies that it violated Plaintiffs’ Fourteenth Amendment rights.

WHEREAS, the parties agree that the County has taken appropriate steps to correct conditions identified in Plaintiffs’ complaint and will continue to monitor and remedy conditions at FCP until such time as FCP is no longer used to house individuals overnight.

WHEREAS, in order to avoid the costs and uncertainty of further litigation, the Parties desire and mutually agree to compromise and settle on an individual basis all individual claims that were asserted or could have been asserted by Plaintiffs against the County in the Lawsuit as set forth in this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED by and between the Parties as follows:

### DEFINITIONS

1. As used in this Agreement, the following terms have the following meanings:
  - a. **“FCP”** means the Fayette County Prison located at 12 Court Street in Uniontown, Pennsylvania, including the main prison building and the annex building. It is not intended to include the county jail currently under construction at 245 McClellandtown Road in Uniontown, even if that facility will be referred to as the “Fayette County Prison” now or in the future
  - b. **“Housed”** refers to the detention of an inmate in the FCP for a period of time equal to or exceeding 24 hours.
  - c. **“Housing Unit”** refers to the specific areas in which individuals are housed at the FCP, including Ranges A, B, C, D, E, and F, Inmate Workers’ Unit (“IWU”), Intake, Special Housing Unit (“SHU”), and Annex.
  - d. **“Inmate”** refers to a person being detained in the FCP, including persons sentenced to a term of incarceration as well as pretrial detainees.
  - e. **“Temporary Bed”** refers to the “moveable cots,” also known as “boats,” or any other temporary bedding arrangements that may not meet the requirements of 37 Pa Code. § 95.229(1).

## AGREED-UPON MEASURES

2. The inmate population of the FCP that has been accepted by the Pennsylvania Department of Corrections is 264. Nonetheless, in the interest of resolving this dispute, the County agrees to make all reasonable efforts to limit the population of individuals housed at the FCP to 180, subject to the below conditions.

- a. If the inmate population exceeds 180 individuals for seven consecutive days, the County will provide notice to Plaintiffs' counsel (listed in paragraph 19) within 72 hours of the seventh consecutive day during which the inmate population exceeds 180. The notice must contain:
  - i. the number of inmates in excess of 180 being housed at the FCP;
  - ii. the number of temporary beds, if any, that are being utilized to house any inmates at that time;
  - iii. the reason(s) for exceeding the 180-inmate limit; and
  - iv. the County's plan to reduce its population to 180 inmates or fewer within seven days.
  
- b. The County may not house more than 180 inmates at the FCP for a period of 14 or more consecutive days unless it obtains an order from the Court permitting it to do so, or receives the consent of Plaintiff's counsel following the provision of the information set forth in subsection (a.) above.

3. Each month, the County will provide the following to Plaintiffs' counsel: (a) monthly housing reports showing inmate counts per housing unit; (b) inmate grievances; and (c) work orders.



4. The County will record temperature readings for each housing unit in the FCP as was agreed to prior to the execution of this agreement and will provide Plaintiffs' counsel with accurate temperature readings of those locations on a biweekly basis.
5. The County will provide suitable clean clothing to individuals at no cost in accordance with 37 Pa. Code § 95.228. Suitable clean clothing shall include an inmate uniform, adequate footwear and underwear, if needed
6. The County will allow Plaintiffs' expert, Marty Horn, to tour FCP at a mutually agreeable date and time to ensure compliance with the terms of this Agreement.
7. The County will advise counsel for Plaintiffs if the date for substantial completion of the new prison is changed from the current March 2023 anticipated date of completion.
8. The County will make the following changes to its policy governing the use of temporary bedding:
  - a. add the following definition for "movable cots":

“The term ‘movable cot’ as used in this policy shall have the same meaning as ‘temporary bedding’ as used in 37 Pa. Code § 95.229. It shall consist of an approved mattress/pillow within a plastic frame (sometimes referred to as a ‘boat’) or other commercially available frame designed for use as containing bedding. Movable cots shall also be provided with a sheet and blanket of the same type provided for permanent bedding in the facility.”
  - b. eliminate the use of movable cots for individuals identified as vulnerable and in need of protection, and instead require that those individuals be single-celled, subject to the flexibility needed to respond to the COVID pandemic (such as a need to

quarantine individuals) and to comply with obligations pursuant to the Prison Rape Elimination Act (“PREA”), if necessary;

- c. limit the use of movable cots throughout FCP to a maximum of 90 days within a 120-day period.
- d. limit the time that an individual can be housed on a movable cot to 30 days in a 60-day time period, subject to the exception in 8(e).
- e. If the County houses an individual on a movable cot for the individual’s own protection or due to a compelling need to keep the individual separate from other individuals incarcerated in the FCP, or if the County otherwise exceeds the limits on the use of movable cots upon which the parties have agreed, it will notify plaintiffs’ counsel in writing within 72 hours. That notice will include:
  - i. the reason for the use of the movable cot;
  - ii. the name(s) of the individuals housed on movable cots;
  - iii. the housing unit(s) where the movable cots are located; and
  - iv. the County’s plan for ceasing the use of movable cots that violate the limits set forth in this agreement.
- f. The County may not exceed the limits on the use of movable cots on which the parties have agreed for more than 7 days unless it obtains a court order to do so.
- g. Individuals who are housed on movable cots will be moved into a cell as soon as a bed in a cell becomes available for use.
- h. The County will provide Plaintiffs’ counsel with a certification from the FCP’s health care provider if an individual is being housed on a cot for a medical reason, subject to a protective order entered into by the parties.

