

9/14/17

RESOLUTION NO. R-2017-33

**A RESOLUTION APPROVING AND AUTHORIZING
THE EXECUTION OF A COST SHARING INTERGOVERNMENTAL AGREEMENT
RELATIVE TO EXPLORATION AND PLANNING FOR ESTABLISHMENT OF
A CONSOLIDATED 911 COMMUNICATIONS CENTER
BETWEEN THE VILLAGE OF BROADVIEW
AND THE VILLAGE OF MAYWOOD**

(Village of Maywood)

WHEREAS, the President and Board of Trustees of the Village of Maywood (the "Maywood Village Board") desire to approve the agreement entitled "Cost Sharing Intergovernmental Agreement Relative To Exploration And Planning For Establishment Of A Consolidated 911 Communications Center Between The Village Of Broadview And The Village Of Maywood" (the "Agreement") a copy of which is attached hereto as **Exhibit "A"** and made a part hereof; and

WHEREAS, the President and Board of Trustees of the Village of Broadview (the "Broadview Village Board") desire to approve the attached Agreement (**Exhibit "A"**); and

WHEREAS, the Maywood Village Board and the Broadview Village Board (collectively, the "Villages") have made the following findings and determinations as to why approving and entering into the Agreement is in the best interests of the respective Villages, Village residents, property owners, business owners and the public:

1. The Villages desire to explore and evaluate the feasibility of consolidation of their 911 emergency communications centers and systems, which are currently operated separately, into a proposed consolidated 911 communications center and single public safety answering point ("PSAP"). This consolidation will also include the establishing and governing of a joint emergency telephone system board and determining a cost sharing arrangement to pay for the evaluation, development and implementation of a 911 consolidation plan, and the establishment and operation of the 911 communications center and the joint emergency telephone system board; and
2. The Villages are required to consolidate their existing 911 emergency communications systems and PSAPs and desire to work together to evaluate, develop and implement a consolidation plan for the establishment and operation of a centralized, combined emergency services dispatch and communication center to be known as the "**West Central Communications Center**" ("**WCCC**"), which will be established and operated by the Villages through the adoption of an intergovernmental agreement ("IGA") and a joint emergency telephone system board (the "**WCCC JETSB**") pursuant to the

Emergency Telephone System Act (50 ILCS 750/1 *et seq.*) and the Prepaid Wireless 9-1-1 Surcharge Act (50 ILCS 753/1 *et seq.*); and

3. The WCCC and the WCCC JETSB will not be newly created public agencies. The WCCC will not be an employer of 911 dispatch personnel and will not employ the 911 dispatch personnel who service the respective Villages. The Villages will continue to employ their own 911 dispatch personnel, who will continue to provide 911 dispatching services to the respective Villages and those employees shall staff the WCCC; and
4. Consolidation will allow the Villages to upgrade their existing 911 emergency communications equipment and systems, which will enhance the delivery of 911 emergency communication services to the respective Village's residents, property owners, business owners and the public; and
5. The health, welfare and safety of the respective Village's residents, property owners, business owners and the public should be enhanced by the proposed 911 consolidation.

WHEREAS, a majority of the members of the Maywood Village Board and the members of the Broadview Village Board are required to vote in favor of the attached Agreement by approving a Resolution that contains the same authorizing content and is in substantially the same format as this Resolution; and

WHEREAS, the Maywood Village Board and the Broadview Village Board are authorized to approve and enter into this Agreement in accordance with the applicable State laws, including Article VII, Section 10 of the 1970 Constitution of the State of Illinois, the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*), the Illinois Municipal Code (65 ILCS 5/1 *et seq.*), the Emergency Telephone System Act (50 ILCS 750/1 *et seq.*) and the Prepaid Wireless 9-1-1 Surcharge Act (50 ILCS 753/1 *et seq.*) (collectively, the "Applicable Laws").

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF MAYWOOD, COOK COUNTY, ILLINOIS, AS FOLLOWS:

Section 1: Each Whereas paragraph above is incorporated by reference into this Section 1 and made a part hereof as material and operative provisions of this Resolution.

Section 2: The President and Board of Trustees of the Village of Maywood approve and authorize the execution of the agreement entitled "Cost Sharing Intergovernmental Agreement Relative To Exploration And Planning For Establishment Of A Consolidated 911 Communications Center Between The Village Of Broadview And The Village Of Maywood" (the "Agreement"), a copy of which is attached hereto as **Exhibit "A"** and made a part hereof.

