



CITY OF ATLANTA

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Mayor Kasim Reed

TO: City Council President and City Council members

FROM: Leslie Ward, City Auditor 

DATE: April 16, 2010

SUBJECT: Review of proposed agreement with Fulton County for the city's detention center and analysis of projected cost savings

My office has reviewed the city's proposed package of agreements with Fulton County to lease and eventually purchase the city's detention center and the projected savings of alternate methods for detention center operations prepared by the Office of the Mayor. The Finance Executive Committee of the City Council requested the review on March 31, 2010. We sought to address the following questions:

- Does the proposed agreement mitigate the city's risk exposure?
- Is the analysis of projected savings reasonable?

We shared the results of our review with the mayor's office as work progressed. The mayor's office made changes to the draft agreements and revised its financial analysis in response to our discussions. We did not ask the mayor's office to provide a written response to this report due to time constraints.

Background

The proposal comprises three intergovernmental agreements with Fulton County: a lease/purchase agreement, an inmate services agreement, and a lease agreement for courtroom space. Under the lease/purchase agreement, the county will lease the Atlanta Detention Center for 15 years beginning July 1, 2010, and make 13 annual lease payments of \$3.2 million beginning January 1, 2012, and ending January 1, 2024. The county will have the option to purchase the facility for \$10 at the end of the period, provided that the city has paid all outstanding debt on the facility. Under the inmate services agreement, the county agrees to house city detainees at a rate of \$78 per inmate per day. The rate covers boarding,

services, programs, and on-site medical care. Under the lease agreement for the courtrooms, the county will lease four courtrooms from the city for a monthly rental rate of 9% of the per diem times 400—the bed space allocated to the city under the inmate services agreement. The first year rental fee is \$1,024,920; the courtroom lease runs concurrently with the detention center lease.

We concluded in our March 2009 performance audit of the Department of Corrections that the department covered proportionately less in facility operating costs for housing non-city inmates than the amount of space leased because operating costs were too high and the per diem rate had not been adjusted for several years. The department leased about 55% of its bed space, but covered 42% of its operating costs in lease revenue in fiscal year 2008. We recommended changes to address operational inefficiencies and reduce operating costs. The proposed agreement with Fulton County is consistent with the intent of our recommendations.

Proposed Lease/Purchase Agreement Provides Sufficient Protection for the City; Changes to the Inmate Services Agreement Would Provide Additional Protection

The proposed lease/purchase agreement protects the city's financial interests and provides current employees first opportunity to be considered for employment.

- The county is responsible for all unpaid payments due for the 15-year lease period even if it defaults on the lease payments during the period. Sec. 9.2(b)
- The amount the city will pay for repairs and improvements is capped at \$2 million. Sec. 1. The city is not obligated to repair or replace any inadequate, worn out, or obsolete furniture and equipment. Sec. 5.2
- The county cannot allow liens to be established against the facility for labor or materials furnished in connection with any improvements. Sec. 5.1(e)
- The county will carry insurance on the facility and indemnify the city against claims. Sec. 5.4 and 7.7
- The county agrees that the city and its authorized agents may enter and inspect the facility at all reasonable times. Sec. 7.2
- The county will provide current detention center employees first opportunity to apply for and be considered for employment at the detention facility and the county will use its best efforts to retain city employees. Sec. 7.5

The inmate services agreement provides a reasonable standard of care for city inmates, uses an established method to set the per diem rate and provides a right to audit clause.

- The county agrees to house the inmates in accordance with federal, state, and local laws, standards, policies, procedures or court orders applicable to the operations at the facility. Sec. 1.1. Therefore, Fulton County's correctional officers will be POST certified and meet minimum training requirements.
- The county will follow minimum American Correctional Association standards for programs and services for city and other inmates in the facility. Sec. 2.2

- The per diem is based on the US Marshals cost sheet for allowable costs for detention services. Sec. 1.2. The calculated rate of \$78 per diem is reasonable based on the department's actual operating costs for fiscal year 2009. It excludes some specific allowable costs but is still on the higher end of what the US Marshals will pay. We reviewed the underlying support submitted in the US Marshals worksheets.
- The county will keep records of city inmates similar to the county's inmate records and will provide copies of those records to the city upon request. Sec. 2.6
- The county will allow city officials access to the facility for inspection. Sec. 2.4
- The city can inspect all revenue and expenditure records pertaining to services provided under the agreement. Sec. 2.7

The courtroom lease protects the city's interests.

