

**COURT CONSOLIDATION AGREEMENT
BY AND BETWEEN
THE CITY OF SIERRA VISTA, ARIZONA
AND COCHISE COUNTY, ARIZONA**

THIS IS AN AGREEMENT, made and entered into by and between the County of Cochise, a body politic, [hereinafter “**COUNTY**”] and the City of Sierra Vista, a municipal corporation [hereinafter “**CITY**”] and is approved by the County Board of Supervisors, the City Mayor and Council, the Presiding Judge of the Superior Court in and for Cochise County, the Cochise County Attorney, and the Justice of the Peace for the Precinct of which the **CITY** is part, as authorized by the powers and authority granted by the laws of the State of Arizona.

RECITALS

WHEREAS, the **COUNTY** and the **CITY** have determined that it is mutually beneficial to consolidate the City Municipal Court with the Justice Court for the applicable Precinct, which hereinafter will be referred to as the “Consolidated Court”; and

WHEREAS, such court consolidation provides a coordinated judicial system to provide cost effective services at a centralized location to the residents of the **CITY** and the surrounding community within the Precinct; and

WHEREAS, the **COUNTY** and the **CITY** are authorized and empowered to enter into an Intergovernmental Agreement for this purpose pursuant to A.R.S. §§ 11-951 *et seq.*, 11-952, 22-101 *et seq.*, and 22-402,

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

I. PURPOSE

The purpose of this Agreement is to amend the current Court Consolidation Agreement to further define the duties of the Parties related to operation of the Consolidated Court.

II. NAME AND LOCATION

The consolidation of the courts will hereinafter be known and referred to as the “**CONSOLIDATED COURT**” and is located at the Sierra Vista Justice Court, Precinct #5, 100 Colonia de Salud, Sierra Vista, AZ 85635, or other suitable location within the community.

III. DUTIES OF THE COUNTY

A. The **COUNTY** will operate the Consolidated Court and will also be responsible for the performance of the following related functions:

1. All prosecution and defense of criminal cases which arise under the Arizona Revised Statutes, where the offense is committed on or after the effective date of this Agreement, and during the existence of this Agreement.
2. Transportation and incarceration of defendants appearing before the Consolidated Court, except that the CITY's police department shall be responsible for initial transportation to a County jail facility upon arrest by the police department. Charges to the City for incarceration of defendants pursuant to A.R.S. § 31-121(D) shall be accounted and billed separate from this Agreement.
3. Service of process as required by law for parties appearing before the Consolidated Court as a result of citations or long form complaints.
4. Service of process as required by law for parties appearing before the Consolidated Court for all Orders of Protection, Injunctions Against Harassment and other civil matters.
5. Issuance of Search Warrants, Civil and Criminal Arrest Warrants as required or authorized by law or by Court rules for parties appearing before the Consolidated Court.

B. The COUNTY shall have jurisdiction over any pending City Municipal Court cases and Magistrate files and all new case filings. The COUNTY shall staff this Consolidated Court as it deems appropriate and shall have exclusive authority and control over the hiring, firing and supervision of all judicial staff.

C. The Consolidated Court shall be responsible for the collection of fees, fines, surcharges, City Code administrative fees, and disbursements to the State of Arizona, the COUNTY and/or the CITY, as may be required by law, the State of Arizona and the Arizona Supreme Court.

IV. DUTIES OF CITY

A. The CITY shall cause all cases which would otherwise be processed in the City Magistrate Court to be referred to and filed with the Consolidated Court, which shall assume original jurisdiction over these matters.

B. The CITY understands and agrees that, in consideration of the COUNTY'S operation of the Consolidated Court, the CITY shall be responsible for performance of the following related functions.

1. Initial transportation for incarceration of defendants appearing before the Consolidated Court as a result of citations or complaints issued by the City Police Department or an arrest made by the City Police Department.

2. Issuing, filing, and prosecuting all City Code violations for persons appearing before the Consolidated Court. Prosecution of City Code violations will be done by the City Attorney's Office.

C. The CITY understands and agrees that, in consideration of the COUNTY's operation of the consolidated court, the COUNTY shall be entitled to any and all fines, fees or other similar revenues for civil or criminal misdemeanor cases arising within the boundaries of the Justice Court, after the effective date of this Agreement, which are within the jurisdiction of Justice Court Precinct or the City Magistrate Court, including those cases arising within the corporate limits of the CITY.

