

MEMORANDUM

TO: CITY COUNCILORS (C/O COUNCILOR EAGLETON, COUNCIL CHAIR)

FROM: MAYOR TAYLOR

DATE: SEPTEMBER 12, 2008

RE: STATUS OF JAIL CONTRACT NEGOTIATIONS

Given the approaching expiration date for the Jail Contract I wanted to briefly outline the current status of the negotiations, as well as provide relevant historical background. As you are aware, contract negotiations began in or about March when the County submitted their proposed contract entitled "Detention System Contract" to replace the current "Jail System Agreement". Upon receiving the County's initial proposal, instead of acting precipitously in response to what appeared an unreasonable demand; the legal department engaged in systematic due diligence. To fully understand the counter offer and the current status an outline of relevant historical and financial data follows.

A. BEFORE THE JAIL TAX

History of promises and commitments made by County to City of Tulsa

1. Prior to the passage of the dedicated jail tax and to the creation of the Criminal Justice Authority the City of Tulsa and the County spent a significant amount of time and energy negotiating a framework for the joint operation of the city jail facilities, including cost distribution methodology, housing, booking operations and performance audits by both the City Auditor and an independent auditor.
2. The negotiation of the February 1995 Jail Consolidation Agreement took several years and resulted in an arrangement whereby the City:
 - a) Made its existing City Jail and the booking area (3rd floor of the Police/Municipal Court building) available for use by the County until the completion of a new booking area which the city agreed to fund and construct according to County Specifications;
 - b) The City Jail, the Adult Detention Center, and ultimately a newly constructed area were to be used together with the Tulsa County Jail as a "consolidated City-County jail."
3. The reason these separate jail facilities were merged into a single consolidated jail system was to maximize operational efficiencies which in turn would reduce overall costs to taxpayers.

B. COUNTY'S INDUCEMENT AND PROMISES MADE

1. During the period August – September 1995, County Commissioners advocated the passage of a \$70.9 million jail project to be funded by a new County sales tax. County Officials lobbied hard to gain support from then City officials, including Mayor Susan Savage for a dedicated jail tax.
2. This project was to be administered by a proposed Justice Authority consisting of the elected Tulsa County Commissioners, the Mayor of Tulsa and one other Mayor from a city within Tulsa County.
3. Issues relating to this authority and the new tax were widely discussed and debated.
 - a) It is important to note that the County had failed in two previous elections to secure a dedicated jail tax.
 - b) To justify a third effort to secure such a tax and garner support from the Chamber and the City of Tulsa they made numerous representations and promises.
4. Ultimately, the County commissioners structured the jail proposal to eliminate the need for the City of Tulsa to fund consolidated jail operating costs.
 - a) The City Jail, the Adult Detention Center, and a newly constructed area in the municipal building were to be used together with the Tulsa County Jail as a “consolidated City-County jail.”
5. The Commissioners met with the Chamber to seek its support. During that meeting the Commissioners explained their proposal for a new jail. On July 11, 1995, then Chamber Vice President, Susan Harris prepared a memorandum detailing the representations and promises made by the Commissioners.
 - a) As memorialized in Ms. Harris’s memorandum, at page 5, one of the County’s justifications for the dedicated tax was that it would: “**relieve** City of Tulsa’s budget from the current \$2.2 million obligation for operating costs of the jail.”²
6. Thereafter, in a letter dated July 20, 1995, then Chair of the County Commission, Robert N. Dick, solicited support for the new jail from then Mayor, Susan Savage.³
 - a) This letter was an effort to respond to several of the Mayor’s stated concerns about the jail proposal. In that letter, Commissioner Dick represented in writing that the dedicated sales tax would satisfy “Tulsa County

¹ Exhibit “A”

² Exhibit “A”, page 5, “DOLLAR SAVINGS OPPORTUNITIES AVAILABLE”

³ Exhibit “B”

incarceration needs for a reasonable length of time (25 years)” and would eliminate the expense to the City for jail operation/maintenance from 1996 forward and increase the general fund commitment of the County by \$3 million:

“Obviously, I saved the best for last...”

