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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, *ex rel.* MARK BRNOVICH, Attorney General, Plaintiff, v. SCOTTSDALE UNIFIED SCHOOL DISTRICT #48, an Arizona Political Subdivision; HUNT & CARAWAY ARCHITECTS, LTD., an Arizona corporation; BRIAN ROBICHAUX; JOHN/JANE DOES 1-100; XYZ CORPORATIONS 1-100, Defendants.	Case No: CV2018-003472 **CONSENT JUDGMENT WITH SCOTTSDALE UNIFIED SCHOOL DISTRICT #48** (Non-classified: Procurement Violations) (Assigned to the Hon. James Smith)

The State of Arizona, through its Attorney General, filed its Complaint in this action on February 22, 2018, acting on behalf of the general welfare and economy of the State. The Complaint alleges violations by the Scottsdale Unified School District No. 48 ("District") of the Arizona Procurement Code, A.R.S. § 41-2501 *et seq.*; A.R.S. § 15-213;

A.R.S. § 15-271; and A.A.C. R7-2-1001 *et seq.*

To resolve this matter, Defendant Scottsdale Unified School District No. 48 and the State have agreed to the entry of this Consent Judgment setting forth the following findings and ordering the following relief.

THEREFORE, the Court finds as follows:

FINDINGS

1. The causes of action alleged in the Complaint arose within Arizona. Plaintiff is the State. Defendant is an Arizona political subdivision. Venue in Maricopa County is proper for all claims pursuant to A.R.S. § 12-401(17).

2. This Court has jurisdiction, pursuant to A.R.S. §§ 12-1801 and 15-213(G), over the subject matter of this action and over the parties stipulating to the entry of the Consent Judgment.

3. In 2017, the Attorney General commenced an investigation of the purchasing and contracting activities of the District relating to the construction of school facilities.

4. The Attorney General's investigation was conducted in accordance with and within the scope of its statutory authority.

5. The Attorney General's investigation concludes and alleges that the District engaged in activities that violated the Arizona Procurement Code, A.R.S. § 41-2501 *et seq.*; A.R.S. § 15-213; A.R.S. § 15-271; and A.A.C. R7-2-1001 *et seq.* by, among other things:

a. hiring Brian Robichaux, an unlicensed architect, who participated in a construction manager at-risk committee meeting; and

b. allowing Brian Robichaux to unlawfully influence the construction manager at-risk committee voting process by contacting a non-District member of the selection committee and asking that non-District member to vote a certain way.

6. The District denies that it had any knowledge that there was no licensed architect on the selection committee for the construction manager at risk procurement for the Hohokam Elementary School project. The District denies that it had any knowledge of any attempt by Brian Robichaux to unlawfully influence the construction manager-at-risk selection process until the Complaint was filed.

7. To avoid the further expenditure of public funds in prosecuting and defending this case, the State and the District desire to resolve without trial any liability for or allegations of wrongdoing by the District under A.R.S. §§ 15-213 and 41-2616 and have consented to entry of this Consent Judgment.

8. Furthermore, the District has taken affirmative measures prior to the entry of this Consent Judgment to mitigate and ameliorate the State's alleged violations. These include:

a. Conducting an investigation in the fall of 2017 pertaining to six construction projects and the involvement of Brian Robichaux in procuring construction managers at risk for those projects;
b. Sharing the results of that investigation with the State;
c. Providing numerous documents to the State at no charge and without the necessity of a subpoena

d. Stopping construction at Hohokam Elementary School prior to the entry of the March 3, 2018 agreement between the District and the State;

e. Voluntarily conducting a second evaluation of the construction manager at risk selection for the remodel of the Cheyenne Traditional School;

f. Proactively procuring and retaining Clifton Larson Allen to conduct an examination of the District's procurement processes prior to the entry of this Consent Judgment.

