#10
APR 12 2007

Chandler + Arizona
Where Values Make The Difference

TO: Mayor and Council

FROM: Michael D. House, City Attorney

SUBJECT: Rule 11 Restoration to Competency Services Contract

DATE: April 6, 2007

RECOMMENDATION: The City Attorney recommends adoption of Resolution No. 4055 authorizing the City to enter into an intergovernmental agreement with Maricopa County to provide restoration to competency services for the City's Rule 11 defendants.

BACKGROUND/DISCUSSION: In criminal cases, if there is an issue concerning a defendant's mental competency to stand trial, Rule 11 of the Rules of Criminal Procedure outlines procedures for mental evaluation and possible restoration to competency. Rule 11 hearings are held in the Maricopa County Superior Court. In any given year, the City of Chandler sends an estimated 6-12 defendants through the Rule 11 process. Currently, there are two defendant awaiting Rule 11 evaluation in superior court, and another two awaiting a Rule 11 pre-screen in city court. There are currently no city defendants being held for restoration to competency.

The Rule 11 process entails the defendant's psychiatric evaluation by at least two court-appointed mental health professionals. This evaluation first focuses on mental competency to stand trial. If a defendant is found competent to stand trial, the case is sent back to city court for trial/disposition. If the defendant is found incompetent to stand trial, the evaluation then determines if the defendant can be restored to competency within a reasonable time frame. For misdemeanors, this is no more than six months. If the evaluation concludes that the defendant cannot be restored within a reasonable time frame, the charges are dismissed. If the court also determines the defendant is a danger to himself or others, he can be involuntarily committed to the state hospital. If this occurs, the county, not the city, would be responsible for the costs arising from involuntary commitment. If, on the other hand, the court determines the defendant can be restored to competency within that time frame, the city would then need to decide whether to pursue restoration to competency (RTC). This determination depends on the nature of the case, the charges (e.g., violent offenses), the defendant's criminal history, etc. If the city decides to pursue RTC, the defendant is held and treated in the RTC program. If the city decides not to pursue RTC, the charges are dismissed and the defendant is free to leave.

Currently, RTC is conducted at the Arizona State Hospital. Costs have increased to approximately $600.00 per day. Recently, one city defendant was held for several months and treated for restoration purposes. The total bill to the city exceeded $70,000.00. While it is unusual at the city level to hold city defendants for such periods for restoration purposes, it is not unheard of and may be deemed necessary, if only to avoid possible civil liability.

Chandler recently learned that the City of Phoenix has negotiated an intergovernmental agreement with Maricopa County to provide RTC services at the county hospital at a greatly reduced cost as compared to those of the state hospital. Under that agreement, the county would charge Phoenix approximately $135.00 per day per defendant for RTC services. That is 23% of the state hospital charge and is comprised of the approximate $65.00 per day charge for regular inmate costs, plus an additional approximate $65.00 per day per defendant for RTC services. The per diem cost of RTC services is reviewed quarterly and is derived by dividing the total cost to the county to provide RTC services to all RTC inmates by the number of inmate days in the program for all inmates in the RTC program.

Under the fees listed in the intergovernmental agreement, the city would save a great deal of expense, even for one RTC defendant. For example, the aforementioned $70,000 bill would have amounted to just over $16,000 had the county hospital provided RTC services.

PROPOSED MOTION: Move to adopt Resolution No. 4055.

MDH/rl

Attachment

RESOLUTION NO. 4055

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA AUTHORIZING THE CITY OF CHANDLER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY TO PROVIDE RESTORATION TO COMPETENCY SERVICES FOR RULE 11 DEFENDANTS.

WHEREAS, it is necessary for the Chandler City Court to periodically send defendants to a Rule 11 hearing at Maricopa County Superior Court to determine if they are mentally competent to stand trial; and

WHEREAS, the Rule 11 process entails a psychiatric evaluation of the defendant to determine if the defendant is competent to stand trial or can be restored to competency. If the evaluation concludes that the defendant can be restored to competency, the defendant is held and treated in a restoration to competency (RTC) program, which is currently conducted at the Arizona State Hospital; and

WHEREAS, the City of Chandler has recently learned that the City of Phoenix has negotiated an intergovernmental agreement with Maricopa County to provide RTC services at a rate that is approximately 23% of the amount currently being paid to the State of Arizona for the same services; and

WHEREAS, the City of Chandler also desires to enter into an intergovernmental agreement with Maricopa County to provide RTC services at a lower cost to the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Maricopa County, Arizona, as follows:

Section 1. The City is authorized to enter into an intergovernmental agreement with Maricopa County to provide RTC services for Rule 11 defendants in substantially the form as presented to Council with this Resolution, and as approved as to form by the Chandler City Attorney.

