

59-R-18

A RESOLUTION

**APPROVING AN INTERGOVERNMENTAL AGREEMENT TO USE THE
VILLAGE OF WINNETKA FIRE TRAINING TOWER**

WHEREAS, the City of Evanston ("Evanston") and the Village of Winnetka ("*Winnetka*") are home rule municipalities in accordance with Article VII, Section 6 of the Constitution of the State of Illinois of 1970; and

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1, *et seq.*, authorize and encourage intergovernmental cooperation; and

WHEREAS, Winnetka is the record title owner of the property commonly known as the Village of Winnetka Public Works Facility located at 1390 Willow Road ("*Public Works Facility*"), which Public Works Facility includes a fire training tower ("*Training Tower*") for use by Winnetka Fire Department and its partner municipalities ("*Partner Municipalities*") to train, perform, or observe simulated fire rescue functions in conditions that simulate real fire conditions ("*Training Activities*"); and

WHEREAS, Evanston desires to be a Partner Municipality, and granted permission for Evanston firefighters and Evanston residents the ability to enter, occupy, and use the Public Works Facility, the Training Tower, and all appurtenances to the Training Tower (collectively, the "*Village Fire Training Facilities*") in order to perform the Training Activities; and

WHEREAS, the Parties desire to enter into the attached intergovernmental agreement to set forth the rights and obligations of Evanston and

Winnetka with respect to the Village Fire Training Facilities and the Training Activities (“Agreement”); and

WHEREAS, the Evanston City Council have determined that it will serve and be in the best interest of the City to enter into the Agreement with Winnetka;

NOW BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: Recitals. The City Council hereby adopts the foregoing recitals as its findings, as if fully set forth herein.

SECTION 2: The City Council hereby approves, pursuant to the City of Evanston’s home rule power, the Agreement in the form attached to this Resolution as Exhibit A.

SECTION 3: The City Council hereby authorizes and directs, pursuant to the City’s home rule power, the City Manager and the City Clerk to execute and seal, on behalf of the City, the Agreement with Village of Winnetka so long as the Agreement: (i) is in substantially the form attached to this Resolution as Exhibit A; and (ii) has been approved by the Corporation Counsel.

SECTION 4: This Resolution shall be in full force and effect from and after its passage and approval according to law.

Attest:



Devon Reid, City Clerk

Adopted: September 17, 2018



Stephen H. Hagerty, Mayor

Approved as to form:



Michelle L. Masoncup, Corporation Counsel

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT

**INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN
THE VILLAGE OF WINNETKA AND THE CITY OF EVANSTON
TO USE FIRE TRAINING TOWER**

THIS INTERGOVERNMENTAL AGREEMENT (“**AGREEMENT**”) is made and entered into as of the _____ day of _____, 20____ (“**Effective Date**”), and is by and between the **VILLAGE OF WINNETKA (“Village”)**, an Illinois municipal corporation, and the **CITY OF EVANSTON (“User”)** (collectively “**Parties**”).

IN CONSIDERATION OF, and in reliance upon, the recitals and the mutual covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

SECTION 1. RECITALS.

A. The Constitution of the State of Illinois, 1970, Article VII, Section 10, authorizes units of local government to contract or otherwise associate among themselves in any manner not prohibited by law or ordinance. In addition, the provision of the Intergovernmental Cooperation Act, (5 ILCS 220/1 et seq.), authorize and encourage intergovernmental cooperation.

B. The Village is the record title owner of the property commonly known as the Village of Winnetka Public Works Facility and located at the address commonly known as 1390 Willow Road in the Village (“**Public Works Facility**”), which Public Works Facility includes a fire training tower (“**Training Tower**”) for use by the fire departments of the Village and its partner municipalities, such as the User, to train, perform, or observe simulated fire rescue functions in conditions that simulate real fire conditions (“**Training Activities**”).

C. User, from time to time, desires to enter, occupy, and use the Public Works Facility, the Training Tower, and all appurtenances to the Training Tower (collectively, the “**Village Fire Training Facilities**”) in order to perform the Training Activities for its employees and citizen fire safety courses.

D. In the spirit of intergovernmental cooperation, the Village desires to grant User permission to enter, occupy, and use the Village Fire Training Facilities when the Village itself does not require their use or in conjunction with Training Activities performed jointly by the Village and the User.

E. The Parties desire to enter into this Agreement to set forth the rights and obligations of the Village and User with respect to the Village Fire Training Facilities and the Training Activities.

SECTION 2. USE AND CARE OF THE VILLAGE FIRE TRAINING FACILITIES.

A. **Terms of This Agreement.** The Parties acknowledge and agree that this Agreement and the terms and conditions contained herein shall govern any time User enters, occupies, or uses the Village Fire Training Facilities for the purpose of performing any Training Activities.

