

ORDINANCE NO. 00-05-11A

AN ORDINANCE SETTING FORTH CONDITIONS
FOR ACCEPTANCE OF MUNICIPAL PRISONERS
AT THE GRANT COUNTY DETENTION CENTER

WHEREAS, pursuant to NMSA 1978, §3-18-20, a county may house municipal prisoners in the county's jails upon the terms and conditions determined by said county and otherwise in accordance with law;

WHEREAS, Grant County has historically housed prisoners from the municipalities of Silver City, Bayard, Hurley and Santa Clara and intends to provide such services in the future;

WHEREAS, Grant County incurs costs and expenses in housing said prisoners and is entitled to be reimbursed for said costs and expenditures pursuant to NMSA 1978, §33-3-2.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GRANT, NEW MEXICO, THAT:

1. Grant County shall enter into contractual agreements with the aforementioned municipalities for the purpose of providing proper housing and care of municipal prisoners in the Grant County Detention Center on terms and conditions which are consistent with this Ordinance. It is not expected that property shall be acquired pursuant to this Ordinance and neither is it expected that any surplus funds shall be on hand upon termination of contracts executed pursuant to this Ordinance.

2. In accordance with NMSA 1978, §33-3-2, Grant County shall enter into said contracts upon the approval of the contractual agreement by the Department of Finance and Administration.

3. By the terms of such contracts, Grant County agrees to make the County Detention Center available for the housing, care and feeding of all municipal prisoners as may be required by law and subject to any agreement entered into pursuant to this Ordinance.

4. Grant County shall be entitled to receive compensation through its contracts with the municipalities as long as such contracts are in accordance with the terms and conditions stated in this Ordinance, including:

a. The County shall be entitled to receipt of \$78.00 per prisoner per day or any portion of a day, for the housing, care and feeding of all municipal prisoners confined in the Grant County

Detention Center. Each municipality entering into an agreement with the County pursuant to this Ordinance shall be obligated to pay Grant County within thirty (30) days after receiving a monthly bill for the aforementioned services. Payments not received by the County within ten (10) days past the thirty (30) day grace period shall bear interest at the rate of eighteen percent (18%) per annum until paid in full. Should the County institute action to collect amounts due under the terms of any such contract, the County shall recover its reasonable attorney's fees and costs from the delinquent municipality.

b. The municipalities shall pay to creditor(s) (or to the County, if the County has paid such expense, although the County shall not be obligated to directly pay such expenses) the medication, medical, dental and hospital expenses of all municipal prisoners, except as otherwise provided herein.

c. The municipalities shall agree to pay to creditor(s) (or to the County, if the County has paid such expense, although the County shall not be obligated to directly pay such expenses) the medication, medical, dental or hospital expenses required by any prisoner as a result of injuries caused by the municipality or any of its employees.

d. In the event a municipal prisoner is hospitalized, there shall be no Detention Center charges made by the County to the municipality for the full day(s) that the municipal prisoner is hospitalized and is not a prisoner in the County Detention Center.

e. The County shall determine the fair and reasonable fee for housing municipal prisoners on an annual basis and any increase or decrease in the costs of housing municipal prisoners shall be the fee charged by the County and paid by the municipalities. Any contracts entered into by the County with municipalities for the housing of municipal prisoners shall permit any such change in fee as well as the enforcement of such charges or fees in accordance with this Ordinance.

f. The County shall be responsible to pay for medication, medical, dental or hospital expenses required by any municipal prisoner as a result of injuries sustained while said prisoner is in the physical custody of the County.

g. The County shall require indemnification and have the municipalities hold the County harmless from all medical, dental or hospital costs incurred as a result of pre-existing sickness or injuries sustained by municipal prisoners except as herein specifically provided. Pre-existing sickness or injury shall be defined for the purposes of this Ordinance as any sickness

or injury suffered by a prisoner prior to the municipality or its agent's taking custody of the prisoner.

h. Municipalities shall be required to provide the necessary personnel to convey and transport the municipality's prisoner(s) to obtain the care required, however, if the municipality requests that these services be provided by the County, the municipality shall be required to pay the County the costs of such services provided by the County, including, but not limited to, transportation and use of County personnel.

i. The County shall not provide any service that is not required by law, and provided further, that the municipalities shall have the right to refuse the care requested by any municipal prisoner; provided, further, that the municipalities must agree to indemnify the County and its employees and agents and hold them harmless from and against any and all claims, losses, demands, judgments, liabilities, lawsuits, expenses, attorney's fees, costs and/or any action of any kind and nature arising out of the failure or refusal to provide such care, in the event the municipality exercises the right to refuse the care requested or fails to provide such care.

5. DEFINITION OF MUNICIPAL PRISONERS. Municipal prisoners shall be defined as all of the following:

a. Adult subjects apprehended by a municipality's agents or employees who are confined in jail for violation of an ordinance of the municipality before and after sentence is imposed by the municipality's court; provided, however, the subject shall not be deemed a municipality's prisoner once its court signs an order transferring the subject to District Court for a competency hearing pursuant to the municipality's Rule of Criminal Procedure regarding competency hearings;

b. All adults arraigned in Magistrate Court by a municipality's agents or employees for misdemeanors committed in that municipality if there is a municipal ordinance applicable to all charges filed, regardless of whether the prisoner is charged with an offense under state, county or federal statute; and

c. Any adult incarcerated because of intoxication.

