

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Police

AGENDA DATE: June 15, 2010

CONTACT PERSON NAME AND PHONE NUMBER: Chief Greg Allen, 564-7000
David Almonte, Director of OMB 541-4777

DISTRICT(S) AFFECTED:

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Authorize the Mayor to sign an Interlocal Agreement between the City of El Paso and the County of El Paso for housing municipal inmates.

Cost: \$374,093.25/year for 3,000 inmates, with an additional cost per inmate in excess of the 3,000.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

This interlocal agreement clarifies responsibilities of the City and the County and adjusts the fees to exclude non-municipal prisoners, resulting in an annual savings to the City of El Paso of over \$2 million.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

The current interlocal agreement was approved by City Council on September 16, 2003 and was effective through August 31, 2007, automatically renewing annually.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

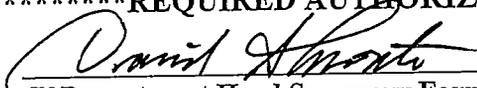
The cost for this agreement is budgeted within the City's general Fund in the Police Department budget. 01101-21010061-504408

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:

That the Mayor be authorized to sign an Interlocal Agreement by and between the **CITY OF EL PASO** (City) and the **COUNTY OF EL PASO** (County) regarding fees for the housing of prisoners.

ADOPTED this _____ day of _____, 2010.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

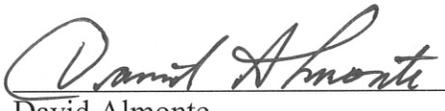
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



John R. Batoon
Assistant City Attorney

APPROVED AS TO CONTENT:



David Almonte
Director, Office of Management and
Budget

STATE OF TEXAS)
)
COUNTY OF EL PASO)

INTERLOCAL AGREEMENT

This Interlocal Agreement (“Agreement”) is made this the _____ day of _____, 2010, by and between the City of El Paso, a home rule municipal corporation (“City”) and the County of El Paso, Texas (“County”).

WHEREAS, there is a single jail system in the City and County of El Paso, Texas that houses all prisoners regardless of the arresting agency; and

WHEREAS, the operation of a single jail system serves to increase the efficiency and effectiveness of local governments in their respective functions in the criminal justice system; and

WHEREAS, the City and County desire to enter into an Agreement that establishes a formal relationship between them for booking, processing and housing of prisoners arrested by the El Paso Police Department and placed in the jail; and

WHEREAS, the City and the County specify that each party paying for the performance of said functions of government shall make those payments from current revenues available to the paying party; and

WHEREAS, Texas Government Code, Chapter 791, authorizes local governments of the state to enter into contracts for governmental functions and services to increase their efficiency and effectiveness;

NOW, THEREFORE, THE CITY AND COUNTY HEREBY ENTER INTO THIS AGREEMENT UNDER THE FOLLOWING TERMS AND CONDITIONS:

1.0 PURPOSE TERMS AND DEFINITIONS

1.1 The purpose of this Agreement is to establish a formal relationship between the City and County for the booking, processing and housing of prisoners arrested by the El Paso Police Department and placed in the county jail system.

1.2 The following terms and definitions shall apply throughout this Agreement:

1.2-1 “Municipal code violation” shall mean a violation of the municipal ordinances or codes within the El Paso City Code that do not cover substantially the same ground as state law and traffic violations that are not covered by state law.

1.2-2 "State law violation" shall mean any violation of a law promulgated by the State of Texas that is punishable by fine, confinement in jail or both. Such violations include but are not limited to any felony, Class A, B, and C misdemeanors. A prisoner is considered to have committed a state law violation for cases involving municipal ordinances or codes that cover substantially the same ground as state law.

1.2-3 "Fiscal year" shall be defined as October 1 through September 30 of any given year.

1.2-4 "County jail" shall include the El Paso County Detention Facility and the El Paso County Jail Annex Detention Facility.

1.2-5 "Day" shall be defined as a twenty-four (24) hour period beginning at midnight and ending at 11:59 p.m.

2.0 CONTRACTUAL RELATIONSHIP

2.1 The parties to this Agreement are independent contractors. Except as may be expressly and unambiguously provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the parties or any of their officers, employees, agents or representatives.

2.1-1 As an independent contractor, County understands and agrees that it will be responsible for its respective acts or omissions, and the City shall in no way be responsible as an employer to County (including Sheriff's Office), its officers, employees, agents or representatives who perform any service in connection with this Agreement.

