

INTERGOVERNMENTAL AGREEMENT
Among
SANTA CRUZ COUNTY, COCHISE COUNTY,
And
THE SANTA CRUZ AND COCHISE COUNTY SUPERIOR COURTS
For
JUVENILE DETENTION SERVICES

THIS INTERGOVERNMENTAL AGREEMENT is made by and between the Sending County and the Host for the detention of juveniles under the supervision of the Host. The parties to this IGA include Santa Cruz County, a political subdivision of the State of Arizona (“Host County”), and the Santa Cruz County Superior Court, on behalf of the Santa Cruz County Detention Center, (“Host Facility”) (Host County and Host Facility may be collectively referred to as “Host”), and Cochise County, a political subdivision of the State of Arizona (“Sending County”), and the Cochise County Superior Court, on behalf of the Cochise County Juvenile Probation Department (“Sending Department”) (Sending County and Sending Department may be collectively referred to as “Sending County”).

RECITALS

WHEREAS, the Parties are authorized and responsible to provide for the detention of certain juveniles alleged to be delinquent or children who are incorrigible pursuant to A.R.S. §§ 8-305 and 8-301 et seq. and the Parties desire to utilize available resources in an efficient and mutually beneficial manner according to applicable law; and

WHEREAS, Santa Cruz County maintains a juvenile detention center (Facility) where such juveniles may be detained; and

WHEREAS, the Presiding Judge of the Juvenile Division of the Superior Court in Santa Cruz County supervises the Facility pursuant to A.R.S. § 8-306; and

WHEREAS, A.R.S. §§ 11-952(J) and 11-951 et seq. authorize the Parties to enter into this IGA.

AGREEMENT

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

1. PURPOSE AND INTENT

The purpose of this IGA is for the provision of juvenile detention facilities and services (“Services”) for Sending County’s juveniles who are ordered to be detained (Sending County Juvenile(s)) to be transferred by Sending County to Host Facility, beginning on January 1, 2021.

Sending County acknowledges and agrees that Host’s policies and practices may not necessarily coincide with those of Sending County and that Host and all Sending County’s Juveniles will be managed and administered according to Host’s policies and practices.

Juveniles are those individuals under the age of eighteen years. Sending County acknowledges and agrees that Host will not accept juveniles: who are charged with nothing more than incorrigible offense(s); or who are under the age of eight years.

2. EFFECTIVE DATE AND DURATION

- A. Initial Term. Upon execution and signature below, this IGA shall become effective and shall remain in effect through December 31, 2021.
- B. Termination. Either Party may terminate this IGA, with or without cause, by providing sixty (60) days advance written notice of termination to the other Party as set forth in Section 9.A. Each Party agrees to return any and all equipment and/or materials in its control or possession, if any, to the owner-Party no later than thirty (30) days after termination.
- C. Renewal. This IGA will be automatically renewed each year, up to nine (9) additional one year terms, unless either Party provides notice of an intent not to renew before October 31st for a given year.

3. MUTUAL OBLIGATIONS

- A. Under this IGA Host agrees to:
 - i. Provide Services for Sending County Juveniles in Host Facility according to applicable policies, practices, standards and requirements. Services provided shall include, but are not to be limited to, housing, food, clothing, normal hygiene, and other routine services and care, including routine medical care, education, recreation, and visitation. “Routine medical care” includes medical services that can be provided by detention medical staff. All Services will be provided in compliance with applicable laws, ordinances, state and federal standards and practices. All Sending County Juveniles will be treated according to the

same rules, regulations and policies applied to other detainees in the custody of the Host Facility.

- ii. Guarantee Sending County at least four (4) of the eight (8) beds at the Facility. If the Sending County needs more than four (4) beds at any given time, and Santa Cruz has additional beds available, they will make those available to Sending County.
- iii. Send billing invoices to Sending County on a monthly basis per Section 6 below.
- iv. Manage the day-to-day supervision, operations and Services for Sending County Juveniles.
- v. Provide all staff, labor and services necessary for the Facility's day-to-day use and operation and maintain and provide all staff, labor, materials, and routine in-house services and bear all routine costs associated with the Facility.
- vi. Arrange for non-routine medical, mental health, and/or educational services for Sending County Juveniles. These non-routine services include, but are not limited to, hospitalization, ambulance, **diagnostic services** and medications of any kind. The Parties acknowledge and agree that non-routine services will result in additional expense(s) (Additional Expenses), which are the sole responsibility of Sending County.

