

RESOLUTION R-2022-31

A RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF WHEATON AND COMMUNITY UNIT SCHOOL DISTRICT 200 FOR THE PURCHASE OF FUEL

WHEREAS, the Intergovernmental Cooperation provisions of the Illinois Constitution and the Illinois Intergovernmental Cooperation Act (5ILCS 220/1 et seq.) authorize Intergovernmental Agreements by and between units of Illinois Government; and

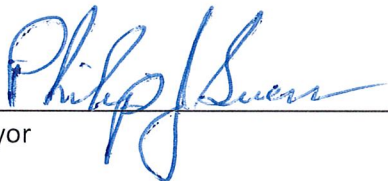
WHEREAS, the corporate authorities of the City of Wheaton, DuPage County and Community Unit School District 200 deem it reasonable and appropriate to enter into an Intergovernmental Agreement for the Purchase of Fuel; and

WHEREAS, both parties agree to the terms, conditions and pricing set forth in the Intergovernmental Agreement Between the City of Wheaton and Community Unit School District 200 for the Purchase of Fuel as set forth herein as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that:

The Mayor is hereby authorized to execute, and the City Clerk is hereby directed to attest to the Intergovernmental Agreement Between the City of Wheaton and Community Unit School District 200 for the Purchase of Fuel; and that a copy of that certain Intergovernmental Agreement is on file with the City Clerk's office as Exhibit A to this Resolution R-2022-31 and is hereby incorporated into this Resolution as if fully set forth herein.

ADOPTED this 18th day of April 2022.



Mayor

ATTEST:



City Clerk

Roll Call Vote:

Ayes: Councilman Weller
Councilman Barbier
Councilwoman Bray-Parker
Mayor Suess
Councilwoman Robbins

Nays: None
Absent: Councilman Brown
Councilwoman Fitch

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF WHEATON AND
COMMUNITY UNIT SCHOOL DISTRICT 200 FOR THE PURCHASE OF FUEL**

THIS AGREEMENT is made and entered into this 13th day of April, 2022, by and between the City of Wheaton, DuPage County, Illinois (hereinafter referred to as the "City") and Community Unit School District 200, DuPage County, Illinois (hereinafter referred to as the "School District"), pursuant to the Intergovernmental Cooperation provisions of the Illinois Constitution and the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.).

RECITALS

WHEREAS, the City owns and operates a fueling station for storing and dispensing gasoline for its municipal vehicles (hereinafter the "City Fueling Station") which is located at 821 W Liberty Drive, Wheaton, Illinois 60187; and

WHEREAS, the City is able to purchase fuel for the City Fueling Station in bulk at wholesale spot market prices; and

WHEREAS, the School District desires to recognize similar fuel cost savings by purchasing gasoline for its District vehicles from the City utilizing the City Fueling Station; and

WHEREAS, the City and the School District believe that allowing the School District to purchase gasoline for its vehicles from the City utilizing the City Fueling Station, are in the best interests of the residents of the City and the residents of the School District; and

WHEREAS, the City and School District have an existing agreement dated April 12, 1977, that is no longer reflective of the current use of the City Fueling Station; and

WHEREAS, the City and the School District are entering into this Agreement based upon the Intergovernmental Cooperation provisions of the Illinois Constitution and the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.), and such other applicable power and authority as may exist.

NOW, THEREFORE, for and in consideration of the promises and mutual understandings and agreements of the parties hereto, as hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed by the City of Wheaton, DuPage County, Illinois, and the Community Unit School District 200, DuPage County, Illinois, as follows:

Section 1. Incorporation of Preamble and Exhibits.

The Recitals to this Agreement and any exhibits thereto are hereby incorporated into this Agreement as if fully set forth in this Section 1.

Section 2. School District Access to City Fueling Station.

The City agrees to allow the School District to fuel its vehicles at the City Fueling Station throughout the term of this Agreement, on the following terms and conditions:

- a) Except as otherwise provided herein, the School District shall be permitted to fuel School District owned vehicles at the City Fueling Station without restriction whenever the City Fueling Station is open and operational;

- b) The City will assign one key fob to the School District for each vehicle in the School District fleet. That key fob shall be used by School District personnel to access the City Fueling Station when fuel is dispensed, in order to track the School's fuel consumption;
- c) The School District shall pay the City a per gallon rate equal to the rate paid by the City for each gallon of gasoline pumped by the School District;
- d) The School District shall also pay the City a service fee in the amount of \$0.10 per gallon ("Service Fee") for the cost of administration, operation, maintenance and future replacement of the fueling facility;
- e) The City shall invoice the School District once per month for all fuel dispensed to the School District for the period since the date of the last invoice, together with the Service Fee charges. The invoiced amount shall be the per gallon (or gallon equivalent) based on the most recent fuel purchase cost paid by the City charged by the vendor multiplied by the number of gallons (or gallon equivalent) dispensed together with the Service Fee;
- f) The School District shall pay all invoices received from the City within sixty (60) days of receipt from the City;
- g) The City Fueling Station shall not be used to dispense fuel into personal vehicles or containers that are not authorized or appropriate for such purposes;
- h) City vehicles shall have priority access to fuel facilities at all times;
- i) Drivers of unmarked School District vehicles shall present identification at the City Fueling Station if requested;
- j) The City's sale of fuel shall be limited to fuel necessary for the City's operations and the City does not guarantee that there will be sufficient fuel available for School District purchase, but the City shall attempt to maintain sufficient quantities of fuel based upon the School District purchase history; and
- k) School District personnel shall abide by all rules, regulations, guidelines and notices issued by the City or posted at the City Fueling Station.

