City of Benson
City Council Communication

Regular Meeting **August 8, 2016**

To: Mayor and Council Agenda Item # 5

From: Vicki Vivian, CMC, City Clerk

Subject:

Discussion and possible action regarding Resolution 31-2016 of the Mayor and Council of the City of Benson, Arizona, approving an Intergovernmental Agreement between Cochise County and the City of Benson for Election Supplies and Services

Discussion:

The City contracts with Cochise County to provide election supplies and services. The previous Intergovernmental Agreement (IGA) approved in 2013 was valid until December 31, 2014 and covered not only the City's elections in 2013, but also covered the City's first consolidated elections, held in the fall cycle of 2014.

Since that time, there have been a few changes at the County level and County staff has been working on a new IGA for cities in Cochise County to consider. The IGA will be applicable to the upcoming City elections to be held in August and November of 2016.

Staff Recommendation:

Approval of Resolution 31-2016

RESOLUTION 31-2016

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN COCHISE COUNTY AND THE CITY OF BENSON FOR ELECTION SUPPLIES AND SERVICES

WHEREAS, A.R.S. §11-952 allows the City of Benson to enter into agreements with other governmental entities regarding joint exercise of powers they hold in common; and

WHEREAS, the City must hold and conduct elections; and

WHEREAS, Cochise County has qualified elections personnel, supplies and equipment available to the City; and

WHEREAS, the City wishes to engage the County to provide its qualified elections personnel, supplies and equipment to the City; and

WHEREAS, the County has drafted an Intergovernmental Agreement, attached hereto as Exhibit "A" and incorporated herein by this reference, pursuant to which the County would provide the City with the County's elections personnel, supplies and equipment, and the City would pay the County's fees for same; and

WHEREAS, the Mayor and Council of the City of Benson have determined that approval of the Intergovernmental Agreement is in the best interests of the City and its residents.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Benson, Arizona, that the City hereby approves the Intergovernmental Agreement attached hereto as Exhibit "A" between Cochise County and the City of Benson, and the Mayor is hereby directed to execute said Agreement on behalf of the City of Benson.

BE IT FURTHER RESOLVED that the staff of the City is hereby directed to take all actions necessary and proper to implement the Intergovernmental Agreement attached hereto as Exhibit "A" and further its purposes.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, this 8th day of August, 2016.

_____
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

Exhibit “A”
Intergovernmental Agreement between
Cochise County and the City of Benson

INTERGOVERNMENTAL AGREEMENT
FOR ELECTION SUPPLIES AND SERVICES

THIS AGREEMENT is made and entered into this ***first*** day ***August of 2016***, by and between COCHISE COUNTY (COUNTY), a political subdivision of the State of Arizona, and the City of BENSON (CITY), for certain election supplies and services;

WHEREAS, it is the mutual desire of the parties to provide citizens in the region with all necessary means and opportunity to participate in elections and exercise their right to vote;

WHEREAS, the COUNTY seeks to assist in the elections process by providing election supplies and services to cities, districts, or other governing bodies within the region;

WHEREAS, the COUNTY is willing to provide election services using a vote center model for election districts wishing to participate in the consolidated state primary and general elections, but will not provide election services to districts wishing to conduct vote-by-mail elections on the consolidated election dates for Primary and General elections;

WHEREAS, the COUNTY, as determined by a Resolution approved by the CITY, is willing to provide election services using either a vote center model or a vote-by-mail election for elections held on dates other than the consolidated state primary and general elections;

WHEREAS, the CITY wishes to enter into an agreement with the COUNTY for the provision of elections services subject to the terms and conditions set forth herein,

WHEREAS, the parties have authority to enter into an intergovernmental agreement to provide for election supplies and services pursuant to A.R.S. § 11-952 (Intergovernmental Agreements), A.R.S. § 11-251(41) (County Lease of Personal Property), A.R.S. § 41-2632 (Cooperative Purchasing) and A.R.S. Title 16 §§ 16-205(C), 16-225, or 16-408(D), (Elections and Electors), the parties agree as follows:

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and obligations herein set forth, the parties agree:

1. C**OUNTY DUTIES.** The COUNTY agrees contingent upon receipt of a timely, specific request as provided in Paragraph 2(C), to provide the following election services:

A. Election equipment:

1. Provide e-pollbook tablets (electronic poll register), touch-screen voting equipment and tabulation equipment at vote centers, for vote center model elections.
2. Provide central election tabulation equipment for early ballots (or for vote-by-mail elections).
3. Provide election reporting system.
4. Provide signage and supplies (paper rolls for machines, tape, scissors, etc.).

