

**Intergovernmental
Agreement Between
Pima County and Cochise County and the Cochise County Superior Court
for
Restoration to Competency Services**

This Intergovernmental Agreement (IGA) is entered into by and between Pima County, (“PIMA”) and Cochise County (“COCHISE”), bodies politic and corporate of the State of Arizona, and the Cochise County Superior Court, collectively (“The Parties”) pursuant to A.R.S. § 11-952.

Recitals

- A. The Parties may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951, et seq.;
- B. COCHISE is authorized pursuant to A.R.S. § 13-4512 to designate its restoration to competency program and has so designated the PIMA restoration program;
- C. The Parties desire to enter into an agreement for the provision of restoration to competency services for COCHISE detainees;
- D. COCHISE detainees will remain under the jurisdiction of COCHISE County Superior Court for COCHISE criminal matters and will be assigned a defense attorney and prosecutor from COCHISE;
- E. This Agreement supersedes and voids all prior agreements regarding restoration to competency services between Pima County and Cochise County.

NOW, THEREFORE, the Parties, pursuant to the above, and in consideration of the matters and things hereinafter set forth, do mutually agree as follows:

Agreement

1. Purpose

1.1 The purpose of this IGA is to set forth the terms and conditions for admission of COCHISE’s detainees into PIMA’s Restoration to Competency Program (“RTC Program”) and the provision of restoration services to COCHISE detainees.

2. Scope

2.1 The PIMA in-custody “jail-based” program will be provided onsite at the Pima County Adult Detention Complex (PCADC) for adult detainees, 18 years of age and older, who are court-ordered by COCHISE to undergo restoration services. Pima County reserves the right to reject admission of any person for any reason, including but not limited to:

- a. Misdemeanor cases
- b. Medically unstable or imminent danger to self or others
- c. Remanded juveniles

2.2 PIMA will receive and detain COCHISE’s detainees after the detainee has been determined by the Superior Court of COCHISE through the Rule 11 process as not competent to stand trial, and who are medically and administratively fit to be housed at PIMA’s PCADC for the purpose of admitting the detainees into and providing the restoration services of the PIMA RTC Program.

2.3 An initial notification of intent to submit the referral packet must be emailed to Pima County Behavioral Health Administrator or designee prior to sending the completed packet for RTC Services by mail or courier service (FedEx preferred) to the address provided in the RTC referral checklist. COCHISE shall refer a COCHISE detainee into the PIMA RTC Program by submitting a full and complete packet as detailed in the Pima County RTC admission packet checklist, an example of which is attached as EXHIBIT A. Packets are not to contain staples, fasteners, tabs or flags, post-it type notes or other similar items. Packets must be submitted on 8 ½ x 11 white paper. Packets are to be submitted in the order of the checklist. Checklists may change periodically and PIMA will provide all updated/new versions of checklist to COCHISE. The referral package that is sent to PIMA must include the following items:

- a) The initial Application form, an example of which is attached as EXHIBIT B, completed and signed;
- b) Hardcopy of the detainee’s medical and behavioral health records from both jail and assigned outpatient provider, for use by the PCADC health care vendor;
- c) Hardcopy of the detainee’s jail records, for use by PCADC corrections staff in determining the suitability of the detainee for detention at PCADC and housing classification should the detainee be accepted into the PIMA RTC Program;
- d) Hardcopy of all Rule 11 paperwork (including, but not limited to, minute entries, court orders, evaluations and all materials presented to COCHISE Rule 11 providers for evaluation prior to the court order), for use by the PIMA RTC staff in determining if the detainee is a viable candidate for inclusion in the PIMA RTC Program;
- e) Administrative records to include such items as, i.e., booking information, jail phone records, video visits if recorded, administrative requests filed by the detainee, logs such as commissary requests, grievances, health services requests, and library use

requests, etc. will be provided to the PIMA RTC Program to the extent they are available to COCHISE jail medical providers and staff;

- f) A copy of the written court order remanding the detainee to the PIMA RTC Program from COCHISE is required for admission to the PIMA RTC Program (A.R.S. § 13-4510). The order must specify Pima County RTC Program.