To the extent permitted by time, Host shall contact Sending County to discuss any non-routine services that arise. The Parties agree that such discussion shall not unduly delay any need for emergency services, including, but not limited to emergency medical attention. Host shall have the sole discretion and authority to determine whether a situation is an emergency or becomes an emergency while awaiting Sending County's concurrence under Section 3.D below and Sending County shall defer to the Host's assessment of the situation and determination regarding the emergency / non-emergency nature of the situation.
- vii. To the extent practicable, Host shall contact Sending County prior to any non-routine services that arise and in order to discuss and concur in writing regarding said service(s) with Sending County.
- viii. In the event of any emergency situation(s) and/or service(s) involving any Sending County Juvenile, Host will notify Sending County within 24 hours of occurrence.

- ix. Provide at least three (3) days advance notice when Sending County will need to retrieve a juvenile.
- x. Observe and administer any records exchanged under this IGA pursuant to applicable law.

B. Under this IGA Sending County agrees to:

- i. Promptly contact Host Intake Unit at (520) 375-8195. prior to transporting a juvenile to the Facility for admission. Sending County will also provide Host with:
 - 1. Applicable Court Order and/or Referral and Affidavit to detain the juvenile; and
 - 2. Any additional records or information requested by Host including but not limited to, information regarding the juvenile's family history, behavioral issues, medical, mental health, psychological evaluations, school, and/or social history for admission and monitoring purposes.
- ii. **The Sending Department and/or Sending County will be responsible for arranging for and transportation to psychiatric assessments, psych-ed evaluation, optical services, prosthetics, contact/eye-glasses, orthodontia, and restoration to competency services.**
- iii. Pay half of the Host's operating costs, which for **FY2020-21** was approximately \$1.2 million, as set forth on Exhibit A hereto. **Also, pay half of the Host's medical expenses related to juveniles for the Facility. Medical expenses related to juveniles for the facility are calculated as approximately \$150,000 (which is 30% of total jail medical services) for the FY2020-21, as set forth on Exhibit B hereto.** Sending County shall have the right to audit Host's operating costs. **All non-routine medical expenses and other services listed in section 3.A.vi. shall be the sole responsibility of the Sending County. The Parties shall arrange for direct-bill to the Sending County for those expenses whenever possible. The Parties agree that the Sending County will reimburse Host County for those expenses within thirty (30) days of receipt of an invoice.**
- iv. Pay any and all Additional Expense(s) incurred under or arising from this IGA and reimburse Host for any and all Additional Expense(s) incurred by Host under this IGA.
- v. Pay each invoice received no later than thirty (30) days after receiving the invoice per Section 3.A.iii and Section 6.

- vi. Provide transportation to and from the Facility: when Sending County Juveniles are booked into and released from the Facility; when appearances are required at court hearings; and when medical, dental, or other appointments for any such juvenile are scheduled within/outside the Nogales area. Host staff will assist on transports within the Nogales area.
- vii. Sending County will not deliver to the Facility any juveniles under the influence of controlled substances, or experiencing serious medical or mental health concerns, including self-harm behavior, without first obtaining a medical release from an appropriate medical and/or mental health professional or hospital.
- viii. Provide any records necessitated by the purposes of this IGA. Such records may include, but are not necessarily limited to, **biographical information, names and all contact information for parent(s), guardian(s), custodian(s) or other responsible adult(s)**, juvenile discipline records, criminal background and history records, medical records, and mental health records.
- ix. Remain responsible for the transportation of juveniles to and from the Host facility. Notwithstanding this, at Host's sole discretion in the event of a medical emergency or other appropriate circumstance Host may transport a Sending County juvenile from the Host Facility to the appropriate destination and Sending County agrees that such instances may result in Additional Expense(s) to the Sending County.
- x. Ensure that no juvenile shall be held at Facility for more than twenty-four (24) hours unless a petition alleging delinquent conduct, or a criminal complaint has been filed and a copy provided to the Host Intake unit. No juvenile shall be held longer than twenty-four (24) hours after the filing of a petition unless so ordered by the court after a hearing.

If a hearing is not held within twenty-four (24) hours of the time of filing of the petition, Sending County shall ensure that the juvenile shall be released from Facility to a parent, guardian, custodian or other responsible person. If no parent, guardian, custodian or other responsible person can be located, Facility shall release the juvenile to the Department of Child Safety and Host shall notify the Sending County of the release. If the Department of Child Safety refuses to pickup the juvenile from the Host Facility, the Sending County shall promptly retrieve the juvenile from the Host Facility.

