

April 28, 2011

To: Public Safety & Education Committee  
From: Peter Harris  
Re: Principles for a new Jail Services Agreement with King County

## **Introduction**

On April 14 the Mayor and the King County Executive signed a letter outlining principles for a new jail services agreement between Seattle and King County. Those principles will be reflected in an agreement they expect to propose for approval by the City Council and the King County Council.

The City Budget Office will brief you on the principles themselves. In this memo I will provide some background by recapping the history of jail planning in the last decade; summarizing the City's main current options, including the anticipated new agreement; and describing the status of the County's compliance with recommendations from the U.S. Department of Justice on the health and protection of inmates. I will also describe three risks in the proposed principles.

## **Jail planning since 2001**

2001: King County informs Seattle and other cities contracting for jail space that it will not be able to accommodate all inmates from Seattle and other cities in future years, and asks to negotiate new agreements that limit the number of city inmates.

2002: New agreements between King County and the cities require the cities to reduce their collective use of King County Jail to an average of 380 inmates by the end of 2003, and to cease using King County Jail at the end of 2012. Seattle enters an agreement with Yakima County to hold some sentenced inmates in order to meet the limits in King County.

2004: The National Institute of Corrections advises that Seattle should start planning for new jail capacity, with urgency.

2005: A consultant estimates Seattle's long term jail space requirements.

2007: The Mayor proposes and Council approves a 2008 budget for evaluating options for a new jail, either in concert with northeastern cities or alone.

2008: Seattle and other cities launch North/East Cities (NEC) Municipal Jail Planning project.

2009: South County cities form the South Correctional Entity (SCORE) and select a site for a new 800-bed jail in Des Moines, to be completed in 2011.

2009: The Council calls for Jail Capacity Study. The study concludes that treating drug offenders and reducing sentences for low-level drug offenders would not eliminate the need for additional jail capacity.

2010: King County and Seattle extend the jail services agreement through 2016. Seattle contracts with Snohomish County to house some sentenced inmates. The combination of new lower demand projections and the additional capacity provided by SCORE allows King County to offer some jail space to other cities through 2020. Seattle and the northeastern cities halt the NEC project.

2011: King County and Seattle enter discussions about a new agreement through 2030.

The context for these decisions is the City’s use of jail. Table 1 shows the City’s average daily jail population from 1994 through 2010.

Year	Average Daily Population (ADP)	Change in ADP from previous year	
		#	%
1990	349		
1991	297	(51)	-15%
1992	298	1	0%
1993	312	14	5%
1994	399	87	28%
1995	447	49	12%
1996	456	9	2%
1997	440	(17)	-4%
1998	457	17	4%
1999	435	(22)	-5%
2000	389	(46)	-10%
2001	409	20	5%
2002	331	(78)	-19%
2003	322	(9)	-3%
2004	267	(55)	-17%
2005	289	22	8%
2006	310	21	7%
2007	285	(24)	-8%
2008	253	(32)	-11%
2009	275	21	8%
2010	271	(4)	-1%

**What are the City’s options for obtaining jail space after 2017?**

In broad terms, there are four:

**Sign a new primary long term contract with King County:** Contract with King County until 2030 for holding pre-trial inmates and some sentenced inmates under the principles

outlined. Continue to send some sentenced inmates to Snohomish County until at least 2017.

**Sign a new primary long term contract with SCORE:** Contract with SCORE for holding pre-trial inmates and some sentenced inmates. Continue to send some sentenced inmates to Snohomish County until at least 2017.

**Resume the new jail construction project:** Restart the jail EIS and construct a new Seattle or NEC jail. Continue sending inmates to King County and Snohomish County under the existing contracts until the new jail is constructed, but no later than 2017.

**Do nothing now:** Continue sending inmates to King County and Snohomish County under the existing contracts until 2017. Develop post-2017 options later.

The starting point for comparing these is the estimated cost in 2012 of the existing contracts with King County and Snohomish County. The 2011 budget assumes the City will have an average daily jail population of 288. Table 2 assumes the same population in 2012, divided in the same way between King County and Snohomish County.

