

INTERGOVERNMENTAL AGREEMENT

BY AND AMONG

COCONINO COUNTY AND CITY OF FLAGSTAFF

FOR COURTHOUSE BAILIFF SERVICES

THIS INTERGOVERNMENTAL AGREEMENT, dated this ___ day of _____, 2013, by and between City of Flagstaff, a municipal corporation of the State of Arizona (hereinafter "City"), and Coconino County, a political subdivision of the State of Arizona (hereinafter "County"), witnesses as follows:

RECITALS:

WHEREAS, Section 11-952 of the Arizona Revised Statutes authorizes the various political subdivisions of the State to enter into agreements providing for the joint exercise of their respective governmental powers for the public benefit; and

WHEREAS, City staffs and operates a limited jurisdiction, non-record court, to wit: the Flagstaff Municipal Court (hereinafter "Municipal Court"); and

WHEREAS, County staffs and operates a general jurisdiction, court of record, to wit: the Coconino County Superior Court, which is located within the corporate limits of City (hereinafter "Superior Court"); and

WHEREAS, Arizona State Constitution at Art. VI § 1 dictates all judicial power be vested in an integrated judicial department, and at Art. VI § 3 that the Supreme Court shall have administrative supervision over all courts of the State, and that Administrative Order 93-30 IIIA stipulates that the presiding judge of the County shall exercise administrative supervision over all the courts in the county, including justice and municipal courts, and that Administrative Order 95-45 mandates uniform education standards and policies for all the courts; and

WHEREAS, the Municipal Court, Flagstaff Justice Court and the Superior Court (hereinafter collectively the "Courts") share commonalities in practice and procedure in many areas including bailiff/security, interpreting, automation, court rules, court procedures, appellate procedure, case management, collections, probation, and other business and judicial practices; and

WHEREAS, the City and the County have entered into a previous intergovernmental agreement to provide for the consolidated administration of the Courts; and

WHEREAS, it is the intent and desire of the parties hereto to provide for uniform and consistent professional bailiff services in the Courts to the greatest extent possible under the laws of the State of Arizona.

WHEREAS, the Municipal Court is seeking coordinated bailiff services from the Superior Court.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth, the parties agree as follows:

1. TERM

A. The initial term of the Agreement shall be from the date first indicated above, for five consecutive fiscal years with option to renew for an additional five-year term. The parties agree that the option to renew may be executed administratively by a writing indicating consent by the City Manager and the County Manager.

B. In recognition of and deference to the budgeting needs and obligations of the parties hereto, any party wishing to terminate the provisions of this Agreement may do so without penalty by providing written notice to the other not later than the first day of February of the calendar year in which such termination shall take effect. No such termination shall take effect until the first day of July following the provision of such notice.

2. UNIFIED IMPLEMENTATION OF BAILIFF SERVICES FOR COURTHOUSE SECURITY

A. This Agreement authorizes the Courts to work together in developing cooperative efforts in providing bailiff services to the mutual benefit of the Municipal Court and the Coconino County Courts located in Flagstaff, Arizona.

B. The County shall provide bailiff services for courthouse security and other related duties (hereinafter "Bailiff Services") for the Municipal Court during normal operational business hours and special court events.

C. Normal operational business hours include Monday through Friday, from 7:30 a.m. to 4:30 p.m. unless modified, or for other special court events with prior notice to the Coconino County Courts Chief Bailiff as indicated in Section 3, paragraphs a-c below.

D. The City will provide funding for two additional full-time-equivalent Bailiff II positions to work in the coordinated court effort. The City will also pay for operational expenses related to the positions.

E. The two bailiffs will be regular employees of the Superior Court. The County shall retain these individuals as employees of the County pursuant to all applicable employment requirements of the County. Direct supervisory responsibility for the bailiffs will belong to the Coconino County Courts Chief Bailiff and Deputy Chief Bailiff. The County shall recruit, hire, supervise, insure, manage, evaluate and train the Bailiff staff. The County will also maintain a work schedule for all Bailiff operational activities in coordination with the City Deputy Court Administrator.

F. The two City-funded Bailiffs will be pooled with the current County bailiff full-time

equivalents. These bailiffs will be assigned work duties for both the County and the City. These work assignments may be on a rotational basis.

G. In the event of an extreme staffing shortage, the County may not be able to facilitate Bailiff Services at both the City and County. Should this event occur, the City will temporarily provide its own Bailiff Services until adequate staffing levels can be reestablished and the City will not be billed for any services during this time period.