Table I ... shows for the years 1996 forward, the elimination of the City of Tulsa’s portion and the reduction in the County’s general fund commitment by \$3 million.”⁴

7. With the October 1995 tax election looming, it was essential that the County have solid municipal support. Toward that end, the Authority’s proposal was modified to add 2 additional Mayors as trustees and Commissioner Dick’s financial commitment to the City of Tulsa was again reiterated in a briefing paper⁵ submitted to Tulsa World reporter, Ziva Brainstetter as background for a September 6, 1995 article.⁶
8. On May 24th, 1996 then Commissioner Lewis Harris, Chairman of the Authority’s Financial Committee outlined the Original Assumptions and Agreements for the jail budget project:

“ORIGINAL ASSUMPTIONS AND AGREEMENTS...”

5. Upon approval of the tax by the voters, the City of Tulsa could stop paying \$2 million per year to the County for the operation of a City Jail because sufficient funds would be available from the new tax.

6. Tulsa County may/would be required to continue to provide as much as \$2.3 million per year for jail operations until the new jail is paid off in order to conserve enough of the 3/12% to help pay the debt for construction.”

C. AFTER THE DEDICATED JAIL TAX

1. In October of 1996 it became necessary for Mayor Savage to reiterate the promises and commitments made by the County. She did so in a letter dated October 30, 1996, to then Commissioner Bob Dick:

*“From the City of Tulsa’s view, there is no dispute regarding the amount of money to be paid by the City to the County. **Based upon your public and private representations on behalf of the County prior to the sales tax election, the Tulsa community, the Chamber of Commerce, the City Council***

⁴ Exhibit “B”, Pages 1, 2 and Table I

⁵ Exhibit “C” Table VI

⁶ Exhibit “D”

and I fully understood that once the sales tax was approved and available for operations, the City's annual appropriation would drop to zero...

Specifically, I direct your attention to your July 20, 1995 letter to me, copied to the other Commissioners and to Chamber of Commerce officials. The rationale for that policy change related directly to the value of the facilities the City of Tulsa has for years provided to the jail system and which currently represents 62% of all available bed space. Many improvements have been made to the systems' facilities during the past ten years at City taxpayer's expense and have totaled \$9.6 million.

Additionally, historic records demonstrate that the City of Tulsa has subsidized the County's jail operations by agreeing to pay, when it was not legally required to do so, for the first forty-eight hours of care of those arrested by Tulsa police officers. This totals more than \$800,000 annually. Knowing all of this, all parties agreed publicly and privately prior to the sales tax vote that the City's assets more than off-set the costs to serve the sixty to sixty-five average daily City municipal prisoners from a population of nearly one thousand in the City-County system.⁷

2. Thereafter, the parties again memorialized their intent in the terms of the **current** contract, which states in Sec 4.2:

"It is the intent of the parties, to the extent reasonably possible, to establish and maintain an equal value-for-value exchange of City and County services and facilities. City and County agree that the provision by the City of its identified facilities and services in exchange for County providing its identified services and facilities is an equal exchange of goods and services sufficient to house a daily average not exceeding one hundred sixteen (116) Municipal Prisoners...in the County's jail".

3. Nothing has changed between the City and the County to alter the terms of the original agreement between them. The County received and continues to receive the benefit of that bargain - an annual revenue stream of \$23 million (likely more in the coming years due to BOK Center and downtown vitalization efforts.)
 - a.) The dedicated jail tax currently generates approximately \$23 million annually of which the City of Tulsa contributes approx \$17.5 million (75%).

D. THE COUNTY'S PROPOSED "DETENTION SYSTEM CONTRACT"

1. DEFINITION OF MUNICIPAL PRISIONER

- a.) After the jail tax was passed by the citizens, the City and the County entered into the Jail System Agreement, which incorporated the terms referenced above, and defined "municipal prisoner with simple clarity:

⁷ Exhibit "E"

“1.3 Municipal Prisoner. The term “Municipal Prisoner” has reference to individuals present in the Jail System exclusively as the result of a City of Tulsa misdemeanor charge.”

- b.) The County now proposes to change the definition of municipal prisoner to include any prisoner charged with a misdemeanor regardless of whether they are also charged with a felony. This proposed change eviscerates the fundamental definition of “Municipal Prisoner” and renders it meaningless. As a consequence, the County’s proposal is completely contrary to the intent of the original agreement.

1. Under the current contract, the City and the County agreed that the real cost of a municipal prisoner is \$16.44 per day. The amount demanded by the County’s current proposal is \$54.13 per day.