- The proposed annual payment for county use of courtrooms in the municipal court building was negotiated as a discount on the per diem rate. As a result, the payment will increase whenever the inmate services per diem rate increases. Sec. 2.0
- The county is responsible for providing security for the leased courtrooms. Sec. 1.6
- The county cannot make any alterations or improvements to the space without consent of the city. Sec. 1.8
- The city will not make any repairs to the courtroom space other than structural repairs and maintenance. Sec. 1.4
- The city retains the right to use the tunnel between the detention center and the municipal court. Sec. 1.11

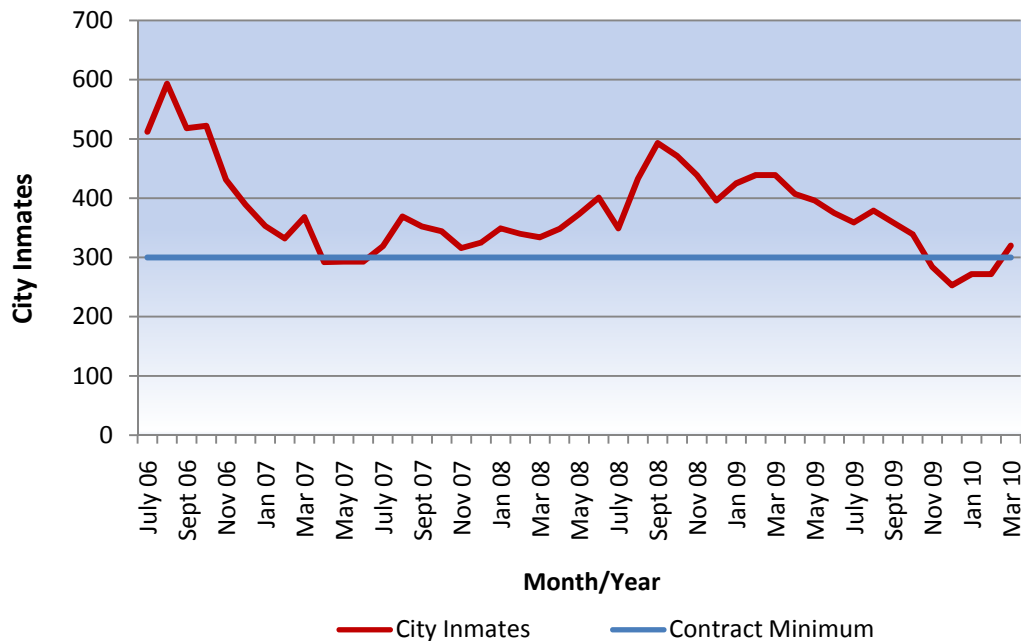
While state law allows chief judges of state and superior courts to use each other's courtrooms, and it was suggested that a lease agreement for court space was therefore unnecessary, the law does not seem applicable to municipal courts or to long-term arrangements. The law provides that if a superior or state court needs alternate court space, a session can be held at an alternate state court. The senior or chief judge of the superior court must enter a written order to have the session at the state court; the state court judge must enter a written order consenting to the session. O.C.G. A. § 15-6-18

We identified four areas of potential risk in the agreements.

- **The city's guaranteed payment for a minimum population of 300 inmates may prove to be too high.** The proposed lease/purchase and inmate services agreements establish a guaranteed minimum payment. The city's average daily population is trending downward and has dipped below 300 in four of the last five months (see Exhibit 1). The city's agreements with Fulton County and federal agencies did not include a minimum guarantee. We recommended the negotiating team propose a lower minimum guarantee and an annual review of the guaranteed minimum based on its average daily population for the preceding year. The mayor's office disagrees that the 300-bed minimum is too high because plans to add police officers could increase the number of arrests, but agreed to add a review provision if possible.

