

County of Santa Cruz

SHERIFF - CORONER

701 OCEAN STREET, RM 340 SANTA CRUZ, CA 95060 PHONE (831) 454-2440 FAX (831) 454-2353 TDD (831) 454-2123

MARK TRACY SHERIFF - CORONER

August 20,2001

Agenda: August 28,2001

Board of Supervisors County Santa Cruz 701 Ocean Street, Room 510 Santa Cruz, Ca. **95060**

CONTRACT WITH TRANSCOR AMERICA, LLC TO PROVIDE PRISONER TRANSPORTATION

Dear Members of the Board:

The Sheriffs Office had a contract with Transcor America, Inc. that ended on June 30,2001. Under the advisement of County Counsel, because Transcor America, Inc changed to Transcor America, LLC, has a new CEO/President, and has changed one of its general transport provisions, we have opted to re-do the contract, instead of doing a standard yearly amendment for contract extension. The anticipated cost for this contract is \$14,520.

We are requesting the approval of the attached agreement with Transcor America, LLC for the transport of inter-state and intra-state transport of prisoners.

It is therefore RECOMMENDED that your Board:

1. APPROVE the attached contract with Transcor, LLC.

Sincerely,

CC:

Mark **S.** Tracy Sheriff-Coroner

Sheriff-Coroner, Detention Bureau

Auditor-Controller

Recommended:

Susan Mauriello County Administrator

Maurie

INDEPENDENT CONTRACTOR AGREEMENT

THIS CONTRACT is entered into this 1st day of July _____, 2001, by and between the COUNTY OF SANTA CRUZ, hereinafter called COUNTY, and TRANSCOR AMERICA LLC, hereinafter called CONTRACTOR. The parties agree as follows:

1. <u>DUTIES</u>: CONTRACTOR agrees to exercise special skill to accomplish the following result:

Provide transportation of prisoners, as detailed in Attachment A-1,

- 2. <u>COMPENSATION:</u> In consideration for CONTRACTOR accomplishing said results, COUNTY agrees to pay CONTRACTOR as follows: Refer to Attachment B-1.
- 3. TERM: The term of this contract shall be through June 30, 2002.
- 4, <u>EARLY TERMINATION</u>: Either party hereto may terminate this contract at any time giving 30 days written notice to the other party.
- 5. <u>INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS.</u>
 CONTRACTOR shall exonerate, indemnify, defend, and hold harmless COUNTY (which for the purpose of paragraphs 5 and 6 shall include, without limitation, its officers, agents, employees and volunteers) from and against:
- A. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which COUNTY may sustain or incur or which may be imposed upon, it for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with the CONTRACTOR'S performance under the terms of this Agreement, excepting any liability arising out of the sole negligence of the COUNTY. Such indemnification includes any damage to the person(s), or property(is) of CONTRACTOR and third persons.
- B. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to CONTRACTOR and CONTRACTOR'S officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).
- 6. <u>INSURANCE</u>,: CONTRACTOR, *Sole cost and expense, for the full term of this Agreement (and any extensions thereof), shall obtain and maintain at minimum compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects COUNTY and any insurance of self-insurance maintained by COUNTY shall be excess of CONTRACTOR'S insurance coverage and shall not contribute to it.

If CONTRACTOR utilizes one or more subcontractors in the performance of this Agreement, CONTRACTOR shall obtain **and** maintain Independent Contractor's Insurance as to **each** subcontractor or otherwise provide evidence of **insurance coverage** for each **subcontractor** equivalent to that required to that required of CONTRACTOR in this **Agreement**, unless

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CONTRACTOR and COUNTY both initial here ______.

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A. Types of Insurance and Minimum Limits

- (1) Worker's Compensation in the minimum statutory required coverage amounts. This insurance coverage shall not be required if the CONTRACTOR has no employees and certifies to this fact by initialing here _____.
- (3) Comprehensive of Commercial General Liability Insurance coverage in the minimum amount of \$1,000,000 combined single limit, including coverage for: (a) bodily injury, (b) personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability.
- (4) Professional Liability Insurance in the minimum amount of \$_____ combined single limit. This insurance coverage shall, not be required if both the CONTRACTOR AND COUNTY acknowledge to this fact by initialing

Other Insurance 'Provisions.

- (1) If any insurance coverage required in the Agreement is provided on a "Claims Made" rather than "Occurrence" form, CONTRACTOR agrees to maintain the required coverage for a period of three (3) years after the expiration of this Agreement (hereinafter "post agreement coverage") and any extensions thereof. CONTRACTOR may maintain the required post agreement coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post agreement coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for post agreement coverage shall be deemed to be reasonable.
- (2) All required Automobile and Comprehensive or Commercial General Liability insurance shall. be endorsed to contain the following clause:

"The County of Santa Cruz, its officials, employees, agents and volunteers are added as an additional insured as respects the operations and activities of, or on behalf of, the named insured performed under Agreement with the County of Santa Cruz."