If the defendant has an existing Title 36 Court Order Treatment (COT) order, COCHISE will seek an order changing venue to PIMA and adding forced medication language similar to “IT IS ORDERED that during the period of the patient’s incarceration, the mental health treatment provider (PCADC) shall have authority to administer the patient’s medications against his/her will and, if needed, have the assistance of a trained Corrections Officer”. A copy of the new order will be sent with the packet. Upon a detainee’s release from PIMA RTC, PIMA will, if appropriate, change venue to COCHISE. PIMA will, in a manner consistent with all applicable privacy laws, be responsive to requests from the COCHISE designated central point of contact regarding the status of COCHISE detainees (other than those that cannot be disclosed pursuant to Rule 11).

2.4 PIMA will determine whether to accept the detainee and notify COCHISE within three (3) business days after receiving the complete referral packet. PIMA reserves the right to refuse or return a COCHISE detainee for any reason, including but not limited to, reasons based upon the detainee’s medical condition or available bed capacity at the PCADC.

2.5 If the detainee is accepted, PIMA RTC staff shall coordinate with COCHISE and PCADC custody staff to arrange for COCHISE to deliver the detainee to PCADC. PIMA will house the COCHISE detainee based upon classification criteria established by PCADC and will provide for the onsite supervision and care and maintenance of COCHISE detainees, including medical care, behavioral health and dental care, except as otherwise provided in this IGA.

2.6 Upon arrival, and within seven (7) days, the PCADC medical services provider will conduct a psychiatric and medical evaluation. Medication will be prescribed based on previous history and current presentation and will be incorporated into a treatment plan. Medication will be offered to the defendant as prescribed. If, at any point, the defendant refuses medications and is not already under a T36 order for treatment, the PCADC medical services provider will notify PIMA RTC staff (who will in turn notify COCHISE) and an assessment of the appropriateness of a Court Ordered Evaluation (COE) process will be pursued by the PCADC medical provider. If the defendant is an appropriate candidate for COE, the Pima County medical provider will pursue that option utilizing the services of the Pima County Attorney’s Office. If not, PIMA will make a recommendation to COCHISE Superior Court about whether forced medications are indicated. COCHISE Superior Court will then determine if a Sell hearing must occur and will notify RTC as to whether the PCADC medical services/RTC psychiatrist will need to testify. If the COCHISE Superior Court holds a Sell hearing but determines that forced medications are not appropriate, or

determines that no Sell hearing is required, PIMA will not force medications and may not be able to proceed further in the restoration process.

2.7 In the event of a Sell hearing the PIMA psychiatrist will be prepared to answer questions concerning: 1. the duration and nature of recommended medication(s) and treatment; 2. any potential side effects from the medications together with an explanation of any available measures to reduce or mitigate the side effects; 3. his or her opinion as to whether the proposed course of treatment is medically necessary; 4. whether the proposed course of treatment would interfere or prevent the detainee's ability to assist in his or her defense; 5. the basis and rationale for involuntary medication administration; 6. the status of the detainee's current medical and psychiatric condition; and 7. the likelihood of the proposed course of treatment to restore the detainee's competency.

2.8 COCHISE must seek an order allowing PIMA RTC testimony to be provided telephonically. In the event PIMA RTC staff must appear in person for any court proceeding, COCHISE will, pursuant to Paragraph 3.3, compensate PIMA for all associated costs including, but not limited to, travel, and travel time, physician coverage for the PCADC, and the professional fees of the testifying physician.

