

RESOLUTION NO. 2478

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A PUBLIC EMPLOYEE PURCHASING AGREEMENT AMONG THE TOWN OF PAYSON, GILBERT UNIFIED SCHOOL DISTRICT NO. 41, WASHINGTON ELEMENTARY SCHOOL DISTRICT NO. 6, PEORIA UNIFIED SCHOOL DISTRICT NO. 11, CITY OF MESA, AND THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT.

WHEREAS, the Town of Payson, Gilbert Unified School District No. 41, Washington Elementary School District No. 6, Peoria Unified School District No. 11, City of Mesa, and the Central Arizona Water Conservation District (the "Parties") each is a public procurement unit as defined in A.R.S. § 41-2631; and

WHEREAS, the Parties desire to participate in an agreement for the purposes authorized in A.R.S. § 41-2631; and

WHEREAS, for such purpose, a Public Employee Purchasing Agreement has been negotiated,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. That the Public Employee Purchasing Agreement, attached hereto as Exhibit "A" and incorporated herein as though set forth in full at this point, be and is hereby approved in substantially the form as set forth in said Exhibit "A".

Section 2. That Kenny J. Evans, Mayor of the Town of Payson, be and is hereby authorized to execute such Agreement in substantially the form attached.

Section 3. That the Town of Payson be and hereby is authorized to take such other and further actions as are necessary or appropriate to carrying out the purposes of such Agreement.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this ____ day of _____, 2009, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

APPROVED AS TO FORM:

Samuel I. Streichman, Town Attorney

ATTEST:

Silvia Smith, Town Clerk

EXHIBIT "A"

to Resolution No. 2478

PUBLIC EMPLOYEE PURCHASING AGREEMENT

This Public Employee Purchasing Agreement, also known as the PEP Agreement (hereinafter, this "Agreement"), is entered into as of the _____ day of _____, 2009, by and between the Governing Boards, City or Town Councils or other governing bodies of the following entities:

Gilbert Unified School District No. 41 ("Gilbert Schools")
Washington Elementary School District No. 6 ("Washington Schools")
Peoria Unified School District No. 11 ("Peoria Schools")
City of Mesa ("Mesa")
Town of Payson ("Payson")
Central Arizona Water Conservation District ("CAWCD")
by and on behalf of the Central Arizona Project

(individually, a "Party", and collectively, the "Parties") for the provision of services pursuant to A.R.S. §41-2631, *et seq.*

RECITALS

WHEREAS, each of the Parties is a public procurement unit as defined in A.R.S. §41-2631; and

WHEREAS, school districts are authorized to enter into this Agreement pursuant to A.R.S. §15-342(13); and

WHEREAS, the Parties desire to sponsor and participate in this Agreement for the purposes authorized in A.R.S. §41-2631 *et seq.*

AGREEMENT

NOW THEREFORE, in consideration of the mutual agreements set forth, the Parties agree as follows:

1. Purpose

The purpose of this Agreement is to set forth the terms and conditions under which the Parties will sponsor and participate in the procurement and/or use of materials, services or construction pursuant to A.R.S. §41-2631 *et seq.* in order to improve competition, quality, and services, and to provide lower prices and avoid duplication of procurement efforts.

2. Term

This Agreement shall commence on the date the last of each of the Parties' respective governing bodies approves this Agreement, and shall remain in effect until participation has been terminated by all but one of the Parties.

3. Termination and Modification

The participation of any Party may be terminated by that Party upon thirty (30) days' prior written notice to the other Parties; provided, however, that any Party may terminate without notice if another Party fails to comply with the terms of this Agreement. This Agreement may be modified only by written amendment approved by the Governing Boards of all Parties.

4. Special Provisions

A. During the period of time that Gilbert Schools is a party to this Agreement, Gilbert Schools shall act as the lead procurement entity, and as such:

- i. shall comply with all competitive procurement and contract requirements under Arizona procurement codes and regulations;
- ii. may submit cooperative bids and proposals in accordance with the terms and conditions of the bid or proposal, except as modification of those terms and conditions are allowed by law;
- iii. may provide personnel as necessary and receive reimbursement from the other Parties for the direct and indirect costs of providing such personnel;

B. Procurement Units

- i. The participation in a specific bid or proposal will be at the option of the individual Party, except that procuring Parties and their requirements specifically identified within a bid or proposal shall be required to participate in the procurement agreement unless the resulting agreement is canceled, as provided within the terms and conditions of the specific bid or proposal.
- ii. Receipt, inspection, and acceptance for materials and services ordered under this Agreement shall be the obligation of the ordering Party.
- ii. Payment for materials, services, inspections, and acceptances ordered by a Party shall be the exclusive obligation of such procuring Party, and such payments to a vendor shall be timely made.

