



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

Requested Board Meeting Date: 11/10/2015

or Procurement Director Award

Contractor/Vendor Name (DBA): Squire Patton Boggs (US) L.L.P.

Project Title/Description:
Bond Counsel

Purpose:

Contractor will act as the County's bond counsel in connection with the issuance of GO Bonds, HURF Revenue Bonds, COPS, and other debt issuances as necessary.

Procurement Method:

Direct Select

Program Goals/Predicted Outcomes:

Contractor will provide various types of assistance in connection with County bond issuances, including: allocation and coordination of the responsibilities of the issuance team; Drafting and dissemination of the calendar of activities; advising COUNTY on sizing the timing of each issue; advising COUNTY on restrictions in any bond indentures and the maturity and interest-payment structures; assisting in the preparation, assembling, printing and disseminating the official statement and related documents; assisting in procurement of bond ratings; advertising and dissemination of the Notice of Sale; insuring that all steps are properly followed in the issuance of the bonds; and coordinating the bond closing.

Public Benefit:

In order to issue bonds, the County must retain nationally recognized bond counsel to issue a bond opinion; bond counsel also ensures that the County complies with complex state and federal statutes applicable to bond issuances and post-issuance compliance, including federal tax regulations and securities regulations. The assistance of outside counsel is therefore necessary for the County to issue bonds. Because the lawyers at Squire Patton Boggs are very familiar with the County's bond program, as well as other aspects of the County's financial operation, they are able to provide this assistance very efficiently and effectively.

Metrics Available to Measure Performance:

Contractor will be paid based on a percentage of each issuance with respect to which they function as bond counsel, and will be paid at hourly rates for supplemental services related to such issuances and to post-issuance compliance.

Retroactive:

n/a

COB: 10-28-15

9 pgs (1)

Procure Dept 10/26/15 PM 08:50

Original Information

Document Type: CT Department Code: FN Contract Number (i.e., 15-123): 16*106

Effective Date: 11/10/2015 Termination Date: 11/9/2016 Prior Contract Number (Synergen/CMS): _____

Expense Amount: \$ \$300,000.00 Revenue Amount: \$ _____

Funding Source(s): The source of the funding for the legal services related to issuing debt will be proceeds of the issued debt - either GO bond, HURF bond, or COPS proceeds.

Cost to Pima County General Fund: _____

Contract is fully or partially funded with Federal Funds? Yes No Not Applicable to Grant Awards

Were insurance or indemnity clauses modified? Yes No Not Applicable to Grant Awards

Vendor is using a Social Security Number? Yes No Not Applicable to Grant Awards

If Yes, attach the required form per Administrative Procedure 22-73.

Amendment Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____

Amendment No.: _____ AMS Version No.: _____

Effective Date: _____ New Termination Date: _____

Expense Revenue Increase Decrease Amount This Amendment: \$ _____

Funding Source(s): _____

Cost to Pima County General Fund: _____

Contact: Marilee Weston

Department: PCAO Civil Division, BTU

Telephone: (520) 740-5250

Department Director Signature/Date: TOM WEAVER 10/19/15

Deputy County Administrator Signature/Date: [Signature] 10-21-15

County Administrator Signature/Date: [Signature] 10/22/15
(Required for Board Agenda/Addendum Items)

