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FEB 14 2013



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MEMORANDUM Fire Department

DATE: FEBRUARY 14, 2013

TO: MAYOR AND COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *RD*

FROM: JEFF CLARK, FIRE CHIEF *JC*

SUBJECT: INTERGOVERNMENTAL AGREEMENT WITH THE CITIES OF TEMPE
AND SCOTTSDALE FOR THE RECRUITMENT AND TESTING OF
FIREFIGHTERS

RECOMMENDATION: Staff recommends that the City enter into a “Tri-City” Intergovernmental Agreement (IGA) with the City of Tempe and the City of Scottsdale for the recruitment of firefighter applicants and the administration of a written test to the firefighter applicants.

BACKGROUND/DISCUSSION: The firefighter recruitment process has been that each city would recruit and administer written tests for firefighter applicants. Generally, the applicant pool for the process in each city was the same group of people. In addition, each city would purchase validated written tests from testing companies to ensure compliance for the testing process. Each city would independently bare the cost of marketing, providing registration forms and issuing the written examination. This IGA will formalize the process of jointly recruiting and administering the validated written test. After the recruitment and written test, each city will conduct hiring interviews on their own in order to determine qualities important to that city. The IGA includes a provision to allow other jurisdictions the opportunity to join, reducing the costs even further.

FINANCIAL IMPLICATIONS: The IGA is written that the costs for marketing, registration, test purchase and test administration will be shared equally by the parties involved. The aggregate cost for all phases is estimated to be \$48,000, the City’s share will be approximately \$16,000.

PROPOSED MOTION: Move that Council approve the Intergovernmental Agreement between the City of Chandler, City of Scottsdale and City of Tempe for the purpose of a “tri-city” firefighter recruitment and written testing process and sharing the cost of such process.

Attachments: Intergovernmental Agreement

INTERGOVERNMENTAL AGREEMENT FOR A MULTI JURISDICTIONAL FIREFIGHTER RECRUITMENT PROCESS

This Intergovernmental Agreement ("Agreement") is entered into pursuant to A.R.S. §§11-951 *et seq.*, by and among the City of Chandler, the City of Scottsdale and the City of Tempe. The aforementioned agencies shall herein after be known collectively as the "Parties" and individually as "Party."

RECITALS

1. The Parties all maintain and operate fire departments providing firefighting, emergency medical services and other public safety functions for their respective communities.
2. Although each of the Parties' Fire Departments vary in some respects in recruiting and training of prospective new fire fighters, they all have a need to establish a current firefighter eligibility list on an ongoing basis ("Eligibility List").
3. The Parties have determined that their needs for formulating an Eligibility List for recruiting firefighters in this regard are sufficiently similar such that engaging in a coordinated effort will be more efficient for each, resulting in savings of both cost and time.
4. Arizona Revised Statutes ("A.R.S.") § 11-952 allow public agencies such as the Parties to jointly exercise any powers common to the Parties and may enter into intergovernmental agreements such as this one.
5. For these reasons, the Parties believe that by agreeing to participate collectively and to establish an Eligibility List is in their mutual best interests and that of their respective communities.

NOW, THEREFORE, for and in consideration of the foregoing, the covenants and promises contained below and for other good and valuable consideration, the Parties agree as follows:

TERMS

1. Recitals. The foregoing recitals are incorporated into this Agreement and made a part of it by this reference.
2. Purpose. The Parties to this Agreement wish to work together to identify, test and individually select qualified individuals seeking the opportunity to participate in firefighter recruit training and employment with one of the Parties' Fire Departments.

3. Additional Agencies.

- 3.1. Other public agencies, as that term is defined in A.R.S. § 11-951, may be invited to and become a Party to this Agreement after approval by a majority of the then-existing fire chiefs of the then-existing Parties and compliance with the provisions of A.R.S. §§11-951 *et seq.*
- 3.2. Any Party's fire chief may propose additional public agencies located within Arizona, as defined in the statute, as parties to this Agreement.
- 3.3. A public agency approved by the fire chiefs in accordance with Subsection 3.1, shall become a Party to this Agreement as of the date that the Agreement is adopted by its governing body and properly executed by it and filed with the County Recorder for the county wherein the new Party is located.
- 3.4. Each Party shall provide a copy of its fully executed Agreement to every other Party.

