



STAFF REPORT

DATE: March 7, 2017

CONSENT

ITEM #: 10

TO: City Council

FROM: Greg Malmquist, Fire Chief

AGENDA ITEM: Approval of Joint Powers Agreement for the East Metro Public Safety Training Facility

REVIEWED BY: Kristina Handt, City Administrator

BACKGROUND: This is our second year as a member of the JPA, which oversees the East Metro Public Safety Training Facility. As a member along with Maplewood, Oakdale and North Saint Paul, we oversee all operations at the facility and have unlimited use for training.

ISSUE BEFORE COUNCIL: Renewal of existing contract due to the cover and signature pages having been reformatted. No other changes.

PROPOSAL DETAILS/ANALYSIS:

FISCAL IMPACT: \$4,200.00 (\$200.00 per Firefighter) Annual Fee which will be covered by reimbursement from the MBFTE (Mn Board of Firefighter Training and Education) as well as budgeted training monies for rental of the facility.

OPTIONS:

RECOMMENDATION: Approve contract.

ATTACHMENTS: Copy of contract

JOINT POWERS AGREEMENT
EAST METRO PUBLIC SAFETY TRAINING FACILITY

THIS JOINT POWERS AGREEMENT (the "Agreement") is made on the ___ day of _____ 201_, by and among the Cities of Maplewood, North St. Paul, Lake Elmo and the Oakdale Volunteer Fire Department Inc.

RECITALS

A. Each Member to this Agreement has determined that it is in the best interests of their communities to undertake in a cooperative fashion the operation of a facility in the NORTH EASTERN portion of the Twin Cities metropolitan area to be used for the training of public safety disciplines.

B. It is more economical for the Members to jointly and cooperatively construct and operate a public safety training facility than for each Member to construct and maintain its own facility.

C. The Members are authorized pursuant to Minnesota Statutes, Section 471.59, to enter into agreements providing for the joint and cooperative exercise of powers common to them.

D. The Members desire to jointly and cooperatively exercise power common to them by jointly operating a public safety training facility in accordance with the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual understandings and agreements hereafter set forth, the Members agree as follows:

ARTICLE I

Section 1. Definitions.

When used in this Agreement, the following terms shall be defined as follows, unless a different meaning is clearly specified:

Association - The term "Association" shall be used to refer to East Metro Public Safety Training Facility Association which is formed by this Agreement.

Board - The term "Board" shall be used to refer to the governing body of this Association.

Board Member - The term "Board Member" shall be used to refer to an individual member of the Board, who is appointed in accordance with Article II, Section 2 to represent a Member municipality or public corporation of the Association.

Coordinator - The term "Coordinator" shall be used to refer to the person appointed by the Board to manage and coordinate the daily operation of the Facility.

Cost Sharing Formula

Full JPA membership - By January 1 of each year, each member will provide a department list to the board with the names of each firefighter for the purpose of determining the number of firefighters per department to be used in the fee calculation. Members will pay based on the number of firefighters in their agency for the year. (see Appendix A for pricing) Full JPA members will have access to the site 365 day per year, subject to scheduled availability, first priority for site scheduling, and a seat on the “Board” that governs the operation of the facility.

Hour Base JPA Members - By January 1 of each year, each Hour Based member will determine the estimated number of training hours to be prepaid for their agency for the upcoming year from the blocks listed. (see Appendix A for hourly blocks and pricing) Hour Based JPA members will have second priority for site scheduling, training provided for an agency Site Manager, and reduced hourly rates based on the number of hours selected.

Executive Board - The Executive Board shall be the body that oversees the day-to-day business of the Facility and shall consist of the Appointed Officials of the Board as defined in Article II Section 2 and an additional appointed member representing the City of Maplewood, the underlying landowner.

Facility - The term “Facility” shall be used to refer to the East Metro Public Safety Training Facility and shall include all structures, buildings and the grounds associated with the East Metro Public Safety Training Facility.

Hazardous Substance - The term “Hazardous Substance” shall be used to refer to any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law. Environmental Law refers to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 9601 et seq., the Federal Water Pollution Control Act, 33 U.S.C. 1201 et seq., the Clean Water Act, 33 U.S.C. 1321 et seq., the Clean Air Act, 42 U.S.C. 7401 et seq., the Toxic Substances Control Act, 33 U.S.C. 1251 ET SEQ., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing and hereafter enacted.

Major Improvement - The term “Major Improvement” shall be used to refer to any addition to or improvement to the Facility designated as a Major Improvement by the Board irrespective of value or any addition to or improvement to the Facility with a value at \$50,000 or greater.

