

TALKGROUP ACCESS AGREEMENT

This agreement is hereby made and entered into this ____ day of _____, 20__ by and between the City of Elgin, Illinois, a municipal corporation (hereinafter referred to as "City") and, Emergency Telephone System Board of DuPage County (hereinafter referred to as "Agency").

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is hereby mutually acknowledged, the parties hereto hereby agree as follows:

Grant of Access. City hereby authorizes the Agency and only those personnel members whose names the Agency provides to the City to access the following (hereinafter referred to collectively as "Talkgroups"):

ELG CW OPS 1

ELG FD Main, ELG FD OPS 2, ELG FD OPS 3, ELG FD OPS 4

Scope of Use. Recognizing the need to control the use of these Talkgroups and in accordance with the State of Illinois Starcom21 policies and procedures, the Agency agrees to limit the use of the Talkgroups to Emergency Notifications (serious incidents, serious traffic crashes, and active fires), Coordination of Joint Operations and Mutual Aide Responses (Natural and Man-Made Disasters, Mass Casualty Incidents, Police, Fire, EMS, HAZMAT, Rescue Operations, and Training).

The Agency shall, at all times, ensure that its personnel utilize its access to Talkgroups in strict conformance with the provisions of this agreement, its application to the City, and such rules and policies as the City or its subordinate entities may from time to time establish. The Agency shall not permit its personnel to utilize the Agency's access to Talkgroups in any manner that exceeds this scope of use or in violation of law.

Termination. The Agency may terminate its access to Talkgroups at any time by providing written notice to the City. The City may terminate the Agency's access to Talkgroups at any time for any reason with or without written notice.

Indemnification.

(a) The Agency shall, at all times, fully indemnify, hold harmless, and defend the City and their officers, agents, and employees from and against any and all claims and demands, actions, causes of action, and cost and fees of any character whatsoever made by anyone whomsoever on account of or in any way growing out of use of Talkgroup by the Agency and its employees, or because of any act or omission, neglect or misconduct of the Agency, its employees and agents or its subcontractors including, but not limited to, any claims that may be made by the employees themselves for injuries to their person or property or otherwise, and any claims that may be made by the employees themselves or by the Illinois Department of Labor for the Agency's violation of the Illinois Prevailing Wage Act (820 ILCS 130/1 et seq.). The foregoing obligation of the Agency to indemnify shall not be limited by reason of insurance or immunity.

(b) Nothing contained herein shall be construed as prohibiting the City and their officers, agents, or its employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, actions or suits brought against them. The Agency shall likewise be liable for the costs, fees and expenses incurred in defense of any such claims, actions, or suits.

(c) The Agency shall be liable for any damages incurred as a result of its errors, omissions or negligent acts.

Duty to Contract for Access, Costs. The Agency shall contract with the applicable entity for access to the system on which the Talkgroup operates. The Agency shall be solely responsible for all costs associated with its access to the Talkgroup. The Agency shall be solely responsible for the acquisition of any equipment it requires to access Talkgroup.

Notices. All notices required to be given pursuant to this agreement shall be in writing and addressed to the parties at their respective addresses set forth below:

If to the City:
Michael Bayard
Elgin Police Department
151 Douglas Avenue
Elgin, Illinois 60120

If to the Agency:
Linda Zerwin, Executive Director
DuPage County ETSB
421 N County Farm Road
Wheaton, IL 60187

Covenant Not to Sue. In consideration of the City's grant of access to Talkgroups, the Agency covenants and agrees that it shall not sue, institute, cause to be instituted or permit to be instituted on its behalf, or by or on behalf of its past, present or future officials, officers, employees, attorneys, agents or assigns, any proceeding or other action with or before any local, state and/or federal agency, court or other tribunal, against the City, its council members, officers, commissioners, employees, attorneys, agents or assigns, arising out of, or from, or otherwise relating, directly or indirectly, to this agreement to the extent authorized by law. In no event shall the City be liable to the Agency for monetary damages for any reason whatsoever.

Representations. The Agency represents that it has the authority to enter into this agreement and undertake the duties and obligations contemplated by this agreement and that it has taken or caused to be taken all necessary action to authorize the execution. Further, the Agency represents that the signatory of this agreement has the authority to bind the Agency to all obligations herein contained.

Survival. The Agency's obligations pursuant to the sections herein under the headings entitled "Indemnification" and "Covenant Not to Sue" shall survive the termination of this agreement.

Assignment. Neither the Agency nor any of its personnel may assign or transfer any rights afforded to it under this agreement to any third party for any purpose without the express written permission of the City.

Venue. This agreement shall be subject to the laws of the State of Illinois. Venue for the resolution of any disputes or the enforcement of any rights arising out of or in connection with this agreement shall be in the Circuit Court of Kane County, Illinois.

Severability. The terms of this agreement shall be severable. In the event any of the terms or provisions of this agreement are deemed to be void or otherwise enforceable for any reason, the remainder of this agreement shall remain in full force and effect.

CITY OF ELGIN:

AGENCY:

By: _____
City Manager

By: _____
Name/Print: Greg Schwarze

Attest:

City Clerk

Title: ETSB Chair