

RESOLUTION 2015-40

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE COOPERATIVE PURCHASING NETWORK TO PURCHASE COMMODITIES OR SERVICES.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. The Intergovernmental Agreement with Region 4 Education Service Center, known as The Cooperative Purchasing Network (“TCPN”), authorizing the Town to purchase commodities or services through TCPN contracts (the “Agreement”) is hereby approved in substantially the form and substance attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, Arizona, September 3, 2015.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:



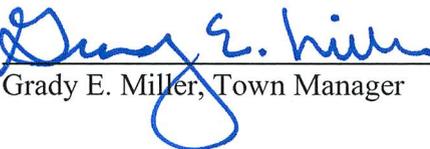
Linda M. Kavanagh, Mayor



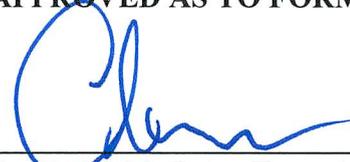
Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:



Grady E. Miller, Town Manager



Andrew J. McGuire, Town Attorney

EXHIBIT A
TO
RESOLUTION 2015-40

[Agreement]

See following pages.

INTERLOCAL AGREEMENT
Region 4 Education Service Center

Contracting Parties

School District or Public Entity

County-District Number

Region 4 Education Service Center

101 - 950
County-District Number

This Interlocal Agreement (“Agreement”) is made and entered into by and between the above parties, Region 4 Education Service Center (“Cooperative”) and _____ (“Member”).

I. RECITALS

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code authorizes local government entities to enter into agreements to perform governmental functions and services, including purchasing; and

WHEREAS, cooperative purchasing is further authorized pursuant to Section 271.101, *et seq.*, of the Texas Local Government Code; and

WHEREAS, Region 4 Education Service Center has established and operates a purchasing cooperative known as TCPN; and

WHEREAS, the Arizona Revised Statute § 11-952 authorizes its local government entities to enter into agreements with public procurement units such as Region 4 Education Service Center (a political subdivision of the State of Texas), pursuant to Arizona Revised Statute § 11-951.

WHEREAS, Arizona school districts have authority to enter into cooperative purchasing agreements with public procurement units such as Region 4 Education Service Center pursuant to Arizona Revised Statute § 41-2631 *et seq.*; Arizona Revised Statute § 15-213; and Ariz. Admin.Code R7-2-1191.

WHEREAS, the purpose of this Agreement is to increase the effectiveness and efficiency of government entities through volume purchasing, insure compliance with state procurement requirements, identify qualified vendors of commodities, goods and services;

NOW THEREFORE, in consideration of the mutual covenants, promises and obligations contained herein, the parties agree as follows.

II. TERMS AND CONDITIONS

1. **Term.** The initial term of this Agreement shall commence on the date it is executed by both parties and shall automatically renew for successive one-year terms unless either party provides thirty (30) days written notice of non-renewal; however, the term of this Agreement shall not extend beyond five years.
2. **Termination.** This Agreement may be terminated by either party at any time by thirty (30) days prior written notice. Such termination by the Member does not relieve the Member of its financial obligation to make payment for any and all purchases made from vendors under this Agreement.
3. **Cooperative Duties**
 - (a) Provide for the organizational and administrative structure of the Cooperative.
 - (b) Provide for the operation and management of the Cooperative.
 - (c) Prepare, or cause to be prepared, all procurement documents and advertisements in accordance with Chapter 44 of the Texas Education Code or Chapter 2267 of the Texas Government Code and any corresponding Arizona statutes, as applicable.
 - (d) Evaluate responses to solicitations.
 - (e) Award contracts for use by Members.
 - (f) Track all purchases by Members from awarded Vendors.
 - (g) Monitor Vendor performance.
 - (h) Assist in facilitating the resolution of disputes between Members and Awarded Vendors when Requested; however, the Member is solely responsible for the commencement, defense, prosecution, intervention or participation in any judicial, administrative or other proceeding related to the Member's purchase from the Vendor.
4. **Member Duties**
 - (a) Execute this Interlocal Agreement.
 - (b) Designate a contact person for the Cooperative. The Member represents that the contact person for the Cooperative has the express authority to represent and bind the Member in all matters related to the Cooperative.
 - (c) Utilize the Cooperative when the Member, in its sole judgment, determines it to be in the best interest of the Member.
 - (d) Make timely payments to the Vendor in accordance with the terms and conditions of the applicable procurement documents for the goods, materials and services received. Payment for goods, materials and services and inspections and acceptance of goods, materials and services ordered by the procuring Member shall be the exclusive obligation of the procuring Member, and not the Cooperative.
 - (e) Negotiate and secure any ancillary agreements from the vendor on such other terms and conditions, including provisions relating to insurance or bonding, that the Member deems necessary or desirable under state or local law, local policy or rule, or within its business judgment.