D. Attached as Exhibit A are calculations of the costs of operating the Consolidated Court and the revenues derived from it for the 2015 calendar year, including a breakdown of the costs and revenues attributable to the Municipal Court, the net cost to the COUNTY from operating the Consolidated Court, and the amount that the CITY must reimburse the COUNTY, or the COUNTY to the CITY. Attached as Exhibit A1 is the Annual Joint Court Fee Calculation Methodology, setting forth the agreed methodology for arriving at the calculations in Exhibit A. The parties agree that based on that methodology, Exhibit A represents fair calculations of these costs, revenues and amount of reimbursement for the 2015 calendar year and forms the basis for the amount of reimbursement to be paid by the CITY to the COUNTY, or by the COUNTY to the CITY, for the fiscal year 2016-17. Said reimbursement shall be payable quarterly, in advance, or, at CITY's option if it is required to reimburse, or COUNTY's option if it is required to reimburse, reimbursement may be made in one lump sum at the beginning of the fiscal year.

Said reimbursement shall be adjusted annually, effective on the beginning of each fiscal year, as court costs and revenues change. By February 15 of each calendar year, the Cochise County Court Administration shall provide revised revenue and cost figures for the Court for the previous calendar year. By May 1 of each calendar year the COUNTY shall revise Exhibit A and the reimbursement required of the CITY or COUNTY under this paragraph for the next fiscal year, starting on July 1 of that calendar year, based upon cost and revenue figures for the previous calendar year. Said revision shall be subject to approval of both the City Council and the County Board of Supervisors.

E. The CITY shall have the sole authority to appoint the City Magistrate pursuant to A.R.S. § 22-403, *et seq.* and to establish the compensation for the appointee as provided for under a separate agreement. Compensation of the City Magistrate shall be the sole responsibility of the CITY.

F. The CITY shall have sole authority to renew such appointment or make a new appointment as may be required by the election of a new Justice of the Peace, applicable City Code or Charter, or the resignation of the Justice of the Peace followed by appointment of another individual; however, as a condition precedent to the COUNTY's obligation to provide services with respect to City Ordinance enforcement pursuant to this Agreement, the CITY shall:

1. Appoint the Justice of the Peace as City Magistrate; and

2. Renew such appointment or make a new appointment in accord with Subparagraph 1, above, as required by election of a new Justice of the Peace, election of a new City Council, resignation of an incumbent Justice of the Peace followed by appointment of another individual, or otherwise.

V. INDEMNIFICATION AND INSURANCE

A. COUNTY agrees to hold harmless CITY, its officers, employees and agents from all losses, suits, damages or costs of any kind, including reasonable attorney's fees, defense costs and expenses arising from COUNTY'S performance pursuant to this agreement. It is understood and agreed that the COUNTY may elect to self-insure against any or all of the risks enumerated in this section. The COUNTY shall provide the CITY with current insurance certificates or the evidence of coverage as appropriate.

B. The CITY agrees to hold harmless the COUNTY, its officers, employees and agents from all losses, suits, damages or costs of any kind, including reasonable attorney's fees, defense costs and expense arising from the CITY'S performance pursuant to this agreement. It is understood and agreed that the CITY may elect to self-insure against any or all of the risks enumerated in this section. The CITY shall provide the COUNTY with current insurance certificates or evidence of coverage as appropriate.

VI. TERM AND TERMINATION

A. The term of this Agreement shall begin on July 1, 2016 and shall continue through June 30, 2019, covering the fiscal years 2016-17, 2017-18 and 2018-19.

B. Either party may terminate this Agreement upon written notice to the other party no less than 120 days prior to the end of a fiscal year.

C. This Agreement is subject to cancellation pursuant to A.R.S. § 38-511, the provisions of which are incorporated herewith by reference.

D. The parties do not anticipate any acquisition of joint property under this Agreement. In the event of termination of this Agreement, any property supplied by the CITY pursuant to this agreement shall be and remain the property of the CITY. Any property acquired through the use of Justice Court Enhancement Funds (JCEF) will be handled in accordance with JCEF policies and procedures. The parties agree to the transfer of ownership of digital recording equipment and any computers or other related hardware and software supplied to the Magistrate Court by the Arizona Supreme Court to the COUNTY for utilization by the Consolidated Court for utilization by Consolidated Court personnel under terms of this Agreement, and to the return of said property to the CITY upon termination of this Agreement, unless the parties agree otherwise at that time. Any property owned or purchased by the COUNTY, which is used to provide services pursuant to this Agreement, shall be and remains property of the COUNTY.