9. Based on the foregoing, upon the Complaint, and upon the Stipulation to Entry of Consent Judgment annexed below, the Court finds itself fully apprised.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

APPLICABILITY

1. The provisions of this Consent Judgment shall apply to the District. So long as this Consent Judgment is in effect, the District shall be responsible to ensure that its Board, employees and agents act in conformity with the terms of this Consent Judgment.

TERM OF CONSENT JUDGMENT

2. Unless otherwise indicated, this Consent Judgment shall be in full force and effect for thirty-six (36) months following its entry. In the event that the Attorney General finds that the District has violated any of the Consent Judgment provisions and upon written notice to the District, the term of the Consent Judgment may be extended up to one year per violation.

PROVISIONS

The following provisions of the Consent Judgment will be effective immediately upon entry of the Judgment unless otherwise indicated:

3. The District, its Board, employees, and agents shall not engage in any conduct prohibited by A.R.S. § 15-213, the School Procurement Code, A.A.C. R7-2-1001 *et seq* (the "School Procurement Code"), the State of Arizona Auditor General Uniform System of Financial Records ("USFR"), or any other procurement rules or regulations adopted by the State of Arizona, the State of Arizona Auditor General, or the Arizona State Board of Education that apply to Arizona public school districts.

4. All District procurements above the sealed bid/proposal threshold amount, as set by applicable procurement law and District policies, shall strictly conform to the requirements set forth in the School Procurement Code, and all District procurements below the sealed bid/proposal threshold amount shall strictly conform to the USFR Competitive Purchasing requirements.

5. No goods or services subject to the School Procurement Code or USFR Competitive Purchasing requirements shall be accepted by the District unless properly procured, and no purchase order or contract for the purchase of goods or services shall be issued until after completion of an appropriate procurement or competitive purchasing process for such order or contract.

6. The District shall make a copy of the Consent Judgment available to the public in the

District's Administrative Offices.

7. The District shall obtain additional and ongoing training on the procurement and competitive purchasing requirements of the School Procurement Code and the requirements of the USFR that apply to procurement and issuance and processing of purchase orders. This training shall take place at least once per fiscal year. The training shall include the topics listed in Exhibit A to this Consent Judgment. The personnel who attend this training shall include the District's Superintendent, its Finance Director, all procurement personnel, all finance department personnel, and all employees or agents who it is reasonably expected will be involved in any of the District's competitive purchasing and procurement activities. At least ten calendar days before each training occurs, the District shall notify the Attorney General of the scheduled training and provide a copy of the training syllabus for approval. The Attorney General shall promptly review the syllabus and shall not unreasonably object to the content of the training or the persons conducting the training. No later than ten District work days after each training, the District shall provide to the Attorney General documentation identifying the District employees or agents who participated in the training. If a new employee is hired in a fiscal year after the training for that fiscal year has occurred, such person will receive such training within 90 days of their first day of work. Nothing in this order shall preclude the District from presenting training on-line, in installments, by holding training in one or more segments, or providing the training to separate groups at separate times. Nothing in this order shall preclude the District from using District personnel or outside legal counsel for conducting the training required in this paragraph.

8. In order to ensure that it has abided with procurement requirements prescribed by statute, the School Procurement Code, and the USFR, the District previously has competitively procured and retained, at the District's expense, an independent examiner to conduct examinations of the District's competitive purchasing and procurement practices (hereinafter "special procurement audits or examinations") to take place once each fiscal year commencing with fiscal year 2018-2019 and continuing until the end of the 2020-2021 fiscal year. The District shall conduct either a special procurement audit or special procurement examination (as the District chooses) for each fiscal year until the end of fiscal year 2020-2021 as previously procured or with another auditor or examiner if and when the contract with Clifton Larson Allen ends. The special procurement audits or examinations shall be separate and independent of the District's single audit and annual financial and compliance audits conducted pursuant to A.R.S. §15-914 and shall constitute an extensive and systematic review of the District's purchasing practices during the prior fiscal year that fall within the scope of review defined below in subparagraphs i - vi. The independent examiner shall not be precluded from serving as an auditor on separate matters. Special procurement audit or examination reports and all findings and information gathered by the independent auditors or examiners shall be reported to the Attorney General no later than September 1, 2019 (for the fiscal year 2018-2019 special procurement audit or examination) and September 1, 2020 (for the fiscal year 2019-2020 special procurement audit or examination) and September 1, 2021 (for the fiscal year 2020-2021 special procurement

audit or examination). Completion of these special procurement audits or examinations may extend beyond the term of this Consent Judgment.