(3) All required insurance policies shall be endorsed to contain the following clause:

This insurance shall not be canceled until after thirty (30) days prior written notice has been given to:

County of Santa Cruz, Detention Bureau Attn: Sr. Departmental Administrative Analyst 259 Water Street Santa Cruz. CA 95060

(4) CONTRACTOR agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COUNTY on or before the effective date of this Agreement with Certificates of Insurance for all required coverages. All Certificates of Insurance shall be delivered or sent to:

County of Santa Cruz, Detention Bureau Attn: Sr. Departmental Administrative Analyst 259 Water Street Santa Cruz, CA 95060

- 7. <u>EQUAL EMPLOYMENT OPPORTUNITY:</u> During and in relation to the performance of this Agreement, **CONTRACTOR** agrees as follows:
- A. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, ancestry, disability, medical condition (cancer related and genetic characteristics), marital status, sex, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.
- B. If this Agreement provides compensation in excess of \$50,000 to CONTRACTOR and if CONTRACTOR employs fifteen (15) or more employees, the following requirements shall apply:
- (1) The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR., state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, national origin, ancestry, disability, medical condition (cancer related and genetic characteristics), marital status, sex, sexual orientation, age (over 18), veteran status, gender, pregnancy or any other non-merit factor unrelated to job duties. In addition, the CONTRACTOR shall make a good faith effort to consider Minority / Women / Disabled Owned Business Enterprises in CONTRACTOR'S solicitation of goods and services. Definitions for Minority / Women / Disabled Business

Enterprises are available from the COUNTY General Services Purchasing Division.

- (2) The CONTRACTOR shall furnish COUNTY Equal Employment Opportunity Office information and reports in the prescribed reporting format. (PER 4012) identifying the sex, race, physical or mental disability, and job classification of its employees and the names, dates and methods of advertisement and direct solicitation efforts made to subcontract with Minority-Women/Disabled Business Enterprises.
- (3) In the event of the CONTRACTOR'S non-compliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations, or orders said CONTRACTOR may be declared ineligible for further agreements with the COUNTY.
- (4) The **CONTRACTOR** shall cause the foregoing provisions of this subparagraph **7B**. to be inserted in all subcontracts for any work covered under this Agreement by a subcontractor compensated more than \$50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- 8. INDEPENDENT CONTRACTORS STATUS: CONTRACTOR and COUNTY have reviewed and considered the principal test and secondary factors below and agree that CONTRACTOR is an independent contractor and not an employee of COUNTY, CONTRACTOR is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. CONTRACTOR is not entitled to any employee benefits. COUNTY agrees that CONTRACTOR shall have the right to control the manner and means of accomplishing the result contracted for herein.

<u>PRINCIPAL TEST:</u> The CONTRACTOR, rather than COUNTY has the right to control the manner and means of accomplishing the result contracted for.

SECONDARY FACTORS: (a) The extent of control which, by agreement, COUNTY may exercise over the details of the work is slight rather than substantial; (b) CONTRACTOR is engaged in a district occupation, or business; (c) In the locality, the work to be done by CONTRACTOR is usually done by a specialist without supervision, rather than under the direction of an employer; (d) the skill required in the particular occupation is substantid rather than slight; (e) the CONTRACTOR rather than the COUNTY supplies the instrumentalities, tools and work place; (f) The length of time for which CONTRACTOR is engaged is of limited duration rather than indefinite; (g) The method of payment of CONTRACTOR is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COUNTY; (i) CONTRACTOR and COUNTY believe they are creating an independent contractor relationship rather than an employer-employeerelationship; and (j) The COUNTY conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors which indicate that CONTRACTOR is an independent contractor.

By their signatures to this Agreement, each of the undersigned certifies that it is his or her considered judgment that the CONTRACTOR engaged under this Agreement is in fact an independent contractor.

