

ORIGINAL

INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF POWDER SPRINGS,
GEORGIA AND THE CITY OF SMYRNA, GEORGIA FOR THE HOUSING OF PRISON
INMATES

This intergovernmental Agreement is entered into this 1 day of July, 2023, by
and between the City of Powder Springs Georgia ("Powder Springs ") and the City of Smyrna,
Georgia ("Smyrna ").

WHEREAS, Smyrna, through its Police Department, provides a jail facility for the housing
of prison inmates; and

WHEREAS Powder Springs desires to house certain of its prison inmates in the Smyrna
City Jail facility; and

WHEREAS Smyrna is willing to house Powder Springs prison inmates subject to the terms
and conditions of this Agreement; and

WHEREAS, pursuant to Article 9, Section 3, paragraph 1 of the Constitution of the State
of Georgia, Smyrna and Powder Springs are authorized to enter into this intergovernmental
agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for
other good and valuable consideration, the parties agree as follows:

SECTION 1

DEFINITION OF "CITY PRISONER"

"City Prisoner" shall mean a person held in the Smyrna City Jail when the exclusive basis for
confinement is the violation of Powder Springs municipal code, or pursuant to a warrant,
commitment, or order of a Powder Springs Municipal Court or following the arrest by a Powder
Springs Police Officer for any reason including the violations of state law and other third-party
municipal violations. Persons arrested by Powder Springs Police Officers and housed in the
Smyrna City Jail awaiting pick up by a third party will be charged the agreed upon per diem
during the stay of the prisoner.

SCANNED

BY: HC DATE: 7/18/23

APPROVED

per the City of Smyrna
Mayor and Council

Official Meeting Minutes

Date: July 17, 2023

SECTION 2
SUPERVISION OF CITY PRISONERS

Upon the request of Powder Springs, the Smyrna Police Department agrees to house Powder Springs prisoners at the Smyrna City Jail.

A. Smyrna's Responsibilities shall include the following:

- a. During incarceration at the Smyrna City Jail, Smyrna shall confine City Prisoners in the same manner and to the same extent as similarly situated Smyrna prisoners, including the basic subsistence services and access to medical services.
- b. Book in, processing, clothing, fingerprinting, and mug shots.
- c. Provide access to Smyrna's Intoxilyzer 9000 or such replacement devices as may be provided by Smyrna regarding persons suspected of driving under the influence of intoxicating beverages.
- d. Availability of City Prisoners for Powder Springs Municipal Court, subject to appropriate notice from the City and/ or Powder Springs Police Staff for regularly scheduled weekly court during the Term. Provided that Powder Springs provides an agency transport for pick up and standby, Smyrna shall provide the Powder Springs Municipal Court in person access and/ or virtual access using Smyrna City Jail virtual court technology and/ or physical facilities.
- e. Should any Emergency Medical Services be required, Smyrna shall cause a police officer to accompany the City Prisoner to an appropriate emergency medical facility for up 2 hours. After the initial 2 hours, Powder Springs shall be responsible for providing supervision of the City Prisoner.
- f. Smyrna shall provide Powder Springs notice as soon as reasonably practicable of the transfer of a City Prisoner for Emergency Medical Services.
- g. Smyrna shall provide notice to Powder Springs when the jail reaches 90% capacity to ensure that Powder Springs can plan for alternative sources of jail housing or arrange for early release of currently housed inmates.

B. Powder Springs Responsibilities. In addition to other responsibilities contained in this Agreement, Powder Springs' obligations relative to Smyrna's supervision of City Prisoners include:

- a. **Individuals Eligible to be a City Prisoner.** Powder Springs shall only present individuals having been properly arrested by the Powder Springs Police Department under the authority of law. Such individuals shall not need medical attention or mental health attention/ mental crisis intervention at the time they are presented to be a City Prisoner subject to the terms of this Agreement. Any prisoner requiring medical attention prior to admission to the facility will be

accepted once appropriate medical attention has been provided and appropriate documents of medical attention have been submitted. Smyrna City Jail maintains the right to refuse prisoners needing medical care that cannot be provided by our facility.