B. In-House programming services to include the following:
   1. Ballot layout & design, all ballot styles
   2. Program the operation of the voting equipment
   3. Program the operation of the tabulating equipment
   3. Program the operation of the election reporting module

C. Elections administrative services to include the following:
   1. Obtain facilities for use as vote centers
   2. Recruit, train and oversee election poll workers to staff the vote centers, and such staff as needed for early boards, write-in boards, tabulation boards, etc.
   3. Conduct logic and accuracy tests of programs and equipment
   4. Provide ballots for vote-by-mail elections
   5. Deliver and pick up equipment, ballots, signage and supplies
   6. Provide abstract of results of tabulation to include total ballots cast within the jurisdiction; total votes for each candidate, question or proposition.

E. Arrange for vote-by-mail services from vendor to include the following:
   1. Printing, folding, insertion and mailing of ballots and required notices

F. Prior to or within ten (10) working days after the Cochise County Elections Officer receives notice, pursuant to Paragraph 2(C), that the CITY desires services, provide an estimate of the aggregate cost of the services and supplies.

2. CITY DUTIES. The CITY understands and agrees that:

A. The CITY retains the primary responsibility for ensuring that its election is noticed, held and conducted in the manner required by applicable local, state and federal laws and that the COUNTY does not assume responsibility under this agreement for any aspects of this election other than those that are expressly stated in Paragraph 1.

B. For any specific election for which the CITY desires services and supplies pursuant to this Agreement, the CITY shall pay to the COUNTY the amounts at the rates set forth on Exhibit A hereto.

C. With respect to any specific election for which the CITY desires services and supplies pursuant to this Agreement, the CITY shall provide written notice of the election to the Cochise County Elections Officer at least one hundred and twenty (120) days prior to such election.

D. The CITY shall inform the Cochise County Elections Officer in writing within ten (10) workings days after receiving the COUNTY estimate of the

aggregate cost of elections services and supplies of the CITY'S acceptance or rejection of the COUNTY'S services and supplies. Acceptance by the CITY shall constitute agreement by the CITY to pay actual costs up to ten percent (10%) over the estimate for the supplies and services provided, plus the actual cost of additional services provided, as set forth in **FEES,** below.

E. The CITY shall provide the detail necessary to support the programming of the ballot to include the Wards or citywide districts for which elections are to be held, the offices to be listed on the ballot, the exact listing of the candidates' names to be included, the exact wording (in English and in Spanish) of any Proposition or ballot Question to be included on the ballot, using the **City Ballot Programming Request Form** supplied by the COUNTY (Exhibit B).

F. The CITY shall be responsible for the preparation, printing and distribution of the Publicity Pamphlet for a CITY election.

G. The CITY shall remit payment to the Elections Office in a timely manner or in any event within thirty (30) days of receipt of invoice. The CITY understands that they will be billed separately by the Recorder's office for staff time and/or any outside vendor utilized for ballot mailing services.

3. FEES. The CITY shall compensate the COUNTY for election services provided pursuant to this Agreement in accordance with the fees set forth in Exhibit A. The fee schedule is for base services only. Any additional services required by the CITY will result in additional charges. Additional services include, but are not limited to, the following:

Hand count audit, court preparation, court appearances, supplemental mailings, recounts, or any service which will cause the COUNTY to incur increased costs or expenses.

If a recount/hand count is necessary, the CITY shall reimburse the COUNTY for administrative costs of conducting a recount at the rate of $500 per contest/questions/proposition.

All other additional services will be billed based on actual costs, including staff time, materials, vendor services and equipment usage.

4. TERM. The term of this Agreement shall begin on August 1, 2016 and continue until December 31, 2017 provided that the Agreement shall be effective only when it is executed by all parties.

