

October 14, 2022

MEMORANDUM TO: Honorable Mayor and City Council

THROUGH: Charles P. Potucek, City Manager  
Victoria Yarbrough, Assistant City Manager

FROM: Laura Wilson, Director of Parks, Recreation & Library

SUBJECT: REQUEST FOR AGENDA ITEM PLACEMENT  
RESOLUTION 2022-070, Authorization to proceed with an  
Intergovernmental Agreement between the City of Sierra Vista  
and the Cochise County Community College District

STAFF RECOMMENDATION:

The City Manager recommends approval.  
The Police Chief recommends approval.  
The Director of Public Works recommends approval.  
The Director of Parks, Recreation & Library recommends approval.

INITIATED BY:

Laura Wilson, Parks, Recreation & Library Director

BACKGROUND:

The Cochise County Community College District (Cochise College) originally developed plans to construct a new First Responders Academy at its Douglas campus. The College eventually determined it was more financially feasible to shift plans for the academy and other programs to Sierra Vista.

Part of the Academy will include a paved track to conduct public safety and other driver's safety training and certification programs, including CDL certification. City staff identified 10 underutilized acres of city-owned land located east of Fire Station 3 and west of the Sierra Vista Riding Club Arena appropriate for these purposes. Cochise College plans to construct the track, and when the property is not being used by the College, the City may use the property for driver's training, certification courses, activities, event overflow parking, and other public uses.

If approved, reservations for the jointly used space will be managed through the Department of Parks, Recreation & Library. In exchange for the land improvements, Cochise College will receive priority for usage at no cost, followed by official city uses, and then public use.

RESOLUTION 2022-070

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF SIERRA VISTA AND COCHISE COUNTY COMMUNITY COLLEGE DISTRICT; AND AUTHORIZING AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, both the City of Sierra Vista and the Cochise County Community College District recognize that the public is best served when costs are minimized with maximum benefits to governmental entities; and

WHEREAS, pursuant to Arizona Revised Statutes, Section 11-952, which allows contracts/agreements between public agencies for cooperative actions; and

WHEREAS, at times the City of Sierra Vista and/or Cochise County Community College District may have a need for land, property, equipment, personnel, services, and/or other assets that can be more efficiently and effectively provided through partnering with another governmental agency that may be in possession or have access to these assets.

WHEREAS, Attachment A specifically agrees that the City of Sierra Vista shall allow Cochise County Community College District to construct a driver's safety course on City-owned property on parcel 10701007, and

WHEREAS, it is established policy of the City of Sierra Vista, most recently affirmed by Resolution 2022-062, to work in partnership with the Cochise County Community College District for improved service to the public.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, AS FOLLOWS:

SECTION 1

The policy of the City of Sierra Vista, relating to entering into intergovernmental agreements when in the best interest of its residents, hereby is reaffirmed.

SECTION 2

That the intergovernmental agreement between the Cochise County Community College District and the City of Sierra Vista for the purpose of sharing property, facilities, equipment, personnel, services, and/or other assets; and construction and shared use of a driving track; attached and made a part hereof as Attachment A, is approved.

SECTION 3

The City Manager, City Clerk, City Attorney, or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this Resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, THIS 27<sup>TH</sup> DAY OF OCTOBER 2022.

\_\_\_\_\_  
Frederick J. Mueller  
Mayor

Approval as to Form:

Attest:

\_\_\_\_\_  
Nathan Williams  
City Attorney

\_\_\_\_\_  
Jill Adams  
City Clerk

Prepared by:  
Laura Wilson, Director of Parks, Recreation & Library

**INTERAGENCY GOVERNMENTAL AGREEMENT**

**BETWEEN**

**THE CITY OF SIERRA VISTA**

**AND**

**COCHISE COUNTY COMMUNITY COLLEGE DISTRICT**

**FOR**

**PARTNERSHIP BETWEEN AGENCIES**

This Interagency Governmental Agreement (hereinafter referred to as AGREEMENT) is entered into in accordance with Arizona Revised Statutes, Section 11952, -on this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Sierra Vista, a municipal corporation, organized under the laws of the State of Arizona (hereinafter referred to as CITY) and Cochise County Community College District (hereinafter referred to as AGENCY).