2.9 If COCHISE or the COCHISE Superior Court decides, for any reason, to drop the charges against a PIMA RTC detainee, COCHISE will notify PIMA and will have the detainee transported back to COCHISE prior to a hearing to drop charges or release of the detainee from PIMA RTC Program, or, if determined by COCHISE to be appropriate, will have the detainee transported to a treatment facility. COCHISE Superior Court will not order detainees to be released from the PCADC prior to their transportation back to COCHISE or transfer to a treatment facility. In the event COCHISE Superior Court orders the release of a detainee from the PCADC prior to their transportation back to COCHISE or to a treatment facility, it is grounds for immediate termination of the IGA.

2.10 In the event a Sell hearing takes place, COCHISE Superior Court agrees, that in the event it determines the involuntary administration of medication is appropriate, that any orders it issues will adopt the PIMA RTC psychiatrist's treatment plan in accordance with US v Griffin. PIMA agrees that the PCADC medical services provider/RTC psychiatrist will create and submit to the court, a treatment plan which includes proposed medication(s) and dosages within the therapeutic range. If COCHISE sends PIMA a specific order for medications that runs contrary or is inconsistent with the PIMA psychiatrist's treatment plan, PIMA will notify COCHISE jail staff that the defendant will need to be picked up within two (2) business days and returned to COCHISE custody.

2.11 No COCHISE detainee will be eligible for admission to PIMA's out-of-custody restoration program.

2.12 The PIMA RTC Supervising Forensic Psychologist shall provide to COCHISE Superior Court status reports on the detainee's progress every sixty (60) days from date the detainee was admitted into the PIMA RTC program, as well as a Final Competency Report when the detainee has completed the PIMA RTC Program (A.R.S. § 13-4514 and § 13-4509). The date of admission of a detainee into the PIMA RTC Program will be the date the detainee is transferred to PCADC, having been accepted by PIMA into the RTC Program and having received the Court Order and Rule 11 paperwork.

2.13 If during the process of restoration PIMA RTC opines that the detainee requires an intensive inpatient restoration setting, PIMA RTC will notify COCHISE so that the COCHISE Superior Court will order placement of the detainee with an alternative provider. The detainee will otherwise remain at PCADC until a recommendation regarding competency is completed, unless otherwise ordered by COCHISE Superior Court secondary to time limitations on competency or charges, or PIMA determines the detainee is no longer appropriate for housing at PCADC as indicated above. COCHISE and PIMA agree to exchange such documentation as is required by RTC staff or COCHISE Superior Court in as expedient a fashion as reasonably possible. COCHISE is responsible for coordination of any related transportation costs.

2.14 COCHISE and its Superior Court must provide to PIMA's RTC program staff through a designated central point of contact necessary documentation such as minute entries and records of the relevant cases.

2.15 The PIMA RTC Program will request that COCHISE detainees sign release of information requests when admitted to the PIMA RTC program. These documents may include requests for release of information from hospitals, schools, the Social Security Administration, and/or other organizations from which the detainee has received services. If the detainee is unwilling or unable to sign such authorization, PIMA RTC Program will request that COCHISE County Attorney promptly move for an order compelling the release of necessary records. In the event PIMA RTC is unable to obtain necessary information due to the lack of a release or court order, the detainee, in PIMA RTC's sole discretion, may be returned to COCHISE.

2.16 Any non-English speaking or deaf detainees will need services provided by a contract interpreter who will provide services at the PIMA RTC Program. These costs will be billed to COCHISE under separate invoice at PIMA cost.

2.17 COCHISE shall, whenever medically and legally appropriate, initiate civil commitment proceedings (as set forth in Arizona Revised Statutes Title 36, Chapter 5) prior to transfer of a detainee to PIMA and shall be responsible for initiation of involuntary commitment or Title 14 proceedings whenever indicated, including upon completion of a detainee's stay in the PIMA RTC program if appropriate.

2.18 In the event that PIMA, in consultation with COCHISE and with the consent of the Cochise County Attorney, initiates involuntary commitment proceedings for a COCHISE detainee while in PIMA's RTC Program, COCHISE will reimburse to PIMA the costs associated with the proceedings as indicated in Paragraph 3.11.