4. Responsibilities.

- 4.1. The responsibilities of each of the Parties to the Agreement either are set forth below by subject matter or will be mutually determined by the Parties' fire chiefs or their designees before the occurrence of one of the events described herein.
- 4.2. Each Party will be responsible for performing its acts required to successfully accomplish each joint event described below or mutually determined within the purview of this Agreement by the Parties. For purposes of this Agreement, the designees of the Parties' fire chiefs shall be referred to as "Contract Administrators."
- 4.3. By each Party's governing bodies approval of this Agreement, each Party is authorizing its fire chief to make the future decision/decisions regarding expanding the Parties of this Agreement.

5. Marketing. Each Party is committed to recruit and hire the most qualified, diverse firefighter applicants, who represent the cultural diversities in their communities. The Parties will use specific targeted marketing strategies to ensure a diverse pool of applicants. By mutual determination of the Contract Administrators, each Party will:

- 5.1. Use specific targeted marketing strategies to ensure a diverse pool of applicants for each Eligibility List;
- 5.2. Be assigned specific regions of the Phoenix metropolitan area to distribute marketing flyers announcing an open recruitment process;

- 5.3. Develop an individual marketing campaign for each Eligibility List;
 - 5.4. Conduct marketing for each Eligibility List during a period that is mutually agreeable to the Parties and determine which Party will be the Lead Party for marketing; and
 - 5.5. Not exceed the total aggregate costs associated with each marketing campaign of \$1,500 per Party.
6. Website Announcement. For each Eligibility List, each Party will establish a website that can be linked by and to each contributing fire department's website. This site will have an easy link to the firefighter applicant registration form for out-of-state applicants and to instructions for the open registration date and locations.
- 6.1. There are no anticipated costs for the registration module other than the personnel cost to each Party, of which each of the Parties will assume as part of their participation in this Agreement.
 - 6.2. Each Party will comply with the requirements of this section and make it available for access and use by a date mutually agreeable to the Parties.
7. Registration. For each Eligibility List, each Party that decides to utilize applications from the Eligibility List will host an information event within their jurisdiction for recruiting applications for firefighters for the relevant Parties' fire departments. The information event will be held on dates mutually agreed upon by the Parties. Each of the other relevant Parties will support the events with the appropriate number of personnel to answer questions about their specific departments and support personnel to perform data entry. Each qualified applicant will be assigned a firefighter exam date and time, along with a unique identification number to allow sharing of testing and other relevant information without disclosing the identity of the potential candidate to the other candidates or the Parties.
- 7.1. There are no anticipated costs for registration, other than the personnel cost to each Party, of which each of the Parties will assume as part of their participation in this Agreement.
 - 7.2. For each Eligibility List, registration will be conducted on dates that are mutually agreed upon by the Parties. The Parties' Fire Chiefs or Contract Administrators will collectively designate a Lead Agency responsible for coordinating registration for each Eligibility List.
8. Written Examination.

