

RESOLUTION NO. 18-06

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT FOR THE PURCHASE, INSTALLATION, AND OPERATION OF A LIGHTNING PREDICTION AND WARNING SYSTEM BY AND BETWEEN THE VILLAGE OF MANTENO AND MANTENO COMMUNITY UNIT SCHOOL DISTRICT NUMBER 5, KANKAKEE COUNTY, ILLINOIS

BE IT RESOLVED by the President and Board of Trustees of the Village of Manteno, Kankakee County, Illinois, as follows:

Section 1

The Intergovernmental Agreement for the Purchase, Installation, and Operation of a Lightning Prediction and Warning System, in substantially the same form as attached hereto as Exhibit "A," between the Village of Manteno and Manteno Community Unit School District Number 5, Kankakee County, Illinois, is hereby approved and incorporated herein as a part of this Resolution.

Section 2

The President and Village Clerk are hereby authorized and directed to execute the Intergovernmental Agreement and such other documents as may be necessary to implement the same.

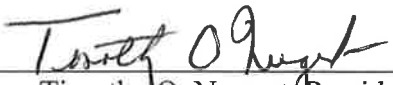
Section 3

All resolutions or parts thereof in conflict with this Resolution are hereby repealed.

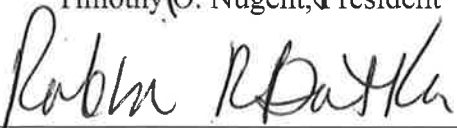
Section 4

This Resolution shall be in full force and effect upon its adoption.

Adopted August 20, 2018.



Timothy O. Nugent, President



Robin Batka, Village Clerk

**INTERGOVERNMENTAL AGREEMENT
FOR THE PURCHASE, INSTALLATION, AND OPERATION OF A LIGHTNING
PREDICTION AND WARNING SYSTEM**

THIS INTERGOVERNMENTAL AGREEMENT FOR THE PURCHASE, INSTALLATION, AND OPERATION OF A LIGHTNING PREDICTION AND WARNING SYSTEM ("Agreement"), is made and entered into as of August 20, 2018, but actually executed by each of the undersigned units of local government on the date set forth beneath the respective signatures of their duly authorized officers below, by and between the Village of Manteno, Kankakee County, Illinois ("Village") and Manteno Community Unit School District No. 5, Kankakee County, Illinois ("District").

WITNESSETH

WHEREAS, the Village and the District are public agencies duly organized under the laws of the State of Illinois;

WHEREAS, under and pursuant to §10 of the Illinois Emergency Management Agency Act (20 ILCS 3305/10) ("Act"), a political subdivision may enter into contracts and incur obligations necessary to place it in a position to effectively combat disasters as defined in §4 of the Act;

WHEREAS, Section 10 of Article VII of the Constitution of the State of Illinois and the Intergovernmental Cooperation Act (5 ILCS 220/1, *et seq.*) provide authority for Village and the District to obtain or share services and to exercise, combine or transfer any power or function not prohibited by law or ordinance;

WHEREAS, there exists a significant threat to life and safety from storms and lightning strikes when large groups of individuals gather outdoors;

WHEREAS, the Village and the District find that large groups of persons present in parks and outdoor sporting venues are at the greatest risk and the most vulnerable to lightning strikes and inclement weather; and,

WHEREAS, the Village and the District deem it necessary, useful and desirable to combine their resources to the install and operate a Thor Guard Integrated Lightning Prediction and Warning System in order to better provide for the protection of the life and safety of their students, guests, and the public in general.

NOW THEREFORE, in consideration of the matters set forth above, the agreements, covenants, representations and undertakings made and contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Village and the District hereby agree, covenant, represent and undertake as follows:

ARTICLE I

In General

Section 1.1. General Definitions. Unless the context hereof clearly indicates otherwise, the capitalized words, terms and phrases defined in this section and elsewhere herein shall have the same meanings for all purposes of this Agreement. In addition, in all cases the singular includes the plural, the plural includes the singular and a reference to any gender includes both genders and the neuter, as the case may be.

District means Manteno Community Unit School District No. 5, Kankakee County, Illinois.

District's Personal Property means the Voice of Thor Base Horn and two (2) LED Strobe Assemblies.

District's Real Property shall mean the property located at 443 North Maple, Manteno, Illinois 60950.

On-Site Warning Devices shall mean the Voice of Thor Base Horn and two (2) LED Strobe Assemblies installed on the District's Real Property.