2.19 COCHISE shall be responsible for payment of any offsite health services for COCHISE detainees housed at the PCADC. Offsite health services may include ambulance transportation, hospital inpatient or outpatient treatment or surgeries, specialty physician consults, or diagnostic services that PCADC does not provide onsite for its detainees. COCHISE must make arrangements with offsite service providers for payment, as PIMA will not accept or pay invoices on behalf of COCHISE. COCHISE shall be responsible for paying any expenses related to exceptional medical care including, but not limited to, "outlier medications" as defined by PIMA's prevailing contract with a health care provider that is providing services at PCADC. PIMA will forward to COCHISE a copy of the outlier medications list as it may change from time to time.

2.20 In the event a COCHISE detainee must be transported offsite for health services in an inpatient setting, PIMA shall provide, at no additional cost, security for the detainee for a maximum of eight hours following notification to COCHISE by PIMA, to allow COCHISE to make arrangements to either transport the detainee to a COCHISE provider or to send COCHISE officers to relieve PIMA officers at the local inpatient facility. Such security will be in the form of up to two Sheriff Deputies or Corrections Officers at PIMA's discretion based on the potential risk. Security provided by PIMA beyond eight hours from notification will be invoiced separately pursuant to Paragraph 3.3.

2.21 Non-emergent transportation of detainees to any Court or other locations, as ordered by the Superior Court in and for COCHISE, shall be COCHISE's responsibility.

2.22 The Parties agree that communication will occur between designated points of contact. Currently, the points of contact are Monalisa Burns for COCHISE with Eric Silverberg as backup and Danna Whiting for PIMA with Gary Fennema as backup. Any changes shall be submitted in writing.

2.23 When a detainee is discharged from the PIMA RTC Program, PIMA's supervising RTC Forensic Psychologist will create a discharge plan based on the specific needs of the detainee required to maintain competency and provide this to the COCHISE Superior Court, custody, medical and mental healthcare provider liaisons.

2.24 Neither the acceptance of the detainee into PIMA's RTC Program nor the acceptance of payment for services from COCHISE is a guarantee of restoration to competency for any specific detainee.

3. Financing

3.1 For each detainee admitted into the PIMA RTC Program through December 31, 2016, COCHISE will pay to PIMA a case rate of \$30,000 for detainee housing, routine onsite healthcare services, and costs of restoration services, regardless of duration, provided during the routine restoration period. For each detainee admitted into the PIMA RTC Program on or after January 1, 2017, the case rate will be \$39,000. PIMA reserves the right to increase the case rate through an amendment to this Agreement.

3.2 Unless other arrangements have been made in advance, COCHISE will pay to PIMA the RTC case rate in full upon acceptance of a COCHISE detainee into the custody or control of PCADC.

3.3 PIMA will submit to COCHISE a separate invoice, if applicable, for each detainee upon discharge from the RTC program for exceptional onsite services including interpreter services as indicated in Paragraph 2.16 above, for outlier medications as indicated in Paragraph 2.19 above, and for any offsite security in excess of the limits specified in Paragraph 2.20 above. Such offsite security will be billed at the rate of forty dollars (\$40) per hour per Deputy or Corrections Officer, until such time as COCHISE Deputies or Corrections Officers take over security of the individual, or until the individual is discharged from the hospital and returned to PCADC. Such invoice will be paid by COCHISE within thirty (30) days of receipt.

3.4 If COCHISE requests, in consultation with PIMA, that a PIMA psychiatrist contracted by PIMA prepares for, provides documentation for, travels to, or testifies at a “Sell hearing” related to forcible administration of antipsychotic medication, COCHISE will pay to PIMA three hundred dollars (\$300) per hour for such psychiatrist services rendered, including travel time. PIMA will submit to COCHISE a separate invoice for said services, and such invoice will be paid by COCHISE within thirty (30) days of receipt.

