

November 3, 2022

MEMORANDUM TO: Honorable Mayor and City Council

THRU: Charles P. Potucek, City Manager
Victoria Yarbrough, Assistant City Manager
Sharon G. Flissar, P.E., Director of Public Works

FROM: Chanel Kirkpatrick, Public Works External Services Manager

SUBJECT: REQUEST FOR AGENDA ITEM PLACEMENT
RESOLUTION 2022-075, Entering Into a New Intergovernmental Agreement with Patagonia Union High School to provide Commercial Driver's License (CDL) Training and Exam Licensure

RECOMMENDATIONS:

The City Manager recommends approval.
The Assistant City Manager recommends approval.
The Director of Public Works recommends approval.

INITIATED BY:

Patagonia Union High School

BACKGROUND:

The City of Sierra Vista employs a DOT certified and approved Trainer and Examiner, Bob Butterworth, who is legally permitted to train and test individuals to receive their CDL. Sierra Vista has been providing this service internally since 2013, and currently assists five other agencies to license staff according to Dept of Transportation's CDL requirements. Patagonia Union High School has requested the City of Sierra Vista provide such training to their selected staff. An IGA is necessary for the City of Sierra Vista to provide this service to Patagonia Union High School.

BUDGET APPROPRIATION:

Not Applicable

Attachment

RESOLUTION 2022-075

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH PATAGONIA UNION HIGH SCHOOL FOR DEPARTMENT OF TRANSPORTATION-APPROVED COMMERCIAL DRIVERS LICENSE TRAINING AND EXAM CERTIFICATION FOR LICENSURE; 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, Arizona Revised Statutes, Section 11-952 allows contracts/agreements between public agencies for cooperative actions, and

WHEREAS, The City of Sierra Vista voluntarily employs a DOT certified Trainer and Examiner for the purposes of licensing individuals in accordance with CDL regulations and requirements; and

WHEREAS, there is no current agreement in place for CDL Training and Exam Licensure with Patagonia Union High School; and

WHEREAS, both parties acknowledge that it is in the best interest of the local taxpayers to minimize costs of training and licensure, and to increase employability of the local labor resource by providing CDL Training and Exam Licensure; and

WHEREAS, Patagonia Union High School requested that the City of Sierra Vista review and approve the new IGA for CDL Training and Exam Licensure per DOT regulations; and

WHEREAS, both parties agree that City of Sierra Vista may only perform CDL Training and Exam licensure SO LONG AS The City of Sierra Vista voluntarily employs a DOT Certified Trainer and Examiner.

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

SECTION 1

That the Intergovernmental Agreement with Patagonia Union High School be, and hereby is approved.

SECTION 2

That 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 10TH DAY OF NOVEMBER 2022.

FREDERICK W. MUELLER
Mayor

Approval as to Form:

Attest:

NATHAN J. WILLIAMS
City Attorney

JILL ADAMS
City Clerk

Prepared by:
Chanel Kirkpatrick, Public Works External Services Manager



**INTERGOVERNMENTAL AGREEMENT (IGA)
WITH THE CITY OF SIERRA VISTA PUBLIC WORKS DEPARTMENT
To Provide Commercial Driver's License (CDL) Testing To Other Government Agencies'
Employees**

THIS AGREEMENT is made and entered into this 10th day of November, 2022, by and between **Agency Name: Patagonia Union High School, Address PO Box 254, Patagonia, City ST Zip__AZ, 85624, hereinafter designated as ("Contracting Agency")**, a municipal corporation, organized and existing under and by virtue of the laws of the State of Arizona; and the City of Sierra Vista, a municipal corporation, organized and existing under and by virtue of the laws of the State of Arizona, hereinafter, designated as the ("Sierra Vista").

WHEREAS The CONTRACTING AGENCY needs to have their employees licensed as CDL drivers; and in order to be licensed, the employee must pass the Arizona Department of Transportation (ADOT) approved CDL test; and

WHEREAS SIERRA VISTA has an employee on staff (Bob Butterworth) who is certified by ADOT as a CDL examiner, hereforth designated as "EXAMINER, and

WHEREAS SIERRA VISTA offers the services of its CDL test EXAMINER to CONTRACTING AGENCY and its employees; and

WITNESSETH: That SIERRA VISTA offers to provide CDL Testing to CONTRACTING AGENCY's staff on an as-needed basis for and in consideration of the sums to be paid to SIERRA VISTA, in the manner and at the time hereinafter provided, and of the other covenants and agreements herein contained, hereby agrees, for itself, all heirs, executors, administrators, successors, and assigns as follows:

ARTICLE I – SCOPE OF WORK:

SIERRA VISTA will:

1. Provide CDL testing services conducted upon mutual arrangement with the EXAMINER and the CONTRACTING AGENCY.
2. The EXAMINER shall test on all ADOT-required elements, including but not limited to pre-trip, skills, and road tests.
3. Mail or e-mail CONTRACTING AGENCY an invoice, payable to the City of Sierra Vista for all employees that take the test. SIERRA VISTA will also accept checks or money orders payable to City of Sierra Vista. Cash will not be accepted.

