

# City of Las Cruces<sup>48</sup>

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

Item # 16

Ordinance/Resolution# 10-274

Council District:     

For Meeting of May 3, 2010

(Adoption Date)

**TITLE: A RESOLUTION APPROVING THE REPLACEMENT OF THE EXISTING JOINT POWERS AGREEMENT WITH AN INTER-GOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE NEW MEXICO CORRECTIONS DEPARTMENT CONCERNING INMATE WORK CREWS.**

**PURPOSE(S) OF ACTION:** To authorize the New Mexico Corrections Department in accordance with state statutes to continue to provide supervised inmate crews to perform minor maintenance and beautification for the City.

|  |                    |                             |                        |                    |       |
|--|--------------------|-----------------------------|------------------------|--------------------|-------|
| Name of Drafter:<br>Amber Vaughn <i>AV</i> |                    | Department:<br>Public Works |                        | Phone: 528-3228    |       |
| Department                                 | Signature          | Phone                       | Department             | Signature          | Phone |
| Originating Department                     | <i>[Signature]</i> | 3333                        | Budget                 | <i>[Signature]</i> | 2300  |
|  |                    |                             | Assistant City Manager | <i>[Signature]</i> | 2271  |
| Legal                                      | <i>[Signature]</i> | 541-2128                    | City Manager           | <i>[Signature]</i> | 2271  |

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

The City of Las Cruces and the New Mexico Corrections Department first entered into a Joint Powers Agreement in October 1997 concerning the use of inmate work crews. The original Joint Powers Agreement was approved by the City Council via Resolution 98-143 and has been amended multiple times, most recently on July 21, 2008 in City Council Resolution No. 09-011.

Pursuant to NMSA, 3-49-1 (C), the City has the authority to provide for the cleaning, beautification, landscaping and maintenance of City streets and public grounds. Additionally, pursuant to NMSA 1978 33-1-6 and 33-8-15, Corrections has the authority to "cooperate with...local officials... in the furtherance of the purpose of the Corrections Act" and to "provide for the utilization of available inmate labor on public works by any state agency or local public body."

The program has been extremely successful over the past twelve years resulting in considerable cost savings to the City. As a result, the City Council has authorized three additional crews. There have been no incidents involving the work crews during the period the program has been in existence. The work crews provide an essential service to the City by completing work that would otherwise go uncompleted.

(Continue on additional sheets as required)

Four crews are currently being utilized, two in the Facilities Department Parks Section and two in the Public Works Street Systems Section. Services provided by the crews include cleaning of alleys; litter removal; weed control; removal of debris from culverts and drainage ditches; erosion control and repair; and other labor intensive minor maintenance activities.

A public meeting was held on February 9, 2010 to address several citizens concerns regarding inmates working in residential areas. Representatives of the City and the Southern New Mexico Corrections Facility were present to provide information and answer questions. The establishment of City work rules separate from the Inter-Governmental Agreement was also proposed by the City in order to provide direction to staff and to address the concerns voiced by those in attendance. The work rules are attached as Exhibit "B".

The attached updated Inter-Governmental Agreement between the City of Las Cruces and the New Mexico Corrections Department has been signed and approved by representatives of the New Mexico Corrections Department including the Secretary of Corrections, the Warden of the Southern New Mexico Correctional Facility and the Corrections Department General Counsel. This Agreement will replace the Joint Powers Agreement previously in existence.

#### **SUPPORT INFORMATION:**

| <b>Fund Name / Account Number</b>        | <b>Amount of Expenditure</b> | <b>Budget Amount</b>           |
|--|------------------------------|--------------------------------|
| 1000 General Fund<br>10226020-722190     | \$50,000.00                  | Not to exceed budgeted amount. |
| 2650 Flood Operations<br>26226040-722190 | \$50,000.00                  | Not to exceed budgeted amount. |
| 1000 General Fund<br>10123130-722190     | \$100,000.00                 | Not to exceed budgeted amount. |

1. Resolution
2. Exhibit "A".
3. Exhibit "B"

#### **OPTIONS / ALTERNATIVES:**

1. **Approve the Replacement of the Existing Joint Powers Agreement with an Inter-Governmental Agreement between the City of Las Cruces and the New Mexico Corrections Department Concerning Inmate Work Crews.**