Section 3: The President and Board of Trustees of the Village of Maywood authorize and direct the Village President and the Village Clerk, or their designees, to execute the Agreement. The President and Board of Trustees also authorize and direct the Village President, the Village Clerk, the Village Manager and the Village Attorney to execute and deliver all other instruments and documents and pay all Village Board-authorized costs that are necessary to fulfill the Village's obligations under the Agreement.

Section 4: The respective Village Clerks of Maywood and Broadview shall prepare and deliver certified copies of this Resolution and multiple original executed signature pages of the Agreement to the other Village Clerk, so that each Village has at least one fully executed original of the Agreement and a certified copy of the approving Resolution.


ADOPTED this 20th day of June, 2017, pursuant to a roll call vote as follows:

AYES: Mayor Edwenna Perkins, Trustee(s) H. Yarbrough, Sr., I. Brandon, A. Sanchez, K. Wellington and M. Lightford

NAYS: None


ABSENT: Trustee R. Rivers

APPROVED this 22nd day of June, 2017, by the Village President of the Village of Maywood, and attested by the Village Clerk on the same day.



Village President

ATTEST:



Village Clerk


(SEAL) 

Exhibit "A"

**COST SHARING INTERGOVERNMENTAL AGREEMENT
RELATIVE TO EXPLORATION AND PLANNING FOR ESTABLISHMENT OF
A CONSOLIDATED 911 COMMUNICATIONS CENTER
BETWEEN THE VILLAGE OF BROADVIEW
AND THE VILLAGE OF MAYWOOD**

(attached)

**COST SHARING INTERGOVERNMENTAL AGREEMENT
RELATIVE TO EXPLORATION AND PLANNING FOR ESTABLISHMENT OF
A CONSOLIDATED 911 COMMUNICATIONS CENTER
BETWEEN THE VILLAGE OF BROADVIEW
AND THE VILLAGE OF MAYWOOD**

This Cost Sharing Intergovernmental Agreement Relative to Exploration and Planning for Establishment of a Consolidated 911 Communications Center is made and entered into this ___ day of _____, 2017, by and between the Village of Broadview, a non-home rule Illinois municipal corporation ("Broadview") and the Village of Maywood, a home rule Illinois municipal corporation ("Maywood") (collectively the "Villages") (the "Agreement"), for the purpose of exploring and evaluating the feasibility of consolidation of their 911 emergency communications systems, which are currently operated separately by Broadview and Maywood, into a proposed consolidated 911 communications center and single public safety answering point ("PSAP"), establishing and governing of a joint emergency telephone system board, and determining a cost sharing arrangement to pay for the evaluation, development and implementation of a 911 consolidation plan, and the establishment and operation of the 911 communications center and the joint emergency telephone system board. (Broadview and Maywood are at times in this Agreement referred to individually as a "Party" and collectively as the "Parties.")

RECTIALS:

WHEREAS, as required by the Applicable Laws (defined below), the Villages are required to consolidate their existing 911 emergency communications systems and PSAPs and desire to work together to evaluate, develop and implement a consolidation plan for the establishment and operation of a centralized, combined emergency services dispatch and communication center to be known as the "IKE Communications Center" ("IKECC"), which will be established and operated by the Villages through the adoption of an intergovernmental agreement ("IGA") and a joint emergency telephone system board (the "IKECC JETSB"); and

WHEREAS, the IKECC and the IKECC JETSB will not be newly created public agencies. The IKECC will not be an employer of 911 personnel and will not employ the 911 personnel who service the respective Villages. The Villages will continue to employ their own 911 personnel and those employees shall staff the IKECC; and

WHEREAS, as part of the work to be performed under this Agreement, all necessary documents relating to the consolidation plan, that must be filed with the Illinois Department of State Police in order to comply with the consolidation requirements and other provisions of the Emergency Telephone System Act (50 ILCS 750/1 *et seq.*) and the Prepaid Wireless 9-1-1 Surcharge Act (50 ILCS 753/1 *et seq.*), as amended, will be prepared by the Villages, including but not limited to a feasibility study, architectural and engineering plans for certain interior

building renovations and proposed building addition of the current Broadview Police Station to house the IKECC, a plan for consolidation of existing PSAPs operated by the Villages, plans for a combined 911 communications system and recordkeeping system, the consolidation application, the IGA and the ordinances dissolving the local emergency telephone system boards ("local ETSBs"); and

WHEREAS, the long-term purposes of this Agreement and the proposed IGA are to provide communication services for police, fire, ambulance and other emergency communication systems for the mutual benefit of the members of the IKECC (the "Services"); to provide such Services on a contract basis to other public agencies; and to provide a forum for discussion, study, development and implementation of recommendations of mutual interests regarding communications, information systems, statistical matters and criminal justice, fire safety, emergency medical and telephone emergency request systems, public safety information communication and data processing within the geographic areas as may be served by the IKECC; and