- xii. Observe and administer any records exchanged under this IGA pursuant to applicable law.
 - xii. Upon notice from Host, promptly retrieve each Sending County Juvenile from the Host Facility not later than three (3) days (72 hours) after such notice from Host.
- C. Facility Capacity. The Parties acknowledge and agree that housing Sending County Juveniles will not be available if/when the population of the portion(s) of the Facility in operation at the time of referral is at capacity. If the Facility is at or near capacity, Host will work with Sending County to determine which juveniles under the supervision of Sending County should be released in the event the need arises for additional detention of juveniles at the Facility. **Each County shall have priority for the half of the capacity apportioned to them under this agreement, should an impasse arise. (E.g. If the Facility is at capacity with 8 juveniles, up to 4 places shall be available for the Host County and up to 4 places shall be available for the Sending County.)**
- D. Written Concurrence for Non-Routine Services. In the event of non-routine services the Parties agree to discuss said services and create a written concurrence regarding the services in advance. The Parties acknowledge that any emergency circumstances that arise may, in turn, make it unreasonable or unfeasible to discuss and/or create a written concurrence in advance. **In those rare situations where it is not feasible or reasonable to have a prior written agreement, the Host shall provide the Sending County with 24-hours-notice of the service and the reason there was no agreement in advance.**
- E. Additional Expenses. Additional Expense(s) include any and all costs associated with: transportation not expressly provided for in this IGA that are attributable to Sending County juveniles; non-routine services **listed in 3.A.vi.** and/or materials required by Sending County juveniles; and Sending County juvenile medical and/or mental-health care and treatment not covered by the **expense sharing detailed in section 3.B.iii, iv. and v.** Medical and/or mental-health care and treatment not covered by the **expense sharing agreement include:** prescription medication(s), hospital visits, **non-routine medical services,** or any other medical/mental-health services requiring outside facilities, **testing,** services or providers, and/or catastrophic medical or mental-health events.
- F. Remote Appearance Technology. To the maximum extent possible, and according to the mandates of the Court, the Parties intend to utilize available technology for the remote appearance/attendance of juveniles in hearings, proceedings, meetings, appointments, and evaluations when appropriate and available. Such

means/methods may include audio/video conferencing technology and/or telephonic communication. The purpose of doing so is to maximize the health and safety of all facility occupants and to maximize the efficient use of available time, staff and resources, subject to any requisite court approval or, when applicable, the professional discretion of involved physician(s), other psychiatric or medical professional(s), or legal counsel.

- G. Inmate Legal Counsel. Host is not responsible for any legal representation required or requested by Sending County Juveniles. The provision of any such legal counsel and/or any arrangements therefore remains the responsibility of Sending County.
- H. Sending County Release. Sending County shall notify Host Intake Unit at (520) 375-8195 when a Sending County juvenile is to be released from the Facility to the custody of Sending County. Any such release made at the request of Sending County shall be at the sole discretion of the Sending County and shall, with prior verbal notice confirmed by e-mail or fax, be performed promptly and without undue delay by Host, and shall not require an order of a court. The Facility shall only release the detained juvenile to a specifically identified person that Sending County has advised, in writing, is authorized to take custody of the juvenile. The Sending County avers that it will only request release of a juvenile from the Host Facility that the Sending County is appropriately authorized to release.
- I. Facility Acceptance or Rejection of Juvenile. Host retains final and absolute right to refuse acceptance or request removal of any Sending County juvenile exhibiting violent or disruptive behavior, or of any juvenile found to have a medical condition that requires medical care beyond the scope of the Facility health provider. In the case of a juvenile already in Facility custody, Host shall notify Sending County and request such removals, and shall allow Sending County reasonable time to make alternative arrangements for the juvenile.
- J. Open Communications. Host and Sending County shall maintain open communications between each Party's designated point of contact ["POC"] (listed in Section 9.A) to ensure the agreed upon facilities and services are provided and maintained throughout the term of this IGA. Parties shall maintain open communication regarding needs arising out of the IGA.
- K. PREA. The Prison Rape Elimination Act (PREA) 34 U.S.C. §§ 30301—30309 and 28 C.F.R. §§ 115.11—115.501 was established to address the elimination and prevention of sexual assault and sexual harassment within correctional systems and detention facilities. The Parties will comply with all standards. The Nogales Police Department or Santa Cruz County Sheriff's Office will be assigned to investigate all incidents of sexual assault allegedly occurring within the Facility. The

Parties agree to disclose any knowledge of sexual abuse or sexual harassment that a Sending County juvenile may have encountered, whether as the perpetrator or the victim.

