

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATION**

CC: 7C
Amend No. _____

Date Prepared: April 15, 2008 Council Meeting Date: May 6, 2008

TO: Terrence L. Ellis, City Manager

THROUGH: Susan Thorpe, Deputy City Manager *SCT*

FROM: Larry J. Ratcliff, Chief of Police *[Signature]*

SUBJECT: Approve the Intergovernmental Agreement (IGA) between Maricopa County Board of Supervisors and City of Peoria regarding county jail services

RECOMMENDATION:

That the Mayor and City Council approve the Intergovernmental Agreement between the City of Peoria and Maricopa County Board of Supervisors regarding jail incarceration services provided to the city.

SUMMARY:

Attached for signatures is the IGA between City of Peoria and Maricopa County Board of Supervisors for the purpose of continued support from Maricopa County for jail incarceration services.

The Agreement has a term of five (5) years from the effective date, and may be extended by both parties for an additional five year term. The rates for the Housing Per Diem Fee and First Day of Booking/Processing Fee will be established on or before December 1st of each year to be effective July 1st of the following fiscal year. In the event the Board does not establish such rate(s) as of July 1st the rate(s) most recently established shall continue in effect until the Board of Supervisors establishes the new rates.

The City of Peoria had a cooperative agreement with the Maricopa County Board of Supervisors for years to provide jail services the City of Peoria does not have the resources to perform. Therefore, it is recommended that Mayor and Council authorize the execution of the IGA between Maricopa County Board of Supervisors and the City of Peoria for county jail services and facilities.

ATTACHMENT:

1. Intergovernmental Agreement

CITY CLERK USE ONLY:

Consent Agenda
 Carry Over to Date: _____
 Approved
 Unfinished Business (Date heard previous: _____)
 New Business

ORD. # _____ RES. # _____
LCON# 03308 LIC. # _____
Action Date: _____



INTERGOVERNMENTAL AGREEMENT

FOR COUNTY JAIL SERVICES & FACILITIES

Between

MARICOPA COUNTY BOARD OF SUPERVISORS

AND

CITY OF PEORIA

L CON 03308

PREAMBLE

This Intergovernmental Agreement ("Agreement") is made and entered into this _____ day of _____, 200____, by and between Maricopa County, a political subdivision of the State of Arizona, acting by and through its Board of Supervisors ("Maricopa County" or "County") and City of Peoria ("Municipality") (collectively, the "Parties").

RECITALS

WHEREAS, County owns and operates detention facilities ("County Jail") for housing persons ("Inmates") who have been committed to jail by competent authority; and

WHEREAS, County, through the Maricopa County Sheriff ("County Sheriff"), provides Inmates with necessary housing, food, clothing and bedding; and

WHEREAS, pursuant to A.R.S. § 31-121(D), Municipality is responsible for the costs of incarceration of the following persons: (1) a person who is arrested by a peace officer employed by Municipality and who is charged in the municipal court and housed in the County Jail; and (2) a person who is convicted in the municipal court and sentenced to the County Jail (collectively, "Municipal Inmates"), and

WHEREAS, County and Municipality desire to enter into an intergovernmental agreement with one another to contract for services and payment of costs relating to the incarceration of Municipal Inmates in the County Jail, and

WHEREAS, County and Municipality are authorized to enter into this Agreement pursuant to A.R.S. §§ 11-951 *et seq.* and 31-121.

NOW, THEREFORE, in consideration of the mutual performance of services by County and payment by Municipality as set forth herein, Maricopa County and Municipality agree as follows:

L ~~CON~~ 03308

AGREEMENT

1. Authority

The above Recitals are incorporated into this Agreement and all rights and obligations of the Parties shall be governed by the terms of this Agreement.

2. Definitions

As used throughout this Agreement, defined and capitalized terms set out in the body of this Agreement are synonymous with the definitions set out in this section. Ambiguity as to a defined term in the body of this Agreement shall be resolved in favor of the definition of the term below.

