

A 20



IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

CITY OF TULSA,)
an Oklahoma municipal corporation,)
)
Plaintiff,)

v.)

Case No. CJ-2008-8659

TULSA COUNTY; THE BOARD OF)
COUNTY COMMISSIONERS FOR)
TULSA COUNTY; and)
STANLEY GLANZ, individually and)
in his official capacity as)
Tulsa County Sheriff,)

Judge Jefferson D. Sellers

Defendants.)

DISTRICT COURT
FILED
DEC 19 2008
SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

SALLY HOWE SMITH
COURT CLERK
2008 DEC 19 P 3:41

DEFENDANT STANLEY GLANZ'S MOTION TO DISMISS

Defendant Stanley Glanz ("Glanz"), by and through his attorneys of record, Clark O. Brewster, Guy A. Fortney, and Mark B. Jennings of Brewster & DeAngelis, hereby moves the Court to dismiss this action as to all claims asserted against him, on the grounds that the Petition fails to state a claim against this Defendant for which relief may be granted. In support of his motion, Glanz shows the Court the following.

I. INTRODUCTION.

Glanz is the currently sitting, duly elected sheriff for Tulsa County. Pursuant to 57 Okla. Stat. §47, Glanz "shall have charge of the county jail of his county and of all persons by law confined therein ..." Further, "[t]he sheriff shall have the charge and custody of the jail of his county, and all the prisoners in the

P

same, and shall keep such jail himself, or by his deputy or jailer, for whose acts he and his sureties shall be liable." 19 Okla. Stat. §513.

In its Petition, filed herein on December 11, 2008, the Plaintiff City of Tulsa ("City") describes a putative cause of action arising from the failure between City and Defendant Tulsa County ("County") to negotiate a renewal agreement to follow the now expired *Jail System Agreement* which was executed between City and County in April 1999, and made retroactive by its terms to July 1, 1998. (Attached hereto as Exhibit "1"). Pursuant to the terms of the *Jail System Agreement*, "made and entered into by and between the Board of County Commissioners of Tulsa County, the governing body of a political subdivision of the state of Oklahoma ... and the City of Tulsa, Oklahoma, a municipal corporation ... pursuant to tit. 19 Okla. Stat. §752 (Laws 1998):"

[T]he parties agree that County will operate and maintain a City-County Jail System, ... maintain and secure all Municipal Prisoners for the time period commencing on, July 1, 1998, and ending on June 30, 2008.

[*Jail System Agreement* (preamble); see also, *Petition* at ¶4 and throughout]. While the *Jail System Agreement* contemplates that City and County would commence "negotiations concerning continuation *and alteration* of this Agreement ... no later than February 1, 2008," it concludes: "[f]ailure of the parties to reach agreement by May 1, 2008, shall be deemed notice of termination effective June 30, 2008." Finally, the *Jail System Agreement* states that it "expressly supersedes all previous Jail Agreements between the parties." [*Jail System Agreement* at ¶ 5.4].

Among the several “counts” included in the *Petition*, only three seek relief against Glanz: Count VII (‘court-ordered equitable accounting’); Count VIII (‘tortious interference with contract’); and Count IX (injunctive relief). Each of the three counts/claims asserted against Glanz fail to state a claim for relief against Glanz, and should be dismissed.

II. CITY’S COUNT VIII (TORTIOUS INTERFERENCE WITH CONTRACT) FAILS TO STATE A CLAIM FOR RELIEF, AND SHOULD BE DISMISSED.

(a) City’s claim of ‘tortious interference with contract’ is a ‘tort’ within the scope of the Oklahoma Governmental Tort Claims Act, and is both premature and invalid due to City’s failure to comply with the OGTCAs notice of claim provisions.

The Oklahoma Governmental Tort Claims Act, 51 Okla. Stat. §§151, *et seq.*

(the “OGTCA”), requires, *inter alia*:

The State of Oklahoma does hereby adopt the doctrine of sovereign immunity. The state, its political subdivisions, and all of their employees acting within the scope of their employment, whether performing governmental or proprietary functions, shall be immune from liability for torts.

51 Okla. Stat. §152.1 (A). The OGTCAs defines “tort” as meaning:

... a legal wrong, independent of contract, involving violation of a duty imposed by general law or otherwise, resulting in a loss to any person, association or corporation as the proximate result of an act or omission of a political subdivision or the state or an employee acting within the scope of employment.

51 Okla. Stat. §152 (13).

City alleges that “[s]ince at least early 2008, Sheriff Glanz has exerted pressure and influence over the County and the Board of County Commissioners in an effort to convince the County and the Board of County Commissioners to charge substantial jail operating costs” to the City for housing the City’s jail

population.” [*Petition*, ¶84]. Inasmuch as City’s ‘tortious interference’ claim is “independent of contract” (i.e., City’s claim sounds in tort and alleges wrongs independent of contract; that is, City alleges a breach of a duty by Glanz that is not based on a contract between City and Glanz), the wrong alleged by the City falls within OGCTA’s definition of ‘tort,’ rendering the claim subject to the provisions of the OGCTA. As such, City’s ability to proceed with its ‘tortious interference’ claim against the Tulsa County sheriff is subject to the OGCTA’s ‘notice of claim’ requirements:

A. Any person having a claim against the state or a political subdivision within the scope of Section 151 et seq. of this title shall present a claim to the state or political subdivision for any appropriate relief including the award of money damages.

... ..
D. A claim against a political subdivision shall be in writing and filed with the office of the clerk of the governing body.

51 Okla. Stat. §156. Further:

A. A person may not initiate a suit against the state or a political subdivision unless the claim has been denied in whole or in part ...

51 Okla. Stat. §157.

““These notice and filing provisions are a creation of statutory law and ‘[create] a right previously unknown to both the common as well as the statutory law’ [and constitute] a condition precedent and an essential element of any right to a cause of action against [a state governmental entity].” (citations omitted). Failure of compliance extinguishes the right to sue both the governmental entity *and its employees*. Stated another way, if an action fails as to a governmental entity for noncompliance, it likewise fails as to the entity’s employees.” *Leding v. Pittsburg County Dist. Court*, 1996 OK CIV APP 107, 928 P.2d 957, 959.

Here, City is asserting a tort claim against an employee of Tulsa County, a political subdivision of the state of Oklahoma, but has done so both without providing the required written notice of claim, and without waiting for the required denial or deemed denial of the written notice of claim. City's failure to show, and inability to demonstrate compliance with the notice requirements of the OGTCa requires the claim be dismissed.

(b) City's conclusory allegation that Glanz's alleged acts were unauthorized, malicious, wrongful, and without justification" cannot suffice to extricate the claim from the requirements of the OGTCa.

1. City's Petition fails in its effort to assert its 'tortious interference' claim against Glanz "in his individual capacity," and therefore fails to comply with the OGTCa, and should be dismissed.

City asserts the 'tortious interference with contract' claim against Glanz "in his individual capacity," and further states in the *Petition* that Glanz's actions were "unauthorized, malicious, wrongful, and without justification." [*Petition*, ¶185]. The contention is, however, wholly conclusory and without any factual support whatsoever.

First, City attempts to bring its claim against Glanz only "in his individual capacity." City's substantive allegations against Glanz, insofar as City's 'tortious interference' claim is concerned, is summarized and restated under the "Count VIII" heading of the City's *Petition*:

Since at least early 2008, Sheriff Glanz has exerted pressure and influence over the County and the Board of County Commissioners in an effort to convince the County and the Board of County Commissioners to charge substantial jail operating costs" to the City for housing the City's jail population.

Petition at ¶84. However, these allegations are consistent with the duties imposed by Oklahoma law on a county sheriff. Under Oklahoma law, a sheriff is responsible, *inter alia*, for the proper management of the jail in his county. 19 Okla. Stat. §§ 513, 547. Among the sheriff's responsibilities is the proper operation, administration and maintenance of the county jail; *i.e.*, the "David L. Moss Correctional Facility" created, constructed, funded, and administered by the Tulsa County Criminal Justice Authority (the "TCCJA"). The City's bald assertion that Glanz's pursuit to impose a fee for the county's handling of the City's prisoners in the county's jail was "unauthorized, malicious, wrongful, and without justification," is a bare-boned, factually unsupported, conclusory allegation that can neither suffice to maintain a claim, nor compel the Court to entertain the claim, as a claim against Glanz in his *individual capacity* rather than as one against him in his *official capacity* as sheriff of Tulsa County. As such, the claim, notwithstanding City's attempt to artfully plead, is subject to the provisions of the OGTC, including its notice of claims provisions:

The Governmental Tort Claims Act, GTCA, (51 O.S.2001 §§ 151 *et seq.*), makes a distinction between a government employee acting within the scope of employment and one who was not. ... A government employee acting within the scope of employment is relieved from private (individual) liability for tortious conduct ...

An individual's "official capacity" usually refers to a person's status as a representative of an entity where that representation is legally recognized. ... A suit against a governmental officer in his or her "official capacity" is the same as a suit against the entity that the officer represents, and is an attempt to impose liability upon that entity. ...

A suit against an employee in his or her official capacity, as a suit against the governmental entity, must be based upon the claimant presenting written notice of a claim within one year of the date the loss occurs, or the claim is forever barred.

Pellegrino v. Cameron University, 63 P.3d 535, 537, 2003 OK 2 537 (internal citations omitted).

2. City's Petition fails in its effort to adequately allege that Glanz's actions were "unauthorized, malicious, wrongful, and without justification," and therefore fails to comply with the OGTCA, and should be dismissed.

City comes to Court armed only with bare-boned, factually unsupported, and conclusory allegations. City does nothing more than include the particular words the City believes suffice to take Glanz's alleged actions "outside the scope of his employment" as Tulsa County sheriff, *i.e.*, that Glanz's actions were "unauthorized, malicious, wrongful, and without justification," in an attempt to skirt the requirements of the OGTCA. See, 51 Okla. Stat. § 153 (A). However, such conclusory pleading cannot survive a motion to dismiss for failure to state a claim.

In *Bell Atlantic v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929, the United States Supreme Court prescribed a new inquiry in assessing a motion to dismiss for failure to state a claim upon which relief can be granted – whether the complaint contains "enough facts to state a claim to relief that is *plausible on its face*." Id. at 1974 (emphasis added). In order for a complaint to survive a motion to dismiss for failure to state a claim, the plaintiff must "nudge[] their claims across the line from conceivable to plausible." Id.

"In reviewing a dismissal, a court must accept as true all well-pleaded facts, as distinguished from conclusory allegations, and those facts must be viewed in the light most favorable to the non-moving party. ... The complaint must plead sufficient facts, taken as true, to provide "plausible grounds" that

discovery will reveal evidence to support the plaintiff's allegations." *Shero v. City of Grove, Oklahoma*, 510 F.3d 1196, 1200 (10th Cir. (N.D. Okla.) 2007)¹, citing *Bell Atlantic Corp. v. Twombly*, supra. More particularly,

A conclusory allegation that a public official acted "maliciously," without any supporting allegation of fact, is insufficient to defeat a motion to dismiss on the ground of public official immunity. ... If the facts alleged are not sufficient to permit a finding of malice, the public official is entitled to dismissal for failure to state a claim for which relief can be granted. (Internal citations omitted)

Baltimore Police Department v. Cherkas, 140 Md.App. 282, 780 A.2d 410, 438 (2001).

City's bald assertion that Glanz was acting "unauthorized, malicious, wrongful, and without justification" is not sufficient to take the 'tortious interference' claim outside of the OGTCA.² Given City's failure to comply with the applicable notice provisions, the claim must be dismissed.