2. Work with COUNTY officials and COUNTY'S financial advisor on creation and discussion of structuring financing alternatives within the confines of the market, acceptable risk and legal constraints and that minimizes COUNTY'S transaction costs.
3. Prepare all ordinances, resolutions, agreements and other documents and instruments necessary or appropriate to the authorizations to the authorization, issuance, sale and delivery of COUNTY'S bonds in consultation with COUNTY, coordinate with any other counsel of COUNTY, COUNTY'S financial advisor and underwriters with respect to the bonds and their counsel, and the officials and other consultants of COUNTY, and coordinate the authorization and execution of COUNTY'S bond documents.
4. Attend meetings of the Pima County Board of Supervisors when requested.
5. Assist in presenting information relating to the legality of the bonds to bond rating agencies and providers of credit enhancement to the extent required or requested.
6. Prepare election proceedings or pursue validation proceedings.
7. Provide continuing advice to COUNTY concerning any actions necessary to assure that the interest paid on the bonds will continue to be excluded from gross income for federal income tax purposes.
8. Represent COUNTY'S interest in the preparation of any contract that provides for the sale of bonds including but not limited to insurer, trustee, paying agent and registrar agreements; ensure that professionals and investment banking firms retained by, or contracting with, COUNTY disclose all conflicts of interest with COUNTY through the use of due diligence reviews.
9. Cooperate with the COUNTY in preparation of official statements or other securities laws disclosure documents, including review of the information therein describing the bonds, and the security therefore; and provide advice as needed or requested to enable COUNTY to make proper disclosure.
10. Render advice to individual employees or officials of COUNTY to the effect that any representation or certification made by an employee or official in connection with the issuance of the bonds is authorized or required by law and is properly supported by fact.
11. Provide assistance in making required submissions to any entity.
12. Obtain any governmental or other registrations, approvals, permissions and exemptions required by law or contract or determined by COUNTY to be necessary or appropriate in connection with the authorization, issuance, sale and delivery of COUNTY'S bonds.
13. Supervise the printing, execution, and delivery of the bonds to the purchasers and prepare and distribute final transcripts within thirty (30) days of the closing. County Finance Department will receive one (1) original transcript and three (3) copies of transcript on CD.
14. When requested or required in conjunction with a financing, render a legal opinion regarding the validity and binding effect of COUNTY'S bonds, the source of payment and security for the bonds, and the federal and Arizona income treatment of interest on the bonds.
15. Interpret financing document provisions and covenants when requested by COUNTY.
16. Assist the County Attorney, if requested, in any litigation relating to or in any way affecting the issuance, sale, execution and delivery of COUNTY bonds.
17. At the time of or between financing, consult with COUNTY officials, employees, counsel, consultants, citizen committees, and others in the formulation of a coordinated program for the public financing of particular projects, including the delivery of oral and written legal advice on particular projects when requested by the County Administrator or a designee thereof.
18. Brief COUNTY officials, employees, counsel, and consultants on matters that impact upon the issuance of municipal financing. This includes availability for phone consultation with COUNTY officials, employees,

counsel and consultants on questions of federal and state law, which impact upon the issuance of municipal financings.

19. Provide updates in a form acceptable to COUNTY on statutory and regulatory changes which impact upon the issuance of municipal financings.

20. Provide COUNTY with advice on federal, state and local legislation, including analysis of local referenda related to, or impacting upon, COUNTY'S financing programs.

21. Draft State legislation and provide testimony before legislative committees when requested by COUNTY.

22. Assist in the training of pertinent COUNTY staff.

23. Provide other advice or opinions requested by COUNTY relating to municipal finance.

2.2. **Key Personnel.** CONTRACTOR will perform the work in accordance with the terms of this Contract and to the best of CONTRACTOR'S ability. CONTRACTOR will employ suitably trained and skilled professional personnel to perform all consultant services under this Contract. Prior to changing any key personnel, especially those key personnel COUNTY relied upon in making this Contract, CONTRACTOR will obtain the approval of COUNTY. The key personnel include the following staff:

Tim E. Pickrell

Todd Cooper

Pedro Miranda

Jennifer Cospers

3. **COMPENSATION AND PAYMENT:**

3.1. **Rates.** In consideration of the services specified in this Contract, COUNTY agrees to pay CONTRACTOR in an amount not to exceed Three Hundred Thousand Dollars (\$300,000.00) per year, per the fee pricing for work as set forth in Exhibit A (one page).

3.2. **Price Increases.** It is the intention of both parties that pricing remain firm during the term of the Contract. Price increases will only be considered in conjunction with a renewal of the Contract. In the event that economic conditions are such that unit price increases are desired by the CONTRACTOR upon renewal of the Contract, CONTRACTOR will submit a written request to COUNTY with supporting documents justifying such increases at least ninety (90) days prior to the termination date of the Contract. It is agreed that the Unit Prices include compensation for the CONTRACTOR to implement and actively conduct cost and price control activities. COUNTY will review the proposed pricing and determine if it is in the best interest of COUNTY to renew or extend the Contract as provided for in Article 1 of this Contract.

3.3. **Invoices.** CONTRACTOR will submit invoices to COUNTY on a monthly basis or upon completion of a specific task, whichever is sooner. CONTRACTOR will provide COUNTY with a letter report detailing activities performed as a part of each invoice. COUNTY may refuse to pay any amount for which CONTRACTOR fails to timely bill County, and will, pursuant to A.R.S. § 11-622(C), refuse to pay any amount invoiced more than six months after the services were performed. In the event that a task or any part of a task is terminated prior to completion, CONTRACTOR will submit to COUNTY an itemized report of CONTRACTOR'S fees and/or costs up to the time of termination. COUNTY will review the report and approve a fair and equitable compensation to be paid to CONTRACTOR. Each invoice is payable within thirty (30) days of the date the invoice is received by COUNTY.

