#27

JUN 12 2014

MEMO

TO: Mayor and City Council

FROM: R. Michael Traynor, Presiding Magistrate

SUBJECT: APPROVAL OF CONTRACTUAL SERVICES WITH MARICOPA COUNTY JURY COMMISSION

RECOMMENDATION: The Presiding Magistrate recommends approving the IGA with Maricopa County Superior Court Jury Commissioner to continue responsibility for providing jurors for the Chandler Municipal Court.

BACKGROUND: The Chandler Municipal Court presently utilizes the services of the Maricopa County Superior Court Jury Commissioner to summon citizens of the City of Chandler for jury service. In addition to selecting the names of potential jurors, the contract also provides for the cost of mailing the summons/questionnaires, letters of excuse, postponement and failure to respond cards. The contract also provides a separate payroll service to pay jurors serving on a jury panel.

DISCUSSION: The initial term of this agreement is July 1, 2014 through June 30, 2016 with the option to renew this IGA in writing for four additional two-year terms, to expire no later than June 30, 2024. The Court is satisfied with the jury services being provided and is requesting approval.

FINANCIAL IMPLICATION: The fees paid to the Jury Commissioner for FY 14/15 will be approximately $10,000. This figure includes reimbursement to the Superior Court for the daily attendance fees and mileage reimbursement the Superior Court pays to jurors on behalf of the Chandler Municipal Court plus $2.09 per person summoned.

PROPOSED MOTION: Move to approve the contractual agreement between the City of Chandler, Chandler City Court and Maricopa County Superior Court, County of Maricopa not to exceed $10,000.

R. Michael Traynor
Presiding City Magistrate

INTERGOVERNMENTAL AGREEMENT

BETWEEN

THE SUPERIOR COURT OF ARIZONA IN MARICOPA COUNTY

and

THE CITY OF CHANDLER, ARIZONA

RECEIVED
CHANDLER MUNICIPAL COURT
2014 MAY 30 AM 9: 11

This Intergovernmental Agreement ("IGA"), is entered into between the Superior Court of Arizona, in and for the County of Maricopa ("Superior Court"), and the City of Chandler, Arizona on behalf of its municipal court ("Municipal Court"), for jury services.

1. RECITALS

WHEREAS, the Superior Court has historically offered certain jury services to certain municipal courts in Maricopa County; and

WHEREAS, Municipal Court desires to use the jury services offered by the Superior Court;

THEREFORE, in consideration of the mutual agreement expressed herein, the parties agree as follows:

2. PURPOSE

The purpose of this IGA is to provide jury services as specified herein.

3. AUTHORITY

The Superior Court has the duty and authority to summon jurors. A.R.S. § 21-101 et seq. The Municipal Court has the duty and authority to summon jurors. A.R.S. §§ 21-101 et. seq., 22-401 et. seq. The parties are authorized to enter into this IGA pursuant to A.R.S. § 11-952(J).

4. TERM AND RENEWAL; TERMINATION

A. This IGA shall be effective July 1, 2014 and shall expire June 30, 2016. The parties may renew this IGA in writing for four additional two-year terms, to expire no later than June 30, 2024. If the Municipal Court wishes to renew this IGA, it must notify the Superior Court at least 90 days in advance of its expiration. If City Council approval is required for this IGA, the renewal may be executed by the Municipal Presiding Judge or City Manager. The Municipal Court understands and agrees that the Superior Court may increase the cost per summons or cost per compact disc ("CD") at the time of renewal to reflect an increase in actual costs.

B. Either party may terminate this IGA for any reason upon 30 days' written notice. Either party may terminate this IGA immediately if the other party materially breaches the IGA. Either party may terminate this IGA due to non-availability of funds, as stated in paragraph 17. Upon termination, all property used in performance of this IGA shall be returned to the party owning the property or entitled to possession.

C. This IGA supersedes all prior agreements between the parties for jury services. Any amendments to this IGA must be in writing and signed by both parties.