Remote Warning Device shall mean a device consisting of a Voice of Thor Remote Receiver with external Horn Cluster, a Thirty (30W) Watt Solar Panel, a Strobe Assembly, and a Tripod.

Shared Property means the Thor PCX and Software.

System means the integrated Thor Guard Integrated Lightning Prediction and Warning System consisting of: (a) one (1) Thor Guard L 75R Computer Console with ASA Sensor and Cable; (b) one (1) Thor PCX and Software; (c) one (1) Moxa Device; (d) one (1) Voice of Thor Base Horn; (e) two (2) Voice of Thor Remote Receivers with external Horn Clusters; (f) two (2) Thirty (30W) Watt Solar Panels; (g) four (4) LED Strobe Assemblies; (h) one (1) UPS/Battery back-up/Surge Suppressor; and, (i) two (2) Tripods.

System Mainframe means the Thor Guard L 74R Computer Counsel with ASA Sensor and Cable, the Thor PCX and Software, Moxa Device, and UPS/Battery back-up/Surge Suppressor.

Village means the Village of Manteno, Kankakee County, Illinois.

Village's Personal Property means one (1) Thor Guard L 75R Computer Console with ASA Sensor and Cable, one (1) Moxa Device, two (2) Voice of Thor Remote Receivers with external Horn Clusters, two (2) Thirty (30W) Watt Solar Panels, two (2) LED Strobe Assemblies; one (1) UPS/Battery back-up/Surge Suppressor, and two (2) Tripods.

Village's Real Property means those public parks on which any Remote Warning Device is located.

Section 1.2. Certain Phrases. The words "hereof", "herein", "hereunder", "hereto" and other words of similar import refer to this Agreement as a whole and not solely to the particular portion thereof in which any such word is used. The words "District" and "Village" shall include both the body politic and its employees.

Section 1.3. Subdivisions. References to sections and other subdivisions of this Agreement are to the designated sections and other subdivisions of this Agreement as originally executed.

Section 1.4. Headings. The headings of this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

ARTICLE II

Lightning Prediction and Warning System

Section 2.1 Purchase of System. The Village shall purchase the System. Of the total cost for the System, the District shall be responsible for reimbursing the Village \$5,097.50 corresponding to: (a) one-half (1/2) of the costs associated with purchase of the Thor PCX and Software, or \$497.50; (b) the full cost of the Voice of Thor Base Horn, or \$4,000.00; and (c) one-half (1/2) of the costs associated with the LED Strobe Assemblies, or \$300.00. The District shall tender its payment to the Village no later than thirty (30) days after the Effective Date of this Agreement.

Section 2.2. System Location. The System Mainframe shall be installed and located in the press box overlooking the football/track field on the District's Real Property. The Voice of Thor Base Horn and one (1) Strobe Assembly shall be installed and located above the press box on the District's Real Property. One (1) Strobe Assembly shall be installed on the District's Real Property at a location chosen by the District. A Remote Warning Device connected wirelessly to the System Mainframe shall be installed and located on the Village's Real Property at two public park locations that the Village may choose.

Section 2.3. System Installation and Maintenance.

2.3.1. The Village and the District shall assign and devote such personnel as needed for the installation, maintenance, and operation of the System, and any costs or expenses associated with the same shall not be subject to reimbursement from the other party.

2.3.2. The Village and District shall complete installation of the System such that the same is functioning and in full working order no later than September 30, 2018. Thereafter, the Village and the District shall cooperate in the operation and maintenance of the System so that the same is and remains in a functioning order and in good repair throughout the term of this Agreement.

2.3.3. All costs associated with purchasing upgrades, replacement parts or components, and any third-party (e.g., manufacturer) maintenance costs, for the System Mainframe shall be split evenly between the Village and the District. Provided, however, except as may be authorized by Section 2.3.5, neither the Village nor the District shall contract or otherwise incur expenses for which the other may be liable without their express written consent.

2.3.4. The District shall be and remain solely responsible for the cost and expense associated with purchasing replacement parts or components, and any third-party maintenance costs, for the On-Site Warning Devices. The Village shall be and remain solely responsible for the cost and expense associated with purchasing replacement parts or components, and any third-party maintenance costs, for the Remote Warning Devices. The District and the Village shall complete repairs, replacements, and/or maintenance associated with the On-Site Warning Devices and Remote Warning Devices, respectively, in a good and workmanlike manner and in a commercially reasonable time-period after either of them has knowledge of a condition necessitating the same.