Member - The term “Member” shall be used to individually refer to a municipal corporation or public corporation that is a party to this Joint Powers Agreement.

Operating Budget - The term "Operating Budget" shall be used to refer to the annual budget of operating expenses for the Facility, including but not limited to, maintenance and repair of the building and grounds, costs of utilities, maintenance and repair of all equipment associated with the building, supplies and materials associated with the operation of the Facility, personnel expenses associated with the Coordinator and other ordinary business expenses associated with the operation of the Facility, except for Major Improvements.

Public Safety Consumables - The term "Public Safety Consumable" refers to propane fuel , liquid smoke used in fire firefighting operations, fire extinguishing material, pallets and straw other than water, used in any firefighting training operation and other unique training supplies declared to be Public Safety Consumables by the Board.

Section 2. Plural and Singular References.

Unless a contrary intent is clearly demonstrated, a singular reference to a person or entity shall include the plural and a plural reference to persons or entities shall include the singular.

Section 3. Counterparts.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

ARTICLE II

Section 1. Formation of Association.

The parties to this Agreement form the "East Metro Public Safety Training Facility Association" for the purpose of operating a public safety training facility. Each party shall be a Member of the Association until it terminates or participation is otherwise truncated pursuant to Article III.

Section 2. Governance of Association.

The Association shall be governed by a Board consisting of one representative from each Member. The Board representative need not be an elected official of any Member of the Association. The Member shall designate an individual to serve as such Member's representative and an alternate representative who shall be entitled to act as the representative of the Member on the Board in the case of the absence or disability of the representative of such Member on the Board.

Each representative and their alternate shall serve until a successor is appointed and assumes his or her responsibilities. Board Members and their alternates shall serve at the pleasure of the Member appointing them and any vacancy on the Board shall be filled by the Member whose position on the Board is vacant.

Each Board Member shall have one vote. The Board shall act by 3/4 majority vote of the Board Members at a meeting duly called upon 15 days written notice to each Board Member and to the manager or executive director of each Member. Should the membership in the Association decline to three members the 3/4 majority vote required for Board action shall be reduced to a 2/3 majority vote. At least three Board Members must be present to constitute a quorum of the Board. The Board shall meet at least once annually and more often as it deems necessary to perform its duties.

The Board shall designate one of the Board Members as the Chair and a second as the Vice Chair as well as one to be a Secretary/Treasurer (the Officers of the Board). This designation will be made annually by the Board and the Chair and Vice Chair shall retain their positions until a successor has been designated. All appointed officers must be voting members of the Board. The Chair shall preside at all meetings of the Board and shall perform all duties incident to the office of Chair and such other duties as may be delegated by the Board. The Vice Chair shall act as Chair in the absence of the Chair and the Secretary/Treasurer shall act in the absence of the Vice Chair. A record of all proceedings of the Board shall be maintained by the Secretary/Treasurer and a copy of that record shall be forwarded to each Member. The Chair, Vice Chair and Secretary/Treasurer shall have the authority to sign all documents on behalf of the Association.

The Board may establish committees for any purpose related to the business of the Association. The members of a committee need not be members of the Board. Committees are subject at all times to the direction and control of the Board.

Section 3. Executive Board - The Executive Board shall be the body that oversees the day-to-day operation of the Facility and shall consist of the Appointed Officials of the Board as defined in Article II Section 2 and an additional appointed member representing the City of Maplewood, the underlying landowner. If a member of the Executive Board is also the Maplewood Representative to the Association, the additional appointment is not necessary for so long as Maplewood's interests are directly represented on the Executive Board.

Section 4. Operating Committee.

There shall be appointed by the Board an Operating Committee, consisting of a fire training officer for each Member which is a fire fighter participant. The Operating Committee shall be responsible for identifying training needs, working with the Coordinator to schedule curricula and training sessions, insuring proper supplies, coordinating the maintenance of the Facility, and developing an Operating Budget for submission to the Board for approval. The Operating Committee will be responsible for the development of the operating policy for the Facility and shall forward recommendations with respect to the Facility to the Board as appropriate.

Section 5. Fiscal Matters.

The Board shall designate one of the Members to act as, "Fiscal Agent" for the Association. The Fiscal Agent shall have custody of the Association's funds, shall pay its bills,

shall keep its financial records, and generally conduct the financial affairs of the Association. The Fiscal Agent shall be responsible for such other matters as shall be delegated to it by the Board. The City of Maplewood is hereby appointed as Fiscal Agent until such time as a successor fiscal agent is appointed by the Board.

Any Member may inspect and copy the Association's books and records at any and all reasonable times. All books and records of the Association shall be kept in accordance with normal and accepted accounting procedures and principles used by Minnesota cities.

