

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
PINAL COUNTY
AND
TOWN OF KEARNY
FOR
DETENTION OF MUNICIPAL-CHARGE INMATES**

This INTERGOVERNMENTAL AGREEMENT ("IGA") dated this 19th day of October, 20 20 is made by and between Pinal County, a political subdivision of the State of Arizona, by and through the Pinal County Sheriff's Office Adult Detention Facility ("PCSO"), and Kearny, an Arizona municipal corporation, ("TOWN") for the detention of adult inmates arrested, held, booked and/or convicted under the authority of TOWN. PCSO and TOWN may also be referred to herein as "Party" individually and "Parties" collectively.

RECITALS

WHEREAS, the Parties are authorized and responsible to provide for the detention of adults arrested and/or convicted of criminal offenses within the party's respective jurisdiction pursuant to Arizona law including, but not limited to, A.R.S. Title 9, and §§ 31-121, 11-251(8), 22-401 *et seq.*, and 11-441 *et seq.*; and

WHEREAS, the Parties desire to utilize available resources in an efficient and mutually beneficial manner according to applicable law; and

WHEREAS, PCSO maintains an adult detention center (ADC) where such inmates may be detained; and

WHEREAS, it is operationally necessary for TOWN to utilize available space within local county facilities for the purpose of detaining and housing TOWN inmates; and

WHEREAS, the Parties have reached an agreement on the exchange and cooperative provision of detention facilities and services and have reached an understanding on each Party's responsibilities in implementing this IGA; and

WHEREAS, A.R.S. §§ 31-121(D) and 11-951 *et seq.* authorize the Parties to enter into this IGA.

AGREEMENT

NOW, THEREFORE, the Parties hereto, in consideration of the stipulations, covenants and agreements hereinafter set forth, do hereby agree as follows:

1. **PURPOSE AND INTENT.** This IGA sets forth the terms and conditions under which TOWN's inmates shall be incarcerated in the PCSO ADC. TOWN inmates are adults arrested, charged or sentenced under the authority of TOWN (i.e. criminal charges within TOWN's municipal court jurisdiction).
2. **COSTS AND FEES.** The Parties agree that a 'Phased In' method will be employed to gradually incorporate actual current costs into the detention services fees paid by TOWN pursuant to A.R.S. § 31-121(D). The Parties further agree that current (FY 2018-19) detention services costs have been established as \$357.00 per booking/intake event and \$123.00 per inmate per day of detention. The Phases will proceed as follows: **Phase 1** will commence July 1, 2021; **Phase 2** will commence January

1, 2022; **Phase 3** will commence July 1, 2022; and **Phase 4** will commence January 1, 2023.

The Parties further agree that, at PCSO's sole discretion, detention costs may be studied, determined and updated on an annual basis. Any fee increase(s) will be subject to, and will not take effect without the mutual written agreement of the Parties.

3. EFFECTIVE DATE AND DURATION

- A. **Initial Term.** Upon execution and signature below, this IGA shall become effective on the 19th day of October, 2020, and shall remain in effect for five (5) years unless otherwise terminated or renewed as provided in this IGA.
- B. **Termination.** Either Party may terminate this IGA, with or without cause, by providing thirty (30) days advance written notice of termination to the other Party as set forth in **Section 10.A** below. Each Party agrees to return any and all equipment and/or materials in its control or possession to the owner-Party no later than thirty (30) days after termination.
- C. **Renewal.** By mutual written agreement of the Parties, this IGA may be renewed for additional terms (Subsequent Term(s)). The specific date range/duration of any Subsequent Term shall be stated in the Parties' mutual written agreement.