WHEREAS, the Villages agree to allocate and share in the costs and obligations relating to the evaluation, development and implementation of a 911 consolidation plan, and the establishment and operation of the 911 communications center and the joint emergency telephone system board, including the project management phase costs and the preliminary start-up costs in accordance with the provisions of this Agreement; and

WHEREAS, the corporate authorities of Broadview and the corporate authorities of Maywood have determined that there exists a need to jointly cooperate and share the costs of establishing and operating the IKECC. Once the IKECC is formally established by the IGA, this Agreement will be terminated after the Villages' respective obligations are satisfied. The IGA that will create the IKECC will include the operating and procedural terms, protocols and covenants for the IKECC and the IKECC JETSB; and

WHEREAS, the Village of Broadview and the Village of Maywood have taken all necessary corporate actions to approve this Agreement and to authorize the respective Village Presidents and Village Clerks to execute this Agreement on behalf of the Villages. This Agreement is authorized and entered into in accordance with the applicable State laws, including Article VII, Section 10 of the 1970 Constitution of the State of Illinois, the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*), the Illinois Municipal Code (65 ILCS 5/1 *et seq.*), the Emergency Telephone System Act (50 ILCS 750/1 *et seq.*) and the Prepaid Wireless 9-1-1 Surcharge Act (50 ILCS 753/1 *et seq.*) (collectively the "Applicable Laws").

NOW, THEREFORE, in consideration of the mutual agreements, obligations and covenants set forth in this Agreement, and upon the further consideration stated in the foregoing Recitals, it is agreed by the Villages as follows:

Section 1. Incorporation. The above Recitals are incorporated by reference into this Section 1.

Section 2. Sharing of Costs and Obligations. The Villages agree to allocate and share the following costs and obligations:

A. Planning Committee

- a. A six (6) person planning committee (the "Committee"), consisting of the fire and police chiefs (or their designees) of the Villages, shall assist with and oversee the exploration, evaluation and completion of necessary tasks, and preparation of required documents regarding: (1) the feasibility of consolidation of their 911 emergency communications systems and PSAPs into a single consolidated 911 communications center and PSAP, which shall be known as the IKECC, and preparation of a 911 consolidation plan; (2) the establishing, operating and governing of the IKECC and the IKECC JETSB; and (3) the determination of one or more cost sharing formulas that will apply to the Villages and other future participating members of the IKECC and IKECC JETSB to pay for the costs incurred relative to the activities covered by this Agreement, including but not limited to the completion of the Preliminary Consolidation Assessment Phase Activities, the Project Management Phase Activities and the Preliminary Start-Up Activities listed below, the on-going operation, maintenance, replacements, upgrades and governance of the IKECC and the IKECC JETSB, and the performance of any other assignments and tasks as directed by the corporate authorities of the Villages, the "Village Managers" (this term shall include any other designated Village representative in lieu of a Village Manager / Administrator) or as needed to accomplish the goals and objectives of this Agreement and to comply with the Applicable Laws.
- b. The Committee shall work cooperatively with the Village Boards, the Village Managers, the Finance Directors and mutually retained consultants (e.g., architects, attorneys, engineers, technology and financial consultants) to prepare all necessary documents to evaluate, develop and implement a consolidation plan for the establishment and operation of the IKECC and the operation and governance of the IKECC JETSB, including but not limited to the Estimated Budget(s) for the Preliminary Consolidation Assessment Phase Activities and Costs, the Project Management Phase Activities and Costs and the Estimated Budget for Preliminary Start-Up Activities and Costs, the consolidation plan and supporting documents, and the IGA for the IKECC and the IKECC JETSB.
- c. The Committee shall review all contracts, agreements, financial obligations/commitments and expense requests of the Committee members relating to the Preliminary Consolidation Assessment Phase Activities and Costs, the Project Management Phase Activities and Costs, and the Preliminary Start-Up Activities and Costs, and shall send written recommendations to the respective Village Managers and Village Boards for approval of such contracts, agreements, financial obligations/commitments and expenses. These contracts,

agreements, financial obligations/commitments and expenses shall be included under the term "Shared Costs", as defined below.

- d. The Committee shall provide periodic written reports to the Village Managers and Village Boards on the status of the completion of the Preliminary Consolidation Assessment Phase Activities, the Project Management Phase Activities and the Preliminary Start-Up Activities, and any other assignments, tasks, goals and objectives of this Agreement. The frequency of the status reports shall be determined by the Village Managers and the Village Boards.
- e. The Committee shall commence work on the activities relating to the next or any subsequent Phase and incur costs pertaining to the next or any subsequent Phase of the Project only upon mutual consent of the Villages. The Villages understand that it may be necessary, cost-effective and/or critical to the overall evaluation and progress of the Project for the Committee to perform or complete portions of activities that are part of a subsequent Phase and to incur costs relating to such activities of a subsequent Phase. In such instances, the Villages agree to consent to such activities and costs.