- b. **Transport of Powder Springs Prisoners.** Powder Springs shall be responsible for all transport of Powder Springs Prisoners other than Emergency Medical Services exceeding 2 hours. Powder Springs' responsibilities include, but are not limited to, transport to court and to outside medical services.
 - c. **Supervision of City Prisoners.** Powder Springs shall be responsible for supervision of Powder Springs prisoners receiving Outside Medical Services, Emergency Medical Services (2) hours after notification and Municipal Court access to Powder Springs Prisoners. In the case of Emergency Medical Services, Powder Springs is responsible for supervision as soon as practicable after receiving notice, but in no case more than two (2) hour after notice.
 - d. **Appropriate notice.** Powder Springs shall provide the Smyrna City Jail with appropriate advance notice of Powder Springs Prisoner hearings and release dates.
 - e. **Municipal Court Hearings.** The Powder Springs Municipal Court shall ensure that First Appearance hearings, Bond hearings, Probation Revocation hearings and other essential court related hearings for Powder Springs Prisoners shall be provided according to state and federal law.
 - f. **Bonding.** Powder Springs would be responsible for conducting their own bonding. Bonds/ Releases will be emailed to Smyrna. Completed/ signed bonds would be picked up by Powder Springs as needed.
 - g. **Medical bills/ payments.** Powder Springs would be responsible for all bills incurred through emergency medical transport of a Powder Springs inmate for emergency medical treatment or outside non-emergency medical treatment. Medical bills would not be a "pass through". Powder Springs would be "directly billed" by the medical provider for any medical services rendered on behalf of their prisoner. Powder Springs will be responsible for any medical bills originating from the lawful use of force against a Powder Springs prisoner while incarcerated in the Smyrna City Jail as well as any medical bills originating because of the prisoner's stay in the Smyrna City Jail.
- C. **Services Not Included in this Agreement.** Powder Springs acknowledges and agrees that this Agreement does not include:
- a. **No City Arrestees in Need of Medical Attention.** Smyrna will not accept individuals for purposes of housing or supervision that are initially presented by Powder Springs who need medical attention.
 - b. **Limited Transportation.** Smyrna will not transport Powder Springs prisoners other than transport for Emergency Medical Services. Powder Springs is

responsible for transporting Powder Springs Prisoners to in-person court appearance and outside medical services. Additionally, Powder Springs is responsible for transporting Powder Springs prisoners from Emergency Medical Services back to the Smyrna City Jail.

- c. **Supervision during outside medical services, emergency medical services and personal matters.** Except as otherwise provided in this agreement Smyrna will not provide supervision of Powder Springs prisoners at outside medical facilities or while attending any approved personal matters such as funerals.
- i. **Outside Medical Services.** No supervision will be provided by Smyrna for Powder Springs prisoners receiving outside medical services.
 - ii. **Emergency Medical Services.** Noted in above Section 2Ae.
 - iii. **Personal Matters.** No supervision will be provided by Smyrna for Powder Springs prisoner personal matters.

SECTION 3 TERM OF AGREEMENT

- A. **Effective Date.** The Effective Date of this Agreement shall be July 1, 2023
- B. **Term.** The initial term of this Agreement shall be a period of 5 years, ("Initial Term"), unless sooner terminated under the provisions set forth in Section 10 of this Agreement. If this Agreement is terminated by Smyrna for convenience or not extended by Smyrna at the conclusion of the contract term, Smyrna shall at Powder Springs' election continue to house Powder Springs prisoners for an additional 90 days for Powder Springs to make other provisions for housing its inmates, during which time all terms of this Agreement shall remain in effect.

SECTION 4 STATEMENT OF INTENT

The intent of this Agreement is that Smyrna shall board Powder Springs prisoners at the Smyrna City Jail facility, but that such operation and boarding shall not result in added cost to Smyrna. All interpretations of this Agreement shall be construed considering this statement of intent.

SECTION 5 COMPENSATION

Smyrna shall be entitled to payment of a per diem per Powder Springs prisoner supervised by Smyrna to cover the costs to Smyrna for boarding, basic services, and In-House Medical Services.

- A. **Calculation of per diem rate.** Said per diem rate shall be determined and agreed upon by Smyrna and Powder Springs. The per diem rate for each year shall be established on January 1st. This per diem rate shall be instituted as the next twelve (12) months per diem rate which shall be charged to Powder Springs.
- B. **Initial per diem.** The per diem rate per Powder Springs prisoner at the commencement of this contract will be \$70.00.
- C. **Per diem period.** For per diem calculations, Powder Springs will pay for each part of each day beginning with the day that Powder Springs' prisoner is accepted by Smyrna and concluding on the date of release of the Powder Springs prisoner.

SECTION 6

PROVISIONS FOR EMERGENCY MEDICAL SERVICES OUTSIDE PRIMARY APPROVED FACILITY

In the case of an emergency requiring immediate medical care outside the Smyrna City Jail, Smyrna may approve the third-party medical provider's order to transfer a Powder Springs prisoner under guard to a specialized medical center without obtaining the permission or order of Powder Springs for Emergency Medical Services

SECTION 7

RESPONSIBILITY FOR TIMELY RELEASE OF PRISONERS

Powder Springs shall be responsible for coordinating with Smyrna the release time and date of each Powder Springs prisoner. To avoid misunderstanding or unclear directions, Powder Springs shall provide a release date, immediately upon sentencing prisoner via email.

If an Powder Springs prisoner alleges he or she is unlawfully detained at the Smyrna City Jail, Powder Springs agrees to provide a defense of Smyrna, including retaining counsel acceptable to Smyrna, to such allegations, including but not limited to any petitions for writ of habeas corpus.