VII. WAIVER

Waiver, or the failure of either party at any time to require performance by the other, of any provision herein, shall in no way affect the party's subsequent rights and obligations under that provision. Waiver by either party of any breach or any provision herein shall not be taken or held to be a waiver of any succeeding breach of such provision or waiver of such provision itself.

VIII. ENTIRE AGREEMENT

This written Agreement, constitutes the entire agreement between the parties with respect to the subject matter hereof, and shall supersede all previous proposals, negotiations, representations, commitments, writings, and agreements. It may not be released, discharged, changed or modified, except by an instrument in writing, signed by a duly authorized representative of each of the parties except as expressly provided otherwise in this Agreement.

IX. RIGHTS OF THE PARTIES ONLY

The terms of this Agreement are intended only to define the respective rights and obligations of the parties. Nothing expressed herein shall break any rights or duties in favor of any potential third party beneficiary or other person, agency or organization.

X. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

A. To the extent required by law, the parties shall comply with Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, and State Executive Order No. 75-5 which mandated that all persons, regardless of race, religion, handicap, color, age, sex, political affiliation or national origin shall have equal access to employment opportunities.

B. Both parties shall comply with (1) the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap; (2) all applicable federal regulations regarding equal employment opportunity and relevant orders issued by the U.S. Secretary of Labor; and (3) all applicable provisions of the Americans Disabilities Act (Public Law 101336, 42 U.S.C. §§ 12101-12213) and all applicable Federal Regulations under the Act including 28 CFR Parts 35 & 36.

XI. APPROVAL OF THE PARTIES

Before the Agreement shall become effective and binding upon the parties, it must be approved by the COUNTY Board of Supervisors and the CITY Council. In the event that either party fails or refuses to approve this Agreement, it shall be null and void and of no effect whatsoever.

IN WITNESS WHEREOF, the COUNTY has caused this instrument to be executed by Chairman of its Governing Board and attested to by the Clerk of said Board; and the CITY has caused this Agreement to be executed by its Mayor and Council and attested to by the Clerk of said Council on the dates set forth below.

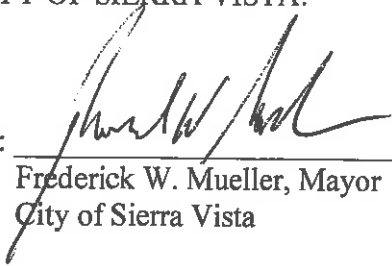
APPROVED:

COUNTY OF COCHISE:

By: _____
Richard Searle, Chair Date
Board of Supervisors

APPROVED:


CITY OF SIERRA VISTA:

By:  _____ 12/8/16
Frederick W. Mueller, Mayor Date
City of Sierra Vista

ATTEST:

By: _____
Arlethe G. Rios, Clerk Date
Board of Supervisors

ATTEST:

By:  _____ 12/8/16
Jill Adams, City Clerk Date
City of Sierra Vista

APPROVED:

SUPERIOR COURT IN AND FOR
THE COUNTY OF COCHISE

By: _____
Hon. James Conlogue Date
Presiding Judge

APPROVED:

JUSTICE COURT, PRECINCT #5
CITY MAGISTRATE

By: _____
Hon. Timothy Dickerson Date
JP/City Magistrate

COCHISE COUNTY ATTORNEY

By: _____
Brian McIntyre Date
Cochise County Attorney

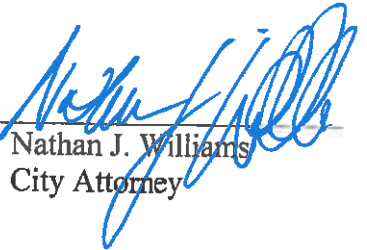
INTERGOVERNMENTAL AGREEMENT DETERMINATION

RE: Court Consolidation Agreement between the City of Sierra Vista and Cochise County

This Agreement has been reviewed pursuant to A.R.S. § 11-952 by the undersigned City Attorney who has determined that it is in appropriate form and is within the powers and authority granted to the City of Sierra Vista, Cochise County, Arizona.

APPROVED this 8 day of Dec, 2016.

By: _____



Nathan J. Williams
City Attorney

In accordance with A.R.S. § 11-952 this Agreement has been reviewed by the undersigned who has determined that this agreement is in appropriate form and within the powers and authority granted to the County of Cochise.

