



STAFF REPORT

Agenda Item: **Associate Magistrate Independent Contractor Agreement –**
Approval of an Independent Contractor Agreement between the Town of Clarkdale and C. Kenneth Ray, II, Esq., for the Town Associate Magistrate position.

Sponsored By: Mayor Doug Von Gausig

Staff Contact: Ronald Ramsey, Town Magistrate

Meeting Date: October 12, 2010

Background: **Ordinance #289**, passed July 11, 2006, added **Section 5-2-4** to the code of the Town of Clarkdale allowing the appointment by Town Council of an Associate Magistrate recommended by the Magistrate. All appointed Associate Magistrates will be compensated per a fee established by the Council, and shall be independent contractors, not subject to the benefits or wage provisions for Town employees. Associate Magistrates shall serve at the direction of the Town Magistrate for an unspecified term, subject to removal by the Town Council.

On October 10, 2006 Council appointed James Bond as Associate Magistrate. At this time, Judge Ramsey recommends the additional appointment of C. Kenneth Ray, II, Esq. as Associate Magistrate, to be compensated at the rate of \$50 per hour which is the same rate as the existing Associate Magistrate and the prevailing fee for *pro tem* work in municipal and justice courts in the Verde Valley. Mr. Ray's Curriculum Vitae is attached reflecting his extensive court experience. Mr. Ray also currently serves as an Associate Magistrate in several other Yavapai County courts.

Services rendered by Mr. Ray via this appointment would include the rare occasion of covering the initial appearance hearings or emergency protective orders for the Town on Fridays, as needed. Judge Bond would continue as Associate Magistrate, however in a backup role, in the event neither the Town Magistrate nor Associate Magistrate Ray were available.

Recommendation: Approval of the Associate Magistrate Independent Contractor Agreement between the Town of Clarkdale and C. Kenneth Ray, II, Esq., for the Town Associate Magistrate position at an hourly rate of \$50.

**TOWN OF CLARKDALE
INDEPENDENT CONTRACTOR AGREEMENT**

THIS INDEPENDENT CONTRACTOR AGREEMENT ("Agreement") is made and entered into as of this ____ day of _____, 2010, by and between the **TOWN OF CLARKDALE** ("**TOWN**") and **C. KENNETH RAY II, P. C.** ("**CONTRACTOR**").

RECITALS

WHEREAS, the **CONTRACTOR** has expertise and skill in an area of work desired by the **TOWN** and is willing to provide those services to the **TOWN**; and

WHEREAS, the **TOWN** is willing to engage **CONTRACTOR** as an Independent Contractor, and not as an employee, on the terms and conditions set forth in this Agreement.

AGREEMENT

ARTICLE I - SCOPE OF SERVICE

The **CONTRACTOR** agrees to provide the professional services specified in the Scope of Services defined in Exhibit "A."

ARTICLE II - CONTRACTOR IS AN INDEPENDENT CONTRACTOR

This Agreement does not create an employee/employer relationship between the parties. It is the parties' intention that the **CONTRACTOR** will be an independent contractor and not an employee of the **TOWN** for all purposes, including, but not limited to, the Fair Labor Standards Act, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the Internal Revenue Code (and any other Arizona income tax laws), the Arizona State workers' compensation laws, the Arizona State unemployment insurance laws and any of the **TOWN's** benefit plans for the **TOWN's** employees. **CONTRACTOR** agrees that it is a separate and independent enterprise from the **TOWN**, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform any work performed for the **TOWN**. This Agreement shall not be construed as creating any joint employment relationship between **CONTRACTOR** and the **TOWN** and the **TOWN** will not be liable for any obligation incurred by the **CONTRACTOR**, including but not limited to unpaid minimum wages and/or overtime premiums. This Agreement shall not be construed to authorize the **CONTRACTOR** to act as an agent for the **TOWN** in any manner.

ARTICLE III - TIME OF PERFORMANCE

Work shall commence on _____, 2010, and will expire on _____, 2010. The **TOWN** has an option to renew the contract on a month to month basis at the expiration date of this contract.

ARTICLE IV - TOWN RESPONSIBILITIES

The **TOWN** shall accomplish the following:

Assist the **CONTRACTOR** by placing at its disposal all available information pertinent to the Scope of Services for the project.

