IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI

City of Springfield, Missouri,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 1531-CC00863
	)	
Sheriff James Arnott, Robert Cirtin,	)	
Roseann Bentley, Harold Bengsch,	)	
	)	
	)	
Defendants.	)	

ANSWER TO PETITION FOR DECLARATORY JUDGMENT, PRELIMINARY AND PERMANENT INJUNCTION AND SPECIFIC PERFORMANCE

Comes Now, Defendant James Arnott, by and through counsel Keck & Austin, LLC and for his Answer to the City of Springfield's Petition for Declaratory Judgment and Preliminary and Permanent Injunction and Specific Performance and states:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff City of Springfield is and at all times relevant hereto was a municipal corporation and a home rule charter city organized under the provisions of the Constitution of the State of Missouri, and in accordance with the Charter adopted by the people of Springfield, Missouri, at a special election on March 17, 1953.

RESPONSE: Admit

2. Defendant Sheriff is the duly elected and acting Sheriff of Greene County, Missouri.

RESPONSE: Admit

3. Defendant Commissioners are the duly elected County Commissioners of Greene County, Missouri, and have been joined as a party to this action pursuant to Missouri Supreme Court Rule 87.04.

RESPONSE: Sheriff Arnott neither admits nor denies this allegation as it makes no allegation as to this defendant, but to the extent an allegation is made against him, defendant Sheriff Arnott denies the same.

4. Plaintiff has standing to maintain this action.

RESPONSE: Deny that plaintiff has standing to assert any action or claim which seeks to limit the duly elected Greene County Sheriff's statutory duties or

responsibilities in general, and in particular any action or claim which interferes with the Sheriff's police powers or statutory duties of accepting and housing prisoners.

5. Jurisdiction and Venue for this action are appropriate in this Court.

RESPONSE: Admit

STATEMENT OF FACTS

6. Plaintiff hereby realleges and incorporates by reference in their entirety each allegation set forth in paragraphs 1 through 5 set out hereinabove, inclusive.

RESPONSE: Sheriff Arnott adopts herein by reference, pursuant to MRCP Rule 55.12, all of his answers contained in paragraphs 1-5 of Plaintiff's Petition.

7. On or about July 16, 1997, Plaintiff and Defendants entered into an Inter-governmental Agreement (hereinafter "the Agreement") pursuant to Section 70.220 RSMo for the purpose of constructing and operating a Consolidated County-Municipal Justice Center (hereafter referred to as "the City-County jail"). A copy of said Agreement is attached hereto as Exhibit A and incorporated herein by reference.

RESPONSE: Deny; The July 16, 1997 Agreement as referenced in the City of Springfield's Petition does not refer to the subject jail as the "City-County jail" and the City of Springfield's reference to the jail facility as the "City-County Jail" is false and misleading.

Further responding:

1) **To the extent the Agreement restricts, limits or changes the statutory duties of the Greene County Sheriff, or restricts, releases or changes the elected Greene County Sheriff's police powers or it is void and unenforceable.**

2) **§70.220 RSMo provides in pertinent part (*emphasis added*) that: "Any municipality or political subdivision of this state, as herein defined, may contract and cooperate with any other municipality or political subdivision, or with an elective or appointive official thereof, or with a duly authorized agency of the United States, or of this state, or with other states or their municipalities or political subdivisions, or with any private person, firm, association or corporation, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service; *provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision…."***

   Pursuant to §70.220 RSMo it must be within the power of the County and City to enter into an agreement regarding the subject matter of the agreement itself. It must also be within the Sheriff's power as agent of the County to enter into a contract. (§432.070 RSMo). Neither Sheriff Arnott, nor any former Sheriff of

Greene County has the statutory authority to enter into an agreement regarding the distribution of tax money. §70.220.4 RSMo authorizes only certain counties and cities to enter into an agreement regarding the distribution of tax money; it does not authorize a sheriff to enter into such agreement, and therefore, the Agreement would be void and unenforceable as to any Greene County Sheriff.

3) **The 1997 Agreement states that "The County shall operate and staff the justice center and screening facility from the proceeds of the law enforcement sales tax." (Agreement, ¶4). Neither the City of Springfield nor the County has the power to operate or direct the operation of the subject jail; that duty expressly belongs with the county sheriff. (See Exhibit 1, §221.020 RSMo). To the extent the 1997 Agreement states Greene County will operate the jail; it is beyond the scope of the powers of the Sheriff, City or County, and therefore, that portion of the Agreement which requires the County to operate the jail, is void and unenforceable.**

4) **The Missouri Constitution Article 6, § 16 allows for the "Cooperation by local governments with other governmental units" and states: "Any municipality or political subdivision of this state may contract and cooperate with other municipalities or political subdivisions thereof, or with other states or their municipalities or political subdivisions, or with the United States, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service, in the manner provided by law." This Constitutional provision does not allow for a sheriff to contract with a county or city, or anyone else, for the operation of the jail. Moreover, §70.220 RSMo is clear that to the extent a county and city enter into an agreement, such as the 1997 Agreement, the subject of the agreement must be within their scope of the powers. To the extent the County and City contracted that the County would "operate" the jail, such agreement was beyond their power to make, and is void and unconstitutional. Moreover, to the extent that the Agreement calls for the duly elected sheriff of Greene County to contract away the sheriff's police powers and duty to operate and oversee prisoners and the jail, it is also void.**

5) **No Greene County Sheriff has the authority to enter into an agreement which would violate Missouri statutory requirements or interferes with his police powers and any agreement that violates statutory authority is unenforceable. *Hillside Securities Co. v. Minter*, 254 S.W. 188, 193 (Mo. 1923) (affirming taxpayer injunction prohibiting county from paying a contractor for construction work which was performed in violation of statutory requirements). It is Sheriff Arnott's statutory duty to operate the jail (see §221.020 RSMo, Exhibit 1) and there is no statutory authority to release him from that duty or allow him to contract away that duty. In addition, it is Sheriff Arnott's mandated statutorily duty to receive into custody federal and state prisoners. (See Exhibit 2, §221.270 RSMo re federal prisoners; see also Exhibit 3 §221.040 RSMo re state prisoners); however, Sheriff Arnott is only statutorily required to accept municipal prisoners when space is available, (see Exibit 4, §479.180 RSMo regarding municipal prisoners). Consequently, contracting contrary to**

these statutory mandates would violate Missouri law and the contract requirements regarding those issues would be void and unenforceable.

8. Section 70.230 RSMo states in pertinent part, "any municipality may exercise the power referred to in Section 70.220 by ordinance duly enacted or, if a county, then by order of the county commission duly made and entered… which shall provide the terms agreed upon by the contracting parties to such contract or cooperative action."