Section 3. Repairs and Maintenance.

The City shall be responsible for all repair and maintenance of the City Fueling Station and the equipment related thereto, provided however the School District shall be responsible for any damage caused to the City Fueling Station or any related equipment by any School District personnel. The City reserves the right to temporarily suspend the School District's use of the City Fueling Station due to improvements thereto.

Section 4. Warranty Disclaimer and Assumption of Risk.

All fuel dispensed to the School District is purchased "as-is" and City makes no warranty, express, implied or otherwise, including, but not limited to any warranties of merchantability or fitness for a particular purpose. School District assumes all risk of injury, damage, and/or loss sustained by the School

District associated with the dispensing of fuel to School District owned vehicles and any and all activities of its personnel at the City's Fueling Station except as provided in Section 10.

Section 5. Term of Agreement.

The Intergovernmental Agreement shall be in effect for an initial five (5) year term commencing on May 1, 2022 and ending on May 1, 2027, and shall be automatically renewed from year to year thereafter, unless the City or the School District elect to terminate the Agreement by providing sixty (60) day written notice to the other party, prior to the end of the then current term. In the event of such notice by the City or the School District, this Agreement shall end and all rights, privileges, and understandings created hereunder shall cease at the end of the then current term. In the event of termination, City shall be entitled to compensation for all fuel dispensed to the School District prior to the effective date of termination, and School District shall return all key fobs to the City within seven (7) calendar days of the date of termination. Either party may terminate this Agreement for any reason with sixty (60) days written notice to the other.

Section 6. Notice.

Any notice required under this Agreement shall be sent by certified mail, return receipt requested, with sufficient postage attached thereto and shall be deemed given on the date of the post mark and shall be sent to:

If to the City: City of Wheaton
 300 W. Wesley Ave.
 Wheaton, IL 60187
 Attn: City Manager

With a copy to: City of Wheaton
 300 W. Wesley Ave.
 Wheaton, IL 60187
 Attn: City Attorney

If to the School District: Community Unit School District 200
 130 W. School Ave.
 Wheaton, IL 60189
 Attn: Assistant Superintendent for Business Operations

With a copy to: Community Unit School District 200
 130 W. School Ave.
 Wheaton, IL 60189
 Attn: Community Unit School District 200 Attorney

Section 7. Complete Agreement.

This Agreement, and any Exhibits attached hereto, shall represent the complete agreement and understanding of the parties hereto with respect to all matters regarding the subject matter of this Agreement. All prior agreements or understandings, whether written or oral, shall be of no force, effect or consequence.

Section 8. Amendment.

Any amendment to this Agreement must be in writing, signed by each of the parties, and adopted in the same manner as is required for adoption of this Agreement.

Section 9. Approval.

This Agreement shall not be effective unless each party shall approve this Agreement by ordinance or resolution after a lawful vote of its governing body.

Section 10. Indemnification.

The School District agrees to save, hold harmless, indemnify, and defend the City, its officials, officers and employees, from and against any and all claims and liability for all loss (including the quantity or quality of fuels received), damage, injury or death caused by or arising out of the performance of this Agreement or the failure to perform this Agreement except to the extent said loss, damage, injury or death is caused by the negligence of the City, its officials, officers or employees.

The City agrees to save, hold harmless, indemnify, and defend the School District, its officials, officers and employees, from and against any and all claims and liability for all loss (including attorney fees and the quantity or quality of fuels received), damage, injury or death caused by or arising out of the performance of this Agreement or the failure to perform this Agreement except to the extent said loss, damage, injury or death is caused by the negligence of the School District, its officials, officers or employees.

Section 11. Insurance.

At all times while this Agreement remains in effect, the School District and City shall procure adequate insurance and/or self-insurance to protect itself, its officers, employees and agents from any liability for bodily injury, death, and property damage in connection with the fueling of its vehicles and to provide sufficient coverage to comply with the indemnification provision set forth in Paragraph 10 of this Agreement.

Section 12. Benefit of Parties.

11. Notwithstanding any provision herein to the contrary, this Agreement is entered into solely for the benefit of the contracting Parties, and nothing in this Agreement is intended, either expressly or implied, to provide any right or benefit of any kind whatsoever to any person and/or entity who is not a Party to this Agreement or to acknowledge, establish or impose any legal duty to any third party. Nothing herein shall be construed as an express and/or implied waiver of any common law and/or statutory immunities and/or privileges of the City and/or Township, and/or any of their respective officers, employees, volunteers and/or agents; such immunities and privileges are expressly reserved.

Section 13. Severability.

This Agreement and every provision thereof, shall be considered severable. In the event that any court of competent jurisdiction may find and declare any word, phrase, clause, sentence, paragraph, provision or section or part of a phrase, clause, sentence, paragraph, provision or section of this agreement is void or unconstitutional, the remaining words, phrases; clauses; sentences, paragraphs and provisions and parts of phrases, clauses, sentences, paragraphs, provisions and sections not ruled void or unconstitutional shall continue in full force and effect.

Section 14. Multiple Counterparts.

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which taken together shall be deemed on (1) Agreement.

Section 15. Headings.

All Section headings contained herein are for convenient reference only and shall not be deemed a part of the text of this Agreement.

Section 16. Survival.

All obligations arising prior to the termination of this Agreement and the indemnity provision shall survive the termination of this Agreement.

WHEREFORE, the parties have executed this Agreement on the day and date first above written.

CITY OF WHEATON

By: _____

Mayor

Attest: _____

City Clerk

COMMUNITY UNIT SCHOOL DISTRICT 200

By: _____

Board President

Attest: _____

Secretary, School District