B. Preliminary Consolidation Assessment Phase Activities; 911 Center Cost Estimate.

- a. The Preliminary Consolidation Assessment Phase Activities consist of: (1) the preparation of a cost estimate of the buildout of a consolidated 911 communications center within the Broadview Village Hall; (2) the identification of the cost sharing arrangement that Broadview will charge Maywood for the use of space within the IKECC to operate and maintain Maywood's 911 emergency communications systems and related equipment (i.e., four (4) dispatch consoles, record management equipment, radio equipment, etc.); and (3) the preparation of an Estimated Budget(s) for the Preliminary Consolidation Assessment Phase Costs, the Project Management Phase Costs and the Estimated Budget for Preliminary Start-Up Costs.
- b. In March 2017, Broadview hired FGM Architects ("FGM") to prepare a cost estimate of the buildout of a consolidated 911 communications center as well as an overall master plan for improvements to the Broadview Village Hall. The portion of the architectural design work that relates only to the preparation of a cost estimate of the buildout of a consolidated 911 communications center is referred to as the "Phase One Services" or the "911 Center Cost Estimate." The Phase One Services and 911 Center Cost Estimate also will include design plans and cost proposals from the following vendors: Mercury Systems (phone/network/IT), Valor Systems (Computer Aided Dispatch ("CAD") / Records Management System ("RMS")), and Chicago Communications (radio). FGM, Mercury Systems, Valor Systems and Chicago Communications are referred to as the "Approved Vendors." Any additional vendors or different vendors who are

going to be providing services to the Committee, to either Village at the IKECC, to the IKECC or to the IKECC JETSB shall be mutually approved by the Villages.

- c. Upon approval of this Agreement, Broadview will authorize the Approved Vendors to communicate and work cooperatively with Maywood in regard to the preparation of the 911 Center Cost Estimate so that Maywood's comments, planning input, and technical, equipment and physical space needs are accounted for and included within the 911 Center Cost Estimate.
- d. The Committee will prepare the Estimated Budget(s) for the Preliminary Consolidation Assessment Phase Costs, the Project Management Phase Costs and the Estimated Budget for Preliminary Start-Up Costs for approval by the corporate authorities of the Villages.
- e. Once the 911 Center Cost Estimate is received by the Committee, cost sharing, cost allocations and funding options to pay for the estimated 911 Center Costs shall be discussed and one or more recommendations shall be prepared by the Committee and transmitted to the corporate authorities of the Villages for consideration and action.
- f. Once the 911 Center Cost Estimate and the Committee recommendation(s) are received and reviewed by the Villages, the corporate authorities of each Village shall decide whether or not to continue to pursue the 911 consolidation plan and will provide direction to the Village Managers and/or Committee members in this regard. If the Villages agree to continue to pursue the 911 consolidation plan, the Committee shall promptly commence Project Management Phase Activities, and the corporate authorities of each Village shall promptly authorize and deliver payment for its respective share of all completed Phase One Services.
- g. The Villages agree to share equally (on a 50% / 50% cost sharing basis) in the preparation costs relating to this Agreement and all related approval resolutions and memoranda and other documents prepared by the law firm of Klein, Thorpe and Jenkins, Ltd. ("KTJ"). Maywood shall pay KTJ's invoices for such services and Broadview agrees to reimburse Maywood for its 50% share of such invoices upon demand. Maywood shall transmit copies of the KTJ invoices to Broadview, which shall be a demand for payment. The Villages shall be responsible for paying their own legal counsel's time and expense to review this Agreement and related documents.
- h. The Villages agree to share equally (on a 50% / 50% cost sharing basis) in the costs relating to the Phase One Services performed by the Approved Vendors. Maywood shall not be obligated to pay for any portion of work performed by Approved Vendors that is outside of the scope of the Phase One Services.