RESPONSE: Deny that § 70.230 authorizes any Greene County Sheriff to enter into an Agreement with the City and County such as the 1997 Agreement.

9. Section 70.220(4) RSMo states, "In the event an agreement for the distribution of tax revenues is entered into between a county of the first classification without a charter form of government and a constitutional charter city with a population of more than one hundred forty thousand that is located in said county prior to a vote to authorize the imposition of such tax, then all revenue received from such tax shall be distributed in accordance with said Agreement for so long as the tax remains in effect or until the Agreement is modified by mutual agreement of the parties."

RESPONSE: Admit that §70.220(4) RSMo states as cited, but deny that this statute authorizes Sheriff Arnott or any Greene County Sheriff, to enter into an agreement for the distribution of tax proceeds; therefore, the requirement in the Agreement that tax proceeds be divided with the City would not apply to any duty or consideration involving the Sheriff. To the extent any Greene County Sheriff is involved in an agreement for the division of taxes, the provision is void and unenforceable because the sheriff has not power to contract for collection or division of tax money; but only the City and County have such authority and to the extent the Agreement is interpreted otherwise, it is void and unenforceable as to any past, current or future elected Greene County Sheriff.

10. Greene County, Missouri, was and is such a county as described in Section 70.220(4), RSMo, and set out in the preceding Paragraph 9 above.

RESPONSE: Sheriff Arnott neither admits nor denies this allegation as it makes no allegation as to Sheriff Arnott; but to the extent an allegation is made as to a Sheriff's authority to enter into an Agreement as to collection or distribution of taxes, such allegation is denied. In addition, to the extent the City is interpreting the power of Greene County to contract for the use of tax money for the County itself to operate a jail as stated in the 1997 Agreement, such interpretation is a violation of Missouri statutes, the elected sheriff's police powers, duties and responsibilities regarding jail operation and is void and unenforceable.

11. The Plaintiff City of Springfield, Missouri, also was and is such a city as described in Section 70.220(4), RSMo, and set out in the preceding Paragraph 9 above.

RESPONSE: Sheriff Arnott has insufficient information as to the truth of the allegation contained in paragraph 11, and therefore denies the same.

12. On November 4, 1997, the citizens of Greene County approved the imposition of a law enforcement sales tax to fund, among several items, the City-County jail.

RESPONSE: Deny that there is any such facility known as the "City-County jail;" further answering, the citizens of Greene County approved ballot language regarding a sales tax for the "purpose of providing additional law enforcement personnel, funding law enforcement related capital projects and other law enforcement services throughout the County…;" this language did not approve a "City-County jail."

13. Pursuant to the Agreement, dated July 16, 1997, the parties agreed that the jail would accept and house, with limited exceptions, all Springfield Municipal prisoners and that the funding for housing the Springfield Municipal prisoners would consist solely of the proceeds collected from the tax approved by Greene County voters on November 4, 1997.

RESPONSE: Deny. The Agreement does not state as represented by the City and the City's statements are misleading. The 1997 Agreement actually says that the "Sheriff shall accept all municipal, county or federal prisoners brought to the jail, in accordance with established Policy and Procedures." Sheriff Arnott has set policies and procedures for accepting municipal prisoners pursuant to the Agreement and Missouri law. (See Inmate Admissions Procedures attached hereto as Exhibit 5). Further answering, the City's interpretation would violate the Sheriff's statutory authority, duties and the police powers vested in a county sheriff by the legislature regarding operation of the jail.

14. Following passage of the aforesaid law enforcement sales tax, the City-County jail was constructed and completed.

RESPONSE: Deny that there is any such facility known as the "City-County jail," and therefore, deny that such jail was constructed or completed.

15. Prior to the completion of the City-County jail, the Plaintiff City of Springfield maintained its own municipal detention facility, and also housed prisoners in the Greene County Jail pursuant to agreements with the Greene County Sheriff, calling for a daily per-prisoner charge.

RESPONSE: Deny that there is any such facility known as the "City-County jail;" further responding, pursuant to the sheriff's policy at the time, the City also paid per-prisoner charges after the 1997 Agreement. (See Exhibit 6, Payment W).

16. In accordance with the terms of the Agreement, the City-County jail was and is operated by the Greene County Sheriff, and accepted City of Springfield sentenced prisoners and pretrial detainees without charge until April 3, 2015.

RESPONSE: Deny that there is any such facility known as the "City-County jail;" further answering, deny that the Greene County Sheriff accepted City prisoners under the Agreement without charge until April 13, 2015. Pursuant to the sheriff's

policy at the time, the City reimbursed defendants for City prisoner's for a period of time after the Agreement was executed. (See Payment Worksheet Exhibit 6).

17. The duty of the Defendant Sheriff and Commissioners to accept and house municipal prisoners is independent of and is not conditioned upon the total number of prisoners accepted by the Sheriff and housed in the City-County jail.

RESPONSE: Deny that there is any such facility known as the "City-County jail;" further answering, the allegation contained in paragraph 17 calls for a legal conclusion and the City's interpretation calls for violation of Missouri statutory requirements and duties of the Greene County Sheriff; and moreover the Greene County Commission has no authority or power to accept and house prisoners, including, but not limited to, City prisoners, and to the extent the Agreement calls for the County to operate the jail, it is void and unenforceable and in violation of §479.180 RSMo. (See §479.180 RSMo, as Exhibit 4; § 229.020 RSMo., Exhibit 1).

18. In or around 2000, Greene County and the Sheriff entered into an agreement with the federal government wherein the City-County jail would dedicate 35 beds for housing federal prisoners.

RESPONSE: Deny that there is any such facility known as the "City-County jail;" further responding, this allegation is denied because it does not accurately state the terms of the agreement with the federal government, and a county sheriff has a statutory duty to accept federal prisoners and that statutory duty is not limited by a number established in the statute.

19. The Plaintiff City was not a party to that aforesaid agreement with the federal government.

RESPONSE: Deny. The City of Springfield understood and consented in the 1997 Agreement that the Greene County Sheriff would be accepting "federal" prisoners pursuant to the Policies and Procedures established by the Sheriff.

20. Despite the Defendants agreeing with the federal government to only house up to 35 federal prisoners, the City-County jail has routinely housed over 100 federal prisoners.

RESPONSE: Deny that there is any such facility known as the "City-County jail;" further answering, this allegation is denied because it does not adequately state the terms of the agreement with the federal government; and the City of Springfield understood and consented in the subject Agreement to the Greene County Sheriff accepting "federal" prisoners pursuant to Policies and Procedures established by the Sheriff; there was no limitation in the Agreement on the number of federal prisoners the Sheriff would accept and the Greene County Sheriff has had, and continues to have, the statutory duty to accept federal prisoners and that statutory duty is not limited by a number established in the statute. (See §221.270 RSMo, Exhibit 2).

