City of Las Cruces®
PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 4 **Ordinance/Resolution#** 11-110 **Council District:** N/A

For Meeting of November 15, 2010
(Adoption Date)

A RESOLUTION APPROVING A CONTRACT RENEWAL AND AMENDMENT TO DOÑA ANA COUNTY CONTRACT NUMBER 08-101 FOR HOUSING OF MUNICIPAL PRISONERS.

PURPOSE(S) OF ACTION: To authorize the renewal and amendment of the City's existing contract with Doña Ana County to house municipal prisoners at the County Detention Center.

Drafter and Staff Contact: Marcia B. Driggers		Department: Legal		Phone: 541-2128	
Department	**Signature**	**Phone**	**Department**	**Signature**	**Phone**
Department Director		541-2128	Budget		541-2107
Other			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: For years, the City has contracted with Doña Ana County to house municipal prisoners in the County's Detention Center. For FY 2008-2009 and FY 2009-2010, City staff approved annual renewals of the Detention Center contract because the only amendment sought by the County was a Consumer Price Index ("CPI") adjustment to the daily rate for housing an individual City prisoner. However, for FY 2010-2011, the County has not only sought a CPI adjustment for daily prisoner care but has also sought material amendments to the existing contract that should only be approved by the Council.

Attached as support information are (1) the proposed FY 2010-2011 County Contract Number 08-101 renewal and amendments submitted by the County; (2) existing County Contract Number 08-101 which the County seeks to renew and to amend; and (3) a highlighted version of the proposed contract renewal and amendment showing the County's requested changes.

Staff had three areas of concern regarding the County's proposed changes. The first concern had to do with the amendment to Article 5(B) obligating the City to pay for prisoner hospitalization for mental health care. A related concern had to do with whether the County was submitting prisoner hospitalization costs for payment through the County's indigent healthcare fund as provided in Article 5(B) of the existing contract. Staff met with John Caldwell, the County Attorney, and with Chris Barela, the County Detention Center

(Continue on additional sheets as required)

Administrator, on July 23, 2010 and again on October 25, 2010. At those meetings, Mr. Caldwell explained that the County had entered into a contract with Mesilla Valley Hospital to house and treat mentally ill detainees at the daily rate of $700.00 per occupied bed; however, County Detention staff does not determine who is sent to Mesilla Valley Hospital. Rather, those decisions as well as other decisions regarding prisoner medical care are made by a third party prisoner health care provider under contract with the County. Mr. Caldwell further explained that there is no indigent health care fund available to pay for prisoner hospitalization expenses, and that Memorial Medical Center, who previously provided mental health services to prisoners, no longer does so.

The second area of concern was focused on the "minimum charge" per detainee. The proposed change will increase by one day the charges levied for each prisoner because the City will now pay for the release day.

The third concern is related to the proposed change involving the escalator calculation that is used to adjust the cost per day charge using the CPI. This modification will change the CPI index used from a regional index to a national index and potentially create increased volatility in future years because the new CPI calculation is the difference between two (2) months rather than a yearly average.

Given the County's position and the lack of an alternative method of detaining City prisoners, the staff recommends that the changes be approved. The aggregate cost of the changes will be significant, estimated to be in excess of $250,000 to $300,000 per year compared to what would be paid under the existing contract without changes. However, no budget adjustment is being proposed at this time. Staff will closely monitor the monthly charges from the County and, if necessary, recommend a budget adjustment before the end of FY 2011 if a funding shortfall develops.

SUPPORT INFORMATION:

1. Resolution.

2. Contract Renewal and Amendment Between Doña Ana County and the City of Las Cruces to Contract Number 08-101 Housing of Prisoners;

3. Existing County Contract Number 08-101 for housing of City prisoners;

4. Proposed Contract Renewal and Amendment to Contract Number 08-101 with changes highlighted.

(Continue on additional sheets as required)

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☒	See fund summary below
	No	☐	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
	Yes	☐	Funds will be deposited into this fund: _____
	No	☒	There is no new revenue generated by this action.

BUDGET NARRATIVE:

N/A

FUND SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
Prisoner Care	24100010-722201	$2,180,590	$2,180,590	$0	None
Prisoner Care	24147160-722201	$270,000	$270,000	$0	None

(Continue on additional sheets as required)

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this authorizes the renewal and amendment of Doña Ana County Contract Number 08-101 for Housing of City Prisoners.