III. GENERAL PROVISIONS

1. **Amendment by Notice.** The Cooperative may amend this Agreement, provided that prior written notice is sent to the Member at least 60 days prior to the effective date of any change described in such amendment and provided that the Member does not terminate its participation in the Cooperative before the expiration of 60 days.
2. **Authorization to Participate and Compliance with Local Policies.** The Member represents and warrants that its governing body has duly authorized its participation in the Cooperative and that the Member will comply with all state and local laws and policies pertaining to purchasing of goods and services through its membership in the Cooperative.
3. **Cooperation and Access.** The Member agrees that it will cooperate in compliance with any reasonable requests for information and/or records made by the Cooperative. The Cooperative reserves the right to audit the relevant records of any Member. Any breach of this provision shall be considered material and shall make the Agreement subject to termination on ten (10) days written notice to the Member.
4. **Member Contact.** The Member reserves the right to change the Contact as needed by giving written notice to the Cooperative. Such notice is not effective until actually received by the Cooperative.
5. **Current Revenue.** The Member hereby warrants that all payments, fees, and disbursements required of it hereunder shall be made from current revenues budgeted and available to the Member.
6. **Defense and Prosecution of Claims.** The Member authorizes the Cooperative to regulate the commencement, defense, intervention, or participation in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution, or other appearances of the Cooperative in any litigation, claim or dispute which arises from the services provided by the Cooperative on behalf of its members, collectively or individually. Neither this provision nor any other provision in this Agreement will create legal duty for the Cooperative to provide a defense or prosecute a claim; rather, the Cooperative may exercise this right in its sole discretion and to the extent permitted or authorized by law. The Member shall reasonably specific revocation, the Member hereby designates the Cooperative to act as a class representative on its behalf in matters arising out of this Agreement.
7. **Legal Authority.** The Member represents and warrants to the Cooperative the following:
 - (a) It meets the definition of “Local Government” or “State Agency” under the Interlocal Cooperation Act (“Act”), Chapter 791 of the Texas Government Code.
 - (b) The functions and services to be performed under the Agreement will be limited to “Administrative Functions” as defined in the Act, which includes purchasing.
 - (c) It possesses the legal authority to enter into this Agreement and can allow this Agreement to automatically renew without subsequent action of its governing body.
 - (d) Purchases made under this Agreement will satisfy all procedural procurement requirements that the Member must meet under all applicable local policy, regulation, or state law.
 - (e) All requirements—local or state—for a third party to approve, record or authorize the Agreement have been met.

8. **Limitation of Liability.** Without waiver of the disclaimer or other limitation of liability in this Agreement, the parties agree that:
- (a) Neither party waives any immunity from liability afforded under law, except that the parties agree that this constitutes an agreement for the provision of services and is subject to Subchapter I, Chapter 271, of the Texas Government Code;
 - (b) In regard to any lawsuit or formal adjudication arising out of or relating to this Agreement, neither party shall be liable to the other under any circumstance for special, incidental, consequential, or exemplary damages;
 - (c) The maximum amount of damages recoverable will be limited to the amount of fees which the Cooperative received as a direct result of the Member's purchase activity, within 24 months of when the lawsuit or action was filed; and
 - (d) In the event of a lawsuit or formal adjudication the prevailing party will be entitled to recover reasonable attorney's fees pursuant to Section 271.159 of the Texas Local Government Code.
 - (e) Without waiver of the disclaimer or other limitation of liability in this Agreement, the parties further agree to limit the liability of the Cooperative's management contractor, R4 Enterprises LLC, up to the maximum amount each received from or through the Cooperative, as a direct result of the undersigned Cooperative Member's purchase activity, within 24 months of the filing of any lawsuit or action.
9. **Limitation of Rights.** Except as otherwise expressly provided in this Agreement, nothing in this Agreement is intended to confer upon any person, other than the parties hereto, any benefits, rights, or remedies under or by reason of this Agreement.
10. **Notice.** Any written notice under this agreement shall be made by first class mail, postage prepaid, and delivered to the following
- Cooperative:**
- Member:**
11. **Severability.** If any portion of this Agreement shall be declared illegal or held unenforceable for any reason, the remaining portions shall continue in full force and effect.
12. **Signatures/Counterparts.** The failure of a party to provide an original, manually executed signature to the other party will not affect the validity, enforceability or binding effect of this Agreement because either party may rely upon a facsimile signature as if it were an original. Furthermore, this Agreement may be executed in several separate counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
13. **Warranty.** By execution and delivery of this Agreement, the undersigned individuals warrant that they have been duly authorized by all requisite administrative action required to enter into and perform the terms of this Agreement.

14. **Payment.** Payment for materials and services and inspection and acceptance of materials or services ordered by Member under this cooperative purchasing agreement shall be the exclusive obligation of such Member;
15. **Rights and Remedies.** The exercise of any rights or remedies by a Member shall be the exclusive obligation of such Member;
16. **Termination for Failure to Comply.** Any Member may terminate without notice this cooperative purchasing agreement if another eligible procurement unit fails to comply with the terms of the contract.
17. **Securing Performance.** 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 Member to exercise its own rights or remedies.
18. **Cancellation.** The Member reserves all rights that it may have to cancel this Agreement for possible conflicts of interest under Ariz. Rev. Stat. § 38-511, as amended.
19. **E-verify, Records and Audits.** To the extent applicable under A.R.S. § 41-4401, the parties warrant their compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). A party's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by either party under the terms of this Agreement. The parties each retain the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The parties warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties shall cooperate with the other party's random inspections including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.
20. **Sudan/Iran.** The parties hereby warrant, and represent to each other, that they do not have and during the term hereof will not have a "scrutinized business operation" in either Sudan or Iran as defined under A.R.S. § 35-391 et seq.

Public Entity

Region 4 Education Service Center

By Wesley E. Miller
Authorized Signature

By _____
Authorized Signature

Town Manager
Title

Region 4 ESC Chief Financial Officer
Title

9-3-15
Date

Date

Craig Rudolph
Contact Person

Telephone Number

Finance Director
Title of Contact

robert.zingelman@esc4.net
Email Address

16705 E Ave. of the Fountains
Street Address

Fountain Hills AZ 85268
City, State Zip

480-816-5162
Contact's Telephone Number

crudolph@fh.az.gov
Email Address