



AGENDA

6:00 PM

SPECIAL CITY COUNCIL MEETING

MONDAY, JUNE 30, 2014

MEETING LOCATION: SAFFORD LIBRARY PROGRAM ROOM ♦ 808 S 7TH AVENUE, SAFFORD, ARIZONA

2.04.100 Special Council Meetings

Special meetings of the council shall not provide for a call to the public except when authorized by the mayor and noted on the agenda.

If authorized by a majority vote of the Common Council of the City of Safford, and pursuant to Arizona Revised Statutes, §38-431.03 et seq., the Council may adjourn the meeting at any time and move into Executive Session for consultation with the attorneys of the public body.

Members of the City of Safford Council may attend either in person or by telephone conference call.

Executive Session will not be open to the public.

1. **WELCOME AND CALL TO ORDER:** (Reminder: Please turn off cell phones)
2. **ROLL CALL:**
3. **PLEDGE OF ALLEGIANCE TO THE FLAG:** Mayor Gibbs will lead the Pledge of Allegiance to the Flag.
4. **OPENING PRAYER:**
5. **CITIZEN COMMENTS ON AGENDA ITEM:**
6. **EXECUTIVE SESSION:** The City Council may adjourn to Executive Session pursuant to *Arizona Revised Statutes* § 38.431.03(A)(3) and (4) to seek legal advice and to discuss *smartworksplus* contract. The Council may adjourn executive session and return to open session to approve revised terms and conditions of the *smartworksplus* contract. **DISCUSSION/ACTION**
7. **ADJOURN:** In accordance with Section 2.04.120 of the *Municipal Code of the City of Safford*, and *Arizona Revised Statutes* §§38-431.01 et seq., and 38-431.02 et seq., notice is hereby given to the members of the general public that the City of Safford will hold a Special Council Meeting open to the public on the date and time specified above in the Safford Library Program Room, 808 South 7th Avenue, Safford, Arizona.

Date Posted:

Georgia Luster, MMC, City Clerk

SERVICE AGREEMENT

This SERVICE AGREEMENT (this "AGREEMENT") is entered into as of this 16th day of June, 2014 ("Effective Date") between smartschoolsplus, inc, an Arizona corporation, d/b/a smartworksplus ("Provider"), and City of Safford ("City").

RECITALS

- A. Provider is a corporation engaged in the business of providing professional services, including employee staffing services, to governmental entities;
- B. Provider's employees include qualified staff, administrators, [insert other classifications of Provider employees];
- C. The City is a governmental entity within the State of Arizona that requires the services of qualified personnel, administrators, [insert other classifications of required City personnel].
- D. City is authorized to enter into this Agreement pursuant to City of Safford Municipal Code Section 2.20.070.C.
- E. City desires to obtain services, as more fully described in Exhibit A, attached hereto ("Services") from Provider and Provider is willing to provide Services to City upon the terms and conditions contained in this Agreement.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound, Provider and City agree as follows:

1. Services. Provider shall provide the Services set forth in this Agreement and in the Scope of Services attached as Exhibit A (collectively, "Services").

2. Provider Employees.

A. Employment Agreement. Provider shall enter, or has previously entered, into employment agreements ("Employment Agreements"), with staff, administrators, [insert other classifications of Provider Employees] (collectively, "Provider Employees") to perform work required by the City. A roster of Provider Employees and their daily pay rates are set forth in Exhibit B. A copy of each Employment Agreement shall be provided to the City as soon as available. Provider shall (i) take steps to assure that each Provider Employee performs in accordance with his or her Employment Agreement, and (ii) provide general direction, supervision and control of each Provider Employee in the performance of his or her duties as assigned by the City, as more fully described in the Scope of Services.

B. Payroll. Provider, and not the City, shall be solely responsible for administrative employment matters regarding Provider Employees including, but not limited to, all payroll and payroll income tax withholding matters, payment of workers' compensation premiums and funding of appropriate fringe benefit programs. For employees other than administrative employees, the City shall pay the provider for all direct payroll cost such as (e.g., Social Security, FICA & Medicare, AZ Unemployment, Federal Unemployment, Worker's Compensation (professional/classified)). Provider agrees to hold harmless the City for failure to remit to the appropriate governmental authority any and all taxes, assessments or governmental charges in connection with its employment of Provider Employees. The City shall immediately forward to Provider any garnishment orders, involuntary deduction orders, notices of IRS liens and other forms of legal process received by the City affecting payment of wages to Provider Employees and shall cooperate with Provider in responding thereto.

