



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

Requested Board Meeting Date: November 22, 2016

or Procurement Director Award

Contractor/Vendor Name (DBA): City of **South Tucson**

Project Title/Description:

Intergovernmental Agreement for Election Services

Purpose:

To provide City of South Tucson with election services to assist them in the preparation for, and conduct of, their primary elections, general elections and special elections.

Procurement Method:

City of South Tucson is contracting with the Pima County Elections Department through an Intergovernmental Agreement, in accordance with the provisions in A.R.S. Title 11, Section 952.

Program Goals/Predicted Outcomes:

To contract with the City of South Tucson to include their primary, general and special elections on the County's ballot. This will result in revenue for the County, significant cost savings for the City, and allow City of South Tucson voters to cast only one ballot, rather than two separate ballots if the City conducted their own election with a separate ballot.

Public Benefit:

In addition to the significant cost savings to City of South Tucson, City voters will only need to cast one ballot, rather than two separate ballots requiring two separate return envelopes. This will avert any possible confusion for City voters due to having two ballots. Additionally, City voters will have significantly more opportunities to drop their ballots off at a polling place, since their ballots will be accepted at approximately 240 polling places around the County, versus only one polling place within the City of South Tucson.

Metrics Available to Measure Performance:

During the five-year period of 2012 through 2016, the City of South Tucson successfully contracted with the Elections Department to include City of South Tucson candidates and propositions on a number of County Ballots.

Retroactive:

No.

To: COB- 11-3-16 (2)
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Procurement Dept 11/02/16 PM 02:40

Original Information

Document Type: CTN Department Code: EL Contract Number (i.e., 15-123): 17*0080

Effective Date: 01/01/2017 Termination Date: 12/31/2021 Prior Contract Number (Synergen/CMS): _____

Expense Amount: \$ _____ Revenue Amount: \$ 25,000 over 5-year IGA

Funding Source(s): Revenue Funding will come from City of South Tucson.

Cost to Pima County General Fund: _____

Contract is fully or partially funded with Federal Funds? Yes No Not Applicable to Grant Awards

Were insurance or indemnity clauses modified? Yes No Not Applicable to Grant Awards

Vendor is using a Social Security Number? Yes No Not Applicable to Grant Awards

If Yes, attach the required form per Administrative Procedure 22-73.

Amendment Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____

Amendment No.: _____ AMS Version No.: _____

Effective Date: _____ New Termination Date: _____

Expense Revenue Increase Decrease Amount This Amendment: \$ _____

Funding Source(s): _____

Cost to Pima County General Fund: _____

Contact: Brad R. Nelson, Director

Department: Elections Telephone: 724-6874

Department Director Signature/Date: Brad R. Nelson 10-31

Deputy County Administrator Signature/Date: _____

County Administrator Signature/Date: C. Reddick 11/2/16
(Required for Board Agenda/Addendum Items)

INTERGOVERNMENTAL AGREEMENT
For Election Services
Among the City of South Tucson and Pima County

This Intergovernmental Agreement (IGA) is by and among CITY OF SOUTH TUCSON OF PIMA COUNTY, ARIZONA, a municipal subdivision of the State of Arizona (“the City”) and PIMA COUNTY, a political subdivision of the State of Arizona (“the County”), on behalf of the PIMA COUNTY ELECTIONS DEPARTMENT (the “Elections Department”).

WHEREAS, the County of Pima has a comprehensive voting system and certified elections officials; and

WHEREAS, the City of South Tucson, an Arizona political subdivision pursuant to A.R.S. § 9-231 (A), seeks Pima County’s assistance in the preparation and conduct of the City’s primary elections, general elections and special elections;

NOW, THEREFORE, IT IS AGREED by and between the County, on behalf of its Elections Department, and the City, pursuant to A.R.S. §§ 16-205(C), 16-172, 16-405 *et seq.*, 16-450, 11-251(3), and 11-951, *et seq.*, as follows:

1. **Purpose.** The purpose of this IGA is to provide election services to the City for the City’s primary elections, general elections and special elections.
2. **County Obligations.** County shall:
 - A. Provide election services at the applicable cost set forth in the **Schedule of Prices, Level 2 – Consolidated Elections** (Exhibit A), as requested by the City Clerk for placing ballot language on the Pima County ballot.
 - B. Provide for all of the following services as indicated under the Level 2 fee schedule:
 - Boardworker recruitment, training and service
 - Polling place acquisition and use
 - Sample ballot printing and postage
 - Translation services
 - Early and provisional ballot processing
 - Supplies
 - Supply delivery and pick-up
 - Law enforcement
 - Technical support
 - Election Night processing and tabulation
 - C. Provide final camera-ready ballot formats to the City, including Spanish language translations, no later than 55 days prior to each election. Upon written notice of a need for a change to the ballot format approved by the City, the Elections Department shall, if possible, arrange for the corrections to be made by the vendor. The Elections Department will inform the City of any additional charges incurred.

