

RESOLUTION NO. 2924

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE COOPERATING PURCHASING AGREEMENT (“AGREEMENT”) BETWEEN THE CENTRAL ARIZONA FIRE AND MEDICAL AUTHORITY (“AUTHORITY”) AND THE TOWN OF PAYSON, THE PAYSON FIRE DEPARTMENT, (“REFERRING AGENCY” OR “MEMBER”) TO COOPERATE WITH EACH OTHER IN THE PURCHASING OF MATERIAL AND EQUIPMENT (“GOODS”).

WHEREAS, the REFERRING AGENCY, a municipal corporation and a political subdivision of the State of Arizona, is located entirely in Gila County and incorporated and organized under A.R.S. §§ 9-101 and 9-231; and

WHEREAS, the AUTHORITY, a political subdivision of the State of Arizona, is located entirely in Yavapai County and organized under A.R.S. § 48-805.01 *et seq.* as a Separate Legal Entity as provided by A.R.S. § 11-952.02; and

WHEREAS, the REFERRING AGENCY and the AUTHORITY are empowered, pursuant to A.R.S. §§ 11-952 *et seq.* and 15-342(13) and §§ 48-805 and 41-2632 to enter into this Agreement for purposes of carrying out their mutual responsibilities; and

WHEREAS, the Parties desire to approve and to execute the Agreement which shall become effective upon the adoption and execution by both Parties (the “Effective Date”) and shall automatically renew from year to year thereafter until terminated.

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

Section 1: That the Agreement between the AUTHORITY and the REFERRING AGENCY, attached hereto marked Exhibit A is approved in substantially the form attached.

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

Section 3: That the Town of Payson and its officials are authorized to take such other and further actions as may be necessary or appropriate to carrying out the intent of this Resolution.

Section 4: If any section of Exhibit A to this Resolution is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of Exhibit 1.

Prepared by Town of Payson Legal Department

HMI:dkk June 9, 2016 (2:50PM)

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JUN 16 2016 G.I

**PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE TOWN OF
PAYSON, ARIZONA, this 16th day of June, 2016, by the following vote:**

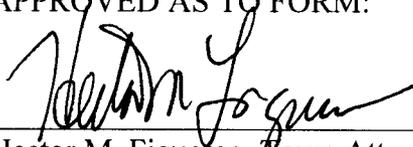
AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk



Hector M. Figueroa, Town Attorney

Exhibit A

to Resolution 2924

(Central Arizona Fire and Medical Authority)

**INTERGOVERNMENTAL AGREEMENT FOR
PURCHASING
BETWEEN CENTRAL ARIZONA FIRE AND MEDICAL AUTHORITY
AND THE TOWN OF PAYSON, ARIZONA**

PREAMBLE

This Agreement, effective the 1ST day of July,2016 by and between the CENTRAL ARIZONA FIRE AND MEDICAL AUTHORITY, a political subdivision of the State of Arizona ("Agency" or "Eligible Procurement Unit") and the TOWN OF PAYSON, ARIZONA, a political subdivision of the State of Arizona (the "Member").

RECITALS

WHEREAS, the Member and the Agency are empowered pursuant to A.R.S. §11-952, A.R.S. §15-342(13), A.R.S. §48-805, and A.R.S. §41-2632 to enter into this Agreement for purposes of carrying out their mutual responsibilities; and

WHEREAS, the Member and the Agency 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 mutual promises and covenants contained herein, the parties agree as follows:

COVENANTS

SECTION 1. - SCOPE OF WORK AND COMPENSATION

Agency's responsibilities and obligations

1. For the term of this Agreement, the Agency shall act as a purchasing agent ("Purchasing Agent") for the Member 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 Member
 - b) Delivery by Agency personnel
 - c) Pick-up by Member
3. The Agency shall maintain records on all purchases made on behalf of the Member, and shall provide the Member with a report of all purchases made on request within a reasonable time thereafter.

4. The Agency shall submit an invoice to the Member on a monthly basis reflecting the compensation owed to the Agency.

5. The Agency agrees that the priority given to the Member's purchases will be comparable to the priorities given to other purchases by the Agency taking into consideration all other purchasing commitments.

6. The Agency will insure that vendor contracts will allocate to the vendors all risk of loss of or damage to the operations supplies until they are delivered to, inspected, and accepted by: (1) the Member at their respective warehouses or storage facilities; or (2) the Agency at its storage facility.

7. If operations supplies are damaged or nonconforming to the contract, each Member, or the Agency on that Member's behalf, may reject the supplies and arrange for them to be returned to the vendor. With a Member's consent, the Agency may direct the vendor to promptly deliver non-damaged, conforming replacement supplies to the Member or the Agency storage facility on that Member's behalf.