APPROVED this _____ day of _____, 2016.

By: _____

Britt Hanson, Chief Civil Deputy.
Cochise County Attorney

Exhibit "A"

Current Costs and revenues of the Sierra Vista Magistrate Court under the Consolidated Justice Court:

I.	2015 Revenue	\$349,416.08
II.	2015 Costs	
	A. Defense	\$ (70,339.30)
	B. Prosecution	\$ (116,112.73)
	C. Court Costs (Staffing)	\$ (221,102.82)
	D. Operations	\$ (27,249.10)
	E. Interpreter Costs	\$ (811.44)
		<u>\$ (435,615.39)</u>
III.	2015 Total Costs:	\$ (435,615.39)
	Total Revenue to County GF:	<u>\$349,416.08</u>
	Due 16/17:	\$ (86,199.31)

Exhibit "A1"

Annual Joint Court Fee Calculation Methodology

The County shall be responsible for annually collecting and compiling all data required to determine the fee the City shall pay for its share of operating the consolidated court. The County and City agree that the fee shall be based upon the following methodology:

A. DEFINITIONS:

- **CIVIL TRAFFIC PRORATION:** The total Civil Traffic charges filed in the court each calendar year divided by six (6), which more accurately reflects the lower cost of processing charges within this category.
- **TOTAL CHARGES:** The Total Civil Traffic (as prorated), Criminal Traffic, Felony and Misdemeanor, and other Civil charges filed within the consolidated court each calendar year. Each Category shall have its own TOTAL CHARGES specifically identified.
- **TOTAL CITY CHARGES:** The number of TOTAL CHARGES filed by the City by each category during a calendar year.
- **DEFENSE COSTS:** The total General Fund cost of providing defense legal services for cases within the court as documented by the Public Defender per calendar year.
- **PROSECUTION COSTS:** The total General Fund cost of providing prosecution services for cases within the court as documented by the County Attorney per calendar year.
- **COURT OPERATING COSTS:** The total General Fund costs of operating the court, based upon actual expenses documented for each calendar year.
- **INTERPRETER COSTS:** The total General Fund cost of providing required interpreter services for cases within the court within each calendar year.
- **TOTAL COURT COSTS:** The combination of Defense Costs, Prosecution Costs, Court Operating Costs and Interpreter Costs as calculated for each calendar year.
- **CITY PROPORTIONAL PERCENTAGE CALCULATION.** The Total City Charges as divided by the Total Charges, calculated separately and as a total of Civil Traffic, Criminal Traffic, Felony and Misdemeanor categories and expressed in a percentage.
- **TOTAL REVENUE:** The total amount of fines, fees, and other related revenues collected by the court each calendar year.
- **TOTAL CITY REVENUE PROPORTION:** The percentage of the total amount of fines, fees and other related revenues collected by the court each calendar year that is

directly attributable to charges/filings made by the City as more specifically outlined below and documented by Cochise County.

- ▶ For year one of this agreement, said percentage is based upon the average collection of total city revenue collected in the Willcox, Benson, and Bisbee courts from calendar years 2012, 2013, 2014 and 2015 due to the skewed data within the Sierra Vista court from photo radar enforcement violations.
- ▶ For years two and subsequent extension years of this agreement, the said percentage will be based upon a prior four calendar year average of total city revenues collected in all municipal courts that participate in County consolidated court services, omitting any calendar year revenue from a participating city which includes specialty revenue from a discontinued program.

B. FEE CALCULATION:

City's fee shall be based upon:

- The Total Court Costs prorated by the City Proportional Percentage Calculation reflects the City's share of Total Court Costs for the calendar year with the exception of Prosecution Costs, which reflect the City's share of misdemeanor cases.
- The Total County Revenue prorated by the Total City Revenue Proportion reflects the estimated City share of the Total Revenue collected during the calendar year that is deposited to the General Fund.
- The City's share of the Total Revenue is subtracted from the City's share of the Total Court Costs.
 - ▶ If the City's share of Total Court Costs exceeds the City's share of the Total Revenue, the City shall pay the County that portion for the following fiscal year.
 - ▶ If the City's share of Total Revenue exceeds the City's share of Total Court Costs, the County shall apply the portion of excess revenues as a credit to the City's share of Total Court Costs in following Fiscal Year, shown as a separate line on the Exhibit A.