3.4. **Not-to-Exceed Amount.** Contractor will not provide goods and services in excess of the Exhibit A Line item and Contract Amounts without receiving prior written authorization by an amendment executed by COUNTY. Services provided in excess of Line item or Contract Total Amounts without a fully executed amendment to this Contract are at CONTRACTOR'S own risk.

3.5. **Payment Corrections.** For the period of record retention required under Section 21 below, COUNTY reserves the right to question any payment made under this Contract and to require reimbursement therefore by setoff or otherwise for payments determined to be improper or contrary to the Contract or applicable law.

4. **INSURANCE:** The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. CONTRACTOR will furnish Pima County with certificates of insurance for the coverages required by this Contract.

4.1 **Minimum Scope and Limits of Insurance:**

CONTRACTOR shall procure and maintain, until all obligations have been discharged, insurance coverages with limits of liability not less than those stated below.

4.1.1 **Professional Liability (Errors and Omissions) Insurance** – Policy limits of \$1,000,000 Each Claim and \$2,000,000 Annual Aggregate. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, CONTRACTOR warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this Contract is completed.

4.1.2 **Workers' Compensation and Employers' Liability** – Arizona statutory requirements and benefits for workers' compensation as required for employers of one or more employees. The policy shall contain a waiver of subrogation endorsement.

Note: The Workers' Compensation requirement shall not apply to a CONTRACTOR that is exempt under A.R.S. § 23-901, and when such CONTRACTOR executes the appropriate Pima County Sole Proprietor or Independent CONTRACTOR waiver form.

4.2 **Approval and Modifications:**

Pima County Risk Management reserves the right to review or make modifications to the insurance requirements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

5. **INDEMNIFICATION:** CONTRACTOR will indemnify, defend, and hold harmless COUNTY, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any act, omission, fault or negligence by the CONTRACTOR, its agents, employees or anyone under its direction or control or on its behalf in connection with performance of this Contract.

6. **COMPLIANCE WITH LAWS:** CONTRACTOR will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract. The laws and regulations of the State of Arizona govern the rights of the parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract must be filed and maintained in a court of the State of Arizona in Pima County. Any changes in the governing laws, rules, and regulations during the terms of this Contract apply, but do not require an amendment.

7. **INDEPENDENT CONTRACTOR:** The status of the CONTRACTOR is that of an independent contractor. Neither CONTRACTOR, nor CONTRACTOR'S officers, agents or employees are considered an employee of Pima County or are entitled to receive any employment-related fringe benefits under the Pima County Merit System. CONTRACTOR is responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Contract and will indemnify and hold COUNTY harmless from any and all liability which COUNTY may incur because of CONTRACTOR'S failure to pay such taxes. CONTRACTOR is solely responsible for program development and operation.

8. **SUBCONTRACTOR:** CONTRACTOR will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor and of persons for whose acts any of them may be liable to the same extent that the CONTRACTOR is responsible for the acts and omissions of persons directly employed by it. Nothing in this contract creates any obligation on the part of COUNTY to pay or see to the payment of any money due any subcontractor, except as may be required by law.