SECTION 8

SMYRNA'S PROCEDURES, RULES AND REGULATIONS

Powder Springs prisoners shall be subject to Smyrna's procedures, rules, and regulations in the same manner and to the same extent as Smyrna prisoners and shall be subject to Smyrna's disciplinary processes and procedures.

- A. Holds for outside agencies.** Powder Springs shall continue to be responsible for per diem and medical care of prisoners with outside agency holds until said agency takes possession of the prisoner. In lieu of this, Powder Springs may transport the prisoner to the county jail upon release from Powder Springs custody.
- B. Fugitive Warrants.** Powder Springs is responsible for securing extradition warrant for Powder Springs prisoners and transferring said prisoner to County Jail.

SECTION 9

ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties relating to the subject matter. All prior negotiations and understandings are merged in this Agreement. Modifications or amendments of this Agreement shall be made only in writing and signed by the parties. No modifications or amendments of this Agreement shall be valid until executed in writing by all parties.

SECTION 10

TERMINATION

This Agreement may terminate, in whole or in part, upon any one of the following conditions:

- A. Mutual Agreement.** The parties may terminate this Agreement at any time by mutual written notice.
- B. For Cause.** Any party may terminate this Agreement for cause upon thirty (30) days prior written notice to the other party for failure to perform the terms of the Agreement.
- C. For Convenience.** Any party may terminate this Agreement for its convenience at any time upon sixty (60) days prior notice to the other party.
- D. For Suspension of Smyrna City Jail Facility Operation.** Should Smyrna cease operation of the Smyrna City Jail for any reason, a (90) day notice shall be given, the Agreement shall, at the option of Smyrna, become void.
- E. Upon Conclusion of Agreement.** At the conclusion of the Initial Term or any Renewal Terms agreed to by the Parties, this Agreement shall be terminated unless a new contract is entered.

SECTION 11

INDEMNIFICATION

Each party shall defend, indemnify, and hold harmless the other, its officials, officers, employees, and agents from any and all injuries, claims, damages, liabilities, costs and expenses caused by, relating to or based upon the housing of Powder Springs inmates, for claims arising out of an allegation of negligence or other wrongdoing by the other party. Nothing in this paragraph shall be construed a waiver Powder Springs or Smyrna's sovereign immunity of any individual's qualified good faith immunity, and this Agreement shall not be construed to create rights in any third party.

SECTION 12

MISCELLANEOUS

- A. **Governing Law, Jurisdiction.** This Agreement and the rights and obligations of the parties hereto (including third party beneficiaries) shall be governed, construed, and interpreted according to the laws of the State of Georgia. The parties hereby submit to the exclusive jurisdiction of the Superior Court of Cobb County, Georgia for the purposes of all legal proceedings arising out of or relating to this Agreement, and the parties irrevocably waive, to the fullest extent permitted by law, any objection which they may now or hereafter have to the venue of any such proceeding which is brought in such a court.
- B. **Severability.** If any provision of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable under any particular circumstances because it conflicts with any provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Agreement shall not affect the remaining portions of this Agreement.
- C. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, and all of which constitute but one and the same instrument.
- D. **Amendments in Writing.** No waiver, amendment, release, or modification of this Agreement shall be established by conduct, custom, or course of dealing, but solely by a document in writing duly executed and delivered by Powder Springs or Smyrna.
- E. **Notices.** Except as otherwise specifically provided herein, all notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given

when mailed by certified mail, return receipt requested, postage prepaid or when personally delivered or when sent by registered overnight mail or delivery service charges prepaid, or when so specified herein by Electronic Means, to the Parties hereto at the following addresses or such other address designated by such Party in writing:

1. Contract City:

City of Powder Springs

Attention: Lane Cadwell
Telephone: 770-943-1616
Email: lcadwell@cityofpowdersprings.org

Notification of Emergency Medical Services:

Chief of Police or Designee:

Lane Cadwell 678-779-6316

City of Smyrna

2800 King Street SE

Smyrna, Ga. 30080

Attention: _____

Telephone: _____

Email: _____

- F. Headings. All headings herein are intended for convenience and ease of reference purposes only and in no way define, limit, or describe the scope or intent thereof, or of this Agreement, or in any way affect this Agreement.

In Witness Whereof, this Agreement has been executed by Smyrna and a duly authorized representative of the city of Powder Springs as of this date set forth above.

City of Smyrna

Derek Norton, Mayor

ATTEST:

Heather K. Peacon-Corn
Official City Seal
Heather K. Peacon-Corn, City Clerk

Scott A. Cochran, City Attorney



City of Powder Springs

Albert Thurman

Albert Thurman, Mayor

Julie K. Livingston
Julie K. Livingston, City Attorney