C. Health and Safety. Provider shall, and shall require Provider's Employees to, comply with all health and safety laws, regulations, ordinances, directives and rules imposed by controlling federal, state or local governments, and shall immediately report all work-related accidents involving the Provider Employee within 24 hours to the City. Provider shall provide where necessary, and shall require that all Provider Employees use, personal protective equipment as required by federal, state or local law, regulation, ordinance, directive or rule.

D. Compensation of Provider Employees. Provider shall pay Provider Employees in compliance with applicable wage and hour laws including, but not limited to, the Fair Labor Standards Act ("FLSA") and Arizona Labor Code. Provider shall maintain complete and accurate records of all wages paid to a Provider Employee assigned to perform work for the City. Provider shall be exclusively responsible for, and shall comply with, applicable law governing the reporting and payment of wages, payroll-related and unemployment taxes attributable to wages paid to Provider Employees assigned to perform work for the City.

E. Legal Arizona Worker's Act. Provider, and not the City, shall be responsible for compliance with the Legal Arizona Worker's Act (2007), as amended from time to time. Compliance shall include, but not be limited to, verification of employment eligibility for all new employees through the E-Verify program, as defined in A.R.S. § 23-211.

F. Termination. Provider or the City may terminate this Agreement, with respect to any or all of the Provider Employees, without cause or justification of any kind, by providing the other party with written notice of such termination at least 30 days prior to the effective date of termination. The City shall have the right to terminate the service of, and therefore cease to have any obligation with respect to, any particular Provider Employee, upon written notice to Provider (or its successor in interest) upon the occurrence of any of the following:

(1) if the Provider Employee: (i) embezzles, steals or misappropriates funds or property of the City or defrauds the City; (ii) is convicted of a felony; (iii) has a necessary certification revoked or suspended; or (iv) commits an act or omission which constitutes unprofessional conduct or which adversely affects the reputation of the City, in which case termination of such Provider Employee shall be effective as of the date of the first of any act giving rise to a termination event under this Subsection F(1), and the City shall have the right to require the Provider Employee to cease all work pending a final determination regarding whether the Provider Employee acted or failed to act in a manner that constitutes a termination event under this Subsection F(1); the City shall have no obligation to pay for any work performed by such Provider Employee following the date of the first act or failure to act by a Provider Employee that gives rise to a termination event under this Subsection F(1);

(2) the death of the Provider Employee occurring any time during the term of this Agreement, in which event this Agreement (as it relates to that employee) shall terminate as of his date of death;

(3) the permanent disability of the Provider Employee occurring at any time during the term of this Agreement. For purposes of the foregoing, a Provider Employee shall be deemed to be permanently disabled if, by reason of any physical or mental condition, the Provider Employee is unable to substantially perform his duties hereunder during either (i) any continuous period of 30 days, in which event this Agreement shall terminate as of the first day following the end of such 30-day period, or (ii) an aggregate of 45 days within a 12-month period, in which event this Agreement shall terminate as of the first day following the 45th such day;

(4) in the event that a Provider Employee is unwilling, unable or fails to satisfactorily comply with the City rules, guidelines, policies, procedures and regulations promulgated by the City during the term of the Provider Employee's Employment Agreement; provided, however, that termination for cause shall not occur unless written notice of the alleged non-compliance is first given to

Provider and Provider fails to cure the non-compliance within 10 days following receipt of such written notice, in which case termination shall be as of the end of such ten (10) day period; or

(5) if it is later discovered that a Provider Employee has made any material misrepresentations or has failed to provide any material information in connection with the application for employment that was previously submitted to Provider.