- 2.1. **Agreement** means this document and all exhibits, attachments and appendices, including all subcontracts or amendments, attached hereto.
- 2.2. **Billable Inmate** means a person booked and accepted by the Sheriff into the County Jail pursuant to Section 7 of this Agreement and charged in Municipality's Court or sentenced to the County Jail by Municipality's Court. Billable Inmate does not include a person arrested for and charged in Superior Court, irrespective of whether a municipal warrant is outstanding for that person.
 - 2.2.1 **Designated Class 6 Felonies.** For the limited purpose of this Agreement only, all offenses designated as misdemeanors pursuant to A.R.S. § 13-702(G) and referred to Municipality for prosecution in Municipality's Court will *not* be considered to be a Billable Inmate and therefore will *not* be an obligation of Municipality.
- 2.3. **Correctional Health Services ("CHS")** means the organizational department and budgetary unit that County has funded to provide CHS Medical Care to Inmates in the County Jails. As used in this Agreement "CHS" includes and incorporates any successor, assign, employees, contractor, subcontractor, designee or County budgetary unit performing any or all of the duties of CHS.
- 2.4. **County** means Maricopa County, a political subdivision of the State.
- 2.5. **County Jail or Jail** means all facilities under the control or supervision of Maricopa County or the County Sheriff, and whose primary purpose is to incarcerate persons.
- 2.6. **County Sheriff or MCSO** means the Maricopa County Sheriff's Office and those activities and facilities for which it has legal responsibility.
- 2.7. **First Day Booking/Processing Fee** is a fee for the initial first calendar day of booking and receiving a Municipality's Inmate into jail and is based upon a rate established by Maricopa County Board of Supervisors. The First Day fee includes health care services provided to a Municipal Inmate, including services provided in a County Jail, or in facilities operated by the Maricopa County Special Health Care District, or to the Municipal Inmate by any other publicly or privately operated health care facility or provider. The fee also includes transportation costs and provider fees.
- 2.8. **Health Care Services** include medically necessary medical, health and mental health services provided to a Municipal Inmate.
- 2.9. **Housing Per Diem Fee** is a fee established by the Maricopa County Board of

Supervisors that is charged for incarcerating and maintaining a Municipal Inmate in a County Jail housing unit beginning the calendar day immediately following the calendar day on which the individual was booked into the County Jail. The final day of incarceration shall not be included in the Housing Per Diem Fee calculation. The Per Diem fee includes all health care services provided to a Municipal Inmate, including services provided in a County Jail, or in facilities operated by the Maricopa County Special Health Care District, or to the Municipal Inmate by any other publicly or privately operated health care facility or provider. The fee also includes transportation costs and provider fees.

- 2.10. **Municipality** means the City or Town that is a signatory to this Agreement.
- 2.11. **Municipal Credit** is a credit against the cost of incarceration pursuant to Section 4.5 below.
- 2.12. **Municipal Inmate** is synonymous with Billable Inmate.

3. **Term of Agreement**

This Agreement shall become effective July 1, 2008 ("Effective Date") and shall have a term of five (5) years from the Effective Date. After the initial term, the Parties may extend the period of this Agreement for additional five year terms, or for such other period as may be agreed upon in writing.

4. **Compensation for County by Municipality**

4.1. **Setting of Rates. Housing Per Diem Fee and First Day Booking/Processing Fee.** The Maricopa County Board of Supervisors shall establish a rate for the Housing Per Diem Fee and First Day Booking/Processing Fee as follows:

- 4.1.1. On or before December 1st of each year, Maricopa County will provide MAG, Cities and Towns, Municipal Court Administrators, and Municipal Presiding Judges with the preliminary detention inmate housing and booking rates to be effective July 1st of the following fiscal year.
- 4.1.2. On or before February 1st of each year, Maricopa County will provide MAG, Cities and Towns, Municipal Court Administrators, and Municipal Presiding Judges with the final detention inmate housing and booking rates to be effective July 1st of the following fiscal year.

In the event the Board does not establish such rate(s) as of July 1st, the rate(s) most recently established shall continue in effect until the Board of Supervisors establishes the new rates.

4.2. **First Day Booking/Processing Fee.** Municipality shall pay County the prevailing First Day Booking/Processing Fee established by the Board of Supervisors, for the first calendar day of booking and processing each Billable Inmate into the County Jail. No additional Housing Per Diem Fee will be charged for the Billable Inmate's first day of incarceration.

4.3. **Housing Per Diem Fee.** Municipality shall pay County the prevailing Housing Per Diem Fee established by the Board of Supervisors, for each calendar day, or portion thereof, that a Billable Inmate is housed in the County Jail, excluding the calendar day for which the Municipality is assessed the First Day Booking/Processing Fee and the final calendar day of incarceration (e.g., if a Billable Inmate is booked into the County Jail on Friday evening and released at

noon the next day (Saturday) on bail or on his or her own recognizance, the Municipality shall pay County the First Day Booking/Processing Fee only, and exclude Saturday from the Housing Per Diem Fee calculation because it is the final day of incarceration.)