C. Project Management Phase Activities and Costs.

- a. Once the Villages have authorized the commencement of the Project Management Phase Activities and related costs, the Committee shall commence work on the Project Management Phase Activities, which shall consist of: preparation of the IGA and the dissolution ordinances for the local ETSBs and approval by the Villages, preparation and filing of a 911 consolidation plan application with the IDSP and follow-up activities responsive to the IDSP approval process, preliminary and advanced planning, resource management, notices to labor unions, procurement and contracting activities, to establish and operate IKECC and the IKECC JETSB and plan for the transition from the Villages' current dispatch centers, PSAPs and related CAD and RMS systems to IKECC. There are facilities, equipment, personnel, software and hardware, data processing and other services necessary or incidental to the provision of emergency and/or municipal dispatch and communications services that may be unique to each Village that need to be coordinated, acquired and contracted for during the initial phase of establishing the IKECC. The Project Management Phase Activities shall be conducted by the Committee and any consultants, contractors and vendors authorized by the Village Boards or the Village Managers.
- b. "Project Management Phase Costs" are the costs incurred relative to the Project Management Phase Activities.
- c. Budget for Project Management Phase Costs. The Committee and the Village Managers shall work cooperatively to finalize the draft Estimated Budget for Project Management Phase Costs, which final version shall be sent to the corporate authorities of the Villages for review and approval under a recommendation of the Committee and the Village Managers.
- d. For Project Management Phase Costs that are applicable or unique only to one Village (e.g., purchase of certain equipment or technology needed to update existing equipment or facilities to allow one Village to be serviced by the IKECC at the agreed-upon service level or to avoid diminishing the existing service level of the other Village), that Village shall be solely responsible for payment of such Costs. Any dispute as to whether certain Project Management Phase Costs are unique and applicable only to one Village shall be resolved under the Dispute Resolution provision below.
- e. For all other Project Management Phase Costs, the Villages agree to share equally (on a 50% / 50% cost sharing basis) in all of the incurred Project Management Phase Costs.

D. Preliminary Start-Up Activities and Costs.

- a. Once the IDSP approves the 911 consolidation plan and the Villages have agreed to finalize the consolidation, certain planning, resource management, procurement, contracting, and other start-up activities shall be performed by the Committee and any consultants, contractors and vendors authorized by the Villages or the Village Managers in order to transition from the Villages' current dispatch centers and systems and two (2) PSAPs to begin operating the IKECC and its single PSAP. There are facilities, equipment, personnel, software and hardware, data processing and other services necessary or incidental to the provision of emergency and/or municipal dispatch and communications services to its service territory areas that need to be coordinated, acquired and contracted for during the initial phase of establishing the IKECC, which phase shall be referred to as the "Preliminary Start-Up Phase Activities." The Preliminary Start-Up Phase Activities shall be conducted by the Committee and any consultants, contractors and vendors authorized by the Village Managers.
- b. "Preliminary Start-Up Costs" are the costs incurred in regard to all initial start-up costs related to the IKECC and the IKECC JETSB, including the acquisition and maintenance, upgrades, repair or replacement of the dispatch system or portions thereof, such as equipment, technology (software, hardware, computers, servers, etc.) and improvements to the building(s) that house the IKECC dispatch operations and personnel or construction costs of a building addition that will house the IKECC dispatch operations and personnel.
- c. Budget for Preliminary Start-Up Costs. The Committee and the Village Managers shall work cooperatively to finalize the draft Estimated Budget for Preliminary Start-Up Costs, which final version shall be sent to the corporate authorities of the Villages for review and approval under a recommendation of the Committee and the Village Managers.
- d. For Preliminary Start-Up Phase Costs that are applicable or unique only to one Village (e.g., purchase of certain equipment or technology needed to update existing equipment or facilities to allow one Village to be serviced by the IKECC at the agreed-upon service level or to avoid diminishing the existing service level of the other Village), that Village shall be solely responsible for payment of such Costs. Any dispute as to whether certain Preliminary Start-Up Costs are unique and applicable only to one Village shall be resolved under the Dispute Resolution provision below.
- e. For all other Preliminary Start-Up Costs, the Villages agree to negotiate an amendment to this Agreement to set a cost sharing formula that will cover the extraordinary costs associated with the acquisition and maintenance, upgrades,

repair or replacement of the dispatch system or portions thereof, such as equipment, technology (software, hardware, computers, servers, etc.) and improvements to the building(s) that house the IKECC dispatch operations and personnel or construction costs of a building addition that will house the IKECC dispatch operations and personnel.

E. Payment Schedule for Shared Costs.

- a. On a monthly or quarterly or as-needed basis, Broadview agrees to calculate all of the shared costs under this Agreement (the "Shared Costs"), which include the Preliminary Consolidation Assessment Phase Costs, the Project Management Phase Costs and the Preliminary Start-Up Costs, and send invoices to Maywood showing the total Shared Costs of both Villages and the respective portion of Shared Costs for payment based on the cost sharing allocation provisions in this Agreement. The quarterly periods shall be: January 1st to March 31st; April 1st to June 30th; July 1st to September 30th; and October 1st to December 31st. Broadview and Maywood agree to promptly pay their respective share of the Shared Costs; Maywood's payments shall be sent to Broadview within thirty (30) calendar days of receipt of the invoice.

