

City of South Daytona
Office of the City Manager

1672 S. Ridgewood Avenue • South Daytona, FL 32119 • 386/322-3014



MEMORANDUM

To: James L. Gillis Jr., City Manager
From: Becky Witte, Deputy City Clerk
Re: Consideration of approving a Fire Training Facilities Agreement with the City of Port Orange for use of the Port Orange Fire Department's Fire Training Facilities.
Date: July 7, 2023

Currently the City's Fire Department utilizes the Volusia County Fire Training Facility on Tiger Bay Road for its training needs. The City of Port Orange has operational fire training facilities, including a training tower on Oak Street in Port Orange which they have offered the City to utilize.

This facility allows fire personnel the opportunity to continue training with our Southeast District Fire Training Group and is in closer proximity to City Hall. The City will continue to utilize the County facility for ISO training and other exercises.

If approved, the Fire Department can start using the facility almost immediately at no cost.

Staff requests the City Council approve the Fire Training Facilities Agreement with the City of Port Orange for use of the Port Orange Fire Department's Fire Training Facilities. If approved, the agreement has a term of five years.

FIRE TRAINING FACILITIES AGREEMENT
CITY OF PORT ORANGE

THIS AGREEMENT is made and entered into this ____ day of _____ 20____, between the City of Port Orange, a Florida Municipal corporation with a mailing address of 1000 City Center Cir., Port Orange, Florida 32129 (hereinafter referred to as “City” or “COPO”, and includes the Port Orange Fire Department), and the City of South Daytona, a Florida Municipal corporation with a mailing address of 1672 S. Ridgewood Avenue, South Daytona, Florida 32119 (hereinafter referred to as “PERMITTEE”).

WITNESSETH

Whereas, COPO has operational fire training facilities for the use of the Port Orange Fire Department (POFD), including the training tower, (“Fire Training Facilities”); and

Whereas, to the extent that such facilities have spare capacity for use by other fire departments or other related agencies, COPO is willing to allow such agencies to use its Fire Training Facilities to the extent such use will not interfere with use of the facility by the POFD; and

Whereas, in order that PERMITTEE and its officers, agents and/or employees (“Personnel”) may maintain a level of performance in firefighting, and in consideration of the mutual promises hereinafter contained in this Agreement, this Agreement is entered into to enable PERMITTEE to use the Fire Training Facilities; and

Whereas, given the liabilities, hazards, and risks inherent to such facilities and activities, PERMITTEE acknowledges that it would not be economically feasible or sustainable for COPO to allow other agencies to utilize or enter the Fire Training Facilities absent execution of this Agreement

NOW, THEREFORE, the parties hereto agree as follows:

1. The above recitations are true and correct.
2. COPO hereby agrees to permit the Personnel of PERMITTEE to use the Fire Training Facilities at such time(s) as are mutually agreed upon between the parties in accordance with individual departmental schedules.
3. PERMITTEE agrees to provide all safety gear for its Personnel which conforms to any and all safety standards specifications set by the State Fire Marshal.
4. PERMITTEE further agrees to provide a qualified instructor to provide training for and immediate supervision of its Personnel utilizing the Fire Training Facilities during such times as said facilities are used by PERMITTEE Personnel.
5. Term and Termination. The term of this Agreement shall commence on the date of execution by both parties and shall expire five years thereafter. This Agreement may be canceled by either party upon furnishing at least (30) days written notice of cancellation upon the other party.
6. Notices.

To COPO:
City of Port Orange, Attention: City Manager
1000 City Center Circle
Port Orange, Florida 32129

To PERMITTEE:
City of South Daytona, Attention: City Manager
1672 S. Ridgewood Avenue
South Daytona, Florida 32119
7. Non-Assignment. PERMITTEE shall not assign this Agreement, or any portion thereof, to any other person, agency, or entity.
8. Release, Waiver and Liability. To the maximum extent allowed by law, PERMITTEE hereby releases COPO, its affiliates, contractors, personnel, employees, agents,

agencies, officers, public officials, representatives, successors, successors in interest and assigns ("Released Parties") from any and all liability and damages in any way arising out of, connected to or related to the entry, access, utilization, use, occupancy and/or enjoyment of the Fire Training Facilities by PERMITTEE or any of its Personnel and, in no event shall the Released Parties be liable for any injuries or damages suffered or incurred by PERMITTEE, any of its Personnel, or any third party, as a result of, or in any way related to, the entry, access, utilization, use, occupancy and/or enjoyment of the Fire Training Facilities. The PERMITTEE shall be legally responsible for its own actions and the actions of the PERMITTEE's Personnel entering, accessing, utilizing, using, occupying and/or enjoying the Fire Training Facilities under or pursuant to this Agreement. Lawsuits and claims that may be filed from time to time shall be handled by the PERMITTEE in accordance with normal procedures, and the PERMITTEE shall hold the Released Parties, to the maximum extent allowed by Florida Statutes, harmless from any and all matters, causes of actions, suits, judgments, executions, claims and demands of any kind whatsoever, in law or in equity, which may result or arise out of or be connected to PERMITTEE's and its Personnel's entry, access, utilization, use, enjoyment and/or occupancy of the COPO's property/Fire Training Facilities or the intentional or negligent acts or omissions of the PERMITTEE and its Personnel. PERMITTEE shall be liable for its own actions and negligence and agrees to assume responsibility for the acts, omissions or conduct of the PERMITTEE'S Personnel, subject to the provisions of Section 768.28, Florida Statutes, where applicable.

