

## **INTERGOVERNMENTAL AGREEMENT BETWEEN PIMA COUNTY AND COCHISE COUNTY FOR MEDICAL EXAMINER SERVICES**

This Intergovernmental Agreement (“Agreement”) is entered into pursuant to A.R.S. §11-952 by and between Pima County, a body politic and corporate of the State of Arizona (“County”) and Cochise County, a body politic and corporate of the State of Arizona (“Cochise”).

### **Recitals**

WHEREAS, County and Cochise may contract for services and enter into agreements with one another for joint or cooperative action pursuant to Arizona Revised Statutes §11-951, et. seq.; and

WHEREAS, County is authorized by Arizona Revised Statute §11-592 to appoint and has appointed a qualified person to the position of Medical Examiner; and

WHEREAS, Cochise is authorized by Arizona Revised Statutes §11-592 and has determined that appointment of a full-time Cochise Medical Examiner is not practical and desires to establish a list of licensed physicians who will be available to perform the duties required of a county Medical Examiner; and

WHEREAS, County and Cochise desire to enter into an agreement whereby the County will provide county Medical Examiner services for and on behalf of Cochise.

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

### **Agreement**

**1. Purpose.** The purpose of this Agreement is to set forth the responsibilities of the parties for the provision of Medical Examiner services by County to Cochise, and to address legal and administrative matters among the parties.

**2. Definitions.**

**2.1 AUTOPSY** – means the postmortem examination of a body, including the internal organs and tissues, to determine the cause of death or pathological changes and conditions.

**2.2 EXTERNAL EXAMINATION** – means the postmortem examination which excludes the internal examination where cause and manner of death may be reasonably ascertained without the direct inspection of internal organs.

**2.3 BOARD CERTIFIED PATHOLOGIST** – means a board certified physician who is a specialist in diagnosing the abnormal changes in organs and tissues removed during postmortem examinations.

### **3. Term.**

**3.1** This Agreement shall commence on July 1, 2022 and shall terminate on June 30, 2027.

Either party may terminate this Agreement, without cause, upon 30 days advance written notice.

### **4. Scope**

County will:

**4.1** Provide those services customarily provided by the County Medical Examiner pursuant to A.R.S. Title 11, Chapter 3, Article 12 on behalf of Cochise;

**4.2** Except for services provided by residents training under the supervision of County's staff forensic pathologists, assure that physicians performing under this Agreement are Board Certified or Board Eligible Forensic Pathologist(s) and licensed to practice in the State of Arizona;

**4.3** Fully comply with all applicable provisions of law and other rules and regulations of any and all governmental, accrediting and regulatory authorities relating to the licensure and regulation of physicians;

**4.4** Provide 24-hour staff availability for consultation with Cochise County's designated personnel;

**4.5** Perform autopsies in a timely fashion;

**4.6** Provide forensic pathologist or otherwise qualified staff to testify in court whether as an expert or fact witness;

**4.7** Perform forensic and non-forensic autopsies. Some or all of the following service tasks may be performed, based upon the Pima County Medical Examiner's determination of need for each case:

**4.7.1** Prepare body for autopsy.

**4.7.2** Take photographs of decedent.

**4.7.3** Take fingerprints of the decedent.

**4.7.4** Take x-rays of decedent, if necessary.

**4.7.5** Prepare documents required for court testimony.

**4.7.6** Collect evidence, if necessary.

**4.7.7** Obtain specimens for possible toxicology testing.

**4.7.8** Provide a complete and detailed autopsy report for each individual case.

- 4.7.9** Maintain secure records containing the appropriate professional and supportive information and documentation pertaining to individual cases. Each case may contain the following information:
- 4.7.9.1** Law Enforcement agency preliminary report;
  - 4.7.9.2** Law Enforcement initial report of case;
  - 4.7.9.3** Any autopsy or examination report;
  - 4.7.9.4** Histological evidence;
  - 4.7.9.5** Slides and/or photographs of the decedent if any;
  - 4.7.9.6** Fingerprints of the decedent;
  - 4.7.9.7** X-rays of the decedent, if any;
  - 4.7.9.8** Past medical history of decedent, if any;
  - 4.7.9.9** Narrative entries of any other informational aspects concerning decedent, if any;
  - 4.7.9.10** Copy of signed death certificate.
  - 4.7.9.11** Submit to Cochise, by the 15th working day following the month in which service is rendered, supporting documentation of cases completed during the previous month and, if applicable, accompanying reports.
  - 4.7.9.12** Perform other duties related to this Agreement, including, but not limited to, the following:
    - 4.7.9.12.1** Signing death certificates for cremation authorization.
    - 4.7.9.12.2** Authorize anatomical gifts.
    - 4.7.9.12.3** Provide information to family members, the public and other service agencies as authorized by law including, when appropriate, to Consulates and other agencies that track or maintain databases regarding missing persons

## **5. Method of Payment and Pricing Payment**

- 5.1** Flat Fee Examination and Autopsy Fees. Not later than 30 days after execution of this Agreement, Cochise will submit the amount of \$93,750 to County as a flat fee payment for cases performed during the first quarter of the Contract Year (the Base Rate). For each subsequent quarter that this Agreement is in effect Cochise will submit the amount of \$93,750 not later than the 1st day of each new quarter (i.e. 10/1/2022; 1/1/2023; and 4/1/2023).
- 5.2** Other services. All non-examination or non-autopsy services will be billed and paid in accordance with County's published fee schedule in effect at the time the service is rendered. County will submit an invoice to Cochise by the 15th working day following the month in which the service is rendered identifying the service rendered along with any documentation which Cochise may need for their records.