4. MUTUAL OBLIGATIONS

A. PCSO agrees to:

- i. Upon TOWN's submission of the completed booking document(s) to ADC staff, PCSO shall receive and detain inmates who are medically fit to be incarcerated in PCSO ADC. Medical fitness is determined by ADC's medical provider and ADC intake staff.
- ii. Provide detention services ("Services") for booked TOWN inmates, which Services include, but may not be limited to, housing, food, clothing, normal hygiene, and other routine services and care, including routine medical care, education, recreation, and visitation.
- iii. Send billing invoices to TOWN on a monthly basis per **Section 5** below.
- iv. Manage the day-to-day supervision, operations and Services for TOWN inmates; and provide all staff, labor and services necessary for the Facility's day-to-day use and operation and maintain and provide all staff, labor, materials, and routine in-house services and bear all routine costs associated with the Facility at no additional cost to TOWN.
- v. Arrange for any non-routine services necessary for any TOWN inmate(s) detained at the Facility. These non-routine services include, but are not limited to, hospitalization, ambulance, psychiatric assessments, psych-ed evaluation, and medications. The Parties acknowledge and agree that non-routine services will result in additional expense(s) which are the sole responsibility of TOWN, as further set forth in **Sections 4.F** and **4.G** below.
- vi. Observe and administer any records exchanged under this IGA pursuant to applicable law.

B. TOWN agrees to:

- i. For any daily inmate detention costs incurred *prior to* July 1, 2021 (PHASE 1 start date), pay the fee of \$72.33 per inmate per day.
For any daily inmate detention costs incurred *on or after* July 1, 2021, pay the fee of \$103.00 per inmate per day.

- For any detention costs incurred *on or after* January 1, 2022 (PHASE 2), pay the fee of \$123.00 per inmate per day.
- ii. For any booking/intake costs incurred *prior to* July 1, 2022 (PHASE 3 start date), pay the fee of \$193.86 per event.
For any booking/intake costs incurred *on or after* July 1, 2022, pay the fee of \$275.00 per event.
For any booking/intake costs incurred *on or after* January 1, 2023 (PHASE 4), pay the fee of \$357.00 per event.
- iii. Pay any and all Additional Expense(s) incurred under or arising from this IGA and reimburse PCSO for any and all Additional Expense(s) incurred by PCSO under this IGA.
- iv. Pay each invoice received no later than thirty (30) days after receiving the invoice per Section 4.A.iii above and Section 5 below. TOWN acknowledges and agrees that failure to timely pay outstanding invoice(s), or any outstanding portion(s)/amount(s) thereof, will result in TOWN's additional obligation to pay PCSO 3% monthly interest until all outstanding balance amounts are paid in full and pay PCSO for any costs incurred by the County resulting from TOWN's failure to timely pay.
- v. Provide transportation to and from the Facility: when TOWN inmates are booked into and released from the Facility; when appearances are required at court hearings; and when medical, dental, or other appointments for any such inmates are scheduled within/outside the Florence area. When available, PCSO staff may assist on transports within the Florence area, which may result in Additional Expenses to be paid by TOWN.
- vi. TOWN will *not* deliver to the Facility any inmates under the influence of controlled substances, or experiencing serious medical or mental health concerns, including self-harm behavior, *without first* obtaining a medical release from an appropriate medical and/or mental health professional or hospital.
- vii. Provide any records necessitated by the purposes of this IGA. Such records may include, but are not necessarily limited to, inmate penalogical and discipline records, criminal background and history records, medical records, and mental health records.
- viii. Remain responsible for the transportation of inmates to and from the PCSO ADC. Notwithstanding this, at PCSO's sole discretion in the event of a medical emergency or other appropriate circumstance PCSO may transport a TOWN inmate from the PCSO ADC to the appropriate destination and such instances may result in Additional Expense(s) to be paid by TOWN.
- ix. Ensure that no TOWN inmate shall be held at Facility for more than twenty-four (24) hours without an initial appearance in TOWN court and any applicable or necessary Court Orders or other documentation substantiating inmate's detention beyond the initial 24-hour period.
- x. Observe and administer any records exchanged under this IGA pursuant to applicable law.
- C. "Day" and "Event". The Parties agree that "day" for the purposes of billing/incurred daily inmate detention costs/fee means any period in excess of two hours within the given calendar day. The Parties agree that "event" for the purposes of billing/incurred booking/intake costs/fee means each time/instance that the booking/intake of an inmate is completed and the inmate is accepted into PCSO ADC custody.