2.1-2 As an independent contractor, City understands and agrees that it will be responsible for its respective acts or omissions, and the County shall in no way be responsible as an employer to City, its officers, employees, agents or representatives who perform any service in connection with this Agreement.

2.2 County (including the Sheriff's Office) acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind the City to any obligation other than the obligations set forth in this Agreement. City also acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind the County to any obligation other than the obligations set forth in this Agreement.

2.3 The parties hereby agree that the City and County enter into this Agreement as governmental entities for the purpose of performing a governmental function.

3.0 DUTIES, RIGHTS AND SCOPE OF SERVICES

A. County of El Paso

3.1 The County, through the El Paso Sheriff's Office, shall perform the following services under this Agreement:

3.1-1 Accept and take responsibility of all prisoners arrested by the El Paso Police Department, regardless of the offense charged, who are presented to the jail for confinement along with an arrest supplement with a DIMS number when applicable, a commitment order, arrest affidavit, or an arrest warrant, and provide secure booking, processing, housing, custody, care and safekeeping in accordance with all applicable laws, standards, policies, procedures or court orders applicable to the operation of the county jail as well as in accordance with this Agreement.

3.1-2 The County reserves the right to refuse to accept custody of any prisoner due to a physical or mental medical condition if the prisoner is not fit for confinement pursuant to jail policy. In such an event, the prisoner will remain in the custody of the El Paso Police Department until a medical clearance is obtained for the prisoner and the prisoner is determined by the County to be fit for confinement pursuant to jail policy.

3.1-3 The County reserves the right to refuse to accept any prisoner charged with only Class C misdemeanor offenses of any kind which would cause the jail facility to become overcrowded and may result in a violation of Texas Commission on Jail Standards detention officer to inmate ratios. Such refusal decision shall be made by the Lieutenant in charge of the inmate processing unit or the commander of the jail.

3.1-4 Other than the amount set forth in Section 4.0 paid by the City for the booking or pursuant to Section 3.1-5 below, processing, and housing of municipal code violation prisoners, the County shall bear the cost to confine all prisoners (regardless of classification), to include but not limited to supplies, prisoner medical expenses while in custody, transportation of a prisoner to and from court, and any other miscellaneous charge associated with the safeguarding of prisoners.

3.1-5 In the event that a municipal code violation prisoner requires medical treatment while in the care and custody of the County, the County shall either provide the necessary medical treatment to said prisoner or obtain a

release order from a City of El Paso Municipal Court judge per the procedure that has been established by the parties.

3.1-6 The County shall charge the City a single fee for each municipal code violation prisoner booked regardless of the number of violations or warrants attached to said prisoner. Said fee shall not be charged to the City if the prisoner is in custody for a state law violation. The higher degree offense shall control the classification of the prisoner at the time of booking.

3.1-7 The County shall process prisoners on a first come first serve basis, however, the Sheriff or his designee retains the authority to make an exception to this provision, should a reasonable basis exist for such exception.

3.1-8 All damage to County property sustained in the booking and processing area of the jails shall be the responsibility of the County, unless such is caused by the negligent acts or omissions of City personnel.

3.1-10 The County shall maintain a property office operation on a 7 day, 24 hour basis within the jail, which will be responsible for the receipt, storage, and return of personal property found on any prisoner arrested by the El Paso Police Department that will fit in a standard jail property basket and all other property shall be retained in the custody of the El Paso Police Department. The jail will not accept any property deemed as contraband, including but not limited to flammable items, tobacco products, perishable items, glass containers, alcohol, or weapons.

3.1-11 The County shall be responsible for procedures, policies and the release or bonding out of all prisoners held within the jail.

3.1-12 The County shall provide the City monthly billing detail in an Excel electronic format.

B. City of El Paso

3.2 The El Paso Police Department, upon presentation of a prisoner to the jail for incarceration, shall:

3.2-1 Provide a copy of the complaint affidavit and an arrest supplement with a DIMS case number if the prisoner was processed through the DIMS program; or

3.2-2 Provide the original of the warrant or commitment order, and a magistrate warning in non DIMS cases; or

3.2-3 Provide the complaint affidavit, magistrate warning and a NCIC/TCIC "hit" confirmation in fugitive from justice (FFJ) cases; and

3.2-4 Inform the Sheriff's Office, in writing on a form to be provided by the Sheriff's Office, of any unusual behavior, illness or other problems the prisoner may have exhibited during the arrest and transport process.