a. For any examinations that are to be conducted pursuant to this Consent Judgment after the District's current contract with Clifton Larson Allen ends, the Attorney General shall review and approve the RFP for the procurement of the independent auditor or examiner for the special procurement audits or examinations and on request shall be provided copies of any proposals received in response to that RFP;
b. The auditors or examiners shall be provided a copy of the Complaint and Consent Judgment and be permitted to communicate with the Attorney General regarding any questions about these documents or the scope of the special procurement audits or examinations;
c. The Attorney General shall receive copies of all preliminary or draft special procurement audit or examination reports, as well as copies of District responses and final audit or examination reports; and
d. The Attorney General and any designees shall be permitted to attend the exit interviews for each special procurement audit or examination.
e. The scope of the special procurement audit or examination shall include but is not limited to:
    i. all procurements of major construction projects over One Million Dollars ($1,000,000);
    ii. all procurements of architects and engineers;
    iii. all sole source purchases;
    iv. all emergency purchases;
    v. all Cooperative Purchasing over One Hundred Thousand Dollars ($100,000);
    vi. and all procurements over One Hundred Thousand Dollars ($100,000).

The special procurement auditor or examiner is not required to examine those procurements that are subject to review by the Auditing Firm that conducts the District's annual financial and compliance audit pursuant to A.R.S. §15-914 or procurements by PTO or volunteer groups, procurements through the Arizona School Risk Retention Trust, procurements for purchases using student activity funds,or procurements of textbook and curricular materials.

9. The District shall pay to the Office of the Arizona Attorney General, Antitrust Revolving Fund, the sum of Five Thousand Dollars ($5,000.00) by November 5, 2018 for the costs of monitoring compliance with this judgment. Should the District fail to complete a special procurement audit or examination for fiscal years 2018-2019 or 2019-2020, the District shall pay an additional Five Thousand Dollars ($5,000.00) to the Office of the Arizona Attorney General for each fiscal year that a special procurement audit or examination was not completed.

10. No later than October 1, 2019 and again on October 1, 2020, and on October 1, 2021, and at other times at the request of the Attorney General, the District shall submit to the

Attorney General evidence of compliance with the provisions of this Consent Judgment.

11. The District shall self-report any violation of this Consent Judgment or of Arizona procurement statutes or rules to the Attorney General within five (5) business days of discovery of any violation.

12. The District shall fully cooperate with the Attorney General in the monitoring or enforcement of the Consent Judgment, in any ongoing investigation, or in any action concerning any matter that has or may arise from any investigation by the Attorney General into any acts or practices of the District, and shall provide access to its records and submit any supplemental reports requested by the Attorney General.

13. The Attorney General, or any independent auditor or examiner appointed by the Attorney General, on reasonable notice to the District, shall be permitted, subject to the reasonable convenience of the District and with minimal interference to the District's provision of educational services, and without the District's restraint or interference with:

a. Access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the District relating to any matters raised or that could have been raised in the Complaint or in this Consent Judgment ("Relevant Matters"); and

b. Access to interview Board Members, employees and agents of the District regarding Relevant Matters. Nothing precludes the District from having an attorney present at such an interview.

The determination of whether a matter is a Relevant Matter shall be in the discretion of the Attorney General in consultation with District counsel in the event of any dispute. If the dispute is unresolved, any party may ask the Court to resolve it.

14. Upon request of the Attorney General, the District shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Consent Judgment as may be identified in the request. This requirement shall be in addition to any notice or reporting requirements set forth above.

