

MUNICIPALITY OF ANCHORAGE

CLERK'S OFFICE

ASSEMBLY MEMORANDUM

APPROVED

Date: 11-17-98

No. 1070 -98

Meeting Date: November 17, 1998

From: Mayor

Subject: Approval of a Prisoner Care Agreement With the State for Operating the Replacement Jail and Terminating the 6th Ave. Jail Prisoner Care Agreement.

The Prisoner Care Agreement between the Municipality and the State of Alaska provides for the operation of the Replacement Jail Facility by the Department of Corrections (DOC). The Agreement is for a term of 20 years with six, five-year options to renew. The Agreement also provides for the concurrent operation of the 6th Avenue Jail for a four month transition period. For the care of its prisoners, the Municipality will pay DOC a net sum of Two Million Dollars annually subject to adjustment beginning in the fifth year of the Agreement based on increases in the Consumer Price Index for Anchorage over 1998. This Agreement will take effect when operation of the Replacement Jail commences which is expected to be in the year 2001.

DOC will provides all prisoner care, including medical, and the costs of transporting prisoners to court. This Agreement will be subject to the leases limiting the type of prisoners to: 1) those serving terms of five years or less, 2) APD prisoners, 3) those awaiting arraignment, trial or sentencing, 4) parole or probation violators, and 5) U.S. Marshal or Immigration and Naturalization Service prisoners.

The Agreement is subject to appropriations and may be terminated by mutual consent or for cause. It is also subject to re-negotiation if the Legislature enacts a comprehensive act addressing the responsibilities and obligations of State and local governments for providing criminal justice services. This Agreement will terminate the existing prisoner care agreement with the State for the Sixth Avenue Jail as well as all claims under the existing agreement, including the State's claims of past due payments.

APPROVAL OF THIS MEMORANDUM AUTHORIZES THE ADMINISTRATION TO ENTER INTO THE PRISONER CARE AGREEMENT WITH THE STATE OF ALASKA.

Concur:

George J. Vakalis
Municipal Manager

Concur:

Elaine Christian
Executive Manager

Respectfully submitted:

Rick Mystrom
Mayor

Prepared by:

Mary K Hughes
Municipal Attorney

PRISONER CARE AGREEMENT

This Agreement made this _____ day of _____, 1998, is between the **MUNICIPALITY OF ANCHORAGE, ALASKA** ("Municipality") and the **STATE OF ALASKA**, acting through the **DEPARTMENT OF CORRECTIONS** ("State").

WHEREAS, the State and the Municipality are parties to a lease agreement covering the facility known as the Sixth Avenue Jail, and a Prisoner Care Agreement concerning prisoners at the Sixth Avenue Jail entered into by the Municipality and the State in August of 1989, which agreement was modified by an amendment in November of 1990;

WHEREAS, the Alaska Legislature passed HB 53, ch. 15 SLA 1998, authorizing the State to lease a new correctional facility to be built and owned by the Municipality of Anchorage;

WHEREAS, the State and the Municipality desire to terminate these old agreements and enter into this new Prisoner Care Agreement to be effective on the commencement date of the Lease;

WHEREAS, the Consumer Price Index for Anchorage has risen each year since 1989 and is expected to continue to rise;

WHEREAS, the Municipality is entitled to a credit against the payments due hereunder for promoting alternatives to incarceration, including preventative programs and practices, for its low level offenders so as to save the State costs and free up hard beds for serious, dangerous offenders; and

WHEREAS, the Municipality has been paying the costs for utilities for the Sixth Avenue Jail and under the lease for the new facility the State will be paying those costs; and

WHEREAS, the Municipality and the State are legally authorized to enter this Agreement;

W I T N E S S E T H:

In consideration of the premises and of the mutual covenants herein set forth, the parties hereto agree and covenant as follows:

ARTICLE I
Definitions and General Provisions

1.1 Definitions. The following terms shall, for all purposes of this Agreement, have the following meanings, unless the context shall clearly indicate or require some other meanings:

"Administration" means the State of Alaska, Department of Administration.

"Anchorage CPI Index" means the Anchorage Consumer Protection Index number for all Urban Consumers (CPI-U) as reported by the U.S. Department of Labor for the first half of the year.

"Anchorage Police" means the Anchorage Police Department, Municipality of Anchorage.

"Anchorage Property and Facility Management" means the Department of Property and Facility Management of the Municipality of Anchorage.

"Corrections" means the State of Alaska, Department of Corrections.

