

**RESOLUTION NO. 2829**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH CENTRAL YAVAPAI FIRE DISTRICT FOR PURCHASING MATERIALS AND EQUIPMENT.**

**WHEREAS**, the Town of Payson and Central Yavapai Fire District wish to cooperate with each other to more effectively and economically purchase certain materials and equipment; and

**WHEREAS**, for such purpose, an Intergovernmental Agreement has been prepared; and

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

Section 1. That the Intergovernmental Agreement for Purchasing between Central Yavapai Fire District and the Town of Payson (the "IGA"), attached as Exhibit "A", is hereby approved in substantially the form attached.

Section 2. That Kenny J. Evans, Mayor of the Town of Payson, is authorized to execute said IGA in substantially the form attached.

Section 3. That the Town of Payson is authorized to take such other actions as are necessary to carrying out the purposes of such IGA.

**PASSED AND ADOPTED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PAYSON, ARIZONA**, this \_\_\_\_\_ day of February, 2015, by the following vote:

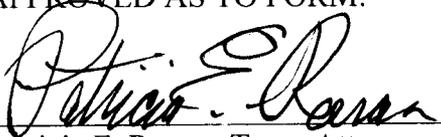
AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSTENTIONS \_\_\_\_\_ ABSENT \_\_\_\_\_

\_\_\_\_\_  
Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Silvia Smith, Town Clerk

  
\_\_\_\_\_  
Patricia E. Ronan, Town Attorney

# EXHIBIT "A"

to Resolution No. 2829

## INTERGOVERNMENTAL AGREEMENT FOR PURCHASING BETWEEN CENTRAL YAVAPAI FIRE DISTRICT AND THE TOWN OF PAYSON, ARIZONA

### PREAMBLE

This Agreement, is effective the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the CENTRAL YAVAPAI FIRE DISTRICT, a political subdivision of the State of Arizona ("DISTRICT") and the TOWN OF PAYSON, an Arizona municipal corporation (the "Referring Agency" or "Member" as the context requires.

### RECITALS

WHEREAS, the Referring Agency and DISTRICT are empowered pursuant to A.R.S. § 11-952, A.R.S. § 15-342(13), A.R.S. § 48-805, and A.R.S. § 41-2623 to enter into this Agreement for purposes of carrying out their mutual responsibilities; and

WHEREAS, the Referring Agency and DISTRICT wish to cooperate with each other in order to more effectively and economically purchase material and equipment ("Goods") consistent with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

### COVENANTS

#### SECTION 1. - SCOPE OF WORK AND COMPENSATION

##### **DISTRICT'S responsibilities and obligations**

1. For the term of this Agreement, the DISTRICT shall act as a purchasing agent ("Purchasing Agent") for the Referring Agency when requested.
2. The delivery method of requested purchases will be determined on a case by case basis and may include, but is not limited to:
  - a) Direct shipment to Referring Agency
  - b) Delivery by DISTRICT personnel
  - c) Pick-up by Referring Agency
3. The DISTRICT shall maintain records on all purchases made on behalf of the Referring Agency, and shall provide the Referring

Agency with a report of all purchases made on request within a reasonable time thereafter.

