



Board of Supervisors Memorandum

January 24, 2023

Initial Appearances

Introduction

Courts in Pima County and the City of Tucson are required to provide anyone arrested within Pima County and the City of Tucson an initial appearance and/or misdemeanor arraignment before a judge within twenty-four hours after arrest. For at least the past 18 years the Courts in Pima County have determined that it is most efficient for them to consolidate all initial appearances and arraignments in Tucson City Court. Historically, an Intergovernmental Agreement (IGA) between the Arizona Superior Court, Pima County Consolidated Court and the City of Tucson has been entered into to provide for these hearings. While the last IGA was approved in June 2007 (Attachment 1), amendments approved in 2009 (Attachment 2) and 2011 (Attachment 3) extended the IA until June 30, 2013. The Superior Court recommended a revised IGA for twice-day appearances that was first considered by the Board of Supervisors on March 15, 2022. Ultimately, no action was taken and the Superior Court has now requested to continue consideration of a new IGA until December 29, 2023 while focused work groups established by the Courts evaluate processes and provide recommendations.

Discussion

The Intergovernmental Agreement between Pima County and the City of Tucson to conduct Initial Appearances (IA) has existed since (at least) 2004 and has required approval by the Board of Supervisors primarily to provide a mechanism by which the Courts share the cost of Initial Appearances and payment can be made for such.

The significance of the Initial Appearance, at which time the potential risk of release and the opportunity for bail is established, results in ever-increasing scrutiny on the process. The ability of those conducting the hearings to properly assess and review the cases before them, the concern that bail decisions are sometimes made without significant input from prosecution or defense counsel and the lack of data on outcomes resulted in concern being expressed to the Board of Supervisors regarding the content and term of the IA IGA proposed early last year.

On March 15, 2022 the Board of Supervisors first considered approval of a ten year extension for the IA between the Superior Court, Justice Court, and the City of Tucson, to provide for joint participation and pro-rata cost sharing for initial appearances and/or misdemeanor arraignments. The Board discussed the IA IGA and possible amendments to the proposed agreements at its meetings of April 5, 2022, April 19, 2022, May 3, 2022 and May 17, 2022. At the May 17, 2022 meeting a unanimous vote of the Board removed the item from the agenda and the direction was provided to work on revisions and come back to the Board at a later date.

In his letter of December 21, 2022 Jeffrey Bergin, Presiding Judge of the Pima Court Superior Court, updated the Board on the three work groups that were created and have been meeting to address the areas of:

1. Release Conditions Matrix and Decision Tree
2. Electronic Monitoring/New Supervision Options
3. Data and Reporting

The Honorable Chair and Members, Pima County Board of Supervisors
Re: **Initial Appearances**
January 24, 2023
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Presiding Judge Bergin reports that the work groups, overseen by Superior Court leadership include representatives of the Pima County Attorney's Office, Public Defense Services, Tucson City Court and Pima County Government. The Court anticipates receiving recommendations within the second quarter of 2023 for consideration in the development of a new IA IGA and, therefore, requests that the current IGA be extended to December 29, 2023.

Throughout the deliberations, the Board of Supervisors has received formal comments from the Pima County Attorney, Pima County Public Defense Services, and the NAACP regarding the content of the IA IGA.

Conclusion

The work being conducted by the Superior Court to evaluate critical elements of the Initial Appearance process is commendable and should continue, but should be expedited to conclude prior to the adoption of the Pima County Budget for Fiscal Year 2023/24. In addition, the Court should be asked to expand its work groups to include specific data elements and additional representatives. Finally, to ensure the continued ability to pay for services rendered, a minimal or interim IGA should be adopted by the Board of Supervisors prior to the adoption of a new IA IGA.

Recommendation

I recommend the Board of Supervisors:

1. Approve the work plan as presented in Presiding Judge Bergin's letter of December 21, 2022 to include the following:
 - a. In addition to those of the Pima County Attorney's Office, Public Defense Services, Tucson City Court and Pima County Government, the work groups shall add representatives of the Pima County Sheriff's Department and Tucson Police Department, particularly if the development of an electronic/location monitoring is discussed;
 - b. The Data and Reporting work group shall consider for inclusion in the IA IGA a requirement for daily data collection and monthly or quarterly reporting of this data to the County Administrator and the Board of Supervisors regarding bail including the number of individuals
 - i. detained preventively and/or are unable to secure release due to a financial condition of bail;
 - ii. arrested for misdemeanors who are detained on bail;
 - iii. arrested for one or more violent felony charges;
 - iv. arrested for one or more violent felony charges who have been released with the condition they be monitored by Pretrial Services and are re-arrested for new felony charges which occurred during the time they are supervised by Pretrial Services;
 - v. arrested for misdemeanors who have financial bail imposed but are unable to post their bond within 24 hours, 72 hours and within 7 days

Data required in the IA IGA shall include information regarding the racial and ethnic breakdown for each of the five elements delineated above.