(Continue on additional sheets as required)

- 2. Do Not Approve of the Replacement of the Existing Joint Powers Agreement with an Inter-Governmental Agreement between the City of Las Cruces and the New Mexico Corrections Department Concerning Inmate Work Crews.**
- 3. Modify the Inter-Governmental Agreement as the Council deems necessary, said modifications will have to be approved by the New Mexico Corrections Department.**

(Continue on additional sheets as required)

**TITLE: A RESOLUTION APPROVING THE REPLACEMENT OF THE EXISTING JOINT POWERS AGREEMENT WITH AN INTER-GOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE NEW MEXICO CORRECTIONS DEPARTMENT CONCERNING INMATE WORK CREWS**

The City Council of the City of Las Cruces is informed that:

**WHEREAS**, The City of Las Cruces and the New Mexico Corrections Department first entered into a Joint Powers Agreement in October 1997 concerning the use of inmate work crews which has been amended multiple times; and

**WHEREAS**, Pursuant to NMSA, 3-49-1 (C), the City has the authority to provide for the cleaning, beautification, landscaping and maintenance of City streets and public grounds. Additionally, pursuant to NMSA 1978 33-1-6 and 33-8-15, Corrections has the authority to "cooperate with...local officials... in the furtherance of the purpose of the Corrections Act" and to "provide for the utilization of available inmate labor on public works by any state agency or local public body."; and

**WHEREAS**, The program has been successful over the past twelve years resulting in considerable cost savings as well as the authorization of three additional crews by City Council; and

**WHEREAS**, Four crews are currently being utilized for various labor intensive minor maintenance activities, including, but not limited to, cleaning of alleys; litter removal; weed control; removal of debris from culverts and drainage ditches; and erosion control and repair in the Facilities Parks Section and the Public Works Street Systems Section; and

**WHEREAS**, A public meeting was held on February 9, 2010 to address several citizens concerns regarding inmates working in residential areas; and

**WHEREAS**, An updated Inter-Governmental Agreement between the City of Las Cruces and the New Mexico Corrections Department has been signed and approved by representatives of the New Mexico Corrections Department that will replace the Joint Powers Agreement previously in existence; and

**NOW, THEREFORE,** be it resolved ~~1~~<sup>122</sup> by the governing body of the City of Las Cruces:

**(I)**

**THAT** The existing Joint Powers Agreement be replaced with an Inter-Governmental Agreement between the City of Las Cruces and the New Mexico Corrections Department concerning Inmate Work Crews; and

**(II)**

**THAT** The City Work Rules attached as Exhibit "B" will be utilized by City Staff and that minor updates and/or modifications may be made by Staff as required.

**(III)**

**THAT** City Staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

**DONE AND APPROVED** this 3rd day of May, 2010.

APPROVED:

\_\_\_\_\_  
Ken Miyagishima, Mayor

ATTEST:

\_\_\_\_\_  
CITY CLERK

VOTE:

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

|                     |       |
|---------------------|-------|
| Mayor Miyagishima:  | _____ |
| Councillor Silva:   | _____ |
| Councillor Connor:  | _____ |
| Councillor Pedroza: | _____ |
| Councillor Small:   | _____ |
| Councillor Sorg:    | _____ |
| Councillor Thomas:  | _____ |

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

Agreement #10-770-3000-0013  
City of Las Cruces, New Mexico  
Southern New Mexico Correctional Facility  
Page 1 of 6

**INTER-GOVERNMENTAL AGREEMENT CONCERNING INMATE WORK CREWS**

This Agreement is entered into between the **CITY OF LAS CRUCES** ("City") and the **NEW MEXICO CORRECTIONS DEPARTMENT** ("Corrections") on this \_\_\_\_ day of \_\_\_\_\_, 2010, and is effective as of that date.