Section 2. The Mayor is authorized to execute said intergovernmental agreement.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this ____ day of _____, 2007.

ATTEST:

_____ _____

CITY CLERK MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4055 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the ____ day of _____, 2007, and that a quorum was present thereat.

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

INTERGOVERNMENTAL AGREEMENT

BETWEEN

THE CITY OF CHANDLER, ARIZONA,

AND

MARICOPA COUNTY
d.b.a.
CORRECTIONAL HEALTH SERVICES (Maricopa County)

WHEREAS, Maricopa County and the City of Chandler are duly authorized to enter into this Agreement pursuant to A.R.S. § 11-951 *et. seq*; and

WHEREAS, Maricopa County has established a jail-based competency restoration treatment program within the Maricopa County Jails pursuant to AR.S. § 13-4512.

NOW THEREFORE, Maricopa County and the City agree to abide by the terms and conditions set forth in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year specified below.

MARICOPA COUNTY on behalf of
CORRECTIONAL HEALTH SERVICES

_____
BY: Date

Chairman, Board of Supervisors

ATTEST:

_____
Clerk of Board Date

THE CITY OF CHANDLER, ARIZONA

_____
BY: Date

ATTEST:

_____
City Clerk

In accordance with A.R.S. § 11-952, this Agreement has been reviewed by the undersigned who has determined that this Agreement is in the appropriate form and is within the power and authority granted to Maricopa County.

_____

Maricopa County Attorney
Date:_____

In accordance with A.R.S. § 11-952, this Agreement is in the proper form and is within the power and authority granted to the City.

_____

City Attorney

Date: _____

MARICOPA COUNTY
REVIEW & APPROVAL

MARICOPA COUNTY d.b.a.
CORRECTIONAL HEALTH SERVICES

_____

BY: Lindy Funkhouser Date
Director

INTRODUCTION

1.0 DEFINITIONS: Unless otherwise defined in this Agreement, all terms shall have the same meaning as set forth in Title 13 of the Arizona Revised Statutes.

1.1 "City" means the political subdivision or other entity entering into this Agreement with Maricopa County, including but not limited to the City's courts.

1.2 "Competent" and "Incompetent" have the same meaning as used in A.R.S. §§ 13-4501, *et seq.* and in Rule 11 of the Arizona Rules of Criminal Procedure.

1.3 "Custody" means the lawful detention and physical control of an Inmate.

1.4 "Final Report of Restoration" means a report that Maricopa County RTC files with the court which committed an Inmate to Maricopa County RTC to receive Restoration Services.

1.5 "Inmate" means a City defendant who is lawfully committed by the Maricopa County Superior Court to receive Restoration Services through Maricopa County RTC.

1.6 "Maricopa County RTC" or "Maricopa County Restoration to Competency" means the jail-based program operated by Maricopa County to provide Restoration Services for inmates within the Maricopa County Jail and designated as such by Maricopa County pursuant to A.R.S. § 13-4512.

1.7 "Not restorable" means that an inmate cannot be restored to competent status as provided in A.R.S. §§ 13-4501, *et seq.* and in Rule 11 of the Arizona Rules of Criminal Procedure.

1.8 "Restoration Services" refers to all services that Maricopa County provides pursuant to A.R.S.§ 4501 et seq. to determine whether an Inmate is restored to competency or not restorable and to complete a Final Report of Restoration. The term includes services performed in preparation for or as a consequence of the court order committing an Inmate to Maricopa County RTC, including but not limited to any form of communication, testimony, document production, interviews, etc.

2.0 INTENT:

The intent of this Agreement is to permit the City to designate the Maricopa County RTC to provide Restoration Services to Inmates who are housed in the Maricopa County Jails and to provide for compensation to Maricopa County.

3.0 SCOPE OF WORK:

3.1 Purpose.

The Agreement is entered into pursuant to A.R.S. §§ 11-951 et seq., and 13-4512 to designate Maricopa County RTC to provide Restoration Services to City's criminal defendants who are Inmates in the Maricopa County Jails, subject to order of Maricopa County Superior Court or City's municipal court. It is the understanding of the Parties that the Maricopa County RTC will provide such Restoration Services when the City has stipulated or consented to an order from the Maricopa County

Superior Court committing an Inmate to the Maricopa County RTC or when the City gives written notice to Maricopa County RTC to proceed with court-ordered Restoration Services.