D. Policies, Practices and Standards. The Parties acknowledge and agree that the PCSO ADC and all inmates therein are managed and administered according to PCSO ADC management, policies, practices and standards and will remain so for the duration of this IGA.

E. Acceptance or Rejection of Inmate. The Parties agree that if the inmate presents a serious medical condition beyond the scope of the Facility health provider, an urgent medical condition or is otherwise not medically cleared for intake into ADC, TOWN shall maintain custody of the inmate and TOWN shall transport or otherwise seek any necessary examination, care and/or treatment as soon as possible. By initiating the intake/booking process, PCSO does not in any way accept responsibility for the inmate or any costs of medical care. TOWN agrees that PCSO shall not be responsible for the inmate's custody and detention unless and until the inmate is deemed medically fit to be incarcerated in PCSO ADC.

F. Non-Routine Services and Additional Expenses. The Parties agree that "Services" do not include non-routine medical care, mental health or psychiatric care. Non-routine services include, but are not limited to, hospitalization, ambulance, psychiatric assessments, psych-ed evaluation, and medications. The Parties acknowledge and agree that non-routine services will result in additional expense(s) which are the sole responsibility of TOWN.

Additional Expense(s) include any and all costs associated with: transportation not expressly provided for in this IGA that are attributable to TOWN inmates; non-routine services and/or materials required by TOWN inmates; and TOWN inmate medical and/or mental-health care and treatment not covered by the daily inmate fee referenced above. Medical and/or mental-health care and treatment not covered by the daily inmate fee include: prescription medication(s), hospital visits or any other medical/mental-health services requiring outside facilities, services or providers, and/or catastrophic medical or mental-health events.

G. Written Concurrence for Non-Routine Services. In the event of non-routine services the Parties agree to discuss said services and create a written concurrence regarding the services in advance. The Parties acknowledge that any emergency circumstances that arise may, in turn, make it unreasonable or unfeasible to discuss and/or create a written concurrence in advance.

To the extent permitted by time, PCSO shall contact TOWN to discuss any non-routine services that arise. The Parties agree that such discussion shall not unduly delay any need for emergency services, including, but not limited to emergency medical attention. PCSO shall have the sole discretion and authority to determine whether a situation is an emergency, or becomes an emergency while awaiting TOWN's concurrence and TOWN shall defer to PCSO's assessment of the situation and determination regarding the emergency / non-emergency nature of the situation.

H. Open Communications. PCSO and TOWN shall maintain open communications between each Party's designated point of contact ["POC"] (listed in Section 10.A below) to ensure the agreed upon facilities and services are provided and maintained throughout the term of this IGA. Parties shall maintain open communication regarding needs arising out of the IGA.

I. Inmate Legal Counsel. PCSO is *not* responsible for any legal representation required or requested by TOWN inmates. The provision of any such requisite legal counsel and/or any arrangements therefore remain the responsibility of TOWN.

J. PREA. The Prison Rape Elimination Act (PREA) 34 U.S.C. §§ 30301—30309 and 28 C.F.R. §§ 115.11—115.501 was established to address the elimination and prevention of sexual assault and sexual harassment within correctional systems and detention facilities. The Parties will comply with all applicable standards. A duly authorized law enforcement agency will be assigned to investigate all incidents of sexual assault allegedly occurring within the Facility. The Parties agree to disclose any knowledge of sexual abuse or sexual harassment that a TOWN inmate may have encountered, whether as the perpetrator or the victim.