"Care" means custody, care and treatment including basic medical care, food, lodging and personal items.

"Lease" means both the Ground Lease between the Municipality and the Registrar and the Agreement of Lease between the Registrar and the State of Alaska, Department of Administration, to be entered into pursuant to the Agreement to Issue Bonds and Agreement to Lease dated the ____ day of _____, 1998 ("MOU").

"Municipal Jail" means the facility as defined in Appendix I to the MOU.

"Municipality" means the Municipality of Anchorage.

"The State" means the state government of the State of Alaska.

ARTICLE II
Provisions

Section 1. Facility

- 1.1 Subject to the terms of the Lease, Corrections shall maintain the Municipal Jail as a state correction facility to care for and house offenders confined for the violation of state or municipal law delivered by the Anchorage Police Department and such other prisoners allowed under the terms of the Lease.
- 1.2 Corrections shall have the discretion to assign prisoners to various correctional facilities as deemed appropriate according to its standard operating procedures and policies.

The commissioner of Corrections shall designate the correctional facility to which a prisoner is to be committed to serve a term of imprisonment or period of temporary commitment.
- 1.3 Corrections shall lodge separately adult males and females.
- 1.4 The Municipality and the State have entered into an agreement whereby the Municipality will lease the Municipal Jail to the State to be used as a State correctional facility. The lease and this agreement are separate but mutually dependent and this agreement is subject to renegotiation upon termination of or material change to the lease.

Section 2. Delivery of Prisoners

- 2.1 The Municipality shall deliver prisoners to the custody of Corrections at the Municipality's own expense along with an original or duly authenticated copy of appropriate detention documents. Except as set out below, thereafter, in accordance with AS 33.30.081 and the Memorandum of Understanding executed by Corrections and the Department of Public Safety, the transportation of prisoners shall be the responsibility of Corrections and shall be performed by Corrections, and the costs shall be borne by Corrections.
- 2.2 Transportation of prisoners to and from court buildings for purposes of court appearances shall remain the responsibility of the Judicial Services Division of the Alaska Department of Public Safety.

- 2.3 Upon presentation of a written request from an appropriate authority of the Municipality, Corrections shall deliver any prisoner into the custody of the Municipality.

Section 3. Escape of Prisoners

- 3.1 Corrections shall employ all reasonable efforts to recapture any prisoner who has escaped.
- 3.2 Corrections shall notify the Municipality promptly whenever any prisoner has escaped from the Municipal Jail.

Section 4. Custody and Care of Prisoners

- 4.1 Corrections shall provide care for all prisoners delivered to it under this agreement in accordance with all applicable provisions of local, state, and federal law.
- 4.2 Corrections shall provide essential medical services at all reasonable times at all correctional facilities at which the Municipality's prisoners are lodged.
- 4.3 Whenever Corrections identifies a prisoner's need for special medical care that cannot be provided by the correctional facility medical staff, Corrections shall obtain medical services commensurate with those provided to state prisoners.

Section 5. Term

- 5.1 The term of this agreement shall be twenty (20) years beginning on the Commencement Date of the Lease as that term is defined in the Lease, with the option to renew for six (6) additional periods of five (5) years each. Each one (1) year period beginning on the Commencement Date and ending one (1) year thereafter shall be a "Payment Year."
- 5.2 The agreement for prisoner care covering and concerning the lease and operations of the jail located at Sixth Avenue and C Street in Anchorage is terminated as of the first day of the term hereof. Corrections shall have a four (4) month period from the commencement date of the lease to move prisoners and transfer all operations to the Municipal Jail. The Municipality shall not be obligated to pay Corrections the compensation for that four month transaction period under the terms of the terminated

Prisoner Care Agreement, but shall, instead, pay the compensation called for under this Agreement.

- 5.3 Should the Municipality and Corrections continue the relationship after expiration of the original term or after expiration of the term of any option period, all written provisions last agreed upon shall be held over quarter to quarter.

Section 6. Compensation

- 6.1 For the first payment year of this agreement, the Municipality shall pay Corrections for prisoner care a fixed fee of \$2,500,000 (two million, five hundred thousand dollars) annually, payable in advance in three equal quarterly payments of \$500,000 (five hundred thousand) and a fourth payment of \$1,000,000 (one million) upon receipt of billing from Corrections according to the following schedule:

March 31
June 30
September 30
December 31

The Municipality shall be credited with \$500,000 (five hundred thousand) on the fourth payment for programs and practices of the Municipality that promote alternatives to incarceration for its low level offenders so as to free up hard beds for serious, dangerous offenders. Because of the difficulty in quantifying the savings to the State, this credit shall not be subject to review or challenge. The first quarterly payment due hereunder shall be prorated as of the Commencement Date. The Municipality shall pay the difference between the amount that the Municipality has previously paid for the quarter under the provisions of the terminated Prisoner Care Agreement and the amount that is due under the payment schedule for this Agreement covering the period of time between the Commencement Date and the next payment date hereunder.

