

RESOLUTION 2014-024

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; AUTHORIZING THE CITY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH COCHISE COUNTY TO ALLOW EACH ENTITY TO LEASE NEEDED EQUIPMENT FROM THE OTHER ENTITY; 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, the City and the County are facing tighter budgets; and

WHEREAS, the City and the County have needs for equipment which they do not own; and

WHEREAS, there are occasions when the owner of the equipment is not using it and the other entity has a need to lease the equipment; and

WHEREAS, leasing the equipment from the entity will provide a cost savings for the Lessee and additional income for the Lessor; and

WHEREAS, it is in the mutual interest and benefit for Cochise County and the City of Sierra Vista, and the residents and businesses located within these jurisdictions, to enter into this intergovernmental agreement.

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 intergovernmental agreements, be, and hereby is, reaffirmed.

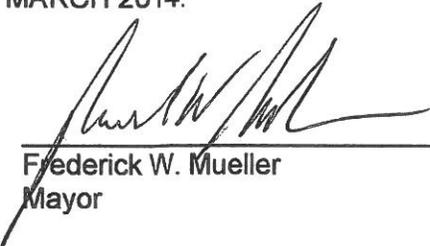
SECTION 2

The City Council hereby approves entering into an Intergovernmental Agreement with Cochise County to allow either entity to lease equipment that they do not have, but the other entity owns.

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.

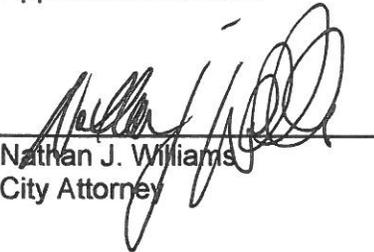
PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA THIS 27<sup>th</sup> DAY OF MARCH 2014.



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Frederick W. Mueller  
Mayor

Approval as to Form:



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Nathan J. Williams  
City Attorney

Attest:



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Jill Adams  
City Clerk

Prepared by:  
D. Michael Clawson, Procurement Manager

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
COUNTY OF COCHISE AND CITY OF SIERRA VISTA  
FOR  
LEASE OF EQUIPMENT**

**RECITALS**

**WHEREAS**, the County of Cochise (hereinafter "County") and the City of Sierra Vista (hereinafter "City") are both authorized to enter into intergovernmental agreements pursuant to A.R.S. § 11-952 for services or joint exercise of powers common to their respective jurisdictions; and

**WHEREAS**, from time to time, the County and the City are in need of equipment to perform services at various locations around Cochise County and in the City; and

**WHEREAS**, the County and City have personnel certified in the operation of the equipment, but at times, either party may not have the needed equipment available for its use; and

**WHEREAS**, during such times when the County and City have the equipment available and not in use, the Lessor owns the equipment and may lease the equipment to the Lessee, for an agreed upon rate; and

**WHEREAS**, if the Lessee in need of the use of the equipment does not have personnel certified in the operation of that particular equipment, or does not have certified personnel available, then the Lessor may provide the equipment and an operator, for an agreed upon rate; and

**WHEREAS**, it is in the County's and the City's interest to maximize economic return on their assets and, thus, it is in the interests of both parties to lease such equipment to the other at such times as it is not needed for the Lessor's purposes.

**NOW, THEREFORE**, the parties agree to the following terms:

**Purpose:** To make equipment available to the County or City at such times as the Lessor determines that, at its sole discretion, it is not needed for such purposes and the Lessor has a certified operator(s) available, if required, and at such times as the other Lessee determines that it has a need for the use of said equipment.

**Condition of Leased Equipment:** The Lessor of the equipment certifies that the equipment is in good operating condition and is fit and safe to be used for its intended purpose. An initial inspection of the equipment will be performed by both parties prior to the lease of the equipment. Upon return of the equipment, both parties will again perform an inspection of the equipment to ensure that it is being returned in good working condition, equal to the condition determined during the initial inspection, allowing for reasonable wear and tear. In the event the equipment is damaged during use or transport, the Lessee shall be liable for any necessary repairs needed to return the equipment back to its initial inspection condition.

**Maintenance and Operation:** The Lessee shall not remove, alter, disfigure or cover up any numbering, lettering, or insignia displayed upon the equipment, and shall see that the equipment is not subjected to careless, unusually or needlessly rough usage; and shall, at their own expense, maintain the equipment and its appurtenances in good repair and operative condition, and return it in such condition to Lessor, ordinary wear and tear resulting from proper use thereof alone expected.

**Repairs:** The expense of all repairs made during the rental period, including labor, material, parts and other items shall be paid by Lessee if it is determined that the repairs are warranted by misuse or above normal wear and tear.

**Operators:** Unless otherwise mutually agreed in writing, the Lessee shall supply and pay all operators on the equipment during the rental period. All operators shall be competent with that equipment and shall provide their own personal protective equipment. The Lessee shall provide and pay for all Workers' Compensation insurance and pay all payroll taxes required by law and applying to such operators and workers.

**Disclaimer of Warranties:** Lessor, being neither the manufacturer, nor a supplier, nor a dealer in the equipment, makes no warranties, express or implied, as to any matter whatsoever, including, without limitations, the condition of merchantability, its design, its capacity, its performance, its material, its workmanship, its fitness for any particular purpose, or that it will meet the requirements of any laws, rules, specifications, or contracts which provided for specific apparatus or special methods. Lessor further disclaims any liability whatsoever for loss, damage, or injury to Lessee or third parties as a result of any defects, latent or otherwise, in the equipment. The equipment is leased "as is". Lessor shall not be liable in any event to Lessee for any loss, delay, or damage of any kind or character resulting from defects in, or inefficiency of, equipment hereby leased or accidental breakage thereof.

