

October 13, 2023

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: Gabriel M. Squires, Public Works Internal Services Manager

SUBJECT: REQUEST FOR AGENDA ITEM PLACEMENT  
RESOLUTION 2023-081, Entering into a new  
Intergovernmental Agreement with Whetstone Fire  
District for Fueling Services

RECOMMENDATIONS:

Enter into an Interagency Governmental Agreement (IGA) with Whetstone Fire District that allows the City of Sierra Vista to provide fueling services to Whetstone Fire District.

INITIATED BY:

Whetstone Fire District

BACKGROUND:

To minimize costs and maximize benefits, Whetstone Fire District has requested fueling services from the City of Sierra Vista.

BUDGET APPROPRIATION:

Not Applicable

ATTACHMENT(S):

See attached file: WFD & SV IGA Fuel

RESOLUTION 2023-081

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 WHETSTONE FIRE DISTRICT FOR FUELING SERVICES; 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, there is no current agreement in place for fueling services with Whetstone Fire District; and

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

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

WHEREAS, the City of Sierra Vista has fueling service Intergovernmental Agreements (IGAs) with other agencies, and

WHEREAS, Whetstone Fire District has requested that the City of Sierra Vista review and approve the new IGA for fueling services.

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 Whetstone Fire District, 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 26<sup>TH</sup> DAY OF OCTOBER, 2023.

\_\_\_\_\_  
CLEA McCAA II  
Mayor

Approval as to Form:

Attest:

\_\_\_\_\_  
NATHAN J. WILLIAMS  
City Attorney

\_\_\_\_\_  
JILL ADAMS  
City Clerk

Prepared by:  
Gabriel M. Squires, Public Works Internal Services Manager

**INTERAGENCY GOVERNMENTAL AGREEMENT (IGA)  
FOR FUELING SERVICES**

**BETWEEN**

**THE CITY OF SIERRA VISTA**

**AND**

**WHETSTONE FIRE DISTRICT**

This AGREEMENT, made and entered into by and between the City of Sierra Vista, a municipal corporation, hereinafter referred to as the "CITY", and Whetstone Fire District, Hereinafter referred to as the "AGENCY".

WHEREAS, the CITY and AGENCY have common Fleet Fueling needs, e.g. purchase of unleaded and diesel fuel for use in AGENCY vehicles; and

WHEREAS, by combining the CITY and AGENCY needs and resources, greater efficiencies and cost savings are possible; and

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

NOW, THEREFORE, pursuant to Arizona Revised Statutes (A.R.S.) §11-952, authorizing contracts between public agencies for cooperative actions, A.R.S. §15-341, and §14-342, and A.R.S. §41-2631 et seq., authorizing cities to enter into agreements with other political subdivisions for cooperative use of materials, services, warehousing facilities, capital equipment, and other facilities.

In consideration of the mutual promises contained in this agreement, and of the mutual benefits to result therefrom, parties agree as follows:

**TERM**

The initial term of this Agreement shall be from September 1, 2023 through June 30, 2024. 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**

Either party may request termination of this Agreement without cause upon providing thirty (30) days prior written notice to the other party. In the event either party is in

breach of this Agreement, the Agreement may be terminated after providing written notice with twenty (20) days to correct or remedy the breach. If said breach is not remedied, the Agreement shall terminate at the twenty (20) day period. The CITY will not be responsible to provide services after the date of termination. The AGENCY will not be responsible for any payments after the date of termination unless attributable to services provided prior to the date of termination. This Agreement may also be cancelled pursuant to the provisions of A.R.S. §38-511.

## **AGENCY RESPONSIBILITIES**

Fuel shall be sold to the AGENCY according to the formula stated in Exhibit A.

AGENCY's staff shall perform the actual fueling of its equipment.

The AGENCY shall comply with standard operating procedures and access rules as provided in Exhibit B, Fueling and Access Rules.

The AGENCY shall determine how many gate access cards will be needed. The CITY suggests one access card per employee or one access card per vehicle. Please be advised that the card will automatically deactivate if not used in a 6 month period.