3. Compensation. The City agrees to compensate Provider for work performed, and reimbursable expenses incurred in the performance thereof, by Provider Employees in accordance with the compensation schedule attached hereto as Exhibit C. Provider shall invoice the City monthly; invoices shall be due and payable within 7 days after receipt by the City. The parties acknowledge and agree that Provider Employees shall receive wages solely from Provider. The City shall not pay any Provider Employee in cash or by any other means for any work performed by such Provider Employee pursuant to his or her Employment Agreement.

4. Responsibilities of the City. In addition to its payment, and other obligations set forth in this Agreement, the City shall have the following responsibilities:

A. Supervision; Reporting. The City shall provide daily monitoring of the Provider Employees and shall report to Provider on an ongoing regular basis regarding the Provider Employees' performance of their respective duties.

B. Safety Obligations. The City shall provide a safe workplace for Provider Employees, shall supply documentation related to safety activities as prescribed by law (e.g., safety meeting, training, maintaining OSHA log), and shall inform Provider of any necessary protective equipment that Provider Employees must use in the performance of work for the City. Provider or its workers' compensation carrier has the right to inspect the City's premises and operation, but is not obligated to conduct any inspections. Provider reserves the right to audit safety activities. Provider or its insurer may, but neither is obligated to, give reports to the City on the conditions found at the City's worksites. Neither Provider's insurer nor Provider warrants the result of the inspections or the absence thereof, or that the operations or premises are in compliance with any laws, regulations, codes or standards.

5. Term. The term of this Agreement shall commence as of July 1, 2014 and shall end on June 30, 2015

6. Insurance.

A. Worker's Compensation.

(i) Except as otherwise provided in this Agreement, Provider shall be considered the "employer" of all Provider Employees for the purposes of providing workers' compensation insurance within the meaning of Arizona Revised Statute ("A.R.S.") § 23-901. Provider shall provide workers' compensation and employer's liability insurance in accordance with the statutory requirement of the State of Arizona, including Employer's Liability insurance with limits of liability of not less than \$500,000 for each accident and \$500,000 for bodily injury or disease. The workers' compensation policy shall be endorsed to include the Alternate Employer Endorsement and shall include a waiver of subrogation in favor of the City from the workers' compensation insurer. Provider shall, upon the City's request, upon termination of this Agreement, provide to the City records regarding the loss experience for workers' compensation insurance provided to Provider Employees pursuant to this Agreement.

(ii) The City and Provider understand, agree and acknowledge that no individual shall be covered by Provider's workers' compensation insurance, or be issued a payroll check unless prior to commencing work for the City that individual satisfies the following requirements: (a) is employed by Provider in Arizona to work in Arizona; (b) is performing Services for the City pursuant to this Agreement; (c) is listed on Provider's roster of Provider Employees in Exhibit B (d) has completed

Provider's required enrollment forms and, where applicable, is certified or licensed as required by law for the position in which employed by Provider; (e) has completed necessary criminal background checks, including fingerprinting; (f) has entered into an Employment Agreement with Provider; (g) has provided all data required by Provider for payroll processing and workers' compensation coverage; and (h) has been entered onto Provider's payroll system.

(iii) The City understands, agrees and acknowledges that the workers' compensation insurance that Provider shall provide under this Agreement shall only cover individuals who are listed on Provider's roster of Provider Employees in Exhibit B, and shall not cover other individuals who might perform services for the City, whether as employees, independent contractors or otherwise. The parties agree that a percentage of the service fee paid by the City shall be for payment of workers' compensation insurance premiums. The City agrees to provide workers' compensation insurance or maintain a program of approved self-insurance or risk retention pool coverage covering the City's own employees.

B. City Liability Insurance.

The City shall provide liability indemnity protection to the Provider Employees who provide services to the City but only if those Provider Employees are acting within the course and scope of the authorization granted. The coverage provided shall be made available to the Provider Employee as an additional covered party under the terms of the City's participation agreement with Arizona Municipal Risk Retention Pool ("Pool"). Coverage shall be made available by the Pool to each Provider Employee on the same terms and conditions as coverage is made available to employees of the City. Provider shall be added as an additional covered party to the Pool coverage agreement, but only to the extent that Provider is vicariously liable for the acts of the Provider Employee while the Provider Employee is performing services on behalf of the City, but not for any actual or alleged wrongful act, error or omission of Provider in its own right (e.g., claims of negligent hiring, supervision or retention, employment discrimination, etc.). In no event, however, shall the provision of liability indemnity protection be construed as evidence that the relationship between the parties and the Provider Employees is other than as specifically provided for and agreed to in this Agreement.