Table 2: Estimated cost of jail in 2012 under existing contracts			
	#	rate	cost
<b>King County</b>			
Annual bookings	10,900	\$329	\$3,586,100
Average daily population (ADP):			
Maintenance	179.2	\$126	\$8,239,286
Acute psychiatric care	11.5	\$384	\$1,604,832
Psychiatric care	13.5	\$200	\$988,420
Medical care	6.3	\$322	\$738,088
Work release	15.0	\$84	\$459,900
1 on 1 guarding	0.6	\$1,545	\$324,901
Total ADP	226.0		
King County subtotal			\$15,941,527
<b>Snohomish County</b>			
Annual bookings	832	\$93	\$77,376
ADP maintenance	62	\$64	\$1,448,320
Snohomish County subtotal			\$1,525,696
Total ADP	288		
Total cost			\$17,467,223

The existing contract with King County calls for rate increases based on pro rata shares of the County's costs. It is difficult to predict the annual increases, in part because the City's share of costs depends on changes in the size of the rest of the County's jail population, but one might safely

assume annual increases of at least 2% above the consumer price index (CPI). The existing contract with Snohomish County limits rate increases to 90% of CPI or 3%, whichever is less. Since the King County contract accounts for more than 90% of the total cost, if the rest of the County's jail population remains the same size we might expect the total cost to increase annually by approximately 2% above CPI.

Let's consider the four options in reverse order.

**Do nothing now:** Continue sending inmates to King County and Snohomish County under the existing contracts until 2017. Develop post-2017 options later.

In this scenario, assuming the City's jail population remained the same, the costs of the existing contracts increased as described above, and CPI is steady at 2%, the total cost would increase from \$17.5 million in 2012 to \$20.4 million in 2016, for a five-year cost of \$95 million.

The biggest problem with this option, of course, is that it makes no progress towards obtaining jail capacity after 2016. There is no guarantee that the contracting options available today will still be available in a few years, and there is no reason to think that siting and building a new jail suddenly will become easier and faster.

**Resume the new jail construction project:** Restart the jail EIS and construct a new Seattle or NEC jail. Continue sending inmates to King County and Snohomish County under the existing contracts until the new jail is constructed, but no later than 2017.

The NEC jail project ceased before it developed a good estimate of the cost of constructing a new jail, but planners assumed a cost of roughly \$200 million, including land. (The projected cost of the SCORE jail is \$90 million, reflecting in part excellent timing in the construction market.) If a cost of \$200 million was financed over 30 years at 5%, the annual debt service would be \$13 million, of which Seattle's share would be roughly \$10 million.

Once the new jail opened, the City would begin paying its own operating costs in addition to the debt service. It is difficult to estimate the operating costs. They might be roughly comparable to the cost of the existing contracts, because King County's costs currently include little or no capital costs. If so, the total annual cost would be roughly \$30 million. The operating costs might be substantially less, because some have suggested that the design of a new jail could greatly improve upon the operating efficiency of the existing downtown jail. On the other hand, they might be substantially more due to loss of economies of scale.

The remaining two options may be considered side by side.

**Sign a new primary long term contract with SCORE:** Contract with SCORE for holding pre-trial inmates and some sentenced inmates. Continue to send some sentenced inmates to Snohomish County until at least 2017.

**Sign a new primary long term contract with King County:** Contract with King County until 2030 for holding pre-trial inmates and some sentenced inmates under the principles outlined. Continue to send some sentenced inmates to Snohomish County until at least 2017.

Table 3 compares the 2012 costs of these two options, again assuming a constant jail population.