III. CITY CANNOT ESTABLISH A *PRIMA FACIE* CASE FOR 'TORTIOUS INTERFERENCE WITH CONTRACT,' AND THE CLAIM FAILS AS A MATTER OF LAW.

Without regard to the above-described infirmities with City's claim against Glanz, the City cannot establish a *prima facie* case for "tortious interference with contract" against Glanz. OUJI No. 24.1 (Interference with contracts – Elements) will require the City to establish the following:

¹ 12 Okla. Stat. §2012(B)(6), is adopted from and is identical to its federal counterpart, except for the added sentence requiring some specificity in a motion to dismiss for failure to state a claim. We may use federal case law to interpret Oklahoma procedural rules under these circumstances. *Rooks v. State through Oklahoma Corp. Comm'n*, 1992 OK CIV APP 155, 842 P.2d 773 at ¶9.

² Not only is the assertion bald and unsupported, it is directly to the City's own prior allegation, only a few pages earlier in the same *Petition* that "Sheriff Stanley Glanz [was], at all times relevant to this action, acting on behalf of the County as its duly authorized agent[], making [his] acts and omissions attributable to the County." [*Petition* at ¶ 46]. Such internally inconsistent pleading by the City makes even more transparent City's motivations for its unsupported claim elsewhere that Glanz's actions were "unauthorized, malicious, wrongful, and without justification."

[Plaintiff] claims that [he/she/it] had a contract with [Third Party] in which they had agreed to [Describe the terms of the contract]. [Plaintiff] also claims that [Defendant] intentionally and wrongfully interfered with this contract, and that [he/she/it] suffered damages as a direct result. In order to win on the claim of intentional interference with a contract, [Plaintiff] must show by the weight of the evidence that:

1. [Plaintiff] had a contract with [Third Party];
2. [Defendant] knew [or under the circumstances reasonably should have known] about the contract;
3. [Defendant] interfered with the contract [or induced the Third Party to breach the contract, or made it impossible for the contract to be performed];
4. [Defendant]'s actions were intentional;
5. [Defendant] used improper or unfair means; and
6. [Plaintiff] suffered damages as a direct result of [Defendant]'s actions.

Clearly, Sheriff Glanz cannot be, nor has City alleged him to be, a “third party” to the referenced *Jail System Agreement*. “A cause of action for wrongful interference with contract can arise only when one who is not a party to a contract interferes with that contract by convincing one of the contracting parties to breach its terms.” *Ray v. American Nat. Bank & Trust Co. of Sapulpa*, 1994 OK 100, 894 P.2d 1056 at 15; see also, *Voiles v. Santa Fe Minerals, Inc.*, 1996 OK 13 ; *Navistar Intern. Transp. Corp. v. Vernon Klein Truck & Equipment*, 1994 OK CIV APP 168, 919 P.2d 443 ; see also, *Aerotech Resources, Inc. v. Dodson Aviation, Inc.*, 91 Fed.Appx. 37, 41, 2004 WL 27738 at 1 (10th Cir. 2004) (“Tortious interference with contract requires, among other things, the intervening party to be a stranger to the contractual relationship.”) (emphasis added). Not only has City failed to plead any stranger to the contract who may have interfered, they failed to allege any breach of contract as a necessary

element by the co-defendants herein. The contract in issue has expired by its own terms without a breach.

The *Jail System Agreement* defines "Jail Operator" as "the person, firm, corporation, or other lawful entity or elected official having legal and/or contractual responsibility for the day-to-day operational control of the Jail System." [*Jail System Agreement* at ¶ 1.1]. Further, the *Jail System Agreement* acknowledges that "Jail Operator will be solely responsible for the operational control of the Jail System" [*Jail System Agreement* at ¶ 3.1]. As noted above, Glanz, as Tulsa County Sheriff, is statutorily responsible for management of the county jail. The City does not and cannot dispute that Glanz is "operat[ing] the County Jail" [*Petition* at ¶ 39], and therefore is an integral party to the *Jail System Agreement*.

In any event, the *Jail System Agreement* was executed by the "Jail Operator" at the time of its execution. As such, there can be no issue as to whether Glanz is a party to the *Jail System Agreement*, and even more certainly there can be no issue that Glanz somehow could be deemed to be a "stranger" to the *Jail System Agreement*.

Accordingly, inasmuch as City has neither pleaded nor established, and will not be able to establish, either that the *Jail System Agreement* was a contract with a "third party," or that Glanz interfered with any contract the City had with a "third party," City's claim for "tortious interference with contract" must fail, and should be dismissed.

IV. CITY'S PETITION FAILS TO STATE A CLAIM AGAINST GLANZ FOR, AND CITY WILL NOT BE ABLE TO ESTABLISH A PRIMA FACIE CASE FOR "COURT-ORDERED EQUITABLE ACCOUNTING." THE CLAIM FAILS AS A MATTER OF LAW AND SHOULD BE DISMISSED.

The "required elements for an award of an equitable accounting include: (a) the existence of a fiduciary relationship; and (b) the inadequacy of legal remedies." *Taylor-McDonald v. Taylor*, 245 S.W.3d 867, 876 (Mo.App. 2008). "Upon showing of a need of discovery, complexity of the accounts in question and a fiduciary or trust relationship, a party may be entitled to an equitable accounting." *Mills v. Mills*, 512 P.2d 143 (Okla. 1973) (*syllabus*).

Here, with regard to any aspect of the City's complaints with these Defendants, and particularly with Glanz as the Jail Operator, the relationship of the parties is contractual, and is established and defined by the *Jail System Agreement*. City seeks an "equitable accounting" to account for a laundry list of information and documents, including: all revenues collected as a result of the dedicated "jail sales tax," whether spent or unspent; all revenues collected from city governments; all costs and expenses incurred as a result of operating the jail; all documents reflecting use of funds collected as a result of the dedicated "jail sales tax"; etc. However, it is not the City's business to pry into the county's revenues or expenditures.

City will urge the Court that City is entitled to an accounting of the jail tax-related revenues and expenditures as some means of insuring that the money collected is used by the county to insure that the county never needs to collect a jail fee from the City. Indeed, City charges that Sheriff Glanz has "scheme[d] to hoard revenues at the taxpayers' expense," and urges in its *Petition* that "Glanz

and the County have amassed a \$4,000,000 treasure chest at the taxpayers' expense." [Petition at ¶ 39].

Under the *Jail System Agreement*, however, there is no obligation imposed upon the county to use the jail sales tax revenues in any particular manner or for any particular purpose, nor is there any obligation imposed upon the county to justify its expenditures of those revenues or to make any form of accounting of revenues versus expenditures to the City.

To the contrary, the *Jail System Agreement* neither relies upon nor contemplates any kind of accounting between City and county. Rather, City and county stipulate to the equality in the value of the considerations each brought into the *Jail System Agreement*:

... It is further mutually agreed that the reasonable value of City's contribution to the Jail System ... is equivalent to the City paying to County the cost of daily housing for one hundred sixteen (116) Municipal Prisoners in the Jail System. ...

[*Jail System Agreement* at ¶ 2.2].

... 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. ...

[*Jail System Agreement* at ¶ 4.2].

In other words, there was no obligation imposed on the county to account in any way to City for the tax revenues. Whether the county received \$1 or \$10 or \$10 million dollars in tax revenues did not and would not alter the parties' agreement that the mutual goods and services were deemed by both City and county to be "an equal exchange." No accounting or right to an audit is allowed by

the *Jail System Agreement*, nor is one required or appropriate for determining the parties' rights vis-à-vis the other. The amount of tax revenues collected by the county and its uses of those revenues simply is not relevant to its obligations to City, and is not the City's business.

Furthermore, as set forth above, inasmuch as the City and county failed to reach agreement to continue the agreement, the *Jail System Agreement* has expired in accordance with its terms. Accordingly, even if the City had any right to an accounting from the county as to its revenues and expenditures while the *Jail System Agreement* was in effect, those contractual rights no longer exist, and did not exist at the time City filed this action.

City has failed to show any fiduciary relationship between City and county or between City and Glanz. Without the required relationship between the parties, no equitable accounting, court-ordered or otherwise, can be maintained. City's claim for "court-ordered equitable accounting" should be dismissed.

V. CITY CANNOT SATISFY THE REQUISITE ELEMENTS FOR INJUNCTIVE RELIEF, AND THE CLAIM SHOULD BE DISMISSED.

The four criteria considered in deciding an application for preliminary injunction are "1) the applicant's likelihood of success on the merits, 2) irreparable harm to the party seeking relief if injunctive relief is denied, 3) relative effect on the other interested parties, and 4) public policy concerns arising out of the issuance of injunctive relief." *Dorchester Hugoton, Ltd. v. Dorchester Master Ltd. Partnership*, 1996 OK CIV APP 60, 925 P.2d 1222, 1225. Without regard to City's ability to satisfy any of the other required elements, City cannot and will not be able to demonstrate that without the requested injunctive

relief, the City will suffer “irreparable harm.” “Although all four criteria must be met before an injunction is issued, courts tend to focus most heavily upon the ‘irreparable harm’ requirement.” *Tulsa Order Of Police Lodge No. 93 v. City Of Tulsa*, 2001 OK CIV APP 153, 39 P.3d 152 ¶ 25.

“[T]o constitute irreparable harm ‘the threatened injury must be, in some way, “peculiar”.’” *A. O. Smith Corp. v. FTC*, 530 F.2d 515, 527 (3d Cir. 1976), cited with approval in *Prairie Band of Pottawatomie Indians v. Pierce*, 253 F.3d 1234, 1250 (10th Cir. 2001). “Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough.” *Morgan v. Fletcher*, 518 F.2d at 240 (quoting *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921, 925 (D. C. Cir. 1958)). Only harm that the district court cannot remedy following a final determination on the merits may constitute irreparable harm. *A. O. Smith*, supra at 527.

Further, “Oklahoma law provides that, “[i]njury is irreparable when it is incapable of being fully compensated by money damages, or where the measure of damages is so speculative that arriving at an amount of damages would be difficult or impossible.” *Id.* at ¶ 28, citing *House of Sight & Sound, Inc., v. Faulkner*, 1995 OK CIV APP 112, ¶ 10, 912 P.2d 357, 361.

Here, the essence of the City’s complaint with the several defendants is that the county has and is seeking to collect fees from the City for housing and caring for the City’s municipal prisoners in the county’s jail facility. Without regard to whether the City has standing to raise the issue on behalf of City of Tulsa taxpayers, City complains in its *Petition* that “these unreasonable demands

would directly cost the City of Tulsa residents and taxpayers more than \$1,700,000.” [*Petition* at ¶ 35]. Further, City alleges, “[t]he fees which Sheriff Glanz and the County now seek to impose on the citizens of Tulsa is [*sic*] nothing more than a thinly veiled attempt to charge the citizens of Tulsa millions of tax dollars ...” [*Petition* at ¶ 42].

The only harm demonstrated by the City’s *Petition* is money which is and will become due and owing to the County as payment for the housing and maintenance of the City’s prisoners. Further, as demonstrated by its *Petition*, the City already has determined what amount that will be. This claim is quintessential of a claim which is capable of being fully compensated by money damages. City’s claim for injunctive relief against Defendant Glanz should be dismissed.