**BACKGROUND AND INTENT**

WHEREAS, both parties acknowledge that it is in the best interest of the local taxpayers to minimize costs and maximize benefits to both parties; and

WHEREAS, pursuant to Arizona Revised Statutes, Section 11-952, which allows contracts/agreements between public agencies for cooperative actions, CITY and AGENCY desire to enter into an Interagency Governmental Agreement.

WHEREAS, at times the CITY and/or AGENCY may have a need for land, property, equipment, personnel, services, and/or other assets that can be more efficiently and effectively provided through partnering with another governmental agency that may be in possession or have access to these assets.

THEREFORE, in consideration of the mutual promises contained in this agreement, and of the mutual benefits to result there from, parties agree as follows:

## **SCOPE**

The CITY and/or AGENCY agrees to provide access and/or services to each other as set forth in the attached Schedules subject to the terms and conditions set forth herein. The services pursuant to this AGREEMENT are provided solely to the CITY and AGENCY for the purposes described herein.

The CITY and/or AGENCY shall provide a list of items to be serviced and/or or services to be performed under this AGREEMENT to facilitate service and accurate invoicing/billing information, if/when applicable. The facilities, services, and/or items that will be subject to this AGREEMENT are listed in the attached Schedules.

The terms, facilities, services, and/or items may be edited by the CITY or AGENCY at any time by mutual consent by both parties. 60 days' notice shall be provided prior to instituting any changes to the terms detailed in the attached Schedule(s).

CITY and/or AGENCY personnel will perform the services identified herein and in the attached Schedule(s) in accordance with generally accepted practices and procedures. Post-service issues shall be remedied upon notice by one party to the other that an issue exists, and both parties agree to attempt to reach a mutually acceptable solution in a timely manner.

CITY and AGENCY agree to meet on an as needed basis to evaluate costs, expenses, and adjust terms, if needed, by mutual agreement in order to ensure a mutually beneficial partnership.

## **TERM**

The initial term of this AGREEMENT shall be from \_\_\_\_, 2022, through \_\_\_\_, 2023. Thereafter, it shall be deemed renewable for successive one-year terms as of July 1 of each year, unless terminated by mutual written agreement of both parties, or pursuant to the conditions of this AGREEMENT.

## **TERMINATION, DEFAULT, AND REMEDIES**

Either party may request termination of this AGREEMENT with a 60-day prior written notice.

If either the AGENCY or the CITY fails to honor the terms of this agreement to include timely payment of agreed upon fees, if any, the party at fault shall be deemed to be in default to the other party.

If either party, after written notice, fails to remedy any default within 30 days, or if the remedy requires more than 30 days or fails to begin and diligently pursue remedy of the default within 30 days, the affected party may, at its option, terminate this AGREEMENT by providing written notice of such termination to the other party. The aggrieved party may also pursue any other remedies available to it under applicable law by reason of party's default.

### **INSURANCE**

It is understood that AGENCY and CITY are both public bodies in the State of Arizona. Each party shall maintain worker's compensation insurance as required by statute, general commercial liability insurance, property damage insurance and automobile liability insurance with respect to its activities under this AGREEMENT.

Except as may be required by statute, the liability insurance referred to above shall provide, as a minimum, liability coverage for not less than \$1,000,000 combined single limit.

The limits of the required insurance shall be adjusted in accordance with the maximum limit of liability imposed on political subdivisions of the State of Arizona during the term of this AGREEMENT.

The insurance shall stipulate that the coverage shall not terminate or be canceled without thirty days written notice first being given to the Insured Party's risk manager. If the insurance is canceled or terminated prior to termination of the AGREEMENT, the Insuring Party shall provide a new policy with the same or greater limits. The Insuring Party agrees to maintain continuous, uninterrupted coverage for the duration of the AGREEMENT and to provide the Insured Party with evidence thereof on an annual basis.