2.3.5. Notwithstanding anything herein to the contrary, in the event the District or the Village fails or refuses to repair, replace, and/or maintain their respective property, or the same is in a condition that is adversely affecting the operability or the functionality of the System as a whole, within fifteen (15) days after notice of such condition is delivered, the party providing the notice shall be entitled and authorized to take such action as is reasonably necessary to place the System into working order. Any cost or expense incurred by the party who is not primarily responsible for the maintenance of such property (or portion of the cost or expense in the case of the System Mainframe), including the costs and expenses for parts, components, equipment, or labor (irrespective of source), shall be charged to and paid by the other party within fifteen (15) days after an invoice and proof of payment therefor is delivered to the responsible party.

2.3.6. The Village and the District, as the case may be, shall provide notice to the other in the event that any portion of the System located on District's Real Property (including the System Mainframe) or the Village's Real Property malfunctions, or will be inoperable for any period of time.

Section 2.4. System Ownership. The Shared Property shall be and remain common property of the Village and District. The District's Personal Property shall be and remain the property of District and the Village's Personal Property shall be and remain the property of the Village.

Section 2.5. Utilities. Both the Village and the District shall pay for the costs to connect and for the provision of electricity to/for any part of the System located on their own real property irrespective of which party owns those components or parts services thereby. Neither the Village nor the District shall allow the cessation of electricity to the System without fifteen (15) days prior notice to the other party. Power outages due to acts of God shall not be considered within this notice provision; however, the District and the Village shall notify each

other of any power outages to their property or the System as soon as it has knowledge of that condition be it by act of God or otherwise.

Section 2.6. License. The District hereby grants to the Village, officials, employees, and agents an irrevocable non-exclusive license to enter upon the District's Real Property to construct, repair, inspect, and maintain the System Mainframe during normal business hours and outside of normal business hours in the event the same malfunctions or becomes inoperable. Such license shall be limited to those areas necessary to access and work on those components. The license granted herein shall extent to the repair and maintenance of the On-Site Warning Devices should their condition adversely affect the operability or the functionality of the System as a whole.

Section 2.7. Insurance; Worker's Compensation. The Village and District shall maintain liability insurance or membership in an approved self-insurance pool for claims arising from or relating to the System. To the extent not covered by the Village or District's existing property damage insurance policies, the Village and District may elect to insure System or any portion thereof, but any decision to forego insuring the System or any portion thereof shall have no bearing on a party's obligation to replace or repair any damaged or destruction thereto. No party shall be entitled to any portion of the proceeds on account of such policy upon which it is not listed as loss payee, but such party may compel the party listed as loss payee to use the proceeds to fulfill their respective obligations under this Agreement. The Village and District agree that they shall be solely responsible for providing worker's compensation coverage for their own employees.

Section 2.8. Operation. The parties shall cooperate and devote such resources as are necessary to provide for the continuous operation of the System in a manner they both agree is appropriate during the term of this Agreement. Notwithstanding the above, the parties may agree to discontinue operation of the System during certain period's time as they may agree such as winter months or late at night.

Section 2.9. Term. This Agreement shall become effective upon its execution and delivery by Village and the District ("Effective Date") and shall be and remain in full force and effect thereafter for a period of five (5) years. This Agreement shall renew for a successive five (5) year term unless either party gives notice to the other of its intent to not renew for the successive term prior to the commencement thereof.

Section 2.10. Default. Except as otherwise provided in this Agreement, the failure on the part of either party to comply with any material term, representation, warranty, covenant, agreement, or condition of this Agreement, which continues uncured for thirty (30) days after written notice thereof shall constitute an "Event of Default"; provided that an Event of Default will not be deemed to have occurred if such failure is a matter than cannot reasonably be cured within thirty (30) days due to uncontrollable circumstances, and the failure is cured by the end of a period that includes the days lost due uncontrollable circumstances. No default by Village or the District shall be actionable or be of other consequence unless and until it shall constitute an Event of Default.

Section 2.11. Termination for Cause. This Agreement may be terminated upon a material breach of any of the provisions contained herein by the other party that remains uncured for thirty (30) days after written notice thereof.

Section 2.12. Disposition of the System. Upon the earlier expiration or termination of this Agreement, the Village shall be given the opportunity to purchase the District's Personal Property, and the District's share of the Shared Property, at the depreciated value of the same (as determined by an independent third-party agreeable to both parties). In the event the Village elects not to purchase the same, the District shall be given the opportunity to purchase the Village's Personal Property (excluding the District's share of the Shared Property) at the depreciated value of the same (as determined by an independent third-party agreeable to both parties). In the event the District elects not to purchase the same, the parties shall work to sell the System to a third-party at the fair market value or such other price as may be mutually agreeable, and the proceeds from the sale shall be distributed to the parties in proportion to the value of the components owned by each of them.