4. Examiner shall provide test results to the CONTRACTING AGENCY and the employee, only stating "pass" or "fail", and will follow ADOT reporting requirements.
5. Provide general liability insurance per ADOT requirements:
 - \$2,000,000 General Aggregate
 - Products – Completed Operations Aggregate \$1,000,000
 - Personal and Advertising Injury \$1,000,000
 - Blanket Contractual Liability – Written and Oral \$1,000,000
 - Damage to Rented Premises \$50,000
 - Each Occurrence \$1,000,000

CONTRACTING AGENCY will:

1. Provide to SIERRA VISTA, a copy of their liability insurance policy showing as additional insured: The City of Sierra Vista, its officials, employees, agents and volunteers.
2. Make arrangements with the EXAMINER regarding testing dates and times.
3. The CONTRACTING AGENCY shall be responsible for any applicable payment to their employees during the testing period for salary, travel, etc.
4. The CONTRACTING AGENCY shall provide their own vehicles for their employee's testing.
5. Payment shall be made on the day of the test via payment of a City of Sierra Vista invoice, check, or money order payable to City of Sierra Vista.
6. Pay all correct invoices within thirty (30) calendar days from receipt of the invoice.

ARTICLE II – CONTRACT TERM:

CONTRACTING AGENCY and SIERRA VISTA agree to perform said services for the period beginning as dated above. SIERRA VISTA and/or AGENCY shall have the right to terminate this agreement, or any renewal thereof, upon giving written notice to the other party.

ARTICLE III – PAYMENT: (See Exhibit A)

ARTICLE IV – INSURANCE PROVISIONS:

The subjects to be tested shall be employees of CONTRACTING AGENCY and CONTRACTING AGENCY shall have sole responsibility, at its expense, for providing workers compensation and all other insurance that is customarily maintained by CONTRACTING AGENCY for similarly situated employees of CONTRACTING AGENCY. CONTRACTING AGENCY shall indemnify and hold SIERRA VISTA harmless from any and all claims, damages, losses or expenses, including reasonable attorneys' fees, incurred by CONTRACTING AGENCY as a result of the acts or omissions of SIERRA VISTA's employees.

The Parties hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under a standard liability policy with extended coverage endorsement; provided, that this Paragraph shall be inapplicable if it would have the effect, but only to the extent that it would have the effect, of invalidating any insurance coverage of the parties.

ARTICLE V – FORCE MAJEURE

- A. In the event that the performance of any of the covenants of this agreement on the part of the SIERRA VISTA or CONTRACTING AGENCY shall be prevented by war, act of God, illness, physical disability, acts or regulations of public authorities or labor interruption or delay of transportation service or any other similar causes beyond their control, they shall be relieved of their obligation hereunder with respect to the activities so prevented for any of the foregoing reasons, and SIERRA VISTA is not able to reschedule, CONTRACTING AGENCY shall not be obligated to compensate SIERRA VISTA for its services and expenses incurred.

ARTICLE VI – MISCELLANEOUS PROVISIONS:

- A. Non-discrimination – Contractor agrees that he will not discriminate in any manner because of race, color, handicap, religion, sex or national origin, and to abide by all Federal and State laws regarding non-discrimination.
- B. Indemnification (Sierra Vista) – To the fullest extent permitted by law, CONTRACTING AGENCY shall defend, hold harmless, and indemnify the City of Sierra Vista, 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 any Contractor's acts, errors, mistakes, omissions, work, or services in the performance of this Contract including any employee of the Contractor, or any other person for whose acts, errors, mistakes, omissions, work, or services the Contractor may be legally liable.
- C. Indemnification (CONTRACTING AGENCY) – To the fullest extent permitted by law, SIERRA VISTA shall defend, hold harmless, and indemnify CONTRACTING AGENCY, 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 any Contractor's acts, errors, mistakes, omissions, work, or services in the performance of this Contract including any employee of the Contractor, or any other person for whose acts, errors, mistakes, omissions, work, or services the Contractor may be legally liable.

D. Nothing under this Agreement is intended, nor shall be construed, to create a partnership, employer-employee relationship, or joint venture between the parties. Neither party (nor their respective agents or employees) shall have any authority to bind the other party without the other party's express written consent.

Entire Agreement and Modifications.

This Agreement constitutes the entire agreement between both parties and supersedes all prior agreements, understandings and representations, both written and oral, between us with respect to the subject matter of this Agreement. Amendments, addenda and waivers to this Agreement will be effective only if made in writing and signed by both parties. Any additional or different terms or conditions contained in any purchase order, confirmation, receipt, invoice, or similar documents will not be binding on either party.

IN WITNESS THEREOF, the Parties hereto have caused this Contract to be executed by their duly authorized representatives as attested and witnessed as of the day and year date first above written.

CITY OF SIERRA VISTA:

FREDERICK W. MUELLER
Mayor

ATTEST:

Jill Adams,
City Clerk

APPROVED AS TO FORM:

Nathan J. Williams
City Attorney

CONTRACTING AGENCY:

Agency Name: Patagonia Union High School
(Signature on separate instrument)

Signature
Printed Name _Angelica Lucero_____
Title _Business Manager_____

AGENCY WITNESS / ATTEST:

(Signature on separate instrument)

Signature
Printed Name Kenny Hayes_____
Title _Superintendent_____

APPENDIX A

1. Testing Fees shall be **\$150 per person**
2. The employee is allowed three (3) attempts to take the test at no additional fee.

City of Sierra Vista Point of Contact:

Bob Butterworth

E-mail: Bob.Butterworth@SierraVistaaz.gov

Phone: 520-458-5775

CONTRACTING AGENCY Point of Contact:

Name: _____

Phone number: _____

E-mail: _____

Sierra Vista invoices shall be mailed or emailed to:

Agency Name: Patagonia Union High School

Address: PO Box 254, Patagonia AZ

City State Zip: 85624

Or email _____