VI. CITY’S ACTION SHOULD BE DISMISSED FOR FAILURE TO JOIN INDISPENSIBLE PARTIES.

The essence of City’s claims set forth in its *Petition* is premised upon City’s contention that Defendants Tulsa County and Board of Commissioners for Tulsa County have failed to negotiate in good faith with City to renew and continue the *Jail System Agreement*, and thereby those Defendants have wrongfully benefited thereby, and that Defendant Sheriff Stanley Glanz has acted in a wrongful manner to lead the other Defendants to that position, all to the City’s detriment. At its most basic, City’s complaint is that Tulsa County, in the wake of the expiration of the *Jail System Agreement*, now seeks to recoup from City a fee for housing and maintaining City’s prisoners in the absence of any agreement to the contrary. However, in bringing its action premised upon the City’s abhorrence to

agreeing to pay any fee for the housing and maintaining of its prisoners, City has failed to include as defendants in the action (1) an entity which was a signatory to the *Jail System Agreement*, the agreement which lies at the core of the dispute – the TCCJA; (2) the entity which is legally vested with the responsibility for determining that fee – again, the TCCJA; and (3) the Trustees of the TCCJA. Further, City cannot join these indispensable parties in this action. As such, the action must be dismissed.

a) The Tulsa County Criminal Justice Authority and its Trustees must be joined as parties in this action.

PERSONS TO BE JOINED IF FEASIBLE. A person who is subject to service of process shall be joined as a party in the action if:

1. In his absence complete relief cannot be accorded among those already parties; or
2. He claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may:
 - a. as a practical matter, impair or impede his ability to protect that interest, or
 - b. leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant or, in a proper case, an involuntary plaintiff.

12 Okla. Stat. § 2019 (A). Here, as noted above and as is apparent on the face of the *Jail System Agreement*, the TCCJA was a party signatory to the *Jail System Agreement*. By signing the *Jail System Agreement*, the TCCJA's chairman acknowledged, on behalf of the TCCJA, that the *Jail System Agreement* created responsibilities for the TCCJA and therefore its Trustees.

Further and more importantly, pursuant to the *Amended and Restated Declaration of Trust of Tulsa County Criminal Justice Authority* (“the *Declaration of Trust*”) (attached hereto as Exhibit 2), the TCCJA stands as the legal entity vested, via actions of its Trustees, with the authority, *inter alia*, to administer funds for operating and maintaining the Tulsa County Jail, to establish and maintain oversight of the expenditure of all funds administered by the Trustees, and to provide funds for the costs of “... financing, acquiring, constructing, installing, equipping, repairing, remodeling, improving, extending, enlarging, maintaining, operating, administering and disposing of or otherwise dealing with” the Tulsa County jail facilities “and for all other charges, costs and expenses incidental thereto ...” [*Declaration of Trust*, Art. III (a), (c) and (f)].³

Inasmuch as (i) the City’s complaints arise from and relate directly to the *Jail System Agreement* and the respective parties thereto; (ii) the City’s *Petition* specifically seeks declaratory judgments as to alleged violations of statutory laws and Constitutional provisions governing the use of the tax revenue funds, funds which the TCCJA and its Trustees are charged to administer; (iii) urges a claim for unjust enrichment, again premised upon the funds the TCCJA and its Trustees are charged to administer; and (iv) an accounting of the income and expenditures of those same funds which the TCCJA and its Trustees are charged

³ The Court should give particular and significant note to the agreed-to provisions in the 1995 *Declaration of Trust* in Art. VIII (c):

The city and town Beneficiaries shall not have any right to house any of their respective prisoners in any detention facility for which this Trust administers funds, without payment of appropriate costs, as determined by the governing body of the County of Tulsa, Oklahoma.

to administer, the TCCJA and its Trustees are indispensable parties to the City's action.

b) The City cannot join the Tulsa County Criminal Justice Authority and its Trustees as parties in this action, requiring the action to be dismissed.

DETERMINATION BY COURT WHENEVER JOINDER NOT FEASIBLE. If a person as described in paragraphs 1 and 2 of subsection A of this section cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable.

12 Okla. Stat. § 2019 (B).

The TCCJA was formed on October 20, 1995 upon the execution of the *Declaration of Trust*. The *Declaration of Trust* provides:

The Trustees of this Trust shall be seven (7) in number, three of whom shall be the same persons, *ex officio*, who currently shall be the acting members of the legally-constituted governing body of Tulsa County, Oklahoma, without distinction as to the office held, one of whom shall be the same person, *ex officio*, who currently shall be the Mayor of the City of Tulsa, Oklahoma ... and the other three of whom (the "Appointive Trustees"), shall be at the time of appointment the Mayor of a municipality, other than the City of Tulsa, located in whole or in part in Tulsa County, Oklahoma, and the undersigned, as Trustees, and all successors ...

Declaration of Trust, Art. VI (a).

Among the specific powers and duties of the Trustees is the specific duty to "defend, in their discretion, any action or proceeding against the Trust or the Trustees ..." *Declaration of Trust*, Art. VII (h).

In addition, the *Declaration of Trust* identifies its "Beneficiaries" as Tulsa County, the cities of Bixby, Broken Arrow, Collinsville, Glenpool, Jenks, Owasso, Sand Springs and Tulsa, and the towns of Skiatook and Sperry. The *Declaration of Trust* further requires "[t]he Beneficiaries shall have no legal claim or right to

the Trust Estate⁴, or to any part thereof, against the Trustees or anyone holding under them ..." *Declaration of Trust*, Art. VIII (b).

Since (i) the Mayor of the City of Tulsa was a signatory to the *Declaration of Trust*; (ii) the Mayor of City of Tulsa is a Trustee for the Trust; (iii) the Mayor of the City of Tulsa is a member of the TCCJA; (iv) the City of Tulsa is a designated Beneficiary under the terms of the *Declaration of Trust*, and (iv) the Trustees and members of the TCCJA are specifically and legally obligated to "defend, in their discretion, any action or proceeding against the Trust or the Trustees ...," joining the TCCJA, the Trust, the Trustees, and/or the Beneficiaries as indispensable parties would pit the City of Tulsa as the Plaintiff asserting allegations of wrongdoing on the one hand, and the City of Tulsa, perhaps in multiple capacities defending the TCCJA as its trustee as a Defendant on the other hand. Such circumstances render the joinder of the TCCJA, the Trust, the Trustees, and the Beneficiaries not feasible, requiring the action be dismissed. In these circumstances, the Court should find that the action cannot, in equity and good conscience, proceed among the parties before it, and order the action dismissed.

Finally, should there be any question as to whether the TCCJA was or now is an indispensable party, that the TCCJA now has authorized Defendant Glanz, in his capacity as Sheriff of Tulsa County, "to invoice the City of Tulsa, on our behalf, monthly, beginning for the month of December, 2008, for the costs of the

⁴ The "Trust Estate" is defined within the *Declaration of Trust* as "consist[ing] of all money, property (real, personal and/or mixed), rights, choses in action, contracts, leases, privileges, franchises, benefits and all other things of value ... presently in or hereafter coming into the hands, or under the control of the Trustees ..." *Declaration of Trust*, Art. V.

City of Tulsa's housing of prisoners in the county jail, in the amounts and in the manner determined by the Board of County Commissioners on September 22, 2008."⁵ (See, Resolution, attached hereto as Exhibit 3).

VII. CONCLUSION.

For the reasons set forth herein, the Court should find that all claims against Defendant Stanley Glanz should be dismissed as a matter of law for failure of the Plaintiff City of Tulsa to state claims for which relief may be granted.

Respectfully submitted,

BREWSTER & De ANGELIS, P.L.L.C.



Clark O. Brewster, OBA #1114
Guy A. Fortney, OBA #17027
Mark B. Jennings, OBA #10082
2617 East 21st Street
Tulsa, Oklahoma 74114
Tel: (918) 742-2021
Fax: (918) 742-2197

**ATTORNEYS FOR DEFENDANT
STANLEY GLANZ**

⁵ Reference is to that "Resolution Setting the Costs of Housing Prisoners of the City and Town Beneficiaries of the Tulsa County Criminal Justice Authority," approved by the TCCJA on September 22, 2008 (attached hereto as Exhibit 4).

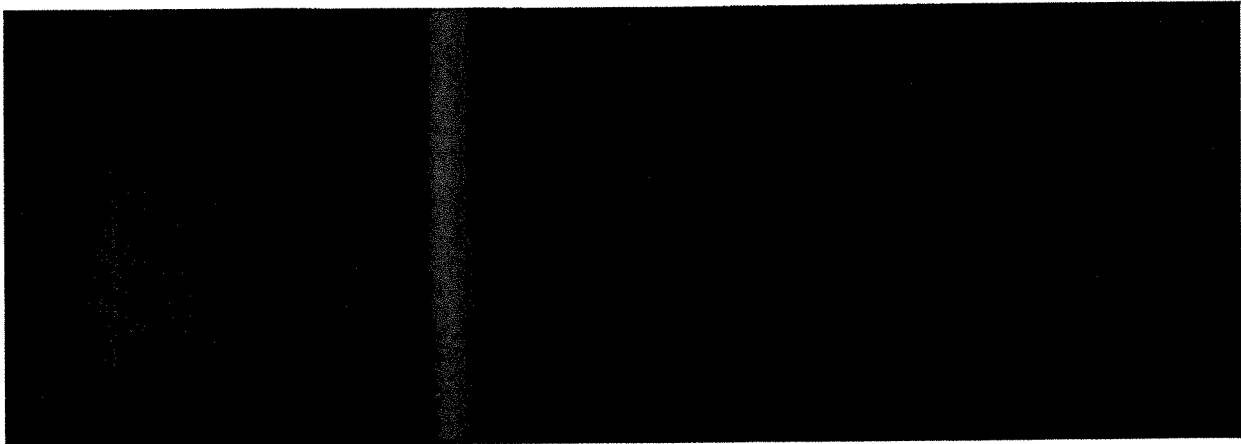
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by regular mail this 19 day of December, 2008, to the following:

David T. Iski
Assistant District Attorneys
900 Tulsa County Courthouse
500 S. Denver
Tulsa, OK 74103-3832
(918) 596-4859/596-4976
(918) 596-4804 Fax
*Attorney for Defendant, Board of County Commissioners
for Tulsa County*

Joel L. Wohlgemuth
Jo Lynn Jeter
Adrienne L. Barnett
Ryan A. Ray
Norman Wohlgemuth Chandler & Dowdell
2900 Mid-Continent Tower
Tulsa, OK 74103-4065
(918) 583-7571
(918) 584-7846 Fax
Attorneys for Plaintiff, City of Tulsa





EXHIBITS

4-23-99 A. Mtg. 172004 APPROVE.
Agenda Item II. A. STATE OF OKLAHOMA
TULSA COUNTY APR 19 '99
FILED

9899.4-4.wpd

JAIL SYSTEM AGREEMENT 99 APR 16 PM 2:55

This Jail System Agreement (Agreement) is made and entered into by and between the Board of County Commissioners of Tulsa County, Oklahoma, the governing body of a political subdivision of the state of Oklahoma, hereinafter referred to as "County" and the City of Tulsa, Oklahoma, a municipal corporation, hereinafter referred to as "City", pursuant to tit.19 Okl.Stat. §752 (Laws 1998).

WITNESSETH:

In consideration of the concurrent lease of City's property to County, the payment of one dollar (\$1.00) City funds to County, and the operating terms of this Agreement, all as hereinafter more particularly specified, the parties agree that County will operate and maintain a City-County Jail System, hereinafter referred to as the "Jail System" to house, maintain and secure all Municipal Prisoners for the time period commencing on, July 1, 1998, and ending on June 30, 2008.

ARTICLE 1

Definitions

Except as otherwise hereafter defined, the words, terms and phrases of this Agreement shall be given their ordinary meaning in understanding the terms of this Agreement.