9. **ASSIGNMENT:** CONTRACTOR will not assign its rights or obligations under this Contract, in whole or in part, without prior written approval of COUNTY. Approval may be withheld at the sole discretion of COUNTY, provided that COUNTY will not unreasonably withhold such approval.
10. **NON-DISCRIMINATION:** CONTRACTOR agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this contract as if set forth in full herein, including flow down of all provisions and requirements to any subcontractors. During the performance of this contract, CONTRACTOR will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.
11. **AMERICANS WITH DISABILITIES ACT:** CONTRACTOR will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
12. **AUTHORITY TO CONTRACT:** CONTRACTOR warrants its right and power to enter into this Contract. If any court or administrative agency determines that COUNTY does not have authority to enter into this Contract, COUNTY is not liable to CONTRACTOR or any third party by reason of such determination or by reason of this Contract.
13. **FULL AND COMPLETE PERFORMANCE:** The failure of either party to insist on one or more instances upon the full and complete performance with any of the terms or conditions of this Contract to be performed on the part of the other, or to take any action permitted as a result thereof, is not a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.
14. **TERMINATION FOR CONFLICT OF INTEREST:** This Contract is subject to cancellation for conflict of interest pursuant to A.R.S: § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.
15. **TERMINATION OF CONTRACT FOR DEFAULT**
 - 15.1. Upon a failure by CONTRACTOR to cure a default under this Contract within ten (10) days of receipt of notice from COUNTY of the default, COUNTY may, in its sole discretion, terminate this Contract for default by written notice to CONTRACTOR. In this event, COUNTY may take over the work and complete it by contract or otherwise. In such event, CONTRACTOR is liable for any damage to the COUNTY resulting from CONTRACTOR's default, including any increased costs incurred by COUNTY in completing the work.
 - 15.2. The occurrence of any of the following, without limitation to the named events, constitutes an event of default:
 - 15.2.1. Abandonment of or failure by CONTRACTOR to observe, perform or comply with any material term, covenant, agreement or condition of this Contract, or to prosecute the work or any separable part thereof with the diligence that will insure completion within the time specified in this contract, including any extension, or a failure to complete the work (or the separable part of the work) within the specified time;
 - 15.2.2. Persistent or repeated refusal or failure to supply adequate staff, resources or direction to perform the work on schedule or at an acceptable level of quality;
 - 15.2.3. Refusal or failure to remedy defective or deficient work within a reasonable time;
 - 15.2.4. Loss of professional registration or business or other required license or authority, or any curtailment or cessation for any reason of business or business operations that would substantially impair or preclude CONTRACTOR's performance of this Contract;
 - 15.2.5. Disregard of laws, ordinances, or the instructions of COUNTY or its representatives, or any otherwise substantial violation of any provision of the contract;
 - 15.2.6. Performance of work hereunder by personnel that are not qualified or permitted under state law or local law to perform such services;

15.2.7. Commission of any act of fraud, misrepresentation, willful misconduct, or intentional breach of any provision of this Contract; or

15.2.8. If a voluntary or involuntary action for bankruptcy is commenced with respect to CONTRACTOR, or CONTRACTOR becomes insolvent, makes a general assignment for the benefit of creditors, or has a receiver or liquidator appointed in respect of its assets.

15.3. For the purposes of paragraph 15.1 above, "receipt of notice" includes receipt by hand by CONTRACTOR's designated representative, by facsimile transmission with notice of receipt, or under the Notices clause of this Contract.

15.4. The rights and remedies of COUNTY in this Article are cumulative and in addition to any other rights and remedies provided by law or under this contract.

16. TERMINATION FOR CONVENIENCE

16.1. COUNTY reserves the right to terminate this Contract at any time and without cause by serving upon CONTRACTOR thirty (30) days advance written notice of such intent to terminate. In the event of such termination, the COUNTY'S only obligation to CONTRACTOR is payment for services rendered prior to the date of termination.

16.2. Notwithstanding any other provision in this Contract, COUNTY may terminate this Contract if for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining COUNTY or other public entity obligations under this Contract. In the event of such termination, COUNTY will have no further obligation to CONTRACTOR, other than to pay for services rendered prior to termination.

17. **NOTICE:** Any notice required or permitted to be given under this Contract must be in writing and be served by personal delivery or by certified mail upon the other party as follows:

County:

Keith Dommer, Director
Pima County Finance & Risk
Management
130 W. Congress, 5th Floor
Tucson, Arizona 85701
(520)724-8496

Contractor:

Tim Pickrell, Esq.
SQUIRE PATTON BOGGS (US) L.L.P.
1 E. Washington Street, Suite 2700
Phoenix AZ 85004
(602) 528-4000

18. **NON-EXCLUSIVE CONTRACT:** CONTRACTOR understands that this Contract is nonexclusive and is for the sole convenience of COUNTY. COUNTY reserves the right to obtain like services from other sources for any reason.

19. **REMEDIES:** Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

20. **SEVERABILITY:** Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law is ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

21. BOOKS AND RECORDS

21.1. **Inspection.** CONTRACTOR will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of COUNTY.

21.2. **Retention.** In addition, CONTRACTOR will retain all records relating to this contract at least five (5) years after its termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

22. LEGAL ARIZONA WORKERS ACT COMPLIANCE:

22.1. **Warranty of Compliance.** CONTRACTOR hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to CONTRACTOR'S employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). CONTRACTOR will further ensure that each subcontractor who performs any work for CONTRACTOR under this contract likewise complies with the State and Federal Immigration Laws.

22.2. **Books & Records.** COUNTY has the right at any time to inspect the books and records of CONTRACTOR and any subcontractor in order to verify such party's compliance with the State and Federal Immigrations Laws.