C. Other Insurance.

Provider shall maintain in full force and effect at all times during the term of this Agreement the Commercial General Liability ("CGL") Insurance and unemployment insurance.

(i) The CGL policy shall provide for limits of not less than \$1,000,000 per occurrence and if such CGL policy contains a general aggregate limit of liability, the limit shall be no less than \$2,000,000. The CGL policy shall be written on an occurrence form and shall cover liability arising from the independent negligence or other wrongful act, error or omission of Provider or its employees that is not the direct consequence of the work performed by the Provider Employees under the terms of this Agreement. The City shall be added as an additional insured to the CGL policy, but only to the extent that the covered liability-causing event is not related to the work performed under the terms of this Agreement.

(ii) Provider shall provide unemployment insurance coverage to the extent required by law.

7. Independent Contractor. The relationship created by this Agreement shall be deemed and construed to be, and shall be, that of principal and independent contractor. Provider has no authority to enter into any contract or incur any liability on behalf of the City. Provider's employees are not intended to be and shall not be considered employees of the City. Except as otherwise provided in this Agreement, Provider retains full control over the employment, direction, supervision, compensation, discipline and discharge of all persons performing Services and work under this Agreement.

8. Non-Exclusive Use. Provider acknowledges and agrees that the City may enter into agreements with other provider organizations to perform work for the City and that Provider is not the exclusive organization with which the City may contract to provide services.

9. Notice. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received when hand delivered to the party addressed or upon the date noted upon the receipt for registered or certified mail, first class postage prepaid, return receipt requested, addressed as set forth below:

If to Provider: smartworksplus
P.O. Box 11618
Tempe, AZ 85284-0027

With a copy to: Perkins Coie Brown & Bain P.A.
2901 N. Central Ave., Suite 2000
Phoenix, AZ 85012
Attention: Judith K. Weiss, Esq.

If to the City: Horatio Skeete
City Manager
P.O. Box 272
City Hall Annex
808 8th Avenue
Safford, AZ 85548-0272

With a copy to: William J. Sims
Sims Murray, Ltd.
2020 North Central Ave., Suite 670
Phoenix, Arizona 85004

Either party may alter the address or addresses to which communications or copies are to be sent to such party by giving notice of such change of address in conformity with the provisions of this Section 10.

10. Binding Nature of Agreement; Assignment and Nominee. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

11. Entire Agreement. This Agreement constitutes the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions expressed or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. This Agreement may not be modified or amended other than by a writing signed by both parties.

12. Waiver. The failure or delay on the part of any party to exercise any right, remedy, power or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such rights, remedies, powers or privileges with respect to any other occurrence.

13. Costs and Expenses. Each party hereto shall bear its own costs, including attorneys' fees and accounting fees, incurred in connection with the negotiation, drafting and consummation of this Agreement and the transactions contemplated hereby, and all matters incident thereto.

14. Headings. All sections and descriptive headings of sections and subsections in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

15. Construction; Interpretation. This Agreement is intended to express the mutual intent of the parties hereto and thereto, and irrespective of the identity of the party preparing any such document, no rule of strict construction shall be applied against any party. In this Agreement, the singular includes the plural, and the plural the singular; words imparting either gender include the other gender; references to "writing" include printing, typing, lithography and other means of reproducing words in a tangible visible form; the words "including," "includes" and "include" shall be deemed to be followed by the words "but not limited to." The term "person" shall include an individual, corporation, joint venture, partnership, trust, estate, association, governmental entity or any other entity.

16. Exhibits and Recitals. All Exhibits referred to herein and the Recitals made and stated hereinabove are hereby incorporated by reference into, and made a part of, this Agreement.