21. Plaintiff states that there is no amendment to the 1997 Agreement allowing the housing of either federal inmates or prisoners from any jurisdiction outside of Greene County, to the exclusion of prisoners from the City of Springfield.

RESPONSE: Move to strike as a misrepresentation to the Court and misleading. Within the Agreement itself, the City of Springfield understood and agreed that the Greene County Sheriff would accept "federal" prisoners pursuant to the Policies and Procedures established by the Sheriff. Further answering, a Sheriff does not have the statutory authority to enter into an agreement or undertake actions which are in violation of Missouri statutory law. *Hillside Securities Co. v. Minter*, 254 S.W. 188, 193 (Mo. 1923). Since limiting federal prisoners would violate Missouri statute, such interpretation of the Agreement would be void.

Further answering, it is Sheriff Arnott's statutory duty to operate the jail in a safe manner (§221.020 RSMo.) and to accept federal prisoners, (§221.270 RSMo.) and there is no statutory authority to release him from that duty. Sheriff Arnott has developed Policies and Procedures to allow him to fulfill his obligations under the Agreement and Missouri statutory mandates. (See Exhibit 5 attached hereto, Inmate Admissions Procedures).

22. The Defendant Sheriff has in the past and currently houses prisoners in his custody in facilities outside the City-County jail.

RESPONSE: Deny that there is any such facility known as the "City-County jail;" further answering, Sheriff Arnott admits that the prisoner count at the jail facility does exceed the capacity count of the jail on a regular bases and in order to safety and securely operate the jail, prisoners are housed in other facilities pursuant to agreements with sheriffs of other counties and defendants are responsible for paying the per diem charge for housing those prisoners out of Greene County, as well as the cost of transporting those prisoners to and from Greene County.

23. The Defendant Sheriff pays the housing costs for such prisoners kept in custody outside the City-County jail from his budget and law enforcement sales tax revenues received.

RESPONSE: Deny that there is any such facility known as the "City-County jail;" further answering, Sheriff Arnott is not in control of the law enforcement sales tax revenues or its expenditure, nor Greene County budget approval and denies the allegations in paragraph 23.

24. On or about August 31, 2009, Defendant Arnott contacted City Manager Greg Burris indicating his intent to begin to charge the City a per diem rate of $45.00 per day for each Springfield Municipal prisoner held in the City-County jail.

RESPONSE: Deny that there is any such facility known as the "City-County jail;" further answering, in 2009 Sheriff Arnott had recently taken office and was undertaking a review and update of the jail policies and procedures.

25. This action was in clear violation of the Agreement, which provides that the "jail" shall be operated from the proceeds of the law enforcement sales tax.

RESPONSE: Move to Strike paragraph 25 as vague and ambiguous as to the City's reference to "This action" as referred to in paragraph 25 as the allegation does not describe the "action" which the City states was in "clear violation of the Agreement."

Further answering, the Agreement does not state that the provision of the prisoners' food, clothing and sustenance will be at no cost to the City, and in fact, after the 1997 Agreement was executed by the City, the City reimbursed for inmate housing costs for a period of time. The Policies and Procedures enacted by Sheriff Arnott pursuant to his mandatory statutory duty and his duties under the 1997 Agreement allows him to seek payment for housing of municipal prisoners and the 1997 Agreement does not prohibit such charges and to the extent it prohibits such charges it violates § 479.180 RSMo. (§479.180 RSMo, Exhibit 5).

26. After negotiation between the parties, the City and Sheriff reached an agreement on or about September 30, 2009, a copy of which is attached hereto as Exhibit B.

RESPONSE: Admit Sheriff Arnott established a new jail admission procedure in 2009, but further responding, the September 30, 2009 agreement is irrelevant as it has expired by its terms and a new procedure has been put into place. (See Exhibit 5, Inmate Admissions Procedures).

27. Although limited in time, the Memoranda restates the obligation of the Sheriff to accept without charge Springfield Municipal prisoners in the City-County jail.

RESPONSE: Deny that there is any such facility known as the "City-County jail;" further responding, the 1997 Agreement by its terms allows the Sheriff to set the Policies and Procedures for accepting municipal inmates and does not require the acceptance of the inmates to be at no cost to the City. Moreover, the duty of the County to provide staff and an operational facility does not affect the duty of Sheriff Arnott to provide for the health and welfare of prisoners, including but not limited to housing, safekeeping, medical evaluation, transportation and sustenance of all prisoners; nor does the County's duties supersede §221.270 RSMo, §221.040 RSMo and §479.180 RSMo, and specifically the Sheriff's duty to accept federal and state prisoners and operate the jail and keep prisoners in a safe and secure environment.

28. Said Memoranda verifies the intention and belief of the City and the Sheriff that the 1997 Agreement still controls the rights and duties of the parties with respect to the City-County jail.

RESPONSE: Deny that there is any such facility known as the "City-County jail;" further responding, Sheriff Arnott had the authority under the 1997 Agreement to establish the Policies and Procedures by which the "municipal, county or federal prisoners [were to be] brought to the jail…." Sheriff Arnott after first taking office in 2009 addressed the issue and entered into a limited duration agreement in order

to further assess the situation. Once it was verified that there was a capacity issue in the jail, Sheriff Arnott took immediate steps to remedy the situation which lead to new Policies and Procedures for accepting municipal prisoners pursuant to the Agreement and §479.180 RSMo.

29. On April 1, 2015, the Defendant Sheriff Arnott delivered a letter to Springfield Chief of Police Paul Williams, declaring his intent to cease receiving any municipal prisoners in the City-County jail, including any City of Springfield Municipal prisoners, commencing April 3, 2015, at 5:00 p.m. A copy of this letter is attached to this Petition as Exhibit C and is incorporated by reference herein.

RESPONSE: Deny that there is any such facility known as the "City-County jail;" further answering, it came to Sheriff Arnott's attention shortly before the April 1, 2015 letter that there was a capacity issue in the jail; therefore, pursuant to the 1997 Agreement, as well as §479.180 RSMo, Sheriff Arnott had the right and duty to establish the Policies and Procedures by which he accepted municipal prisoners into the jail.

30. On April 2, 2015, Springfield Mayor Bob Stephens responded by letter to the aforesaid April 1 correspondence, to Defendant Sheriff and the Defendant Commissioners, proposing that Sheriff Arnott continue to accept Springfield Municipal prisoners while the parties attempt to work out the jail capacity issues alleged by Defendant Sheriff Arnott. A copy of this letter is attached to this Petition as Exhibit D and is incorporated by reference herein.