9. Responsibility of Personnel. PERMITTEE acknowledges that its Personnel shall at all times remain an employee, agent and/or officer of such agency. PERMITTEE will be responsible for the worker's compensation coverage and claims of its own Personnel. All privileges and immunities from liability, exemptions from law and all pensions and relief,

disability, worker's compensation and other benefits that would apply if the PERMITTEE'S Personnel were receiving training in its territorial limits, shall apply to the same degree and extent.

10. Permittee Responsible for Damage or Loss to City Property. PERMITTEE shall be responsible for any loss or damage to COPO property caused by its Personnel, absent normal use of the facility for fire related training purposes.

11. Assumption of the Risk. The PERMITTEE acknowledges that use of many props including the Fire Tower at the Fire Training Facilities may present special dangers to persons using them and that various training techniques are inherently dangerous. Therefore, it is understood and agreed that the PERMITTEE and its Personnel assume the risk of such activity. PERMITTEE shall assure COPO that any and all Personnel are qualified to present themselves for training.

12. Indemnity. PERMITTEE agrees to indemnify the Released Parties and hold them harmless as to any claim, judgment, or damage award whatsoever arising out of, connected to or related to the PERMITTEE and its Personnel's own negligent or wrongful acts or omissions, to the extent permitted by law. The Parties understand that pursuant to Florida Statute § 768.28(19), no Party is entitled to be indemnified and held harmless by another Party for its own negligent or wrongful acts or omissions.

13. Reservation of Sovereign Immunity and No Consent to Suit. The Parties agree that nothing contained herein is intended to, nor shall be construed as, a waiver of any Party's rights and immunities under common law or Section 768.28, Florida Statutes, as might be amended from time to time. Nothing herein is intended to serve as a waiver of sovereign immunity by any Party to which sovereign immunity may be applicable, and each Party claims all of the privileges and immunities and other benefits and protections afforded by Florida

Statute § 163.01(9). Nothing contained herein shall be construed as consent to be sued by third parties in any matter arising out of or connected to this Agreement.

14. No City Liability for Inoperability of Facilities. The COPO shall not be responsible for any damages incurred by PERMITTEE as a result of the Fire Training Facility being temporarily inoperable for any reason.

15. Waiver of Subrogation. PERMITTEE hereby waives all rights against the Released Parties to the extent of the risk coverage by any insurance policy required hereunder for damages by reason of any claim, demand, suit, or settlement (including workers' compensation) for any claim for injuries or illness of anyone, or perils arising out of or connected to the PERMITTEE's or PERMITTEE Personnel's entry, enjoyment, utilization, occupancy, access to or use of the Fire Training Facilities. PERMITTEE shall require similar waivers from any other entities acting on PERMITTEE's behalf, whether they are contractors or subcontractors. This provision applies to all applicable policies of insurance carried by the PERMITTEE, including, but not limited to, workers' compensation and general liability policies.

16. Insurance. The PERMITTEE agrees to name City of Port Orange as an additional insured in its Insurance Policy coverage as required by the COPO's Risk Manager (consistent with the law) and agrees to provide the COPO a copy of the same.

17. Arrangements. PERMITTEE will need to contact the POFD in advance to determine availability and make arrangements for the use of the POFD Fire Training Facilities.

18. Severability. PERMITTEE acknowledges and agree that should any term, condition, or provision (or any part thereof) contained in this agreement be found unenforceable by a court of competent jurisdiction, then all remaining terms, conditions and

provisions shall remain in full force and effect. The COPO's failure to enforce any remedy or provision in this agreement shall not be construed as a waiver of such remedy or provision.

19. Venue/Waiver of Jury Trial. This agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. Jurisdiction of and venue for any controversies or legal issues connected to or arising out of this agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall, if in state court, be in the 7th Judicial Circuit in and for the County of Volusia, Florida, and if in federal court, be in the Middle District of Florida, Orlando Division. By executing this agreement, PERMITTEE hereby expressly waives any rights it may have to a trial by jury of any civil litigation related to this agreement.

20. Entirety of Contract. This Agreement is and shall be considered to be the only Agreement concerning the Fire Training Facilities between the parties hereto. All negotiations and all agreements of said parties are included herein.

21. Recordation. After execution this Agreement shall be forwarded to the City of Port Orange City Clerk for recordation with the Clerk of Court in Volusia County.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals as of the dates indicated below.

CITY OF SOUTH DAYTONA

By:

Printed Name _____

Title _____

Attest _____

Printed Name_____

Title _____

Dated this __ day of _____ , 20____.

CITY OF PORT ORANGE

By:_____

Joe Wulfing, Fire Chief
Port Orange Fire Department

Dated this __ day of _____ , 20____.