4. The DISTRICT shall submit an invoice to the Referring Agency on a monthly basis reflecting the compensation owed to the DISTRICT.
5. The DISTRICT agrees that the priority given to the Referring Agency's purchases will be comparable to the priorities given to other purchases by the DISTRICT, taking into consideration all other purchasing commitments.
6. The DISTRICT will insure that vendor contracts will allocate to the vendors all risk of loss of or damage to the Goods until they are delivered to, inspected, and accepted by: (1) the Member/Referring Agency at its respective warehouse or storage facility; or (2) DISTRICT at its storage facility.
7. If Goods are damaged or nonconforming to the contract, each Member/Referring Agency - or DISTRICT on that Member's behalf - may reject the Goods and arrange for them to be returned to the vendor. With the Member's consent, DISTRICT may direct the vendor to promptly deliver non-damaged conforming replacement Goods to the Member or DISTRICT'S storage facility on the Member's behalf.
8. While acting as the Purchasing Agent, DISTRICT shall be responsible for all damage or loss incurred to Goods ordered by Member as a result of DISTRICT'S negligent acts or omissions and shall at all times maintain all-risk property and contents insurance on its storage facility and the DISTRICT Goods warehoused there.
9. Goods stored at a DISTRICT warehouse pending payment of the DISTRICT invoice and delivery to the Member/Referring Agency shall remain the property of DISTRICT until payment is actually received and cleared by the DISTRICT'S bank and/or such Goods are actually delivered to the Member/Referring Agency.
10. In the case of "direct delivery of Goods to a Member/Referring Agency by a vendor or manufacturer, any damages suffered by any Goods so shipped shall be the responsibility of the vendor or shipper thereof, the manufacturer, and the Member/Referring Agency, as their interests and duties may arise therefrom, and not the responsibility of the DISTRICT.

**Referring Agency's responsibilities and obligations**

11. The Referring Agency shall request the DISTRICT to make purchases when desired. Requests shall be in the form of an ordering process established by DISTRICT.
12. Compensation to be paid to DISTRICT shall be as follows:

- a) The Referring Agency agrees to pay the actual cost of purchases + 5% to DISTRICT.
  - b) If delivery is requested from DISTRICT warehouse and made by DISTRICT personnel, the Referring Agency agrees to pay the personnel and equipment costs of the delivery. Delivery will be subject to personnel availability.
  - c) If the Referring Agency elects to use a third party shipping company for delivery from the DISTRICT warehouse, the Referring Agency agrees to pay shipping costs.
  - d) The Referring Agency agrees to pay DISTRICT within 30 days of receiving an invoice from DISTRICT. Failure to pay DISTRICT within thirty (30) days of receipt of a DISTRICT invoice may result in an interest charge of one and one-quarter percent (1.25%) interest per month, or fifteen percent (15%) per annum, on the outstanding balance until paid in full.
  - e) In the event that payments are not received within 30 days of receiving an invoice from the DISTRICT, DISTRICT reserves the right to decline further requests for purchases until the Referring Agency submits payments.
13. The Referring Agency agrees to establish and provide to DISTRICT a list of personnel who are authorized to request purchases prior to making any request hereunder, and shall update such list from time to time or when there is any change thereto, and shall be solely responsible for oversight of authorized personnel.
14. So long as the DISTRICT reasonably relied on the purchase authorization given to it, the Parties agree that the DISTRICT shall be timely paid pursuant to its rates as set forth in Paragraph 12 above, subject however to set off for damages or claims for which DISTRICT or the vendor is responsible.
15. Each Referring Agency must be prepared to: (1) take delivery of the Goods at its own facilities through direct shipping from the vendor; or (2) pick up the Goods delivered to DISTRICT'S storage facility on that member's behalf no later than the pick-up date set by DISTRICT; or (3) arrange for delivery by DISTRICT personnel or a third party shipper.
16. Except as otherwise provided in this Agreement, each Referring Agency is exclusively responsible to exercise all of its rights and remedies against any manufacturer, seller, or other contractor for defective or nonconforming Goods procured under this Agreement.
17. Each Member/Referring Agency undertakes that it will indemnify and defend the DISTRICT from all claims or liability arising from any and all damages to Goods ordered by a Member/Referring Agency

that are to be delivered by "direct delivery", unless such damages occur due to the negligent acts or omissions of the DISTRICT.

18. Each Referring Agency shall maintain all-risk insurance on Referring Agency Goods warehoused at DISTRICT'S facility.

## **SECTION 2. - GENERAL PROVISIONS**

This Agreement is intended to serve as an avenue for more economic purchasing of material and supplies ("Goods") at the discretion of the Referring Agency. This Agreement does not require or imply any obligation for the Referring Agency to use the DISTRICT as purchasing agent. In the event that a Referring Agency does use the DISTRICT as its Purchasing Agent, the Referring Agency's proposed purchase of Goods may be combined with those of other agencies to maximize savings to the Referring Agencies.