22.3. **Breach; Cure.** Any breach of CONTRACTOR'S or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting CONTRACTOR to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, CONTRACTOR will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, (subject to COUNTY approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

22.4. **Subcontractors.** CONTRACTOR will advise each subcontractor of COUNTY'S rights, and the subcontractor's obligations, under the Article by including a provision in each subcontract substantially in the following form:

"SUBCONTRACTOR hereby warrants that it will at all time during the term of this contract comply with all federal immigration laws applicable to SUBCONTRACTOR'S employees, and with the requirements of A.R.S. § 23-214 (A). SUBCONTRACTOR further agrees that COUNTY may inspect the SUBCONTRACTOR'S books and records to insure that SUBCONTRACTOR is in compliance with these requirements. Any breach of this paragraph by SUBCONTRACTOR is a material breach of this contract subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this contract."

22.5. **Costs.** Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of CONTRACTOR. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of CONTRACTOR'S approved construction or critical milestones schedule, such period of delay is excusable delay for which CONTRACTOR is entitled to an extension of time, but not costs.

23. **GRANT COMPLIANCE:** Not Applicable

----- Rest of Page Left Intentionally Blank -----

24. **ENTIRE AGREEMENT:** This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Contract may be modified, amended, altered or extended only by a written amendment signed by the parties.

IN WITNESS WHEREOF, the parties have affixed their signatures to this Contract on the date written below.

APPROVED::

SQUIRE PATTON BOGGS (US) L.L.P.

Chair, Board of Supervisors


By: Authorized Signer

Date

Timothy E. Pickrell
Name and Title (Please Print)

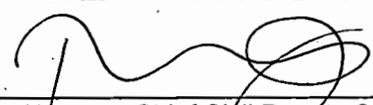
October 7, 2015
Date

ATTEST:

Clerk of Board

Date

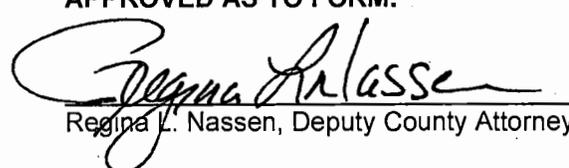
APPROVED AS TO CONTENT:



Tom Weaver, Chief Civil Deputy County Attorney

Date

APPROVED AS TO FORM:



Regina L. Nassen, Deputy County Attorney

Date

EXHIBIT A

For fixed rate for Election Bonds for "new money" purposes or any future bonds authorized by an election for which CONTRACTOR provided legal advice, sold by competitive sealed bids, a fee of \$1.00 per \$1,000.00 of proceeds per issue, with a minimum fee of \$20,000.00, for the first \$50,000,000.00 of proceeds; and \$0.75 per \$1000.00 of proceeds in excess of \$50,000,000.00. If an issue of such bonds is undertaken through other than competitive sealed bids, e.g. negotiated or accelerated bidding process, the fee would be 120% of the foregoing rates, due to the additional documentation, such as bond purchase agreements, and drafting work incorporating comments from the additional participants involved.

This work does not include work performed on the preparation of bond election proceedings which, for certain types of bonds, is prohibited by statute from being paid from bond proceeds. The fee for work on the preparation of bond election proceedings is \$20,000.00 per election.

For financing demanding more intensive or extensive bond counsel services, such as those through a municipal property corporation, lease-purchase agreements or certificates of participation therein, variable rate, tender option or refunding bonds, a fee for any particular financing of \$1.25 per \$1,000.00 of proceeds, with a minimum fee of \$25,000.00, for the first \$50,000,000.00 of proceeds; and \$0.90 per \$1,000.00 of proceeds for financings in excess of \$50,000,000.00. For a combined new money and refunding financing the fee will be calculated based on the proportionate share of each type bonds.

In addition, CONTRACTOR will bill for expenses at cost, such as photocopy, long distance telephone, faxes, legal advertising, printing and (when requested or authorized by COUNTY) out-of-state travel.

On transactions where COUNTY requests that the responsibilities of CONTRACTOR, as bond counsel, include the preparation of the official statement or take primary responsibility for disclosure issues or provide legal advice on interest rate swaps or other finance-related issues, such supplemental work will be billed at hourly rates discounted by at least ten percent (10%) for then-applicable standard rates.

CONTRACTOR acknowledges that COUNTY, at its option, may permit this Agreement to be utilized by other districts and entities related to COUNTY on the same terms.