The Honorable Chair and Members, Pima County Board of Supervisors

Re: **Initial Appearances**

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2. Direct the Superior Court to complete the deliberations of the work groups no later than April 7, 2023 and to provide to the County Administrator a proposed Intergovernmental Agreement for consideration by the Board at its meeting of May 2, 2023.
3. Direct the County Administrator to review with the Pima County Sheriff and the Superior Court Supplemental Budget Requests for data collection and reporting capabilities and a robust evaluation and possible implementation of pretrial electronic monitoring systems, to include Supplemental Budget Requests for defendants currently released or to be released in the future who would be required to be placed on electronic monitoring per ARS 13-3967 E (1).
4. Direct the County Administrator to work with the County Attorney's Office to determine if an interim Intergovernmental Agreement is necessary to ensure the ability of the County to pay for services rendered and, if so, return a proposed Intergovernmental Agreement to the Board of Supervisors at its meeting of February 21, 2023.
5. Direct the County Administrator to work with the City of Tucson City Manager as the City of Tucson is the partner in the Intergovernmental Agreement, which approved the version considered by the Board of Supervisors in 2022, to ensure that amendments to the document meet with their approval.

Sincerely,



Jan Leshner
County Administrator

JKL/mp – January 18, 2023

Attachments

- c:
- The Honorable Jeffrey Bergin, Presiding Judge, Pima County Superior Court
 - The Honorable Danelle Liwski, Associate Presiding Judge, Pima County Superior Court
 - The Honorable Laura Conover, Pima County Attorney
 - The Honorable Chris Nanos, Pima County Sheriff
 - Ron Overholt, Court Administrator, Pima County Superior Court
 - Carmine DeBonis, Jr., Deputy County Administrator
 - Francisco García, MD, MPH, Deputy County Administrator & Chief Medical Officer
 - Steve Holmes, Deputy County Administrator
 - Dean Brault, Director, Public Defense Services

ATTACHMENT 1

RESOLUTION NO. 2007- 269

**RESOLUTION OF THE BOARD OF SUPERVISORS OF PIMA COUNTY,
ARIZONA APPROVING AND AUTHORIZING EXECUTION OF AN
INTERGOVERNMENTAL AGREEMENT BETWEEN PIMA COUNTY AND
THE CITY OF TUCSON FOR THE PROVISION OF TWICE-A-DAY INITIAL
APPEARANCES.**

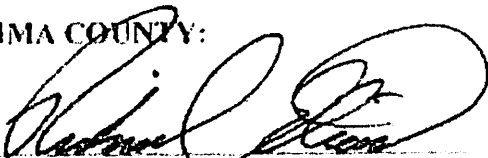
Whereas, it is cost efficient and in the best interest of the public to enter into an Intergovernmental Agreement with the City of Tucson for the provision of twice-a-day initial appearances.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA, THAT the Intergovernmental Agreement between Pima County and the City of Tucson for the provision of twice-a-day initial appearances is hereby approved.

BE IT FURTHER RESOLVED THAT the Chair of the Board is authorized to sign the contract and any documents necessary to its execution

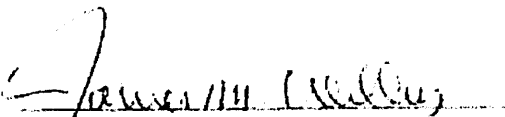
PASSED AND ADOPTED ON OCT 16 2007

PIMA COUNTY:


Chair, Board of Supervisors

ATTEST:


Clerk of the Board


Deputy County Attorney

CONTRACT
NO. 01-18-T-140195-0707
AMENDMENT NO. 01
INTERGOVERNMENTAL AGREEMENT
BETWEEN THE ARIZONA SUPERIOR COURT IN PIMA COUNTY, on all
PIMA COUNTY CONSOLIDATED JUSTICE COURT, and
THE CITY OF TUCSON, to this
PIMA COUNTY FOR
THE PROVISION OF TWICE-A-DAY INITIAL APPEARANCES

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between Arizona Superior Court In Pima County (Superior Court), Pima County Consolidated Justice Court (Justice Court), City of Tucson (City), a municipal corporation, on behalf of the Tucson City Court (City Court), and Pima County (County)

WHEREAS, in addition to their duty and authority in state statute or city charter, the Superior Court, Justice Court and City Court are required by, Rule 4, Arizona Rules of Criminal Procedure, to provide all persons arrested within the County and the City with an initial appearance and/or misdemeanor arraignment before a judge within twenty-four hours after the arrest and;

WHEREAS, it is most efficient and expeditious for the Superior Court, Justice Court and City Court to jointly consolidate the criminal proceeding necessary or as required by law.

