

City of Scottsbluff, Nebraska

Monday, February 5, 2018

Regular Meeting

Item Reports1

Council to approve the Fire Training Facility Use Agreement and authorize the Mayor to execute the agreement.

Staff Contact: Ryan Lohr, Fire Captain

Agenda Statement

Item No.

For meeting of: February 5, 2018

AGENDA TITLE: Training Facility User Agreement

SUBMITTED BY DEPARTMENT/ORGANIZATION: Fire Department

PRESENTATION BY: Nathan Johnson, City Manager

SUMMARY EXPLANATION: A User Agreement has been created for the Training Facility Regional Grant that SBFD has submitted. The Agreement has to be signed by all participating parties before the technical review of the Grant. The Grant submittal period ends February 2, 2018.

BOARD/COMMISSION RECOMMENDATION:

STAFF RECOMMENDATION:

EXHIBITS				
Resolution <input type="checkbox"/>	Ordinance <input type="checkbox"/>	Contract <input type="checkbox"/>	Minutes <input type="checkbox"/>	Plan/Map <input type="checkbox"/>
Other (specify) _____				

NOTIFICATION LIST: Yes ☐ No ☐ Further Instructions ☐

APPROVAL FOR SUBMITTAL: _____
City Manager

Rev 3/1/99CClerk

FIRE TRAINING FACILITY USE AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of January, 2018, by and between the **CITY OF SCOTTSBLUFF and SCOTTSBLUFF FIRE DEPARTMENT, NEBRASKA**, a Municipal Corporation, both hereinafter referred to as “SBFD”, and **GERING, MITCHELL, MORRILL and BAYARD FIRE DEPARTMENT**, hereinafter referred to as “AGENCY”.

WHEREAS, the SBFD will be the owner of a fire training simulator once it is constructed , hereinafter referred to as “Facility,” located at _____, Scottsbluff, Nebraska; and

WHEREAS, Agency desires to utilize the Facility after it is constructed for training purposes for its personnel.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1. **Training.** Agency will be permitted to use the Facility on a non-exclusive basis for training purposes when Facility has not been scheduled for use by another agency which is a party to this Agreement.
2. **Scheduling.** After it is constructed, Facility usage will be scheduled according to a training session scheduling policy set by SBFD. Agency recognizes that the Facility will be used by SBFD and by other Agencies for training purposes. Agency shall schedule its training exercises with SBFD with as much advance notice as possible to ensure that the Facility is available for its desired Training Sessions. SBFD shall use its best efforts to make the Facility available to Agency at Agency's requested Training Sessions, but Agency's requested Training Sessions cannot be guaranteed.
3. **Facility Fee.** SBFD will provide the Facility free of charge or expense to Agency; provided however, Agency shall supply all consumable materials required for its training sessions. Including reimbursement for gas used on class B burn room.
4. **Term of Agreement.** The term of this Agreement shall commence upon execution by the signing parties. This Agreement shall continue in effect until such time as a party terminates the Agreement by providing notice to SBFD and the other parties of its intention to terminate this Agreement at least thirty days (30) prior to termination. The Agreement shall remain in effect for the remaining parties unless otherwise notified.
5. **Rules of Facility Use.** SBFD has adopted certain rules and policies regarding the use of the Facility. These rules may be updated from time to time by SBFD to ensure the orderly and safe utilization of the Facility by the various Agencies. Agency agrees to comply with the Rules and further agrees that SBFD may terminate this Agreement for Agency's failure to comply.

6. **Facility Neat and Clean.** Agency agrees to keep the Facility in as neat and clean condition as reasonably can be expected during its use of the Facility. At the end of each training session or use, Agency agrees to return the Facility to SBFD in as good of condition as received. Agency further agrees that it will clean the Facility after each use to a condition reasonably acceptable by SBFD.

7. **Instructors.** In the event Agency desires to utilize its own instructors, the instructors may be required to go through an orientation session with SBFD.

8. **Safety Officers.** Agency shall adhere to NFPA Code 1403, which requires the presence of a safety officer/operator during use of the live fire training prop, and another safety officer for every five (5) firefighter trainees. Agency must select the safety officer and operator from an approved list provided by SBFD during any training session involving use of the live fire training prop.