4.0 FEES AND PAYMENT

4.1 As consideration for this Agreement, and except as provided below, the City shall pay the County a total amount of Three Hundred Nineteen Thousand, Two Hundred Twenty and No/100 Dollars (\$319,230) per fiscal year for services provided by the County in Section 3.1 of this Agreement for the booking and processing of a maximum of 3000 municipal code violation prisoners per fiscal year. (This amount is based on the actual \$106.41 cost of booking as per our cost allocation study X 3000 prisoners.) Additionally, the City shall pay Fifty-four Thousand Eight Hundred Sixty-three and 25/100 Dollars (\$54,863.25) for the housing costs of a maximum of 375 municipal code violation prisoners per fiscal year. (This amount is based on the actual \$86.06 daily housing cost as per our cost allocation study X 375 prisoners X 1.7 days which is the average length of stay in the jail for municipal code violation prisoners.)The City shall make monthly payments in the amount of one-twelfth of the total of the annual booking and processing fee and annual housing fee without demand.

4.2 In the event that the number of municipal code violation prisoners booked into the county jail exceeds the 3000 prisoner maximum in a fiscal year, the City shall pay to the County a booking and processing fee of \$106.41 and a housing fee of \$86.06 per day of stay for each municipal code violation prisoner in excess of 375 housed by the county jail. Said fees shall be paid per municipal code violation prisoner, not per violation or warrant. Said fees shall not be charged for municipal code violation prisoners who are also in custody for a state law violation. The higher degree offense shall control the classification of the prisoner.

4.3 (reworded City's 4.2-2) In the event that a prisoner, with both municipal code violations and state law violations, has the state law violations dismissed by a court of competent jurisdiction or declined by the District or County Attorney, said prisoner shall become a municipal code violation prisoner on the date of the dismissal or declination of the state law violations.

4.4 A municipal code violation prisoner is deemed to have been detained in the county jail at the date and time the prisoner is accepted by the jail intake staff (the "intake date/time"). A municipal code violation prisoner detained in the county jail for any part of a day shall be deemed to be detained a full day, except that if such a prisoner is released prior to noon on the day of release, the City shall pay only for one-half (1/2) of the housing fee for that day.

4.5 The City and the County shall keep track of the number of municipal code violation prisoners booked into the county jail and shall reconcile monthly. When the number exceeds 3000 in any fiscal year, the City shall include the additional booking and processing fee and the additional housing fee for each excess municipal code violation prisoner with its monthly payment to the County Auditor.

4.6 The County may contest the information contained in the City's report within ten (10) working days of the receipt of the report by sending written notice to the El Paso Police Department. In the event that a report is contested, the respective parties' representatives shall meet within seven (7) working days of the notice of contest. If necessary, the bill shall be adjusted to reflect the proper amount owed by the CITY and the CITY shall adjust its monthly payment to reflect said change. The CITY shall have an additional ten (10) working days after the meeting to pay such revised amount owed.

4.7 The City shall pay the County by the first (1st) of each month in advance for booking, processing and housing of municipal code violation prisoners for that month by electronic funds transfer. In addition, the City shall add to its monthly payment any additional booking and processing fees for prisoners booked in excess of 3000 prisoners per year incurred by the city for the previous month, and any additional housing fees for prisoners in excess of 375 housed per year. In the event the City accrues an arrearage on payment, the County Auditor or any collection agency retained by the County to collect on delinquent accounts may add a collection fee of 21% to the account receivable if owing to the County for more than 60 days.

4.8 The fee payable under Paragraphs 4.1 and 4.2 above for the services provided by the County to the City for municipal code violation prisoners may be re-negotiated annually. All fees shall be established on the basis of actual costs associated with the operation of the facilities during the

most recent annual accounting period. The County shall notify the City of its intent to re-negotiate the fees charged to the City for municipal code violation prisoners by June 1st of each fiscal year in writing and delivered to the Chief of Police and City of El Paso's Office of Management and Budget. If the fee for municipal code violation prisoners is re-negotiated and accepted by all parties, then the new fees would be effective the beginning of the fiscal year, as such term is defined in this Agreement. Negotiations of a new fee shall be completed by August 1st of each fiscal year in order to allow both parties to incorporate the new fee, if any, into their respective budgets for the new fiscal year. If negotiations of a new fee are not completed by August 1st, then the current fee will remain in effect until an arbitrator issues a decision on the matter, if necessary.