NOW, THEREFORE, the Superior Court, Justice Court, City Court, and County, pursuant to the provisions of ARS 11-951 et seq., and in consideration of the covenants and conditions set forth in the following, to ensure their faithful performance, do mutually agree as follows:

ARTICLE 1 PURPOSE

The purpose of this agreement is to provide for the joint participation and pro-rata cost sharing by the Superior Court, Justice Court, and City Court in the initial appearance and/or misdemeanor arraignment proceedings, conducted twice-a-day, seven days a week, pursuant to the Arizona Rules of Criminal Procedure. Such proceedings will be conducted at the Pima County Jail each morning and evening, including weekends and holidays. The specific time for the proceedings will be set by mutual decision of those involved and may be adjusted as necessary during the life of this agreement.

ARTICLE 2 TERM OF AGREEMENT

This agreement will be in effect for a period of one year with an option to renew it for up to five years unless a party timely objects or seeks to terminate the agreement pursuant to Article 9 of this agreement. The initial term of the agreement shall begin July 1, 2007 or on the date of filing in the office of the secretary of state, and shall remain in effect through June 30, 2008.

EX A TO RESOLUTION NO. 20755
CITY OF TUCSON CONTRACT NO. 0072-08

ARTICLE 3. OBLIGATIONS OF THE CITY COURT

- A SECURITY: The Tucson Police Department shall provide security at the Mission Road facility for all morning sessions.
- B JUDICIAL SERVICES: The City Court shall provide regular City Court Magistrates or other designate, qualified attorneys appointed by the Superior Court as Special Commissioners of the Superior Court, to conduct joint Justice Court, City Court and Superior Court initial appearances and/or arraignment proceedings during the weekday morning sessions.
- C CLERICAL SUPPORT: The City Court shall provide a courtroom clerk during initial appearances and/or arraignment proceedings, who shall complete the paperwork resulting from those proceedings as required by that court
- D INTERPRETING SERVICES: The City Court shall provide interpreting services for all morning proceedings.

ARTICLE 4. OBLIGATIONS OF THE COUNTY

- A FACILITIES & SECURITY: The County shall provide courtrooms at the Sheriff's Mission Road and Silverlake jail Facilities to conduct joint misdemeanor arraignments and misdemeanor and felony initial appearance proceedings at an agreed upon time every morning and evening, weekends and holidays included. The County shall insure proper jail facilities and management are maintained to match the flow of the court proceedings. The County shall provide access, parking, security, office space, and telephones for the employees traveling to the jail locations for court events. The County will also ensure public and media access to or viewing of the court proceedings conducted at either courtroom

ARTICLE 5. OBLIGATIONS OF THE COURTS

- A JUDICIAL SERVICES: The Superior Court shall provide qualified judicial officers for every evening, weekend, and holiday proceeding.
- B CLERICAL SUPPORT: Justice Court shall provide a courtroom clerk during initial appearances and/or arraignment proceedings, who shall complete the paperwork resulting from the initial appearances and/or arraignment proceedings as required by the Superior Court and the Justice Court
- C INTERPRETING SERVICES: The Superior Court shall provide interpreting services for all evening, weekend and holiday initial appearance and/or arraignment sessions.

ARTICLE 6. PAYMENT

The parties agree that each will share in certain common costs of the proceedings in proportion to each court's share of the cases appearing at the daily hearings. For each fiscal year of this agreement, the proportionate shares shall be based on the prior fiscal year's breakdown, by court, of cases going through the initial arraignment court.

The common costs to be shared shall be payments made by the Superior Court to judicial officers for evening, weekend and holiday sessions; costs borne by the City Court to provide magistrates to cover the weekday morning sessions; payments made by the Superior Court to interpreters for attendance at each evening, weekend and holiday sessions; costs borne by the City Court to provide interpreting services at weekday morning sessions. It should be noted that the costs borne by the City Court for the provision of clerical support services will not be considered in the allocation of common costs and therefore, will not be shared with any other agency. Further, the cost of clerical services provided by the Justice Court will be shared solely with the Superior Court. Each quarter, the Superior Court shall issue detailed invoices to the other parties for their shares of the total costs, making adjustments for the expenses as outlined in A, B and C below.

- A. The Superior Court's share of the total cost shall be reduced by the amounts it has paid for judicial officers and interpreting services to cover evening, weekend and holiday sessions. If those costs exceed the Superior Court's share of the total costs based on caseload proportion, the other court partners shall reimburse the difference to the Superior Court at the end of each quarter.
- B. The City Court's share of the total cost shall be reduced by the amounts it has paid for the provision of magistrates and interpreting services to cover the weekday morning sessions.
- C. The Justice Court's share shall be reduced by the amounts it has paid for the provision of clerical support at evening, weekend and holiday sessions. As this clerical support is related solely to County cases, this cost will be shared only with Superior Court.

All parties represent that they have within their respective budgets sufficient funds or other resources to discharge their obligations as set forth in this Agreement.