- 8.1. A third party firefighter exam vendor has been identified, based upon a selection process previously conducted by the City of Chandler that included provisions for cooperative purchasing. Upon expiration or termination of the City of Chandler's contract with this vendor, the Parties reserve the option to select a new exam vendor and such vendor shall be competitively selected pursuant to the purchasing code of the Party mutually agreed upon to conduct a new selection process and any such selection shall incorporate provisions for cooperative use.
 - 8.2. Prior to each written examination, the Parties will mutually agree upon a Testing Facility that can support the administering of a written exam to the large number of applicants anticipated. Applicants previously determined to be qualified will arrive and take their written exams at the times assigned during the open registration process. The total number of tests will be capped based upon mutual agreement of the Parties.
 - 8.3. The total costs for securing the Testing Facility, which shall not exceed \$5,000, and the total aggregate cost for the written exams for all applicants, which shall not exceed \$40,000, will be shared equally by each Party. In order for each Party to be liable for its share of the total aggregate costs of the written exam, each Party will enter into a written agreement with the firefighter exam vendor for its respective share of the total number of tests to be given, for which it shall pay its share of the total cost. A Party that does not pay their share of the total cost shall not receive any test results or have access to the Eligibility List discussed below in Section 9.
 - 8.4. For each Eligibility List, the written examination will be administered on dates as determined collectively by the Contract Administrators, at the Testing Facility, at times to be determined. The Parties' Fire Chiefs or Contract Administrators will collectively designate a Lead Agency responsible for making testing arrangements for each Eligibility List.
9. Test Results. The third party vendor will independently score the written exams and will provide each Party with a list of applicants and their associated test scores. This will establish an Eligibility List for each Party that can be administered based on their specific hiring practices and guidelines. Test results will be posted on the internet and will be referenced only by the applicant's unique number assigned at the time of registration.
- 9.1. Applicants will be placed on the Eligibility List. Each Party will determine what the cutoff or passing score is for the particular Agency. Each applicant will be required to complete the specific Party's application process, based on each Party's hiring policies, once they have been selected from the Eligibility List for an interview by a particular Party.

9.2. There are no anticipated costs for processing test results for the Parties, other than the personnel cost to each Party, of which each of the Parties will assume as part of their participation in this Agreement.

10. Duration and Cancellation of Agreement.

10.1. Duration. This Agreement shall become effective upon filing the authorizing document executed the Parties hereto and shall remain in effect until July 1, 2023, unless otherwise terminated by the terms of this Agreement or operation of law. Failure by one or more Parties to execute the Agreement shall not invalidate the Agreement as to those Parties who did so.

10.2. Cancellation without Cause. Any Party may withdraw from this Agreement with or without cause by giving thirty (30) calendar days written notice to the other Parties to the Agreement.

11. Indemnification. To the fullest extent permitted by law, each Party (as "Indemnitor") its successors, assigns and guarantors, shall defend, indemnify and hold harmless the other Parties (as "Indemnitee") and any of their elected or appointed officials, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, personal injury and wrongful death claims, losses, expenses, penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the Indemnitees by reason of this Agreement or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by one or more of the Indemnitor, or any of its subcontractors, or anyone directly or indirectly employed by any of the Indemnitors or anyone for whose acts any of the Indemnitors may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Agreement, including but not limited to, any injury or damages claimed by any of Indemnitors and subcontractor's employees.

12. Contract Administrators. Each Party's Fire Chief will designate the contract administrators ("Contract Administrator") for each of the Parties. The Contract Administrators will be responsible for the administration of the Agreement for the respective Parties, and they will communicate and coordinate, as necessary.

13. Workers' Compensation. Pursuant to A.R.S. §23-1022(D), for the purposes of workers' compensation coverage, all employees of each Party covered by this Agreement shall be deemed to be an employee of all Parties. The agency which regularly employs an employee entitled to workers' compensation arising out of work associated with this Agreement shall be the agency solely liable for payment of all workers' compensation and related benefits.