2. Vote "No"; this will not authorize the proposed contract renewal and amendment.

3. Vote to "Amend"; this could modify proposed amendments which would require the approval of Doña Ana County.

4. Vote to "Table"; this would postpone consideration of the resolution.

REFERENCE INFORMATION:

N/A.

(Continue on additional sheets as required)

RESOLUTION NO. 11-110

A RESOLUTION APPROVING A CONTRACT RENEWAL AND AMENDMENT TO DOÑA ANA COUNTY CONTRACT NUMBER 08-101 FOR HOUSING OF MUNICIPAL PRISONERS

The City Council is informed that:

WHEREAS, for years, the City has contracted with Doña Ana County to house municipal prisoners in the County's Detention Center. For FY 2008-2009 and FY 2009-2010, City staff approved annual renewals of the Detention Center contract because the only amendment sought by the County was a Consumer Price Index ("CPI") adjustment to the daily rate for housing an individual City prisoner. However, for FY 2010-2011, the County has not only sought a CPI adjustment for daily prisoner care but has also sought material amendments to the existing contract that should only be approved by the Council; and

WHEREAS, City staff had concerns with some of the County's proposed amendments. The concerns were centered in three areas. The first area of concern was Article 5(B) obligating the City to pay for prisoner hospitalization for mental health care. Staff's related concern had to do with whether the County was submitting prisoner hospitalization costs for payment through the County's indigent healthcare fund as provided in Article 5(B) of the existing contract; and

WHEREAS, the second area of concern was the "minimum change" amendment to the proposed contract; and

WHEREAS, the third concern was the selection of a national Consumer Price Index and the calculation method used to annually adjust the per day prisoner costs; and

WHEREAS, staff met with John Caldwell, the County Attorney, and with Chris Barela, the County Detention Center Administrator, on July 23, 2010 and again on October 25, 2010. At the meetings, Mr. Caldwell explained that the County had entered into a contract with Mesilla Valley Hospital to house and treat mentally ill detainees at the daily rate of $700.00 per occupied bed; however, County Detention staff does not determine who is sent to Mesilla Valley Hospital. Rather, those decisions as well as other decisions regarding prisoner medical care are made by a third party prisoner

health care provider under contract with the County. Mr. Caldwell further explained that there is no indigent health care fund available to pay for prisoner hospitalization expenses, and that Memorial Medical Center, who previously provided mental health services to prisoners, no longer does so. Staff also discussed the "minimum change" and the use of the CPI index; and

WHEREAS, after understanding the County's position and the options currently available to the City, City staff now recommends that the Council approve the proposed renewal and amendments to County Contract Number 08-101.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAS CRUCES:

(I)

THAT Contract Renewal and Amendment between Doña Ana County and the City of Las Cruces to Contract Number 08-101 Housing of Prisoners is hereby approved effective as of July 1, 2010.

(II)

THAT City staff is hereby authorized to do all deeds necessary to accomplish the intent of this Resolution and of the Contract Renewal and Amendment.

DONE AND APPROVED on this 15th day of November, 2010.

APPROVED:

(SEAL)

_____
Mayor

ATTEST:

_____
City Clerk

Moved by: _____

Seconded by: _____

VOTE:
Mayor Miyagishima: ____
Councillor Silva: ____
Councillor Connor: ____
Councillor Pedroza: ____
Councillor Small: ____
Councillor Sorg: ____
Councillor Thomas: ____

APPROVED AS TO FORM:

Asst City Attorney

Support Information #2

Contract No 08-101

Contract Renewal and Amendment Between Dona Ana County And the City of Las Cruces to Contract Number 08-101 Housing of Prisoners

Pursuant to **ARTICLE 2 - TERMS,** it is mutually agreed by and between Doña Ana County and the City of Las Cruces that Contract No. 08-101 shall be renewed for an additional annual term from July 1, 2010 through June 30, 2011.

Pursuant to **ARTICLE 12 - AMENDMENTS,** it is hereby agreed by and between the parties that:

ARTICLE 4. COMPENSATION is amended as follows:

A. Daily Rate: The Contracting Entity shall pay the County Ninety Dollars and Eighteen Cents ($90.18) per day per prisoner, effective July 1, 2010. The Contracting entity will be charged the full daily rate for any partial day including the day of admission and day of release.