K. Remote Appearance Technology. To the maximum extent possible, and according to the mandates of the Court, the Parties intend to utilize available technology for the remote appearance/attendance of inmates in hearings, proceedings, meetings, appointments, and evaluations when appropriate and available. Such means/methods may include audio/video conferencing technology and/or telephonic communication. The purpose of doing so is to maximize the health and safety of all facility occupants and to maximize the efficient use of available time, staff and resources, subject to any requisite court approval or, when applicable, the professional discretion of involved physician(s), other psychiatric or medical professional(s), or legal counsel.

L. Emergency Evacuation. In the event of any emergency requiring evacuation of the Facility, PCSO shall evacuate any TOWN inmate in the same manner and with the same safeguards as other inmates in the Facility. PCSO shall verbally notify TOWN and confirm by e-mail or fax, within eight (8) hours of such evacuation.

M. Public Health Crises. In the event of a public health crisis or the like (i.e. COVID 19 pandemic), TOWN acknowledges and agrees that PCSO is authorized to take all reasonable measures, as determined in the sole discretion of PCSO, to protect the health and welfare of Facility occupants. Such measures may include, but are not limited to, stopping all non-essential ingress and/or egress to and from the Facility which may result in the discontinuation of programs and/or practices that pose a high risk of introducing and/or transmitting infection to or between Facility occupants. Additionally, PCSO reserves the right to deny entry of any TOWN inmate referred to Facility where, as determined in the sole discretion of PCSO, the public interest in detention does not outweigh the risk of introducing infection into the Facility. Further, at the request of PCSO, TOWN may be required to arrange for an initial quarantine detention of any such inmate before the inmate may be later transferred into Facility.

N. Facility Capacity. The Parties acknowledge and agree that housing TOWN inmates will not be available if/when the population of the portion(s) of the Facility in operation at the time of referral is at capacity. If the Facility is at or near capacity, PCSO will work with TOWN to determine whether, in PCSO's sole discretion and determination, any accommodations can be provided in the event the need arises for additional detention of TOWN inmates at the Facility.

O. Force Majeure. The Parties are not liable to each other if an occurrence of force majeure prevents its performance under the contract. If either party is delayed at any time in the progress of its performance under the contract by an occurrence of force majeure, the delayed party shall notify the other no later than the following working day after the occurrence, or as soon as it could reasonably have been expected to recognize that the occurrence had effect in cases where the effects were not readily apparent. In any event, the notice must make specific reference to this paragraph specifying the causes of the delay in the notice and, if the effects of the occurrence are on-going, provide an initial notification and thereafter the delayed party shall provide regular updates until such time as the effects are fully known. To the extent it is able, the delayed party shall cause the delay to cease promptly and notify the other party when it has done so.

5. BILLING/INVOICING

Billing, invoicing and payment between the Parties arising out of this IGA shall be administered as follows:

- A.** PCSO shall bill TOWN on a monthly basis and send TOWN an itemized invoice promptly at the end of each month.
- B.** TOWN shall send payment to PCSO (*made payable to "Pinal County"*) within 30 days of receiving the invoice.

- C. All billing and payment correspondence shall be sent to the Party contacts provided in **Section 10.A** below.

6. SUPERVISION

Each Party shall have sole supervisory authority over that party's personnel, operations, services and materials. Each Party agrees that it will be solely responsible for and will assume sole liability for its officer's acts or omissions of any kind, while performing any service or activity under this IGA. Each Party shall remain responsible for its employees' salaries and employee-related benefits, discipline and similar matters and shall be solely responsible for its employee's civil wrongs, and each employee shall be deemed to be performing regular duties for the primary employer Party while engaged in services and activities under this IGA. For the purposes of Workers' Compensation, the Party employing such employee shall be solely liable for the payment of Worker's Compensation benefits payable as the result of the employee's participation in services and activities under this IGA.

7. EQUIPMENT AND MATERIALS

The Parties agree to avoid using the other Party's materials and/or equipment for purposes not directly associated with the purpose and intent of this IGA without the prior express written consent from the Party to whom the equipment and/or materials belong. However, this provision shall not be construed to prohibit any use of materials or equipment of another Party that is merely nominal and incidental, or on an emergency basis.