### **INDEMNIFICATION**

To the fullest extent permitted by law, each party shall defend, indemnify, and hold harmless the other party, its agents officers, officials and employees from and against all tortuous claims, damages, losses and expenses, including but not limited to attorney fees, court costs and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of each party, its agents or employees. It is each party's duty to defend, hold harmless and indemnify the other party, its agents, officers, officials

and employees shall arise in connection with any tortuous claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death or injury to, impairment or destruction of property including loss of use resulting there from caused by either party's acts, errors, mistakes, omissions, work or services in the performance or failure to perform under this AGREEMENT, including any employee of either party or any other person for whose acts, errors, mistakes, omissions, work or services either party may be legally liable. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

### **ADMINISTRATION OF AGREEMENT**

Each party shall designate a representative or representatives, notice of the same to be provided to the other party, who shall be jointly responsible for developing procedures to be utilized in fulfilling this AGREEMENT and providing other administrative services as necessary. Any disputes arising under this AGREEMENT which cannot be resolved by the above-mentioned representatives, shall be referred to the City Manager and AGENCY's designated representative for joint resolution. Disputes not resolved at this level shall be referred to binding arbitration to be conducted by a panel of three arbitrators, one selected by each party, and the third selected by the two arbitrators.

### **NOTICES**

Unless otherwise specified herein, any notice or communication required or permitted under this AGREEMENT shall be in writing and sent to the address given below for the party to be notified.

#### **CITY**

City of Sierra Vista  
1011 North Coronado Drive  
Sierra Vista, AZ 85635  
520-458-3315  
Attn: Chief Procurement Officer

#### **AGENCY**

Cochise College  
901 Colombo Ave  
Sierra Vista, AZ 85635  
520-452-2601  
Attn: Director of Procurement Services

### **ASSIGNMENT**

Neither party shall assign the rights or duties under this AGREEMENT to a third party without the written consent of the other party. Any such assignment in violation of this AGREEMENT will be grounds for termination of the AGREEMENT.

### **NON-DISCRIMINATION**

To the extent applicable, the parties shall comply with all laws and regulations, including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act and State Executive Order 75-5 which mandated all persons, regardless of race, religion, handicap, color, age, sex, political affiliation, or national origin shall have equal access to employment opportunities. All parties shall comply with the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap, with all federal regulations regarding equal employment opportunity, with relevant orders issued by the U.S. Secretary of Labor and with all applicable provisions of the Americans with Disabilities Act, Public Act 101-336, 42 U.S.C. Sections 12101-12213 and all applicable Federal Regulations under the Act, including 28 C.F.R. Parts 35 & 36.

### **RIGHTS OF PARTIES**

The provisions of this AGREEMENT are intended only to define the respective rights and obligations of the parties. Nothing expressed herein shall create any rights or duties of any nature or kind in favor of any third party.

### **SEVERABILITY**

The provisions of this AGREEMENT are severable to the extent any provision or application held to be invalid shall not affect any other provision or application of the agreement, which may remain in effect without the invalid provision, or application.

### **OTHER TERMS**



1. **WORKER'S COMPENSATION:** For purposes of workers' compensation, an employee of a Party to this Agreement, who works under the jurisdiction or control of, or who works within the jurisdictional boundaries of another Party pursuant to this intergovernmental agreement, is deemed to be an employee of both the Party who is her primary employer and the Party under whose jurisdiction or control or within whose jurisdictional boundaries she is then working, as provided in A.R.S. §23-1022(D). The primary employer of such employee shall be solely liable for payment of workers' compensation benefits for the purposes of this section. Each Party herein shall comply with the provisions of A.R.S. §23-1022(E) by posting the notice required.
2. **CONFLICT OF INTEREST.** This Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511 regarding Conflict of Interest.
3. **NO BOYCOTT OF ISRAEL.** In accordance with A.R.S. § 35-393.01, the parties certify that they are not currently engaged in, and for the duration of this Agreement agree not to engage in, a boycott of Israel, and will not adopt a procurement, investment, or other policy that has the effect of inducing or requiring a person or company to boycott Israel.
4. **INVALIDITY OF PART OF THE LEASE:** The parties agree that should any part of this Lease be held to be invalid or void, the remainder of the Lease shall remain in full force and effect with those offending portions omitted.
5. **IRAN/SUDAN:** Pursuant to A.R.S. §§ 35-391, *et seq.*, and 35-393, *et seq.*, the parties hereby warrant, and represent to each other that the parties and the parties' subcontractors do not have and shall not have a scrutinized business operation in either Sudan or Iran during the term of this Lease.
6. **COMPLIANCE WITH IMMIGRATION LAWS.** The parties hereby warrant that they will at all times during the term of this Agreement comply with all federal immigration laws applicable to the parties' employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together the "State and Federal Immigration Laws"). The parties shall further ensure that each sub-consultant who performs any work for the party under this Agreement likewise complies with the State and Federal Immigration Laws.
7. **INSPECTION AND AUDIT.** The parties agree to keep all books, accounts, reports, files, and other records relating to this Agreement for five (5) years after completion of the contract; and, in addition, agrees that such books, accounts, reports, files, and other records shall be subject to audit pursuant to A.R.S. § 35-214.
8. **PUBLIC RECORDS LAW.** Notwithstanding any other provision of the agreement, the parties understand that all of the other parties are public entities and, as such, are each subject to Arizona's public records law, A.R.S. § 39-121 *et. seq.*
9. **JURISDICTION AND APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of Arizona. Jurisdiction and venue for any action under this Agreement shall be in Cochise County, Arizona.