1.1 Jail Operator. The "Jail Operator" shall mean the person, firm, corporation, or other lawful entity or elected official having legal and/or contractual responsibility for the day-to-day operational control of the Jail System.

RECEIVED
APR 21 1999
EXHIBIT 1
FLINTCO TULSA

1.2 Leased Premises. The "Leased Premises" shall mean the premises formerly known as the "City Jail", located on the third floor of the City of Tulsa Police Municipal Courts Building, 600 Civic Center, Tulsa, Oklahoma, including the hallway area located East from the doorway separating the Sheriff's previous booking area from the administrative offices of the Tulsa Police Department/Municipal Courts Building, and the buildings and premises commonly known as the "Adult Detention Center" (hereinafter referred to as "ADC" and more particularly described as follows: All of Government Lot 8 North of and less right-of-way Charles Page Boulevard and all Northeast 1/4 of Southeast 1/4 and South and West of line drawn from the Northwest 1/4 Southeast 1/4 to Southeast corner of Northeast 1/4 of Southeast 1/4 less Charles Page Boulevard and the East half of the Northwest 1/4 of the Southeast 1/4 Section 3, Township 19 N, Range 12 E, Indian Base and Meridian, Tulsa County, Oklahoma), located at 1727 Charles Page Boulevard, City of Tulsa, Tulsa, Oklahoma. Said facilities are hereinafter identified as "the Leased Premises."

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.

1.4 Jail System. The "Jail System" has collective reference to the David L. Moss Criminal Justice Center, the City Jail and the City's Adult Detention Center.

ARTICLE 2

Lease of Premises to County and Funding Agreement

2.1 City hereby leases to County the Leased Premises, and City acknowledges and acquiesces in subsequent sublease of the Leased Premises by County to the Tulsa County Criminal Justice Authority (TCCJA).

2.2 City and County agree to exchange the use of the Leased Premises and provision of City services as an alternative to the payment of funds between the parties. In addition to the City 's Leased Premises, City agrees to continue to equip and maintain, at an annual cost to City exceeding \$400,000, a fully staffed evidence property room sufficient to meet the evidence storage needs of the Fourteenth Judicial District arising from the law enforcement activities of the Tulsa Police Department. County acknowledges that City has previously funded and leased to County for \$1.00 annual cost a 23,300 square foot facility contiguous to the County's Juvenile Detention Center having an annual rental market value of \$349,500. It is further mutually agreed that the reasonable value of City's contribution to the Jail System, as identified, is equivalent to the City paying to County the cost of daily housing for one hundred sixteen (116) Municipal Prisoners in the Jail System. City agrees to pay County for housing each Municipal Prisoner exceeding one hundred sixteen (116) held in the Jail System, as hereafter specified.

2.3 The Leased Premises are to be used together as elements of the combined Jail System. County shall not use or permit the use of Leased Premises for any other purpose without the written consent of City.

2.4 City shall pay for all utility services, except telephone services, for the premises hereto described as the City Jail. County shall pay for all utility services at the ADC. County shall also pay for telephone services at all other Jail System facilities.

2.5 County will at all times during the term of this Agreement maintain the Leased Premises of the City Jail, and ADC in good, safe, and substantial condition and shall use all reasonable precautions to prevent waste, damage, or injury to said premises, and will make all

ordinary and necessary repairs at said premises. If any structural repairs are necessary, including but not limited to roof replacement and/or repair, water and sewer and/or gas line repair and replacement, and/or substantial repairs necessitated by Acts of God or fire, County will contact City and County engineers to obtain a cost estimate of the work required. Prior to initiation of the work required, County will submit the engineers' estimates and plans to the City for approval. Within forty-five (45) days after presentation by County to City a bill relating to approved structural repairs, City will reimburse County for one-half (½) of the structural repair expenses incurred.

County will pay for the cost of renovations of the Jail System facilities. Before any structural repairs and/or renovation projects involving City's Leased Premises are commenced, County agrees to submit the project plans to City for approval.

Upon termination of this Agreement, County shall have the right to remove all personal property belonging to County from the Leased Premises, including but not limited to furniture, computers, computer terminals, televisions, and cameras.

2.6 County shall permit City's agents, as approved by the Chief of Police of the City of Tulsa, to enter into the Leased Premises at all reasonable hours for the purpose of satisfying themselves that the Leased Premises are being maintained in a reasonable fashion and that waste is not occurring. In the event that City determines that repairs should be made to the Leased Premises, then City shall advise County in writing of such repairs and County shall have a reasonable time thereafter to complete said repairs.

2.7 City designates the City Controller, Tulsa Department of Finance, 200 Civic Center, Tulsa, Oklahoma, 74103 as City's contract administrator having responsibility for receiving all

reports identified in this Agreement, making timely payment to County as required by this Agreement, and for the purposes of serving or receiving any notice to or from County as identified in this Agreement.

ARTICLE 3

System Operations

City and County agree to the operation of their separate jail facilities as a single Jail System, in accordance with the following terms and conditions:

3.1 The Jail Operator will be solely responsible for the operational control of the Jail System and he shall have absolute control over all Municipal Prisoners within the Jail System. City agrees that no action affecting any prisoners in the Jail System will be taken by City personnel which is contrary to the orders or directions of the Jail Operator.

3.2 County will be responsible for all booking functions relating to the Jail System.

3.3 Except as specifically agreed to herein, and with specific reference to prisoners brought to the Jail System's booking facility by City police officers, County shall not be responsible for prisoner medical expenses incurred prior to medical screening and custodial acceptance of a prisoner by the Jail Operator.

3.4 With specific reference to prisoner medical expenses City and County agree:

A. If a person is injured during the course of an arrest by a City police officer, if the arrest is being made solely on a state charge or District Court warrant, County will be responsible for paying all medical costs relating to such injury from the time of acceptance of the arrestee for custody by the Jail Operator into the Jail System.

B. After a prisoner has been medically screened and accepted for custody by the Jail Operator into the Jail System, County shall be solely responsible for the payment of all medical expenses pertaining to all prisoners in the Jail System, except Municipal Prisoners. Neither County, the Jail Operator, nor County's or the Jail Operator's medical care contractor is authorized to incur or otherwise obligate City in any way to pay private provider medical care expenses for any Municipal Prisoner medical condition for which City has no legal obligation to pay. However, in the event of a Municipal Prisoner medical emergency requiring immediate medical care not available within the Jail System, the Municipal Prisoner may be sent outside the Jail System at City expense. The City authorizes County to pay all medical laboratory bills related to incarcerated Municipal Prisoners and present the City with a monthly itemized bill for reimbursement to the County, and agrees that payment for said bills will be made within forty-five (45) days after presentation to City.

C. This Agreement between County and City with regard to prisoner medical expenses exists solely and exclusively for the benefit and convenience of County and City; the terms of this Agreement shall not be construed to create any legal right allowing enforcement of its terms for the benefit of any prisoner or, otherwise establish any prisoner, any third party or any medical care provider as a beneficiary of the Agreement.

ARTICLE 4

RENEWAL OF AGREEMENT

4.1 This Agreement shall apply retroactively from July 1, 1998 and, subject to the terms and conditions hereafter stated, it shall expire on June 30, 2008.

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 (according to the facility midnight population count) in County's jail. County acknowledges that City's current Municipal Prisoner count is less than eighty (80) prisoners. City offers and County agrees to accept the currently beneficial difference between the actual number of Municipal Prisoners and the currently greater value of City's facilities and services as appropriate present consideration supporting the implementation of the costs adjustment process hereafter identified.

4.3 Subject to the terms of section 4.4 of this Agreement, City agrees to pay housing and facility costs for each Municipal Prisoner in the Jail System exceeding one hundred sixteen (116), as follows: should the midnight prisoner count of Municipal Prisoners average more than one hundred sixteen point four (116.4) for any 30-day report period, City shall be responsible to pay county per capita housing and facility costs. Said costs shall be payable commencing the next following 30-day report period, and thereafter continue monthly until the daily average City count decreases below one hundred sixteen point five (116.5), as determined by the midnight prisoner count records of the Jail Operator. The amount of the per capita City payment shall be calculated as follows: City shall pay to County seventy four percent (74%) of the then current full daily housing rate charged by the Jail Operator; should the Jail System be subject to the operation and control of the County Sheriff, City agrees to pay County seventy four percent (74%) of the then current full

value of the sheriff's current daily bed rate for each daily average Municipal Prisoner in excess of one hundred sixteen (116). In either instance, City shall additionally pay County the sum of sixteen dollars forty-four cents (\$16.44) per day per prisoner (subject to annual CPI adjustment payment, commencing on July 1, 2000, and on July 1 of each year thereafter, in an amount annually determined by the CPI index as it exists on the preceding December 31st) for the value of County's facility use.

4.4 Whenever the average Municipal Prisoner count exceeds a daily average of one hundred eleven (111) Municipal Prisoners for any one month, City agrees to initiate budgeting funds for housing Municipal Prisoners in the Jail System commencing during the City's next fiscal year. Thereafter, Municipal Prisoner costs shall be assessed and paid to County in the manner specified in paragraph 4.3, immediately preceding.

4.5 It is mutually agreed that this Agreement shall automatically renew on a year-to-year basis during its stated term, subject only to the City's budgeting of funds during any City fiscal year when such budgeting is required. In the event of any failure by City to budget and pay for Municipal Prisoner costs during any fiscal year when such budgeting and payment is required, this Agreement shall be null and void without further action by either party.

ARTICLE 5

Termination of Agreement

5.1 Either party may terminate this Agreement immediately if it is determined that said termination is necessary for the public safety or welfare or if the other party fails to correct any breach of this Agreement within forty five (45) days after receiving written notice of said breach.

5.2 City, with reference to Municipal Prisoners, hereby authorizes the Jail Operator to promulgate such rules, regulations, and policies and to issue such administrative orders as are necessary to carry out the purposes and intent of this Agreement. Provided, that any change in booking procedures which affects the operations of the Tulsa Police Department will be submitted to and approved by the Chief of Police prior to implementation.

5.3 City hereby authorizes the Chief of Police of Tulsa to promulgate such rules, regulations, and policies and to issue such administrative orders as are necessary to carry out the purposes and intent of the Agreement.

5.4 The parties agree that negotiations concerning continuation and alteration of this Agreement shall commence no later than February 1, 2008, with the objective of completing negotiations by May 1, 2008. County, using the current jail Agreement as a base model, shall submit to City a redline hard copy proposed Agreement for the next Agreement term and an IBM-compatible diskette containing the proposed redline Agreement in WordPerfect format. Thereafter, City shall either accept the County's proposed Agreement or submit to County City's counter proposal by following the same redline/hard copy procedure, governing County's proposal. The exchange of updated diskettes shall continue between the parties until a new Agreement is finalized. The County shall appropriately document and/or explain any changes presented in its initial contract proposal submitted to the City. The City shall appropriately explain any changes presented in their initial response. Failure of the parties to reach agreement by May 1, 2008, shall be deemed notice of termination effective June 30, 2008, unless waived in writing by both parties.

5.5 County shall indemnify City and pay all expenses, liabilities, and claims of every kind, including reasonable counsel fees, by or on behalf of any person or entity arising out of either (1) a failure by County to perform any of the terms or conditions of this Agreement; (2) any damage to the Leased Premises described in Paragraph 1.2 above exceeding the level of reasonable wear and tear caused by normal use of the Leased Premises; or (3) failure of the Jail Operator to comply with the Constitution of the United States of America or any law of any governmental authority pertaining to the operation of the Jail System.

