RESOLUTION 22-2020

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA (CITY), APPROVING AND AUTHORIZING THE EXECUTION OF A COURT CONSOLIDATION AGREEMENT BY AND BETWEEN THE CITY OF BENSON, ARIZONA AND COCHISE COUNTY, ARIZONA (COUNTY)

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; and

WHEREAS, the Mayor and Council of the City of Benson have reviewed the terms and conditions of the Court Consolidation Agreement attached as Exhibit A hereto, and find that entering into it is in the best interests of the City and its residents.

NOW THEREFORE, BE IT RESOLVED by the City of Benson Mayor and Council that the City enter the Agreement (attached as Exhibit A) with Cochise County for Court Consolidation. The Mayor is authorized to execute the Agreement.

BE IT FURTHER RESOLVED that the City's officers and staff are authorized to take all steps necessary and proper to implement the above-discussed Agreement and carry out its intents and purposes.

PASSED AND ADOPTED by the Mayor and Council of the City of Benson, Arizona, this 22nd day of June, 2020.

_____
Toney D. King, Sr., Mayor

ATTEST:

_____
Vicki L. Vivian, CMC, City Clerk

APPROVED AS TO FORM:

_____
Mesch Clark Rothschild
By Gary J. Cohen
City's Attorney

COURT CONSOLIDATION AGREEMENT
BY AND BETWEEN
THE CITY OF BENSON, 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 Benson, 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** are authorized to enter into this Intergovernmental Agreement pursuant to A.R.S. §11-951 *et seq.*

WHEREAS, the **CITY** enters this Agreement in lieu of establishing or maintaining a municipal court pursuant to A.R.S. §22-402(C).

WHEREAS, the **COUNTY** agrees to provide the services of a municipal court through the Benson Justice Court, Precinct Three as set forth in this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

I. LOCATION AND DESIGNATION

The municipal court is merged into and consolidated with the Benson Justice Court, Precinct Three. The Justice Court shall be located at 126 W. 5th Street, Suite 1, Benson, AZ or other suitable location within the **CITY.** The Justice Court Identification Number shall be used for all purposes including any municipal court services performed under this Agreement.

The Benson Justice Court, Precinct Three, shall provide the services of a municipal court including exercising jurisdiction of all cases arising under the ordinances of the **CITY** pursuant to A.R.S. §11-402(C). The Justice Court shall assume all responsibilities and

authority provided by A.R.S. Title 22, Chapter 4 which the **CITY** otherwise would have but for this Agreement.

II. DUTIES OF THE COUNTY

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

1. The prosecution and defense of all cases which arise during the existence of this Agreement which could have been filed in the **City** municipal court but for this Agreement.

2. Transportation and incarceration of defendants appearing before the Justice 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.

3. Service of process as required by law for parties appearing before the Justice Court as a result of citations or long form complaints.

4. Service of process as required by law for parties appearing before the Justice 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 Justice Court.

B. 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 court staff. The County shall be responsible for the administration and management of all compensation, payroll and employee benefits of Justice Court judicial officers and court employees.

C. The Justice Court shall be responsible for the collection of fees, fines, surcharges, City Code administrative fees, and shall make disbursements as may be required by law or rules and regulations of the State of Arizona and the Arizona Supreme Court.

III. DUTIES OF CITY

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

B. The CITY understands and agrees that, in consideration of the COUNTY'S provision of municipal court services, the CITY shall be responsible for performance of the following related functions.

1. Initial transportation for incarceration of defendants appearing before the Justice 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. 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 provision of municipal court services, 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, including those cases arising within the corporate limits of the **CITY**.

D. The CITY agrees to pay the COUNTY $0.00 for municipal court services for FY2020-21. Said payment shall be payable quarterly, in advance, or payment may be made in one lump sum at the beginning of the fiscal year.

E. The County shall consult with the City on the process for selection of a new Justice of the Peace in the event the Board is required to appoint a new Justice of the Peace; provided, however, that the final selection shall be determined by the Board.

IV. 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.

V. TERM AND TERMINATION

A. The term of this Agreement shall begin on July 1, 2020 and shall continue through June 30, 2021.

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.

VI. 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.

VII. 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.

VIII. 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.

IX. 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.

X. 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. Any party may sign this Agreement electronically, with the same force and effect as if signed with pen and ink.

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:

_____

Thomas E. Borer, Chair Date
Board of Supervisors

ATTEST:

_____

Kim Lemons, Clerk Date
Board of Supervisors

APPROVED:

SUPERIOR COURT IN AND FOR
THE COUNTY OF COCHISE

_____

Hon. James Conlogue Date
Presiding Judge

COCHISE COUNTY ATTORNEY

_____

Brian McIntyre Date
Cochise County Attorney

APPROVED:

CITY OF BENSON:

_____

Toney D. King, Sr., Mayor Date
City of Benson

ATTEST:

_____

Vicki L. Vivian, CMC, City Clerk Date
City of Benson

APPROVED:

JUSTICE COURT, PRECINCT #1
CITY MAGISTRATE

_____

Hon. Bruce Staggs Date
JP/City Magistrate

INTERGOVERNMENTAL AGREEMENT DETERMINATION

RE: Court Consolidation Agreement between the City of Benson 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 Benson, Cochise County, Arizona.

APPROVED this _____ day of _____, 2020.

_____
Mesch Clark Rothschild
By Gary J. Cohen
City's 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 _____, 2020.

_____
Britt W. Hanson, Of Counsel
Cochise County Attorney