6. ACCEPTANCE OF CITY PRISONERS. The County shall accept all municipal prisoners, without reservation, with the following exceptions:

a. OPEN WOUNDS, ABSCESES, INJURIES, ETC. Any person having a visible open wound, abscess or injury must be examined by a doctor prior to being detained, and such doctor must determine

whether detention will or will not be detrimental to the health or welfare of the municipal prisoner. All medical costs for the purposes herein stated shall be the sole responsibility of the municipality presenting said prisoner. The municipality shall indemnify and hold the County harmless from all medical costs incurred by the County arising out of the County's performance of its obligations under this provision.

b. INJURIES. Any person with non-opened injuries which are visible, or if the municipal prisoner complains or states that he has been in some kind of accident or affray, must be examined by a doctor prior to being detained, and such doctor must determine whether or not detention will be detrimental to the health or welfare of the municipal prisoner. All medical costs for the purposes herein stated shall be the sole responsibility of the municipality presenting said prisoner. The municipality shall indemnify and hold the County harmless from all medical costs incurred by the County arising out of the County's performance of its obligations under this provision.

c. OPEN-HEART SURGERY. Any person with recent open-heart surgery or having a mechanical pace-maker must be seen prior to detention by a doctor to determine whether detention is or is not detrimental to the health or welfare of the municipal prisoner. All medical costs for the purposes herein stated shall be the sole responsibility of the municipality presenting said prisoner. The municipality shall indemnify and hold the County harmless from all medical costs incurred by the County arising out of the County's performance of its obligations under this provision.

7. FACILITIES. The County shall have sole control over the operation and security precautions of its detention facility and all prisoners therein.

8. All municipalities who use the County's detention facility shall maintain and provide proof of liability insurance in an amount deemed acceptable by the County and shall name the County and the County's employees as additional insureds.

9. No provision in this Ordinance modifies and/or waives any provision of New Mexico Tort Claims Act or any other defenses or claims which the County and its employees may have.

10. RECORDS. 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.

11. The County shall provide copies of said records to the municipalities on a monthly basis to support the County's claim for monthly payment of the housing and related fees assessed herein.

12. INDEMNIFICATION. The municipalities shall indemnify, defend and hold harmless the County and its public employees, elected officials, agents and servants, from and against any and all claims, losses, fines, lawsuits, demands, cause of actions of any kind whatsoever, allegedly arising from or related to the performance of the County's obligations arising under this Ordinance and/or any contract entered into pursuant to this Ordinance. This includes, but is not limited to, any civil rights claim or habeas corpus action brought during or subsequent to confinement.

13. ATTORNEY'S FEES. Any contractual obligations entered into by the County pursuant to this Ordinance shall provide for payment of the County's reasonable attorney's fees, court costs and other expenses incurred by the County in the event a lawsuit is filed by either the County or the contracting municipality regarding an alleged breach of such contractual relationship or the enforcement of this Ordinance.

14. Municipalities contracting with the County for the services addressed herein shall not assign or transfer any interest in a contract entered into pursuant to this Ordinance, or assign any claims for money due or that become due without the prior approval of the County.

15. Any contractual relationship entered into by the County with a municipality for the services addressed herein shall be governed by the laws of the State of New Mexico.

16. Grant County Detention Center Administrator shall have complete and total authority over the administration, security, safety, and well-being of all inmates housed in the Detention Center.

17. PRISONER RELEASE. The County shall release municipal prisoners only pursuant to an order of a municipal judge or order of a court of competent jurisdiction.

18. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason illegal, invalid or unconstitutional by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The Board of County Commissioners hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase hereof, irrespective of the fact that any one or more

sections, subsections, clauses, or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of this Ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of any person or entity under the Ordinance. All ordinances and parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

APPROVED AND ADOPTED at a hearing in the regular meeting of the Board of County Commissioners of the County of Grant, State of New Mexico this 17th day of May, 2000.

GRANT COUNTY BOARD OF COMMISSIONERS

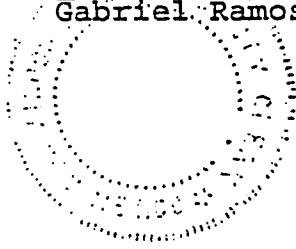
Carl W. Scholl
Carl W. Scholl, Chairman

Manuel T. Serna, Member

David C. Conway
David C. Conway, Member

ATTEST:

Gabriel Ramos
Gabriel Ramos, County Clerk



STATE OF NEW MEXICO
County of Grant
I hereby certify that this instrument was filed for record on the 12 day of May A.D., 2000 at 1:07 o'clock P M. and duly recorded in book 254 of the records of MISC at page 6490-95
Witness my hand and seal of office
Gabriel Ramos
COUNTY CLERK, GRANT CO., N.M.
Conway Deputy