Nothing contained in this Agreement shall create any partnership or joint venture between the Parties. Each Party shall at all times be independent of each other and shall not at any time purport to act as an employee of any other Party.

The DISTRICT shall be excused for delay or failure to perform its obligations under this Agreement, in whole or part, when and to the extent that such delay or failure is a result of scheduling conflicts or causes beyond the reasonable control of the DISTRICT. Such causes include, without limitation, acts of God, acts of the public enemy, acts of the federal or state government, fire, floods, epidemics, quarantine restrictions or embargo. In addition, the DISTRICT shall not be responsible for delays caused by the acts or omissions of an outside contractor, not controlled by the DISTRICT, if any.

The District and the Referring Agency waive all rights against each other and any of their agents and employees, each of the other, for damages caused by fire or other causes of loss not incurred as the result of the District's negligent act or omission to the extent covered by property insurance obtained pursuant to this Intergovernmental Agreement or other applicable property insurance, except the rights they have to proceeds of the insurance held by DISTRICT as fiduciary. A waiver of subrogation is effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. Notwithstanding the above, no such waiver shall be effective if, or to the extent, it is forbidden by or is a breach of said Party's obligations under its contract with its insurance carrier.

If the District is permitted to adjust a loss, a loss insured under the District's or a Referring Agency's property insurance must be adjusted by the District as fiduciary and made payable to the District

or the Referring Agency as fiduciary for the insureds, as their interests may appear.

**SECTION 3. - SEVERABILITY**

If any provision of this Agreement shall be held to be unenforceable, it shall be deemed severable; however, the remainder of the Agreement shall not be affected and shall remain in full force and effect.

**SECTION 4. - DURATION OF AGREEMENT**

This Agreement shall become effective upon the effective adoption and execution of this Agreement by both Parties and, where required, the recordation of the same (the "Effective Date"), and shall automatically renew itself from year to year thereafter, until terminated.

**SECTION 5. - LIABILITY INSURANCE**

Each party shall maintain, during the life of this Agreement, a policy of liability insurance in the amount of not less than \$1,000,000 per occurrence with aggregate liability coverage of not less than \$3,000,000. Each party shall provide the other with proof of insurance within thirty (30) days after the execution of this Agreement.

**SECTION 6. - INDEMNIFICATION**

The Parties to this IGA shall indemnify and hold harmless each other and their respective districts, boards, employees, and agents, from any and all claims, liabilities, and expenses resulting from the indemnifying Party's negligence, or the negligence, acts of omissions of its directors, employees, and agents incurred in connection with the performance of its responsibilities under this IGA. Nothing herein shall be construed as a waiver by either Party of the right to bring an action for contribution against the other or as against any third person or entity.

**SECTION 7. - TERMINATION**

This Agreement will terminate immediately upon written notice to the other party should the governing body of either party fail to allocate funds for its continued implementation. The DISTRICT shall be entitled to compensation for all services provided up to the effective date of said notice.

In addition, either party may terminate their participation in this Agreement, for any reason, effective one hundred eighty (180) days from the giving of written notice to the other party at the following addresses:

Central Yavapai Fire District  
Attn: Fire Chief  
8555 E. Yavapai Road  
Prescott Valley, Arizona 86314

Town of Payson  
Attn: Fire Chief  
303 North Beeline Highway  
Payson, Arizona 85541

Either Party may cancel this Agreement, pursuant to the requirements of A.R.S. §38-511.

**SECTION 8. - IMMIGRATION; LEGAL ARIZONA WORKERS ACT COMPLIANCE**

Both Parties are governmental entities that are required to comply with A.R.S. §41-4401. The Parties hereby warrant that they will, at all times during the terms of this Agreement, comply with all federal immigration laws applicable to the employment of their respective employees, the requirements of A.R.S. §41-4401, and with the e-verification requirements of A.R.S. §23-214(A) (together the "State and Federal Immigration Laws").