4.9 Fees for services rendered by the County for municipal code violation prisoners shall not be recalculated more than annually, unless the Texas Commission on Jail Standards or a court order require substantial expenditures to be made at the county jail in order for the county jail to continue operating in compliance with jail standards or other applicable laws. If any unusual expenditures are required of the County that directly relate to the operation of the facilities which were not known at the time of the budget adoption, including but not limited to a major increase in utility rates or food costs, in excess of twenty (20) percent of the cost of the operation of the downtown jail, or if implementation of any technological advances or upgrades result in operational costs to decrease more than twenty (20) percent, then recalculation of payment rates will be opened and renegotiated upon ten (10) working days notice to the Chief of Police and City of El Paso's Office of Management and Budget. Said notice must be in writing and to said parties listed above.

4.10 In the event that the parties come to an impasse on negotiations, the parties agree to submit the matter to binding arbitration within thirty (30) days of the impasse. Each party shall be responsible for one-half (1/2) of the cost of the arbitration services and shall be responsible for their own attorney fees and other costs associated with presenting their case to the arbitrator. The parties agree to jointly select an arbitrator from the American Arbitration Association ("AAA"), provide assistance with the appointment of an arbitrator, with said appointment to be made by AAA within fifteen (15) days of such application.

4.11 In the event that the arbitrator's decision is not received prior to the beginning of the fiscal year, the City shall make payments to the County for services rendered for municipal code violation prisoners based on the prior fiscal year's fee. The parties agree that in such an event, the arbitrator's decision will become effective as of the beginning of the fiscal year. The parties agree that the arbitrator may not set the fees at a rate higher than the County's proposed fee.

5.0 TERM OF AGREEMENT

5.1 This Agreement shall become effective on October 1, 2009, and shall remain in effect until the end of the fiscal year.

5.2 Said Agreement shall automatically be extended for one (1) year periods at the beginning of the fiscal year under the same price, terms and conditions, unless terminated or amended pursuant to the terms stated herein.

6.0 TERMINATION

6.1 Either party may terminate this Agreement at any time upon one hundred twenty (120) days written notice via certified mail, return receipt requested.

6.2 Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminating party prior to the date of termination. The parties acknowledge and expressly warrant that no claim of damages will exist after the date of termination.

7.0 GENERAL PROVISIONS

7.1 This Agreement is not intended to alter or reallocate any defense or immunity authorized or available to either party by law.

7.1-1 The City and County reserve, and do not waive, their respective rights of sovereign immunity and similar rights and do not waive their rights under the Texas Tort Claims Act or any applicable statute. No provision of this Agreement that imposes an obligation or restriction on either party not permitted by applicable law shall be enforceable.

7.2 The City shall have the right to perform, or cause to be performed inspections of all facilities and books kept by County in connection with the booking, processing and housing of prisoners arrested by the El Paso Police Department during the term of this Agreement. The reports of state or federal inspections of the facilities will be provided by the County to the City upon written request and within ten (10) business days of such request.

7.3 The parties may amend this Agreement only by written instrument duly executed on behalf of the City and County. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

7.4 This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas.

7.5 All agreements and covenants contained in this Agreement are severable. Should any term or provision of this agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this agreement should be valid and binding and have full force and effect as if the invalid portion had not been included.

7.6 Venue shall be in the County of El Paso, State of Texas.

7.7 All notices required or permitted hereunder shall be in writing and shall be deemed delivered within 5 days of mailing via United States Postal Service, certified mail, return receipt requested, addressed to the respective other party at the address provided below or at such other address as the receiving party may have theretofore prescribed by written notice to the sending party or by receipted hand delivery or confirmed fax transmission. The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

CITY OF EL PASO: City Manager
2 Civic Center Plaza, 10th Floor
El Paso, Texas 79901

Copy to: Chief of Police
El Paso Police Department
911 N. Raynor
El Paso, Texas 79903

COUNTY OF EL PASO: County Judge
El Paso County Courthouse, 3rd Floor
500 East San Antonio
El Paso, Texas 79901

Copy to: El Paso County Sheriff
3850 Justice Drive
El Paso, Texas 79938

7.8 This Agreement constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that all prior agreements/contracts on jail fees are no longer valid and that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This

Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.

THE CITY OF EL PASO

Mayor John Cook

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

John R. Batoon
Assistant City Attorney

Gregory Allen
Chief of Police

Signatures on Following Page

THE COUNTY OF EL PASO

County Judge Anthony Cobos

ATTEST:

County Clerk Delia Briones

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Assistant County Attorney

Sheriff Richard Wiles