The AGENCY will use the City-supplied key fob that contains the unique unit number programmed into it. The AGENCY must input the CURRENT MILEAGE for the vehicle before pumping. (Please note if the key fob and the mileage don't align the vehicle will not be approved for fueling, per system protocols. Only one fob will be assigned to a vehicle)

After fueling, please remember to hang up the hose.

To exit the gate, simply drive up to the gate and it will automatically open.

The AGENCY shall safeguard CITY facilities to ensure that damage does not occur due to AGENCY use of said facilities. The AGENCY shall be financially responsible for damage caused by AGENCY employees, whether accidental or intentional.

The AGENCY shall be responsible for its vehicles while on CITY property. Responsibility for vandalism or other damage to AGENCY property shall not confer upon the CITY, except in the case of negligence on the part of the CITY or its employees.

The AGENCY shall assume responsibility for any other areas agreed upon by the parties and specified by written amendment to the Agreement.

## CITY RESPONSIBILITIES

The CITY shall provide and maintain a modern fueling facility which is safe and efficient in the dispensing of fuel to AGENCY fleet and equipment. An adequate supply of diesel and unleaded fuel will be maintained by the CITY to support AGENCY fuel usage requirements. In the event that the CITY's fuel facilities become inoperable, the CITY shall provide a temporary backup fueling facility which meet AGENCY needs.

The CITY shall provide gate access cards to individuals or vehicles as determined by the AGENCY and one key fob per vehicle to be used by the AGENCY for fueling services, in accordance with rules as specified in Exhibit B.

## 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 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  
Attn: Chief Procurement Officer  
1011 N. Coronado Drive  
Sierra Vista, Arizona 85635  
Phone: 520-439-2165  
E-mail: [Procurement@sierravistaaz.gov](mailto:Procurement@sierravistaaz.gov)

### AGENCY

Whetstone Fire District  
Attn: Accounts Payable  
2422 N. Firehouse Lane  
Whetstone, AZ 85616  
Phone: 520-456-1717  
E-mail: [cdyer@whetstonefire.org](mailto:cdyer@whetstonefire.org)

## 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.

## **APPROVAL BY PARTIES**

Before this Agreement shall become effective and binding upon the parties, the appropriate governing authorities of each party must approve it. In the event that such appropriate authority fails or refuses to approve this Agreement, or any renewal hereof, it shall be null and void with no effect whatsoever. This Agreement shall be filed with the appropriate records.

## **REVISIONS**

Procedural and administrative changes to this Agreement may be made upon mutual written agreement of the City Manager and the Agency Designee.

## **INSURANCE**

The CITY and the AGENCY agree to maintain adequate insurance including Workers' Compensation to insure their respective employees.

**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.

## **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.

**CONFLICT OF INTEREST**

This Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511 regarding Conflict of Interest.

**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.

**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.

**INSPECTION AND AUDIT**

The parties agree to retain and dispose of all books, accounts, reports, files, and other records pursuant to the provisions of the Arizona State Library, Archives & Public Records General Records Retention Schedule for All State and Local Agencies. The parties further agree that such books, accounts, reports, files, and other records shall be subject to audit pursuant to A.R.S. § 35-214.

**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.

**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.

**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.



**INDEPENDENT AGENCY**

It is understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other. An employee or agent of one party shall not be deemed or construed to be an employee or agent of the other party for any purpose whatsoever.

AGENCY understands that it is not entitled to compensation in the form of salaries, or to paid be vacation or sick days by the City, and that such days do not accumulate for the use of same at a later date.

AGENCY understands that the City of Sierra Vista will not provide any insurance coverage to the AGENCY including workmen's compensation coverage.

**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 contract, which may remain in effect without the invalid provision, or application.

IN WITNESS WHEREOF, two (2) 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.

**APPROVED BY:**

**APPROVED BY:**

WHETSTONE FIRE DISTRICT

CITY of SIERRA VISTA



\_\_\_\_\_

(Bruce Harris)  
Board Chairman

Clea McCaa II, Mayor  
City of Sierra Vista

8/16/23

\_\_\_\_\_

Date

Date

**ATTEST:**

**ATTEST:**



\_\_\_\_\_

Agency Clerk,  
Title

Jill Adams, City Clerk  
City of Sierra Vista

Pursuant to A.R.S. §11-952, this Agreement has been reviewed by legal counsel for each party to determine it is in proper form and is within the power and authority granted under the laws of the State of Arizona to the respective client agency.