2. Neither the Sheriff nor the County has provided any facts or figures to support a true calculation for the cost of a “municipal” prisoner as distinguished from a prisoner for whom the County has a statutory obligation to house. Obviously, the cost for a felony prisoner is the same whether or not there are any ancillary misdemeanor or municipal charges.

3. The cost of a “municipal” prisoner (an individual held exclusively as the on a City of Tulsa misdemeanor charge) is not equivalent to that of a state/felony prisoner. Municipal prisoners’ are not required to have all services provided by the facility, are ordinarily released on bail within hours of booking and are uniformly held in the lowest security area of the prison (therefore require the least amount of supervisory manpower.)

- c.) It is our position that the County cannot avoid its statutory responsibility for felony prisoners merely because there are also pendent misdemeanor offenses. This would tantamount to the Federal Court refusing to accept a case over which it had jurisdiction, simply because it included a State law claim.⁸ The City cannot and will not agree to change the definition of municipal prisoner. It is the City’s position that the definition set forth in the Jail System Agreement strikes at the very heart of the inducement used by the County to garner the support from the City which made it possible to pass the jail tax.

2. PROPOSED COST INCREASE FOR MUNICIPAL PRISONER:

- a.) In addition to the very significant change in the definition of “Municipal Prisoner” outlined above, the County proposes to increase the daily per diem rate per “Municipal Prisoner” (under the new definition) from zero to \$54.13. The current contract provides that there is no charge to the City unless the average daily count of municipal prisoners exceeds 116. If that number is exceeded, the City would be charged a daily rate of \$16.44 for those municipal prisoners only.

⁸ **Pendent jurisdiction** is the authority of a United States federal court over nonfederal (state) claims between parties litigating other matters properly before the court.

PRIVILEGED AND CONFIDENTIAL SETTLEMENT ANALYSIS

1. Historically, municipal prisoners make up less than 7% of the total jail population at any given time. According to our records, the average number of municipal prisoners on any given day would be less than 35 (averaged over a year.) To date, the City has never exceeded the average daily count.

b.) The County has proposed to expand the definition of municipal prisoner to include those prisoners charged with state/felony charges who also had any pending misdemeanor charge(s). The County also proposes an increase in the daily rate to \$54.13. Over the course of a year the average number of prisoners charged with both a felony and a misdemeanor is 85.

1. This change, in concert with the change in definition, would result in an additional cost of approximately \$1.7 million to the citizens of Tulsa above and beyond the \$17.5 million they already contribute through the dedicated jail tax.

a. The proposed formula would have the following economic impact: 85 (average number of prisoners with both felony and misdemeanor charges) multiplied by daily rate \$54.13 X 365 = approximately \$1.7 million dollars, leaving the County with a profit of approximately \$1.5 million dollars.

3. THE COUNTY'S PROPOSAL ELIMINATES THE FUNDAMENTAL BENEFIT OF THE ORIGINAL AGREEMENT BETWEEN THE PARTIES

a.) The original agreement between the parties is incorporated in the current contract as follows:

4.2 "It is the intent of the parties, to the extent reasonably possible, to establish and maintain an equal value-for-value exchange of City and County services and facilities. City and County agree that the provision by the City of its identified facilities and services in exchange for County providing its identified services and facilities is an equal exchange of goods and services sufficient to house a daily average not exceeding one hundred sixteen (116) Municipal Prisoners...in the County's jail."

4. THE COUNTY PROVIDES NO CLEAR EXPLANATION FOR THEIR DRAMATIC CHANGE IN POSITION

a.) The County provides no clear explanation for their dramatic change in position or the concomitant effort to reconstitute the terms of the deal agreed to in connection with the passage of the jail tax. Looking back to the original purpose of consolidation – to maximize operational efficiencies to **reduce** overall costs to taxpayers, this would appear to be an effort designed to achieve the exact opposite.

5. THE COUNTY IS NOT EXPENDING ALL REVENUE GENERATED BY THE DEDICATED SALES TAX

a.) TCCJA records reflect that for the past 2 years the Sheriff has operated the jail for \$2 million less than the revenue generated by the dedicated tax (current fund balance is approximately \$4 million.) Based upon representations made by Sheriff Glanz, these funds in conjunction with anticipated additional revenues from the City of Tulsa would be used to expand the jail (to house prisoners from neighboring communities at a cost.) First, this is precisely what has gotten Oklahoma City into its current jail predicament. Second, given the overall state of the economy and both the City and County budget constraints this effort is not an appropriate or responsible use of taxpayer dollars.