10. SURRENDER OF EQUIPMENT. If this AGREEMENT is terminated for any reason, AGENCY and CITY shall surrender any equipment provided by either to the other for the purposes of utilizing products or services pursuant to this AGREEMENT.

IN WITNESS WHEREOF, two identical counterparts of this AGREEMENT, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties hereinabove named on the date and year first above written.

Dated this \_\_\_ day of \_\_\_\_\_, 2022.

CITY OF SIERRA VISTA:

By: \_\_\_\_\_  
FREDERICK W. MUELLER, Mayor

COCHISE COLLEGE

By:   
J.D. ROTTWEILER, President

APPROVAL AS TO FORM:

\_\_\_\_\_  
NATHAN WILLIAMS  
City Attorney

APPROVAL AS TO FORM:

\_\_\_\_\_  
Jill Adams  
City Clerk

APPROVAL AS TO FORM:

\_\_\_\_\_  
CHRISTINE ROBERTS  
County Attorney

**Schedule A**  
**JOINT FACILITY USE AGREEMENT**

between

**The City of Sierra Vista**

and

**Cochise College**

**I. AGREEMENT TO USE:**

A. Subject to the availability of facilities, needs of the parties, and terms and conditions contained herein, the City permits Cochise College to use and modify the following City of Sierra Vista land to construct a driver's safety course to be used primarily for their First Responders Academy and CDL training activities at no cost.

- a. Approximately 10-acre parcel of land located behind Fire Station 3 in Sierra Vista. The parcel number is 10701007.

B. The City may utilize the property when not in use for the First Responders Academy for other city activities. The City will also permit the College to park vehicles utilized for First Responders Academy Training inside the gated property of the Pedro Castro Maintenance Facility located at 401 Giulio Cesare Ave, Sierra Vista, AZ 85635.

C. The College will request pre-approval by the City for all infrastructure improvement plans made on City property prior to the work taking place.

D. The City agrees to maintain approved and completed infrastructure improvements made to the property in perpetuity.

**II. USE OF FACILITIES**

A. **USE BY THE PARTIES:** Both the City and the College may obtain the use of said property by reserving it through the Department of Parks, Recreation & Library. The College's First Responders Academy Program and CDL Program will be given first priority for use of the driving course.

B. **SCHEDULING OF USES:** Both the City and the College shall endeavor to schedule planned uses as far in advance as is practical. Both parties shall execute the appropriate use document prior to the anticipated date of use unless otherwise agreed by the two parties.

C. **TERMINATION OR AMENDMENT OF USE AGREEMENTS:** Both the City and the College shall endeavor to accommodate scheduled use of the property. Both the City and the College reserve the right to terminate or amend agreements for facility use

for good cause. Due to scheduling demands, notice of an amendment for other than health or safety issues shall require five (5) business days' notice whenever possible. Terminations shall require consultation between the City Manager and College President or their authorized representatives.

III. ADMINISTRATION OF USE AGREEMENT: Each party shall designate representatives, who shall be jointly responsible for developing procedures necessary to effectuating the shared usage agreement, processing use agreements, and providing other administrative services. Disputes arising under this agreement, which cannot be resolved by the authorized representatives, shall be referred to the City Manager and College President for joint resolution.