8. While acting as the Procurement Officer, the Agency shall be responsible for all damage or loss incurred to Goods ordered by Members as a result of the Agency's negligent acts or omissions and shall at all times maintain all-risk property and contents insurance on its storage facility and the Agency supplies warehoused there.

9. Goods stored at an Agency warehouse pending payment of the Agency invoice and delivery to the Member shall remain the property of the Agency until payment is actually received and cleared by the Agency's bank and/or such goods are actually delivered to the Member.

10. In the case of "direct delivery" of goods to a Member 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, as their interests and duties may arise there from, and not the responsibility of the Agency.

Member's responsibilities and obligations

11. The Member shall request the Agency to make purchases when desired. Requests shall be in the form of an ordering process established by the Agency.

12. Compensation to be paid to the Agency shall be as follows:

- a) The Member agrees to pay the actual cost of purchases + 5% to the Agency.
- b) If delivery is requested from the Agency warehouse and made by Agency personnel, the Member agrees to pay the personnel and equipment costs of the delivery. Delivery will be subject to personnel availability.

c) If the Member elects to use a 3rd party shipping company for deliver from the Agency warehouse, the Member agrees to pay shipping costs.

d) The Member agrees to pay the Agency within 30 days of receiving an invoice from the Agency. Failure to pay the Agency within thirty (30) days of receipt of an Agency 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 Agency, The Agency reserves the right to decline further requests for purchases until the Member submits payment.

13. The Member agrees to establish and provide to the Agency 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 Agency reasonably relied on the purchase authorization given to it, the parties agree that the Agency shall be timely paid pursuant to its rates as set forth in Paragraph 2 above, subject however to set off for damages or claims for which the Agency or Vendor is responsible.

15. Each Member 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 the Agency's storage facility on that member's behalf no later than the pick-up date set by the Agency; or (3) arrange for delivery by the Agency personnel or a 3rd party shipper.

16. Except as otherwise provided in this Agreement, each Member is exclusively responsible to exercise all of its rights and remedies against any manufacturer, seller, or other contractor for defective or nonconforming operations supplies procured under this agreement.

17. Each Member undertakes that it will indemnify and defend the Agency from all claims or liability arising from any and all damages to goods ordered by a Member that are to be delivered by "direct delivery", unless such damages occur due to the negligent acts or omissions of the Agency.

18. Each Member shall maintain all-risk insurance on Member Goods warehoused at the Agency'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 Member. This Agreement does not require or imply any obligation for the Member to use the Agency as purchasing agent. In the event that a Member does use the Agency as its Purchasing Agent, the Member'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 Agency 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 Agency. 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 Agency shall not be responsible for delays caused by the acts or omissions of an outside contractor, not controlled by the Agency, if any.

The Agency and the Member 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 Agency'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 the Agency 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 Agency is permitted to adjust a loss, a loss insured under the Agency's or a Member's property insurance must be adjusted by the Agency as fiduciary and made payable to the Agency or the Member as fiduciary for the insureds, as their interests may appear. In accordance with Arizona State Board of Education Rule R7-2-1192(4), failure of an Eligible Procurement Unit to secure performance from the contractor in accordance with the terms and conditions of its purchase order does not necessarily require any other School District to exercise its own rights or remedies.

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, 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 Agency 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 Arizona Fire & Medical
Authority
Attn: Fire Chief
8555 E. Yavapai Road
Prescott Valley, Arizona 86314

Town of Payson
Attn: David Staub, Fire Chief
303 N. Beeline Hwy.
Payson, AZ 85541

Pursuant to Arizona State Board of Education Rule R7-2-1192(3), any Member School District may terminate without notice this Agreement if another Eligible Procurement Unit fails to comply with the terms of this Agreement.

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 Agency 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 Agency 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

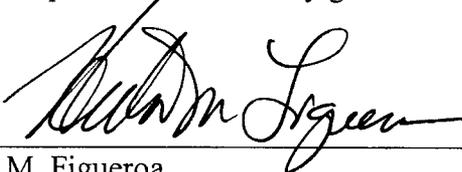
This Agreement shall be binding upon the parties and any successor in interest hereto, including subsequent boards, as elected, unless terminated as otherwise set forth herein.

Determinations of Counsel

In accordance with A.R.S. § 11-952, this Intergovernmental Agreement has been reviewed by the undersigned legal counsel who has determined that this contract is in appropriate form and within the powers and authority granted to the _____ Fire District under A.R.S. §48-805 et seq.

By _____ Date _____
Nicolas "Nick" Cornelius
Counsel for Central Arizona
Fire and Medical Authority

In accordance with A.R.S. § 11-952, this Intergovernmental Agreement has been reviewed by the undersigned legal counsel who has determined that this contract is in appropriate form and within the powers and authority granted to the Town of Payson.

By  _____ Date 6/9/16
Hector M. Figueroa
Counsel for Town of Payson