ARTICLE 7. POTENTIAL FINANCIAL SUPPORT FROM OTHER COURT USERS

Because other county courts are sending or may send defendants through the initial arraignment court and that work has a resource impact on the process, such courts may be asked to support the process financially. In the combined discretion of the Justice Court and the Superior Court, with the approval of the Superior Court Presiding Judge, a cost of performing such functions may be constructed and payment for those services negotiated with each of those courts. Such payments shall not affect the sharing of costs as described in Article 6, except that the cases from non-party courts shall not be considered in the calculation of proportionate caseloads.

ARTICLE 8. SELF INSURANCE

The parties acknowledge that they are self-insured and that each shall be responsible for their own acts and omissions.

ARTICLE 9. TERMINATION

This agreement may be terminated at any time by mutual written consent or by any party's giving not less than ninety (90) days written notice to the other parties. This agreement is subject to the provision of ARS 38-511.

ARTICLE 10. LEGAL JURISDICTION

Nothing in this agreement shall be construed as either limiting or extending the legal jurisdiction of either the Superior Court, Justice Court or City Court.

ARTICLE 11. PRIOR AGREEMENTS

This agreement supersedes all previous agreements regarding the same subject matter.

ARTICLE 12. RENEWAL

This agreement shall be reviewed annually and may be amended as agreed upon by the parties as referenced in Article 2.

ARTICLE 13. ARBITRATION

This agreement is subject to arbitration to the extent required by ARS 12-1518, ARS 12-133, and Rule 3.9 Pima County Superior Court Local Rule.

ARTICLE 14. ASSIGNMENT

No right or interest in this Agreement shall be assigned by either party without prior written permission. No delegation of any duty shall be made without prior written permission of the COURT.

ARTICLE 15. APPLICABLE LAW

This agreement shall be governed by the laws of the State of Arizona, and suits pertaining to this agreement may be brought only in the courts in the State of Arizona.

Parties to this agreement shall comply with all City, County, State and Federal laws, ordinances, rules, regulations, and statutes which may be applicable to this Agreement.

ARTICLE 16. NON-DISCRIMINATION

Parties shall not discriminate, and shall require that any subcontractor not discriminate, against any employee, or applicant for employment, in violation of Federal Executive Order 11246 and State Executive Order No. 99-4 and A.R.S. §41-1461 et seq., in the provision of program services on the basis of race, age, creed, color, religion, sex, condition of disability, or national origin.

ARTICLE 17. AMERICANS WITH DISABILITIES ACT

All parties shall comply with 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

ARTICLE 18. NON-APPROPRIATIONS

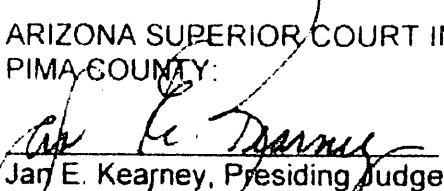
Each payment obligation created is conditioned upon the availability of funds which are appropriated for the payment of such an obligation. If funds are not available for the continuance of the contract services, the contract period for the services may be terminated by any of the parties at the end of the period for which funds are available. Any party shall notify the other at the earliest possible time which services will or may be affected by a shortage of funds. No penalty shall accrue to the party in the event this provision is exercised, and shall not be obligated or liable for any future payments due or for any damages as a result of the termination under this section. This provision shall not be construed so as to permit the party to terminate this agreement or any service in order to acquire a similar service from another party.

ARTICLE 19. ENTIRE AGREEMENT

This document constitutes the entire agreement between the parties and shall not be modified, amended, altered or changed except through a written amendment signed by all the parties.

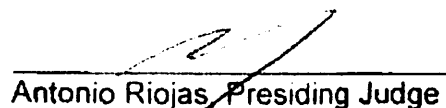
IN WITNESS THEREOF, all parties have affixed their signatures to this agreement on the date written below.

ARIZONA SUPERIOR COURT IN
PIMA COUNTY:


Jan E. Kearney, Presiding Judge

7/25/07
Date

TUCSON CITY COURT.


Antonio Riojas, Presiding Judge

8/9/07
Date

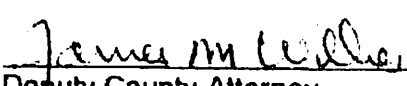
PIMA COUNTY JUSTICE COURTS


Jack Peyton, Assoc Presiding Judge

Date

8/1/07

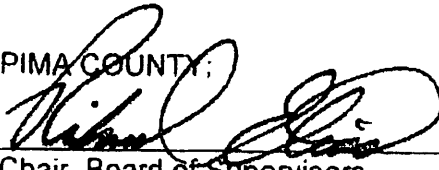
APPROVED AS TO FORM


Deputy County Attorney

Date

July 30, 2007

PIMA COUNTY:


Chair, Board of Supervisors

Date

OCT 16 2007

ATTEST:


Lori Godoshian, Clerk of the Board

Date

OCT 16 2007

CITY OF TUCSON:


Robert Wap, Mayor

PRO-TEMPORE

September 5, 2007

Date

COUNTERSIGNED: ATTEST:


City Clerk

September 5, 2007

Date

APPROVED BY:


City Attorney

Date

8-13-07

ATTACHMENT 2



Terry Goddard
Attorney General


Office of the Attorney General
State of Arizona

INTERGOVERNMENTAL AGREEMENT DETERMINATION

Amendment No. 02 to the Intergovernmental Agreement for the Provision of Twice-A-Day Initial Appearances, which is an Agreement between the Arizona Superior Court in Pima County, Pima County Consolidated Justice Court, the City of Tucson, and Pima County, has been reviewed pursuant to A.R.S. § 11-952 by the undersigned Assistant Attorney General, who has determined that it is in the proper form and is within the powers granted under the laws of the State of Arizona to those Parties to the Agreement represented by the Attorney General.

Dated this 10th day of August, 2009.

TERRY GODDARD
The Attorney General


Assistant Attorney General
KATHRYN J. WINTERS

This is an official copy of the Pima County Court record and on file with Pima County Court.

COLLIER 2009/08/10

INTERGOVERNMENTAL AGREEMENT
BETWEEN ARIZONA SUPERIOR COURT IN PIMA COUNTY, PIMA COUNTY CONSOLIDATED JUSTICE
COURT, THE CITY OF TUCSON AND PIMA COUNTY FOR CONTRACT
THE PROVISION OR TWICE-A-DAY INITIAL APPEARANCES

AMENDMENT NO. 02

NO. 01-18-T-140195-0707

AMENDMENT NO. 02

This number must appear on all
Arizona Superior Court Pima County
municipal corporations and behalf of the
contract.

THIS AMENDMENT to that certain Agreement by and between the Arizona Superior Court (Court), Pima County Justice Court (Justice Court), City of Tucson (City), a municipal corporation, and Pima County (County), and Pima County (County).

WHEREAS, The Court, Justice Court, City Court, City, and County have entered into an intergovernmental agreement for joint participation and pro-rata cost sharing in the initial appearance and/or misdemeanor arraignment proceedings, conducted twice-a-day, seven days a week, pursuant to the Arizona Rules of Criminal Procedure dated the 19th day of October 2007, and

WHEREAS, all parties desire to amend said Agreement

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Pursuant to Article 12 of the original Agreement all parties agree to extend the Agreement for one (1) year period, effective July 1, 2009 through June 30, 2010.
2. All costs, rates, and conditions shall remain the same.

All other provisions of this Agreement, not specifically changed by this Agreement, shall remain in effect and be binding upon the parties.

IN WITNESS THEREFORE, all parties have affixed their signatures to this amendment on the dates written below.

ARIZONA SUPERIOR COURT IN PIMA COUNTY

[Signature]
Presiding Judge, Jan E. Kearney

6-17-09
Date

PIMA COUNTY JUSTICE COURTS

[Signature]
Presiding Judge, Maria L. Felix

8/28/09
Date

APPROVED AS TO FORM

[Signature]
Deputy County Attorney

28 Aug 2009
Date

TUCSON CITY COURT

[Signature]
Presiding Judge, Antonio Riojas

9-3-09
Date

CITY OF TUCSON

[Signature]
Mayor, Robert E. Walkup

October 6, 2009
Date

ALL CITY

[Signature]
City Clerk, Roger W. Randolph

October 6, 2009
Date

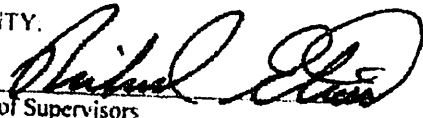
APPROVED BY

[Signature]
CITY ATTORNEY 9.9.09

EX A TO RESOLUTION NO 21400

CITY OF TUCSON CONTRACT NO 0072-08


PIMA COUNTY.


Chair, Board of Supervisors

NOV 17 2009

Date

ATTEST:


Clerk of Board, Lori Godoshian

THIS DOCUMENT IS THE PROPERTY OF THE PIMA COUNTY CLERK'S OFFICE. IT IS TO BE KEPT IN THE OFFICE OF THE CLERK OF BOARD OF SUPERVISORS. IT IS NOT TO BE REPRODUCED OR DISTRIBUTED OUTSIDE THE OFFICE OF THE CLERK OF BOARD OF SUPERVISORS.