- F. Illinois Freedom of Information Act.** The definition of a public record in the Freedom of Information Act (5 ILCS 140/1 *et seq.*) ("FOIA") includes a "public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the public body and that directly relates to the governmental function and is not otherwise exempt under this Act." (5 ILCS 140/7(2).) Consequently, the Villages must maintain and make available to the other Party, upon request, their public records relating to the performance of this Agreement in compliance with the requirements of the Local Records Act (50 ILCS 205/1 *et seq.*) ("LRA") and the FOIA. To facilitate a response to a FOIA request, each Party agrees to provide all requested public records within five (5) business days of a request being made by the requesting Party.

- G. Data and Records.** The Villages shall maintain all data and records relating to this Agreement in accordance with the FOIA and the LRA, and further agree to maintain such records for at least seven (7) consecutive calendar years after the termination of this Agreement. If a Consolidated 911 Communications Center is established by the Villages arising out of their efforts pursuant to this Agreement, then the data and records generated by the activities performed under this Agreement shall be maintained for the duration that the Consolidated 911 Communications Center operates, unless the data and records are properly disposed of pursuant to the LRA.

- H. Audit.** Each Village agrees to allow the other Party and its auditors and attorneys to inspect and audit all data and records maintained by each Party relating to this Agreement. Upon written request, the data and records shall promptly be made

available to the requesting Party or its auditors or attorneys during normal business hours during the term of this Agreement, and for at least seven (7) consecutive calendar years after the termination of this Agreement. Copies of such data and records shall be promptly furnished by the Party to the requesting Party at a reasonable per-page photocopy expense, or in an electronic or digital format at no charge. To the extent any data and records, or portions thereof, are exempt pursuant to the FOIA, the Villages may assert the applicable FOIA exemption(s), and then, if necessary, the Villages agree to use the Dispute Resolution process (see Section I. below) as a first step to resolving any dispute over the production of data and records. If the dispute is not resolved, the Villages may exercise their appeal rights under the FOIA.

- I. **Dispute Resolution.** If a dispute arises between the Villages concerning this Agreement, the Villages will first attempt to resolve the dispute by negotiation. Each Party will designate persons to negotiate on their behalf. The Party contending that a dispute exists must specifically identify, in writing, all issues and present it to the other Party. The Villages will meet and negotiate in an attempt to resolve the matter. If the dispute is resolved as a result of such negotiation, there must be a written determination of such resolution, ratified by the corporate authorities of each Party, which will be binding upon the Villages. If necessary, the Villages will execute an addendum to this Agreement. Each Party will bear its own costs, including attorneys' fees, incurred in all proceedings in this Section. If the Villages do not resolve the dispute through negotiation, either Party to this Agreement may pursue any other available remedies to enforce the provisions of this Agreement.

Section 3. General Provisions.

- A. **Term.** The term of this Agreement shall commence on its Effective Date (as defined below) and continue until the IGA for the formation, operation and governance of the IKECC and the IKECC JETSB is approved by the Villages, subject to compliance and satisfaction of all pending payments and obligations of the Villages, or its mutual termination by the Villages, or termination by one or more of the Villages, upon sending written notice of its/their withdrawal from this Agreement.
- B. **Termination.** Upon the termination of this Agreement, the Villages shall share equally in all costs pertaining to debts and liabilities incurred under this Agreement. The Villages shall work cooperatively to declare as surplus and sell all equipment and personal property acquired under this Agreement and shall share equally in the proceeds and losses of such sales.
- C. **Breach; Interest; Cure.** In the event that either Party breaches this Agreement and the breach is litigated before a court of law or an administrative agency, the non-prevailing Party shall be liable to the prevailing Party for the prevailing Party's reasonable attorneys' fees and costs of suit incurred by the prevailing Party. If either Party fails to pay its share of any financial obligation or to reimburse any uncontested amount due to

the other Party pursuant to this Agreement, the breaching Party's failure shall constitute an automatic breach of this Agreement; in such case, any fine, penalty or accrued interest that arises due to the late payment or failure to pay shall be the responsibility of the breaching Party, and the vendor, contractor or other Party shall be owed interest on the amount of the unpaid payment or reimbursement at the rate provided for in the Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*). A default or breach shall not constitute an actionable event of breach or default, if such breach or default cannot be cured within fifteen (15) calendar days, and the breaching Party, within said fifteen (15) calendar days, initiates and diligently pursues appropriate measures to remedy the breach / default and in any event cures such breach / default within thirty (30) calendar days after such notice of such breach / default. Each Party shall be entitled to any and all remedies at law and in equity under this Agreement.