5.6 City shall indemnify County and pay all expenses, liabilities and claims of every kind, including reasonable counsel fees, by or on behalf of any person or entity arising out of failure by City to perform any of the terms of this Agreement or any injury or damage to any property resulting from conduct of a City Police officers(s) or employee(s).

5.7 The provisions of this Agreement are severable and if any part or provision shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this Agreement.

5.8 This Agreement shall be regulated by requirements of the Minimum Inspection Standards of Oklahoma Jail, 74 O.S., 1991, § 192, or as amended or superseded by any new statute.

5.9 This Agreement expressly supersedes all previous Jail Agreements between the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates set forth immediately below.

Executed by the City of Tulsa, Oklahoma, a municipal corporation, this ___ day of April, 1999.

Executed by Tulsa County, Oklahoma, a county and political subdivision of the State of Oklahoma, this ___ day of April, 1999.

CITY OF TULSA, OKLAHOMA
a municipal corporation

M. Susan Savage, Mayor

ATTEST:

Mike Kier, City Clerk

APPROVED AS TO FORM:

David L. Pauling, City Attorney

I acknowledge that I have read this Agreement and I am aware of my responsibilities as identified in this Agreement.

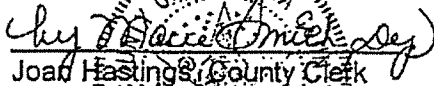
Ronald Palmer, Chief of Police

BOARD OF COUNTY COMMISSIONERS
OF TULSA COUNTY




Robert N. Dick, Chairman

ATTEST:



Joan Hastings, County Clerk



APPROVED AS TO FORM:

Assistant District Attorney

Tulsa County Criminal Justice Authority

Robert N. Dick, Chairman

I acknowledge that I have read this Agreement and I am aware of my responsibilities as identified in this Agreement.

Corrections Corporation of America

By Charles Crandell, Jail Operator

ACCEPTED & FILED NOV 13 1995

AMENDED AND RESTATED
DECLARATION OF TRUST
OF
TULSA COUNTY CRIMINAL JUSTICE AUTHORITY

STATE OF OKLAHOMA
COUNTY CLERK
TULSA COUNTY CLERK
FILED
158131

KNOW ALL MEN BY THESE PRESENTS:

I.

DECLARATION AND COVENANT

FEB - 5 1997
OKLAHOMA SECRETARY
OF STATE

The undersigned Trustor hereby contracts with the undersigned Trustees, and the latter, as individuals and not as holders of public office, hereby do declare and covenant, between themselves and unto the Trustor, the State of Oklahoma and the Beneficiaries hereinafter described, that they and their successors do and will hold, receive and administer the Trust Estate hereinafter described, as Trustees of a public trust under and pursuant to the laws of the State of Oklahoma now in force and effect (generally, but not exclusively, Title 60, Oklahoma Statutes 1991, Sections 176-180.3, inclusive, and the Oklahoma Trust Act), solely for the use and benefit of the Beneficiaries for the public purposes and functions hereinafter set forth, in the manner provided in this instrument or, in the absence of applicable provision herein, then in the manner now provided by law. The aforesaid public trust is created by virtue of the execution of this instrument by the individuals signing the same as the Trustor and initial Trustees hereunder; and neither the acceptance of the beneficial interest hereunder, nor the endorsement hereon of such acceptance, for and on behalf of the designated Beneficiaries as provided by law, nor the fact that, at the time of signing this instrument, some or all of the initial Trustees are members of the governing bodies thereof, shall be deemed or construed to be the creation of a public trust by any such Beneficiary or the governing body thereof.

The undersigned Trustor hereby forever irrevocably conveys, relinquishes and assigns to the Trustees of the Authority any and all right, title and interest he may have in and under this Declaration of Trust and the trust created hereunder, including, without limitation, the right to consent to and approve any changes, amendments or supplements to this Declaration of Trust.

II.

NAME

The name of this Trust shall be, and the Trustees thereof in their representative fiduciary capacity shall be designated as the "Tulsa County Criminal Justice Authority".

EXHIBIT 2

TULSA COUNTY CLERK
JOAN HASTINGS
REC'D 12:48
FEB 25
11/11/95 10:10:31
DOC # 95102774 FILE

5761 2117

Under that name, the Trustees shall, so far as practicable, conduct all business and execute all instruments in writing, and otherwise perform their duties and functions, in execution of this Trust.

III.

PURPOSE

The purposes of this Trust, for and on behalf of the Beneficiaries as hereinafter described, are:

(a) To administer funds for the purposes of acquiring a site for, erecting, furnishing, equipping, operating, maintaining, remodeling and repairing a county jail and/or other detention facilities within the territorial limits of Tulsa County, Oklahoma;

(b) To administer funds for the purposes of establishing, providing, administering, maintaining, operating and conducting criminal justice intervention and prevention programs;

(c) To establish and maintain oversight over the efficient, proper and lawful expenditure of all funds administered by the Trustees;

(d) To hold, maintain and administer any leasehold rights in and to properties of the Beneficiaries demised to the Trustees, and to comply with the terms and conditions of any leases providing said rights;

(e) To acquire by lease, purchase or otherwise, and to hold, construct, install, equip, repair, enlarge, furnish, maintain and operate or otherwise deal with, any and all physical properties and facilities needful or convenient for utilization in executing or promoting the execution of the aforesaid trust purposes or any of them; to lease, rent, furnish, provide, relinquish, sell or otherwise dispose of, or otherwise make provision for, any or all of said properties and facilities either in execution of any of the aforesaid trust purposes or in the event that any thereof shall no longer be needful for such purposes;

(f) To provide funds for the costs of financing, acquiring, constructing, installing, equipping, repairing, remodeling, improving, extending, enlarging, maintaining, operating, administering and disposing of or otherwise dealing with any of the aforesaid physical properties and facilities, and for administering the Trust for any or all of the aforesaid trust purposes, and for all other charges, costs and expenses incidental thereto; and in so doing to incur indebtedness, either unsecured or secured by any part or parts of the Trust Estate and/or revenues thereof;

5761 2116

(g) To expend all funds coming into the hands of the Trustees, as revenue or otherwise, in the payment of the aforesaid costs and expenses, and in the payment of any indebtedness incurred by the Trustees for the purposes specified herein; and

(h) Whenever the same shall be or become material, the purposes set forth in paragraphs (a), (b) and (c), inclusive, of this Section shall be the primary objectives of this Trust and the provisions of paragraphs (d) to (g), inclusive, shall be deemed and construed in implementation thereof and collateral thereto.

For all purposes of this Section, the word "facilities" as used herein means real estate and all rights, privileges, benefits, and appurtenances thereto, also buildings, structures, installations, and all personal property whatsoever, and all rights, privileges and benefits appertaining or related thereto.

IV.

DURATION

This Trust shall have duration for the term of duration of the Beneficiaries as hereinafter described, and until such time as the Trust's purposes shall have been fully executed and fulfilled, or until it shall be terminated as hereinafter provided.

V.

TRUST ESTATE

The Trust Estate shall consist of all money, property (real, personal and/or mixed), rights, choses in action, contracts, leases, privileges, franchises, benefits and all other things of value (whether or not above described) presently in or hereafter coming into the hands, or under the control, of the Trustees pursuant to the provisions of this instrument or by virtue of the Trusteeship herein declared. Furthermore, each of the beneficiaries hereto shall contribute the sum of \$1.00 to the trust estate upon acceptance of beneficial interest herein.

VI.

THE TRUSTEES

(a) The Trustees of this Trust shall be seven (7) in number, three of whom shall be the same persons, ex officio, who currently shall be the acting members of the legally-constituted governing body of Tulsa County, Oklahoma, without distinction as to the office held, one of whom shall be the same person, ex officio, who currently shall be the Mayor of the City of Tulsa, Oklahoma (the

5761 2117

"Ex Officio Trustees"), and each of the other three of whom (the "Appointive Trustees"), shall be at the time of appointment the Mayor of a municipality, other than the City of Tulsa, located in whole or in part in Tulsa County, Oklahoma, and the undersigned, as Trustees, and all successors thereof who shall qualify as Trustees as hereinafter provided, each contract, agree and covenant with and to each other, with and to the State of Oklahoma, with and to each Beneficiary hereunder, and with and to each component thereof, as by law now in force and effect, that they will execute the trust herein declared and created, as Trustees for the Beneficiaries hereunder, and each component thereof, and that they do and will receive, hold and administer the Trust Estate solely for the use and benefit of the said Beneficiaries in the manner provided in this instrument, or, in the absence of applicable provision herein, then in the manner now provided by presently existing law. The Ex Officio Trustees and the Appointive Trustees are herein collectively called the "Trustees". The initial Appointive Trustees shall be appointed by the presiding officer of the governing body of Tulsa County, Oklahoma, and confirmed by a majority of the persons who constitute the governing body of Tulsa County, Oklahoma, and they shall serve, respectively, for fixed terms from the date of appointment and qualification as hereinafter provided to July 31, 1996, and each such person shall continue to serve until a successor shall have qualified, unless removed as hereinafter provided.

Each undersigned Ex Officio Trustee shall continue as such, unless temporarily replaced pursuant to paragraph (f) of this Section, until succeeded and replaced by some other person as an officer of Tulsa County, Oklahoma, above designated, or as Mayor of the City of Tulsa, as appropriate, ex officio, to be an Ex Officio Trustee and such other person shall have qualified as an Ex Officio Trustee hereunder as provided in paragraph (g) of this Section; each person who shall become such an above-designated member of the governing body of Tulsa County, Oklahoma, or the Mayor of the City of Tulsa, as appropriate, shall be entitled to qualify as, and to become, an Ex Officio Trustee hereunder and to continue as such, unless temporarily replaced pursuant to paragraph (f) of this Section, until succeeded and replaced by some other person as such member of the governing body of Tulsa County or as such Mayor of the City of Tulsa, as appropriate, and such other person shall have qualified as an Ex Officio Trustee hereunder as provided in paragraph (g) of this Section: PROVIDED, that in the event the number of persons constituting the governing body of Tulsa County shall be reduced by or pursuant to applicable law, any person serving as an Ex Officio Trustee who shall cease to be a member of the governing body of Tulsa County shall, forthwith, cease to be an Ex Officio Trustee of this Trust.

Each Appointive Trustee shall continue as such unless temporarily replaced pursuant to paragraph (f) of this Section or unless such Appointive Trustee shall cease to be a member of the legally-constituted governing body of the Tulsa County municipality from which he was appointed, in either of which events such

person shall, forthwith, cease to be an Appointive Trustee of this Trust. All of the legal rights, powers and duties of each Trustee shall terminate when he shall cease to be a Trustee hereunder and all of such legal rights, powers and duties shall devolve upon his successor and successors, with full right and power of the latter to do or perform any act or thing which his predecessor or any predecessor could have done or performed.

Successors to each of the Appointive Trustees shall have fixed terms of one (1) year, and shall continue to serve until a successor has qualified hereunder. Upon the expiration of the fixed term of an Appointive Trustee, the power of appointment of his successor hereby is vested in the person who then shall be the presiding officer of the governing body of Tulsa County, but before such appointment shall become effective, it also shall require the confirmation of a majority of the persons who then shall constitute the governing body of Tulsa County; Provided, that if the form of government of Tulsa County be changed, or the said Tulsa County shall have been succeeded by another governmental entity as provided in Section VIII hereof, then the aforesaid appointive power shall be vested in the person who then shall be the elected official who shall be the presiding officer of the governing body thereof, and confirmation of all such appointments shall be required by a majority of the persons who then shall constitute the elected governing body of such successor.