RESPONSE: Admit that Springfield Mayor Bob Stephens in his April 2, 2015 letter requested that "Greene County" continue to accept their municipal prisoners, but also threatened that the "*County* work to develop a more workable solution to this long-standing problem *before the City would pursue any legal recourse*…." The Mayor wanted "the County" to propose "possible solutions within 90 days." Mayor Stephens did not offer the City's assistance to the "County" to find a workable solution, but only threatened potential future litigation.

31. On April 2, 2015, Defendant Sheriff Arnott responded by letter to Mayor Stephens, refusing the Mayor's request that he continue to accept municipal prisoners after April 3, 2015. A copy of this letter is attached to this Petition as Exhibit E and is incorporated by reference herein.

RESPONSE: Deny that Sheriff Arnott refused Mayor Stephens request, but instead Sheriff Arnott stated that it was impossible for the jail to accept municipal prisoners because of capacity issues; however, Sheriff Arnott continued to accept City prisoners who were brought in on Federal or State charges.

32. At 5:00 p.m. on April 3, 2015, the Defendant Sheriff Arnott ceased accepting any Springfield Municipal prisoners at the City-County jail facility.

RESPONSE: Deny that there is any such facility known as the "City-County jail;" further responding; for a period of time Sheriff Arnott stopped taking municipal

prisoners due to safety and capacity concerns voiced by the City of Springfield Fire Marshal; however, Sheriff Arnott continued to accept municipal prisoners charged with State violations; and Sheriff Arnott has started taking municipal prisoners pursuant to developed Policies and Procedures and §479.180 RSMo. (See Policies and Procedures, Exhibit 5).

33. At the time the Defendant Sheriff ceased accepting municipal prisoners, the Defendant Sheriff did not know the actual prisoner occupancy capacity of the City-County jail facility.

RESPONSE: Deny: at the time Sheriff Arnott stopped accepting municipal prisoners Sheriff Arnott had a report from the City of Springfield's Fire Marshall regarding his inspection of the jail facility and the conditions and configuration of the inmate housing units. In the report, referring to the City of Springfield's adopted International Fire Code (IFC) 2012 edition, it was determined by the Springfield Fire Marshal that the jail exceeded the maximum occupancy for its current condition; thereafter, Sheriff Arnott ceased taking municipal prisoners and started taking other prisoners to facilities in other counties.

34. No new Springfield Municipal prisoners were accepted at the City-County jail from April 3, 2015, until the events described below.

RESPONSE: Deny that there is any such facility known as the "City-County jail;" further answering, Sheriff Arnott stopped taking municipal prisoners from any Missouri State municipality until a construction project was completed to remedy the City of Springfield's Fire Marshal's concerns regarding the City of Springfield's code regarding building ingress and egress.

35. Since April 3, 2015, the Defendant, Sheriff Arnott, has accepted increasing numbers of federal prisoners in the City-County jail, at times as many as 130 federal prisoners.

RESPONSE: Deny that there is any such facility known as the "City-County jail;" further answering, Sheriff Arnott is mandated by Missouri statute §221.270 RSMo to accept federal prisoners and by §221.040 RSMo to accept State prisoners, without limitation as to the number of inmates, but is authorized to accept municipal prisoners only when space is available. (See §479.180 RSMo). Sheriff Arnott has developed Policies and Procedures to comply with these statutory requirements and the 1997 Agreement. (See Exhibit 5).

36. Plaintiff has repeatedly demanded that the Sheriff perform as required under the 1997 Agreement, to accept "all municipal ... prisoners" and the Sheriff has refused to accept same instead choosing to house federal prisoners.

RESPONSE: Move to Strike: the City, by its omission of the full texted of the sentence referred to in paragraph 36 misrepresents the meaning and context of the provision; instead, the applicable sentence in the 1997 Agreement referred to by the City states: "The Sheriff shall accept all municipal, county, or federal prisoners brought to the jail, in accordance with established Policy and Procedures;" and

therefore, the Sheriff complied with the Agreement and his statutory duties (See 1997 Agreement, ¶4; see also current Inmate Admissions Policies, Exhibit 5).

37. On July 8, 2010, at approximately 3 p.m., the Sheriff announced he would open up 5 beds for municipal prisoners. By 8 p.m. that evening, the Sheriff had closed the jail.

RESPONSE: Admit that Sheriff Arnott made such an announcement on July 8, 2010 (sic), based on the fact that the construction project to comply with City fire code requirements had been complete; however, the available space in the jail was filed by 8 p.m. that date; Sheriff Arnott denies that he "closed" the jail, but accepted prisoners pursuant to the established Policies and Procedures. (See Exhibit 5).

38. On the morning of July 9, the Sheriff contacted Springfield, Missouri, Chief of Police indicating he would be moving prisoners out of the jail, freeing up to 50 beds, however the jail was closed again by 6 a.m. on July 10, 2015, after accepting only 5 prisoners from the Springfield Police Department in a five hour period.

RESPONSE: Deny: Sheriff Arnott told Springfield City Police Chief Williams that he had relocated 50 prisoners to other facilities because the jail had reached the maximum capacity of 601 and advised Chief Williams that the reason he had moved approximately 50 inmates was so that beds would be available for additional inmates.

39. On the afternoon of July 10, 2015, the Sheriff announced he would pay for up to 25 beds, in Henry County, Missouri, for municipal prisoners. However, transportation to and from there would be at the time and expense of the booking municipality.

RESPONSE: Admit that the Sheriff offered the City to pay for up to 25 beds in Henry County, Missouri in an attempt to have time to further discuss the jail capacity issues and possible solutions; however, instead of working with Sheriff Arnott to develop a solution, the City of Springfield filed this suit.

COUNT I – DECLARATORY JUDGMENT

40. Plaintiff hereby realleges and incorporates by reference in their entirety each allegation set forth in paragraphs 1 through 39 set out hereinabove, inclusive.

RESPONSE: Sheriff Arnott adopts herein by reference, pursuant to Missouri Rules of Civil Procedure, Rule 55.12, all of his answers contained in paragraphs 1-39 of Plaintiff's Petition.

41. A controversy exists between the parties as follows:

a. Plaintiff, Sheriff and Commissioners entered into the Agreement, dated July 16, 1997, wherein each party accepted duties with regard to the City-County jail.

RESPONSE: Deny that there is any such facility known as the "City-County jail;" further, Sheriff Arnott denies the remaining allegations contained in paragraph 41.

b. In the Agreement, the parties agreed that the jail would accept and house all Springfield Municipal prisoners and that the funding for housing the Springfield Municipal prisoners would consist solely of the proceeds collected from the tax approved by Greene County voters on November 4, 1997.