- D. **Notice.** All notices and other communications required or permitted under this Agreement shall be in writing and may be personally delivered, faxed, e-mailed or sent by first class mail, postage prepaid, addressed to the Village Managers at their business mailing address and electronic telecommunications contact information. All notices and other communications required or permitted under this Agreement shall be deemed to have been received on the day when personally delivered, faxed or e-mailed, or three (3) calendar days after being mailed, as the case may be.
- E. **Complete Agreement; Amendment.** This Agreement contains the entire understanding between the Villages 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 Villages relating to the subject matter of this Agreement which are not fully expressed herein. No oral modification, amendment or change to this Agreement shall be allowed. Any modification, amendment or change to this Agreement shall be in writing, approved by the Villages, and executed by the Village Presidents or their designees.
- F. **Severability.** If any provision of this Agreement or the application of any such provision to either Party shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement shall not be affected, and each remaining provision of this Agreement shall be considered valid and shall be enforced to the fullest extent permitted by law.
- G. **Assignment.** This Agreement shall be binding upon and inure to the benefit of the successors of the Villages, as if each was a party to this Agreement. Neither Party shall have the right to assign the terms of this Agreement, without the prior, written approval of the other Party. No assignment, even if consented to, shall in any way reduce or eliminate the liability of the assignee for obligations accrued prior to such assignment.

- H. **Construction And Governing Law.** Construction and interpretation of this Agreement shall at all times and in all respects be governed by the laws of the State of Illinois, without regard to its conflicts of laws principles. The Villages acknowledge that they have had an opportunity to review and revise this Agreement, and have it reviewed by legal counsel, if desired, and, therefore, the normal rules of construction, to the extent that any ambiguities are to be resolved against the drafting Party, shall not be employed in the interpretation of this Agreement. Neither Party, by entering into this Agreement, waives any immunity provided by local, state or federal law.
- I. **Compliance With Laws.** The Parties to this Agreement shall comply with all applicable federal, state and local laws, rules and regulations in carrying out the terms and conditions of this Agreement, including the following:
- a. **Certification.** Each Party and its officers, corporate authorities, employees and agents certify that they are not barred from entering into this Agreement as a result of a violation of either 720 ILCS 5/33E-3 or 5/33E-4 (bid rigging or bid rotating) or 5/33E-6 (interference with contract submission and award by public official) or as a result of a violation of 820 ILCS 130/1 *et seq.* (the Illinois Prevailing Wage Act) or as a result of: (1) a delinquency in the payment of any tax administered by the Illinois Department of Revenue or any fee required by any unit of local government or the State, unless the Party is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax or the fee, as set forth in Section 11-42.1-1 *et seq.* of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 *et seq.* Each Party and its officers, corporate authorities, employees and agents further certify, by signing this Agreement, that the Party and its officers, corporate authorities, employees and agents have not been convicted of or are not barred for attempting to rig bids, price-fixing or attempting to fix prices as defined in the Sherman Anti-Trust Act and Clayton Act. 15 U.S.C. § 1 *et seq.*; and has not been convicted of or barred for bribery or attempting to bribe an officer or employee of a unit of state or local government or school district in the State of Illinois in that officer's or employee's official capacity. Nor has either of the Villages and their officers, corporate authorities, employees and agents made admission of guilt of such conduct which is a matter of record, nor has any official, officer, agent or employee of the Villages been so convicted nor made such an admission.
 - b. **Non-Discrimination.** Each Party and its officers, corporate authorities, employees and agents agree not to commit unlawful discrimination and agree to comply with all applicable provisions of the Illinois Human Rights Act, Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act, Section 504 of the Federal Rehabilitation Act, and all applicable rules and regulations. Each Party maintains a written Sexual Harassment Policy in compliance with Section 2-105 of the Illinois Human Rights

Act (775 ILCS 5/2-105(A)(4)). Each Party certifies that it is an "Equal Opportunity Employer" as defined by federal and State laws and regulations, and agrees to comply with the Illinois Department of Human Rights ("IDHR") Equal Opportunity Employment clause as required by the IDHR's Regulations (44 Ill. Admin. Code, Part 750, Appendix A). As required by Illinois law and IDHR Regulation, the Equal Opportunity Employment clause is incorporated by reference in its entirety as though fully set forth herein. Each Party certifies that it agrees to comply with the Prohibition of Segregated Facilities clause, which is incorporated by reference in its entirety as though fully set forth herein. See, Illinois Human Rights Act (775 ILCS 5/2-105). See also, Illinois Department of Human Rights Rules and Regulations, Title 44, Part 750. Administrative Code, Title 44: Government Contracts, Procurement and Property Management, Subtitle B: Supplemental Procurement Rules, Chapter X: Department of Human Rights, Part 750: Procedures Applicable to All Agencies, Section 750.160: Segregated Facilities (44 Ill. Admin. Code 750.160).