NOV 17 2009

F. ANN RODRIGUEZ, RECORDER
RECORDED BY: MRB
DEPUTY RECORDER
1562 PE-1

PCPRO
PIMA CO PROCUREMENT
PICKUP



DOCKET: 13690
PAGE: 295
NO. OF PAGES: 6
SEQUENCE: 20092250129
11/23/2009
RES 11:42
PICKUP
AMOUNT PAID \$ 0.00

ADOPTED BY THE
MAYOR AND COUNCIL

October 6, 2009

RESOLUTION NO. 21400

RELATING TO INTERGOVERNMENTAL AGREEMENTS; APPROVING AND
AUTHORIZING EXECUTION OF AMENDMENT NO. 2 TO THE
INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF
TUCSON, ARIZONA SUPERIOR COURT IN PIMA COUNTY, PIMA
COUNTY CONSOLIDATED JUSTICE COURTS AND PIMA COUNTY
FOR THE PROVISION OF TWICE-A-DAY INITIAL APPEARANCES; AND
DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF
TUCSON, ARIZONA, AS FOLLOWS:

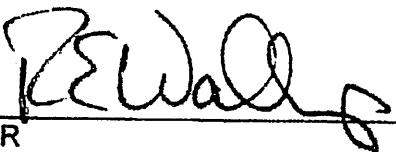
SECTION 1. Amendment No. 2 to the Intergovernmental Agreement
between the City of Tucson, Arizona Superior Court in Pima County, Pima
County Consolidated Justice Court, and Pima County for the Provision of Twice-
A-Day Initial Appearances, attached hereto as Exhibit "A," is approved.

SECTION 2. The Mayor is hereby authorized and directed to execute
said Amendment No. 2 for and on behalf of the City of Tucson and the City Clerk
is directed to attest the same.

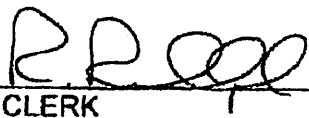
SECTION 3. The various City officers and employees are authorized and
directed to perform all acts necessary or desirable to give effect to this resolution

SECTION 4. WHEREAS, it is necessary for the preservation of the peace, health, and safety of the City of Tucson that this resolution become immediately effective, an emergency is hereby declared to exist and this resolution shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED BY THE MAYOR AND COUNCIL
OF THE CITY OF TUCSON, ARIZONA, October 6, 2009.


MAYOR

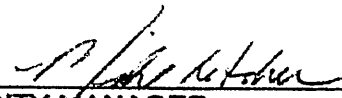
ATTEST:


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY

REVIEWED BY:


CITY MANAGER

MMD/dc
9/9/2009 9:34 AM

This is a true and correct copy of the original document.
Certified by the City Clerk on 10/13/2009.

Certificate of Clerk
● *City of Tucson* ●

State of Arizona
County of Pima

} ss

I, Roger W. Randolph, the City Clerk of the City of Tucson, Arizona, do hereby certify that the foregoing is a true and correct copy of Resolution No. 21400 which was passed and adopted by the Mayor and Council of the City of Tucson, Arizona, at a meeting held on October 6, 2009, at which a quorum was present.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the City of Tucson, Arizona on October 26, 2009.

Total of 2 pages
(Exhibits not included)

R. Randolph
City Clerk

11-10-09 10:00 AM

ATTACHMENT 3

INTERGOVERNMENTAL AGREEMENT
BETWEEN THE ARIZONA SUPERIOR COURT IN PIMA COUNTY,
PIMA COUNTY CONSOLIDATED JUSTICE COURT,
THE CITY OF TUCSON, AND
PIMA COUNTY FOR
THE PROVISION OF TWICE-A-DAY INITIAL APPEARANCES

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between Arizona Superior Court in Pima County (Superior Court), Pima County Consolidated Justice Court (Justice Court), City of Tucson (City), a municipal corporation, on behalf of the Tucson City Court (City Court), and Pima County (County).

WHEREAS, in addition to their duty and authority in state statute or city charter, all courts in the county are required by, Rule 4, Arizona Rules of Criminal Procedure, to provide all persons arrested within the County with an initial appearance and/or misdemeanor arraignment before a magistrate within twenty-four hours after the arrest and;

WHEREAS, the Presiding Judge of the County has the duty under Rule 4 to assure that initial appearances are held daily with at least one at a fixed time each day;

WHEREAS, the Presiding Judge of Pima County has determined that it is most efficient and expeditious for the Superior Court, Justice Court and City Court to jointly conduct in a consolidated manner the criminal proceedings necessary or as required by law.

NOW, THEREFORE, the Superior Court, Justice Court, City Court, and County, pursuant to the provisions of ARS 11-951 et seq., and in consideration of the covenants and conditions set forth in the following, to ensure their faithful performance, do mutually agree as follows:

ARTICLE 1. PURPOSE

The purpose of this agreement is to provide for the joint participation and pro-rata cost sharing by the Superior Court, Justice Court, and City Court in the initial appearance and/or misdemeanor arraignment proceedings, conducted twice-a-day, seven days a week, pursuant to the Arizona Rules of Criminal Procedure. Such proceedings will be conducted at the Pima County Jail each morning and evening, including weekends and holidays. The specific time for the proceedings will be set by mutual decision of those involved and may be adjusted as necessary during the life of this agreement.