RESPONSE: Deny

c. The City-County jail facility is described in the Agreement as "a consolidated county-municipal justice center".

RESPONSE: Deny that there is any such facility known as the "City-County jail;" further, Sheriff Arnott denies the remaining allegations contained in paragraph 41(c).

d. On April 3, 2015, the Sheriff ceased accepting City of Springfield Municipal prisoners at the City-County jail.

RESPONSE: Deny that there is any such facility known as the "City-County jail;" further, Sheriff Arnott denies the remaining allegations contained in paragraph 41(d).

e. The Sheriff does not have authority to unilaterally modify the Agreement entered into by the Plaintiff, Sheriff and Commissioners.

RESPONSE: Deny: any agreement that violates the Missouri Constitution or statutory authority is void and to the extent the 1997 Agreement limits the Sheriff's duty to accept federal and state prisoners, it is void and unenforceable. Further responding, the 1997 Agreement specifically authorizes the Sheriff to set Policies and Procedures for accepting municipal prisoners and does not prevent the Sheriff from charging for those prisoners.

f. Section 70.220(4) of the Revised Missouri Statutes states, "In the event an agreement for the distribution of tax revenues is entered into between a county of the first classification without a charter form of government and a constitutional charter city with a population of more than one hundred forty thousand that is located in said county prior to a vote to authorize the imposition of such tax, then all revenue received from such tax shall be distributed in accordance with said Agreement for so long as the tax remains in effect or until the Agreement is modified by mutual agreement of the parties."

RESPONSE: Admit that the statute states as recited, but denies that §70.220(4) gives Sheriff Arnott the power to enter into an agreement for the collection or expenditure of tax revenue and that by its own terms, this section applies to certain first class counties and charter cities, however, it does not apply to an elected official such as Sheriff Arnott; further answering, Sheriff Arnott denies that this section applied to any provision in the 1997 Agreement which affects Sheriff Arnott's duties within the Agreement. Finally, §70.220 RSMo violates the Missouri Constitution.

g. The Agreement at issue was entered into by the Plaintiff, Sheriff and Commissioners on or about July 16, 1997. The law enforcement sales tax was approved by the people on or about November 4, 1997.

RESPONSE: Deny that Sheriff Arnott entered into this Agreement or that the Sheriff in 1997 had the authority to enter into this or any agreement that would violation Missouri statutory authority or could limit a Sheriff's statutory duties or police power.

h. There has been no modification of the Agreement by mutual agreement of the parties, and the terms of the same have been upheld by all parties to this lawsuit since its inception in 1997, until April 3, 2015.

RESPONSE: Deny.

i. Section 479.180, RSMo, cited by the Defendant Sheriff Arnott in his correspondence of April 2, 2015, as legal justification for his refusal to accept municipal prisoners does not apply to the consolidated City-County jail facility agreed to by the parties in the Inter-governmental Agreement.

RESPONSE: Deny that there is any such facility known as the "City-County jail;" further answering, Sheriff Arnott denies the City's legal conclusion that §479.180 RSMo does not apply to the Sheriff's duty to accept municipal prisoners is correct, and also affirmatively states that the 1997 Agreement itself allows for the Sheriff to set Policies and Procedures for acceptance of municipal prisoners, and that the Agreement does not prohibit the Sheriff from charging for municipal prisoners per the terms of the Agreement; further answering, to the extent the Agreement violates or limits the Sheriff's police powers or duties to operate the jail, it is void and unenforceable.

j. Defendant Sheriff has no legal authority to refuse to accept Springfield Municipal prisoners meeting the conditions set out in the Agreement.

RESPONSE: Deny

k. The Defendant Sheriff is obligated under the terms of the Agreement to accept all Springfield Municipal prisoners meeting the eligibility requirements contained in the Agreement.

RESPONSE: Deny Sheriff Arnott denies the City's legal conclusion that he is obligated to accept Springfield Municipal prisoners in contradiction of §479.180 RSMo. or the specific terms of 1997 Agreement which allows the Sheriff to set the Policies and Procedures for acceptance of municipal prisoners and does not prohibit Sheriff Arnott from charging for prisoner care.

l. The obligations of the Defendant Sheriff and Commissioners to accept all Springfield Municipal prisoners under the Agreement are not severable from the provisions of the Agreement dividing the tax proceeds of the law enforcement tax among the respective parties.

RESPONSE: Deny: Neither the City nor the Commissioners have no statutory authority to direct the housing of prisoners in Greene County. (See §221.020 RSMo). In addition, Sheriff Arnott does not have the statutory authority to direct the collection or distribution of tax money. Also, Sheriff Arnott has the statutory authority and duty to house federal and state prisoners without limitation to numbers of prisoners to be accepted and no agreement can limit that duty. Therefore, to the extent the Agreement requiring Sheriff Arnott to house prisoners conflicts with those statutes, the Agreement provisions are unenforceable. Moreover, to Sheriff Arnott's knowledge and believe, the provision in the Agreement dealing with tax distribution has been fulfilled by the County and is therefore, binding on the City. Moreover, the 1997 Agreement itself does not prohibit the Sheriff from charging for care of municipal prisoners regarding, but not limited to housing, safekeeping, medical evaluation, transportation and sustenance.

42. The Defendant Sheriff, by refusing to accept Springfield Municipal prisoners as described hereinabove, has committed a breach of the Agreement.

RESPONSE: Deny

43. This breach of the Agreement by the Defendant Sheriff is substantial and ongoing.

RESPONSE: Deny

44. By reason of the foregoing, a declaratory judgment is authorized under Missouri Supreme Court Rule 87.02, and is both necessary and proper in order to set forth and determine the rights, obligations and liabilities that exist among the parties to this matter.

RESPONSE: Move to Strike as this allegation calls for a legal conclusion; and therefore, deny same.

45. The proper construction of the terms of the Agreement is to require the Defendant Sheriff and Commissioners to accept all Springfield Municipal prisoners into custody meeting the eligibility terms of the Agreement.

RESPONSE: Deny for all of the reasons stated above.

46. Alternatively, to construe the provisions of the Agreement and the law enforcement tax to allow the Sheriff to receive sales tax money to accept and house the Springfield Municipal prisoners, and then to allow Defendant Sheriff Arnott to refuse to accept the Springfield Municipal prisoners, would constitute an invalid and unconstitutional use of designated law enforcement sales tax revenue.

RESPONSE: Deny that Sheriff Arnott directly receives any sales tax money; in addition, there is a question as to the extent of the City's use of their portion of the sales tax funds.