The Fiscal Agent shall prepare annual financial statements of the Association. A copy of such annual financial statements shall be distributed to each of the Members.

Section 5. Operating Budget.

On or before May 1 of each year, the Board shall prepare and approve a budget for the operation of the Facility for the next calendar year. A copy of the operating budget and a breakdown of each Member's share of the operating cost, using the Cost Sharing Formula, shall be forwarded to each Member by May 15. Each Member shall be responsible for the payment of their share of the operating costs of the Facility. All member fees will be paid by January 15 of each year. If fees are not paid within thirty (30) days, a late fee of one percent (1%) will be assessed to the member department. Fee payments not made within ninety (90) days will come before the board for action. Failure of a Member to pay its proportional share of the operating costs, or additional expenses unanimously approved by the Board shall be grounds for removal of the Member from the Association. To the extent possible, expenses that are exclusively related to one public safety vocation (police or fire) shall be stated separately with the assessment allocated to Members who are participating members for that vocation, including Public Safety Consumables which shall be stated separately and assessed against the Member actually using those items.

Section 6. Facility Coordinator.

A person shall be appointed by the Board to act as the Coordinator for the Facility. The Coordinator shall be an employee of one of the Members and the Member employing the Coordinator shall be entitled to reimbursement of wages, benefits and other payroll related expenses under guidelines established by the Board. The Coordinator shall be responsible for the day to day operation and maintenance of the Facility and other responsibilities as assigned by the Board. The Coordinator shall be responsible for managing rental agreements from any non-Member public safety agency which desires to utilize the Facility for training purposes.

Section 7. Major Improvements.

If recommended by the Operations Committee and approved by the Board in advance and ratified by the governing body of each of the Members, the costs of all major capital additions and improvements to the Facility shall be assessed against each Member based upon the Cost Sharing Formula. Where a Major Improvement is only related to one public safety vocation

(police or fire), the costs shall only be allocated against the participating Members for that vocation.

Section 8. Liability and Insurance.

The East Metro Public Safety Training Facility Association is a separate and distinct public entity to which the parties have transferred all responsibility and control for actions taken pursuant to this Agreement. The East Metro Public Safety Training Facility Association shall defend and indemnify the parties, and their officers, employees, and volunteers, from and against all claims, damages, losses, and expenses, including attorney fees, arising out the acts or omissions of the Joint Powers Board in carrying out the terms of this Agreement.

This Agreement does not constitute a waiver on the limitations of liability set forth in Minnesota Statutes, Section 466.04.

Nothing herein shall be construed to provide insurance coverage or indemnification to an officer, employee, or volunteer of any member for any act or omission for which the officer, employee, or volunteer is guilty of malfeasance in office, willful neglect of duty, or bad faith.

To the fullest extent permitted by law, action by the parties to this Agreement are intended to be and shall be construed as a "cooperative activity" and it is the intent of the parties that they shall be deemed a "single governmental unit" for the purposes of liability, as set forth in Minnesota Statutes, Section 471.59, subd. 1a(a), provide further that for purposes of that statute, each party to this Agreement expressly declines responsibility for the acts or omissions of another party.

The parties to this Agreement are not liable for the acts or omissions of another party to this Agreement except to the extent they have agreed in writing to be responsible for the acts or omissions of the other parties.

Any excess or uninsured liability shall be borne equally by all the members, but this does not include the liability of any individual officer, employee, or volunteer which arises from his or her own malfeasance, willful neglect of duty, or bad faith.

The Association shall purchase insurance in forms and amounts to adequately protect its insurable interests in the value of the Facility and all other property of the Association against perils of fire, theft, vandalism and Acts of God, and to protect the financial interests of the Association, the Members and their agents and employees, against all claims or lawsuits, including expenses and attorney fees, arising from the ownership, design, operation, and maintenance of the Facility. The policy limits, terms and conditions shall be acceptable to each Member. Costs of insurance shall be included in the Operating Budget.

The Board shall continually assess the need for other policies of insurance deemed necessary and appropriate by the Board to protect the property of Association, to protect the Association from claims and to protect the Members of the Association from any claims that

might be made against them by virtue of their participation in the Association and operation of the Facility.

Section 9. Facility Use.

Each Member shall be entitled to use of the Facility subject to advance scheduling through the Coordinator under the rules and guidelines established by the Operating Committee.

Section 10. Use By Other Public Safety Agencies.