- 4.4. **Second Conviction DUI / Reimbursement.** Notwithstanding the provisions in this Section 4, for Billable Inmates who are incarcerated for a second offense DUI conviction under A.R.S. §§ 28-1381 or 28-1382. Municipality shall be charged fifty percent (50%) of the First Day Booking/Processing Fee and fifty percent (50%) of the Housing Per Diem Fee.
- 4.5. **Limitation on Municipal Credits.** Municipality may obtain a "Municipal Credit" for a Billable Inmate who is subsequently charged in a Justice Court or in the Superior Court, for a felony arising from the booked charges.
 - 4.5.1. In the event of a Billable Inmate who is subsequently charged in a Justice Court or in the Superior Court for a felony arising from the booked charges, the Municipal Credit will apply to the days on and after the felony charges are filed.
 - 4.5.2. In the event of a Billable Inmate who is subsequently charged with both a misdemeanor and felony arising from the booked charges, the Municipal Credit will be apportioned according to the Municipality producing satisfactory written documentation of any Municipal credit sought under this section, within ninety (90) days of the first billing for the Municipal Inmate. County shall not be liable for a credit claimed by Municipality which is filed more than ninety (90) days after the first billing.
- 4.6. **Copayment.** As authorized by law, County may charge Municipal Inmates a copayment for each health care service or prescription that is provided by Correctional Health Services. Municipality is not responsible for the Municipal Inmate's copayment. No inmate will be refused health care services for financial reasons.
- 4.7. **Pre-Incarceration Health Care Services.** Pre-booking and pre-incarceration health care services provided to Municipal Inmates (including those provided to a Municipal Inmate who self-surrenders, but requires medical, health and mental health services in order to be admitted to jail) are not the subject of this Agreement. Nothing in this Agreement is intended to create or provide any third party rights or third party beneficiary rights.
- 4.8. **Third Party Liability.** This Agreement shall not relieve any responsible third party of liability for health care services, including the Municipal Inmate.

5. **Billing**

- 5.1. **Municipality's Duty to Track Billable Inmates by Booking Number.** The Parties shall minimize problems in tracking or identifying a Municipal Inmate so that their staffs will not perform unnecessary research concerning the financial responsibility for the Billable Inmate. The Parties acknowledge that the relevant data for tracking and identifying an Inmate is the MCSO Booking Number assigned to the Municipal Inmate by the Jail when the Municipal Inmate is fingerprinted and booked into the Jail. Therefore, the Parties shall, at a minimum, track each Municipal Inmate by MCSO Booking Number and shall refer to the MCSO Booking Number to confirm whether an Inmate in the County's

invoice is a Billable Inmate.

5.2. **Billing for Amounts Due.** County will bill Municipality monthly for all amounts due to County per Section 4 of this Agreement. Municipality shall pay County's billed charges within forty five (45) days of the date of mailing (the "Due Date").

5.2.1. Municipality shall not be charged any interest on any outstanding balances.

5.2.2. Except as provided in paragraphs 5.3 and 6, County may terminate this Agreement pursuant to Section 11, Termination, for failure or refusal by Municipality to pay any balance due under this Agreement.

5.3. **Billing Adjustments.** Municipality may request County to adjust any portion of a bill paid pursuant to Section 5.2 that Municipality believes is in error, provided the request is made in writing within ninety (90) days from the date of mailing the invoice from Maricopa County. Adjustments that have not been requested in writing within the 90-day period shall be deemed waived.

6. **Audit**

Each Party must give thirty (30) calendar days prior written notice to the other Party prior to conducting an audit of records retained pursuant to Section 13.2 of this Agreement. Notwithstanding the provisions of Section 5.3, if an audit indicates that the other Party paid an incorrect bill the Party shall make timely and appropriate payment to the other Party.

7. **Performance by Sheriff and County**

7.1. **Performance by County Sheriff.** The County Sheriff shall receive Municipal Inmates for booking, detention, and incarceration by the Sheriff and determination of medical stability by CHS or the County Sheriff at intake. Maricopa County or the County Sheriff will provide for the safekeeping, care and maintenance of Municipal Inmates. To the extent permitted or authorized by law, the Sheriff's Office, Maricopa County or CHS, as may be appropriate, shall provide or arrange for the facilities, personnel and other items necessary for compliance with this Agreement.

