

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
PIMA COUNTY AND COCHISE COUNTY  
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, pursuant to A.R.S. § 11-952.

**RECITALS**

- A. PIMA and COCHISE 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. PIMA and COCHISE desire to enter into an agreement for the provision of restoration to competency services for COCHISE pre-trial detainees;
- C. COCHISE detainees will remain under the jurisdiction of COCHISE for COCHISE criminal matters and will be assigned a defense attorney and prosecutor from COCHISE;
- D. This Agreement supersedes and voids Agreement 01-65-C-142975-0510 (now CTN 12\*524) executed between the Parties on May 19, 2010.

NOW, THEREFORE, PIMA 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**

1.1. The purpose of this IGA is to set forth the terms and conditions for admission of COCHISE's pre-trial 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. The following types of cases will not be accepted into PIMA’s RTC Program:

- a. Misdemeanor cases
- b. Medically unstable or danger to self or others
- c. Non-compliant with treatment

2.2. PIMA will receive and detain COCHISE’s pre-trial 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 letter of interest or the intake form must be faxed to the PIMA Restoration to Competency Program Manager at (520) 351-8097 prior to sending the Request for RTC Services by mail or courier service (FedEx preferred) to the address provided in the RTC Services Packet. COCHISE shall apply to admit a COCHISE detainee into the RTC Program by submitting a “Request for RTC Services” to PIMA. The request package that is sent to PIMA must include the following items, collated and clearly labeled where so indicated:

- a) The initial Intake Form (included in the RTC Services Packet), completed and signed;
- b) Hardcopy of the detainee’s medical and behavioral health records, collated and labeled, for use by the PCADC health care vendor;
- c) Hardcopy of the detainee’s administrative records, collated and labeled, 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 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), collated and labeled, for use by the PIMA RTC staff in determining if the detainee is a viable candidate for inclusion in the PIMA RTC program.

2.4. PIMA will determine whether to accept the detainee within 3 business days after receiving the complete Request package. 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. In deciding whether to accept a COCHISE detainee into the PIMA jail-based RTC program and, once in the program, in deciding whether a detainee should remain in the program, PIMA will apply the same criteria for acceptance and inclusion that PIMA uses in determining whether its own detainees are suitable for the jail-based RTC program.

2.5. If the detainee is accepted, COCHISE shall coordinate with PIMA and PCADC custody staff (see RTC Services Packet) 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. A court order from COCHISE is required for admission to the PIMA RTC Program (A.R.S. § 13-4510). The detainee will not be sent to PIMA PCADC for PIMA Restoration Services until a minute entry is received referring the detainee. The minute entry is the official notification of a detainee's referral to the program. The COCHISE Superior Court will be responsible for providing to the PIMA RTC program all collateral data that was shared with Rule 11 providers. Court orders into the PIMA RTC program will include the ability to force medications. The PIMA RTC program will begin the intake process for all detainees court ordered into the PIMA RTC program by the Superior Court of COCHISE after receipt of the Rule 11 provider's evaluations, the court order, and after PIMA has the detainee incarcerated.

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

2.7. COCHISE jail administrative records may also be used by the supervising RTC Forensic Psychologist and Forensic Support Staff during the course of restoration. At time of admission, 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.

2.8. 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.

2.9. If during the process of restoration it is determined that the detainee requires an intensive inpatient restoration setting, PIMA RTC will notify COCHISE so that a COCHISE Superior Court order can be issued to transfer the detainee to Arizona State Hospital (ASH) if applicable. 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 any related transportation.

2.10. As part of the restoration process, the PIMA RTC administration assistant will need 4 access granted to the COCHISE Superior Court website. The online access provides the PIMA RTC program the ability to obtain necessary documentation, i.e., minute entries and court records of the case.

2.11. The PIMA RTC program will request that COCHISE detainees sign release of information requests when admitted to the 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.

~~Deleted this section: PIMA will provide to the point of contact at the COCHISE Superior Court an active roster of COCHISE detainees in the PIMA RTC program.~~

2.12. 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.

2.13. COCHISE shall, whenever indicated, initiate civil commitment proceedings (as set forth in Arizona Revised Statutes Title 36, Chapter 5) prior to transfer of a detainee and shall be responsible for initiation of involuntary commitment and Title 14 proceedings whenever indicated upon completion of the RTC program.

2.14. In the event that PIMA, in consultation with COCHISE, 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.

2.15. 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 shall also 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.

2.16.PIMA will notify offsite health providers and COCHISE upon learning of COCHISE detainee receiving offsite services that those services are the financial responsibility of COCHISE. 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 5 beyond eight hours from notification will be invoiced separately pursuant to Paragraph 3.3.

2.17.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.

2.18.COCHISE shall specify a single point of contact for COCHISE Superior Court inquiries, who shall serve as a court liaison and an additional single point of contact for COCHISE custody communication, and a liaison for medical and/or mental healthcare. PIMA shall specify a single point of contact for RTC program service coordination and an additional single point of contact for billing and finance inquiries.

2.19.When an 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.

2.20.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.

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### **3. Financing**

3.1. For each detainee admitted to the RTC Program COCHISE will pay to PIMA a case rate of \$20,000.00 for detainee housing, routine onsite healthcare services, and costs of restoration services provided during the routine restoration period. This case rate may be revised from time to time through 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 for each detainee upon discharge from the RTC program for exceptional onsite services including interpreter services as indicated in Paragraph 2.12 above, for outlier medications as indicated in Paragraph 2.15 above, and for any offsite security in excess of the limits specified in Paragraph 2.16 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 days of receipt.

3.4. If COCHISE requests, in consultation with PIMA, that a PIMA psychiatrist prepares for, provides documentation for, travels to, or testifies at a “Sell’s hearing” related to forcible administration of antipsychotic medication, COCHISE will pay to PIMA three hundred dollars per hour (\$300) 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 days of receipt.

3.5. COCHISE shall notify PIMA in writing of any contested charges within 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 30 days after the receipt on the annual billing. Disputes shall be jointly reviewed by both parties for resolution within sixty days. If unresolved after sixty 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 County 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.

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 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 a 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 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 actual cost basis.,,,

3.11. As referenced in 2.14 herein, if PIMA, in consultation with COCHISE, 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 three 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 8 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. **Legal Authority.** Neither party warrants to the other its legal authority to enter into this IGA. If a court, at the request of a third person, should declare that either party lacks authority to enter into this IGA, or any part of it, then the IGA, or parts of it affected by such order, shall be null and void, and no recovery may be had by either party against the other for lack of performance or otherwise.
15. **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.
16. **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.

**17. 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.

**18. 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 300  
Tucson, AZ 85714

COCHISE:  
Michael J. Ortega  
County Administrator  
1415 Melody Lane  
Bisbee, AZ 85603

*With copies to:*  
County Administrator  
130 West Congress Street, 10th Floor  
Tucson, Arizona 85701

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

**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 Chairman of its Board of Supervisors, upon resolution of the Board and attested to by the Clerk of the Board, and COCHISE has caused this Intergovernmental Agreement to be executed by the Chairman if its Board of Supervisors upon resolution of the Board and attested to by the Clerk of the Board:

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**PIMA:**

**COCHISE:**

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Chairman, Board of Supervisors

\_\_\_\_\_  
Chairman, Board of Supervisors

**ATTEST:**

**ATTEST:**

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

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Clerk of the Board

**Intergovernmental Agreement Determination**

The foregoing Intergovernmental Agreement between PIMA and COCHISE for Restoration to Competency Services 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**

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Deputy County Attorney

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Deputy County Attorney