C. General Provisions

i. The exercise of any rights or remedies by a procuring Party shall be the exclusive obligation of such Party. In this Agreement, failure of a Party to secure performance under its purchase order does not necessarily require another Party to exercise its own rights or remedies. A non-procuring Party shall not be liable for any violation by a procuring Party, and the procuring Party shall hold any non-procuring Party harmless from any liability which may arise from action or inaction on the part of the procuring Party.

ii. The Parties, on request, will make available to the other Parties informational, technical or other services or software that may assist in improving the efficiency or economy of procurement. The Party furnishing such information, technical or other services or software shall have the right to request reimbursement for the reasonable and necessary costs of providing such service or software.

iii. If a procurement involves the expenditure of federal assistance or contract monies, the procurement shall comply with applicable federal law and authorized regulations which are mandatorily applicable.

iv. No Party may use this Agreement as a method of obtaining additional concessions or reduced prices for similar materials and services outside of this Agreement.

v. Nothing in this Agreement shall be deemed to abrogate responsibility of each Party to ensure compliance with procurement laws that apply to a particular public procurement.

vi. The activities described in this Agreement shall not be deemed to limit what the Parties may do under this Agreement and applicable laws, rules and regulations.

5. Cancellation for Conflict of Interest

Pursuant to A.R.S. §38-511, any Party may, within three years after the execution of this Agreement, cancel its participation in this Agreement without further penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of the canceling Party is at any time while the Agreement is in effect, an employee or agent of any other Party to the Agreement in any capacity or a consultant to any other Party to the Agreement with respect to the subject matter of the Agreement. A cancellation made pursuant to this provision shall be effective when all other Parties receive written notice of the cancellation unless the notice specifies a later time.

6. Non-discrimination

The Parties shall require that all persons, regardless of race, color, sex, age, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act.

7. Applicable law

This Agreement shall be governed, interpreted and enforced in accordance with the laws of the State of Arizona.

8. Dispute Resolution

The Parties to this Agreement agree to resolve all disputes arising out of or relating to this Agreement through mediation, using the Maricopa County Superior Court Mediation Services, if resolution cannot be achieved through discussion and negotiation between or among the Parties.

9. Non-assignability

This Agreement is not assignable by any Party. Any attempt to do so shall render the assignment null and void and the participation of the Party attempting assignment may be terminated immediately by consensus of the non-assigning Parties.

10. Non-waiver

No failure to enforce any condition or covenant of this Agreement shall imply or constitute a waiver of the right to insist upon performance of such condition or covenant, or of any other provision hereof, nor shall any waiver by any Party or and breach of any one or more conditions or covenants of this Agreement constitute a wavier of any succeeding or other breach hereunder.

11. Entire Agreement

Each Party acknowledges that it has not relied upon any statements, representations, agreements, or warranties, except as expressed herein, and that this Agreement constitutes the Parties' entire agreement with respect to the matters addressed herein.

12. Severability

In the event that a court of competent jurisdiction shall hold any part or provision of this Agreement void or of no effect, such holding shall not affect the remaining terms which shall remain in full force and effect.

13. New Parties

Upon approval by each Party's governing body, any other public agency or procurement unit may be admitted as a party to this Agreement following approval of the applicant's governing body.

14. Counterparts

This Agreement may be signed in two or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

In Witness whereof, the Parties execute this Agreement:

FOR GILBERT SCHOOLS:

Approved by resolution of the Governing Board at a duly convened meeting held on _____, 20__.

Chairperson
Gilbert Unified School District No. 41

Clerk

FOR WASHINGTON SCHOOL:

Approved by resolution of the Governing Board at a duly convened meeting held on _____, 20__.

Chairperson
Washington Elementary School District No. 6

Clerk

FOR PEORIA SCHOOL:

Approved by resolution of the Governing Board at a duly convened meeting held on _____, 20__.

Chairperson
Peoria Unified School District No. 11

Clerk

FOR CITY OF MESA:

Approved by resolution of the City Council at a duly convened meeting held on _____, 20__.

Chairperson
City Council for the City of Mesa

Clerk

FOR TOWN OF PAYSON:

Approved by resolution of the Town Council at a duly convened meeting held on _____, 20__.

Chairperson
Town Council for the Town of Payson

Clerk

FOR CAWCD (CAP):

Approved by resolution of the Board of Directors of the Central Arizona Water Conservation District (“CAWCD”) for and on behalf of the Central Arizona Project (CAP).

Chairperson
Central Arizona Water Conservation District (“CAWCD”)
for and on behalf of the Central Arizona Project (CAP).

Clerk