- D. Prepare and deliver an invoice to the City from the Elections Department for election costs pursuant to this IGA, within forty-five (45) days after the date of each election. The invoice will be based on the voter registration data provided by the Pima County Recorder as of the voter registration cut-off for each election. The invoice shall be calculated based on the schedule of prices, Level 2, Consolidated Elections.
- E. Assure that all polling locations comply with the Americans with Disabilities Act by using the ADA Checklist for Polling Places (2004) published by the U.S. Department of Justice.

3. **City Obligations.** The City shall:

- A. Make arrangements with the County for any necessary language translations as required by Section 203 of the Voting Rights Act.
- B. Provide the County Elections Department with the final certified copy of any ballot issue for a City election at least 120 days prior to the election, unless a different timeframe is otherwise mutually agreed upon. The final certified copy of the ballot issue will be provided in an electronic format (Microsoft Word).
- C. Review and approve the camera-ready ballot formats provided by the Elections Department no more than two (2) business days after receipt. The City must notify the Elections Department, in writing, of any required changes after the ballot format has been approved.
- D. Be responsible for the preparation and distribution of publicity pamphlets, including, but not limited to, any requisite translation, printing and mailing.
- E. Pay any and all charges for printing of publicity pamphlet by commercial means directly to the commercial vendor providing such services.
- F. Arrange for and publish any and all notices of each election as required by law.
- G. Prepare and timely submit any reports required under A.R.S. § 16-409(B).
- H. Should the election be challenged or questioned for any reason whatsoever, the City shall be responsible for defense. This duty shall survive the expiration of the IGA, provided that County shall cooperate with City in making relevant information and witnesses available upon reasonable request.
- I. Within thirty (30) days of date of the invoice, City shall reimburse County, in full, for invoiced costs of election at the rates set forth in Exhibit A.
- J. The City will, within thirty (30) days of the date of the invoice, pay the Elections Department the actual costs for any changes to ballots incurred by the Elections Department.
- K. Any amount invoiced by the County that is not paid thirty (30) days from the date of the invoice shall accrue interest at the rate of ten percent (10%) per annum until paid. The City expressly acknowledges and agrees that the payments required to be made hereunder

constitute valid, binding obligations and authorized debt of the City.

4. **Manner of Financing and Budgeting.** The City warrants that it has sufficient funds available and budgeted to discharge the funding obligation imposed by this IGA.
5. **Term.** The term of this IGA shall be from January 1, 2017 through December 31, 2021, provided that the term shall continue through final resolution of any legal challenge to the election. Any modification or time extension of this IGA shall be by formal written amendment and executed by the parties hereto.
6. **Hold Harmless Clause.** 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 or 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.
7. **Compliance with Applicable Laws.** The parties shall comply with all federal, state and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this IGA. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this IGA and any disputes hereunder. Any action relating to this IGA shall be brought in an Arizona court in Pima County. Any changes in the governing laws, rules and regulations during the terms of this IGA shall apply but do not require an amendment.
8. **Non-Discrimination.** Neither party will discriminate against the other party's employee, client or any other individual in any way involved with, the other party, because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out the City's duties pursuant to this IGA. Both parties agree to comply with the provisions of A.R.S. §41-1463 and of Executive Order 75-5, as amended by Executive Order 2009-09, which are incorporated into this IGA by reference, as is set forth in full herein.
9. **Americans With Disabilities Act.** This IGA is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. §§ 12101-12213) and all applicable Federal Regulations under the Act, including 28 CFR Parts 35 and 36.
10. **Severability.** If any provision of this IGA or any application thereof to the County, the City or any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this IGA which can be given effect, without the invalid provision or application and to this end the provisions of this IGA are declared to be severable.
11. **Conflict of Interest.** This IGA is subject to the cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.
12. **Non-Appropriation.** Notwithstanding any other provision in this IGA, this IGA may be terminated if for any reason the County Board of Supervisors or the City does not appropriate sufficient monies for the purpose of maintaining this IGA. In the event of such cancellation, County or City shall have no further obligation other than for payment for services rendered prior to cancellation.