- L. Emergency Evacuation. In the event of any emergency requiring evacuation of the Facility, Host shall evacuate the juvenile in the same manner and with the same safeguards as other juveniles in the Facility. Host shall verbally notify Sending County and confirm by e-mail or fax, within four (4) hours of such evacuation.
- M. Force Majeure. The Parties are not liable to each other if an occurrence of force majeure prevents its performance under the contract. If either party is delayed at any time in the progress of its performance under the contract by an occurrence of force majeure, the delayed party shall notify the other no later than the following working day after the occurrence, or as soon as it could reasonably have been expected to recognize that the occurrence had effect in cases where the effects were not readily apparent. In any event, the notice must make specific reference to this paragraph specifying the causes of the delay in the notice and, if the effects of the occurrence are on-going, provide an initial notification and thereafter the delayed party shall provide regular updates until such time as the effects are fully known. To the extent it is able, the delayed party shall cause the delay to cease promptly and notify the other party when it has done so.
- N. Public Health Crises. In the event of a public health crisis or the like (eg., COVID-19 pandemic), Sending County acknowledges and agrees that Facility is authorized to take all reasonable measures, as determined in the sole discretion of Facility, to protect the health and welfare of Facility occupants. Such measures may include, but are not limited to, stopping all non-essential ingress and/or egress to and from the Facility which may result in the discontinuation of programs and/or practices that pose a high risk of introducing and/or transmitting infection to or between Facility occupants. Additionally, Facility reserves the right to deny entry of a juvenile referred to Facility where, as determined in the sole discretion of Facility, the public interest in detention does not outweigh the risk of introducing infection into the Facility. Further, at the request of Host, Sending County may be required to arrange for an initial quarantine detention of any such juvenile before the juvenile may be later transferred into Facility.

4. SUPERVISION

Each Party shall have sole supervisory authority over its own personnel, operations, services and materials. Each Party agrees that it will be solely responsible for and will assume sole liability for its officer's acts or omissions of any kind, while performing

any service or activity under this IGA. Each Party shall remain responsible for its employees' salaries and employee-related benefits, discipline and similar matters and shall be solely responsible for its employee's civil wrongs, and each employee shall be deemed to be performing regular duties for the primary employer Party while engaged in services and activities under this IGA. For the purposes of Workers' Compensation, the Party employing such employee shall be solely liable for the payment of Worker's Compensation benefits payable as the result of the employee's participation in services and activities under this IGA.

5. EQUIPMENT AND MATERIALS

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

6. BILLING/INVOICING

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

- A. Host shall bill Sending County on a monthly basis and send an itemized invoice promptly at the end of each month.
- B. Sending County shall send payment to Host within thirty (30) days of receiving the invoice.
- C. All billing and payment correspondence shall be sent to the Party contacts provided in Section 9.A.

7. INSURANCE

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

8. INDEMNIFICATION AND COOPERATIVE DEFENSE

- A. To the maximum extent permitted by law, each Party (as "Indemnitor") agrees to indemnify, defend and hold harmless the other Party, its officers, officials, agents, employees, or volunteers from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively

referred to as "Claims") arising out of actions taken in performance of this IGA to the extent that such Claims are caused by the acts, omissions, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers. If a Claim or Claims by third parties becomes subject to this section, the governmental parties to this IGA that are the subject of the Claim or Claims shall expeditiously meet to agree upon a common and mutual defense pursuant to Subsection B below, including proportionate liability and proportionate payment of litigation fees, expenses and damages. To whatever extent applicable, the Parties agree to abide by the Memorandum of Understanding Regarding Joint Defense ("MOU") between the Arizona Counties Insurance Pool ("ACIP"). Each Party acknowledges that it has received a copy of the MOU from ACIP.

- B. In the event that a claim, arising from or relating to the activities provided in this IGA, is made against any Party for acts or omissions of any of its employees or officers, it is the intent of the Parties to cooperate fully in the defense of said claim or claims and to cause their insurers to do likewise, to the extent practicable.
- C. The obligations under this section shall survive the termination of this IGA.

9. GENERAL

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

If to Sending County: John H Schow
Name

Court Administrator
Title

Cochise County Superior Court
Agency/Governmental Entity Name

P.O. Box 204
Address

Bisbee, AZ 85603
City ZIP

If to Host County:

Name

Luis B. Fimbres

Title

Chief Probation Officer

Agency/Governmental Entity Name

Santa Cruz County Probation Department

Address

2160 N. Congress Drive, Nogales, AZ

Notices under this Section shall be deemed completed and effective on the date delivered, if given by facsimile, personal delivery, email or overnight express delivery service, or four days after the date of deposit in the mail if sent through the United States Mail.

