

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE
VILLAGE OF ORLAND PARK AND CITY OF PALOS HILLS
CONCERNING USE OF ORLAND PARK'S FIREARMS RANGE FACILITIES**

This INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into this 7TH day of JUNE, 2021, by and between the VILLAGE OF ORLAND PARK ("Village"), an Illinois Municipal Corporation, and the CITY OF PALOS HILLS ("City"), an Illinois Municipal Corporation (collectively the "Parties").

RECITALS

WHEREAS, Article VII, Section 10 of the Illinois Constitution of 1970 and the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., authorize units of local government to contract or otherwise associate among themselves to obtain or share services, and to exercise, combine or transfer any power or function, in any manner not prohibited by law; and

WHEREAS, the Village and City are home rule units of local government pursuant to Section 6 of Article VII of the Illinois Constitution of 1970 and have the authority to exercise any power and perform any function pertaining to their government and affairs; and

WHEREAS, the Village currently owns and maintains a Firearms Range for use by its police department and police officers (the "Firearms Range"); and

WHEREAS, City desires to use the Firearms Range as a part of its education curriculum, which includes conducting gun training as part of the State mandatory police training program; and

WHEREAS, it is in the mutual best interests of the Village and City to enter into this Intergovernmental Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **INCORPORATION OF PREAMBLES**: Each of the whereas paragraphs contained in the Recitals section above are incorporated herein and made a part of this Agreement.

2. **PURPOSE**: The purpose of this Agreement is to govern City's use of the Firearms Range, subject to the terms and conditions set forth herein.

3. **FIREARMS RANGE USE**: Under this Agreement, City shall have the authority to use the Village's Firearms Range, subject to the terms and conditions of this Agreement and as set forth in the attached **EXHIBIT "A"**. City must also comply with all applicable rules and regulations of the Village and the Orland Park Police Department, including its General Orders, relating to use of the Firearms Range.

4. **RELEASE/WAIVER OF CLAIMS**: All City instructors, students, program

participants, contractors, subcontractors, officers, employees, agents, volunteers, independent contractors, and any other person associated with City (the "City Users") who use the Firearms Range pursuant to this Agreement shall sign the Acknowledgement of Risk, Release & Indemnity Agreement (the "Release"), attached here to as **EXHIBIT "B"**, prior to being permitted to use the Firearms Range facilities. The Releases shall be delivered and retained by the Orland Park Police Chief or his designee.

5. **INDEMNIFICATION**: As a material inducement for the Village to enter into this Agreement, City agrees to defend, indemnify, hold harmless and covenant not to sue the Village and its former, current, and future officers, appointed and elected officials, President, Trustees, employees, agents, volunteers, representatives, assigns, successors, transferees, licensees, invitees, attorneys, and engineers (the "Village Affiliates") from and against any and all claims, actions, lawsuits, causes of action of any kind, property damages, economic and non-economic damages, losses, costs, expenses and liabilities of any kind, including the reasonable fees and expenses of their attorneys, expert witnesses and consultants, court costs and fines, asserted against them or sought to be imposed upon them, individually, jointly or severally (collectively, the "Liabilities"), in any way arising out of or in consequence of this Agreement, or any other Liabilities which may be incurred by or asserted against the Village and/or Village Affiliates directly or indirectly resulting from the City and or City Users presence on the Firearms Range or use of the Village's property, equipment and facilities.

City shall assume the expense of defending all suits, claims, proceedings and disputes of any description with all persons, entities, political subdivisions or government agencies arising out of the matters to be indemnified under this Agreement. In the event that the Village or any of the Village Affiliates is/are named as a defendant(s) in any lawsuit arising out of the matters to be indemnified under this Agreement, the Village and/or any of the Village Affiliates shall have the right to choose the attorney(s) who represent(s) them in said lawsuit, and the reasonable costs, expenses and fees associated with said attorney(s) in relation to said lawsuit shall be paid by City pursuant to the indemnification provisions herein. City shall pay, promptly upon entry, any nonappealable order, judgment or other final resolution of any claim or dispute arising out of the matters to be indemnified under this Agreement and shall pay promptly when due any fines, penalties or agreed settlements arising out of the matters to be indemnified under this Agreement. In the event that such payment is not made, the Village or any Village Affiliate, at their sole discretion, may proceed to file suit against the City to compel such payment. City also agrees that it will not settle or compromise any action, suit or proceeding without the Village's prior written consent, which consent shall not be unreasonably withheld.

In the event of any personal injury, bodily injury, death, illness, or loss or damage or claim or claims therefor arising from City's use of the Firearms Range, City shall give immediate written notice thereof to the Village Manager.