- c. Conflict of Interest. Each Party represents and certifies that, to the best of their own respective knowledge: (1) no employee or agent of either of the Villages is interested in the business of the other Party or this Agreement; (2) as of the date of this Agreement, neither Party nor any person employed or associated with either Party has any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement; and (3) neither Party nor any person employed by or associated with either Party shall at any time during the term of this Agreement obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement.

- J. **Consent to Dual Representation**. KTJ serves as the Village Attorney for Maywood and, at times, provides special legal counsel services to Broadview. Under the applicable Illinois Rules of Professional Conduct, a law firm owes its clients a duty of loyalty. Normally, this duty would preclude any attorney within the firm from undertaking a representation that is adverse to any client of the firm, without the affected client's informed consent. Other ethical rules generally prohibit a law firm from undertaking any representation involving an actual or potential conflict of interest, without the informed consent of all the affected clients. This situation exists whenever a law firm represents two (2) clients simultaneously in a situation where their interests are actually or potentially adverse. The conflict of interest, and the need for informed consent, exists no matter how cordial the business relationship between the two (2) clients may be, or is anticipated to be, and no matter how non-controversial the transaction in question is anticipated to be. Because KTJ has an attorney-client relationship with Maywood and at other times has an attorney-client relationship with Broadview, it may not be possible for KTJ to represent both Parties in dealings with each other in a manner as aggressive as may be involved with representation by two (2) separate and independent law firms. By providing dual consent, the Villages may, in effect, be giving up that kind of zealous

and/or aggressive representation of its individual interests with respect to matters involving both entities. Further, if a dispute or conflict of interest should arise in the future between the Villages regarding their dealings with each other, KTJ would have to withdraw from representing the Villages with regard to that dispute. In other words, the Villages would then each have to retain separate counsel for said limited purpose. Under such circumstances, KTJ would not represent either Village in regard to the issue in dispute, and would continue to represent Maywood in all other matters as their Village Attorney. KTJ reasonably believes that it can provide competent and diligent representation to each Village in relation to the preparation and completion of matters covered by this Agreement. Because a potential conflict or dispute could arise between the Villages, KTJ's representation of both Villages requires each Village's informed consent. Although the interests of the Villages should generally be consistent, the Villages and KTJ each recognize and understand that differences may now exist or may become evident during the course of KTJ's joint representation. Notwithstanding these possibilities, by agreeing to the Dual Representation, both Villages and KTJ acknowledge that they have determined that it is in their individual and mutual interest to have KTJ represent both Villages during the preparation and completion of the matters covered by this Agreement. This Section serves as notice of the risks of dual representation and confirms the agreement of the Villages that KTJ may represent both Villages in all matters covered by this Agreement and the proposed IGA, until such time as the Villages hire new legal counsel. This Section also confirms that the Villages have each agreed to waive any conflict of interest arising out of, and that neither Village will object to, KTJ's representation of the Villages or the IKECC or the IKECC JETSB in day-to-day legal matters relating to the matters covered by this Agreement or the proposed IGA, even when such matters involve both Villages. The decision to consent to KTJ's dual representation is voluntary and either Village is free to decline to consent to dual representation, at which time KTJ would not proceed to represent the Villages, the IKECC and the IKECC JETSB, and would continue to represent Maywood as Village Attorney.

Effective Date. The Effective Date of this Agreement shall be the date that the last authorized signatory signs and dates this Agreement, which date shall be inserted on the first page of this Agreement.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the Village of Broadview and the Village of Maywood have caused this Agreement to be signed on their behalf by their respective Village Presidents, on the days and year written below. The Effective Date of this Agreement shall be the date the last signatory signs this Agreement, which date shall be inserted on page 1 hereof.

APPROVED BY VILLAGE OF BROADVIEW:

APPROVED BY VILLAGE OF MAYWOOD:

By: _____

By: _____

Name: _____

Name: _____

Village President

Village President

Date: _____, 2017.

Date: _____, 2017.

ATTEST:

ATTEST:

By: _____

By: _____

Name: _____

Name: _____

Village Clerk

Village Clerk

Date: _____, 2017.

Date: _____, 2017.

(Seal)

(Seal)