17. Materiality. All covenants, agreements, representations and warranties made herein shall be deemed to be material and to have been relied on by the parties in entering into this Agreement and shall survive the execution and delivery of this Agreement.

18. Governing Law; Forum; Venue. This Agreement is executed and delivered in the State of Arizona, and the substantive laws of the State of Arizona (without reference to choice of law principles) shall govern its interpretation and enforcement. Any action brought to interpret or enforce any provisions of this Agreement, or otherwise relating to or arising from this Agreement, shall be commenced and maintained in a federal, state or local court located within Graham County, Arizona.

19. Knowing Covenants. The parties hereby represent to each other that the covenants and agreements provided for in this Agreement have been knowingly and voluntarily granted after thorough consultation with counsel as to the binding and irrevocable effect thereof. Based upon consultation with counsel, the parties hereby represent and warrant to each other that this Agreement is binding and enforceable in accordance with its terms.

20. Indemnification. Provider agrees to indemnify, defend and hold harmless the City, its Council members, officers, directors, employees, insurers, indemnitors and agents for, from and against all suits, claims, liabilities, costs, expenses and debt, including reasonable attorneys' fees, incurred by the City arising from, attributable to or caused by acts or omissions of Provider (or its officers, directors, shareholders or agents) or any Provider Employee in the performance of or related to the performance of the duties of any Provider Employee as described in the Employment Agreement (including, but not limited to injuries to Provider Employees that may or may not be covered by workers compensation insurance); except, to the extent such suits, claims, liabilities, costs, expenses and debt result from acts or omissions of the City or its Council members, officers, directors, employees, insurers, indemnitors or agents. This indemnification provision shall apply to suits, claims, liabilities, costs, expenses and debt that are not otherwise covered by the City's Liability Insurance provided for by the Pool.

21. Conflict of Interest. The parties expressly acknowledge that the City has the option of canceling this contract for three years from the date of execution without any further penalty or obligation pursuant to A.R.S. § 38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City is at any time during the term or any extension thereof, an employee or agent of Provider or a consultant to Provider. Provider acknowledges the potential for a current City employee to become a Provider Employee and recognizes the applicability of A.R.S. § 38-511.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and date first above written and effective as of the date hereinabove stated.

"Provider"

smartschoolsplus, inc.
an Arizona corporation, d/b/a smartworksplus

"City"

The City of Safford

By: Sandra McClelland
Its: President

By: _____
Its: _____

EXHIBIT A

Scope of Services

The following Services shall be performed by smartschoolsplus, inc. [d/b/a smartworksplus] in fulfillment of its obligations under the terms of the Agreement.

1. Provider shall recruit, hire, train, evaluate and supervise Provider Employees who are professionally and technically qualified to perform the duties of staff, administrators, [insert other classifications of Provider Employees] and shall discipline and terminate Provider Employees, as appropriate, including the following:

a. maintaining a recruiting and hiring program that is in compliance with federal and state laws, rules and regulations, equal opportunity and anti-discrimination policies applicable to, and restricting, the hiring and selection process, including, but not limited to, Title VII of the Civil Rights Act of 1964 ("Title VII"), the Americans With Disabilities Act ("ADA"), the Age Discrimination in Employment Act ("ADEA"), the Fair Credit Reporting Act ("FCRA") and the Arizona Employment Protection Act ("AEPA");

b. maintaining a system of statewide personal background checks on all Provider Employees provided to the City to include statewide criminal background check and fingerprinting. Provider shall ensure that all Provider Employees possess all certifications qualifications necessary to enable them to perform their assignments, and that Provider Employees have satisfied any legal prerequisites to the performance of their assignments;

c. maintaining a system of performance evaluation for each Provider Employee;

d. maintaining a program of supervision that enforces the policies and procedures of the City. In order to maintain the program, Provider shall designate one or more on-site staff as the supervisor and/or Provider contact who shall be responsible for addressing and responding to Provider Employees. The designated on-site supervisor and/or Provider contact shall be trained by Provider in regard to: (i) applicable workers' compensation laws; (ii) applicable equal employment opportunity laws, regulations and policies, including reporting procedures; and (iii) workplace violence prevention, including the detection of early warning signs of violence and the proper reporting of threats and acts of violence. The supervisor and/or Provider contact shall promptly notify the City of any human-resource-type issue raised by a Provider Employee that may affect the City, such as threats of violence, harassment, discrimination or retaliation;