WHEREFORE, Plaintiffs respectfully request the Court enter judgment determining the rights and obligations of the parties herein pursuant to, and as directed by the vote of the people in the passing of the law enforcement tax of 1997, the Agreement, and the past practice and procedure of the relationship between the law enforcement agencies of the City and the County, and awarding the Plaintiff their costs herein incurred and for such other and further relief as may be deemed appropriate under the circumstances.

RESPONSE TO THE WHEREFORE ALLEGATIONS: Denied

COUNT II
PRELIMINARY AND PERMANENT INJUNCTION

47. Plaintiff hereby realleges and incorporates by reference in their entirety each allegation set forth in paragraphs 1 through 46 set out hereinabove, inclusive.

RESPONSE: Sheriff Arnott adopts herein by reference, pursuant to Missouri Rules of Civil Procedure, Rule 55.12, all of his answers contained in paragraphs 1-46 of Plaintiff's Petition.

48. Plaintiff as a Municipality charged with protection of its citizens, is faced with immediate and irreparable injury, loss or damage in the absence of relief from this Court, as the City following the construction of the City-County jail closed its own municipal facility in accord with the 1997 Agreement.

RESPONSE: Deny that there is any such facility known as the "City-County jail;" further responding, deny that the City will face immediate and irreparable injury because upon information and believe, other local counties have offered the City of Springfield the use of their jail facilities to house municipal prisoners; therefore, there must not be an urgency to house City prisoners since the City turned those offers down.

49. On April 3, 2015, the Defendant Sheriff committed a breach of the said Agreement by refusing to accept any Springfield Municipal prisoners.

RESPONSE: Deny for all of the reasons stated above.

50. That pursuant to the terms of the Agreement, Defendant Sheriff cannot unilaterally modify the terms of the Agreement or refuse to accept Springfield Municipal prisoners.

RESPONSE: Deny for all of the reasons stated above.

51. Due to the inability of the City to find or obtain suitable housing for Springfield Municipal prisoners, the Plaintiff has been forced to allow Springfield Municipal prisoners to return to the street all to the detriment of the community.

RESPONSE: Deny; and further answering, upon information and belief the City has been approached by at least one, if not more, local counties offering their

facilities to house the City's prisoners; which the City has rejected. Further answering,

52. Although the Agreement for the Sheriff to house Springfield Municipal prisoners at the jail has been honored since its inception, the Plaintiff is without an adequate remedy or available alternative to the jail, should the Sheriff be permitted to unilaterally modify the existing Agreement, as it closed its municipal jail in conjunction with the law enforcement sales tax and associated Agreement.

RESPONSE: Deny, and further answering, specifically denies that the City does not have an available alternative to the jail because upon information and belief the City has been approached by at least one, if not more, local counties offering their facilities to house the City's prisoners; which the City has rejected.

53. Plaintiff's remedy at law, for contractual breach, is inadequate and equitable relief should be granted, as during the pendency of the litigation the Sheriff will be in breach of the Agreement which leaves the City without a place to house their prisoners and would potentially leave the citizens of Springfield paying twice to house prisoners whose housing has already been paid for by the law enforcement sales tax, and accounted for in the Agreement.

RESPONSE: Deny for all the reasons stated above.

THEREFORE, the Plaintiff prays this Court to enter its order declaring the rights and obligations of the parties pursuant to the Agreement and underlying law enforcement sales tax, and for injunctive orders herein to enjoin the Sheriff and the Commissioners from unilaterally modifying the provisions of the Agreement, in contradiction to the law enforcement sales tax passed by the people. Plaintiff further requests that the court enter an order requiring the Sheriff to carry out his duty to provide housing for all Springfield Municipal prisoners pursuant to the Agreement and during the course of this litigation, for its costs herein incurred and for such other relief as the Court may deem just and appropriate under the circumstances.

RESPONSE TO THEREFORE (sic) CLAUSE: Deny

COUNT III

54. Plaintiff restates and realleges each and every allegation contained in paragraphs 1 through 53.

RESPONSE: Sheriff Arnott adopts herein by reference, pursuant to Missouri Rules of Civil Procedure, Rule 55.12, all of his answers contained in paragraphs 1-53 of Plaintiff's Petition.

55. As a result of the Agreement reached in 1997, and the subsequent construction of the City-County Jail the City of Springfield closed its municipal jail.

RESPONSE: Deny that there is any such facility known as the "City-County jail;" and further answering, states defendant is without sufficient information to admit or deny this allegation; and therefore denies same.

56. Defendant Sheriff Arnott has breached the Agreement signed by the respective governing bodies and approved by the voters in his complete refusal to accept any prisoners brought to the jail by the Springfield Police without payment, or under such terms and conditions that are contrary to the 1997 Agreement.

RESPONSE: Deny: The City misrepresents to the Court that the 1997 Agreement was "approved by the voters." Further answering, the City of Springfield's own allegations above admit that Sheriff Arnott has opened the jail from time to time to municipal prisoners since the completion of the jail facility construction process.

Further responding, for all of the reasons stated above, Sheriff Arnott is allowed by the Agreement to set the policies by which he accepts municipal prisoners and is statutorily bound to accept federal and state prisoners and keep them safe and secure and the 1997 Agreement cannot contradict those statutory mandates or Sheriff Arnott's police powers and duties.

57. The City is without an adequate remedy at law for damages, and has changed its position to its detriment by closing its detention facility.

RESPONSE: Deny: it is within defendant's information and belief that the City has been approached by at least one, if not more, local counties offering their facilities to house the City's prisoners; and therefore, there is a solution to the City's complaints and an adequate remedy at law; moreover, the City of Springfield is bound to mitigate its damages.

58. The City cannot reopen its facility as doing so would require appropriation, construction delays, interim expenses for the housing of prisoners, none of which should be incurred but for the refusal to perform under the 1997 Agreement by the Sheriff.

RESPONSE: Deny: it is within defendant's information and belief of Sheriff Arnott that the City has been approached by at least one, if not more, local counties offering their facilities to house the City's prisoners; and therefore, there is an adequate solution to the City's complaints and an adequate remedy at law and the City is bound to mitigate its damages and construction is not the City's only alternative.

WHEREFORE, the City moves this court to order specific performance of the 1997 Inter-governmental Agreement and require the Sheriff to accept

RESPONSE TO WHEREFORE CLAUSE: Deny.

AFFIRMATIVE DEFENSES

Defendant states the following affirmative defenses:

1. Defendant affirmatively states that Plaintiff City's Petition fails to state a claim upon which relief may be granted.