**BACKGROUND**

1. The Parties first entered into a Joint Powers Agreement in 1997 concerning the City's use of Corrections inmate work crews. The original Joint Powers Agreement was amended multiple times, most recently on July 21, 2008 in City Council Resolution No. 09-011.
2. The City Attorney's Office has advised staff that there is no need for the contractual relationship between the parties to continue as a Joint Powers Agreement in compliance with the New Mexico Joint Powers Agreements Act because Joint Powers Agreements are primarily used when two or more New Mexico governmental agencies create a new legal entity.
3. The Parties never created a new legal entity to provide for inmate work crews. Rather, the relationship between the Parties has been a contractual one concerning the City's use of inmate work crews. Therefore, it is not necessary to use a Joint Powers Agreement format for such services.
4. Pursuant to NMSA 1978, § 3-49-1(C), the City has the authority to provide for the cleaning, beautification, landscaping and maintenance of City streets and public grounds.
5. Pursuant to NMSA 1978, §§ 33-1-6 and 33-8-15, Corrections has the authority to "cooperate with . . . local officials and agencies . . . in the furtherance of the purpose of the Corrections Act" and to "provide for the utilization of available inmate labor on public works by any state agency or local public body."

## CONDITIONS

1. **Purpose:**

The purpose of this Agreement is to authorize Corrections in accordance with state statutes to provide supervised inmates to perform minor maintenance and beautification for the City.

2. **Corrections agrees as follows:**

A. To provide work crews comprised of no less than five (5) and no more than ten (10) inmates per crew who are classified Level II security to perform minor maintenance and beautification for the City. However, the Warden has the discretion to shut down for Corrections' needs for emergency institutional support services for minimal periods of time;

B. To provide one (1) Correctional Officer per work crew, as defined in paragraph 2(A) above, properly trained and sufficiently experienced to supervise the work crew; and

C. To provide inmates who are willing and able to perform minor maintenance services as requested by the City including roadside clean up; fence repair; erosion control and repair; cleaning debris from culverts and drainage ditches; grass mowing and weed control and other minor maintenance work.

3. **City agrees as follows:**

A. To provide Corrections daily work schedule assignments including locations and activities;

B. To reimburse Corrections, based on monthly billings, for all expenses from this Agreement, including:

(i) all correctional officers' full salary and benefits, including overtime, if needed, for all time spent by correctional officers supervising inmates in their performance of this Agreement. Overtime shall be paid pursuant to Corrections' policy and procedures based on the overtime hourly rate;

(ii) the inmates' labor at a uniform rate of one dollar (\$1.00) per hour per hours worked, which will include travel time and lunch break; and

(iii) all reimbursements pursuant to this subparagraph (B) shall be paid by the City within thirty (30) days of receipt of a written statement from Corrections noting (a) the time worked by inmates on the work crews, (b) the time worked by the supervising correctional officers, and (c) the total cost of providing the crews for that month.

C. To provide a large enclosed passenger vehicle or vehicles to be maintained and fueled by the City, and to be used by Corrections to transport the correctional officers and work crews to City designated locations. Each vehicle shall be equipped with a City radio to allow immediate contact with law enforcement in the event of an emergency. The City's vehicle(s) may be driven by authorized correctional officers;

D. To provide safety vests for high visibility along roadways and other areas and other work garments for worker protection, as needed, to be determined by the City;

E. To provide all necessary equipment and materials to accomplish the assigned tasks, including but not limited to, hand tools and fencing material;

F. To provide signs stating "NMCD Prisoners Working"; and

G. To inspect the work within a reasonably short time after it has been reported as completed by Corrections. If such work is determined to be unsatisfactory or incomplete in the City's discretion, the work shall be redone to the City's satisfaction at no additional cost.

4. **Both Parties agree that:**

A. Corrections shall provide work crews from its facilities in the Las Cruces area;

B. All crews must be back within correctional facilities at 4:00 p.m. each work day, barring an emergency situation or approved alternative schedule, and that the normal departure time from the Corrections' facilities will be 7:30 a.m. The work crews may take a lunch break of up to thirty (30) minutes duration, and two (2) fifteen (15) minute breaks each day, one (1) break in the morning and one (1) break in the afternoon;

C. Correctional officers assigned to monitor work crews shall receive a minimum of forty (40) hours of in-service training annually provided and paid for by

Corrections. Corrections shall consult with the City in scheduling these training periods. The City shall not be responsible for the correctional officer's salary during such training periods;