- B. MODIFICATION: This IGA shall not be modified except by a mutually signed written agreement.
- C. RELATIONSHIP OF THE PARTIES: Each Party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, associate, or any other representative capacity of the other party. Each Party shall be solely and entirely responsible for its acts or acts of its agents and employees during the performance of this IGA. This IGA shall not be construed to imply authority to perform any tasks, or accept any responsibility, not expressly set forth herein. This IGA shall be strictly construed against the creation of a duty or responsibility unless the intention to do so is clearly and unambiguously set forth herein. Nothing contained in this IGA confers any right to any person or entity not a party to this IGA.
- D. WAIVER OF TERMS AND CONDITIONS: The failure of either Party to insist in any one or more instances on performance of any of the terms or conditions of this IGA or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

- E. GOVERNING LAW AND VENUE: The terms and conditions of this IGA shall be governed by and interpreted in accordance with the laws of the State of Arizona.
- F. INUREMENT, NONASSIGNMENT, SUBCONTRACTING: All of the terms, covenants and conditions of this IGA shall be binding upon, and shall inure to the benefit of, each Party and the successors and assigns of each Party. The Parties shall not assign nor sub-contract their rights, duties, or obligations under this IGA without the prior written consent of the other Parties
- G. ENTIRE AGREEMENT: This IGA represents the entire agreement between the Parties and supersedes all prior negotiations, representations or agreements, either expressed or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this IGA shall be valid unless made in writing and signed by the Parties.
- H. SEVERABILITY: If any part, term or provision of this IGA shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.
- I. CONFLICTS OF INTEREST: To the extent applicable, the provisions of A.R.S. § 38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this IGA.
- J. OTHER DUTIES IMPOSED BY LAW: Nothing in this IGA shall be construed as relieving the involved public agencies of any obligation or responsibility imposed on it by law.
- K. COMPLIANCE WITH CIVIL RIGHTS: To the extent applicable, the Parties agree to comply with A.R.S. Title 41, Chapter 9 (Civil Rights), Arizona Executive Orders 75-5 and 99-4 and any other federal or state laws relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act.
- L. E-VERIFY, RECORDS AND AUDITS: To the extent applicable: Under A.R.S. § 41-4401, the Parties and their respective subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Parties agree to comply with the records retention requirements of A.R.S. § 35-214
- M. INTERPARTY DISPUTE RESOLUTION: If a dispute between the Parties arises out of or relates to this IGA, and if the dispute cannot be settled through negotiation within sixty (60) days, the Parties agree to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518 except as may be required by

other applicable statutes..

- N. AVAILABILITY OF FUNDS: In accordance with A.R.S. § 35-154, every payment obligation of each party under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this agreement may be terminated by either party at the end of the period for which funds are available. No liability shall accrue to either party in the event this provision is exercised, and the parties shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
- O. WORKER S COMPENSATION: To the extent applicable, each Party shall comply with the notice required by A.R.S. § 23-1022(E). For purposes of A.R.S. § 23-1022, each Party shall be considered the primary employer of all personnel currently or hereafter employed by that Party, irrespective of the operations of protocol in place, and said Party shall have the sole responsibility for the payment of Worker's Compensation benefits or other fringe benefits of said employees.
- P. COMPLIANCE WITH LAWS AND POLICIES: To the extent applicable, the Parties shall comply with all federal, state and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this IGA. The laws and regulations of the State of Arizona shall govern the rights of the Parties, the performance of this IGA and any disputes hereunder. Furthermore, the Parties agree to abide by each Party's policies to the extent appropriate and required or permitted by law.
- Q. NO JOINT VENTURE: It is not intended by this IGA to, and nothing contained in this IGA shall, be construed to, create any partnership, joint venture or employment relationship between the Parties or create any employer-employee relationship between the Parties' employees. Neither Party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other Party, including, but without limitation, the other Party's obligation to withhold Social Security and income taxes for itself or any of its employees.
- R. NO THIRD PARTY BENEFICIARIES: Nothing in this IGA is intended to create duties or obligations to or rights in third parties not Parties to this IGA or affect the legal liability of either Party to the IGA by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.
- S. COUNTERPARTS. This IGA may be executed in any number of counterparts, each of which shall be deemed a duplicate original and all of which when taken together

