

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF MARIETTA,  
GEORGIA AND THE CITY OF SMYRNA, GEORGIA FOR THE HOUSING OF  
PRISON INMATES**

THIS INTERGOVERNMENTAL AGREEMENT is entered into this 31<sup>st</sup> day of December, 2020, by and between the City of Marietta, Georgia (“Marietta”) and the City of Smyrna, Georgia (“Smyrna”).

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

WHEREAS, Marietta desires to house certain of its prison inmates in the Smyrna detention facility; and

WHEREAS, Smyrna is willing to house Marietta 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 Marietta 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:

1. Purpose and Security Provided. The purpose of this Agreement is to establish a formal binding relationship between Smyrna and Marietta for the detention of persons charged with, or convicted of violations of federal, state, or local laws, or held as material witnesses at the Smyrna detention facility.

Smyrna agrees to accept and provide for the secure custody, care and safekeeping of Marietta inmates in accordance with state and local laws, standards, policies, procedure or court orders applicable to the operations of the Smyrna detention facility.

Smyrna further agrees to make available to Marietta spaces inside the Smyrna detention facility currently utilized by Smyrna for inmate interviews for use by Marietta. The parties agree to cooperate with each other regarding the scheduling of the use of these spaces.

2. Period of Performance. This agreement shall be in effect from **January 1, 2021** through **December 31, 2021** or until terminated as hereinafter provided. This Agreement shall thereafter automatically renew for up to four (4) successive one-year terms commencing on January 1 and terminating on December 31, unless terminated as hereafter provided. Either party may terminate this Agreement by giving the other party written notice at least ninety (90) days prior to the effective date of termination of the Agreement or the end of the initial term, or the end of any renewal term, as the case may be, advising that it no longer wishes to continue this

Agreement in effect. Should conditions of an unusual nature occur making it impractical to continue to house prisoners, Smyrna may suspend or restrict the use of the facility by giving written notice to Marietta. Such notice will be provided to the Chief of Police of Marietta by the Chief of Police of Smyrna sixty (60) days in advance of the effective date of the formal termination, and at least thirty (30) days in advance of a suspension or restriction of use. Should prisoner housing requirements reach the maximum capacity of the detention facility, the Smyrna Police Chief will be authorized under this Agreement to refuse to accept additional Marietta prisoners without written notice until the aggregate number of prisoners falls below the maximum capacity; provided, however, that the Smyrna Police Chief shall provided notice to Marietta to ensure at any point when the jail reaches 90% capacity to ensure that Marietta maintains the ability to plan for alternative sources of jail capacity, if necessary.

3. Receiving, Detention and Discharge. Smyrna agrees to accept and process through its normal booking procedures, including fingerprinting, photographing, and entering arrest data through the Georgia Crime Information Center (GCIC) as required by law, as Marietta prisoners those persons committed by Marietta, and for violation of federal, state or local laws alleged to have been committed within the city limits of Marietta.

Smyrna agrees regarding persons suspected of driving under the influence of intoxicating beverages within the boundaries of Marietta to allow officers in the Marietta Police Department to use Smyrna's Intoxylizer 9000 devices (or such replacement devices as may be provided by Smyrna) to test the blood alcohol content of those persons; provided, however, that any officer using those devices must first maintain on file with the Smyrna police Department a copy of his or hers current valid permit issued by the State of Georgia certifying that officer's competency to use that device.

Adequately trained detention staff will be provided by Smyrna twenty-four (24) hours a day to supervise prisoners. Smyrna will provide at least two (2) meals per day for prisoners. Marietta prisoners will be housed with Smyrna prisoners and will be expected to follow all rules and regulations established by the Smyrna detention facility for prisoners. Marietta agrees to allow its prisoners to serve as inmate workers, both within the facility and on outside or off-site work details. The parties understand and agree, however, that Marietta may desire to utilize inmate labor within Marietta. The parties agree that they will cooperate with each other to allow Marietta prisoners to be transported from and to the detention facility by authorized Marietta personnel for the purpose of inmate labor in Marietta. Marietta will be fully responsible for the care and custody of any inmate it removes from the detention facility for these purposes.

Smyrna agrees to release Marietta prisoners only to law enforcement officers of Marietta, or upon representation of appropriate bail, or upon the order of a court of competent jurisdiction. All bonding procedures will be conducted by the Marietta Police Department.

4. Medical Services. Smyrna shall provide Marietta prisoners emergency transportation to medical facilities. Security while at medical facilities for prisoners requiring removal from the Smyrna detention facility for emergency medical care shall be provided by Marietta officers when called upon by Smyrna detention/police service. All costs associated with hospital or health care services provided to Marietta prisoners will be paid directly by Marietta at the cost of the services.

Smyrna agrees to notify Marietta as soon as possible of all emergency medical cases requiring removal of a prisoner from the detention facility.

5. Court Appearances. Marietta shall be solely responsible for the transportation and security of Marietta prisoners to court and will ensure that First Appearance Hearings are provided its prisoners in accordance with state and federal law.

6. Per Diem Rate. Marietta shall reimburse Smyrna at the rate of forty-two dollars and no cents (\$42.00) per “prisoner day” for every Marietta prisoner held by the detention facility. A “prisoner day” shall be a twenty-four (24) hour period.

Smyrna shall prepare and submit an invoice each month to Marietta to include the name of the Marietta prisoner, their dates of confinement, the total days to be reimbursed and the amount of the reimbursement due.

Payment under this Agreement will be due on the thirtieth (30<sup>th</sup>) calendar day after receipt of a proper invoice in this office designated by Marietta to receive the invoice. If the due date falls on a non-working day, then the payment due date will be the next working day. The date of payment received by Smyrna shall be the date payment is made.

The original per diem rate under this Agreement (the “Original Per Diem Rate”) is subject to annual adjustments. Any adjustment to the original per diem must be provided by the Smyrna Chief of Police to the Marietta Chief of Police sixty (60) days before the date of the adjustment takes effect. Amended rates will be published as addenda to this Agreement each year.

7. Modifications/Disputes. Either party may initiate a request for modification to this Agreement in writing. All modifications will be written and approved by the governing bodies of the parties.

Disputes, questions or concerns pertaining to this Agreement will be resolved by the Chiefs of Police of the Cities and/or by the Marietta City Manager and the Smyrna Mayor.

8. 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 Marietta prisoners, for claims arising out of an allegation of negligence or other wrong doing by the other party.

Nothing in this paragraph shall be construed a waiver of Marietta or Smyrna's sovereign immunity or any individual's qualified good faith immunity, and this Agreement shall not be construed to create rights in any third party.

9. Independent Contractor Status. Nothing contained in the Agreement shall be deemed to create any relationship other than that of an independent contractor between Marietta and Smyrna. Under no circumstances shall any Smyrna official or employee be deemed to be an employee of Marietta for any purpose. Under no circumstances shall any Marietta official or employee be deemed an employee of Smyrna for any purpose.

10. Miscellaneous. This Agreement constitutes the entire Agreement between the parties and supersedes any prior discussions. This Agreement can only be modified in writing by both parties. This Agreement is not assignable. This Agreement shall be construed in accordance with the laws of the State of Georgia.

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

**CITY OF SMYRNA, GEORGIA**

**CITY OF MARIETTA, GEORGIA**

By: \_\_\_\_\_

By: R. Lee Tully, Jr.

Title: \_\_\_\_\_

Title: MAYOR

Attest: \_\_\_\_\_

Stephanie Gray  
Attest: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

M. Jagnie  
\_\_\_\_\_  
City Attorney

Date: \_\_\_\_\_

Date: October 22, 2020