14. Additional provisions.

- 14.1. Nondiscrimination. The Parties to this Agreement shall comply with all applicable provisions of state and federal non-discrimination laws and regulations. No Party shall engage in any form of illegal discrimination, including but not limited to discrimination based on race, religion, gender, sexual orientation, gender identity, age, national origin, or political affiliation.
- 14.2. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Neither a signature for every Party nor a signature line shall be required in each counterpart except on a counterpart being brought forward by a Party to its legislative body or equivalent for approval, that particular counterpart shall have to be signed and executed in accordance with that Party's practice. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.
- 14.3. Entire agreement. This Agreement contains the entire understanding of the Parties hereto as to its subject matter. There are no representations or other provisions other than those contained herein, and any amendment or modification of this Agreement shall be made only in writing and signed by the parties to this Agreement.
- 14.3.1. Upon amendment of the Agreement, if any, references to "Agreement" shall mean the Agreement as amended by any subsequent amendment(s).
- 14.3.2. If, after the effective date of any subsequent amendment(s), the Parties find it necessary to refer to the Agreement in its original, unamended form, they shall refer to it as the "Original Agreement." When the Parties mean to refer to any specific amendment to the Agreement as if it were unmodified by any subsequent amendments, the Parties shall refer to it by the number of the amendment as well as its effective date.
- 14.4. Scrutinized Business Operations. Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, each Party certifies that it does not have a scrutinized business operation, as defined in A.R.S. §§ 35-391 and 35-393, in either Sudan or Iran.
- 14.5. Governing Law. The laws of the State of Arizona shall govern this Agreement. Venue will be in the Maricopa County Superior Court unless the subject matter of the dispute involves an Indian Community, then venue shall be in the Federal

District Court for the State of Arizona. In the event of any litigation or arbitration arising out of this Agreement, the prevailing Party in such litigation or arbitration shall be entitled to recover its reasonable attorney fees, expert witness fees and other costs of litigation.

- 14.6. Cancellation. In addition to the termination and cancellation provisions in Section 10, the Parties reserve all rights that each may have to cancel this Agreement for possible conflicts of interest under A.R.S. § 38-511, as amended.
 - 14.7. Severability. If any provision of this Agreement is declared invalid, illegal or unenforceable, that provision shall be severed from the Agreement, and the remaining provisions shall otherwise remain in full force and effect.
 - 14.8. Indemnifications Survive. The provisions of this Agreement wherein a Party has explicitly indemnified the other Party shall survive the expiration or earlier termination of this Agreement.
15. Compliance with E-Verify Program.
- 15.1. To the extent provisions of A.R.S. § 41-4401 are applicable, all Parties warrant to each Party that they will comply with all Federal Immigration laws and regulations that relate to their employees and that each now complies with the E-Verify Program under A.R.S. § 23-214(A).
 - 15.2. A breach of this warranty will be considered a material breach of this Agreement and may subject the breaching Party to penalties up to and including termination of this Agreement.
 - 15.3. All of the Parties retain the legal right to inspect the papers of any employee who works pursuant to this Agreement or any related subcontract to ensure compliance with the warranty given above.
 - 15.4. Any Party may conduct a random verification of the employment records of any other Party to ensure compliance with this warranty.
 - 15.5. A Party will not be considered in material breach of this Agreement if it establishes that it has complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A).
 - 15.6. The provisions of this section must be included in all contracts any Party enters into with any and all of its contractors or subcontractors who provide services under this Agreement.

16. Notices. Any notice required to be given under this Agreement will be provided to the fire chief of every Party to this Agreement

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Party named below has executed this Agreement on _____, 2013.

CITY OF SCOTTSDALE, an Arizona municipal corporation

By: _____
W.J. "Jim" Lane
Mayor

ATTEST:

Carolyn Jagger
City Clerk

APPROVED AS TO FORM:

Bruce Washburn, City Attorney
By Luis E. Santaella
Senior Assistant City Attorney

CITY OF TEMPE, an Arizona municipal corporation

By: _____
Mark W. Mitchell
MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Assst. Kay Bagelow
CITY ATTORNEY

CITY OF CHANDLER, an Arizona municipal corporation

By: _____
Jay Tibshraeny
MAYOR

ATTEST:

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with A.R.S. §11-952 (D), this Agreement has been reviewed by the undersigned who determined that it is in appropriate form and is within the powers and authority of the respective parties.

CITY OF SCOTTSDALE

By: _____
Luis E. Santaella
Senior Assistant City Attorney

Date: _____, 2013

CITY OF TEMPE

By: _____
Andrew B. Ching
City Attorney

Date: _____, 2013

CITY OF CHANDLER

By:  _____
Kay Bigelow
Assistant City Attorney

Date: _____, 2013