In addition, pursuant to Administrative Order 2011-13 of the Presiding Judge of the Superior Court, the remaining courts within the county shall contribute to the cost of these proceedings based on the proportion of the total cases attributable to each court.

ARTICLE 2. TERM OF AGREEMENT

This agreement will be in effect for a period of two years with an option to renew it biennially for up to ten years unless a party timely objects or seeks to terminate the agreement

pursuant to Article 9 of this agreement. The initial term of the agreement shall begin July 1, 2011, and shall remain in effect through June 30, 2013.

ARTICLE 3. OBLIGATIONS OF THE COUNTY

A. **FACILITIES & SECURITY:** The County shall provide courtrooms at the Sheriff's Mission Road and Silverlake jail facilities to conduct joint misdemeanor arraignments and misdemeanor and felony initial appearance proceedings at an agreed upon time every morning and evening, weekends and holidays included. The County shall insure proper jail facilities, management and prisoner movement are maintained to match the flow of the court proceedings. The County shall provide access, parking, security, office space, and telephones for the employees traveling to the jail locations for court events. The County will also ensure public and media access to or viewing of the court proceedings conducted at either courtroom.

ARTICLE 4. OBLIGATIONS OF THE CITY COURT

- A. **SECURITY:** The Tucson Police Department shall provide security at the Mission Road facility for all morning sessions.
- B. **JUDICIAL SERVICES:** The City Court shall provide regular City Court Magistrates or other designated, qualified attorneys appointed by the Superior Court as Special Commissioners of the Superior Court, to conduct joint initial appearances and/or arraignment proceedings during the weekday morning sessions.
- C. **CLERICAL SUPPORT:** The City Court shall provide a courtroom clerk during initial appearances and/or arraignment proceedings who shall complete the paperwork resulting from those proceedings as required by that court.
- D. **INTERPRETING SERVICES:** The City Court shall provide interpreting services for all morning proceedings.

ARTICLE 5. OBLIGATIONS OF THE SUPERIOR COURT AND JUSTICE COURT

- A. **JUDICIAL SERVICES:** The Superior Court shall provide qualified judicial officers for every evening, weekend, and holiday proceeding.
- B. **CLERICAL SUPPORT:** Justice Court shall provide a courtroom clerk during initial appearances and/or arraignment proceedings, who shall complete the paperwork resulting from the initial appearances and/or arraignment proceedings as required by the Superior Court and the Justice Court.
- C. **INTERPRETING SERVICES:** The Superior Court shall provide interpreting services for all evening, initial appearance and/or arraignment sessions.

ARTICLE 6. PAYMENT

The parties agree that each will share in certain common costs of the proceedings, including those done for out-of-county courts, in proportion to each court's share of the cases appearing at the daily hearings. For each calendar year of this agreement, the proportionate shares shall

be based on the prior fiscal year's breakdown, by court, of cases going through these proceedings.

The common costs to be shared shall be: payments made by the Superior Court to judicial officers for evening, weekend and holiday sessions; costs borne by the City Court to conduct the weekday morning sessions; payments made by the Superior Court to interpreters for attendance at each evening, weekend and holiday sessions; costs borne by the City Court to provide interpreting services at all morning sessions. It should be noted that the costs borne by the City Court for the provision of clerical support services for its cases will not be considered in the allocation of common costs and therefore, will not be shared with any other agency. Further, the cost of clerical services provided by the Justice Court will be shared with the Superior Court and in accordance with Superior Court's Administrative Order 2011-13. Each quarter, upon receipt of case statistics for the prior quarter from both Justice Court and City Court, the Superior Court shall issue detailed invoices to the other parties for their shares of the total costs, making adjustments for the expenses as outlined in A, B and C below.

- A. The Superior Court's share of the total cost shall be reduced by the amounts it has paid for judicial officers and interpreting services.
- B. The City Court's share of the total cost shall be reduced by the amounts it has paid for the provision of magistrates and interpreting services.
- C. The Justice Court's share shall be reduced by the amounts it has paid for the provision of clerical support.

All parties represent that they have within their respective budgets sufficient funds or other resources to discharge their obligations as set forth in this Agreement.

ARTICLE 7. FINANCIAL SUPPORT FROM OTHER COURT USERS

Because other county courts are sending defendants through the initial arraignment court and that work has a resource impact on the process, such courts have been directed by Administrative Order 2011-13 to support the process financially. As a consequence, with the approval of the Superior Court Presiding Judge, a cost of performing such functions will be constructed quarterly and payment for those services will be sought from each of those courts. Such payments shall not affect the sharing of costs as described in Article 6, except that the cases from non-party courts shall not be considered in the calculation of proportionate caseloads.

ARTICLE 8. SELF INSURANCE

The parties acknowledge that they are self-insured and that each shall be responsible for their own acts and omissions.