The Board may establish guidelines and policies for use of the Facility by other non-Member public safety agencies for a rental fee. The Coordinator shall implement the guidelines for use of the Facility and shall be in charge of scheduling and collection of rents and fees. Rental use by other non-Member public safety agencies shall not conflict with scheduled activity by any Member. Any rents or fees collected in excess of the yearly operating expenses may at the Board's discretion, be retained for repair or improvements to the Facility, future operating expenses, or returned to the Members in proportion to the Cost Sharing Formula.

ARTICLE III

Section 1. Addition of Members to Association.

Additional Members may be added to the Association upon a majority vote of the Board and the ratification of a majority of the governing bodies of each Member.

Any department that wishes to become a member at any time during the year will be charged based on the formula as listed. Full JPA Member agencies will then be prorated based on the number of months left in that year.

If during that year a Full JPA member department adds or loses a firefighter, there will be no refund for a reduction of firefighters nor will there be an added charge for additional firefighters in that year.

Section 2. Withdrawal from Association.

Any Member may withdraw from the Association by giving written notice of intent to withdraw directed to the attention of the Board members not later than January 1 of the preceding year. A Member's notice of intent to withdraw shall be accompanied by a certified copy of a resolution of the Member's governing body stating its intent to withdraw from the Association. The withdrawing Member shall not be entitled to any refund for its share of the capital costs or fees or operating costs paid under this Agreement. The withdrawing Member waives any and all rights and interest in the Facility as of the date of withdrawal. Any withdrawing Member shall also be responsible for its proportionate share of outstanding operating costs of the Facility through the end of the calendar year in which it gives notice of intent to withdraw.

A withdrawing Member shall not be relieved of responsibility for any foreseen or unforeseen liabilities that may have accrued while they were a member of the Association, including, but not limited to the cost of clean-up of any hazardous substance from the Facility site. A withdrawing Member shall have no claim to assets of the Association including excess fees or rents collected under Article II, Section 10.

Section 3. Dissolution.

Upon unanimous approval by the Members and ratification of the governing bodies of each Member, a dissolution of this Association may be adopted, at which time the liabilities of the Association shall be satisfied from the assets of the Association. The Members further agree that they will share in the cost of clean-up of any hazardous substance caused or created by the Member's usage of the Facility site. Full use and operation of the Facility shall then revert to the City of Maplewood, and all remaining assets shall be divided among the Members at the time of dissolution based on the Cost Sharing Formula.

Section 4. Assignment.

A Member shall not assign or transfer its rights and obligations under this Agreement without the prior unanimous written consent of all other Members and the ratification by the elected bodies of each Member.

Section 5. Amendment.

This Agreement may be amended upon proposal by the Board and approval by the governing body for each Member.

ARTICLE IV.

Section 1. Location of Public Safety Training Facility.

The Association shall provide for the equipping and operation of a public safety training facility. The Facility shall be constructed on property owned by the City of Maplewood and located at 1881 Century Ave North in the vicinity of the intersection of Washington County CSAH 14 and MN Highway 120 to the west within the corporate limits of the City of Maplewood as more specifically described in Exhibit A hereto. Before commissioning of the public safety training facility the Association shall enter a long term ground lease with the City of Maplewood covering the Facility Site for a term of thirty (30) years as indicated in Exhibit B. The lease shall provide for renewal for successive ten year periods at the option of the Association.

Section 2. Ownership of the Public Safety Training Facility.

The City of Maplewood is the owner of the Public Safety Training Facility.

Section 3. Supersedes Previous Agreements.

The Cities of North St. Paul and Lake Elmo and the Oakdale Volunteer Fire Department, Inc. have each previously entered into separate joint powers agreements dated March 25, 2016, January 26, 2016 and December 9, 2015, respectively, with the City of Maplewood regarding the same subject matter as this Agreement. This Agreement supersedes and replaces those previous agreements and constitutes the single joint powers agreement among the parties pertaining to the Facility.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized officers by authority of their respective governing bodies.

CITY OF MAPLEWOOD

Mayor _____

City Manager _____

Date: _____

CITY OF LAKE ELMO

Mayor _____

City Clerk _____

Date: _____

CITY OF NORTH ST. PAUL

Mayor _____

City Manager _____

Date: _____

OAKDALE VOLUNTEER FIRE DEPARTMENT INC.

Fire Chief _____

Secretary _____

Date: _____

Appendix A

Full JPA membership

\$200 per firefighter annually (Includes the cost of all consumables)

Hour based JPA membership cost (Includes Propane)

0-8 Hours:

\$2500

9-20 Hours:

\$5000

21-40 Hours:

\$8000

41-80 Hours:

\$10,000

81-120 Hours:

\$12,000

120+ Hours: \$100/Hour