**Indemnity:** Lessee shall indemnify the Lessor against, and hold Lessor harmless from, any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including attorneys fees, arising out of, connected with, or resulting from the equipment or the Lease, including without limitation, the manufacture, selection, delivery, leasing, renting, control, possession, use, operation, maintenance or return of the equipment. Lessee shall further indemnify Lessor, and hold Lessor harmless from all loss and damage to the equipment during the rental period. Lessee recognizes and agrees that included in this indemnity clause, but not by way of limitation, is Lessee's assumption of any and all liability for injury, disability and death of workers and other persons caused by the operation, use, control, handling, or transportation of the equipment during the Rental Period.

**Risk of Loss:** Lessor shall not be responsible for loss or damage to property, material, or equipment belonging to Lessee, its agents, employees, suppliers, or anyone directly or indirectly employed by Lessee while said material property, or equipment is in Lessee's care, custody, control or under Lessee's physical control. Lessee is encouraged to obtain appropriate equipment, material, or installation floater insurance against such risk of loss. Lessee and its insurers waive all rights of subrogation against Lessor for such losses.

**Inspection:** Lessee shall inspect the equipment after receipt thereof. (See Attachment "B" Equipment Inspection Report) Lessee, within said period of time, must give written notice to Lessor, specifying any defect in or other proper objection to the equipment. Lessee agrees that it shall be conclusively presumed, as between Lessor and Lessee, that Lessee has fully inspected and acknowledged that the equipment is in full compliance with the terms of this agreement, in good condition and repair, and that Lessee is satisfied with and has accepted the equipment in such good condition and repair. Lessor shall have the right at any time to enter the premises occupied by the equipment and shall be given free access thereto and afforded necessary facilities for the purpose of inspection.

**Insurance:** It is understood that Lessee and Lessor are both public bodies in the State of Arizona. Each party shall maintain worker's compensation insurance as required by statutes, 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.

**No Subletting Assignment:** No equipment shall be sublet by Lessee, nor shall he assign or transfer any interest in this Agreement without written consent of Lessor. Lessor may assign this Agreement without notice. Subject to the foregoing, this Agreement inures to the benefit of, and is binding upon, the heirs, successors, and assigns of the parties hereto.

**Lease Rate:** The parties agree that the Lessee and the Lessor will determine a fair and reasonable rate and minimum period of use (See attachment "A" Lease Rate), for any time the Lessee assumes physical control and possession of said equipment for its purposes, upon a determination by the Lessor that said equipment may be made available for use by the Lessee.

**Update of Rates:** Lessor reserves the right to periodically update lease rates predicated on reasonable increases and/or decreases in equipment and personnel costs. Lessor agrees to notify the Lessee within thirty (30) days of any rate changes.

**Disputes:** In the event of any dispute concerning lease or payment terms under this Agreement, the only remedy for either party is to terminate the Agreement.

**Duration:** This Agreement shall remain in effect, unless terminated by either party pursuant to terms below, for a period of one year from the effective date, and shall be subject to automatic renewal for successive one-year terms for a maximum period of five years, unless terminated by either party pursuant to terms below.

**Effective Date:** This Agreement shall become effective on the date that the last party to sign this agreement enters his or her signature.

**Termination:** This Agreement is subject to termination by either party, with or without cause, upon providing thirty (30) days' written notice.

**Notices:** All notices required by this Agreement may be submitted by first class mail to the following addresses:

**For the County:**

Terry Rutan  
Cochise County  
1415 Melody Lane, Bldg C  
Bisbee, AZ 85603

**For the City:**

D. Michael Clawson  
City of Sierra Vista  
1011 N. Coronado Drive  
Sierra Vista, AZ 85635

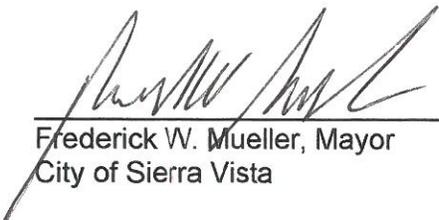
**No Separate Legal Entity:** No separate legal entity is created by this Agreement.

**Obligations Imposed by Law:** Nothing in this Agreement shall relieve either government entity of any obligation or responsibility imposed on it by law.

**Conflict of Interest:** This Agreement is subject to cancellation pursuant to A.R.S. § 38-511 for conflict of interest.

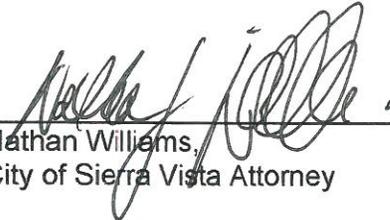
**THIS AGREEMENT** is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014

\_\_\_\_\_  
Ann English, Chairman  
Cochise County Board of Supervisors

  
\_\_\_\_\_  
Frederick W. Mueller, Mayor  
City of Sierra Vista

In accordance with A.R.S. § 11-952, undersigned counsel have determined that this Intergovernmental Agreement for Lease of Equipment is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

\_\_\_\_\_  
Adam Ambrose,  
Civil Deputy Cochise County Attorney

  
\_\_\_\_\_  
Nathan Williams,  
City of Sierra Vista Attorney

ATTEST:

ATTEST:

\_\_\_\_\_  
Arlethe Rios  
Clerk of the Board of Supervisors

  
\_\_\_\_\_  
Jill Adams  
Sierra Vista City Clerk