5. INDEMNIFICATION. To the extent permitted by law, each party to this agreement shall indemnify, defend and hold harmless the other party, its officers, departments, employees and agents from and against any and all suits, actions, legal

or administrative proceedings, claims, demands or damages of any kind or nature which results from the act or omission of the indemnifying party, its agents, officers, employees or anyone acting under its direction, control or on its behalf, whether intentional or negligent.

6. **CANCELLATION DUE TO CONFLICT OF INTEREST.** Pursuant to A.R.S. § 38-511, the provisions of which are incorporated herein by reference, all parties are hereby put on notice that this Agreement is subject to cancellation by the political subdivision or its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of such political subdivision is, at any time while the contract is or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

7. **NON-DISCRIMINATION.** To the extent required by law, each party to this agreement shall comply with all state and federal equal opportunity and non-discrimination requirements and conditions of employment, including the American with Disabilities Act, in accordance with A.R.S. Title 41, Chapter 9, Article 4, and Executive Order 99-4, which mandates that all persons, regardless of race, color, religion, sex, age, national origin, or political affiliation, shall have equal access to employment opportunities.

8. **WORKER'S COMPENSATION.** An employee of either party shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement, for purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any worker's compensation benefits which may accrue. Each party shall post a notice pursuant to the provisions of A.R.S. § 23-906 in substantially the following form:

> All employees are hereby notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers' compensation.

9. **NOTICE.** All written communications shall be addressed and mailed or personally served upon the parties, as follows:

To: COUNTY
Katie Howard, Director
Elections/Special Districts
1415 Melody Lane, Bldg A
Bisbee, AZ 85603

To: CITY
Vicki Vivian, CMC
City Clerk, Benson
P. O. Box 2223
Benson, AZ 85602

10. **GOVERNING LAW.** This Agreement shall be governed and interpreted by the laws of the State of Arizona.

11. **SAVINGS CLAUSE.** Should any part of this Agreement be held to be invalid or void, the remainder of the Agreement shall remain in full force and effect with those offending portions omitted.

12. **AGREEMENT MODIFICATION.** This Agreement may only be modified in writing and must be signed by both parties and their duly authorized agents.

13. **BREACH.** Failure by the COUNTY and/or CITY to provide the services/ material or to provide the documentation at the time and in the manner described in this Agreement shall constitute a breach of this Agreement.

14. **WAIVER OF CONFLICT.** The parties to this Agreement are aware that the County Attorney's Offices represents the Cochise County Elections Department, and may or may not also represent other party (for example, City, Special Districts, including but not limited to Flood, Fire or School Districts) to this agreement in this and other matters. By signing this Agreement each party specifically acknowledges that it is aware of a potential conflict of interest and specifically waives any such claim based upon legal counsels' representation of other parties to this Agreement.

15. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding of the parties hereto. There are no representations or other provisions other than those contained herein, and any amendment or modification of this Agreement shall be made in writing and signed by the parties to this Agreement.

APPROVED:

COCHISE COUNTY

BY:_____
Richard Searle, Chairman
Cochise County Board of Supervisors

ATTEST:

BY: _____
Arlethe Rios
Clerk of the Board of Supervisors

APPROVED:

CITY

BY: _____
Authorized Signatory

ATTEST:

BY:_____
Vicki L. Vivian, CMC
City Clerk

INTERGOVERNMENTAL AGREEMENT DETERMINATION

RE: Intergovernmental Agreement for election services and supplies between the City of Benson and the County of Cochise for Elections held between January 1, 2016 and December 31, 2017.

Pursuant to A.R.S. Section 11-952, this Agreement has been reviewed by the undersigned attorney for Cochise County, who has determined that it is in proper form and is within the powers and authority granted, respectively, to the contracting bodies.

DATED this _____ day of _____, 2016.

Cochise County Attorney

By: _____
Britt Hanson
County Attorney

Pursuant to A.R.S. Section 11-952, this Agreement has been reviewed by the undersigned attorney for _____, who has determined that it is in proper form and is within the powers and authority granted, respectively, to the contracting bodies.