B. **Damage to Village Fire Training Facilities.** User agrees to pay for any damage to, or repairs necessary for, the Village Fire Training Facilities or to any other property of the Village that is caused by User’s employees, residents, agents, volunteers, or other representatives (collectively, the “**User Representatives**”). Per the Illinois Local Government Prompt Payment Act, the User shall pay for all damage within 60 days upon receiving notice from the Village.

C. **Modifications to Village Fire Training Facilities.** User shall not make any modifications or repairs to any of the Village Fire Training Facilities without the prior written approval of the Village.

D. **Vacation and Restoration of Village Fire Training Facilities.** User agrees to vacate the Village Fire Training Facilities on a date and time agreed upon by the Parties. Notwithstanding the foregoing, User agrees to immediately vacate the Village Fire Training Facilities upon request of the Village. User agrees that it has no holdover rights in any of the Village Fire Training Facilities. Upon vacation of the Village Fire Training Facilities by the User, the User agrees to restore the Village Fire Training Facilities into the same condition that they were in when it was first entered by the User, except for such normal wear and tear as is to be expected from customary use of the Village Fire Training Facilities.

E. **Assumption of Risk.** User acknowledges and agrees that it is User's responsibility to inspect the Village Fire Training Facilities before entering, occupying, or using them, and in entering, occupying, or using the Village Fire Training Facilities, User acknowledges that the Village Fire Training Facilities are in good repair, working condition, and fully operational, and that there are no defects to the Village Fire Training Facilities. User assumes all risks of damages to property or injuries, including, without limitation, any illnesses, serious bodily injury, or death caused by User's entrance into or occupation or use of the Village Fire Training Facilities. User covenants and agrees that in entering into this Agreement and by entering, occupying, and using the Village Fire Training Facilities, the Village Fire Training Facilities are provided "AS-IS, Where-IS" and Village is not representing, guaranteeing, or in any way being held responsible for the condition of the Village Fire Training Facilities, nor is the Village making any representations as to the suitability of the Village Fire Training Facilities for any intended purpose.

F. **Knowledge of Use and Safety Procedures.** User warrants that whomever enters, occupies, or uses the Village Fire Training Facilities, including but not limited to the User Representatives: (i) shall enter, occupy, and use the Village Fire Training Facilities with due care; (ii) is properly trained and in possession of any required licenses to operate the Village Fire Training Facilities; (iii) has read any applicable instruction manuals and safety instructions; (iv) and is aware of any and all safety equipment and procedures that should be worn or used for safe use of the Village Fire Training Facilities.

G. **Execution of Participation Agreement By Non-Employee User Representatives.** User agrees that, before any User Representative who is not an employee of the User ("*Non-Employee User Representative*") may enter, occupy, or use the Village Fire Training Facilities or perform any Training Activities, such Non-Employee User Representative must first execute the Participation Agreement attached to and by reference made a part of this Agreement as **Exhibit A ("*Participation Agreement*")**.

H. **Compliance With Laws.** User and User Representatives shall enter, occupy, and use the Village Fire Training Facilities and perform the Training Activities strictly in accordance with all federal, state, and local laws, rules, regulations, policies, and procedures, including any rules, regulations, policies, or procedures of the Village specifically pertaining to the entrance into or the occupation or use of any of the Village Fire Training Facilities or the performance of any Training Activities. User acknowledges and agrees that it is responsible for: (i) supervising the User Representatives at all times during User's entrance into or occupation or use of the Village Fire Training Facilities and performance of any Training Activities; and (ii) ensuring that the User Representatives abide by the terms of this Agreement, including but not limited to the required execution of the Participation Agreement in accordance with Section 2.G of this Agreement by any Non-Employee User Representative that User desires to enter, occupy, and use the

Village Fire Training Facilities and perform the Training Activities before that Non-Employee User Representative may enter, occupy, or use the Village Fire Training Facilities or perform any Training Activities.

I. No Operation by Contractors. Notwithstanding anything to the contrary contained in this Agreement, User shall not permit any contractor to enter, occupy, or use the Village Fire Training Facilities.

SECTION 3. HOLD HARMLESS

A. Insurance. User shall secure and maintain at all times during its entrance into and occupation and use of the Village Fire Training Facilities general liability insurance, and vehicle insurance of a type that covers the applicable class of any emergency vehicles or other vehicles used in performing the Training Activities at the Village Fire Training Facilities in types and amounts sufficient to protect User against any and all claims for injury or loss arising out of or related to the entrance into or occupation or use of the Village Fire Training Facilities by User. All such User insurance policies shall name the Village, its boards, committees, agents, and employees as additional insureds and this coverage shall be the primary insurance for such parties with respect to claims arising out of or related to the entrance into and occupation and use by the User of the Village Fire Training Facilities. User further agrees that any damage or claims arising during or as a result of User's entrance into, occupation or use of the Village Fire Training Facilities shall, in the sole discretion of the Village, be filed with User's insurance carriers, and not the insurance carriers of the Village.