Use its best efforts to secure release of other data necessary for the **CONTRACTOR** to perform the Scope of Services held by others.

Give prompt written notice to the **CONTRACTOR** whenever the **TOWN** observes, or otherwise becomes aware of, any fault or defect in the project or non-conformance with this Agreement.

ARTICLE V - CONTRACTOR RESPONSIBILITIES

The **CONTRACTOR** shall accomplish the following:

Give prompt written notice to the **TOWN** whenever the **CONTRACTOR** observes, or otherwise becomes aware of, any fault or deficit in the project or any non-conformance with the Agreement.

Observe strict confidentiality in relations with all other parties regarding all of the **TOWN's** proprietary information and regarding any other information obtained in connection with the representation of the **TOWN**.

CONTRACTOR specifically agrees to indemnify, defend and hold harmless the **TOWN** and all of its officers, employees and officials from all claims of damages, costs or expenses in law and equity, including any wage or overtime claims made by any of **CONTRACTOR's** employees, and including reasonable attorney's fees and costs of suit that may arise out of or be related to any claims of damages, injury or harm to property or persons received or suffered as a result of the negligent errors, acts or omission of the **CONTRACTOR** or any or its agents, officers, employees and/or subcontractors engaged in the performance of services under the terms of this contract to the full extent permitted by law.

ARTICLE VI – COMPENSATION

The **CONTRACTOR** shall be compensated for services in accordance with the fee schedule in Exhibit "A."

It is further agreed that the **CONTRACTOR** shall not bill the **TOWN**, and **TOWN** shall not be liable to pay, any costs in excess of this amount without specific written authorization to do so from the Town Manager or the Town Clerk of the Town of Clarkdale, in accordance with the amendment procedure described in Article VIII hereunder.

The parties further agree and acknowledge that the **TOWN** is engaging **CONTRACTOR** as an independent contractor to provide services to the **TOWN** under the terms of this agreement and that the **TOWN** shall not be required, under any circumstance(s), to assume liability for the direct payment of any salary, wage, or other compensation to any person employed by the **CONTRACTOR** before, during, or after this agreement is in effect.

ARTICLE VII - INCOME TAX DESIGNATION AND INDEMNIFICATION

The **TOWN** shall not withhold from sums becoming payable to the **CONTRACTOR** under this Agreement any amounts for federal, state or local taxes, including federal or state income taxes, employment taxes (including Social Security and Medicare taxes), and unemployment taxes. The **TOWN** shall report all payments to **CONTRACTOR** on Internal Revenue Service Form 1099. The **CONTRACTOR** agrees that any tax obligation of **CONTRACTOR** arising from the payments made under this Agreement will be the **CONTRACTOR**'s sole responsibility. The **CONTRACTOR** will indemnify the **TOWN** for any tax liability, interest, and/or penalties imposed upon the **TOWN** by any taxing authority based upon the **TOWN**'s failure to withhold any amount from the payments for tax purposes.

ARTICLE VIII - METHOD AND SCHEDULE OF PAYMENT

The **CONTRACTOR** will invoice the **TOWN** bi-weekly for services rendered through the end of the previous two week period, and the **TOWN** agrees to pay within fifteen (15) days of receipt of a valid invoice. A valid invoice shall consist of a daily account with a description of work performed, a detailed accounting of the relative time involved in each billable circumstance, as well as an itemization of all reimbursable expenses, which must be documented with copies of receipts whenever possible.

ARTICLE IX – TERMINATION

Either party may cancel or terminate this Agreement at any time, with or without cause, by giving thirty (30) days written notice to the other party. The **TOWN** also may terminate this Agreement pursuant to the requirements of A.R.S. § 38-511. In the event such termination occurs prior to completion of the Scope of Services provided herein, the **TOWN** agrees to pay the **CONTRACTOR** for work actually performed in accordance with the terms of this Agreement through the cancellation date.

ARTICLE X – CHANGES

The **TOWN** may, from time to time, require changes in the Scope of Services by the **CONTRACTOR** to be performed hereunder. Such changes which are mutually agreed upon by and between the **TOWN** and the **CONTRACTOR** shall be incorporated by written amendment to this Agreement. No payment shall be made by the **TOWN** to the **CONTRACTOR** for any work that does not have such an amendment incorporated into his Contract by mutual signed agreement. There shall be no oral modifications of this Agreement.