ARTICLE 9. TERMINATION

This agreement may be terminated at any time by mutual written consent or by any party's giving not less than ninety (90) days written notice to the other parties. This agreement is subject to the provision of ARS 38-511.

ARTICLE 10. LEGAL JURISDICTION

Nothing in this agreement shall be construed as either limiting or extending the legal jurisdiction of either the Superior Court, Justice Court or City Court.

ARTICLE 11. PRIOR AGREEMENTS

This agreement supersedes all previous agreements regarding the same subject matter.

ARTICLE 12. RENEWAL

This agreement shall be reviewed annually and may be amended as agreed upon by the parties as referenced in Article 2.

ARTICLE 13. ARBITRATION

This agreement is subject to arbitration to the extent required by ARS 12-1518, ARS 12-133, and Rule 3.9 Pima County Superior Court Local Rule.

ARTICLE 14. ASSIGNMENT

No right or interest in this Agreement shall be assigned by either party without prior written permission. No delegation of any duty shall be made without prior written permission of the COURT.

ARTICLE 15. APPLICABLE LAW

This agreement shall be governed by the laws of the State of Arizona, and suits pertaining to this agreement may be brought only in the courts in the State of Arizona.

Parties to this agreement shall comply with all City, County, State and Federal laws, ordinances, rules, regulations, and statutes which may be applicable to this Agreement.

ARTICLE 16. NON-DISCRIMINATION

Parties shall not discriminate, and shall require that any subcontractor not discriminate, against any employee, or applicant for employment, in violation of Federal Executive Order 11246 and State Executive Order No. 99-4 and A.R.S. §41-1461 et seq. , in the provision of program services on the basis of race, age, creed, color, religion, sex, condition of disability, or national origin.

ARTICLE 17. AMERICANS WITH DISABILITIES ACT

All parties shall comply with 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.

ARTICLE 18. NON-APPROPRIATIONS


Each payment obligation created is conditioned upon the availability of funds which are appropriated for the payment of such an obligation. If funds are not available for the continuance of the contract services, the contract period for the services may be terminated by any of the parties at the end of the period for which funds are available. Any party shall notify the other at the earliest possible time which services will or may be affected by a shortage of funds. No penalty shall accrue to the party in the event this provision is exercised, and shall not be obligated or liable for any future payments due or for any damages as a result of the termination under this section. This provision shall not be construed so as to permit the party to terminate this agreement or any service in order to acquire a similar service from another party.

ARTICLE 19. ENTIRE AGREEMENT

This document constitutes the entire agreement between the parties and shall not be modified, amended, altered or changed except through a written amendment signed by all the parties.

IN WITNESS THEREOF, all parties have affixed their signatures to this agreement on the date written below.

**ARIZONA SUPERIOR COURT IN
PIMA COUNTY:**

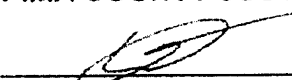


Sarah R. Simmons, Presiding Judge

9/30/11

Date

PIMA COUNTY JUSTICE COURTS:

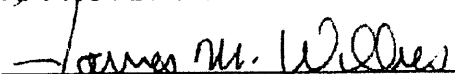


Keith Bee, Presiding Judge

10-6-11

Date

APPROVED AS TO FORM:

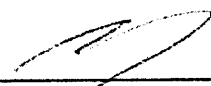


Deputy County Attorney

10/5/11

Date

TUCSON CITY COURT:



Antonio Riojas, Presiding Judge

10/11/11

Date

CITY OF TUCSON:




Robert Walkup, Mayor

November 9, 2011

Date

COUNTERSIGNED:

ATTEST: 

City Clerk

November 9, 2011

Date

PIMA COUNTY:

Chair, Board of Supervisors

Date

ATTEST:

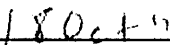
Lori Godoshian, Clerk of the Board

Date

APPROVED BY:



City Attorney



Date



Thomas C. Horne
Attorney General

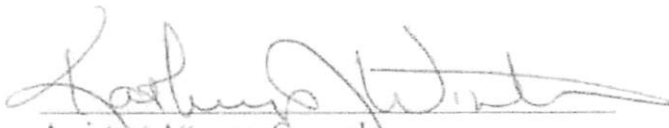
Office of the Attorney General
State of Arizona

INTERGOVERNMENTAL AGREEMENT DETERMINATION

The Intergovernmental Agreement between the Arizona Superior Court in Pima County, the Pima County Consolidated Justice Court, the City of Tucson, and Pima County for the Provision of Twice-A-Day Initial Appearances, has been reviewed pursuant to A.R.S. § 11-952 by the undersigned Assistant Attorney General, who has determined that it is in the proper form and is within the powers granted under the laws of the State of Arizona to those Parties to the Agreement represented by the Attorney General.

Dated this 28th day of September, 2011.

THOMAS C. HORNE
The Attorney General


Assistant Attorney General
KATHRYN J. WINTERS