8. INSURANCE

Each Party acknowledges and affirms that it has appropriate and adequate insurance coverage for its official operations, duties and activities, and that it will maintain such coverage for the duration of this IGA.

9. INDEMNIFICATION AND COOPERATIVE DEFENSE

- A. To the maximum extent permitted by law, each Party (as "Indemnitor") agrees to indemnify, defend and hold harmless the other Party, its officers, officials, agents, employees, or volunteers 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 actions taken in performance of this IGA to the extent that such Claims are caused by the acts, omissions, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers. If a Claim or Claims by third parties becomes subject to this section, the governmental parties to this IGA that are the subject of the Claim or Claims shall expeditiously meet to agree upon a common and mutual defense pursuant to Subsection B below, including proportionate liability and proportionate payment of litigation fees, expenses and damages. If applicable, the Parties agree to abide by the Memorandum of Understanding Regarding Joint Defense ("MOU") between the Arizona Counties Insurance Pool ("ACIP") and the Arizona Municipal Risk Retention Pool ("AMRRP"). If applicable, each Party acknowledges that it has received a copy of the MOU from either ACIP or AMRRP.
- B. In the event that a claim, arising from or relating to the activities provided in this IGA, is made against any Party for acts or omissions of any of its employees or officers, it is the intent of the Parties to cooperate fully in the defense of said claim or claims and to cause their insurers to do likewise, to the extent practicable.
- C. The obligations under this section shall survive the termination of this IGA.

10. GENERAL

- A. NOTICES:** Except as otherwise provided in this IGA, all notices to the other Party required under this IGA shall be in writing and sent to the following personnel:

If to:

Martina Burnam
Name
Interim Town Manager
Title
Town of Kearny
Name of Governmental Entity / Unit
PO Box 639
Address
Kearny, AZ 85137
Town ZIP

If to PCSO:

Chief Deputy
Pinal County Sheriff's Office
P.O. Box 867
Florence, Arizona 85132

- B. MODIFICATION:** This IGA shall not be modified or extended except by a mutually signed written agreement.
- C. RELATIONSHIP OF THE PARTIES:** Each Party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, associate, or any other representative capacity of the other party. Each Party shall be solely and entirely responsible for its acts or acts of its agents and employees during the performance of this IGA. This IGA shall not be construed to imply authority to perform any tasks, or accept any responsibility, not expressly set forth herein. This IGA shall be strictly construed against the creation of a duty or responsibility unless the intention to do so is clearly and unambiguously set forth herein. Nothing contained in this IGA confers any right to any person or entity not a party to this IGA.
- D. WAIVER OF TERMS AND CONDITIONS:** The failure of either Party to insist in any one or more instances on performance of any of the terms or conditions of this IGA or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.
- E. GOVERNING LAW AND VENUE:** The terms and conditions of this IGA shall be governed by and interpreted in accordance with the laws of the State of Arizona.
- F. NONASSIGNMENT:** This IGA has been entered into based upon the personal reputation, expertise and qualifications of the Parties. Neither Party shall assign its interest in this IGA, in whole or in part, without the prior written consent of the other Party. Neither Party shall assign any monies due or to become due to it hereunder without the prior written consent of the other Party.
- G. ENTIRE AGREEMENT:** This IGA represents the entire agreement between the Parties and supersedes all prior negotiations, representations or agreements, either expressed or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this IGA shall be valid unless made in writing and signed by the Parties.
- H. SEVERABILITY:** If any part, term or provision of this IGA shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