IV. CONTROL OF FACILITIES USE: The CITY and AGENCY shall be responsible for determining use policies for their respective facilities. Both parties shall be responsible for providing written copies of relevant use policies where applicable. If violations of use policies are committed, each party will be responsible for notifying the other in writing. The CITY and the AGENCY must identify a single point of contact (POC) that is responsible for reporting and resolving issues. The CITY POC is Laura Wilson, Director of Parks, Recreation & Library; AGENCY POC is Jennifer Wantz, Executive Dean of Community Engagement. The parties agree that they shall not use or permit the shared land usage be used in any manner that is not in conformity with all federal, state, county, and municipal laws, rules, and regulations.

V. CONDITION OF PREMISES AT END OF USE PERIOD: At the completion of a use period, both parties shall return the facilities to the same condition as when the period began, allowing for reasonable wear. Both parties are responsible for any damages caused in excess of reasonable wear.

VI. SCOPE OF USE: Exclusive use of facilities in accordance with this agreement shall be limited to the period of time set forth in the use agreement, and the activities specified in such an agreement. Other restrictions as to the nature and scope of use may be part of any use agreement.

VII. ALTERATIONS, ADDITIONS, SUPPLIES AND MAINTENANCE, ADVERTISING

- A. PURCHASE AND INSTALLATION OF EQUIPMENT: The purchase and installation of equipment in leased facilities, by either party, is predicated on joint consultations and the approval of City Council and the District Governing Board, if required. In the event that equipment and fixtures are installed on the premises of the other party, such equipment and fixtures become the property of the owning party. The party removing the same will be responsible for repairing any damage caused by that removal.
- B. MAINTENANCE AND OPERATIONS COSTS: Both parties are responsible for the routine maintenance and operating costs of their respective facilities unless maintenance and operating costs are specifically addressed elsewhere in this agreement. Additional services will be charged at the current published rate agreed upon by mutual consent.

- C. SUPPLIES AND EQUIPMENT: Both parties are responsible for all incidental supplies required in conjunction with usage of the property. If either party requests the other to provide supplies, a method of payment shall be specified in the use agreement.
- D. ADVERTISING: Both parties may request promotion of each other's activities, programs, and services through the advertising medium(s) that makes the most sense to the other party, and as deemed appropriate by the approving party.

VIII. SUPERVISION OF PROGRAMS AND ACTIVITIES: Both parties shall provide qualified leaders, supervisors, coaches, and instructors as appropriate and necessary to ensure the safety and health of program participants.

IX. ASSIGNMENT: Neither party shall assign any rights nor duties under this Facility Use Agreement to a third party without the written consent of the other party. Any such assignment in violation of this Facility Use Agreement shall be grounds for termination of the agreement.

X. RIGHTS OF PARTIES: The provision of this Lease is intended to define the respective rights and obligations of the parties. Nothing expressed herein shall create rights or duties in favor of any third party.

ACCESS: Parties agree that each of the facilities is accessible under the Americans with Disabilities Act to the full extent required by law for municipal facilities and Cochise College facilities respectively.

**Land Description**  
between  
**The City of Sierra Vista**  
and  
**Cochise College**

**Eastern Section of Parcel 10701007**



10. SURRENDER OF EQUIPMENT. If this AGREEMENT is terminated for any reason, AGENCY and CITY shall surrender any equipment provided by either to the other for the purposes of utilizing products or services pursuant to this AGREEMENT.

IN WITNESS WHEREOF, two identical counterparts of this AGREEMENT, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties hereinabove named on the date and year first above written.

Dated this \_\_\_ day of \_\_\_\_, 2022.

CITY OF SIERRA VISTA:

By: \_\_\_\_\_  
FREDERICK W. MUELLER, Mayor

COCHISE COLLEGE

By:   
J.D. ROTTWEILER, President


APPROVAL AS TO FORM:

APPROVAL AS TO FORM:

\_\_\_\_\_  
NATHAN WILLIAMS  
City Attorney

\_\_\_\_\_  
Jill Adams  
City Clerk

APPROVAL AS TO FORM:

 10/12/2022  
CHRISTINE ROBERTS  
County Attorney  
CHIEF CIVIL Deputy County Attorney