13. **Legal Authority.** Neither party warrants to the other its legal authority to enter into this IGA. If a court, at the request of a third person, declares that either party lacks authority to enter into this IGA, or any part of it, then the IGA, or parts of it affected by such order, shall be null and void, and no recovery may be had by either party against the other for lack of performance or otherwise.
14. **Worker's Compensation.** Each party shall comply with the notice of A.R.S. § 23-1022(E). For purposes of A.R.S. § 23-1022, each party shall be considered the primary employer of all personnel currently or hereafter employed by that party, irrespective of the operations of protocol in place, and said party shall have the sole responsibility of the payment of Worker's Compensation benefits or other fringe benefits of said employees.
15. **No Joint Venture.** It is not intended by this IGA to, and nothing contained in this IGA shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between County and any City employees, or between the City and any County employees. Neither party shall be liable for any debts, accounts, obligations nor other liabilities whatsoever of the other party, including (without limitation) any other party's obligation to withhold Social Security and income taxes for itself or any of its employees.
16. **No Third Party Beneficiaries.** Nothing in the provisions of this IGA is intended to create duties or obligations to, or rights in, third parties not parties to this IGA, or to affect the legal liability of any party to the IGA by imposing any standard of care different from the standard of care imposed by law.
17. **Resolution of Conflicting Needs.** In the event conflict arises between the County and the City over the use of voting equipment, vote tallying equipment, or County elections personnel, County shall have priority, but shall make reasonable efforts to reconcile conflicts so that neither party will suffer as a consequence of conflict.
18. **Notice.** Any notice required pursuant to this IGA shall be given to:

County:

Chuck H. Huckelberry
County Administrator
130 W. Congress St., 10th Floor
Tucson, AZ 85701
Phone: (520) 724-8661
Fax: (520) 724-8171

Brad R. Nelson
Elections Director
6550 S. Country Club
Tucson, AZ 85756
Phone: (520) 724-6830
Fax: (520) 724-6870

Robin Brigode
Clerk of the Board of Supervisors
130 W. Congress St., 5th Floor
Tucson, AZ 85701
Phone: (520) 724-8449
Fax: (520) 222-0448

City:

Veronica Moreno
City Clerk, City of South Tucson
1601 S. 6th Avenue
Tucson, AZ 85713
Phone: (520) 792-2424
Fax: (520) 628-9619

19. **Termination.** Either party may terminate this IGA at any time by giving written notice of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In the event of termination, any real or personal property belonging to either party and furnished pursuant to this IGA, shall be returned to the furnishing party. Any funds of City paid to County in accordance with this IGA and not encumbered at the time of termination shall be refunded to City and, if City terminates, City shall pay any and all costs of County incurred up to the date of termination or as a result of termination.
20. **Legal Arizona Workers Act Compliance.** The parties hereby warrant that they will at all times during the term of this IGA comply with all federal immigration laws applicable to each party's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Each party will further ensure that each subcontractor who performs any work for that party under this IGA likewise complies with the State and Federal Immigration Laws.

Each party has the right at any time to inspect the books and records of the other party and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of either party's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this IGA subjecting the breaching party to penalties up to and including suspension or termination of this IGA. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, the breaching party will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor as soon as possible so as not to delay the completion of work under this IGA.

Each party will advise each of its subcontractors of the other party's rights, and the subcontractor's obligations, under this section by including a provision in each subcontract substantially in the following form:

"SUBCONTRACTOR hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to SUBCONTRACTOR's employees, and with the requirements of A.R.S. § 23-214 (A). SUBCONTRACTOR further agrees that Pima County or the City may inspect the SUBCONTRACTOR'S books and records to insure that SUBCONTRACTOR is in compliance with these requirements. Any breach of this paragraph by SUBCONTRACTOR is a material breach of this contract subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this section will be the responsibility of the breaching party.”


- 21. **Entire IGA.** This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This IGA shall not be modified, amended, altered or extended except through a written amendment signed by the parties.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement on this _____ day of _____, 2016.

PIMA COUNTY:

CITY OF SOUTH TUCSON:


Chair, Board of Supervisors Date


Mayor, City of South Tucson Date

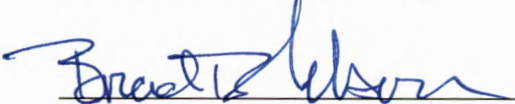
ATTEST:

ATTEST:

Clerk of the Board of Supervisors Date


City Clerk Date

APPROVED AS TO CONTENT:


Brad Nelson, Director Date
Pima County Elections Department

The foregoing Intergovernmental Agreement between the City of South Tucson and Pima County has been reviewed pursuant to A.R.S. § 11-952 by the undersigned, who have determined that it is in the proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Intergovernmental Agreement represented by the undersigned.

PIMA COUNTY:

CITY OF SOUTH TUCSON:


Deputy County Attorney Date


Attorney for City of South Tucson Date

DANIEL JURKOWITZ

EXHIBIT A
Schedule of Prices

LEVEL 2: CONSOLIDATED ELECTIONS

Any jurisdiction may choose to have its election combined with any county wide election. A fee of 75 cents per registered voter will apply.

The seventy-five cent fee covers the following services:

- Boardworker recruitment, training and service
- Polling Place acquisition and use
- Sample Ballot printing and postage
- Translation services
- Early and Provisional Ballot processing
- All supplies
- Supply delivery and pickup
- Law Enforcement
- Technical Support
- Election night processing and tabulation

Fee schedule approved by Pima County Board of Supervisors June 16, 2009.