- 6.2 \$2,000,000 (two million) of the compensation paid by the Municipality to Corrections shall be adjusted every five years, commencing on the fifth anniversary of the signing of this Agreement on the basis of the Anchorage CPI Index reported for 1998. The formula to be applied to determine the five-year adjustment is the Anchorage CPI Index for the adjustment year divided by the 1998 Anchorage CPI Index, multiplied by \$2,000,000 (two million). The adjusted

compensation shall be prorated over the remainder of the quarter and the additional amount due shall be paid to the State together with the next scheduled payment. If the payment is reduced, the prorated reduction shall be repaid to the Municipality.

- 6.3 The Municipality shall pay Corrections upon receipt of billing within thirty (30) days. Thereafter, interest shall accrue on the unpaid balance at a rate of 10% per annum.
- 6.4 If during the period of this Agreement or any of its renewal periods the Alaska Legislature enacts a comprehensive measure addressing the responsibilities and obligations of the State and local governments in the provision of criminal justice services, then the compensation to be paid by the Municipality of Anchorage under this Agreement shall be renegotiated by the parties, within ninety (90) days of the effective date of the act. The inability of the parties to reach agreement on the matter shall be cause for termination of this Agreement but shall not affect the lease of the facility.

Section 7. Relationship of the Parties

- 7.1 The Municipality and Corrections shall perform their obligations as described in this agreement as independent contractors. The Municipality and Corrections shall cooperate and coordinate together in a reasonable manner on administrative, fiscal and operational matters. Nothing in this contract is intended to create an interest in or give a benefit to third persons not signing as a party to this contract.

Section 8. Nondiscrimination

- 8.1 Neither party will discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, marital status, sexual orientation, or mental or physical handicap except as a bona fide occupational qualification. Each party will take affirmative action to ensure that employees are treated fairly during employment without regard to their race, color, religion, national origin, ancestry, age, sex, marital status, sexual orientation or mental or physical handicap except as a bona fide occupational qualification. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer;

recruitment or recruiting advertising; lay off or termination; rate of pay or other forms of compensation; and selection for training including apprenticeship. Both parties agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

- 8.2 Both parties shall state, in all solicitation or advertisements for employees to work on contract jobs, that all qualified applicants will receive consideration for employment without regard to race, color, religion, age, national origin, ancestry, sex, marital status, sexual orientation or mental or physical handicap except as a bona fide occupational qualification.
- 8.3 Both parties shall comply with the reporting requirements that the Division of Equal Employment Opportunity Contract Compliance may establish by regulation.
- 8.4 Both parties shall include the provisions of paragraphs 8.1 through 8.3 in every subcontract or purchase order under this contract, so as to be binding upon every such subcontractor or vendor of the parties under this agreement.

Section 9. Permits and Laws

- 9.1 Both parties shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this agreement. All actions taken by either party under this agreement shall comply with all applicable local, state and federal statutes, ordinances, rules and regulations.

Section 10. Availability of Funds

- 10.1 This agreement is subject to the availability of funds lawfully appropriated for its performance. The Municipality covenants that it will in good faith seek all necessary appropriations for payment of all sums due under this agreement.

Section 11. Contract Administration

- 11.1 The State of Alaska, Department of Corrections, or its designee shall administer the prisoner care agreement on behalf of the State of Alaska.

11.2 The Municipality of Anchorage, Anchorage Police Department or its designee, shall administer the prisoner care agreement on behalf of the Municipality of Anchorage.