B. Annual Rate Review: Both parties agree that on July 1 of each year the daily rate may be adjusted in accordance with the U.S. Department of Labor CPI for all Urban Consumers, US City Average - All Items, 12 month percent change from April of the preceding year through March, of the existing contract year. The County shall provide written notice of a change to the daily rate prior to the contract year.

D. Minimum Charges: The "daily rate" covers one person per prisoner day. There will be a minimum of one (1) day's fee for any incarceration.

ARTICLE 5. MEDICAL CARE OF PRISONERS is deleted in its entirety and replaced with the following, effective the execution date of this amendment / renewal:

A. General Medical Care: The County recognizes that the Fourteenth Amendment to the United States Constitution requires the provision of limited medical care to those who are detained at the DACDC. A detainee is entitled to medical care, including mental health care, because of his/her status as a detainee. Although a detainee is responsible for the cost of his/her medical care, the County may not deny detainees access to medical care, including mental health care, regardless of their ability to pay.

B. Hospitalization, Transportation, and Security Costs: If a detainee is hospitalized for any reason, other than for injuries caused by the County, it shall be the sole responsibility of the Contracting Entity to pay the hospitalization, transportation, and security costs. This includes hospitalization for mental health care. The Contracting Entity will not be billed the daily DACDC rate for any full detainee days on which the detainee is not in the DACDC.

C. Pre-existing Illness and Injuries: If a detainee requires treatment for pre-existing injuries and/or illnesses and if the detainee is unable to pay for the treatment, the Contracting Entity shall pay the costs related to such treatment.

D. Medical Transportation for Care Other than Hospitalization: The Contracting Entity shall provide necessary personnel to guard and transport the prisoner while obtaining medical care outside the DACDC.

All terms and conditions of the original agreement not inconsistent herewith shall remain in full force. This agreement shall be effective when signed by both parties below or in counterpart, and photocopy, facsimile, electronic or other copies shall have the same effect for all purposes as an ink-signed original.

SIGNATURES:

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

Doña Ana County	**City of Las Cruces**
_____	_____
Brian D. Haines, County Manager	Signature of Authorized Representative

APPROVED AS TO FORM:
Asst City Attorney

Support Information #3

08-101

CONTRACT NO. DAC _____

CONTRACT BETWEEN DOÑA ANA COUNTY AND THE CITY OF LAS CRUCES FOR HOUSING OF CITY PRISONERS

This Contract is entered into by and between the Board of County Commissioners of Doña Ana County, New Mexico, hereinafter referred to as the "County," and the City of Las Cruces, hereinafter referred to as "Contracting Entity." The County is authorized to enter into this Contract pursuant to state and local purchasing procedures for contracts of this type and amount. The Board of County Commissioners approved the Contract during a regularly scheduled meeting.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

ARTICLE 1. PURPOSE AND SCOPE OF WORK:

A. The purpose of this Contract is to provide for the housing of Municipal prisoners in the Doña Ana County Detention Center, hereinafter referred to as "DACDC."

B. The County agrees to house and feed Municipal prisoners, space permitting, subject to the terms and conditions of this Contract.

C. The County will provide and operate the detention facility in accordance with and as required by law. Except as specifically set forth herein, the County will provide security for City prisoners.

D. Upon reasonable notice to the County, any Jurisdiction housing prisoners in DACDC may inspect the jail at pre-arranged times.

E. Any Jurisdiction requesting a prisoner be held for protective custody due to intoxication, but who is not charged with a crime, may be denied.

F. The County will give no preference to bed space (first come-first booked) to any arresting agency unless specifically guaranteed in the Contract.

ARTICLE 2. TERMS: The period of the Contract is July 1, 2007 through June 30, 2008. The Contract may be extended for additional one (1) year periods by mutual consent of both parties. The Contract may be terminated pursuant to Article 8 of this Contract.

ARTICLE 3. GOVERNING LAWS: This Contract is governed by New Mexico law. Both parties shall comply with the terms and conditions of the Contract and also with the federal, state and local laws applicable to County detention facilities.

ARTICLE 4. COMPENSATION:

A. Daily Rate: The Contracting Entity shall pay the County Eighty-Three and 84/100 Dollars ($83.84) per day per prisoner effective July 1, 2007. The Contracting Entity will not be charged the daily rate for the day that any prisoner is released unless the prisoner is booked and released in one calendar day. Daily rates will be reviewed on an annual basis.