3. DUTY SCHEDULE & OTHER NOTICES

A. The City will provide the Coconino County Chief Bailiff and the Deputy Chief Bailiff with a weekly copy of the Municipal Court calendar no later than 2:00 p.m. on the Friday prior to the following week’s court schedule. This is to ensure adequate bailiff coverage for any events requiring Bailiff Services.

B. The City must contact the Coconino County Chief Bailiff or the Deputy Chief Bailiff for any communication, schedule changes, personnel issues, or special requests with at least a 48 hour notice, if possible. The County must contact the City Deputy Court Administrator for schedule changes, personnel issues, special requests or any other relevant matters with at least a 48 hour notice, if possible. Contact may occur by e-mail, telephone call or message, or other reasonable means.

4. FUNDING

A. The City will fund two new full-time equivalent Bailiff II positions along with operational expenses related to these two positions

Although these are County positions, the two Bailiff positions are to be fully (100%) funded by the City and as delineated below. Percentages of funding will not be changed unless agreed to in writing by the City Manager and the County Manager.

B. The City is to provide full (100%) funding of total salary and employee-related expenses for the two bailiff positions. This percentage will remain the same should the County modify its salary structure, provide for salary increases or decreases for any reason or provide merit, overtime, incentive or any other type of compensation or benefit. The County shall, however, provide notice to the City Deputy Court Administrator of all salary changes and all substantial increases in benefits that will result in increased payments by the City to the County within 30 days of the change. All overtime must be approved by the City Deputy Court Administrator before the hours are worked. Should City funding not be available for any reason, then the County will not be responsible to continue the positions or fund the positions.

5. THE COURTS TO RETAIN SEPARATE IDENTITIES

Notwithstanding the provision of the Agreement, each of the Courts shall, at all times, retain its separate, legal identity

6. FUTURE CONSIDERATIONS

This Agreement shall not limit future considerations of cooperation and consolidation of Courts in regard to shared facilities, unified personnel systems, traffic school contracts or any other aspect of administration or court operations.

7. NOTIFICATION OF TERMINATION

All notices or demands required to be given pursuant to this Agreement, except for those indicated in Section 3 above, shall be given to the other parties in writing, delivered by hand or U.S. Mail, at the address given below. Notices shall be deemed received on the date delivered, if delivered by hand, and on the date of mailing if mailed.

8. APPROVAL OF PRESIDING JUDGE REQUIRED

Notwithstanding any of the provisions of this Agreement, it shall be of no force and effect until and unless approved by the Presiding Judge of the Superior Court of the State of Arizona in and for the County of Coconino or by his or her attorney.

9. AMENDMENTS; INTEGRATION

This Agreement constitutes the entire agreement of the parties relating to the subject matter hereof. All amendments or modifications of the Agreement, except as otherwise specifically indicated in this Agreement, shall be in writing and approved by the Coconino County Board of Supervisors, the Flagstaff City Council, legal counsel for both such Board and City Council and legal counsel for the Presiding Judge of the Superior Court of the State of Arizona in and for the County of Coconino.

10. DISPUTE RESOLUTION

If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to arbitration, if required under A.R.S. § 12-1518, litigation or some other dispute resolution procedure. Mediation will be self-administered and conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212)949-6490, www.cpradr.org, with the exception of the mediator selected provisions, unless other procedures are agreed upon by the parties. Unless the parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each party agrees to bear its own costs in mediation. The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This mediation provision is not intended to constitute a waiver of the parties' right to initiate legal action if a dispute is not resolved through good faith negotiations or mediation, or if a party seeks provisional relief under the Arizona Rules of Civil Procedure.

11. STATUTORY REQUIREMENT OF CANCELLATION FOR CONFLICT OF INTEREST

This Agreement may be cancelled for conflict of interest in accordance with the requirements of Section 38-511 of the Arizona Revised Statutes.

12. DISPOSITION OF PROPERTY

Upon termination of this Agreement, any property purchased by any one of the parties for purposes of carrying out its obligations under this Agreement shall be returned to the party that purchased the property.

13. INSURANCE

The County (for itself and the Superior Court) and the City of Flagstaff shall maintain in force and effect during the term of this Agreement commercial general liability no less than One Million Dollars (\$1,000,000) per occurrence and property insurance in an amount sufficient to cover any property used by any of the parties to fulfill their obligations under this Agreement.