5. DUTIES OF SUPERIOR COURT

A. If the Municipal Court in paragraph 6 below elects to have the Superior Court print and mail summons, the Superior Court shall do the following on behalf of the Municipal Court:

i. The Superior Court will print and mail a summons to potential jurors on behalf of Municipal Court. The potential jurors will be selected to receive a summons from a master jury list in accordance with state law. *See* A.R.S. § 21-301 et seq. In addition to printing and mailing the summons, the Superior Court will field phone calls about postponements, excuses, and disqualifications.

ii. The Superior Court shall include the phone number provided by the Municipal Court on the summons for potential jurors who receive summons to call and listen to a recording and/or inquire whether they must report at the date and time specified in the summons. The Superior Court is not responsible for maintaining or staffing this phone line or recording.

iii. The Superior Court shall process the payment of jury fees and mileage reimbursements.

iv. The Superior Court is not responsible for setting up the Remote Access Services ("RAS") account or providing maintenance or services related to the RAS account. The RAS accounts and related maintenance or services are provided through the Office of Enterprise Technology ("OET").

B. If the Municipal Court in paragraph 6 below elects to have the Superior Court provide a CD with the names and addresses of potential jurors to whom the Municipal Court may send its own summons, the Superior Court shall provide a CD within ten business days with 100 such names. If the Municipal Court elects to have Superior Court provide a CD, the CD is the only product or service provided by the Superior Court, and the Superior Court will not: print and mail the summons; field phone calls about postponements, excuses, disqualifications; or process payment of jury fees and mileage reimbursements.

C. The Superior Court shall submit bills to the Municipal Court on a quarterly basis, except the Superior Court may bill for the CDs and RAS accounts at the time they are provided.

6. DUTIES OF MUNICIPAL COURT

A. On or before the start of the term of this IGA and any renewal terms, the Municipal Court shall elect in writing to the Superior Court Jury Office whether the Municipal Court wants the Superior Court to print and mail summons, wants a RAS card, and/or wants a CD with the names and addresses of potential jurors to whom the Municipal Court may print and send its own summons. The Municipal Court shall contact the Superior Court Jury Office to coordinate services. The Municipal Court may make its election by checking one of the options below, or it may otherwise make this election in writing to the Superior Court Jury Office.

__X__ Print and Mail Summons ____ CD with Juror Names

B. The Municipal Court agrees to pay the following fees, depending on the elections made by the Municipal Court:

i. A fee of $2.09 for each summons printed and mailed by the Superior Court on behalf of the Municipal Court.

ii. The Municipal Court shall reimburse the Superior Court for the daily attendance fees and mileage reimbursements the Superior Court pays to jurors on behalf of the Municipal Court.

iii. A $50.00 activation fee and an $8.00 monthly subscriber fee for each RAS account. Each person who enters data or has access through a RAS account must have his/her own account. The Municipal Court must notify the Superior Court and OET when the Municipal Court changes RAS account users. If the Superior Court incurs additional fees or costs from OET related to RAS accounts for the Municipal Court, the Municipal Court shall reimburse the Superior Court for such fees or costs.

iv. A fee of $25.00 for each 100 potential jurors listed on the CD.

v. A fee of $150.00 if the Municipal Court fails to timely enter juror data, as set forth below.

C. If the Municipal Court elects to have the Superior Court print and mail summons on its behalf, the Municipal Court is responsible for the following:

i. By July 1 of each year, the Municipal Court shall provide the Superior Court with information on the number of jurors to be summoned and on which days they shall be summoned. The Municipal Court shall notify the Superior Court at least seven weeks in advance of any changes in the number of summonses needed and the dates for which summonses shall be sent. Each year, by the first Friday in November, the Municipal Court shall provide the Superior Court with blackout

dates for the next year. Blackout dates are days on which the Municipal Court knows at the beginning of the year it will not need jurors to appear for service during that year.

ii. The Municipal Court shall operate a phone line for jurors to call to inquire whether they must report on the date and time specified on their summons. The Municipal Court shall provide the Superior Court with the phone number and any changes to the phone number so the Superior Court can include it on the summons. The Municipal Court is solely responsible for the costs, maintenance and staffing associated with this phone line.

iii. Within three (3) business days of the first day a juror reports for jury service in the Municipal Court, the Municipal Court shall provide the Superior Court with information regarding individuals who report for jury service in response to a summons sent by the Superior Court pursuant to this IGA as follows:

a. The Municipal Court may use the Superior Court's form. The Municipal Court shall type the information in order to ensure accurate information is processed on the form as directed by the Maricopa County Superior Court; or

b. If the Municipal Court has elected to have RAS card access and paid the associated fees for such access, the Municipal Court may enter the data into the program the Superior Court uses for juror management (currently, AgileJury). The Superior Court may provide general direction regarding how to enter the data in AgileJury (or any other program the Superior Court later decides to use for juror management). However, the Municipal Court is responsible for all technical support of its computer system and training of its employees.

c. If the Municipal Court fails to enter the data within the three business days, the Superior Court will charge the Municipal Court a fee of $150.00 for each day for which juror information is not entered to cover additional costs for re-running billing data, analyzing billing data, and re-entry into billing spreadsheets.

