

ARIZONA JUDICIAL COUNCIL

Request for Council Action

**Date Action
Requested:**

March 6, 2007

**Type of Action
Requested:**

Formal Action/Request

Information Only

Other

Subject:

Correctional Officers
Retirement Plan
(CORP)

FROM:

Mr. Dave Byers, Administrative Director
Administrative Office of the Courts

DISCUSSION:

Mr. Byers will provide an update on CORP, to include the attached signed joinder agreement between the AOC and CORP.

RECOMMENDED COUNCIL ACTION:

Informational only.

**ARIZONA CORECTIONS OFFICER RETIREMENT PLAN
JOINDER AGREEMENT**

PROBATION, SURVEILLANCE
& JUVENILE DETENTION OFFICERS

THIS JOINDER AGREEMENT (“Agreement”) is by and between the Arizona Supreme Court, Administrative Office of the Courts (“Court”) and the Arizona Corrections Officer Retirement Plan (“Plan”), which is ultimately directed by its “Fund Manager.”

WITNESSETH:

WHEREAS, the Arizona Constitution provides the Arizona Supreme Court administrative supervision over all of the courts in the state and authorizes the Chief Justice to exercise this authority on behalf of the Court through an administrative director;

WHEREAS, the Arizona Superior Court in each county (the “Employer”) is subject to the Arizona Supreme Court’s administrative supervision and employs certain probation, surveillance and juvenile detention officers (the “Employees”),

WHEREAS, the Court on behalf of the Employer, after considering the cost requirements to provide retirement and other benefits to the Employees through the Plan, have determined to provide benefits for the Employees through the Plan and have obtained all required approvals, followed such other procedures as are necessary to join the Plan in accordance with all requirements set forth in A.R.S. Section 38-881 *et seq.* and entered an administrative order and

WHEREAS, the Fund Manager of the Plan has considered the request of the Court, on behalf of the Employer, to join the Plan and has approved the participation in the Plan of, the Employer and the Employees subject to the conditions set forth herein;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, Court (on behalf of itself and the Employer) represents and agrees as follows:

- 1 The Court is authorized to enter into this Agreement on behalf of itself and the Employer.
2. By execution of this Joinder Agreement, the Court for itself and the Employer unconditionally and irrevocably adopts, accepts and agrees to be bound by all the terms and conditions of the Plan and the Arizona Public Safety Personnel Retirement System (“System”), as provided by (i) Title 38, Chapter 5, Articles 4 through 7 of the Arizona Revised Statutes, as amended, and (ii) the common law as interpreted by the courts of the State of Arizona, with respect to the following designated class of Employees: full-time (normally works 40 or more hours per

week), eligible paid probation and surveillance officers appointed pursuant to A.R.S. §§ 8-203, 12-251 or 12-259 and juvenile detention officers responsible for the direct custodial supervision of juveniles detained in a county juvenile detention center which is a facility established pursuant to A.R.S. § 8-305 and supervised pursuant to A.R.S. § 8-306 (the "Covered Employees"). The parties to this agreement understand that juvenile court directors are probation officer members of the designated class due to their appointment pursuant to A.R.S. 8-203, that full time managers and supervisors of detention facilities responsible for direct custodial supervision of juveniles are juvenile detention officer members of the designated class, and that persons with job titles such as "youth supervisor" who perform the duties of a juvenile detention officer responsible for the direct custodial supervision of juveniles are juvenile detention officer members of the designated class.

3. For all Covered Employees joining the Plan on the effective date of this Agreement (and who do not otherwise elect to irrevocably opt out of the Plan in accordance with the procedures for opting out adopted by the Fund Manager), the Court and the Employer will include as past service to be transferred to the Plan all credited service earned by the Covered Employees and on account with any state defined benefit system or plan other than the Plan, with any expense or cost of any kind attributable or related to such transfer to be borne by the Employer. A Covered Employee who does not have the opportunity to opt out of the Plan due to military leave shall have that opportunity for a period of 60 days following the return of the employee to work for the Employer and receipt of information about the Plan. Annually, on or about July 1 of each year following the effective date of this Agreement, all Covered Employees having entered into agreements with the Arizona State Retirement System ("ASRS") for the purchase of ASRS service may instruct the ASRS, pursuant to A.R.S. § 38-921, to transfer to the Plan the amount each Covered Employee paid for ASRS service purchases during the previous fiscal year. Pursuant to A.R.S. § 38-922, an Employee directing such a transfer of purchased ASRS service credit has the option to accept the equivalent service credit value in the Plan or pay to the Plan the additional expense or cost necessary to obtain a one-for-one full service credit transfer to the Plan. Upon receipt of such amounts, the Plan will credit each applicable Covered Employee with the amount of credited service in the Plan that the amounts transferred will purchase, as determined by the Plan's actuary or administrator. Any expense or cost of any kind attributable or related to such transfer shall be borne by the affected Covered Employee.
4. The Employer will make contributions to the Plan for the Covered Employees sufficient to meet the normal cost of benefits for such Covered Employees, on a level cost method, and to satisfy all costs, including interest on its liability for the Covered Employees' past service, as provided in Title 38, Chapter 5, Article 6, Arizona Revised Statutes.