9. **Liability.** Prior to each use, the Agency agrees to inspect the Facility and determine it to be acceptable for its intended uses. If Agency determines the Facility is not acceptable for intended uses, the Agency shall not commence such training. Agency shall not rely upon any representations or warranties concerning the Facility except those that may be set forth herein. Agency agrees accepts sole responsibility and will hold harmless SBFD for all accidents, damages, bodily injury or damage to personal property occurring during Agency's use of the Facility to the extent applicable by law, and pursuant to the terms of any other agreement between the parties.

9.1 **No City or Fire Department Liability For Agency's Property Damage:** Agency waives any and all claims, suits and causes of action against SBFD (including its employees, officers or agents) for any property loss or damage done to Agency's property, whether real, personal or mixed, occasioned by Agency's activities at the Facility. It shall be the Agency's responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of SBFD, third party, or act of nature.

9.2 **Scottsbluff Fire Department Property Damage:** Agency shall compensate SBFD, for any and all damages to the Facility and the City property occasioned by or arising from the use of the Facility by or arising from the use of the Facility by the Agency or anyone at the Facility (or other Fire Department property as a result of the Agency's activities at the Facility) in connection with Agency's use of the Facility, ordinary wear and tear excepted.

9.3 **Indemnity and Hold Harmless:** Agency agrees that it will protect, save, defend, hold harmless and indemnify SBFD, its employees, volunteers, officers and agents from any and all demands, claims, judgments, or liability for loss or damage arising as a result of accidents, injuries, or other occurrences, (except for losses or injuries occurring as the result of the sole

negligence of SBFD), regardless of who the injury party may be. This section is expressly agreed to as a condition of using the Facility.

9.4 **Insurance:** Agency agrees to maintain workers compensation insurance and public liability insurance in an amount of not less than \$1,000,000.00. Such insurance shall show the City of Scottsbluff as an additional insured. A certificate in a form acceptable to SBFD must be furnished to SBFD before Agency uses the Facility.

10. **Assignment or subletting.** Agency is prohibited from either assigning, authorizing, licensing, or subletting all or any portion of the Facility during its use of the Facility.

11. **Litigation.** In the event any party hereto finds it necessary to bring an action against the other party to enforce any of the terms, covenants or conditions hereof, the party prevailing in any such action or proceeding shall be paid all costs and attorneys' fees incurred by the other party.

12. **Notices.** Any notice, demand, request, consent, approval or communication between the Agency, SBFD or any other party that is required to be given shall be in writing addressed to the Agency, SBFD or any other party at the addresses as follows:

Agency and address:

Scottsbluff Fire Dept.
1801 Ave. B
Scottsbluff, NE 69341

Gering Fire Dept.
1025 M Street/PO Box 193
Gering, NE 69341

Mitchell Fire Dept.
1280 Center Ave.
Mitchell, NE 69357

Bayard Fire Dept.
PO Box 447
Bayard, NE 69334

Morrill Fire Dept.
PO Box 207
Morrill, NE 69358

or such address as may have been specified by notifying the Agency, SBFD or other party of the change of address. Notice shall be deemed served on the date of actual delivery or the first attempted delivery as shown on the return receipt if mailed with the United States Postal Service by certified mail, return receipt requested.

13. **Amendment.** No modification, termination or amendment of this Agreement may be made except by written agreement signed by SBFD and affected Agency hereto.

14. **Captions.** The captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement.

15. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall

be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

16. **Counterparts.** This Agreement may be executed in any number of counterparts, counterparts together shall constitute but one agreement.

17. **Additional Acts.** Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by any party hereto, the parties hereto agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered, any and all such further acts deeds and assurances, which may reasonably be required to effect the purposes of this Agreement.

18. **Neutral Authorship.** Each of the provisions of this Agreement had been reviewed and negotiated, and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of the provisions of this Agreement.

19. **Governing Law.** This Agreement and the rights of the parties hereto shall be governed by the construed in accordance with the laws of the State of Nebraska.

20. **Entire Agreement.** The entire agreement between the parties hereto is contained in this Agreement and the exhibits hereto, and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. This Agreement may be amended only by written instrument executed by the parties subsequent to the date hereof.

IN WITNESS WHEREOF, The parties have executed this Agreement as of the day and year first above written.

[SIGNATURE PAGE WILL FOLLOW]

CITY OF SCOTTSBLUFF

&

SCOTTSBLUFF FIRE DEPARTMENT

Name

Title

EIN # _____

AGENCY:

Name

Title

EIN # _____

AGENCY:

Name

Title

EIN # _____

AGENCY:

Name

Title

EIN # _____

AGENCY:

Name

Title

EIN # _____

AGENCY:

Name

Title

EIN # _____