9. The County will track the use of temporary beds and provide monthly reports to Plaintiffs’ counsel when movable cots are used. The reports shall include the dates on which the movable cots are used, the reasons for the use of each movable cot, the range where the movable cot is placed, and the length of time each individual is assigned to a movable cot. In addition, the County will provide Plaintiffs’ counsel with the names of individuals who are housed on movable cots in excess of 30 days.

### OTHER PROVISIONS

10. Within thirty (30) days of the Effective Date, the County shall pay the total sum of One Hundred Forty-Five Thousand Dollars (\$145,000.00) in attorneys' fees and costs to Plaintiffs' counsel (the "Settlement Sum"). Plaintiffs and Plaintiff's counsel agree to waive any other claim against the County for attorney's fees under any federal statute or any common law theory pursuant to either federal law or the law of any state, except against their respective clients, their heirs and/or assigns. Plaintiff's counsel also agrees and represents that they have no agreement with any other attorney which could result in a claim for attorney's fees by Plaintiff's counsel or any other attorney under any federal statute or any common law theory pursuant to either federal law or the law of any state.

11. The provisions set forth in paragraphs 1 through 9 above (the "Agreed-upon Measures") will remain in effect until such time as the FCP is no longer used to incarcerate people overnight (the "Enforcement Period"). After the Enforcement Period, the County may use the FCP without being subject to the Agreed-upon Measures, provided that such use is for the limited purpose of holding persons scheduled for court proceedings before the Court of Common Pleas of Fayette County, as may be ordered by a judge of that Court or other court having jurisdiction to order such proceedings.

12. The Court will retain jurisdiction to enforce this Agreement and address any violations thereof until the expiration of the Enforcement Period, as agreed to in the stipulated Order of Dismissal.

13. The parties do not anticipate a breach of this Agreement. In the event of a breach, however, the Parties agree that counsel for the non-breaching Party may take action to enforce this Settlement Agreement, subject to the procedures set forth below; and the appropriate and hereby stipulated remedy upon proof of a breach is an order of specific performance.

14. If the Plaintiffs have a reasonable basis to believe that the County is failing to comply with any material provision of this Agreement, Plaintiffs' counsel will notify the County in writing. This notice will identify, with particularity, the basis of Plaintiffs' noncompliance claim and the specific provisions of the Agreement that are implicated.

15. Within fifteen days of receipt of the notification, the County will provide a written response to the Plaintiffs' notification with a full factual explanation as to why the County believes it is complying with the Agreement, or an explanation of the County's plans to achieve full compliance with the Agreement.

16. If the Parties are unable to resolve the dispute, the Plaintiffs may seek relief from this Court by filing a motion seeking specific performance and/or other appropriate relief.

17. Neither this Agreement nor anything in this Agreement shall be deemed an admission or concession of liability or evidence respecting any liability on the part of the County.

18. The County will not retaliate against any person because that person has provided information or assistance related to the Lawsuit, this Agreement, or the enforcement of this Agreement.

19. Any notices under this Agreement will be sent by email to the following:

If to the Plaintiffs:

Sara J. Rose, Esq.  
ACLU of Pennsylvania  
PO Box 23058  
Pittsburgh, PA 15222  
[srose@aclupa.org](mailto:srose@aclupa.org)

Alexandra Morgan-Kurtz  
PA Institutional Law Project  
247 Fort Pitt. Blvd., 4<sup>th</sup> Fl.  
Pittsburgh, PA 15222  
[amorgan-kurtz@pailp.org](mailto:amorgan-kurtz@pailp.org)

If to Defendants:

Marie Milie Jones  
Michael R. Lettrich  
JonesPassodelis, PLLC  
Gulf Tower, Suite 3410  
707 Grant Street  
Pittsburgh, PA 15219  
Phone: (412) 315-7272  
Fax: (412) 315-7273  
[mjones@jonespassodelis.com](mailto:mjones@jonespassodelis.com)  
[mlettrich@jonespassodelis.com](mailto:mlettrich@jonespassodelis.com)

20. This Agreement contains the entire Agreement between the Parties with respect to the matters set forth herein, and there are no written or oral understandings or agreements, directly or indirectly connected with this Agreement that are not incorporated herein.

21. This Agreement is binding upon and inures to the benefit of the successors and assigns of each of the Parties throughout the duration of the Agreement.

22. The Parties may jointly agree to a modification of this Agreement, but only in a writing signed by all Parties. This Agreement may not be modified except upon written consent of all Parties.

23. This Agreement will be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.


24. Each Party has cooperated and participated in the drafting of the Agreement, and in any construction to be made of this Agreement, each Party shall be deemed to have cooperated and participated in the drafting and preparation of this Agreement.


25. Each of the Parties had the opportunity before signing this Agreement to make whatever investigations it deemed necessary and to obtain the advice of legal counsel of its own choosing, and each of the Parties has entered into this Agreement voluntarily.


26. If any provision or term of this Agreement is held to be invalid, illegal, unenforceable or in conflict with the law in any jurisdiction, the validity and legality of the remaining provisions will not be affected or impaired thereby.

27. The Parties agree that they will sign and submit a joint stipulation of dismissal without prejudice pursuant to Fed. R.C.P. 41(a). The Parties understand and agree that the Court will maintain jurisdiction of this action throughout the duration of the Enforcement Period. After the Enforcement Period, the Parties will sign and submit a joint stipulation of dismissal with prejudice.

28. This Agreement may be executed in counterparts, and a facsimile or PDF signature shall be deemed to be, and have the same force and effect as, an original signature.

By:   
Sara J. Rose  
ACLU of Pennsylvania

By:   
Alexandra Morgan-Kurtz  
PA Institutional Law Project

By:   
Blank Rome LLP  
Kevin Eddy  
*On behalf of plaintiffs*

By: \_\_\_\_\_  
Marie Milie Jones  
JonesPassodelis, PLLC  
  
*On behalf of defendant Fayette County*