Section 12. Termination

12.1 This agreement may be terminated:

- A. By mutual consent of the parties.
- B. For cause, by either party when the other party fails in any material way to perform its obligations under this contract.
- C. For lack of lawfully appropriated funding of either party.
- D. Termination for any reason under this section is subject to the condition that the terminating party or parties (1) writes of its intent to terminate at least 30 days prior to the effective stated date of termination, (2) states with reasonable specificity the reasons for the intent to terminate, (3) if for cause, shall allow the other party 60 days to cure the claimed deficiency or make a significant good faith effort to correct the same, whereby if the deficiency has been corrected or significant effort made to correct it by the end of the 60 days, the notice shall become null and void or if after 60 days the condition continues, the termination shall be effective and (4) notifies the other party by certified mail, the effective notification date to commence thereof upon receipt.
- E. Renegotiation of this agreement shall not be construed as an intent to terminate.
- F. If either party or both parties terminate, the Municipality shall pay Corrections at the rate agreed upon in this agreement up to the effective termination date.
- G. If either party terminates for whatever reason, neither party may claim any compensation other than that allowed in this agreement.

H. Except as provided in this section, termination by either party does not affect any other right or obligation of a party under this agreement.

Section 13. Assignment

13.1 Corrections shall not delegate its duties pertaining to prisoner care without the written consent of the Municipality, which consent shall not be withheld unreasonably.

Section 14. Modification

14.1 This Agreement and any provision therein may only be amended in writing, signed by both parties.

Section 15. Successors and Assigns

15.1 The terms, provisions and conditions of this agreement shall be binding upon the parties and their respective successors and assigns.

Section 16. Paragraph Headings

16.1 The paragraph headings in this document are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of this agreement or in any way affect its terms, provisions and/or conditions.

Section 17. Indemnification and Insurance

17.1 Corrections shall indemnify, defend, save, and hold the Municipality harmless from any claims, lawsuits or liability, including attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of Corrections occurring during the course of or as a result of Correction's performance of this agreement.

17.2 The Municipality shall indemnify, defend, save, and hold Corrections harmless from any claims, lawsuits or liability, including attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Municipality occurring during the course of or as a result of the Municipality's performance of this agreement.

17.3 Corrections shall not indemnify, defend, save, or hold the Municipality harmless from claims, lawsuits, liability, or

attorneys' fees and costs, arising solely from the wrongful or negligent acts, errors or omissions of the Municipality, its agents, employees, or contractors occurring during the course of or as a result of the performance of this agreement.

17.4 The Municipality shall not indemnify, defend, save, or hold Corrections harmless from claims, lawsuits, liability, or attorneys' fees and costs, arising solely from wrongful or negligent acts, errors or omissions of Corrections, its agents, employees, or contractors occurring during the course of or as a result of the performance of this agreement.

17.5 When claims, lawsuits, or liability, including attorneys' fees and costs, arise from the wrongful or negligent acts, errors or omissions of both the Municipality and Corrections, Corrections shall indemnify, defend, save, and hold the Municipality harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, that result from Correction's wrongful or negligent acts, errors or omissions occurring during the course of or as a result of Correction's performance pursuant to this agreement and the Municipality shall indemnify, defend, save and hold Corrections harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, that result from the Municipality's wrongful or negligent acts, errors or omissions occurring during the course of or as a result of the Municipality's performance pursuant to this agreement.

17.6 Corrections shall effect and maintain liability coverage for its performance under this contract as required of it through its self-insured State program. The Municipality shall provide insurance required of it through its self-insured program.

Section 18. Addresses

18.1 For purposes of notifications and correspondence regarding this agreement, the addresses of the parties are as follows:

The Municipality:	Corrections:
Anchorage Police Department	Department of Corrections
4501 South Bragaw Street	P.O. Box 112000
Anchorage, Alaska 99507-1599	Juneau, Alaska 99811-2000
Telephone: 786-8500	Telephone: 465-4652

Section 19. Force Majeure

- 19.1 Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
- 19.2 As used in this agreement, force majeure is an act or event of substantial magnitude, beyond the control of either party, which delays the completion of this agreement, including without limitation:
- A. Any interruption, suspension or interference resulting solely from the act of the Municipality or the State or neglect of the Municipality or the State not otherwise governed by the terms of this contract.
 - B. Strikes or work stoppages.
 - C. Any interruption, suspension or interference with the agreement caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrence.
 - D. An order of a court, or of an administrative agency or governmental officer other than the Municipality or the State.
 - E. The suspension, termination or interruption of a necessary governmental license, consent, authorization, or approval.

Section 20. Nonwaiver

- 20.1 The failure of either party at any time to enforce a provision of this agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this agreement or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

Section 21. Jurisdiction; Choice of Law

- 21.1 Any civil action arising from this agreement shall be brought in the Superior Court for the Third Judicial District of the State of Alaska at Anchorage. The laws of the State of Alaska shall govern the rights and obligations of the parties under this agreement.