- I. CONFLICTS OF INTEREST:** To the extent applicable, the provisions of A.R.S. § 38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this IGA.
- J. OTHER DUTIES IMPOSED BY LAW:** Nothing in this IGA shall be construed as relieving the involved public agencies of any obligation or responsibility imposed on it by law.
- K. COMPLIANCE WITH CIVIL RIGHTS:** To the extent applicable, the Parties agree to comply with A.R.S. Title 41, Chapter 9 (Civil Rights), Arizona Executive Orders 75-5 and 99-4 and any other federal or state laws relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act.
- L. E-VERIFY, RECORDS AND AUDITS:** To the extent applicable: Under A.R.S. § 41-4401, the Parties and their respective subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Parties' or a subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the IGA and may result in the termination of the IGA by either party under the terms of this IGA. The Parties each retain the legal right to randomly inspect the papers and records of each other Party and each other Party's subcontractors who work under this IGA to ensure that the other party and its subcontractors are complying with the above-mentioned warranty. The Parties warrant to keep their respective papers and records open for random inspection during normal business hours by each other Party. The Parties and their respective subcontractors shall cooperate with each other Party's random inspections including granting the inspecting Party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.
- M. INTERPARTY DISPUTE RESOLUTION:** If a dispute between the Parties arises out of or relates to this IGA, and if the dispute cannot be settled through negotiation within sixty (60) days, the Parties agree to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. sec. 12-1518 except as may be required by other applicable statutes..
- N. NON AVAILABILITY OF FUNDS:** In accordance with A.R.S. § 35-154, every payment obligation of each party under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this agreement may be terminated by either party at the end of the period for which funds are available. No liability shall accrue to either party in the event this provision is exercised, and the parties shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
- O. WORKER'S COMPENSATION:** To the extent applicable, each Party shall comply with the notice of A.R.S. § 23-1022(E). For purposes of A.R.S. § 23-1022, each Party shall be considered the primary employer of all personnel currently or hereafter employed by that Party, irrespective of the operations of protocol in place, and said Party shall have the sole responsibility for the payment of Worker's Compensation benefits or other fringe benefits of said employees.
- P. COMPLIANCE WITH LAWS AND POLICIES:** To the extent applicable, the Parties shall comply with all federal, state and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this IGA. The laws and regulations of the State of Arizona shall govern the rights of the Parties, the performance of this IGA and any disputes hereunder. Furthermore, the Parties agree to abide by each Party's policies to the extent appropriate and required or permitted by law.
- Q. THIRD PARTY ANTITRUST VIOLATIONS:** Pinal, to the extent required by applicable law, assigns to the State of Arizona any claim for overcharges resulting from antitrust violations to the

extent that those violations concern materials or services supplied by third parties to either party, toward fulfillment of this Agreement.

- R. NO JOINT VENTURE:** It is not intended by this IGA to, and nothing contained in this IGA shall, be construed to, create any partnership, joint venture or employment relationship between the Parties or create any employer-employee relationship between the Parties' employees. Neither Party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other Party, including, but without limitation, the other Party's obligation to withhold Social Security and income taxes for itself or any of its employees.
- S. NO THIRD PARTY BENEFICIARIES:** Nothing in this IGA is intended to create duties or obligations to or rights in third parties not Parties to this IGA or affect the legal liability of either Party to the IGA by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.
- T. HEADINGS:** The section headings throughout this IGA shall not be used in the construction or interpretation hereof as they have no substantive effect and are for convenience only.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the Parties have executed this IGA as of the day and year set forth below.

For Kearny (TOWN):

For Pinal County (PCSO):

By: Debra Sommers

By: _____

Debra Sommers
Printed Name

Chairman,
Pinal County Board of Supervisors

Mayor
Title

Date: _____

Date: 10-19-20

Attest: TOWN CLERK

Attest: CLERK OF THE BOARD

Date: Martina Burnam

Date: _____

Content Approved:

Content Approved:

By: Chief of Police

By: Pinal County Sheriff

Date: 10-19-20

Date: 10.20.2020

Approved as to form:

Approved as to form:

By: Stephen R. Cooper

By: _____

Stephen R. Cooper
Print Name
Attorney for TOWN

Print Name
Attorney for PCSO