14. MUTUAL INDEMNIFICATION

Except as provided below and to the extent permitted by law, each party to this Agreement (as “Indemnitor”) agrees, to defend, indemnify, and hold harmless the other parties, and such party’s officers, officials, employees, agents, and directors (collectively, “Indemnitees”) from and against any and all claims, demands, losses, liabilities, causes of action and costs (including expert witness fees, reasonable attorney fees and costs of defense and appellate appeal) herein referred to as “Claims”, which may be imposed upon, incurred by or asserted against the Indemnitees, attributable (directly or indirectly) to, or arising in any manner by reason of, the negligence, acts, errors, or omissions of any agent, officer, servant, or employee of the Indemnitor, or anyone for whom the Indemnitor may be legally liable, in the performance of this Agreement.

Notwithstanding the mutual indemnification provisions above, the City agrees to defend, indemnify, and hold harmless County, and their officers, employees, agents and directors, when any County officer, employee, agent or director is acting in the capacity of an agent of the City when enforcing City ordinances. The City’s indemnification under this paragraph shall apply to any and all claims, demands, losses, liabilities, causes of action and costs (including expert witness fees, reasonable attorney fees and costs of defense and appellate appeal) herein referred to as “Claims”, which may be imposed upon, incurred by or asserted against the Indemnitees, attributable (directly or indirectly) to, or arising in any manner by reason of, the negligence, acts, errors, or omissions of any agent, officer, servant, or employee of the Indemnitor, or anyone for whom the Indemnitor may be legally liable, in acting as the City’s agent when enforcing City ordinances.

15. NOTICES

All notices or demands, unless as otherwise specifically indicated in this Agreement, shall be given to the other parties in writing, delivered by hand or U.S. Mail, at the address given below. Notices shall be deemed received on the date delivered, if delivered by hand, and on the date of mailing if mailed.

Coconino County:
County Manager
Coconino County
219 E. Cherry Ave

City of Flagstaff:
City Manager
City of Flagstaff
211 W. Aspen Avenue

16. CANCELLATION FOR CONFLICT OF INTEREST

Pursuant to the provisions of A.R.S. §38-511, a party may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the party is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

17. NON-DISCRIMINATION

The parties shall comply with the provisions of Arizona Executive Order 2009-09, which is incorporated into this Agreement by reference as if fully set forth herein.

18. WORKERS COMPENSATION

Pursuant to A.R.S. §23-1022E, employees of each of the parties are deemed to be employees of the public agencies who are parties to this Agreement for purposes of workers' compensation. A notice to this effect, as required by A.R.S. §23-1022E, shall be posted by each of the parties in their principal office or human resource office.

19. AMENDMENTS

This Agreement may be modified or amended only by mutual written consent of the parties, with approval by the County Board of Supervisors and the Flagstaff City Council, and their respective legal counsel.

20. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties. This Agreement terminates and supersedes all prior understandings, agreements, and administrative orders of the Superior Court on the subject matter hereof.

21. IMMIGRATION LAW COMPLIANCE

Under the provisions of A.R.S. § 41-4401, each party hereby warrants to the other that the each party and all of its subcontractors (if any) will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulation that relate to their employees and A.R.S. § 23-214 (A) (hereinafter "Contractor Immigration Warranty").

A Breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement and shall subject the breaching party to penalties up to and including termination of this Agreement at the sole discretion of the non-breaching party.

B Each party retains the legal right to inspect the papers of any contractor or subcontractor employee of the other party who works on this Agreement to ensure that the contractor or subcontractor is complying with the Contractor Immigration Warranty. Each party agrees to assist the other party in regard to any such inspections.

C. Each party may, at its sole discretion, conduct random verification of the employment records of the other party and any of its subcontractors to ensure compliance with Contractor's Immigration Warranty. Each party agrees to assist the other party in regard to any random verifications performed.

D. A party will not be considered in material breach of this Agreement or the Contractor Immigration Warranty if the party establishes that it has complied with the employment verification provision prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214, Subsection A.

E. The foregoing provisions of subparagraphs A-E of this article must be included in any contract that a party enters into with any and all its subcontractors who provide service under this Agreement or any subcontract.

F. 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.

IN WITNESS WHEREOF, the governing bodies of the COUNTY, and the CITY have approved and executed this Intergovernmental Agreement as of the day and year first above written.

COCONINO COUNTY:

CITY OF FLAGSTAFF

By: _____
Elizabeth Archuleta, Chair

By: _____
Jerry Nabours, Mayor

Attest: _____
Clerk of the Board

Attest: _____
City Clerk

Approved as to form and found to be within the power and authority of each respective governing body by its undersigned legal counsel:

Deputy County Attorney
Attorney for Coconino County and
Presiding Superior Court Judge

City Attorney