B. Annual Rate Review: Both parties agree that on July 1 of each year the daily rate may be adjusted in accordance with the twelve (12) month average of the U. S. Department of Labor Consumer Price Index for all Urban Consumers (Western Cities with populations of 50,000 – 1,500,000) from May of the preceding contract year through April of the existing contract year. The County shall provide written notice of a change to the daily rate prior to contract renewal.

C. Terms: The County shall bill on a monthly basis. All payments shall be due within thirty (30) days of the statement date. Should it become necessary for the County to institute legal action to collect amounts due and prevail, the County shall recover reasonable attorney's fees and costs from the Contracting Entity.

D. Minimum Charges: The "daily rate" covers one person per prisoner day except for the release day. There will be a minimum of one (1) day's fee for any incarceration.

E. Adjustments: The daily rate may be re-negotiated by the County, prior to the termination date of the Contract, if significant changes occur which increase the County's expense in detention center operations.

ARTICLE 5. MEDICAL CARE OF PRISONERS:

A. General Medical Care: The County provides limited medical care within the DACDC. Whereas prisoners are responsible for the cost of their own medical care, the County may not deny prisoners access to medical care regardless of their ability to pay.

B. Hospitalization, Transportation and Security Costs: If a prisoner is hospitalized for any reason other than County-caused injuries, it shall be the responsibility of the Contracting Entity to pay the hospitalization costs (if not covered by the prisoner or if the prisoner is not covered by the indigent health care fund) and the costs of transportation and security (or provide same) for that time period the prisoner is hospitalized and not in the DACDC. The Contracting Entity will not be billed the daily rate for any prisoner days on which the inmate is not in the DACDC.

C. Pre-existing Illness and Injuries: The County shall not be responsible or liable for the cost of prisoner treatment for any pre-existing sickness, illness or injuries.

D. Medical Transportation for Care Other than Hospitalization: The Contracting Entity shall provide necessary personnel to guard and transport the prisoner while obtaining medical care outside the DACDC.

ARTICLE 6. DEFINITION / STATUS OF MUNICIPAL PRISONERS:

A. A Municipal prisoner is defined as:
   a. any adult apprehended by law enforcement officers for a violation of a municipal ordinance and charged in a municipal court;
   b. any adult arraigned in municipal court or magistrate court for petty misdemeanors committed within the city limits of the municipality, if arrested by a municipal police officer;

c. any adult incarcerated because of intoxication pursuant to NMSA 1978, § 43-2-19 and § 43-2-22, if arrested within the city limits of the municipality.

B. A prisoner shall remain a municipal prisoner throughout the period of incarceration for municipal charges. A prisoner concurrently charged in magistrate or district court for a misdemeanor or felony offense will become a County prisoner upon dismissal of all municipal charges or revocation of any warrant issued for municipal charges.

ARTICLE 7. ACCEPTANCE OF PRISONERS: Upon arrival in the DACDC, all prisoners shall complete a medical and mental health screening evaluation during the booking process. If County's supervisory staff determines that (1) further medical or mental health evaluation is necessary, (2) further medical clearance for incarceration is warranted, or (3) that medical or mental health care is appropriate or necessary, then the County may refuse acceptance and admittance of the prisoner. In this event, the Contracting Entity shall be responsible for transporting the prisoner, providing access to medical and mental health care, and obtaining whatever written medical clearance is required for incarceration.

ARTICLE 8. TERMINATION: The Contract may be terminated by the County upon thirty (30) days written notice of intent to terminate mailed to: City of Las Cruces, Legal Department, P. O. Box 20000, Las Cruces, New Mexico 88004. The Contracting Entity may also terminate the Contract upon thirty (30) days written notice to the County Manager, at 845 North Motel Boulevard, Las Cruces, New Mexico 88007.

ARTICLE 9. ASSIGNMENT: The Contracting Entity shall not assign or transfer any interest in the Contract nor assign any claims for money due or to become due, under the Contract without prior written approval of the other party.

ARTICLE 10. RECORDS:

A. The County shall maintain adequate and satisfactory booking and custody records and accounts, including records of offenses classified by type of offenses and arresting agency. Copies of records for individual inmates will be provided to the Contracting Entity upon written request.

B. Upon reasonable notice, the County shall permit the authorized representative of the Contracting Entity and the State Auditor to inspect and audit all data and records of the County relating to performance under the Contract for a period of three (3) years after final payment. The Contracting Entity has the right to recover excessive or illegal payments.