## **6. Mutual Indemnification**

To the extent permitted by law, the parties (indemnitor) shall indemnify, defend and hold each other (indemnitee) harmless, along with their officers, departments, employees and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands, or damages of any kind or nature which result from any act or omission of the indemnitor, its agents, employees or anyone acting under its direction, control or on its behalf unless due solely to the indemnitee's negligence.

## **7. 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 Agreement. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this agreement and any disputes hereunder. Any action relating to this Agreement shall be brought in an Arizona court in Pima County.

## **8. Non-Discrimination**

Each party agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 which is hereby incorporated into this contract as if set forth in full herein **including flow down of all provisions and requirements to any subcontractors.** During the performance of this contract, the parties will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

## **9. 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.

## **10. Notice**

Any notice required or permitted to be given under this IGA must be in writing and 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 County: Pima County Medical Examiner's Office  
Christopher Smith  
2825 E District St  
Tucson, AZ 85714

Cochise County: Cochise County Health & Social Services  
Alicia M. Thompson, DrPH, LMSW  
1415 W Melody Lane, Bldg A  
Bisbee, AZ 85603

### **11. Non-Waiver**

The failure of either Party to insist upon the complete performance of any of the terms and provisions of this Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, shall not constitute a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either Party of sums less than may be due and owing it at any time shall not constitute an accord and satisfaction.

### **12. Force Majeure**

A party shall not be in default under this Agreement if it does not fulfill any of its obligations under this Agreement because it is prevented or delayed in doing so by reason of uncontrollable forces. The term "uncontrollable forces" shall mean, for the purpose of this Agreement, any cause beyond the control of the party affected, including but not limited to, failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, or action or non action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the parties themselves), and declared local, state, or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

### **13. Remedies**

Either party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be

cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Agreement.

#### **14. Severability**

If any provision of this Agreement 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 Agreement which can be given effect, without the invalid provision or application and to this end the provisions of this Agreement are declared to be severable.

#### **15. Insurance**

Each party is aware of the other party's self-insured status and agrees to satisfy financial responsibility associated with claims, including attorney fees outlined in section 22.0, above.

#### **16. Counterparts**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterpart may be removed from such counterpart and attached to a single instrument.

#### **17. Legal Arizona Workers Act**

17.1 The Parties hereby warrant that they will at all times during the term of this Contract comply with all federal immigration laws applicable to County employment of their employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). The Parties shall further ensure that each subcontractor who performs any work under this Contract likewise complies with the State and Federal Immigration Laws.

17.2 Each Party shall have the right at any time to inspect the books and records of the other Party and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

17.3 Any breach of either Party's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting the breaching party to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, the breaching party shall be required to take such steps as may be necessary to either self-perform the services that would have been provided

under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion.

17.4 Each Party shall advise each subcontractor of the other Party's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form:

“Subcontractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this Contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract.”

## **18. 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.

## **19. Non-Appropriation**

Notwithstanding any other provision in this Agreement, this Agreement may be terminated if for any reason either party does not appropriate sufficient monies for the purpose of maintaining this Agreement. In the event of such cancellation, the canceling party shall have no further obligation other than for payment for services rendered prior to cancellation.

## **20. Worker's Compensation**

Each party shall comply with the notice provisions of A.R.S. §23-1022 (E). For purposes of A.R.S. §23-1022, each party shall be considered the primary employer of all personnel currently or hereafter employed by that party, irrespective of the operations of protocol in place, and said party shall have the sole responsibility for the payment of Worker's Compensation benefits or other fringe benefits of said employees.

## **21. No Joint Venture**

It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between County and any Cochise employees, or between Cochise and any County employees. 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.

## **22. No Third Party Beneficiaries**

Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

## **23. Israel Boycott Certification**

Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

## **24. Amendment**

The parties may modify, amend, alter or extend this Contract only by a written amendment signed by the parties.

## **25. Entire Agreement**

This document constitutes the entire agreement between the parties pertaining to the subject matter it addresses, and this Contract supersedes all prior or contemporaneous agreements and understandings, oral or written.

## **26. Effective Date**

This Agreement will become effective when all parties have signed it. The effective date of the Agreement will be the date this Agreement is signed by the last party (as indicated by the date associated with that party's signature).

**In Witness Whereof**, the parties hereto have caused this Agreement to be executed by the following duly authorized representatives:

**PIMA COUNTY:**

**COCHISE COUNTY**

\_\_\_\_\_  
Chair  
Board of Supervisors

\_\_\_\_\_  
Chair  
Board of Supervisors

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Clerk of the Board

**ATTORNEY CERTIFICATION**

The foregoing Agreement between Pima County and Cochise County 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 Agreement.

**PIMA COUNTY:**

**COCHISE COUNTY:**

\_\_\_\_\_  
Deputy County Attorney

\_\_\_\_\_  
Attorney for Cochise County