7.2. **County Jail Regulations and Standard of Conduct.** Municipal Inmates will be subject to the same rules and regulations that govern inmates in the County Jail.

7.3. **County Sheriff's Determination is Conclusive.** Notwithstanding anything to the contrary in this Agreement, the County Sheriff is solely responsible for housing Municipal Inmates and for supervising County Jail personnel and officers and for other matters incidental to the services provided under this Agreement. In the event of a dispute between the Parties as to the extent of the County Sheriff's duties and responsibilities under this Agreement, or the minimum level of care or acceptable manner of performance of such service, the determination made by the County Sheriff shall be final and conclusive, subject to Municipality's right to perform an audit of billings pursuant to Section 6 herein.

8. **Medical and Health Care Information**

Municipality agrees to comply with any and all Federal and state laws, rules and

regulations regarding the confidentiality of medical information and health care records, which Municipality, its agents, employees, or officers acquire in furtherance of the terms of this Agreement. To the extent such requirements apply to this Agreement, each Party will comply with its own and the other Party's rules, regulations and policies required by state and federal law and the Health Insurance Portability and Accountability Act ("HIPAA") where applicable.

9. **Mandatory Alternative Dispute Resolution**

The parties to this Agreement agree that any disputes that arise regarding the terms of this Agreement, shall be resolved according to the arbitration provisions in A.R.S. § 12-1501 et. seq. and Rules 72 through 76, Arizona Rules of Civil Procedure.

10. **Utilization and Coordination**

10.1 **Notice.** CHS will give notice to Municipality that a Municipal Inmate is to receive health care services from public or private providers other than CHS. If prior notice is not feasible due to an emergent need, then CHS shall notify Municipality promptly. Notice shall be given via the CHS Emergency Authorization and Notification System, as amended from time to time, and/or via facsimile transmission. Municipality and its employees must fully understand the CHS Emergency Authorization and Notification System ("System") and will be solely responsible for maintaining their hardware, software and other technology and equipment, expertise and knowledge. Municipality will be deemed to have received any notice provided or request provided via this System once it is sent by CHS.

10.2 **Municipal Designee.** Municipality shall establish and designate, in writing, the means by which CHS may deliver notice pursuant to the CHS Emergency Authorization and Notification System ("System") and this Section, including but not limited to, email addresses, internet addresses, and/or facsimile or telephone numbers, and the staff who will provide Municipality's 24/7/365 coverage to carry out this Section and this Agreement. Notice shall be fulfilled if provided by any one of the available methods designated by Municipality per the CHS System protocol.

10.3 **Municipal Duties to Assist with Coordination and Utilization Management for Municipal Inmate Health Care Services; Effect on Rates; Necessity of Response.** Municipality agrees to cooperate with CHS' needs for information and review about Municipality's Inmates and to assist CHS with health care services coordination and utilization by Municipality's Inmates. Municipality understands that in addition to any other remedies available to the County, health care service costs will be incorporated in rates established pursuant to Section 4.

11. **Termination**

Either Party may terminate this Agreement, in whole or in part, as follows:

11.1. Upon delivery of a written notice of termination to the other Party not less than one hundred eighty (180) calendar days prior to the termination date.

11.2. Upon one Party's default of the material terms, including financial terms, of this Agreement and failure to cure the default within sixty (60) calendar days of a written notice of default served on behalf of the non-defaulting Party as provided

in this Agreement.

- 11.3. The Parties shall continue to perform their respective obligations until the Agreement has terminated.

12. Insurance and Indemnity

- 12.1. Nothing in this Agreement shall be construed as consent to any suit or waiver of any defense in a suit brought in any state or federal court against either party.
- 12.2. The Parties shall secure and maintain insurance coverage (including but not limited to public entity insurance) for any and all risks that may arise under this Agreement in an amount no less than \$1,000,000 per occurrence and \$3,000,000 aggregate. A Party may fulfill this insurance obligation by acquiring commercial insurance or by maintaining and operating a self-insurance program. Upon request, the Parties shall exchange certificates of insurance or self-insurance.
- 12.3. Each Party ("as Indemnitor") agrees to indemnify, defend and hold harmless the other Party (as the "Indemnitee") from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct or other fault of the Indemnitor, its officers, agents, officials, employees or volunteers. This general indemnity shall extend to the fullest extent permitted by law. If any such injury, damage or death shall arise in part, but not in whole, out of both Parties' negligence, then contribution rights shall apply in accordance with applicable Arizona law.