A breach of a warranty regarding compliance with the State and Federal Immigration Laws shall be deemed a material breach of the Agreement and the Parties who breach may be subject to penalties up to and including termination of the Agreement.

**SECTION 9. - CONSEQUENTIAL DAMAGES; CONTRIBUTION; THIRD PARTIES**

The DISTRICT shall not be liable for any consequential damages associated with the delivery of material or supplies pursuant to this Agreement.

Nothing herein shall be construed to waive any claim for contribution or allocation of fault as it relates to claims arising from the negligent action or omission of the other Party.

This Agreement shall not be construed as a third party beneficiary contract and shall be intended to benefit only the parties named specifically herein.

**SECTION 10. - WORKERS' COMPENSATION COVERAGE**

All employees of a Party to this Agreement, who works under the jurisdiction or control of, or who works within the jurisdictional boundaries of another party pursuant to this particular Agreement, shall be deemed to be an employee of the Party who is his or her primary employer, as provided in A.R.S. §23-1022(D), and the primary employer/party of such an employee shall be solely liable for payment of workers' compensation benefits for the purposes of this section. Each Party herein shall comply with the provisions of A.R.S. §23-1022(E) by posting the public notice required. In conjunction herewith, it is recognized that the Warehouse Operations Manager is an employee of the DISTRICT for the purposes of employment and benefit law.

**SECTION 11. - NON-DISCRIMINATION**

The Parties will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The parties will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, the Genetic Discrimination Act of 2008, and Executive Orders 99-4 and 2000-4.

**SECTION 12. - BINDING EFFECT**

This Agreement shall be binding upon the Parties and any successor in interest hereto, including subsequent boards, as elected, unless terminated as otherwise set forth herein.

**SECTION 13. - GOVERNING LAW**

This Agreement shall be interpreted in accordance with the substantive and procedural laws of the State of Arizona and shall be deemed made and entered into in Yavapai County, Arizona. Any dispute arising hereunder shall be submitted for resolution in Yavapai County, Arizona.

**SECTION 14. - WAIVER OF JURY TRIAL; ATTORNEYS' FEES**

The Parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the Parties hereto waives any right to a trial by jury. In the event of litigation, the Parties agree to submit to a trial before the Court. The parties hereto further expressly covenant and agree that in the event of a dispute, mediation, arbitration or litigation arising from this Agreement, each Party shall bear its own attorneys' fees and costs and neither shall be entitled to an award of attorneys' fees.

This Agreement is intended to replace and supersede any prior agreements and amendments in their entirety, entered into between the Parties relating to fire apparatus maintenance and repairs.

**SECTION 15.- No WAIVER**

No action or failure to act by any Referring Agency or the DISTRICT constitutes a waiver of any right or duty under this Agreement, nor does the action or failure to act constitute approval of or acquiescence in a breach of the Agreement, unless all of the Parties hereto memorialize the waiver or approval in writing and sign it.

**IN WITNESS WHEREOF**, the Parties enter into this Agreement on the date set forth below.

APPROVALS

CENTRAL YAVAPAI FIRE DISTRICT

TOWN OF PAYSON

\_\_\_\_\_  
Chairman/Fire Board                      Date

\_\_\_\_\_  
Kenny J. Evans, Mayor                      Date

ATTEST:

ATTEST:

\_\_\_\_\_  
Clerk/Fire Board

\_\_\_\_\_  
Silvia Smith, Town Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
District Counsel

\_\_\_\_\_  
Curtis, Goodwin, Sullivan, Udall  
& Schwab, P.L.C., Town Attorney,  
by Patricia E. Ronan, Esq.

*January 21, 2015 (4:16pm)*  
*U:\Fire Department\CYFD IGA 2015.wpd*