

RESOLUTION 21-2020

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 22nd day of June, 2020.

TONEY D. KING, SR., Mayor

ATTEST:

APPROVED AS TO FORM:

VICKI L. VIVIAN, CMC, City Clerk

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 this _____ day of _____, 2020 by and between COCHISE COUNTY (COUNTY), a political subdivision of the State of Arizona, and the **City of Benson (JURISDICTION)**, located at 120 W. 6th Street, Benson, Arizona 85602 for certain election supplies and services;

WHEREAS, the County and the Jurisdiction have determined that the use of certain services of the Cochise County Elections Department and the Cochise County Recorder's Office is in the public interest, and the County agrees to provide such service;

WHEREAS, the County is willing to provide election services using a vote center model for election districts wishing to participate in the 2020 consolidated state Primary and General elections, but will not provide election services to districts wishing to conduct vote-by-mail elections on the 2020 consolidated elections dates for Primary and General elections;

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 (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. SCOPE: The scope of this Agreement is limited to election services and supplies between the JURISDICTION and COUNTY for the Primary Election held on August 4, 2020, and/or the General Election held on November 3, 2020.

2. COUNTY DUTIES: The COUNTY agrees contingent upon receipt of a timely, specific request as provided in Paragraph 3(C), to provide the following election services:

A. Election Equipment:

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



- B. Administrative services to include the following:
 - 1. Obtain facilities for use as vote centers located throughout the County.
 - 2. Provide public notice and conduct logic and accuracy tests of programs and equipment.
 - 3. Provide early ballots and election day ballots as required.
 - 4. Deliver and pickup equipment, ballots, signage and supplies.
 - 5. Provide abstract of results of tabulation to include total ballots cast within the jurisdiction; total votes for each candidate, question or proposition.
 - 6. Validate, process and count ballots.
 - 7. Canvass the elections as required and provide documentation to Jurisdiction.
 - 8. Provide for storage and destruction of ballots and election related materials in compliance with the State of Arizona Retention Schedule guidelines.

- C. Arrange for consulting services to include the following services:
 - 1. Ballot layout and design for all ballot styles.
 - 2. Programming the operation of voting and tabulating equipment.
 - 3. Programming the operation of the election reporting module.
 - 4. Printing, folding, insertion and mailing Early Ballots and required notices excluding Informational Publicity Pamphlets if required by Jurisdiction.

- D. Arrange for election board workers:
 - 1. Hire qualified election board workers to include all Boards required and Vote Center workers.
 - 2. Train, supervise and pay election board workers.

- E. Provide an estimate of the aggregate cost of the services.

3. JURISDICTION DUTIES: The JURISDICTION understands and agrees that:

- A. The JURISDICTION retains the primary responsibility for insuring 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 2.

- B. JURISDICTION shall pay to the COUNTY the amounts at the rates set forth on Exhibit A attached hereto and incorporated into this Agreement at actual cost.

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



- D. The JURISDICTION shall provide the information and detail necessary to enable COUNTY to program the ballot, including the Wards, Districts, or Precincts 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, in the format requested by the COUNTY.
1. Translation of the ballot text shall be provided by the JURISDICTION.
 2. The JURISDICTION is responsible for any language, layout, design, printing, mailing, and distribution of any Informational Publicity Pamphlets specific to a JURISDICTION ballot measure.
 3. The JURISDICTION is responsible for final ballot proof.
- E. If an election is cancelled prior to programming or printing ballots, the JURISDICTION shall reimburse the COUNTY for administrative actual costs per Fee Schedule.
- F. The JURISDICTION shall pay the COUNTY in a timely manner or in any event within thirty (30) days of receipt of invoice.
- H. The JURISDICTION understands that they will be billed jointly, on one invoice, by the Elections Department and Recorder's Office for election services as outlined in the attached fee schedule.

4. TERM. The term of this Agreement shall begin upon approval of the parties and continue through the conclusion of the November 3, 2020 election.

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. WORKERS' 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. IMMIGRATION LAWS. The parties hereby warrant that they will at all times during the term of this Agreement comply with all federal immigration laws applicable to the parties' employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together the "State and Federal Immigration Laws"). The parties shall further ensure that each sub-consultant who performs any work for the party under this Agreement likewise complies with the State and Federal Immigration Laws.

10. INSPECTION AND AUDIT. The Parties agree to keep all books, accounts, reports, files, and other records relating to this Agreement for five (5) years after completion of the contract; and, in addition, agrees that such books, accounts, reports, files, and other records shall be subject to audit pursuant to A.R.S. § 35-214.

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

To: COCHISE COUNTY
Lisa M. Marra, Director
Cochise County Elections
1415 Melody Lane, Bldg. E
Bisbee, AZ 85603

To: JURISDICTION
Vicki Vivian, City Manager
City of Benson
120 W. 6th Street
Benson, AZ 85602



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

13. 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.

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

15. BREACH. Failure by the COUNTY and/or JURISDICTION 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.

16. 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, 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.

17. 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.

IN WITNESS WHEREOF, the Parties have authorized the designated officials indicated below to execute this Agreement indicating their respective approval.



APPROVED:

COCHISE COUNTY

BY: _____
Edward T. Gilligan,
County Administrator
Board of Supervisors

ATTEST:

BY: _____
Kim Lemons,
Clerk of the Board
Cochise County Board of Supervisors

APPROVED:

CITY OF BENSON

BY: _____
Toney D. King, Sr., Mayor

ATTEST:

BY: _____
Vicki Vivian, City Clerk



INTERGOVERNMENTAL AGREEMENT DETERMINATION

RE: Intergovernmental Agreement for election services and supplies between the City of Benson and the County of Cochise for the Primary Election held on August 4, 2020 and/or the General Election held on November 3, 2020.

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 8th day of June, 2020.

Cochise County Attorney

By: *Britt Hanson*
Britt Hanson, Of Counsel
County Attorney

Pursuant to A.R.S. Section 11-952, this Agreement has been reviewed by the undersigned attorney for JURISDICTION, 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 _____, 2020.

By: _____
Mesch, Clark and Rothschild
By Gary Cohen, City Attorney

EXHIBIT A

COCHISE COUNTY ELECTION FEE SERVICES SCHEDULE April 25, 2019	<i>Elections consolidated with State or Federal Elections</i>
Election Fee per registered voter	\$0.75
Election Fee if not met above	\$800
Cancel and Appoint	\$250
Cancel if programming started	Actual Cost
Recount per total ballots cast	Included
Info Pamphlet & Postage	Jurisdiction works with Supplier directly
Polling Place Rental if not consolidated with State election	Included
Poll workers - Early Board	Included
Poll workers - Inspector	Included
Poll workers - Marshall	Included
Poll workers - Judges/Clerks	Included
Poll workers - Troubleshooter	Included
Poll workers - Class	Included
Poll workers mileage	Included
Election Equipment – EPollbook tablet (min 2)	Included
Election Equipment - ExpressVote machine (min 2)	Included
Election Equipment - DS200 tabulator (1)	Included
Equipment Delivery Fee	Included
Provisional Ballot Fee	Included
Election Records Destruction	Included
Copy fee	\$0.30
Maps for Vote Location	Included
Recorder's Office Mailing Fees	Waived