City agrees that it is accepting responsibility under this Agreement for use of the Firearms Range and the conduct of its City Users in using the Firearms Range. City accepts the Firearms Range in "AS IS, WHERE IS" condition, agrees that the Village is not making any warranties or guarantees of any kind regarding the suitability or fitness for a particular purpose of the Firearms Range, and agrees to waive any claims, suits, actions and causes of action of any kind that it has or could have against the Village or the Village Affiliates relative to the Firearms Range, including but not limited to any claims or causes of action related to the design, maintenance, and operation of the Firearms Range.

The obligations of the City under this Section 5 shall remain in full force and shall not be

impaired by the expiration or termination of this Agreement. In any pending or threatened litigation, contest, dispute, suit or proceeding in any way relating to this Agreement, and the indemnification described herein, or to enforce the indemnification described herein, or to enforce the indemnification or obligations hereunder, Village shall have the right to retain counsel of its own choice for advice or other representation without affecting or otherwise impairing the indemnification hereunder and all Liabilities arising from such service shall be payable by City within 30 days of demand.

Notwithstanding the foregoing, nothing in this paragraph or Agreement should be construed as an effort on or by the Village and/or Village Affiliates to be indemnified for liability to the extent not permitted by law.

6. **EQUIPMENT**: City and City Users shall be responsible for supplying their own weapons and ammunition, and assume all risks related to the proper operation and maintenance of said weapons and ammunition. The Village agrees to allow City access to and use of certain existing equipment owned by the Village necessary for use of the Firearms Range (the "Equipment"). The Equipment to which City will have access pursuant to this Agreement is listed in **EXHIBIT "C"** attached hereto and made a part hereof.

7. **TERM**:

A. **Initial Term**. This Agreement shall be in effect for five (5) years from and after both Parties have authorized, executed, and approved this Agreement.

B. **Renewal**. This Agreement may be extended by written agreement of both Parties and any renewal term shall be subject to the terms of this Agreement or as modified by the Parties by written amendment to this Agreement duly authorized, executed, and approved by the Parties.

C. **Termination**. This Agreement shall terminate upon the following circumstances and conditions:

1. Upon the expiration of the term of this Agreement as set forth in Subsections 7.A and/or 7.B of this Agreement.
2. In the event that the Firearms Range becomes unusable or is closed for any period in excess of 60 days, the City may terminate this Agreement upon notice to the Village.
3. A Party may terminate this Agreement in the event of a default by the other Party in accordance with Section 11 of this Agreement.

8. **FEE**: City agrees to pay to Village an annual usage fee of FOUR THOUSAND DOLLARS (\$4,000.00).

The first annual usage fee must be paid to the Village within thirty (30) days of the date the last signatory signs this Agreement, and each subsequent annual usage fee shall be due on the anniversary date of this Agreement.

9. **PRIORITY OF ORLAND PARK POLICE DEPARTMENT:** The Orland Park Police Department will be given first priority to use of the Firearms Range should any conflict arise between City's schedule and the Village Police Department's schedule. The Village Police Department shall give notice of any conflict as soon as practical, and shall work in good faith with City to reschedule any missed or cancelled classes.

10. **STANDARD OF CONDUCT:** The Village and City shall not tolerate any unsafe, illegal, or inappropriate behavior or conduct, or any conduct that violates the provisions of this Agreement, by City Users at the Firearms Range, and the Village or City shall cause any persons that City knows to have engaged in such behaviors to be immediately removed from the Firearms Range. Such conduct may result in the termination of this Agreement by the Village following notice and an opportunity to cure, as set forth in Section 11, if such activities are promoted by, participated in, or knowingly condoned, by City personnel. Such conduct may, however, result in the immediate termination of this Agreement without notice or opportunity to cure, where such conduct is ongoing and is promoted by, participated in, or knowingly condoned by City personnel and is likely to result in immediate and serious harm to the Firearms Range and/or patrons, renters, guests or other invitees, City's own employees, agents or City Users, Village personnel or the public, such that providing notice and an opportunity to cure is not practical.

11. **DEFAULT:** In the event that either Party fails to perform under this Agreement, the other Party shall notify the non-performing Party of the default, in writing, setting forth the nature of the default. The Party that has failed to perform shall have thirty (30) days after receipt of the notice to correct such failure or take substantial steps toward correcting the failure. If, after thirty (30) days, the default has not been corrected, or substantial steps taken to correct the default, the Party serving the notice may then declare this Agreement terminated, at which time City shall immediately cease the use of the Firearms Range.