APPROVED AS TO FORM:

APPROVED AS TO FORM:



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Kris Carlson, Deputy County Attorney  
Whetstone Fire District

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Nathan J. Williams, City Attorney  
City of Sierra Vista

**EXHIBIT A  
CITY OF SIERRA VISTA FUEL SERVICES  
FEE SCHEDULE**

**FUEL:**

The CITY shall distribute fuel to the AGENCY for the actual price per gallon paid by the CITY plus a five-cent (\$0.05) per gallon flowage fee for fuel pumped by the AGENCY.

If the AGENCY requests the CITY submit the billing information through Voyager, a three and one-half percent (3.5%) fee per transaction will be charged by the fuel vendor under the State's fuel contract for processing billing and payment of fuel purchased at the CITY's fuel site by the AGENCY.

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**EXHIBIT B**  
**CITY OF SIERRA VISTA FUEL SERVICES**  
**FUELING AND ACCESS RULES**

**HOURS OF OPERATION**

The fueling site is operated on a 24-hour/7-day schedule.

**CITY CONTACT DURING WORKING**

Monday through Friday from 7 a.m. to 4:30pm except holidays, the local phone contact is the Public Works Operations at (520) 458-5775.

**AREA MAINTENANCE**

The City of Sierra Vista shall maintain the area as the City's budget allows.

Pavement: The City of Sierra Vista will provide pavement maintenance, striping and sweeping. The City will repair the pavement for normal wear and tear, pavement seal and re-stripe as-needed. The City will provide weed control within the paved areas.

Lighting: The City will maintain the lighting system as needed.

Trash: The City will provide a location for deposit of trash and litter. It is the responsibility of the AGENCY to keep the areas free of all its trash and debris.

Fencing: The City shall maintain the fencing system, and block wall for normal wear and tear.

Damage: The AGENCY will be responsible for any damage to fence line, pavement, lights, gates, landscaping, fueling equipment, walls or other fixtures located within the area that is caused by actions of the AGENCY's employees or guests.

Oil/Fuel Spills: The AGENCY shall report any oil or fuel spills that occur in the area, within one (1) hour after the spill has occurred. Call the City on-call number at 520-227-4713. It is the responsibility of the AGENCY to reimburse the CITY for the removal, cleanup, and repair of the pavement or dirt/landscape area where the spill has occurred.

**SECURITY**

The City of Sierra Vista does not provide security for the site other than existing fencing and lighting.

**SITE ACCESS**

The Public Works Access System controls access to the fueling site. An Access card will be provided to the AGENCY as described above.

Listing of Equipment: The AGENCY will provide to the City a current list of vehicles that require fueling services. The list shall provide at a minimum: vehicle number, make, model, year, type of fuel and fuel capacity.

**FUELING ACCESS**

Access to the fueling system is controlled by the Public Work's Fleet system. Access to the fueling system is provided for each vehicle requesting fueling services via a key fob. Only one key fob shall be provided for each vehicle per City's protocols.

**LOST OR DAMAGED CARDS**

It is the responsibility of the AGENCY to report any lost or damaged access cards or key fobs to the CITY. The City will replace at no cost any card or fob that does not work due to normal wear and tear.

- a. Lost or damaged Cards - The AGENCY will be responsible for the cost of any damaged or lost cards. The AGENCY can request replacement of a damaged or lost card by emailing the Human Resources department at [Marina.Leyva@sierravistaaz.gov](mailto:Marina.Leyva@sierravistaaz.gov). The cost of a replacement card is \$10.00 per card.
  
- b. Lost or Damaged Fobs - The CITY will replace any damaged or lost fobs at no cost to the AGENCY. Lost fobs may be replaced by emailing [Lawrence.platt@sierravistaaz.gov](mailto:Lawrence.platt@sierravistaaz.gov) or [john.lodes@sierravistaaz.gov](mailto:john.lodes@sierravistaaz.gov) during regular office hours.

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