Table 3: Estimated costs in 2012 of new agreements with King County and SCORE					
		King County		SCORE	
	#	rate	cost	rate	cost
Annual bookings	10,900	<b>\$95</b>	\$1,035,500	\$0	\$0
Average daily population (ADP):					
Maintenance	179.2	<b>\$125</b>	\$8,173,895		
Acute psychiatric care	11.5	<b>\$331</b>	\$1,383,332		
Psychiatric care	13.5	<b>\$182</b>	\$899,462		
Medical care	6.3	<b>\$337</b>	\$772,471		
Work release	15.0	\$84	\$459,900		
1 on 1 guarding	0.6	\$1,545	\$324,901		
Total ADP	226.0			\$125	\$10,311,250
Transport					\$1,224,853
Public defense caseload reduction					\$400,966
Subtotals			\$13,049,461		\$11,937,069
Difference between King County & SCORE			\$1,112,392		
<b>Snohomish County</b>					
Annual bookings	832	\$93	\$77,376	\$93	\$77,376
ADP maintenance	62	\$64	\$1,448,320	\$64	\$1,448,320
Snohomish County subtotal			\$1,525,696		\$1,525,696
Total			\$14,575,157		\$13,462,765

Table 3 illustrates the changes in rates in the potential new contract with King County, and also illustrates the difference in the structures of the potential new contracts with King County and SCORE. Note the following:

The potential new contract with King County would significantly reduce several rates, indicated in boldface. Most dramatically, the proposed booking fee declines from \$329 to \$95, for a savings of \$2.55 million from the existing contract. In addition, the daily maintenance fee declines by \$1, the daily acute psychiatric care fee declines by \$53, the daily psychiatric fee declines by \$18, and the daily medical fee increases by \$15, for a combined estimated savings of \$341,000.

SCORE would charge no booking fee at all, and also would charge the same \$125 daily rate for all inmates, no matter what specialized services they might require.

A contract with SCORE would entail new costs for transporting prisoners to and from the jail in Des Moines to the Municipal Court, and for travel time by public defenders (which would translate into lower caseloads per attorney and thus higher overall costs). The Budget Office estimates that together these would cost approximately \$1.6 million.

With either new contract, the 2012 cost would be significantly less than the estimated cost under the existing contracts, but a contract with SCORE might cost \$1.1 million less than a new contract with King County, even with the transport and public defender travel costs.

Why should the City not take the least cost option? There are two reasons that such savings may not be reliable. One is that the cost of police travel time to the SCORE jail in Des Moines is not included. The extra time required for officers to take arrestees to the SCORE jail would not require an additional cash outlay, but would result in lost productivity, perhaps equivalent to \$400,000.<sup>1</sup> This reduces the difference between a King County contract and a SCORE contract to around \$700,000.

More important, the estimated cost to Seattle of a SCORE contract represents 106% of SCORE's current estimate of its internal costs. When SCORE knows its actual internal costs, the price to Seattle will become 106% of the actual. The actual could be substantially greater than the current estimates. At a minimum there is substantial upward risk. In comparison, a new contract with King County would extend to 2030, and would define cost increases and methods for rate adjustments.

### **What is the status of the County's compliance with the Department of Justice's recommendations on the protection and health of inmates?**

In November 2007 the Department of Justice (DOJ) found that the constitutional rights of inmates in the King County Correctional Facility were violated by the County's failure to adequately protect inmates from hard and serious risk of harm by staff; failure to adequately protect inmates from self-harm; and failure to provide inmates with adequate medical care. The County disagreed that inmates' constitutional rights were violated but agreed to make improvements. In January 2009 the County and DOJ entered an agreement calling for improvements in five areas:

Protection from harm. The improvements include revisions to policies on use of force and internal investigations, and training on use of force for all correctional officers.

Suicide prevention. The improvements include ensuring that suicide prevention policies and procedures are adequate, and that staff are well-trained in recognizing and responding to the risks of inmate suicide.

Medical care. The improvements include timely and appropriate medical care, infection control, and administration of medication in accordance with accreditation standards.

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<sup>1</sup> In 2010 there were 9168 jail bookings, fewer than in every year but one since 1990. The large majority of bookings are of single inmates by the arresting officer. If jail bookings required 8000 officer trips to Des Moines per year, and the average round trip required 45 minutes of travel time, annual travel time to the SCORE would amount to 6000 hours. At a fully loaded hourly officer cost of \$66.85, this time would be worth \$401,000.

Environmental health. The improvements include frequent changes of clothing and bedding to prevent infections and illness.

Quality improvement. The agreement calls for continuous quality improvement programs to identify and correct deficiencies in the four areas above.