C. Both parties shall keep a strict accounting of all receipts and disbursements on the Contract. Such records shall be available for inspection by the parties and by the public during business hours at the offices of the respective parties.

ARTICLE 11. APPROPRIATIONS: The terms of the Contract are contingent upon sufficient appropriations and authorizations being made by both parties. If sufficient appropriations are not made by either party, the Contract shall terminate ten (10) days after receipt of written notice of non-appropriation being given by one party to the other. One party's decision as to whether sufficient appropriations are available shall be accepted by the other and shall be final.

ARTICLE 12. AMENDMENTS: This Contract shall not be altered, changed or amended except by instrument in writing executed by the parties hereof.

ARTICLE 13. WAIVER: Any waiver of any breach of any covenant, term, condition or agreement in this Contract to be kept and performed by the Contracting Entity shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the County from declaring a default for any succeeding breach either of the same covenant, term, condition or agreement or another. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

ARTICLE 14. MERGER OF CONTRACT: The Contract incorporates all the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Contract. No prior statements, representations, promises or agreements of understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract.

ARTICLE 15. SOVEREIGN IMMUNITY: The County and the Contracting Entity and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense(s) and/or do not waive any limitation(s) or liability pursuant to the New Mexico Torts Claim Act. No provision in this Contract modifies and/or waives any provision of the New Mexico Tort Claims Act, as it relates to the County, the City and their public employees.

ARTICLE 16. LIABILITY: 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 liability incurred 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.

ARTICLE 17. CO-PARTNERS: Nothing herein contained is intended or should be construed in any way to create or establish the relationship of Co-Partners between the parties or to establish the Contracting Entity as an agent, representative or employee of the County for any purpose or manner whatsoever. The Contracting Entity and its employees shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of the County as a result of the Contract.

ARTICLE 18. THIRD PARTY BENEFICIARIES: It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create the public or any member thereof a third party beneficiary or to authorize anyone not a party to the Contract to maintain pursuant to the provisions of the Contract a suit of any nature based upon this Contract.

ARTICLE 19. EQUAL OPPORTUNITY COMPLIANCE: The County agrees to abide by all federal and state law rules and regulations, and executive orders of the Governor of the State of New Mexico pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations and executive orders of the Governor, the County agrees to assure that no person in the United States shall, on the grounds of race, color, national origin, sex, age or handicap, be excluded from employment.

ARTICLE 20. BREACH OF CONTRACT: In the event any action or suit or proceedings is brought by either party for failure of the other to observe any of the covenants, terms, conditions and/or agreements, the losing party shall pay the prevailing party's reasonable fees of attorney(s), court costs and/or expenses incurred by winner. Any action brought to enforce the Contract or for its breach shall be tried only by the Court, and jury trials shall not be allowed. Venue shall be proper only in Doña Ana County, New Mexico.

ARTICLE 21. SUBCONTRACT: The County may subcontract any or all services or operations of the DACDC.

ARTICLE 22. NON-COMPETE: During the term of this Contract, the Contracting Entity shall not operate or maintain a jail or detention center in Doña Ana County, New Mexico in competition with Doña Ana County, other than a detoxification facility and holding cells incidental to its law enforcement activities.

ARTICLE 23. LIMITATION OF LIABILITY: No elected or appointed official, employee, servant, agent or law enforcement officer shall be held personally liable under the Contract or any renewal thereof because of its enforcement or attempted enforcement provided they are acting within the course and scope of their employment or governmental duties and responsibilities.

ARTICLE 24. PRISONER RELEASE: Both parties agree that the release of prisoners shall be made only pursuant to an order of a court of competent jurisdiction.

ARTICLE 25. INSURANCE: Both the County and the Contracting Entity will maintain liability insurance or qualify as a self-insured entity, as required by law.

ARTICLE 26. CONFLICT OF INTEREST: The County and the Contracting Entity warrant that they presently have no interest, and shall not acquire any interest during the term of this Contract, which would have the potential to conflict with the performance of the services required under this Contract. In the event such a conflict arises, it shall be brought to the attention of the other party and appropriate action shall be taken. Failure to inform the other party of the existence of a potential conflict of interest constitutes default and shall be grounds for termination of the Contract.