3.2 Contact Information.

3.2.1 **City**

Questions, comments and concerns regarding the duties and responsibilities of City shall be directed to:

Thomas Zaworski, Chandler City Prosecutor
P.O. Box 4008, MS 602
Chandler, AZ 85244-4008
Phone: 480-782-4610
Fax: 480-782-4622
E-Mail: Thomas.Zaworksi@chandleraz.gov

3.2.2 **Maricopa County**

Questions, comments and concerns regarding the duties and responsibilities of Maricopa County shall be directed to:

Lindy Funkhouser, Director CHS
234 No. Central Suite 500
Phoenix, AZ 85004
Phone: 602-506-2906
Fax: 602-372-1204
E-Mail: l.funkhouser@mail.maricopa.gov

Questions, comments and concerns regarding the duties and responsibilities of the County as they relate to **claims** shall be directed to:

Shawn Nau, Director
Health Care Mandates
301 W. Jefferson, Suite 3200
Phoenix, Arizona 85003
Phone: 602-372-7056
Fax: 602-506-3806
E-Mail: Snau@mail.Maricopa County.gov

3.3 City's Obligations.

3.3.1 City shall, upon request by Maricopa County RTC, provide information that Maricopa County RTC deems relevant to the restoration and medical treatment of each incompetent inmate.

3.3.2 City shall obtain necessary waivers or court orders authorizing sharing of information between City and Maricopa County RTC.

3.3.3 City and Maricopa County RTC will consult, when medically appropriate, concerning treatment of any inmate whose condition requires treatment outside the Maricopa County Jail.

3.3.4 If not already in custody in Maricopa County, City shall be responsible for transportation, or court orders for transportation and incarceration, of the inmate to the Maricopa County Jail.

3.3.5 Payment for Services.

3.3.5.1 City shall pay Maricopa County's charges for restoration services within 30 days after receipt of Maricopa County's invoice, which shall be delivered after Maricopa County RTC completes the final report to the court.

3.3.5.2 Maricopa County's charges to the City for Restoration Services are based on the number of Inmate days in the Maricopa County Restoration to Competency Program, commencing with the date of the court order committing an Inmate to the Maricopa County RTC, and ending with the date of the Final Report of Restoration. The daily rate is calculated quarterly by Maricopa County based on actual costs incurred by the Maricopa County RTC program during the quarter in which the Final Report is issued, allocated among all inmates receiving Restoration Services during that period. The quarterly rate is published by Maricopa County at www.maricopa.gov.

3.3.5.3 Maricopa County charges for restoration services will not include sums payable by the City pursuant to agreements between the City and Maricopa County for detention/housing of Inmates in the County jail.

3.4 Maricopa County's Obligations

3.4.1 Maricopa County, through Maricopa County RTC, shall provide Restoration Services to City's Inmates.

3.4.2 Maricopa County will bill City within 30 days of the Final Report of Restoration for all Restoration Services provided to the City's Inmate.

4.0 RIGHTS AND OBLIGATIONS OF ALL PARTIES

4.1 Entire Agreement.

This document, its attachments and appendices, including any approved subcontracts, amendments and modifications made thereto, shall constitute the entire Agreement between the Parties, and supersedes all other understandings, oral or written.

4.2 Exercise of Rights.

Failure to exercise any right, power or privilege under this Agreement shall not operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of that or any other right, power, or privilege.

4.3 Reservation of Rights to Maricopa County.

Notwithstanding any other provision of this Agreement, Maricopa County reserves the right to refuse an Inmate or to return an Inmate to City for any reason, including but not limited to budgetary limitations, jail population demands, RTC census demands, or the inmate's medical condition.

4.4 Contract Term.

The term of this Agreement shall be for two (2) years with either Party reserving the right to renew four (4) additional one-year terms. This Agreement shall be effective March 1, 2007. Renewal shall be by letter agreement signed by each Party's chief executive officer or that officer's designee.