5. All contributions made by the Employer to the Plan, as well as all state taxes allocated to the Plan, shall be irrevocable and shall be used to pay benefits under the Plan or to pay expenses of the Plan and its accumulated assets (the "Fund"), including the expenses incurred by the Fund Manager to administer the Plan and Fund.
6. In the event the Employer no longer has any Covered Employees participating in the Plan, but there remain excess assets in the Employer's account with the Plan, such assets shall not revert to the Employer but instead, shall remain on account with the Plan for five (5) years, after which time, if there continues to be no active or retired Covered Employees in the Plan, such assets shall revert to the Fund for the *pro rata* benefit of all active members of the Plan and to cover the expenses of the Plan and Fund Manager. In the event the Employer no longer has any active or retired Covered Employees participating in the Plan, but there remains an asset deficiency in the Employer's account, the Employer shall pay such deficiency in accordance with the provisions of A.R.S. § 38-891(A).
7. This Agreement is valid and enforceable in accordance with its stated terms, subject to general principles of equity.
8. The Court and the Employer hereby represent, covenant and agree, and the Fund Manager hereby consents and agrees, that:
 - (i) All disputes and controversies of every kind or description involving Court, the Employer, the Covered Employees, the Fund Manager, Plan or System, including without limitation, matters involving Plan enrollment, membership, contributions, termination, reinstatement, benefits, division or taxation of benefits, pension qualification, retirement, tax compliance, vesting, deferred retirement option plans, local boards, qualified governmental excess benefit arrangements, credited service transfers, redemption of prior service, benefit or cost-of-living adjustments, group health and accident coverage, military service credit, medical boards and examinations, tax deferred annuity and deferred compensation programs, medical subsidies, and/or any and all other matters referenced in, related to or implicated by Articles 4 through 7 of Chapter 5 of Title 38, Arizona Revised Statutes, including issues involving interpretation of state statutes involving the Plan, and any amendments to such statutes, will be resolved solely and exclusively through the court system of the State of Arizona and not through the federal court system or the court system of any other State of the United States unless the parties agree otherwise, in writing.
 - (ii) The Court and the Employer are bound by all State of Arizona statutes, common law rules and administrative rules and procedures which regulate and interpret the provisions of the Plan and System, including without limitation, eligibility for membership in the Plan, service credits and the rights of any claimant to benefits and the amount of such benefits.

- (iii) The Court and the Employer shall fully comply with all procedures and requirements consistent with law which the Fund Manager or its Administrator may prescribe to participating employers on a uniform basis.
 - (iv) All actions brought by the Court or the Employer against the Fund Manager or the Plan or System and involving the Plan or System shall be brought and maintained in the Maricopa County, Arizona Superior Court.
 - (v) The terms of the Internal Revenue Code (“Code”) are integral terms of the Plan. To preserve the Plan’s status as a qualified plan under the Code, any provisions of the Code which conflict with provisions of the Plan shall take precedence and prevail over any terms of the Plan.
9. By its execution of this Agreement, the Fund Manager accepts the Employer for participation in the Plan, subject to the provisos, agreements and conditions precedent contained in this Agreement.
10. The Court and the Employer agree that all assets in the Arizona State Retirement System (ASRS) attributable to the Covered Employees that are (i) necessary to equal the actuarial present value of projected benefits and (ii) to the extent funded on a market value basis as of the most recent actuarial valuation attributable to the Covered Employees, calculated using the actuarial methods and assumptions adopted by the ASRS, shall be transferred from the ASRS to the Fund Manager as soon as possible and no later than August 31, 2007. The Court, on behalf of the Employer, agrees to request that ASRS provide a statement to the Fund Manager of the accumulated employee contribution accounts in the prior program. The Court, on behalf of the Employer, shall use its best efforts to prompt ASRS to deliver possession of the aforesaid assets to the Fund Manager no later than August 31, 2007. The portion of the transferred assets attributable to employee contributions, including interest credits, shall be allocated to each affected Covered Employee and credited to the affected Covered Employee’s initial accumulated contributions in accordance with a schedule furnished to the Court by the Fund Manager.
11. If the parties to this Agreement execute it on February 8, 2007 as scheduled, and subject to the Fund Manager’s acceptance of this Agreement on or after February 28, 2007 as anticipated, this Agreement shall be effective February 8, 2007 for purposes of formation of the local board (“Board”) necessary to determine the eligibility for membership and other pension rights of the Covered Employees, but the effective date of this Agreement for purposes of affecting a transfer of the Covered Employees into the Plan, as well as the beginning date for calculating the 60 day period for making the transfer of assets specified in A.R.S. § 38-902 (G) shall be July 1, 2007.

12. The Court's execution of this Joinder Agreement is an acknowledgement of its intent to comply with all requirements set forth in A.R.S. Section 38-902. The provisions of Title 38, Chapter 5, Articles 4 through 7 of the Arizona Revised Statutes, shall control in the event of a conflict with any term of this Joinder Agreement.
13. This Agreement shall bind and inure to the benefit of the parties' agents, attorneys, employees, administrators, managers, officers, trustees, members, successors and assigns. This Agreement shall not be assignable by any party hereto unless all parties hereto consent to such assignment. The persons signing this Agreement on behalf of the parties hereto are authorized to do so and thereby bind said parties.
14. Should any term or provision of this Agreement be found unenforceable by a court of competent jurisdiction, such term or provision shall be severed from this Agreement such that if possible, the remainder of this Agreement shall be preserved and enforceable as if the term or provision found unenforceable had never been a part thereof.
15. This Agreement is subject to the provisions of A.R.S. § 38-511.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates reflected below:

FUND MANAGER:

**ARIZONA SUPREME COURT,
ADMINISTRATIVE OFFICE OF
THE COURTS:**

By _____
Its Administrator
Printed Name: James M. Hacking

By _____
Its Administrative Director
Printed Name: David K. Byers

Date: February 8, 2007

Date: February 8, 2007