On February 8 of this year, the monitoring team chosen by DOJ and the County issued its sixth report. The report says, “Steady progress has been made by [the Department of Adult & Juvenile Detention and Jail Health Services] during the second year of this agreement.” The report includes this table on the County’s progress in meeting the provisions of the agreement:

Substantive Area	Total Provisions	Substantial Compliance		Partial Compliance		Non-Compliance	
		#	%	#	%	#	%
Protection from Harm	17	9	53%	8	47%	-	-
Suicide Prevention	5	3	60%	2	40%	-	-
Medical Care	9	8	89%	1	11%	-	-
Environmental Health	3	3	100%	-	-	-	-
Quality Improvement	1	-	-	1	100%	-	-
Total	35	23	66%	12	34%	-	-

These are the provisions on which the monitoring team found the County has achieved partial compliance:

A.1(a)ii. [Policies and procedures on use of force shall] require use of force reports to include a detailed description of the facts and circumstances of the incident, inmate and staff actions, and witness statements, including statements by all staff who witnessed the incident.

A.1(a)iii. [Policies and procedures on use of force shall] provide that staff are subject to discipline for failure to report a use of force, or for providing false reports or reports containing material omissions, when policy requires such a report.

A.1(a)iv. [Policies and procedures on use of force shall] provide for a preliminary investigation of all uses of force involving serious or unexplained injuries, inmates in mechanical restraints, hard impact head strikes, chemical restraint on mentally ill inmates, or uses of force involving apparent violations of the use of force policies. . .

A.1(a)v. [Policies and procedures on use of force shall] provide that preliminary investigations revealing evidence of possible staff misconduct shall be referred to the Internal Investigations Unit for full investigation.

A.1(a)viii. [Policies and procedures on use of force shall] require that, when feasible, Qualified Medical Professionals are consulted regarding any contraindications before any planned use of chemical agents on an inmate.

A.1(a)ix. [Policies and procedures on use of force shall] require that, when feasible, Qualified Medical Professionals are consulted before any planned use of force or non-routine use of restraints on any inmates with a diagnosis of mental illness.

A.2(c). Incident reports and use of force reports shall be audited monthly by the Internal Investigations Unit or the Use of Force Board to ensure that reports are being appropriately referred for preliminary investigations where warranted.

B.2. Suicide Prevention Program: The County shall continue to implement a program that identifies and responds to suicidal inmates. . .

B.4. Observation: The County shall develop and implement policies, procedures and practices pertaining to observation of suicidal inmates, including close observation of inmates . . . and constant . . . observation . . . where established criteria indicate that constant observation is appropriate. A qualified mental health professional shall conduct a mental status examination of inmates on suicide precautions on a daily basis to adequately assess the appropriateness of continued housing and suicide watch.

C.1(c). The County shall continue to adopt and follow clinical protocols for treatment of chronic disease, including mental illness [and] confirm in the medical record that clinicians are following the . . . protocols. . .

E.1. The County shall continue to develop and implement quality improvement programs adequate to identify and correct serious deficiencies in protection from harm, suicide prevention, and medical care.

If you would like a copy of the agreement or the monitoring team's report, please let me know.

### **Three risks in the principles for a new jail services agreement**

**1. The range between the minimum number of jail beds for which the City must pay and the maximum number it may use is tight. As a result, the City may have to choose between the risk of exceeding the maximum and having the County refuse to book inmates, or raising the minimum and paying for jail beds it does not use.**

Under the principles to which the Mayor and County Executive have agreed, the City may choose the minimum number of average beds for which it must pay and the maximum number of beds it may use, but the average minimum must be 86% of the average maximum.