B. Risk of Loss. User assumes and bear the entire risk of partial or complete loss, theft, damage, destruction, condemnation, requisition, or other interruption or termination of occupation or use of the Village Fire Training Facilities from any cause whatsoever, whether or not insured against, from the date and time of entrance into the Village Fire Training Facilities until the Village Fire Training Facilities is vacated and restored by the User. In the event that the Village Fire Training Facilities or any portion thereof are lost, stolen, destroyed, or damaged while being occupied or used by the User, User shall immediately notify the Village.

C. Indemnification. User agrees to indemnify and hold harmless the Village against all damages, liability, claims, losses, and expenses (including attorneys' fee) that may arise, or be alleged to have arisen, out of or in connection with User's entrance into or occupation or use of the Village Fire Training Facilities by the User Representatives, or the failure of the User or any User Representatives to abide by the terms or representations of this Agreement.

D. Limitation of Liability. The Parties covenant and agree that: (i) the Village shall not be liable for any consequential, special, incidental or indirect damages under this Agreement; and (ii) no elected or appointed official, or employee of the Village shall be personally liable, in law or in contract, to User as the result of this Agreement.

E. Release. User hereby fully and forever releases, waives, discharges, and covenants not to sue the Village or its officials, officers, employees, agents, or representatives regarding any and all claims, demands, damages, rights, or actions or causes of action, present or future, whether the claims are known, anticipated, or unanticipated, resulting from or arising out of the entrance into or occupation or use of the Village Fire Training Facilities, for any property damage, injury, illness, loss, liability, damages, or costs (each a "*Claim*" and collectively "*Claims*").

SECTION 4. GENERAL TERMS AND CONDITIONS

A. **Assignment.** User shall not assign its rights or responsibilities under this Agreement except upon the express prior written consent of the Village.

B. **No Property Interest.** It is specifically agreed and understood that this Agreement is for permissive, temporary use only and that the exercise of the rights and privileges granted in this Agreement shall not operate to create or vest any property right in and to the Village Fire Training Facilities or any portion thereof in User.

C. **Termination.** Either Party may terminate this agreement at any time by providing the other Party written notice; provided, that User shall not be permitted to terminate this Agreement while occupying or using any of the Village Fire Training Facilities and that Sections 2.E, 3.B, 3.C, 3.D, and 3.E shall survive termination.

D. **Amendments and Modifications.** No amendment or modification to this Agreement shall be effective unless and until it is reduced to writing and approved and executed by the Parties to this Agreement in accordance with all applicable statutory procedures.

E. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of User and the Village, and no other party shall be deemed a third-party beneficiary hereof, and accordingly, no third-party shall have the right to enforce the provisions of this Agreement. No claim as a third-party beneficiary under this Agreement by any person, firm, or corporation shall be made or be valid against the Village and its employees, officers, members, officials, agents, attorneys, and representatives.

The person signing this Agreement on behalf of the User is properly authorized by the User to sign this Agreement and bind the User to all provisions of this Agreement.

Dated this _____ day of _____, 20__.

VILLAGE OF WINNETKA

CITY OF EVANSTON

By: _____

By: _____

Its: _____

Its: _____

EXHIBIT A

PARTICIPATION AGREEMENT

PARTICIPATION AGREEMENT

I, _____ (*“Non-Employee User Representative”*), represent and warrant that I am a resident, agent, volunteer, or other representative of the CITY OF EVANSTON of _____ (*“User”*) who is not an employee of the User and is seeking to enter, occupy, and use property (*“Property”*) owned by the Village of Winnetka (*“Village”*), which Property includes, without limitation, a fire training tower, training facilities, equipment, fixtures, and appurtenances thereto, to train, perform, or observe simulated fire rescue functions in conditions that simulate real fire conditions (*“Training Activities”*) pursuant to the Intergovernmental Agreement entered into between the Village and the User as of as of _____, 20 ____.

I acknowledge that the Training Activities are high-risk activities, and hereby agree to assume the risk of any injuries, including death, and of any property loss, and of all expenses, costs, damages, and losses that I may sustain as a result of my performance of any and all activities associated with the Training Activities.

In consideration of the Village granting me permission to enter, occupy, and use the Property, I agree to seek relief and any other recompense from the User and not the Village in the event that I suffer any injury, property loss, or any other expenses, costs, damages, and losses as a result of my performance of the Training Activities or my entrance, occupation, and use of the Property.

I have read and fully understand this Participation Agreement and execute it of my own free will and without any reservation whatsoever.

Print Name of Non-Employee User Representative

Date

Signature of Non-Employee User Representative