ARTICLE XI – AUTHORITY

This Agreement shall be governed by the laws of the State of Arizona and all applicable ordinances, rules and regulations of the Town of Clarkdale. Any actions arising out of or relating to this Agreement shall be brought in Yavapai County, Arizona.

ARTICLE XII - THIRD PARTY CONTRACTS

The **CONTRACTOR** shall have no authority to bind the **TOWN** in any way with third parties without the prior written consent of the **TOWN**.

ARTICLE XIII - ENTIRE AGREEMENT

This Agreement contains the entire understanding and agreement between the parties hereto with respect to its subject matter and supersedes any prior or contemporaneous written or oral agreements, representations or warranties between them respecting the subject matter hereof.

ARTICLE XIV – SEVERABILITY

If any term, provision, covenant or condition of this Agreement, or the application thereof, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement shall remain in full force and effect.

ARTICLE XV – ASSIGNMENT

This Agreement may not be assigned by the **CONTRACTOR** without the express written permission of the **TOWN**.

IN WITNESS THEREOF, the parties hereto have executed this Agreement in duplicate originals on the day and year here above written.

APPROVED:

APPROVED AS TO FORM:

Doug Von Gausig, Mayor

Robert S. Pecharich
Boyle, Pecharich, Cline, Whittington &
Stallings, Town Attorney

ATTEST:

ACCEPTED:

Kathy Bainbridge, Town Clerk

C. Kenneth Ray II, P.C.

EXHIBIT "A"

SCOPE OF SERVICES

C. Kenneth Ray II, P.C. (Contractor) shall serve as Associate Magistrate pursuant to Section 5-2-4 of the Clarkdale Town Code.

Section 5-2-4: The Town Magistrate may recommend to the Council the names of individuals qualified to serve as Associate Magistrates for the Magistrate Court. Upon appointment, Associate Magistrates shall serve for an unspecified term, subject to removal by the town Council. All duly appointed Associate Magistrates will be compensated per a fee established by the Town Council, and shall be independent contractors and not subject to the benefits or wage provisions for Town employees.

FEES AND BILLING

CONTRACTOR will be compensated FIFTY DOLLARS (\$50.00) PER HOUR for services performed at the direction of the Town Magistrate.

A bi-weekly invoice shall be submitted to the **TOWN**. After review and approval the entire amount due each invoice shall be paid fifteen (15) days after submission of bi-weekly invoice. A valid invoice shall consist of a daily account of the relative time involved in each billable circumstance. A valid invoice shall consist of a daily account with a description of work performed and a detailed accounting of the relative time involved in each billable circumstance. Purchases made on behalf of the **TOWN** are not reimbursable unless approved by the Town Magistrate prior to purchase, and having detailed receipts submitted.

Mail all invoices to:

TOWN OF CLARKDALE

Attn: Accounts Payable

PO Box 308

Clarkdale, AZ 86324-0308

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EXHIBIT "B"

Legal Arizona Workers Act Compliance. **CONTRACTOR** hereby warrants that it will, at all times during the term of this Contract, comply with all federal immigration laws applicable to **CONTRACTOR**'s employment of its employees, and with the E-Verify requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). **CONTRACTOR** shall further ensure that each subcontractor who performs any work for **CONTRACTOR** under this contract likewise complies with the State and Federal Immigration Laws.

CONTRACTOR agrees and warrants that **TOWN** shall have the right at any time to inspect the books and records of **CONTRACTOR** and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws. **CONTRACTOR** agrees that any act by the **CONTRACTOR** or subcontractor that result in the impediment or denial of access of the books and records of **CONTRACTORS** or subcontractor shall be a material breach of the Contract on the part of the **CONTRACTOR**.

Nothing herein shall make **CONTRACTOR** or subcontractor an agent or employee of the **TOWN**. Nothing herein shall act to establish privity of contract between the **TOWN** and any subcontractor.

Any breach of **CONTRACTOR**'s or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting **CONTRACTOR** to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, **CONTRACTOR** shall 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 (subject to **TOWN** approval) as soon as possible so as not to delay project completion and at no additional expense to the **TOWN**. Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of **CONTRACTOR**.