Exhibit 1

Average Daily Population per Month of City Inmates
July 2006 - March 2010



- The proposed agreement appears to allow the county to impose annual per diem rate increases with notification to the city. The inmate services agreement states that the city must be notified by March 1st of any adjustments to take effect on the coming July 1 of any year of the agreement. The city's agreement with the US Marshals Service stated, "Per diem rates shall be established on the basis of actual and allowable costs associated with the operation of the facility during a recent annual accounting period....The rate may be renegotiated not more than once per year, after the agreement has been in effect for 12 months." We recommended the negotiating team propose similar language to the agreement to allow for periodic renegotiation of the rate or establish the prevailing federal rate as the city's rate. The mayor's office agreed that the intent of the agreement is to tie the city rate to the US Marshals rate and revised the language to that effect.
- The proposed inmate services agreement does not address who is responsible for transporting and guarding inmates to Grady. We recommended the negotiating team clarify whether the per diem includes transportation and guard services at Grady Hospital when inmates require medical attention that cannot be provided on site. The city provided these services to federal inmates under its agreements. The mayor's office confirmed that the intent is that these services be provided and plan to revise the language in the agreement.

- The proposed agreements impose a late payment fee for the county's annual lease payments but not for the county's payments for use of courtrooms. Applying late fees to all required county payments under the agreement would strengthen incentives for prompt payments. The mayor's office revised the agreement to add a 3% late fee.

Lease/Purchase and Mothball Options Would Yield Significant Savings over the 15-Year Period; However, Projected Savings for Fiscal Year 2011 Budget Are Reduced

We estimate that the lease/purchase agreement will generate \$9.5 million in operating savings in fiscal year 2011 after transition costs. Because \$4-5 million in Department of Corrections' fiscal year 2010 operating costs were budgeted from agency trust accounts rather than the general fund, not all savings can be reallocated to other uses without offsetting general fund cuts. The administration's proposed fiscal year 2011 will recognize that this gap should be covered by the general fund.

Similarly, we estimate that the mothball option will generate \$13 million in operating savings in fiscal year 2011 after transition costs, but \$4-5 million of the savings cannot be reallocated without offsetting general fund cuts. While the mothball option yields the most savings in the first year and over the period reviewed, estimates are based on the least certain assumptions. The rate the city would pay to house inmates is calculated as the blended rate of what Fulton County pays other detention facilities. It's not clear that the assumed per diem rate of \$44 includes on-site medical care. Hall County, which houses the largest number of Fulton County's inmates, does not include on-site medical care in its per diem rate. It's also not clear that the other facilities have capacity to handle the city's inmates.

We reviewed the mayor's office financial analysis of detention center alternatives. We identified some costs that were excluded from the analysis and some inconsistencies among scenarios. The mayor's office revised its analysis to address our concerns.

- Options excluded some operating and transition costs, such as Grady transportation and guard services, leave payouts, and water payments, which overestimated first year savings.
- The lease/purchase and mothball options assumed no increase in the per diem rate over 15 years and maximum capacity of 400 inmates.
- Options didn't reflect operational changes since the scenarios were presented, including a negotiated increase in the city's per diem rate from \$68 to \$78.
- The mayor's office's estimated average daily cost of \$94 per inmate over the last 15 years was overstated but was not used to project costs savings.

We conducted this audit work in accordance with generally accepted government auditing standards. We limited the scope to the proposed package of lease agreements and information the mayor's office presented to the City Council. Audit methods included:

- Reviewing the March 23, 2010, council work session to understand stakeholder concerns

- Interviewing police, finance, corrections, watershed, law and mayor's office staff
- Reviewing the package of proposed agreements to identify risks, protections and incentives
- Reviewing state law concerning agreements between superior and state court judges
- Assessing the city average daily population trends from fiscal year 2007 to the present
- Evaluating the underlying support for the \$78 federal per diem rate
- Identifying and evaluating the assumptions in the Office of the Mayor's financial analysis

Generally accepted government auditing standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained meets that requirement.

cc:

Honorable Kasim Reed, Mayor of Atlanta
 Peter Aman, Chief Operating Officer
 Duriya Farooqui, Deputy Chief Operating Officer
 Luz Borrero, Deputy Chief Operating Officer
 David Bennett, Senior Policy Advisor
 Hans Utz, Senior Management Advisor
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