This comes about in the following way: The average minimum number of beds for which the City must pay is the "secure bed floor." The maximum number of beds it can use for more than a few days is the "secure bed cap." In the proposed principles, the secure bed floor is 77% of the secure bed cap. For example, the scenario in the principles for the year 2017 calls for a secure bed floor of 233 and a secure bed cap of 303. The secure bed floor, however, is an average over six months or a year, while the secure bed cap is a limit on the peak population. Because most jail stays for Seattle misdemeanants are short, and misdemeanor arrests vary substantially day-to-day and seasonally, the City's actual peak jail population at any time in the year is substantially greater than the average over the year. A peak of 303, for example, is what we would expect if the average is 270. Thus the

effective flexibility allowed to Seattle by the principles for the year 2017 is the range between the minimum billed average of 233 and the maximum used average of 270, a difference of 14% of the maximum.

Given the historical variation and implied unpredictability of the City's jail population (see Table 1), this is a narrow range. With this range, the City may have to choose between setting a cap and floor that are conservatively high, and risk paying for beds it doesn't use, or instead setting the cap and floor lower, and risk exceeding the cap and having the County refuse to accept more inmates.

This gives the City an incentive to maintain a second contract for jail space as an outlet, such as the contract with Snohomish County in which the City pays only for the beds it uses. The proposed principles, however, would penalize the City for doing so. If the City houses all of its inmates in the King County jail, the secure bed floor would be calculated as the average over the entire year. If the City houses some inmates elsewhere, the secure bed floor would be calculated semiannually, which creates the possibility that the City would pay for more beds than it uses in one half of the year even if it uses the average minimum over the year as a whole.

In sum, the County has a clear legitimate business reason for seeking a narrow range between the City's cap and the City's floor (although the rationale for penalizing the City for a second jail contract is less clear); and the incentive for the City to predict its jail population within a narrow range is not a bad thing, everything else being equal. But the City and the County may want to give some more thought to whether a contract provision that may force the City to pay for beds it does not use or force the County to either reject inmates or overcrowd the jail will contribute to a mutually satisfactory long term relationship.

## **2. Under the proposed principles, the City's jail costs will increase annually by about 2% above inflation.**

The principles call for annual cost increase of 1.5% above the Consumer Price Index (CPI) for all charges other than those for medical and psychiatric care and 3% above CPI for charges for medical and psychiatric care. In combination these will yield overall annual cost increases of about 2% above CPI. This does not include any cost increases that may result from increases in the jail population resulting from growth in the city population as a whole.

In the long run, unless General Subfund revenue for current services increases by 2% over CPI, the increase in jail costs will gradually squeeze other services. These cost increases may well reflect the underlying reality of the County's costs, and be reasonable on those grounds. Further, the total cost of the contract would be less than 1.5% of the General Subfund, so the squeeze will be small. Nevertheless it may be worth noting that the City cannot allow service costs to increase faster than inflation for everything and still maintain the level of current services.

## **3. The long term success of a new agreement may depend on the results of future negotiations.**

In several important areas the proposed principles identify the potential need for future negotiations and non-binding dispute resolution. These areas include revisiting the floor and cap in the event the City wishes to house all its inmates in King County; adapting to local policy changes or state legislative changes affecting the size of the City's jail population; managing the total jail population in

order to avoid jail expansion; determining Seattle's share of the cost of jail expansion; and resetting the rates every five years.

By definition, a call for future good faith negotiation identifies an area of uncertainty in the contract. Uncertainty in a 19-year contract may be unavoidable, especially in a domain as uncertain as the demand for jail space. The City's and County's forecasts of jail demand over the last decade and the almost annual changes in what appears to be the necessary or best jail solution for the City over the last five years are ample evidence of this. One solution would be a shorter term contract, but this would conflict with the need for a long horizon in ensuring that the City will have access to enough jail space and for planning any new capacity.

This suggests that the City should continue to attend to the regional demand for and supply of jail space, rather than relying exclusively on a new agreement with the County and assuming it will be completely satisfactory for its entire duration. New leadership in the County certainly made a difference in bringing us to this point. The opportunities made available to the City by material facts in the regional demand for and supply of jail space – notably the new supply provided by SCORE – also made a difference.

### **Conclusion**

The risks described above may prevent a new agreement with the County from being perfect, but they do not appear to be fatal flaws. The length of the potential new agreement, its generally predictable costs, and the overall efficiency of allowing the region's largest generator of misdemeanants to use a jail close at hand are all powerful reasons to make a new agreement.