15. Nothing contained herein shall limit the rights of the State pursuant to its civil investigative authority or the Attorney General's right to contest any claim of attorney-client or work-product privilege relating to any matter that has or may arise from any investigation by the Attorney General into any acts or practices of the District.

RELEASE AND SETTLEMENT OF CLAIMS

16. The entry of this Consent Judgment constitutes a full and complete release by the State and the Attorney General of the District with respect to all past acts known or unknown relating solely to the civil claims set forth in the Complaint, except as to the obligations of the District ordered by the Court in this Consent Judgment.

17. The payment and performance as provided herein shall, upon completion, constitute settlement of all remaining claims the State may have against the District arising out of the conduct that is the basis for the State's Complaint in this action.

18. Nothing in this Consent Judgment shall be construed to release or to confer any right

whatsoever on any person other than the District and the State.

19. Nothing in this Consent Judgment shall be construed to be a finding of liability or wrongdoing on the part of the District with respect to the allegations in this matter.

20. Nothing in this Consent Judgment shall be construed to be an admission of liability or wrongdoing on the part of the District with respect to the allegations in this matter.

REMEDY ON DEFAULT

21. In the event the State believes the District has violated any provision of this Consent Judgment, after giving notice to the District, the State may move this Court for an order finding the District in default, upon affidavits stating the factual grounds therefore. In such an event, the District will be allowed to appear on reasonable notice at a hearing before the Court on the allegations that the District is in default and present evidence.

22. If the Court finds the District in default, the Attorney General may seek all remedies available at law or in equity.

23. In the event that the Attorney General finds that the District has violated any of the Consent Judgment provisions and upon written notice to the District and determination that a default has occurred in accordance with paragraphs 21 and 22, the term of the Consent Judgment may be extended up to one year per violation.

RETENTION OF JURISDICTION

24. Jurisdiction is retained by this Court for the purpose of enabling the State and the District to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or implementation of any of the provisions of this Consent Judgment, for the enforcement or compliance herewith, and for the punishment of any violations. Nothing in this provision shall give standing to any person not a party to this Consent Judgment to seek relief related to it.

AGREEMENT OF THE PARTIES

25. The State and the District have stipulated to entry of this Consent Judgment. All prior oral or written agreements, commitments or understandings with respect to the matters provided for herein, with the exception of the March 3, 2018 Agreement between the District and the State, are hereby set aside and no evidence of these shall be admissible in any proceeding for any purpose absent written consent of all parties to this Consent Judgment.

HEADINGS

26. Article headings contained in this Consent Judgment are inserted for convenience of reference only, and shall not be deemed to be part of this Consent Judgment for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions of it.

PUBLIC INTEREST

27. The Attorney General has determined entry of this Consent Judgment to be in the public interest.

DATED this _____ day of _____ 2018.

_____
The Honorable James Smith
Judge, Maricopa County Superior Court

STIPULATION TO ENTRY OF CONSENT JUDGMENT

The Scottsdale Unified School District, by and through its Superintendent, and the Scottsdale Unified School District Governing Board, by and through its President, after having had the opportunity to consult with legal counsel about the terms of this Consent Judgment, and the Arizona Attorney General, on behalf of the State of Arizona, agree that the Consent Judgment may be entered by the Court forthwith.

SCOTTSDALE UNIFIED
SCHOOL DISTRICT NO. 48

_____
By Dr. John Kriekard
Acting Superintendent

Date: _____

MARK BRNOVICH
Attorney General

_____
By Richard L. Baek
Assistant Attorney General

Date: _____

Approved by the Governing Board of the Scottsdale Unified School District by action taken the ____ day of _____ 2018.

_____
By Barbara Perleberg, Governing Board President

Approved by Counsel for the Scottsdale Unified School District No. 48:

_____	_____
By Susan Plimpton Segal	By Michelle G. Marshall
Gust Rosenfeld, PLC.	General Counsel
Dated: _____	Dated:_____