- NON-ASSIGNMENT: CONTRACTOR shall not assign this Agreement without the prior written consent of the COUNTY.
- RETENTION AND AUDIT OF RECORDS: CONTRACTOR shall retain 10. records pertinent to this Agreement for a period of not less then five (5) years after final payment under this Agreement or until a final audit report is accepted by COUNTY, whichever occurs first. CONTRACTOR hereby agrees to be subject to the examination and audit by the Santa Cruz County Auditor-Controller, the Auditor General of the State of California, or the designee of either for a period of five (5) years after final payment under this Agreement.
- PRESENTATION OF CLAIMS: Presentation and processing of any or all claims arising out of or related to this Agreement shall be made in accordance with the provisions contained in Chapter 1.05 of the Santa Cruz County Code, which by this reference is incorporated herein.
- **ATTACHMENTS:** This **Agreement** includes the following attachments: 12. Attachment A-1 "General Provisions" (3 pages) and Attachment B-1 "Price Schedule" (1 page)

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

COUNTY OF SANTA CRUZ	CONTRACTOR TransCor America LLC				
Mark S. Tracy, Sheriff-Coroner	Sharon Johnson Rion, CEO and President				
APPROVED AS TO FORM:	APPROVED AS TO INSURANCE:				
County Counsel	Risk Management				

ATTACHMENT A-1

GENERAL PROVISIONS

- 1. Upon the request of the Department, agents of the Contractor shall assume custody of prisoners committed to the custody of the Department and provide interstate and in-state transportation of said prisoners from and to locations designated by the Department.
- 2. In assuming custody of such prisoners the Contractor's **agents** shall perform their responsibilities for security **and** control of prisoners in **a professional** manner and in **accordance** with **the** Department's **written policies and** procedures and such policies, **procedures** and directives as my be promulgated in the future regarding the use of force and the security and control of prisoners. In the event that there are no written policies or **procedures**, the Contractor shall **follow** reasonable, customary operating procedures.
- 3. In the event of unusual incidents, emergencies, and/or controversial situations that mise in the performance of their services to the Department, the Contractor's agents shall report such incidents to the Department in accordance with the Department's directives. For purpose of this paragraph "unusual incident, emergency, or controversial situations" include but are not limited to any act of violence by a prisoner or other passengers, any escape or attempted escape, of a prisoner or any other breach of security, any excessive delay in the transportation of a prisoner, any medical condition of a prisoner or other passenger requiring emergency medical treatment, my mechanical failure that would normally require formal reports to the cognizant regulatory agency and any refusal, of law enforcement agencies to release a prisoner to the Contractor as authorized or directed by the Department.
- 4. Agents of the Contractor shall assume custody of such prisoners from authorized agents of the Department, at the location of incarceration determined by the parties to be suitable for such purpose, to transport such prisoners to their destination or other specified location. Upon arrival, Contractor shall surrender custody of such prisoners to the Department or to the law enforcement agency as designated by the Department. The Department shall have the right to cancel its pick up order within twenty-four (24) burs after placing the order. Any other cancellation may be made only with the consent of the Contractor. If the Contractor is en route or attempts to pick up a prisoner and that pick up is canceled, the Department, at the option of the Contractor is subject to a cancellation charge of 50% of the original charge for the trip.
- 5. To insure that prisoners are surrendered by the Contractor to the custody of the Department or its duly authorized agents, corroborative identification of Department personnel designated to accept custody of the prisoners shall be presented to the Contractor's personnel at the place and time of surrender of custody. The Contractor shall not surrender custody of prisoners without first verifying the identification of persons to whom custody of prisoners is being transferred.

ATTACHMENT A-1 (continued)

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- 6. In the event of delays whether or not beyond the Contractor's control, including inclement weather or mechanical malfunctions, the Contractor shall provide for all prisoner costs, except medical, related to such delays including, but not limited to, food and lodging.
- 7. All prisoners' medical costs, including, but not limited to, the costs of transportation to or from any medical facility shall be paid by the Department. The Contractor shall be authorized to obtain emergency and/or routine medical treatment for prisoners whenever deemed necessary. All such expenditures shall be reported to the Department in detail and shall be reimbursed by the Department. Contractor will not be liable for medical costs associated with pre-existing medical conditions while in Contractor's custody.
- 8. The Contractor agrees to transport a small amount of prisoner personal property. Due to space constraints on transportation vehicles, the property must be limited to generally what can be placed in a plastic garbage bag or similar container having dimensions of 12 in- by 12 in. by 36 in. and cannot exceed 10 lbs. in weight. The Contractor will not transport electronic equipment (to include phones or pagers), fragile property, foodstuffs, weapons or excessive paperwork. The Department will arrange for shipment of excess property prior to prisoner pickup.

TRANSPORTATIONOF PRISONERS WITH MEDICAL COMPLICATIONS

Contractor reserves the right to refuse to transport persons with medical conditions when there is risk of acute or chronic medical condition(s) worsening as a result of motor vehicle transport. When medical status of the individual is prohibitive to ground transport, Contractor will offer the questing agency escorted transport by commercial air at applicable rates if a written release for such travel is available from licensed medical personnel. Contractor has learned through years of experience and many miles of prisoner transport that seemingly minor medical conditions can worsen or require immediate medical attention during extended ground trips.