3.5 COCHISE shall notify PIMA in writing of any contested charges within thirty (30) days after receipt of invoice. In such a case, COCHISE may withhold payment on each detainee for whom billing is disputed pending resolution of the dispute. No dispute will be accepted if not made within thirty (30) days after the receipt of billing. Disputes shall be jointly reviewed by both parties for resolution within sixty (60) days. If unresolved after sixty (60) days, a mutually acceptable third party may arbitrate charges remaining unresolved.

3.6 COCHISE shall pay interest on any outstanding charges beginning on the 10th day after resolution at a rate of 10% per annum until paid. Upon paying a previously disputed charge, COCHISE will attach documentation detailing the specific charges that are being paid. COCHISE will attach documentation to each check submitted to PIMA indicating the dates and detainees for which the check is to be applied.

3.7 COCHISE will pay community providers directly for all health services provided outside PCADC as indicated in 2.19.

3.8 In the event that PIMA accepts a COCHISE detainee into the PIMA RTC Program and returns the detainee to COCHISE or the detainee is referred to ASH for any reason prior to the detainee being restored to competency or being determined to be non-restorable, PIMA will refund to COCHISE a prorated amount of the case rate fee, based on the detainee's length of stay versus the average length of stay in the PIMA RTC Program over the preceding one hundred eighty (180) days. Such refund will be made either by offset against a future case rate or by check to COCHISE if no new case rate is paid within one hundred eighty (180) days of the detainee leaving PIMA's RTC Program.

3.9 Upon request, PIMA will provide to COCHISE a statement showing all RTC program-related transactions for COCHISE detainees, including name of detainee, booking date and hour, release date and hour, total service days, total exceptional medical expenses, and any balance due in excess of the case rate fee.

3.10 In the event that COCHISE for any reason requests that PIMA hold at PCADC COCHISE detainee after the detainee's discharge from the RTC program (defined as a PIMA forensic psychologist making a determination about the detainee's restoration status and completion and submission of the related report), COCHISE will pay to PIMA a daily housing rate of one hundred dollars (\$100) per detainee per day, plus the cost of the detainee's prescribed medications, through the day that COCHISE takes the detainee back into COCHISE's physical custody. Such charges will be billed separately on an actual cost basis.

3.11 As referenced in 2.18 herein, if PIMA, in consultation with COCHISE and with the consent of the Cochise County Attorney, initiates involuntary commitment proceedings for a COCHISE detainee while in PIMA's RTC Program, COCHISE will reimburse to PIMA the costs associated with the proceedings, which are \$1250 for an involuntary commitment proceeding that reaches a Court hearing, and \$750 for an involuntary commitment proceeding that is dismissed prior to hearing.

4. **Term.** This IGA shall be effective on the date it is fully executed by the Parties and shall continue for a period of five years unless it is, prior to the expiration of such period, amended, extended or terminated by agreement of the parties.
5. **Disposal of Property.** Upon the termination of this IGA, all property involved shall revert back to the owner. Termination shall not relieve any party from liabilities or costs already incurred under this IGA, nor affect any ownership of property pursuant to this IGA.
6. **Indemnification.** Each party (as Indemnitor) agrees to indemnify, defend and hold harmless the other party (as 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, officials, employees, or volunteers. COCHISE acknowledges health care services at PCADC are provided by independent contractors.

7. Insurance. Each party shall obtain and maintain at its own expense, during the entire term of this Contract the following type(s) and amounts of insurance:

- a) Commercial General Liability in the amount of \$1,000,000.00 combined single limit Bodily Injury and Property Damage.
- b) Commercial or Business automobile liability coverage for owned, non-owned and hired vehicles used in the performance of this Contract with limits in the amount of \$1,000,000.00 combined single limit or \$1,000,000.00 Bodily Injury, \$1,000,000.00 Property Damage.
- c) If this Contract involves professional services, professional liability insurance in the amount of \$1,000,000.00.
- d) If required by law, workers' compensation coverage including employees' liability coverage.

