

ORIGINAL

INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF ACWORTH, 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 Acworth Georgia ("Acworth ") 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 Acworth desires to house certain of its prison inmates in the Smyrna City Jail
facility; and

WHEREAS Smyrna is willing to house Acworth 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 Acworth 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 Acworth municipal code, or pursuant to a warrant, commitment,
or order of the Acworth Municipal Court or following the arrest by an Acworth police officer for
any reason including the violations of state law and other third-party municipal violations.
Persons arrested by Acworth 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: August 7, 2023

SECTION 2

SUPERVISION OF CITY PRISONERS

Upon the request of Acworth, the Smyrna Police Department agrees to house Acworth 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 Acworth Municipal Court, subject to appropriate notice from the City and/ or Acworth Police Staff for regularly scheduled weekly court during the Term. Provided that Acworth provides an agency transport for pick up and standby, Smyrna shall provide the Acworth 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, Acworth shall be responsible for providing supervision of the City Prisoner.
- f. Smyrna shall provide Acworth notice as soon as reasonably practicable of the transfer of a City Prisoner for Emergency Medical Services.
- g. Smyrna shall provide notice to Acworth when the jail reaches 90% capacity to ensure that Acworth can plan for alternative sources of jail housing or arrange for early release of currently housed inmates.

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

- a. **Individuals Eligible to be a City Prisoner.** Acworth shall only present individuals having been properly arrested by the Acworth 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 can not be provided by our facility.

- b. **Transport of Acworth Prisoners.** Acworth shall be responsible for all transport of Acworth Prisoners other than Emergency Medical Services exceeding 2 hours. Acworth's responsibilities include, but are not limited to, transport to court and to outside medical services.
- c. **Supervision of City Prisoners.** Acworth shall be responsible for supervision of Acworth prisoners receiving Outside Medical Services, Emergency Medical Services (2) hours after notification and Municipal Court access to Acworth Prisoners. In the case of Emergency Medical Services, Acworth 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.** Acworth shall provide the Smyrna City Jail with appropriate advance notice of Acworth Prisoner hearings and release dates.
- e. **Municipal Court Hearings.** The Acworth Municipal Court shall ensure that First Appearance hearings, Bond hearings, Probation Revocation hearings and other essential court related hearings for Acworth Prisoners shall be provided according to state and federal law.
- f. **Bonding.** Acworth would be responsible for conducting their own bonding. Bonds/ Releases will be emailed to Smyrna. Completed/ signed bonds would be picked up by Acworth as needed.
- g. **Medical bills/ payments.** Acworth would be responsible for all bills incurred through emergency medical transport of an Acworth inmate for emergency medical treatment or outside non-emergency medical treatment. Medical bills would not be a "pass through". Acworth would be "directly billed" by the medical provider for any medical services rendered on behalf of their prisoner. Acworth will be responsible for any medical bills originating from the lawful use of force against an Acworth 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.** Acworth 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 Acworth who need medical attention.
- b. **Limited Transportation.** Smyrna will not transport Acworth prisoners other than transport for Emergency Medical Services. Acworth is responsible for transporting Acworth Prisoners to in-person court appearance and outside medical services. Additionally, Acworth is responsible for transporting Acworth 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 Acworth 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 Acworth 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 Acworth prisoner personal matters.

SECTION 3 TERM OF AGREEMENT

- A. **Effective Date.** The Effective Date of this Agreement shall be July 1, 2023. SE
- 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 Acworth's election continue to house Acworth prisoners for an additional 90 days for Acworth 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 Acworth 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 Acworth 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 Acworth. 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 Acworth.

- B. **Initial per diem.** The per diem rate per Acworth prisoner at the commencement of this contract will be \$70.00.
- C. **Per diem period.** For per diem calculations, Acworth will pay for each part of each day beginning with the day that Acworth's prisoner is accepted by Smyrna and concluding on the date of release of the Acworth 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 an Acworth prisoner under guard to a specialized medical center without obtaining the permission or order of Acworth for Emergency Medical Services

SECTION 7

RESPONSIBILITY FOR TIMELY RELEASE OF PRISONERS

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

If an Acworth prisoner alleges, he or she is unlawfully detained at the Smyrna City Jail, Acworth 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

Acworth 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.** Acworth 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, Acworth may transport the prisoner to the county jail upon release from Acworth custody.

- B. Fugitive Warrants.** Acworth is responsible for securing extradition warrant for Acworth 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 Acworth 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 of Acworth 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 Acworth 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 Acworth

Attention: _____

Telephone: _____

Email: _____

Notification of Emergency Medical Services:
Chief of Police or Designee:

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 Acworth as of this date set forth above.

City of Smyrna

Derek Norton, Mayor

Scott Cochran, City Attorney

City of Acworth

Tommy Allegood, Mayor

Maurnie Douglas Haynie, City Attorney

ATTEST:
Heather K. Peacon-Corn
Heather K. Peacon-Corn, City Clerk

Official City Seal