D. If the Municipal Court elects to have the Superior Court provide a CD of names and addresses, the Municipal Court is responsible for all of its own jury services, including but not limited to printing and mailing the summons, fielding phone calls relating to jury service, and processing payment of jury fees and mileage reimbursements.

E. The Municipal Court is responsible for enforcement of any juror summons issued on behalf of its court, including contempt notices, hearings, proceedings, procedures, and/or other enforcement measures. The Superior Court is not obligated by this IGA to conduct any contempt or enforcement proceedings on behalf of the Municipal Court.

F. The Municipal Court is not authorized and shall not permanently excuse any jurors. The Municipal Court shall refer any jurors seeking to be permanently excused to the Superior Court, regardless of whether the Superior Court printed and mailed the summons or the Municipal Court printed and mailed the summons.

G. The identity of jurors or potential jurors is sensitive, confidential, and protected by statute and court rule. The Municipal Court agrees to restrict access to information provided under this agreement to individuals who are authorized to access such information for the completion of their official duties.

H. The Municipal Court shall comply with the Minimum Accounting Standards and Generally Accepted Accounting Principles related to financial transactions involving jurors.

I. The Municipal Court shall remit payment to the Superior Court within 30 calendar days of receiving a bill from the Superior Court.

7. INDEMINIFICATION

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, agents, employees, or volunteers.

In addition, Municipal Court shall cause its contractor(s) and subcontractors, if any, to indemnify, defend, save and hold harmless the State of Arizona, any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and their respective directors, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Municipal Court's contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

8. INSURANCE

Both parties are insured as governmental entities and therefore no insurance certificates are required by either party pursuant to this IGA. If the Municipal Court uses a contractor to perform services in relation to this Agreement, the below insurance requirements shall apply.

***Insurance Requirements* for Any Contractors Used by Municipal Court:**
The *insurance requirements* herein are minimum requirements and in no way limit the indemnity covenants contained in the Intergovernmental Agreement. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the governmental entity or Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees or subcontractors, and Contractor and the governmental entity are free to purchase additional insurance.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE**: Contractor shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability – Occurrence Form
   Policy shall include bodily injury, property damage, personal and advertising injury and broad form contractual liability.
   - General Aggregate $2,000,000
   - Products – Completed Operations Aggregate $1,000,000
   - Personal and Advertising Injury $1,000,000
   - Blanket Contractual Liability – Written and Oral $1,000,000
   - Damage to Rented Premises $ 50,000
   - Each Occurrence $1,000,000

     a. The policy shall be endorsed to include the following additional insured language: **"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor."** Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

     b. Policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. **Business Automobile Liability**
   Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.
   - Combined Single Limit (CSL) $1,000,000

a. The policy shall be endorsed to include the following additional insured language: **"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor"**. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

b. Policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

c. Policy shall contain a severability of interest provision.

3. Worker's Compensation and Employers' Liability

• Workers' Compensation	Statutory
• Employers' Liability	
Each Accident	$ 500,000
Disease – Each Employee	$ 500,000
Disease – Policy Limit $1,000,000	

a. Policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. § 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

B. **ADDITIONAL INSURANCE REQUIREMENTS**: The policies are to contain, or be endorsed to contain, the following provisions:

1. The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary insurance and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S § 41-621 (E).
2. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of its Contract with the other governmental entity(ies) party to the IGA.

C. **NOTICE OF CANCELLATION**: With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the State of Arizona. Such notice shall be sent directly to the Department and shall be sent by certified mail, return receipt requested.

D. **ACCEPTABILITY OF INSURERS**: Contractors insurance shall be placed with companies duly licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII or duly authorized to transact Workers' Compensation insurance in the State of Arizona. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE**: Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description are to be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

F. **SUBCONTRACTORS**: Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the State of Arizona separate certificates for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

G. **APPROVAL**: Any modification or variation from the *insurance requirements* in any Intergovernmental Agreement must have prior approval from the State of Arizona Department of Administration, Risk Management Division, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.