In the event of a vacancy in an Appointive Trusteeship (except that appointment of temporary trustees, governed by paragraph (f) of this Section shall not be deemed a vacancy), the Trustees shall certify the fact of said vacancy to the above described appointive power and the Mayor of a municipality, other than the City of Tulsa, located in whole or in part in Tulsa County, shall be appointed as an Appointive Trustee for the unexpired term by the presiding officer of the governing body of Tulsa County and confirmed by a majority of persons who constitute the governing body of Tulsa County. In the event that the aforesaid appointing and confirming power, as above set forth, shall fail effectively to appoint a successor Appointive Trustee or said Trustee shall fail to qualify as a Trustee within thirty (30) days next following the expiration of the fixed term of an incumbent Appointive Trustee or within thirty (30) days next following certification of the fact of existence of a vacancy, the power of appointment of a successor Trustee shall be vested in the then remaining incumbent Trustee or Trustees. The determination of the right of any person to qualify as a Trustee hereunder (except a temporary trustee referred to in paragraph (f) hereof), shall be vested exclusively in the incumbent Trustees, and their determination shall be final.

All of the legal rights, powers and duties of each Trustee shall terminate when he shall cease to be a Trustee hereunder and all of such legal rights, powers and duties shall devolve upon his successor and successors, with full right and

power of the latter to do or perform any act or thing which his predecessor or any predecessor could have done or performed.

(b) The person who shall be the Chairman of the Board of County Commissioners of Tulsa County, Oklahoma, shall become automatically the Chairman of the Trustees and shall preside at all meetings and perform other duties designated by the Trustees. The Trustees shall designate the time and place of all regular meetings. A majority of the duly qualified and acting Trustees of this Trust shall constitute a quorum for voting purposes and all other purposes hereunder. All actions by the Trustees pursuant to the provisions of this Declaration of Trust shall be approved by the affirmative vote of at least a majority of a quorum of the Trustees. The Trustees shall select one of their members to be Vice-Chairman, who shall act in the place of the Chairman during the latter's absence or incapacity to act.

(c) The Trustees shall select a person to act as Secretary of the Trustees. The Secretary shall keep minutes of all meetings of the Trustees and shall maintain complete and accurate records of all their financial transactions, all such minutes, books and records to be on file in the office of the Trust. All meetings of the Trustees shall comply with the Oklahoma Open Meeting Act, and the books, records and minutes of the Trustees shall comply with the Oklahoma Open Records Act.

(d) The person who shall be the County Treasurer of Tulsa County, Oklahoma, shall act as Treasurer of the Trustees.

(e) The Trustees may appoint a general manager for the Trust Estate, and may employ such other clerical, professional, legal and technical assistance as may be deemed necessary in the discretion of the Trustees to properly operate the business of the Trust Estate, and may fix their duties, terms of employment and compensation. All Trustees shall serve without compensation but shall be reimbursed for actual expenses incurred in the performance of their duties hereunder.

(f) The Trustees may contract, in connection with the incurring of any indebtedness or obligation related to the Trust Estate and/or its revenues, or any part of either or both, that Temporary Trustees, residents of Tulsa County, Oklahoma, and approved by the District Court of Tulsa County or a Judge of said Court, may be appointed to act in place and instead of permanent Trustees in relation to the Trust Estate or any part thereof, in such number that such Temporary Trustees may constitute a majority of the Trustees, in the event of a default in the performance of such obligation or the payment of principal or interest on such debt or any default under any instrument securing such debt or pursuant to which such debt be incurred. Any such contract, if made, shall

5761 2120

provide for the method of appointment of each Temporary Trustee and shall also provide that any such appointment shall designate the permanent Trustee to be so temporarily supplanted. Each such Temporary Trustee so appointed shall, after he shall have qualified as provided in paragraph (g) of this Section, supplant in all respects the permanent Trustee so designated in relation to the Trust Estate or that portion thereof, for which he was appointed, under the terms of this instrument. All Temporary Trustees shall cease to have any power or authority upon the termination of all defaults by which their appointments would have been authorized and automatically, the permanent Trustees supplanted shall be reinstated.

(g) All Trustees, and all Temporary Trustees appointed hereunder, shall qualify by written acceptance of all of the terms of this instrument, duly acknowledged and filed in the office of the County Clerk of Tulsa County, Oklahoma, and by subscribing and filing such oaths as shall be required by law of public officers of the State of Oklahoma.

(h) Upon each change of personnel of the Trustees hereunder, the Trustees shall cause to be filed in the office of the County Clerk mentioned in paragraph (g) above, a certificate as to the entire personnel of the Trustees of this Trust.

(i) The acceptance of the office of Trustee of this Trust shall not constitute the Trustees, hereunder, permanent or Temporary, or both, to be in partnership or association, but each shall be an individual and wholly independent Trustee only.

(j) Notwithstanding any provision of this instrument which shall appear to provide otherwise, no Trustee or Trustees shall have any power or authority to bind or obligate any other Trustee, or any Beneficiary of this Trust, in his or its individual capacity.

(k) All persons, firms, associations, trusteeships, corporations, municipalities, governments, and all agents, agencies and instrumentalities thereof, contracting with any Trustee or Trustees, permanent or Temporary or both, shall take notice that all expenses and obligations, and all debts, damages, judgments, decrees or liabilities incurred by any Trustee or Trustees, permanent or Temporary or both, and any of the foregoing incurred by any agent, servant, or employee of any such Trustee or Trustees, in the execution of the purposes of this Trust, whether arising from contract or tort, shall be solely chargeable to, and payable out of the Trust Estate. In no event shall any Trustee, permanent or Temporary, or any Beneficiary of this Trust, be in any manner individually liable for any injury or damage to persons or property, or for breach of contract or obligation, caused by, arising from incident to or growing out of the execution of

5/61 212

this Trust; nor shall they, or any of them, be liable for the acts or omissions of each other or of any agent, servant or employee of the aforesaid Trustees, or of another such Trustee: **PROVIDED, HOWEVER,** that the foregoing shall not apply to any willful or grossly negligent breach of trust of any said Trustee.

VII.

POWERS AND DUTIES OF TRUSTEES

Subject to, and in full compliance with, all requirements of law applicable to this Trust or to the Trustees thereof:

(a) The Trustees, in the manner hereinafter set forth, shall do, or cause to be done, all things which are incidental, necessary, proper or convenient to carry fully into effect the purposes enumerated in Section III of this instrument, with the general authority hereby given being intended to make fully effective the power of the Trustees under this instrument; and, to effectuate said purposes, the Trustees are specifically authorized (but their general powers are not limited hereby, notwithstanding any specific enumeration or description), in a lawful manner:

(1) To enter in and conduct and execute apply for, purchase, or otherwise acquire franchises, property (real or personal), contracts, leases, rights, privileges, benefits, choses in action, or other things of value, and to pay for the same in cash, with bonds or other evidences of indebtedness, or otherwise;

(2) To own, hold, manage, and in any manner to convey, lease, assign, liquidate, dispose of, compromise, or realize upon, any property, contract, franchise, lease, right, privilege, benefit, chose in action or other thing of value, and to exercise any and all power necessary or convenient with respect to the same;

(3) To acquire, hold, sell, transfer, assign, encumber, dispose of, and deal in, the stocks, bonds, debentures, shares or evidences of interest or indebtedness in or of any sovereignty, government, municipality, corporation, association, trusteeship, firm or individual and to enter into and perform any lawful contract in relation thereto, and to exercise all rights, powers and privileges in relation thereto, to the same extent as a natural person might or could do;

(4) To enter into, make and perform contracts of every lawful kind or character, including but not restricted to, management contracts, with any person, firm, association, corporation, trusteeship, municipality, government, or sovereignty; and, subject to applicable provisions of paragraph (b) of this Section, without limit as to amount, to draw, make, accept, endorse, assume, guarantee,

2212 191C

discount, execute and issue promissory notes, drafts, bills of exchange, acceptances, warrants, bonds, debentures, and any other negotiable or non-negotiable or transferable or non-transferable instruments, obligations, and evidences of unsecured or secured indebtedness, and if secured by mortgage, deed of trust, or otherwise, secured by all or any part or parts of the property of the Trust, and to pledge all or any part of the income of the Trust, in the same manner and to the same extent as a natural person might or could do.

(b) Notwithstanding anything in this instrument appearing to be to the contrary, if and so long as the incurring of any indebtedness or obligation is required by applicable law to have been approved by the governing body of the Beneficiaries or the members of such governing bodies, no such indebtedness or obligation shall be incurred until after, and pursuant to, such approval.

(c) The Trustees shall collect and receive all property, money, rents and income of all kinds belonging to or due the Trust Estate, and shall distribute the same, or any portion thereof, solely for the purposes, and the furtherance of the purposes, set forth in Section III of this instrument, and not otherwise.

(d) The Trustees shall take and hold title to all property at any time belonging to the Trust in the names of the Trustees or in the name of the Trust and shall have and exercise exclusively the management and control of the same, for the use and benefit of the Beneficiaries, as provided herein, in the execution of the purposes of this Trust; and the right of the Trustees to manage, control and administer the said Trust, its property, assets and business shall be absolute and unconditional and free from any direction, control or management by the Beneficiaries, or any person or persons whomsoever.

(e) The Trustees may employ such agents, servants and employees as they deem necessary, proper or convenient for the execution of the purposes of this Trust, and prescribe their duties and fix their compensation.

(f) The Trustees may contract for the furnishing of any services or the performance of any duties that the Trustees deem necessary, proper or convenient to the execution of the purposes of the Trust, and shall pay for the same as they see fit to provide in such a contract.

(g) The Trustees, by Resolution, may divide the duties of the Trustees hereunder, delegating all or any part of such duties to one or another of the Trustees as they deem proper; but, where a specific duty is not so delegated, a majority of a quorum of the Trustees must act for the Trust.

(h) The Trustees shall, in the name of the Trust as hereinabove set forth, or in their names as Trustees, bring any suit or action which, in their judgment, shall be

5761 2123

necessary or proper to protect the interests of the Trust, or to enforce any claim, demand or contract for the Trust or for the benefit of the Trust; and they shall defend, in their discretion, any action or proceeding against the Trust or the Trustees or agents, servants or employees thereof. And the Trustees are expressly authorized, in their discretion, to bring, enter, prosecute or defend any action or proceeding in which the Trust shall be interested, and to compromise any such action or proceeding and discharge the same out of the Trust property and assets; and the Trustees also are expressly authorized to pay or transfer out of the Trust property or assets such money or property as shall be required to satisfy any judgment or decree rendered against them as Trustees, or against the Trust, together with all costs, including court costs, counsel and attorneys' fees, and also to pay out of the Trust property and assets such sums of money, or transfer appropriate property or assets of the Trust, for the purpose of settling, compromising, or adjusting any claim, demand, controversy, action or proceeding, together with all costs and expenses connected therewith; and all such expenditures and transfers shall be treated as proper expenses of executing the purposes of this Trust.

(i) No bond shall be required of the Trustees, or any of them, unless they shall deem the same proper and shall provide therefor by Resolution.

(j) All records of the Trust shall be kept at the principal office of the Trust.

(k) As soon as reasonably convenient after the acceptance of beneficial interest hereunder by the Beneficiaries, the Trustees' first meeting shall be held at the call of any Trustee. At their first meeting, the Trustees shall designate the principal office of the Trust; and they also shall designate the time and place for regular meetings of the Trustees. The time and place of regular meetings shall not be changed unless at a meeting where all incumbent Trustees are present. No notice shall be required for the holding of regular meetings of the Trustees except as otherwise provided by law. Special meetings may be held upon such call as shall be fixed by Resolution of the Trustees. The Trustees shall cause to be filed in all places where this instrument is recorded, a certificate designating the principal office of the Trust and the time and place of regular meetings of the Trustees; and any changes therein shall be filed for record in like manner.