12. **NOTICE:** All notices required to be provided under this Agreement shall be in writing and served either (a) personally during regular business hours; or (b) by registered or certified mail, return receipt requested, properly addressed with postage prepaid and deposited in the United States mail. Notices served personally shall be effective upon receipt, and notices served by mail shall be effective upon receipt as verified by the United States Postal Service. All notices shall be addressed as follows:

The Village:

Village of Orland Park
15100 S. Ravinia Avenue
Orland Park, IL 60462
Attention: Police Chief

With a copy to:

Klein, Thorpe and Jenkins, Ltd.
20 N. Wacker Drive, Suite 1660
Chicago, Illinois 60606
Attn: Orland Park Village Attorney

City

City of Palos Hills
10335 S. Roberts Road

Palos Hills, IL 60465
Attention: Police Chief
With a copy to:

Gerald R. Bennett, Mayor
10335 S. Roberts Road
Palos Hills, Illinois 60465

13. **ASSIGNMENT**: City shall not assign, sublet, transfer, or convey this Agreement and its obligations hereunder to any person or entity, without the written consent of the corporate authorities of the Village, which may be withheld.

14. **GOVERNMENTAL REGULATIONS**: City shall comply with all applicable requirements of federal, state, county and local regulatory authorities, including the applicable rules and regulations of the Village and its Police Department, with respect to the use of the Firearms Range.

15. **EXECUTION**: This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same Agreement.

16. **ENTIRETY OF AGREEMENT**: This Agreement, together with the Exhibits attached hereto (all of which are attached hereto or incorporated herein by this reference), contains the entire understanding between the Parties concerning City's use of the Firearms Range and supersedes any prior understanding or written or oral agreements between them with respect to the subject matter of this Agreement. There are no representations, agreements, arrangements or understandings, oral or written, between and among the Parties hereto relating to the subject matter of this Agreement which are not fully expressed herein. No oral modification, amendment, or change shall be allowed to this Agreement. Any modification, amendment, or change hereto shall be in writing and approved by the corporate authorities of the Village and City.

17. **NO DUTY TO THIRD PARTIES**: This Agreement is entered into solely for the benefit of the contracting Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person 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 City and/or the Village, and/or any of their respective officials, officers and/or employees. No claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made, or be valid, against another Party to this Agreement.

18. **AUTHORITY**: Execution of this Agreement by the Village is authorized by a resolution passed by the President and Board of Trustees of the Village on JUNE 7th, 2021. Execution of this Agreement by City is authorized by a resolution passed by the Mayor and City Council of the City on JUNE 7th, 2021. The Parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their obligations hereunder.

19. **INTERPRETATION**. This Agreement shall be construed without regard to the

identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though the Parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

20. **DISCLAIMER OF RELATIONSHIP:** Nothing contained in this Agreement, nor any act of the Village or City shall be deemed or construed by either of the Parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the Village and City.

21. **ENFORCEABILITY:** If any provision of this Agreement, or any section, sentence, clause, phrase or word or the application thereof is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that the Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of the Parties. In the event of any conflict or inconsistency between the terms set forth in the body of this Agreement and the terms set forth in any Exhibit hereto, the terms set forth in such Exhibit shall govern and control.

22. **NO WAIVER OF TORT IMMUNITY DEFENSES.** Nothing contained in any provision of this Agreement is intended to constitute nor shall constitute a waiver of the defenses available to either Party under the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.*, as the same may be amended from time to time, with respect to claims by third parties.

23. **CHANGE IN LAWS:** The Parties agree to immediately notify each other of any change in conditions or change in federal, state or local law, or of any other event, which may significantly affect its ability to perform its obligations in accordance with the provisions of this Agreement.

24. **JURISDICTION AND VENUE:** This Agreement concerns property located within, and actions and activities to be performed within, the State of Illinois. Accordingly, this Agreement, and all questions of interpretation, construction and enforcement hereof, and all controversies hereunder, shall be governed by the applicable statutory and common law of the State of Illinois. The Parties agree that for the purpose of any litigation relative to this Agreement and its enforcement, venue shall be in the Circuit Court of Cook County, Illinois and the Parties consent to the in personam jurisdiction of said Court for any such action or proceeding.

25. **CAPTIONS:** The captions at the beginning of the several sections, respectively, are for convenience in locating the context, but are not part of the context.

26. **EXHIBITS:** True and correct copies of the attached Exhibits are incorporated herein and made a part of this Agreement and are identified as follows:

<u>EXHIBIT "A"</u> -	Conditions/Terms of Use
<u>EXHIBIT "B"</u> -	Acknowledgement of Risk, Release & Indemnity Agreement
<u>EXHIBIT "C"</u> -	List of Village-owned Firearms Range Equipment to Which

City shall have Access

27. **EFFECTIVE DATE:** After this Agreement has been signed by City, this Agreement shall be deemed dated and become effective on the date that the Village President and Village Clerk sign this Agreement which date shall be the date stated on the first page of this Agreement.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the
7TH day of JUNE, 2021.

VILLAGE OF ORLAND PARK

By: [Signature]
Village President

Attest: [Signature]
Village Clerk

CITY OF PALOS HILLS

By: [Signature]
Mayor

Attest: [Signature]
City Clerk