2. Defendant affirmatively states that the City's Petition fails to state a claim upon which relief may be granted, in that, the City has an adequate remedy at law.

3. Defendant affirmatively states that plaintiff has failed to mitigate its damages by failing to (a) house its prisoners in another facility; (b) ascertain the conditions of subject jail facility it intended to house its prisoners; (c) failing to comply with the Missouri Constitution or §70.220 RSMo before entering into the 1997 Agreement; and (d) by entering into the 1997 Agreement which was beyond the scope of the Sheriff, City or County's powers.

4. Defendant affirmatively states that any damages suffered by the City as a result of the circumstances pled in the City's Petition were the direct result of the City's failure to take reasonable action to prevent damages, and by such failure, plaintiff failed to mitigate its damages in that the City failed, and continues to fail, to house its prisoners in other available facilities, and by the City failing to ascertain the conditions of the jail, and in failing to comply with the Missouri Constitution or §70.220 RSMo before entering into the 1997 Agreement; and by entering into the 1997 Agreement which was beyond the scope of the Sheriff, City and/or County's powers.

5. Sheriff Arnott, as the duly elected sheriff of Greene County, has the statutory duty to "have the custody, rule, keeping and charge of the jail within his county, and of all the prisoners in such jail…." (§221.020 RSMo). In the situation presented here, §221.020 RSMo does not allow for the county, city or any other person or entity to have control of the jail; therefore, to the extent that the 1997 Agreement required the County to operate the jail, such requirement is void and unenforceable and is an attempt to contract away the Greene County Sheriff's police powers.

6. Paragraph 4 of the 1997 Agreement states that "the County shall operate and staff the justice center (*jail*) and screening facility from the proceeds of the law enforcement sales tax." (1997 Agreement, ¶4; emphasis added). Because this sentence requires the County to "operate and staff" the jail, it is void and unenforceable because the County does not have the power or authority to operate a jail., as that authority lies with the County sheriff.

7. It is the statutory duty of Sheriff Arnott to house prisoners of the United States and to keep them safe; this is a mandatory duty of the elected sheriff and the number of prisoners the Sheriff must house is not limited by statute. (§221.070 RSMo).

8. It is the statutory duty of Sheriff Arnott to house state prisoners and to keep them safe; this is a mandatory duty of the elected sheriff and the number of prisoners the Sheriff must house is not limited by statute. (§221.040 RSMo).

9. Sheriff Arnott has the statutory authority, but not a mandatory duty, to accept municipal prisoners in the jail if space for prisoners is available. (§479.180 RSMo).

10. If Sheriff Arnott accepts municipal prisoners in the jail, the "municipality shall pay the board of such prisoner." (§479.180 RSMo). The use of "shall" in a statute indicates a mandatory duty; therefore, a mandatory duty exists for the City to pay Sheriff Arnott for the municipal prisoners he houses. ("Generally, the word '**shall**' connotes a **mandatory duty**." *State ex rel. City of Blue Springs v. Rice,* 853 S.W.2d 918, 920 (Mo. banc 1993); (*emphasis in original*); citing *State ex rel. Scott v. Kirkpatrick,* 484 S.W.2d 161, 164 (Mo. banc 1972).

11. Sheriff Arnott possessed the right and duty to undertake the actions that he has taken regarding housing municipal prisoners pursuant to § 221.020 RSMo., § 221.270 RSMo., §221.040 RSMo., §479.180 RSMo.).

12. Defendant Arnott affirmatively states that the City is not entitled to recover on the causes of action plead as the 1997 Agreement is unenforceable to the extent that it exceeds the Sheriff, City or County's power to make, or to the extent it attempts to restrict or limit Sheriff Arnott's statutory duties or police powers.

13. Sheriff Arnott affirmatively states the City's actions in attempting to enforce the 1997 Agreement is in violation of, including, but not limited to, the Missouri Constitution, §221.020 RSMo, §221.040 RSMo, §479.180 RSMo, §70.220 RSMo, §432.070 RSMo and/or the police power doctrine.

14. The City is strictly liable for its own damages in that the City violated the Missouri Constitution, §221.020 RSMo, §221.040 RSMo, §479.180 RSMo, §70.220 RSMo, §432.070 and/or the police power doctrine.

15. The City is strictly liable for its own damages in that the City violated §432.070 RSMo which requires in pertinent part the following

> No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its power or be expressly authorized by law, nor unless such contract be made on a consideration wholly to be performed or executed subsequent to the making of the contract; and such contract, including this consideration, shall be in writing and dated when made, and shall be subscribed by the parties thereto, or their agents authorized by law in duly appointed and authorized in writing.

Pursuant to §432.070 RSMo the Sheriff, County and City was required to have the power to contract for each of the elements in the 1997 Agreement. The parties did not have the right to contract for the County to "operate or staff" a jail, in that Sheriff Arnott "shall have the custody, rule, keeping and charge of the jail." (§221.020 RSMo.).

16. The City is not entitled to the damages sought in its Petition for the following reasons:

a. The City's actions in entering into an agreement which violates statutory requirements is void and unenforceable.
b. The City should be estopped from asserting damages because the City has failed to pay per day charges for the prisoners it has housed in the jail in violation of §479.180 RSMo.
c. The County does not have the power to enter into an agreement to operate a jail.
d. The City should be estopped from asserting damages because the City in its pleading has failed to show it does not have an adequate remedy at law.

17. The City assumed the risk in closing its jail facility and expecting the Sheriff to accept municipal prisoners at no cost because of the following:

a. Section 479.180 RSMo does not require a sheriff to accept municipal prisoners even if the municipality does not have a "suitable and safe place of confinement."
b. The 1997 Agreement only requires the Sheriff to accept all of the municipal brought to the jail, in accordance with established policies and procedures. The Sheriffs of Greene County have before and since the 1997 Agreement developed established policies and procedures for housing municipal prisoners, and the City has paid the County for that prisoner housing; however, now the City refuses to do so even though §479.180 RSMo. and the current policy requires such payment.

18. City has failed to state a claim for which relief can be granted in that Plaintiff's interpretation of the 1997 Agreement would violate the requirementof Section 221.040.1, RSMo. that the Sheriff accept all state inmates, and would violate the requirement of Section 221.270, RSMo. That Sheriff accept all Federal inmates and is inconsistent with the requirement of Section 479.180, RSMo. that the sheriff is only to accept municipal inmates so long as space is available.

19. City has failed to state a claim for which relief can be granted in that Plaintiff's interpretation of the 1997 Agreement would violate the requirement of Section 221.020, RSMo. that the Sheriff has the custody, rule, keeping and charge of the jail within his county, and the requirement of Section 544.240, RSMo. that the Sheriff must safely keep all the prisoners in such jail, and is inconsistent with Plaintiff's interpretation of the 1997 Agreement as delegating control of the jail to the City and/or the County.