In such cases, there is potential for unnecessary discomfort of suffering by the passenger and added cost to the requesting agency. Medical conditions that exclude persons from Contractor ground transport eligibility include, but are not limited to, the following:

- Cardiovascular problems requiring medication or prescribed procedures;
- Diabetics whereby prescribed medication must be injected and/or refrigerated;
- Epilepsy whereby seizure activity is not adequately controlled;
- d. Pregnancy;
- e. Fractured bones requiring easts or braces designed to immobilize injured areas;

ATTACHMENT A-1 (continued)

- f. Critical wounds;
- g. Communicable diseases or any other medical condition that may place the passenger, transport personnel and other passengers at risk.
- h. HIV positive or AIDs

In any case not covered above, or in which the holding agency has not accurately advised the requesting agency and/or Contractor personnel of the prisoner's medical condition, the Contractor's Officer-In-Charge shall contact Contractor's management PRIOR to accepting custody of the prisoner.

ATTACHMENT B-1

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SANTA CRUZ COUNTY SHERIFF'S DEPARTMENT PRICE SCHEDULE

1. GROUND TRANSPORTATION

Prices for ground transportation services provided by TransCor America, LLC, are based on the direct mileage between pick-up and drop-off points. **Mileage is** determined by the computer program PC*MILER/\$TREETS 2000 Beta,

- 1.1 Rate for an adult male is \$1.12 a mile,
- 1.2 Rate for an adult female is \$1,12 a mile. A female transport agent is guaranteed to be on the transport at all times a female is being transported.
- 1.3 Discount of twenty-five percent (25%) for each additional prisoner transported between the same pick-up and drop-off locations.
- 1.4 Minimum charge for any transport is \$300.00.

2. SURCHARGES

- 2.1 Court Appearances. A \$250.00surcharge will be added to all transports when the prisoner is being picked-up in a court.
- 2.2 Release Dates. A \$250.00 surcharge will be added to all transports when the prisoner has to be picked up on a specific date. The surcharge will not be applied if there is a time window surrounding the release date.
- 2.3 Form VI transports, A \$50,00 surcharge will be added to all transports being done on a Form VI (Interstate Agreement on Detainers).
- Fuel surcharge, If the average price of diesel fuel **goes** to \$1.80 a gallon, there will be a **2.8%** fuel surcharge added to the **base price** of **a prisoner transport**. The average fuel price will **be based** on the **U.S.**Department of Energy report EIA-888.

3. SPECIAL TRANSPORTS

- 3.1 Ground transport where a dedicated vehicle and agents are used to expedite return of a prisoner will be priced on a case by case basis.
- 3.2 Air transport, using commercial aviation, where for whatever reason a prisoner cannot be transported by ground transport, will be priced on a case by case basis.

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County Administrative Officer

_____ Deputy Clerk

By _____

COUNTY OF SANTA CRUZ REQUEST FOR APPROVAL OF AGREEMENT

FROM: TO: Board of Supervisors Sheriff-Coroner, Detention Bureau Courty Administrative Officer (Dept.) County Counsel Aud tor-Controller The Board of Supervisors is hereby requested to approve the attached agreement and authorize the execution of the same. 1. Said agreement is between the <u>Sheriff-Coroner</u>, <u>Detention</u> Bureau (Agency) gnd Transcor LLC, 646 Melrose Avenue, Nashville, TN 37211 (Name & Address) 2. The cgreement will provide <u>interstate transportation, of prisoners.</u> 3. The agreement is needed as the County cannot provide these services. 4. Period of the agreement is from July 1, 2001 to June 30, 2002 **5.** Anticipated cost **is** \$ 14,520 6. Remtrks: Section II Contract 7. Appropriations are budgeted in _______662410 ______(Index#)___4158 ____(Subobject) NOTE: IF APPROPRIATIONS ARE INSUFFICIENT, ATTACH COMPLETED FORM AUD-74 Contract No. 10590 Appropriations are not available and have been encumbered. GARY A. KNUTSON, Auditor - Controller CC-22, I NOW II reviewed and approved. It is recommended that the Board of Supervisors approve the agreement and authorize the County Administrative Officer Remarks: ____ (Analyst) Agreement approved as to form. Date ___ Distribution: Bd. cf Supv. . White State of California Audi-or-Controller - Blue County of Santa Cruz County Counsel - Green • Co. Admin, Officer - Canary ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz, Audi-or-Controller - Pink State of California, do hereby certify that the foregoing request for approval of agreement was approved by Originating Dept. - Goldenrod said Board of Supervisors as recommended by the County Administrative Officer by an order duly entered

in the minutes of said Board on

'To Orig. Dept. if rejected.

ADM - 29 (6/95)