H. **EXCEPTIONS**: In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university then none of the above shall apply.

9. AUDIT OF RECORDS

Pursuant to A.R.S. §§ 35-214 and 35-215, both parties shall retain all data, books and other records ("records") relating to this Agreement for a period of five years after completion of the Agreement. All records shall be subject to inspection and audit by the State of Arizona at reasonable times. Upon request, either party shall produce the original of any or all such records.

10. CANCELLATION FOR CONFLICT OF INTEREST

The requirements of A.R.S. § 38-511 apply to this Agreement. Either party may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of either party is, at any time while this Agreement or any extension is in effect, an employee or agent of the other party with respect to the subject matter of this Agreement.

11. NON-DISCRIMINATION

Both parties shall comply with Executive Order 2009-9, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable state and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. Both parties shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

12. COMPLIANCE REQUIREMENTS FOR A.R.S. § 41-4401—IMMIGRATION LAWS AND E-VERIFY REQUIREMENT

A. Both parties warrant compliance with all Federal immigration laws and regulations relating to employees and warrant its compliance with Section A.R.S. § 23-214, Subsection A, which reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program."

B. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract and the other party may be subject to penalties up to and including termination of the Agreement.

C. Both parties retain the legal right to inspect the papers of any employee who works on the Agreement to ensure that the other party or any contractor or subcontractor is complying with the warranty under paragraph 12(a).

13. APPLICABLE LAW

This Agreement shall be construed in accordance the laws of the State of Arizona.

14. LEGAL OBLIGATIONS

This IGA does not relieve either party of any obligation or responsibility imposed upon it by law.

15. ARBITRATION

The parties to this Agreement 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.

16. WAIVER AND MODIFICATION

None of the provisions of the Agreement may be waived, changed or altered except in writing signed by both parties.

17. AVAILABILITY OF FUNDS

Every payment obligation of the parties under this Agreement is conditioned upon the availability of funds 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 the parties or any other agency of the State of Arizona at the end of the period for which funds are available. No legal liability on the part of the parties or any other agency of the State of Arizona for any payment may arise under this Agreement until and only as long as funds are made available for performance of this Agreement. If the necessary funds are not made available, then that party shall provide written notice to the other party and may cancel this Agreement without further obligation. No liability shall accrue to the parties or any other agency of the State of Arizona in the event this provision is exercised, and neither the parties nor any other agency of the State of Arizona shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph, including payments or damages for purchases or subcontracts entered into in anticipation of funding.

18. NOTICES

All notices, claims, request, and demands under this IGA are to be in writing and served in person or via certified (return receipt requested) United States mail, postage prepaid, addressed as follows:

If to the Superior Court: Superior Court in Maricopa County
Jury Administrator
175 W. Madison St.
Phoenix, AZ. 85003-2243
Attn: Jury Manager

If to Municipal Court: City of Chandler
175 South Arizona Avenue
Chandler, Arizona 85225
Attn: Thomas A. Zaworski, Assistant City Attorney

or at such other address as shall be indicated in writing by each party. Service by certified mail will be deemed to occur on the postmark date borne by the return receipt.

In witness whereof, the parties hereto have executed this IGA on the date written below:

Honorable Norman J. Davis Presiding Judge, Superior Court of Arizona in Maricopa County	Honorable R. Michael Traynor Presiding Magistrate City of Chandler Municipal Court
Date	6-2-14 Date

CITY OF CHANDLER, an Arizona Municipal corporation on behalf of the Chandler Municipal Court

Mayor Jay Tibshraeny	Date

ATTEST:

City Clerk	Date

IN ACCORDANCE WITH A.R.S. §11-952 THIS CONTRACT HAS BEEN REVIEWED BY THE UNDERSIGNED WHO HAVE DETERMINED THAT THIS CONTRACT IS IN APPROPRIATE FORM AND WITHIN THE POWERS AND AUTHORITY GRANTED TO EACH RESPECTIVE PUBLIC BODY.

CHANDLER CITY ATTORNEY	ARIZONA ATTORNEY GENERAL
By: _____ Kay Bigelow, Chandler City Attorney	By: _____ Assistant Attorney General
Date: _____	Date: _____