VIII.

BENEFICIARIES

(a) The term "Beneficiaries", as used in this instrument, shall denote Tulsa County, Oklahoma, the City of Bixby, Oklahoma, the City of Broken Arrow, Oklahoma, the City of Collinsville, Oklahoma, the City of Glenpool, Oklahoma, the City of Jenks, Oklahoma, the City of Owasso, the City of Sand Springs, the Town of

5761 1975
4212 2124

Skiatook, Oklahoma, Town of Sperry, Oklahoma, and the City of Tulsa, Oklahoma, acting by and through their governing bodies, and likewise shall denote any governmental entity which hereafter may succeed such County, or any such municipality as the governing authority of the territory lying within the boundaries of said County or any such municipality on the effective date of this instrument.

(b) The Beneficiaries shall have no legal claim or right to the Trust Estate, or to any part thereof, against the Trustees or anyone holding under them; neither shall the Beneficiaries, as such, have any authority, power or right whatsoever to do or transact any business whatsoever for, or on behalf of, or binding upon, the Trustees or the Trust Estate; neither shall the Beneficiaries have the right to control or direct the actions of the Trustees in respect of the Trust Estate, or any part thereof; nor shall the Beneficiaries have any right to demand or require any partition or distribution of the Trust Estate, or any part thereof. The Beneficiaries shall be entitled solely to the benefits of this Trust, as administered by the Trustees hereunder, and at the termination of the Trust, as provided herein, each of the beneficiaries herein shall be entitled to the sum of \$1.00, with the exception of Tulsa County, Oklahoma, which shall, in addition to the sum of \$1.00, receive all remaining residue of the Trust Estate. Notwithstanding anything in the aforesaid appearing to be to the contrary, no provision in this instrument and/or of the Acceptance of Beneficial Interest thereunder by the governing bodies of the Beneficiaries, limiting, restricting or denying any authority, power, or right of the Beneficiaries of said Trust in relation to the administration thereof is intended, or shall be construed or interpreted, to effect a surrender, or to attempt to effect a surrender, of any of the sovereign governmental powers of the State of Oklahoma or of the Beneficiaries; but any and all provisions of this trust instrument are intended, and shall be applied, to relate solely and only to the proprietary rights and property interests of the said Beneficiaries, in trust, as distinguished from its sovereign governmental powers and authority. It further is agreed that nothing contained in this Declaration of Trust and/or in any Acceptance of Beneficial Interest thereunder shall be construed, interpreted or applied as intending to grant, or to grant to the Trustees hereunder an exclusive franchise in relation to any powers, rights or authority of the Trustees under this instrument.

(c) The city and town Beneficiaries shall not have any right to house any of their respective prisoners in any detention facility for which this Trust administers funds, without payment of appropriate costs, as determined by the governing body of the County of Tulsa, Oklahoma.

5761 2125

IX.

TERMINATION

(a) This Trust shall be irrevocable by the Trustor and shall terminate:

(1) When the purposes set forth in Section III of this instrument shall have been fully executed and fulfilled; or

(2) In the event of the happening of any event or circumstance that would prevent said purposes from being executed and fulfilled AND all of the Trustees and the governing bodies of the Beneficiaries, with the approval of the Governor of the State of Oklahoma, shall agree that such event or circumstance has taken place: **PROVIDED, HOWEVER**, that all indebtedness of the Trust shall have been paid; or

(3) In the manner provided by Title 60, Oklahoma Statutes 1991, Section 180:

PROVIDED, HOWEVER, that this Trust shall not be terminated by voluntary action if there be outstanding indebtedness or fixed-term obligations of the Trustees, unless all owners of such indebtedness or obligations or someone authorized by them so to do, shall have consented in writing to such termination.

(b) Upon the termination of this Trust, the Trustees shall proceed to wind up the affairs of the Trust, and, after payment of all debts and obligations out of Trust assets, to the extent thereof, shall distribute the residue of the Trust assets to Tulsa County, Oklahoma, hereunder as provided in Section VIII of this instrument. Upon final distribution as aforesaid, the powers, duties and authority of the Trustees hereunder shall cease.

X.

PARTIAL INEFFECTIVENESS

The invalidity or ineffectiveness for any reason of any one or more words, phrases, clauses, paragraphs, subsections or sections of this instrument shall not affect the remaining portions hereof so long as such remaining portions shall constitute a rational instrument. Any such invalid or ineffective portion was inserted conditionally upon its being valid and

effective only; and this instrument shall be construed as though such invalid or ineffective portion had not been inserted herein.

XI.

COVENANT

The provisions hereof shall be binding upon the undersigned, their heirs, executors, administrators and assigns.

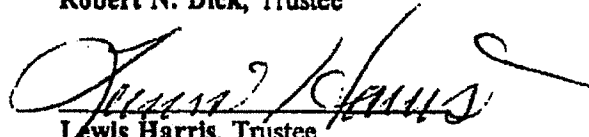
5761 2126

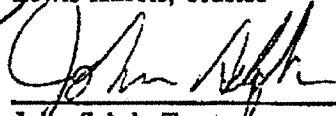
5761 2127


IN WITNESS WHEREOF, we have hereunto set our hands, executing this Amended and Restated Declaration of Trust in several multiple originals, all of which constitute one and the same instrument, this 20 day of October, 1995.


Robert N. Dick, Trustor


Robert N. Dick, Trustee


Lewis Harris, Trustee


John Selph, Trustee


M. Susan Savage, Trustee

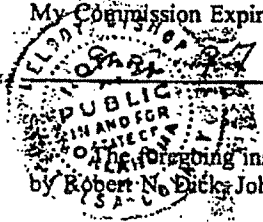
5761 2128

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

The foregoing instrument was acknowledged before me this 20 day of October, 1995,
by Robert N. Dick.

Melody Beck
Notary Public

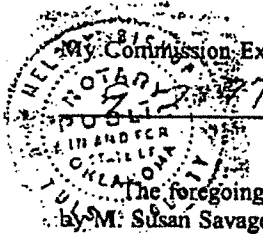
My Commission Expires:



The foregoing instrument was acknowledged before me this 20 day of October, 1995,
by Robert N. Dick, John Selph and Lewis Harris.

Melody Beck
Notary Public

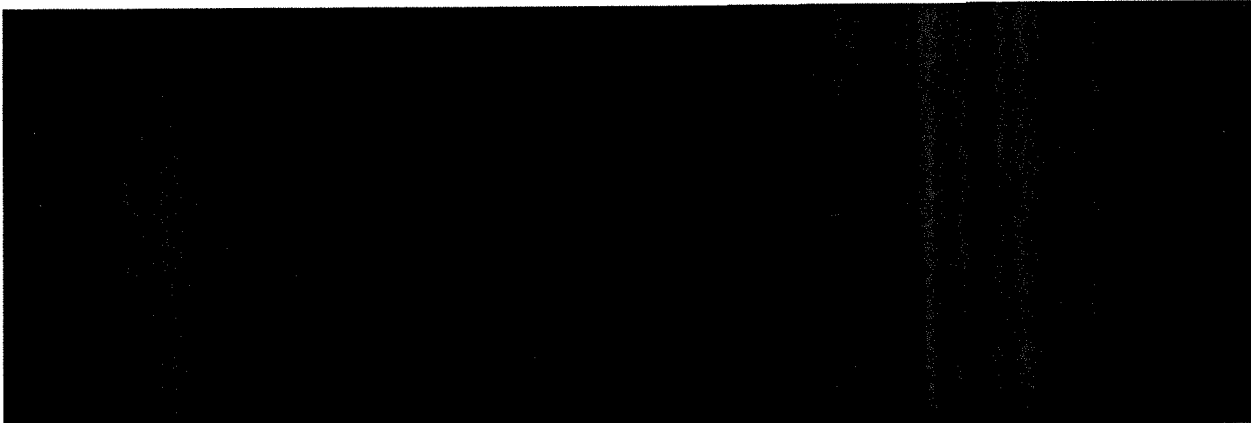
My Commission Expires:



The foregoing instrument was acknowledged before me this 20 day of October, 1995,
by M: Susan Savage.

Melody Beck
Notary Public

My Commission Expires:



I move that we authorize the Sheriff to invoice the City of Tulsa, on our behalf, monthly, beginning for the month of December, 2008, for the costs of the City of Tulsa's housing of prisoners in the county jail, in the amounts and in the manner determined by the Board of County Commissioners on September 22, 2008.

*Motion made by Walker, seconded
by Bowen. Motion passed.*

EXHIBIT 3

5024

**A RESOLUTION SETTING THE COSTS OF HOUSING PRISONERS OF THE CITY
AND TOWN BENEFICIARIES OF THE TULSA COUNTY CRIMINAL JUSTICE
AUTHORITY**

APPROVED

SEP 22 2008

STATE OF OKLAHOMA
TULSA COUNTY
RECEIVED
2008 SEP 18 AM 11:35
EARLENE WILSON
TULSA COUNTY CLERK

212070

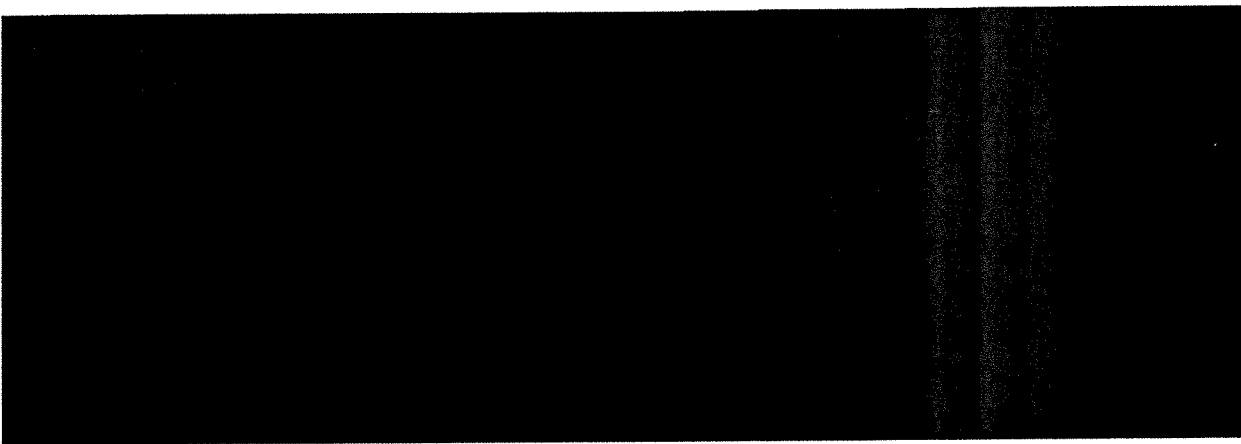
STATE OF OKLAHOMA }
COUNTY OF TULSA } SS

I, Earlene Wilson, Tulsa County Clerk, in and for the County and State above named, do hereby certify that the foregoing is a true and correct copy of a like instrument now on file in my office.

Dated the 15th day of December 2008
EARLENE WILSON, Tulsa County Clerk

Earlene Wilson

EXHIBIT 4



RESOLUTION

A RESOLUTION SETTING THE COSTS OF HOUSING PRISONERS OF THE CITY AND TOWN BENEFICIARIES OF THE TULSA COUNTY CRIMINAL JUSTICE AUTHORITY

WHEREAS, the Board of County Commissioners of Tulsa County is the governing body of the County of Tulsa, Oklahoma.