E. DUE DILIGENCE AND CURRENT COUNTER OFFER

1. After engaging in systematic due diligence and determining that there was no compelling justification for the County to reconstitute the deal giving rise to the current contract, the City made a well reasoned counter-offer, supported by sound historical and financial data. Initially this offer reduced the number of daily prisoners from 116 to 85 and in the spirit of cooperation agreed to pay an amount for an average daily count that exceeded that number with no change to the definition of municipal prisoner. This was met with great opposition from the County and after further discussion both internally (with Judge Crawford, TPD, the City Prosecutor and the legal department) and the County the compromise offer from the City was modified as follows:

No change to the definition of municipal prisoner. The average daily number of Municipal Prisoners would be limited to thirty-five (35) (to be calculated over the course of a year). After that, the City would pay the County \$18 per day for each municipal prisoner. As consideration, in addition to the dedicated sales tax, services would be exchanged as follows: All current consideration would be removed from the terms of the contract to be substituted with 1) City waiver of the fee to maintain criminal records and respond to radio traffic requests for records and warrants checks (approximate value of \$126,807); 2) continuation of the lease to the County of Lakeside home for \$1 per year and of 23,300 square foot facility contiguous to County's Juvenile Detention Center [approximate combined annual rental value exceeds \$400,000.]

2. There has been no meaningful response from the County to date, although we are told a counterproposal will be forthcoming next week.

F. CONCLUSION

Obviously, the Tulsa Police Department is the primary agency charged with bringing prisoners to the County jail. In simple business terms, this means that TPD brings the customers to the County. Without the customers, the jail would essentially be out of business.

Based on the previous understanding and agreement between the parties, the compromise proposed by the City is more than reasonable. The City of Tulsa makes an enormous contribution to the dedicated jail tax. In addition, there are many services provided by the

City to the County, at little or no cost⁹. Based on these facts, there is simply no justification for the County to ask for more money from the citizens of Tulsa. This is especially true in light of the fact that the County is saving, annually, a large amount of the revenues generated by the jail tax.

While there may be other explanations of which I am not aware, I am told, that the main reasons for the County's current effort to reconstitute the agreement stems from:

- 1) An effort to create a new revenue stream and ultimately to generate a profit from the jail operation at the expense of the citizens of Tulsa – which, if true, would be improper.
- 2) At least some of the County Commissioners feeling that they have taken “body blows” because of the annexation of the fair grounds and the establishment of the business improvement district to fund the ball park.
- 3) The Sheriff's frustration at privatization of the jail and his desire to expand the jail to generate additional revenue from prisoners.
- 4) The Sheriff's frustration at having to pay for utilities at the jail.

Clearly, the County has a responsibility and obligation to abide by the terms of the agreements lawfully entered into by its predecessors and to operate in accord with their fiduciary duty to protect the tax dollars of the citizens of the City of Tulsa. Regardless, in the spirit of cooperation and compromise, the City has made an extraordinary settlement offer to the County. It is my strong hope that the County will respond reasonably and accept the offer currently on the table. If they refuse to do so, we will have no choice but to alter the way we do business in Municipal Court. Should it become necessary to make such changes in the short term, Judge Crawford has an excellent plan which he will implement while we evaluate all options, including legal remedies against the County.

⁹ Examples of services provided by the City without charge to the County include: partial reimbursement only for use of Police lab and Animal Shelter; no reimbursement for access to TRACIS; No charge for secure parking facilities for jail vehicles at the Police/Courts Building or for use of elevator and jail holding facilities on the 3rd floor; TPD does not charge for special police services to TCSO and other agencies such as helicopter support, use of police dogs for suspect tracking, use of Bomb Squad or Dive Team; TPD assists TCSO without charge when law enforcement backing is required (both inside and outside city limits); TPD forensic Lab provides full services to TCSO and furnishes a place for the temporary holding of evidence. While the County pays an annual fee for fingerprinting services, this fee does not come close to covering the cost of all services provided by the TPD laboratory.