Parties to this agreement shall provide thirty (30) days written notice to all parties to this IGA of cancellation, non-renewal or material change of coverage.

The above requirement may be alternatively met through self-insurance pursuant to A.R.S. §§ 11-261 and 11-981 or participation in an insurance risk pool under A.R.S. § 11.952.01 at no less than the minimal coverage levels set forth in this article. Parties to this agreement shall provide thirty (30) days written notice to all other parties of cancellation, non-renewal or material change of coverage.

8. Compliance with Laws. 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. Any action relating to this IGA shall be brought in an Arizona court in the county of PIMA.

9. Non-Discrimination. The parties shall not discriminate against any PIMA or COCHISE employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out their duties pursuant to this IGA. The parties shall comply with the provisions of Executive Order 75-5, as amended by Executive Order 99-4, which is incorporated into this IGA by reference, as if set forth in full herein.

10. **ADA.** The parties shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
11. **Severability.** If any provision of this IGA or any application thereof to the parties or any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this IGA which can be given effect, without the invalid provision or application and to this end the provisions of this IGA are declared to be severable.
12. **Conflict of Interest.** This contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.
13. **Non-Appropriation.** Notwithstanding any other provision in this IGA, this IGA may be terminated if for any reason the PIMA or COCHISE Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this IGA. In the event of such cancellation, the parties shall have no further obligation to each other except for payment for services rendered prior to cancellation.
14. **Worker's Compensation.** Each party shall comply with the notice of A.R.S. § 23-1022 (E). For purposes of A.R.S. § 23-1022, irrespective of the operations protocol in place, each party is solely responsible for the payment of Worker's Compensation benefits for its employees.
15. **No Joint Obligations.** Neither party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.
16. **No Third Party Beneficiaries.** Nothing in the provisions of this IGA is intended to create duties or obligations to or rights in third parties not parties to this IGA or to 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.
17. **Notice.** Any notice required or permitted to be given under this IGA shall be in writing and shall be served by delivery or by certified mail upon the other party as follows (or at such other address as may be identified by a party in writing to the other party):

PIMA:

Danna Whiting, M.S.
Pima County Behavioral Health Administration
3950 S. Country Club Road, Suite 3420
Tucson, AZ 85714

COCHISE:

Jim Vlahovich
County Administrator
1415 Melody Lane
Bisbee, AZ 85603

With copies to:

County Administrator
West Congress Street, 10th Floor
Tucson, Arizona 85701

Court Administrator 130
100 Quality Hill Rd.
P.O. Box 204
Bisbee, AZ 85603

Clerk of the Board
130 West Congress, 5th Floor
Tucson, Arizona 85701

Chief Civil Deputy
Cochise County Attorney
Drawer CA
Bisbee, AZ 85603

18. This agreement may be executed in counterparts, each of which is effective as an original and all of which constitute one and the same document.
19. **Entire Agreement.** This document constitutes the entire Agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This IGA shall not be modified, amended, altered or extended except through a written amendment signed by the parties.

In Witness Whereof, PIMA has caused this Intergovernmental Agreement to be executed by the Chair of its Board of Supervisors, and attested to by the Clerk of the Board, and COCHISE has caused this Intergovernmental Agreement to be executed by the Chairman of its Board of Supervisors upon resolution of the Board and attested to by the Clerk of the Board and the Cochise Superior Court has caused this Intergovernmental Agreement to be executed by its presiding judge:

PIMA:

COCHISE:

Chair, Board of Supervisors

Chair, Board of Supervisors

ATTEST:

ATTEST:

Clerk of the Board

Clerk of the Board

COCHISE SUPERIOR COURT:

Presiding Judge

Intergovernmental Agreement Determination

The foregoing Intergovernmental Agreement between PIMA and COCHISE has been reviewed pursuant to A.R.S. § 11-952 by the undersigned, who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Intergovernmental Agreement represented by the undersigned.

PIMA:

COCHISE:

Deputy County Attorney

Deputy County Attorney