D. Correctional officers assigned to monitor work crews shall accrue and shall be entitled to use annual and sick leave pursuant to New Mexico State Personnel Board Rules. Any time a correctional officer assigned to monitor a work crew is absent from work for whatever reason, Corrections will use its best efforts, but is in no way obligated to provide another correctional officer to monitor the work crew. Work crews may not leave the institution in the absence of a correctional officer to monitor that crew. In the event that the correctional officer assigned to monitor a work crew shall be separated from employment with Corrections, Corrections will use its best efforts to make another correctional officer available within the shortest possible time;

E. The contact persons for the performance of this Agreement shall be:

(i) Michael Heredia (or designee), Warden, Southern New Mexico Correctional Facility; and

(ii) Jeff Honeycutt, City Public Works Department, Street Systems Administrator, or Ray Reta, City Facilities Department.

F. Inmates used pursuant to this Agreement will not displace or otherwise assume the duties or jobs of persons employed by the City or Corrections prior to the effective date of this Agreement;

G. Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any other party's acts or omissions in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1, et seq., as amended;

H. This Agreement is not intended by any of its provisions to create in the public or any member thereof a third party beneficiary, or to authorize anyone not a party to the Agreement to maintain a suite for wrongful death, bodily and/or personal injury, damage to property and/or any other claim whatsoever pursuant to the provisions of this Agreement;

I. The term of the Agreement shall be from the effective date shown above until terminated by either party pursuant to paragraphs 5(K) or 5(L);

J. All of the understandings between the parties concerning the subject matter have been merged into this written Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement;

K. This Agreement will be terminated in the event that the City Council fails to appropriate sufficient funds to continue the implementation of this Agreement. The Agreement will be terminated as soon as possible after the failure to appropriate sufficient funds;

L. This Agreement may be terminated by either party for budget needs upon thirty (30) days written notice to the other party; and

M. This Agreement shall not be altered, modified, or amended except by an instrument in writing executed by the parties hereto.

5. **Termination of Prior Joint Powers Agreement:**

A. This Agreement terminates the Amended Joint Powers Agreement between the parties dated September 2, 2003 and all amendments thereto;

B. The New Mexico Joint Powers Agreements Act requires that any surplus monies on hand on termination be returned to the parties in proportion to contributions made; and

C. The Parties state that there are no surplus monies to be returned.

6. **Procurement Code Exemption:**

This Agreement is exempt from the requirements of the City's Procurement Code under LCMC 1997, § 24-4(1), which provides an exemption for the procurement of services from a state agency such as the Corrections Department.

IN WITNESS WHEREOF, the parties have executed this Agreement.

**CITY OF LAS CRUCES**

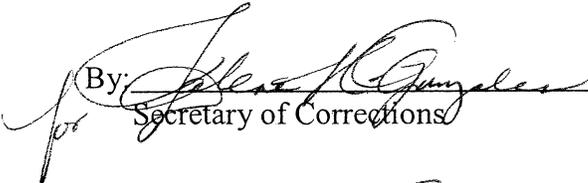
By: \_\_\_\_\_  
Terrence Moore, City Manager

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

Approved:

\_\_\_\_\_  
Marcia B. Driggers  
Senior Assistant City Attorney

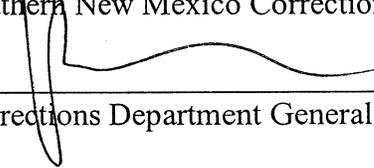
**NEW MEXICO CORRECTIONS DEPARTMENT**

for By:  \_\_\_\_\_  
Secretary of Corrections

Date: 3/25/10

By:  \_\_\_\_\_  
Warden  
Southern New Mexico Correctional Facility

Date: 3-30-10

By:  \_\_\_\_\_  
Corrections Department General Counsel

Date: 3/28/10

## **City of Las Cruces Inmate Crew Work Rules**

1. If a resident notifies the City of a valid concern with the presence of an inmate crew, City staff will investigate and relocate the work crew if deemed necessary.
2. Inmate crews will not be assigned work adjacent to any schools or day care centers.
3. Inmate crews will be assigned to work in different areas on a daily basis. There may be times when crews will work at the same location on consecutive days depending on the work assignment.
4. The City will not provide advance notification to the corrections department of crew work assignments.