13. Miscellaneous

- 13.1. **Integration.** This Agreement contains all the terms and conditions agreed to by the Parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto. Any change, modification or extension of this Agreement must be in the form of a written amendment and signed by the Parties.
- 13.2. **Records.** Except for medical information and health care records, the Parties shall maintain and upon request furnish to each other such records and documents pertaining to the services provided pursuant to this Agreement for a period of three (3) years after the end of the fiscal year in which such records or documents are created.
- 13.3. **Non-Discrimination and Equal Employment Opportunity.** Each Party shall not discriminate against anyone because of race, age, disability, color, religion, gender or national origin and will take action to insure that applicants are employed and that employees are treated fairly during employment without regard to their race, age, disability, color, religion, gender or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Parties shall comply with applicable federal, state or local laws or regulations that mandate equal access for all

persons to employment opportunities. Such applicable laws and regulations include the following: Title VI and VII of the Federal Civil Rights Act; the Federal Rehabilitation Act; the Age Discrimination in Employment Act; The Immigration Reform and Control Act of 1986 (IRCA); The Americans with Disabilities Act; the Legal Arizona Workers Act and Arizona Executive Order 99-4.

- 13.4. **Notice.** Unless otherwise expressly provided herein, legal notice under this Agreement shall be given by personal delivery or by registered or certified mail to the addresses set forth below and shall be effective upon receipt by the Party to whom addressed unless a later effective date is indicated in said notice.

For Municipality:

Terrence L. Ellis
City Manager
City of Peoria
8401 W. Monroe Street
Peoria, Arizona 85345

For Maricopa County:

David Smith
Maricopa County Manager
301 West Jefferson, 10th Floor
Phoenix, Arizona 85003

For Maricopa County Sheriff:

Joseph M. Arpaio, Sheriff
Maricopa County Sheriff's Office
102 West Madison
Phoenix, Arizona 85003

- 13.5. **Time of the Essence.** Time is of the essence of this Agreement, all of the conditions set forth herein are material to the Agreement and a breach of any condition is a breach of the Agreement.
- 13.6. **Severability.** In the event competent authority finds that the law prohibits any term or provision of this Agreement, such a finding shall not render the remaining portions of this Agreement invalid or inoperative.
- 13.7. **No Waiver of Strict Compliance.** A Party's failure to insist in any one or more instances upon the other Party's full and complete performance of this Agreement or to take any action permitted as a result of such non-performance, shall not be construed as waiving or relinquishing the right to demand full and complete performance of the same or any other covenant or condition in the past or in the future.
- 13.8. **Accord and Satisfaction.** The acceptance by either Party of sums less than

may be due and owing at any time shall not be construed as an accord and satisfaction.

13.9. **Applicable Law.** This Agreement shall be interpreted in accordance with Arizona law, and subject to A.R.S. § 38-511.

13.10. Every payment obligation of the Municipality under this Agreement is conditioned upon the availability of funds appropriated for payment of such obligation. Continuation of this Agreement after the close of the City's fiscal year, which ends June 30 of each year, is subject to the approval of the budget of the City providing an appropriation covering this item as an expenditure. The City does not represent that such budget item will be actually adopted, as that determination is made by the City Council at the time of the adoption of the budget. If funds are not appropriated for the continuance of this Agreement, this Agreement may be terminated by the City at the end of the period for which funds are available. No liability shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments or for any damages as a result of termination under this provision.

IN WITNESS WHEREOF, the Parties enter into this Agreement on the date set forth above.

**MARICOPA COUNTY
BOARD OF SUPERVISORS**

**CITY OF PEORIA, a municipal corporation
TERRENCE L. ELLIS, City Manager**

BY: _____
Andrew Kunasek, Chairman

BY: _____
Terrence L. Ellis
City Manager

ATTEST:

BY: _____
Clerk of Board

ATTEST:

BY: _____
City Clerk

This Agreement has been reviewed by the undersigned attorney, who has determined that it is in proper form and is within the power and authority granted under the laws of the State of Arizona, per A.R.S. §§ 11-951 *et. seq.*

MARICOPA COUNTY ATTORNEY

BY: _____
Deputy County Attorney

MUNICIPALITY'S ATTORNEY

BY: _____
Attorney for Municipality