20. City has failed to state a claim for which relief can be granted because Plaintiff's interpretation of the 1997 Agreement is premised on irrelevant parole evidence, where City accuses the Greene County Sheriff of entering an agreement to accept federal inmates as if this could violate the 1997 Agreement.

21. City has failed to state a claim for which relief can be granted in that Plaintiff has alleged, inter alia, that Plaintiff has been forced to "return to the street" municipal inmates, despite the fact that every municipal ordinance violation is civil in nature, and despite the fact that any law enforcement officer with probable cause to suspect an individual of a "crime" can arrest them for violation of State law and commit them to the Greene County jail pursuant to §221.040 RSMo..

22. City has failed to state a claim for which relief can be granted in that the 1997 Agreement unambiguously conditions the acceptance of municipal inmates at the Greene County Justice Center on Policies and Procedures to be determined by the Greene County Sheriff.

23. To the extent the 1997 Agreement interferes with the elected Greene County Sheriff's police powers it is void and unenforceable.

24. Sheriff Arnott reserves the right to amend and add any additional affirmative defenses which are determined to apply to this action.

WHEREFORE, Sheriff Arnott, having answered the actions stated in the City's Petition, prays to be discharged therefrom at the City's costs and for payment of his costs expended herein.

COUNTERCLAIM
DIRECTED TO THE CITY OF SPRINGFIELD

COMES NOW, Sheriff Arnott, by and through counsel Keck & Austin, LLC and for his counterclaim against Plaintiff City of Springfield and states as follows:

1. Sheriff Arnott restates and re-alleges each and every response and factual assertion of Sheriff Arnott to the City's allegations contained in paragraphs 1 through 58 of the City's Petition.

2. The 1997 Agreement relied on by the City of Springfield does not

    a. require the Greene County Sheriff to accept municipal prisoners from the City with no limitation, but instead states that the "Sheriff shall accept all municipal, county or federal prisoners brought to the jail, in accordance with established Policy and Procedures." (Agreement, ¶4).

    b. require the policies and procedures to remain the same without change; furthermore, the policies and procedures contemplated in the agreement were "examples" of potential procedures only with the Sheriff to establish those procedures.

c. prohibit the Greene County Sheriff from charging the City for the care of the municipal prisoners, including but not limited to providing food, clothing, medical evaluation or other items of sustenance.

d. require the Greene County Sheriff to perform any act except to accept all municipal, county or federal prisoners brought to the jail, in accordance with established policies and procedures.

3. The 1997 Agreement is void to the extent it extends beyond the scope of authority of the parties to the Agreement. (See §70.220 and *Hillside Securities Co. v. Minter*, 254 S.W. 188, 193 (Mo. 1923).

4. The County does not have the power to operate a jail, or acceptance of municipal prisoners as required in the 1997 Agreement and that provision is therefore void.

5. The Greene County Sheriff cannot enter into an agreement in violation of his statutory authority and duties under Missouri law, including, but not limited to the Missouri Constitution, §221.020 RSMo, §221.270 RSMo, §221.040 RSMo and §479.180 RSMo.

6. On or about July 27, 1998 former Sheriff Pierpont entered into an agreement with the City of Springfield to house City prisoners in the Greene County Jail. (See 1998 Agreement attached hereto and incorporated herein by reference as Exhibit 7).

7. The 1998 Agreement expressly provides that the City would pay Forty Dollars ($40.00) per day per prisoner. (Exhibit 7, 1998 Agreement, ¶3).

8. On or about August 6, 1999 former Sheriff Pierpont entered into an agreement with the City of Springfield to house City prisoners in the Greene County Jail. (See 1999 Agreement attached hereto as Exhibit 8).

9. The 1999 Agreement expressly provides that the City will pay Forty-Five Dollars ($45.00) per day per prisoner. (Exhibit 8, 1999 Agreement, ¶3).

10. A 2000 housing agreement could not be located by Sheriff Arnott.

11. On or about July 3, 2001 former Sheriff Merritt entered into an agreement with the City of Springfield to house City prisoners in the Greene County Jail. (See 2001 Agreement attached hereto as Exhibit 9).

12. The 2001 Agreement expressly provides that the City will pay Forty-Five Dollars ($45.00) per day per prisoner. (Exhibit 9, 2001 Agreement, ¶3).

13. After taking office in 2009, Sheriff Arnott made an agreement with the City to accept municipal prisoners, at no cost to the City, for a period commencing on October 1, 2009 and ending on June 30, 2011 (Exhibit 10, 2009 Agreement).

14. Sheriff Arnott advised the City of Springfield Mayor by letter dated June 30, 2011 that he was reviewing the 2009 Agreement and was considering a per day charge for housing municipal prisoners since the 2009 Agreement was terminating by its terms.

15. Section 479.180 RSMo expressly provides that a municipality shall pay the board of such prisoner at the same rate until discharged by due process of law. The municipality shall pay the board of such prisoner at the same rate as may now or hereafter be allowed by law to such sheriff for the keeping of other prisoners in his custody.

16. Subsequent to Sheriff Arnott's June 30, 2011 letter to the City, the City has continually refused to pay the per day charge imposed by Sheriff Arnott for municipal prisoners.

17. Due to the City's breach of contract and violation of statute, Third-Party Plaintiff has suffered the following damages:

    a. at this time, $774,270.00 is due on the City's prisoner board bill from July 1, 2011 to April 5, 2015 and for each date thereafter that municipal prisoners were or are housed in the jail an additional $45.00 per day is owed from April 15, 2015 until judgment is entered herein; and

    b. medical charges incurred for any and all municipal prisoners for 5 years preceding filing of this Counterclaim;

    c. cost of video court appearances in the amount of $184,675.28; and

    d. pre-judgment interest for breach of contract pursuant to §408.020 RSMo.

WHEREFORE, Sheriff Arnott prays for the award of a judgment in the amount of $774,270.00, plus $45.00 per day, per inmate since April 15, 2015, and medical charges incurred for care of municipal prisoners for a 5 year period preceding filing of this Counterclaim, plus pre and post judgment interest against the City of Springfield, and for his costs herein expended and for such other and further relief as the Court deems appropriate.

KECK & AUSTIN, L.L.C.

By____/s/ Patricia A. Keck_____

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CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and accurate copy of the foregoing Answer and Counterclaim was electronically filed and contained on a disc and sent via U. S. mail this 14th day of August, 2015 to:

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/s/ Patricia A. Keck

_____

Patricia A. Keck