WHEREAS, the Board of County Commissioners of Tulsa County wish to enter into Detention System Agreements with the City and Town beneficiaries of the Tulsa County Criminal Justice Authority pursuant 19 O.S. §751 for housing Municipal City Prisoners in County prisoner detention facilities.

WHEREAS, the Board of County Commissioners of Tulsa County must determine the costs of housing the prisoners of the City and Town beneficiaries of the Tulsa County Criminal Justice Authority as set out in the Amended and Restated Declaration of Trust of Tulsa County Criminal Justice Authority and found in Section VIII (c).

WHEREAS, the Board of County Commissioners of Tulsa County has made the determination that unless individual changes have been authorized by the Board of County Commissioners of Tulsa County, the following format will be followed effective October 1, 2008 for housing prisoners of the City and Town beneficiaries of the Tulsa County Criminal Justice Authority (hereinafter "City"):

012070

ARTICLE 1

Definitions

Except as otherwise hereafter defined, the words, terms and phrases of this Agreement shall be given their ordinary meaning in understanding the terms of this Agreement.

1.1 **Municipal City Prisoner**. The term "Municipal City Prisoner" (also referred to herein as "Municipal Prisoner" or "City Prisoner") refers to or describes any inmate held for City charges whether or not he or she is also held on State charges. A prisoner ceases to be a Municipal Prisoner when City charges are released.

1.2 **TCSO**. The "TCSO" shall mean the Tulsa County Sheriff's Office. TCSO is responsible for operating and maintaining the Tulsa County Detention System pursuant to action taken by the Tulsa County Criminal Justice Authority.

EXHIBIT 4

1.3 Detention System. The "Detention System" means all prisoner detention facilities owned by the County, including the David L. Moss Criminal Justice Center located at 300 North Denver Avenue, Tulsa County, Oklahoma.

ARTICLE 2

System Operations

City and County agree that the operation of the Detention System shall be in accordance with the following terms and conditions:

2.1 TCSO agrees to accept into the Detention System all Municipal Prisoners subject to the terms and conditions set forth in this Agreement. The number of Municipal Prisoners is limited by the number of beds available. Should the Detention System reach capacity, then the requirement to accept Municipal Prisoners shall cease until bed space becomes available.

2.2 TCSO will be solely responsible for the operational control of the Detention System and shall have absolute control over all Municipal Prisoners within the Detention System. City agrees that no action affecting any prisoners in the Detention System will be taken by City personnel, which is contrary to the orders or direction of the TCSO.

2.3 TCSO is responsible for all booking functions relating to the Detention System. TCSO reserves the right to refuse to accept any Municipal Prisoner into the Detention System that requires immediate medical attention.

2.4 City hereby authorizes the TCSO to promulgate such operational rules, regulations, and policies consistent with Oklahoma Jail Standards, the American Correctional Association (ACA), The Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA), and the National Commission on Correctional Health Care (NCCHC) accreditation standards and to issue such administrative orders as are necessary to carry out the purposes and intent of this Agreement.

2.5 With respect to Municipal Prisoner medical expenses, the City and County agree:

A. If a person is injured during the course of arrest or by City Personnel prior to booking, the Municipal Prisoner will be treated at a medical facility prior to that booking.

B. Neither the County nor TCSO is responsible for any medical expenses associated with a Municipal Prisoner's medical condition for which treatment is needed prior to custodial and medical acceptance of the prisoner by the TCSO.

C. City agrees to pay for all routine medicines/prescriptions prescribed by the jail doctor or nurse for Municipal Prisoners. An itemized bill of County's actual costs without any markup by County for medicines and prescriptions prescribed for Municipal Prisoners shall be submitted to the City monthly. City agrees that payment for said bills will be made within forty-five (45) days after presentation to City.

D. In the event of a medical emergency requiring immediate medical care not available within the Detention System, a Municipal Prisoner may be sent outside the Detention System. The City agrees to pay for all medical expenses related to Municipal Prisoners' medical care that has been provided outside of the Detention System including but not limited to medical laboratory bills and medications. This contract recognizes neither party to this agreement shall be liable for any pre-existing medical condition consistent with 19 O.S. § 746.

E. City agrees to reimburse the TCSO for the costs of officers necessary to guard the Municipal Prisoner while they are transported and admitted at medical facilities outside of the Detention System unless City desires to provide such service. The TCSO will be entitled to be reimbursed at a rate equal to the average cost of a certified deputy per hour, per officer necessary to transport and guard the Municipal Prisoner at medical facilities outside of the Detention System. The City agrees that payment for said bills and costs will be made within forty-five (45) days after presentation to City.

F. Except as provided in Subsections (B), (C), (D), and (E) of "Section 2.4" of this Agreement, the County will be responsible for payment of all other medical expenses incurred by Municipal Prisoners.

G. This Agreement between County and City with regard to prisoner medical expenses exists solely and exclusively for the benefit and convenience of the County and City; the terms of this Agreement shall not be construed to create any legal right allowing enforcement of its terms for the benefit of any prisoner or, otherwise establish any prisoner, any third party or any medical care provider as a beneficiary of this Agreement.

2.6 City agrees to pay a daily per diem rate of \$54.13 per Municipal Prisoner housed by the County. The bill for this per diem amount shall be submitted to the City by the TCSO on a monthly basis. The City agrees that payment for said bills will be made within forty-five (45) days after presentation to City. All delinquent bills will accrue interest at the rate of one and one-half percent (1 ½ %) per month or eighteen percent (18%) per annum.

2.7 Payment will be sent by City to the Tulsa County Criminal Justice Authority.

ARTICLE 3

Duration of Agreement and Amendments

3.1 Unless terminated earlier as provided below, the term of this Agreement shall commence **October 1, 2008** and shall continue until **June 30, 2009**. This Agreement will automatically renew each year unless either party to the Agreement notifies the other in writing ninety (90) days prior to the termination date of the Agreement. The renewal is contingent upon future appropriation of funds by City.

3.2 This Agreement may be modified by mutual written agreement of the parties hereto.

ARTICLE 4

Termination of Agreement

4.1 Either party may terminate this Agreement immediately if it is determined that said termination is necessary for the public safety or welfare. In addition, either party may terminate this Agreement at will upon thirty days written notice.

4.2 City and County shall each be responsible for their own negligence with respect to their actions or inactions in connection with this Agreement.

4.3 Except as expressly provided in this Agreement, waiver by either party, or failure by either party to claim a default, of any provision of this Agreement shall not be a waiver of any default or subsequent default.

4.4 If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

4.5 This Agreement shall be regulated by requirements of the Minimum Inspection Standards of Oklahoma Jail, 74 O.S., 2001, § 192, or as amended or superseded by any new statute, law or regulation.

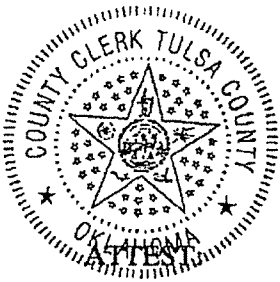
4.6 This Agreement has been made and executed in the State of Oklahoma and shall be construed and enforced according to the laws of the State of Oklahoma without regard to choice of law or conflict of law principles.

4.7 This Agreement expressly supersedes all previous agreements between the parties with respect to the subject matter hereof.

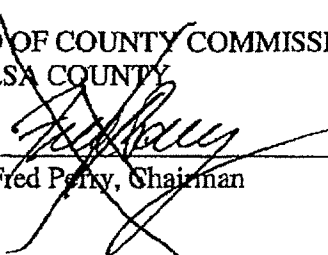
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates set forth immediately below.

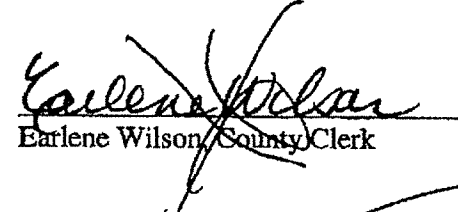
Executed by Tulsa County, Oklahoma, a county and political subdivision of the State of Oklahoma, this 28 day of September, 2008.

Executed by the City of Tulsa, Oklahoma, a municipal corporation, this _____ day of _____, 2008.

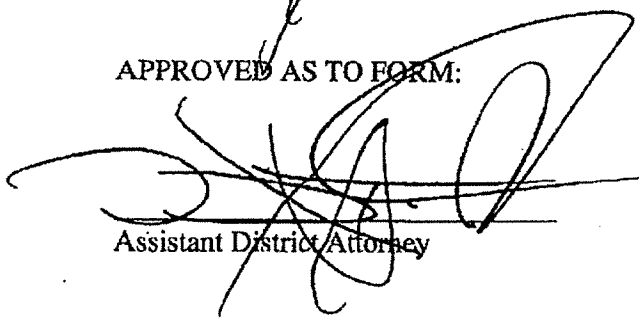


BOARD OF COUNTY COMMISSIONERS
OF TULSA COUNTY


Fred Perry, Chairman


Earlene Wilson, County Clerk

APPROVED AS TO FORM:


Assistant District Attorney

Tulsa County Criminal Justice Authority

Fred Perry, Chairman

I acknowledge that I have read this Agreement and I am aware of my responsibilities as identified in this Agreement.

Tulsa County Sheriff's Office
TCSO

Stanley Glanz, Sheriff

CITY OF _____, OKLAHOMA
a municipal corporation

(Name), Mayor

ATTEST:

(Name), City Clerk

APPROVED AS TO FORM:

City Attorney

I acknowledge that I have read this Agreement and I am aware of my responsibilities as identified in this Agreement.

(Name), Chief of Police

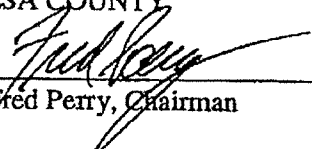
NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Tulsa County that the Amended and Restated Declaration of Trust of Tulsa County Criminal Justice Authority at Section VIII (c) provides that the Board of County Commissioners of Tulsa County must determine the costs of housing the prisoners of the City and Town beneficiaries of the Tulsa County Criminal Justice Authority and that the above format does set forth the aforementioned appropriate costs.


BE IT FURTHER RESOLVED that the above determined appropriate costs of housing the prisoners of the City and Town beneficiaries of the Tulsa County Criminal Justice Authority is to take effect beginning October 1, 2008.

ADOPTED this 22 day of September, 2008.

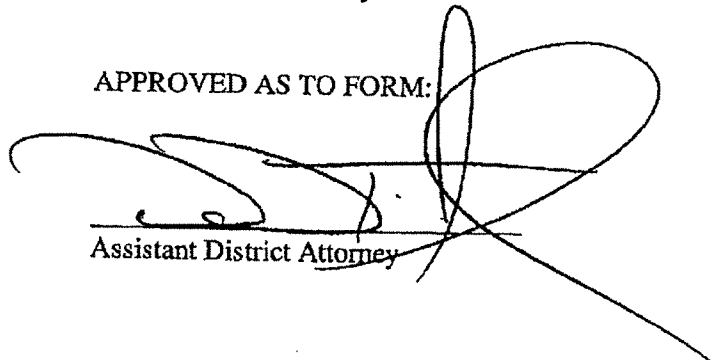


BOARD OF COUNTY COMMISSIONERS
OF TULSA COUNTY


Fred Perry, Chairman


Earlene Wilson, County Clerk

APPROVED AS TO FORM:


Assistant District Attorney