CONTRACTOR shall advise each subcontractor of **TOWN**'s rights and the subcontractor's obligations under this Article by including a provision in its contract with each subcontractor 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 E-Verify requirements of A.R.S. §23-214(A). **SUBCONTRACTOR** further agrees that the Town of Clarkdale 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** will be deemed to be a material breach of this contract subjecting **SUBCONTRACTOR** to penalties up to and including suspension or termination of this contract.

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C. KENNETH RAY II, P.C.

Attorney

P.O. Box 2521

Prescott, Arizona 86302

928-717-9352

Fax: 928-441-1653

ckrpc@aol.com

Curriculum Vitae

Personal Information

Date of Birth: September 14, 1953

Marital Status: Married 25 years on April 13, 2010 (Kathaleen Ray)

Education

Yorkwood High School
Monmouth, Illinois
Diploma (1971)

Western Illinois University
Macomb, Illinois
1971-1973

University of Arizona
Tucson, Arizona
1973-1975, 1980
B.A. (1981)

California Western School of Law
San Diego, California
J.D. (1983)

Employment

McDonough District Hospital
Macomb, Illinois
Orderly and Emergency Medical Technician
1971-1973

Galesburg Cottage Hospital
Galesburg, Illinois
Surgeon's Assistant
1972, 1973 (summer position)

St. Joseph's Hospital
Tucson, Arizona
Surgeon's Assistant
1973-1974

Kord's Ambulance Service
Tucson, Arizona
Emergency Medical Technician
1974-1975

Wilson Foods Corporation
Monmouth, Illinois
Laborer
1975-1980

Harborview Medical Center
San Diego, California
Surgeon's Assistant
1980-1983

Law Offices of Frederick Hetter
San Diego, California
Certified Law Clerk
Plaintiff Personal Injury, Criminal Defense and Immigration Law
1982-1984

Law Offices of William Mark Jacobs
Phoenix, Arizona
Plaintiffs Personal Injury Law
1984-1985

C. Kenneth Ray II, P.C.
Attorney at Law
Primarily Criminal Defense
Indigent Defense Contracts (Maricopa County 1985-1993; Yavapai County 1994-2005)
Phoenix, Arizona (1985-1993)
Prescott, Arizona (1993-present)

Judge Pro Tem Positions

Yavapai County Justice Courts
2007-present

Prescott City Court
2007-present

Yavapai-Prescott Tribal Court
2007-present

Sedona Magistrate Court
2007-present

Chino Valley Municipal Court
2010-present

Licenses and Memberships

Supreme Court of the State of Arizona
1984-present

United States District Court-District of Arizona
1984-present

United States Court of Appeals-Ninth Circuit
1988(?) - present

Arizona Attorneys for Criminal Justice (past member)

National Association of Criminal Defense Attorneys (past member)

Maricopa County Bar Association (past member)

Pro Hac Vice Admissions

United States District Court-Central District of California

United States District Court-New Mexico

United States District Court-Western District of Kentucky

New Mexico District Court-Taos

Circuit Court-Beckam County, Oklahoma

CLE Activities

Past member of Maricopa County Bar CLE Committee

Sponsor of "CLE at Sea" programs (2002-2003; Mexico and Alaska)

Trial and Judicial Experience

I have been sole or lead counsel in over 150 Jury Trials. Of those, two have been civil cases and the remaining were in defense of persons charged with criminal offenses. I have also been counsel in numerous Bench Trials in criminal, domestic relations and civil cases throughout the State of Arizona.

As a Judge Pro Tem in the mentioned Limited Jurisdiction Courts, I have presided over five Jury Trials and numerous Bench Trials, Hearing on Orders of Protection/Injunctions Against Harassment, Forcible Detainers, civil Contract disputes and civil Traffic Hearings.

References

Hon. Arthur Markham
Presiding-Limited Jurisdiction Courts for Yavapai County
Prescott, Arizona

Hon. Elizabeth Yancey (retired)
Sedona Magistrate Court
Sedona, Arizona

Hon. Rodger Overholser
Sedona Magistrate Court
Sedona, Arizona

Hon. John Kennedy
Mayer Justice Court
Mayer, Arizona

Hon. Mary Glaab
Yarnell Justice Court
Yarnell, Arizona

Hon. John Walker
Chino Valley Municipal Court
Chino Valley, Arizona

Hon. Mary Hamm
Seligman Justice Court
Seligman, Arizona

Additional references upon request.