e. providing to each Provider Employee information regarding his or her obligation to comply with all of the City's safety, drug/alcohol, work policies, anti-harassment, anti-discrimination and anti-retaliation policies. Provider shall establish a complaint and/or reporting procedure for violations of policies and instruct Provider Employees on the use of the procedure. Provider shall obtain written acknowledgement from the Provider Employee that he or she has read, understood and agrees to abide by those policies and procedures;

f. providing annual harassment, discrimination, retaliation, abuse and neglect training for all Provider Employees, or ensure Provider Employees participate in similar training provided by the City. Provider shall maintain a record of all such training; and

g. preparing and distributing an Employee Handbook to Provider Employees that identifies and explains Provider's policies and procedures that are to be followed during the course of the Provider Employees' employment with Provider.

2. Provider shall inform the Provider Employee in writing that he or she is employed by Provider, not the City.

3. Provider shall inform the Provider Employee in writing that job related illness/injury reports are to be made to the supervisor or Provider contact and provide information on where and how reports are to be made to Provider contact.

4. Provider shall notify Provider Employees in writing that other than the liability indemnity protection specifically delineated in this Agreement the only benefits they shall receive shall be from Provider, and that they are not entitled to any benefits from the City.

5. Provider shall be responsible for the quality, adequacy and safety of the work performed by Provider Employees pursuant to this Agreement, and the acts, errors or omissions of Provider Employees at all times.

EXHIBIT B

Roster of Provider Employees and Fee Schedule

[see attached]

EXHIBIT C

Provider Compensation Schedule

Compensation: Provider compensation is computed based on the number of days Provider Employees work during a designated month, multiplied by their Daily Rate of Pay set forth in Exhibit B. Provider shall invoice the City monthly at the rates set forth below.

Provider Employee Benefits:

A. Prior to July 1, 2011, Provider Employees received certain benefits (collectively, the “**Prior Provider Employees**”). For such Prior Provider Employees, the City will continue to pay the Prior Provider Employees at the agreed upon percentage of their exit salaries. Each Provider Employee hired on or after July 1, 2011 shall be paid seventy-five percent (75%) of the Provider Employee’s exit salary. Prior Provider Employees and Provider Employees shall receive any pay adjustment received prior to January 1, 2014.

B. The term of every Employment Agreement for Provider Employees shall terminate no later than one (1) year after the Effective Date.

C. The City Manager may approve up to six (6) months of “double filling” to accommodate the transition of a position from a Provider Employee to a City employee.

D. All Provider Employees (including Prior Provider Employees) shall receive eight (8) days of paid time during this year. Prior Provider Employees with vacation accumulation will be allowed to bring forward no more than fifty percent (50%) of paid time off and must use such time within the one (1) year the Effective Date.

E. No sick leave shall be given to any Provider Employees.

F. All Provider Employees will receive the same paid holidays as other City employees.

G. No Provider Employees shall receive adjustments to their pay when the City offers its regular employees pay adjustment.

Service Fee/Direct Payroll Costs: In addition to the payments for work performed, the City shall pay Provider a service fee equal to four percent (4%) and all applicable direct payroll costs (e.g., Social Security, FICA & Medicare, AZ Unemployment, Federal Unemployment, Worker’s Compensation (professional/classified)).

Reimbursement: The City shall reimburse Provider for mileage, travel, conferences and other out-of-pocket expenses incurred by Provider Employees but only if such expenses are approved (prior to the expense being incurred), by the Provider Employee’s City supervisor.

Review of Desk Top Procedures: Each Provider Employee shall complete a full review of all documented desk top procedures within the first six months of this contract extension in order to assist in the transition to a City employee filling the position.

Electronic Access: The City shall provide each Provider Employee access to electronic and technological tools allowing for participation and function of normal City duties (e.g., Kronos, e-mail, internet, cell phones, etc.). Provider Employees agree to follow all City guidelines and policies regarding use of the same.