DATED this _____ day of _____, 2016.

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

EXHIBIT A

COCHISE COUNTY

Election and Special District Charges

Effective November 14, 2015

Pursuant to A.R.S. Sec. 11-251.08 and 48-819, following is the fee schedule for services provided to jurisdictions by Cochise County.

ELECTION SERVICES	Rate or Fee	Per
FOR STANDARD COUNTY-WIDE ELECTIONS		
ADMINISTRATIVE SERVICE FEES	$ 500.00	Election
(These services include consulting or assistance given the entity, any function performed on behalf of the contracting entity, conducting the logic and accuracy test and tabulation of ballots.)		
BALLOT PROGRAMMING	$ 50.00	Issue or Candidate
BALLOT PRINTING – COUNTY-WIDE BALLOT	$ .42	Ballot
BALLOT PRINTING – SEPARATE BALLOT	Actual Cost	
CANCELLATION FEE	$ 250.00	
RECOUNT/HAND COUNT	$ 500.00	Each
FOR CONSOLIDATED ELECTIONS		
ADMINISTRATIVE SERVICE FEES	$1,400.00	Election
(These services include consulting or assistance given the entity, any function performed on behalf of the contracting entity, conducting the logic and accuracy tests and tabulation of ballots.)		
INSTRUCTION OF ELECTION BOARDS	$ 75.00	Class
TRAVEL TO CLASS LOCATION	$ .42	Mile
ELECTION MANUAL	$ 5.00	Copy
ELECTION PERSONNEL	$ 12.00	Hour
(Trouble Shooters, Office Temps, Delivery, Early and Night Boards)		

VOTING BOOTHS	$ 4.00	Booth
BALLOT BOXES AND SUPPLIES	$ 50.00	Box
COUNTING SYSTEM ON SITE (M100 or AutoMark)	$ 500.00	Each
MEMORY CARD BURNING	$ 50.00	Per Card
PROVISIONAL BALLOT	$ .50	Per Prov
BALLOT PROGRAMMING, LAYOUT, PRINTING, INFORMATIONAL AND PUBLICITY PAMPHLETS	Actual Cost	
POSTAGE	Actual Costs	
MAPS	$ 10.00	Each
RECOUNT/HAND COUNT	$ 500.00	Each
Election Board Workers:		
INSPECTOR	$ 125.00	Each
JUDGES, CLERKS, MARSHALL	$ 100.00	Each
PREMIUM BOARD WORKERS	$ 25.00	Add'l Pay
REQUIRED ELECTION CLASS	$ 15.00	Per Person
MILEAGE FOR ELECTION WORKERS	$ .42	Mile
POLLING LOCATION RENTALS	Actual Cost	
TRUCK RENTAL	Actual Cost	
COPIES	$ .30	Each
MAPS	$ 10.00	Each
OTHER SUPPLIES	Actual Cost	

EXHIBIT B
CITY BALLOT PROGRAMMING REQUEST FORM

Jurisdiction: _____

Contact Name: _____

Contact Title: _____

Contact e-mail: _____

Contact Phone: _____

	Office Up for Election:	# of Seats	Vote for not more than *(how many?)*	Candidate's Name (Exactly as it should appear on the ballot: Last Name, First Name and *either Middle Name/Initial OR Nickname*)	Term of Office	Party (if applicable)	Notes: (For example, is election "at large" (entire jurisdiction), or specific to a particular Ward, etc.); has a challenge been filed against one of your candidates (please notify us immediately)?
1							
	Write-Ins (when known)						
2	**Office Up for Election:**						
	Write-Ins (when known)						
3	**Office Up for Election:**						
	Write-Ins (when known)						
4	**Office Up for Election:**						
	Write-Ins (when known)						
5	**Office Up for Election:**						
	Write-Ins (when known)						
6	**Office Up for Election:**						
	Write-Ins (when known)						
							(CONTINUED ON REVERSE)

7	**Question #** **OR Proposition** *(English & Spanish)*	Yes / No	**[CONTENT OF Question or Proposition]:**
8	**Question #** **OR Proposition** *(English & Spanish)*	Yes / No	**[CONTENT OF Question or Proposition]:**