4.5 Compliance with Laws, Rules and Regulations.

The City, Maricopa County and their subcontractors shall comply with all applicable Federal and State laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement. The laws and regulations of the State shall govern the rights of the Parties, the performance of this Agreement, and any disputes thereunder. Any action relating to this Agreement shall be brought by arbitration to the extent required by A.R.S. § 12-1518 or in an appropriate court. Any arbitration award shall be enforced in an appropriate court. If any provision of this Agreement is held invalid or unenforceable, the remaining provisions shall continue as valid and enforceable to the full extent permitted by law.

4.6 Right to Assurance.

In the event one Party to this Agreement, in good faith, has reason to question another Party's intent to perform, the first Party may demand that the other Party give a written assurance of its intent to perform. In the event that a demand is made and no written assurance is given within five (5) working days of the request, the demanding Party may treat this failure as an anticipatory repudiation of this Agreement.

4.7 Confidentiality.

The City, Maricopa County, and their subcontractors shall observe and abide by all applicable State and Federal statutes and regulations regarding use or disclosure of information. The Parties shall establish and maintain procedures and controls that are acceptable for the purpose of assuring that no information contained in its records or obtained from Maricopa County or from others carrying out its functions under the Agreement shall be used by or disclosed by it, its agents, officers, or employees except as required to efficiently perform duties under the Agreement. Persons requesting such information shall be referred to Maricopa County. Maricopa County also agrees that information pertaining to individual persons shall not be divulged other than to employees or officers of Maricopa County and those authorized by law as needed for the performance of duties under the Agreement, unless otherwise agreed to in writing.

4.8 Amendments.

Any change to this Agreement shall be carried out in accordance with the following:

4.8.1 The Agreement shall be modified only through a written amendment within the scope of this Agreement signed by the authorized signatory;

4.8.2 The City and Maricopa County shall give notice to one another of any change of address; telephone number; authorized signatory or designee; or name and/or address of the person to whom notices are to be sent.

4.9 Termination.

4.9.1 This Agreement may be terminated without cause upon sixty (60) days written notice by either Party during the term of this Agreement.

4.9.2 Pursuant to A.R.S. § 38-511, either Party may terminate this Agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the Party is or becomes at any time while the Agreement or an extension of the Agreement is in effect an employee of or a consultant to any other party to this Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when the other Party receives written notice of the cancellation unless the notice specifies a later time.

4.9.3 Continuation of Performance through Termination; Work in Progress.

The City and Maricopa County shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice. Notwithstanding the foregoing, the provisions of this Agreement shall survive the termination date for all work in progress. Work in progress after the date of termination shall be completed and paid in accordance with the prevailing rate established by Maricopa County.

4.10 Records.

Each Party agrees to retain all financial books, records, and other documents and shall contractually require each subcontractor to retain all data and other records relating to the acquisition and performance of the Agreement for a period of five (5) years after the completion of the Agreement. All records shall be subject to inspection and audit by the other Party at reasonable times.

4.11 Severability.

The provisions of this Agreement are severable. Any terms or condition deemed illegal or invalid shall not affect any other term or condition of the Agreement.

4.12 General Budget Information

4.12.1 Funding for this Agreement is contingent upon the availability of funds authorized annually for the specific program services provided under this Agreement. Such authority may be from a Federal, State, or other funding source or a combination of these sources.

4.12.2 I f at any time during the term of the Agreement, either Party determines that the budget authority is insufficient, the Party shall notify the other Party in writing and shall include in the notice recommendations as to the resolution of the shortage.

4.13 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 the negligent performance of this Agreement, 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.

4.14 Notice

Any notice required or permitted to be given under this Agreement shall be in writing and shall be served by personal delivery, overnight commercial carrier, or by certified mail upon the other party as follows:

COUNTY:	CITY:
Lindy Funkhouser, Director of CHS 234 No. Central Suite 500 Phoenix, AZ 85004 Phone: 602-506-2906 Fax: 602-372-12041 Email: l.funkhouser@mail.maricopa.gov	Michael D. House, Chandler City Attorney P.O. Box 4008, MS 602 Chandler, Arizona 85244-4008 Phone: 480-782-4641 Fax: 480-782-4652 Email: Michael.House@chandleraz.gov
Shawn Nau, Director Health Care Mandates 301 W Jefferson, Suite 3200 Phoenix, Arizona 85003 Phone: 602-372-7056 Fax: 602-506-3806 Email: shau@mail.maricopa.gov	

4.15 Workers Compensation

This IGA is subject to A.R.S. § 23-1022, and Maricopa County and the City shall post the employee notices required by A.R.S. § 23-1022(E).

4.16 No Joint Venture

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

[End of Agreement]