ARTICLE III

Miscellaneous

Section 3.1 Notices and Communications. All notices, demands, requests for reimbursement or other communications under or in respect of this Agreement shall be in writing and shall be deemed to have been given when the same are (i) deposited in the United States mail and sent by first class mail, postage prepaid or (ii) delivered, in each case, to Village or the District at their respective addresses (or at such other address as each may designate by notice to the other), as follows:

- (1) If to Village, at the Village of Village, 98 East Third Street, Village, Illinois 60950. Attn: Christopher LaRocque, Village Administrator.
- (2) If to District, Manteno Community Unit School District No. 5, 84 North Oak Street, Manteno, Illinois 60950. Attn: Lisa Harrod, Superintendent.

Whenever any party hereto is required to deliver notices, certificates, opinions, statements or other information hereunder, such party shall do so in such number of copies as shall be reasonably specified.

Section 3.2. Time of the Essence. Time is of the essence in the performance of this Agreement.

Section 3.3. Binding Effect. The parties intend that the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their grantees, nominees, successors in interest, assignees, heirs, executors, or lessees.

Section 3.4. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement

shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law.

Section 3.5 Illinois Law. This Agreement shall be deemed to be an intergovernmental agreement made under and shall be construed in accordance with and governed by the laws of the State of Illinois.

Section 3.6. Written Modification. Neither this Agreement nor any provisions hereof may be changed, revised, modified, waived, discharged, terminated or otherwise abrogated, diminished or impaired other than by an instrument in writing duly authorized and executed by both Village and the District

Section 3.7. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 3.8. Non-Waiver. Neither party hereto shall be under any obligation to exercise any of the rights granted to it in this Agreement. The failure of a party to exercise at any time any right granted to such party shall not be deemed or construed to be a waiver of that right, nor shall the failure void or affect such party's right to enforce that right or any other right.

Section 3.9. Severability. It is hereby expressed to be the intent of the parties that should any provision, covenant, agreement, or portion of this Agreement or its application to any person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any person or property shall not be impaired thereby, but the remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

Section 3.10. Entire Agreement. This Agreement constitutes the entire agreement of Village and the District on the subject matter hereof. The Village and the District represent, warrant, covenant and agree that no representation, warranty, covenant or agreement shall be binding on the other party unless expressed in writing herein or by written modification pursuant to Section 3.6 hereof.

Section 3.11. 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 all 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.

Section 3.12. Recitals. The recitals of this Agreement are hereby incorporated and made a part of this Agreement as though fully set forth herein.

Section 3.13. Authority. The Village and the District hereby warrant and represent to the other that the persons executing this Agreement on their behalf have been properly authorized to do so by their respective corporate authorities.

Section 3.14. Third-Party Beneficiaries. Nothing in this Agreement is intended, nor shall it be interpreted, to create any rights or remedies to and in any third party. No claim as a third party beneficiary under this Agreement by any person shall be made, or be valid, against the Village or the District.

Section 3.15. Uncontrollable Circumstances. Unless otherwise specified, neither the Village nor the District shall be considered in breach of or in default of its obligations under this Agreement in the event of any delay or nonperformance caused by uncontrollable circumstances beyond the reasonable control of the party affected which in fact interferes with the ability of such party to discharge its obligations hereunder. Any party relying on this Section with respect to any such delay shall give written notice thereof to the other party to this Agreement.

Section 3.16. Personal Liability. No covenant or agreement contained in this Agreement shall be deemed to be the agreement of any official, employee, or agent of the Village or District, in his or her individual capacity, and no official, employee, or agent of the Village or District shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery, and performance of this Agreement, or any failure in connection therewith.

Section 3.17. Relationship. Neither this Agreement nor any actions of the parties or any third-party shall be construed to or create a partnership, agency relationship or joint venture.

IN WITNESS WHEREOF, Village and the District have each caused this Agreement to be executed by proper officers duly authorized to execute the same as of the date set forth beneath the signatures of their respective officers set forth below.

VILLAGE OF MANTENO,

MANTENO COMMUNITY UNIT
SCHOOL DISTRICT NO. #5,

By: Timothy O. Nugent
Timothy O. Nugent, President

By: Mark Stauffenberg
Mark Stauffenberg, President

(SEAL)

(SEAL)

ATTEST:

ATTEST:

Robin Batka by Darla Hurley
Village Clerk Deputy VC
Date: 8/20/18

Mary C Schuchert
Secretary
Date: 8/21/18