ARTICLE 27. PROCUREMENT CODE: The Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199, as amended, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

ARTICLE 28. SEVERABILITY: If any clause or provision of the Contract is held to be illegal, invalid or unenforceable, then it is the intention of the parties hereto that the remainder of the Contract shall remain in full force and effect. However, in the event that either party can no longer reasonably perform pursuant to the remaining Contract terms or if the purpose of the Contract can no longer be carried out by either party, the Contract may be voided and no damages shall accrue to either party.

ARTICLE 29. ARBITRATION: In the event that a dispute arises with respect to any of the provisions contained in this Contract or any other matter affecting this contractual relationship between the County and the Contracting Entity, it shall be resolved by arbitration in New

Mexico in accordance with the rules and procedures of the American Arbitration Association, and judgment upon the award rendered may be entered into any court having jurisdiction. All attorneys' fees and associated expenses shall be awarded as decided by the Arbitrator.

ARTICLE 30. NOTICE TO PROCEED: It is expressly understood that this Contract is not binding upon the County until approved and signed by the County.

ARTICLE 31. NOTICES: Payments shall be mailed to Accounts Receivable, 845 North Motel Boulevard, Las Cruces, New Mexico 88007. All other correspondence or notices shall be sent to:

Doña Ana County Manager
DAC Detention Center
845 N. Motel Blvd.
Las Cruces, NM 88007

City of Las Cruces
Legal Department
P. O. Box 20000
Las Cruces, NM 88004

ARTICLE 32. SIGNATURE AUTHORITY: Both parties certify that the persons signing this Contract on behalf of the County and the Contracting Entity have the authority to do so.

DOÑA ANA COUNTY

Brian Haines
County Manager
Date: 11/28/07

CITY OF LAS CRUCES

Terrence R. Moore
City Manager
Date: 11/15/07

APPROVED AS TO FORM:
Asst. City Attorney

Support Information #4

Contract No 08-101

Contract Renewal and Amendment Between Dona Ana County And the City of Las Cruces to Contract Number 08-101 Housing of Prisoners

Pursuant to **ARTICLE 2 - TERMS,** it is mutually agreed by and between Doña Ana County and the City of Las Cruces that Contract No. 08-101 shall be renewed for an additional annual term from July 1, 2010 through June 30, 2011.

Pursuant to **ARTICLE 12 - AMENDMENTS**, it is hereby agreed by and between the parties that:

ARTICLE 4. COMPENSATION is amended as follows:

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B. Annual Rate Review: Both parties agree that on July 1 of each year the daily rate may be adjusted in accordance with the U.S. Department of Labor CPI for all Urban Consumers, US City Average - All Items, 12 month percent change from April of the preceding year through March of the existing contract year. The County shall provide written notice of a change to the daily rate prior to the contract year. ~~except for the release day~~

D. Minimum Charges: The "daily rate" covers one person per prisoner day. There will be a minimum of one (1) day's fee for any incarceration.

ARTICLE 5. MEDICAL CARE OF PRISONERS is deleted in its entirety and replaced with the following, effective the execution date of this amendment / renewal:

A. General Medical Care: The County recognizes that the Fourteenth Amendment to the United States Constitution requires the provision of limited medical care to those who are detained at the DACDC. A detainee is entitled to medical care, including mental health care, because of his/her status as a detainee. Although a detainee is responsible for the cost of his/her medical care, the County may not deny detainees access to medical care, including mental health care, regardless of their ability to pay.

B. Hospitalization, Transportation, and Security Costs: If a detainee is hospitalized for any reason, other than for injuries caused by the County, it shall be the sole responsibility of the Contracting Entity to pay the hospitalization, transportation, and security costs. This includes hospitalization for mental health care. The Contracting Entity will not be billed the daily DACDC rate for any full detainee days on which the detainee is not in the DACDC.

REWORDED

C. Pre-existing Illness and Injuries: If a detainee requires treatment for pre-existing injuries and/or illnesses and if the detainee is unable to pay for the treatment, the Contracting Entity shall pay the costs related to such treatment.

SAME WORDING

D. Medical Transportation for Care Other than Hospitalization: The Contracting Entity shall provide necessary personnel to guard and transport the prisoner while obtaining medical care outside the DACDC.

All terms and conditions of the original agreement not inconsistent herewith shall remain in full force. This agreement shall be effective when signed by both parties below or in counterpart, and photocopy, facsimile, electronic or other copies shall have the same effect for all purposes as an ink-signed original.

SIGNATURES:

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

Doña Ana County	**City of Las Cruces**
_____	_____
Brian D. Haines, County Manager	Signature of Authorized Representative