

FENCING CONSORTIUM JOINT POWERS AGREEMENT

THIS FENCING CONSORTIUM JOINT POWERS AGREEMENT (“**Agreement**”) is made and entered into by and among the Governmental Units identified in the attached Exhibit A (each a “**Member**” or collectively the “**Members**”).

RECITALS

- A. The civil unrest and resulting negative impacts on mental health, damage to buildings, and a reduction in overall safety experienced in the Seven County Metropolitan Area in recent years has given rise to a need for communities to have ready access to anti-scalable fencing. The anti-scale fencing can be set up to protect public buildings, critical infrastructure, and other key locations to de-escalate tensions between law enforcement and protestors as well as reduce the need to rely on crowd control measures to protect such locations from violent and destructive actors.
- B. Appropriate fencing to serve this purpose is produced by few vendors, currently all of which are located outside of the state.
- C. This type of fencing is expensive and the delays associated with attempting to identify and secure the delivery of fencing during the response to a critical incident may result in unnecessary risks to personnel and public property.
- D. By pooling resources and working cooperatively, communities can access high quality fencing, trained personnel, and related resources to assemble it in as efficient manner as possible to support de-escalation measures with protestors and protect facilities from violent and destructive actors.

AGREEMENT

In consideration of the mutual agreements and understandings, and intending to be legally bound, the Members hereby agree as follows:

ARTICLE I DEFINITIONS AND PURPOSE

- 1.1. **Definition of Terms.** For the purposes of this Agreement, the following terms shall have the meaning given them in this section.
 - (a) Additional Member. “Additional Member” means a Governmental Unit that submits a Membership Resolution after the Effective Date and that the Board votes to accept as a Member of the Fencing Consortium.
 - (b) Agreement. “Agreement” means this Fencing Consortium Joint Powers Agreement.

- (c) Board. “Board” means the Fencing Consortium Joint Board established by this Agreement.
- (d) Call Out. “Call Out” means a request by a Requesting Member to the Board requesting the deployment of the Fencing.
- (e) Critical Incident. “Critical Incident” means an event or occurrence that occurs within a Governmental Unit that is reasonably anticipated to result in, or that does result in, civil unrest focused against one or more public buildings, infrastructure, or other critical site with the Governmental Unit.
- (f) Deployment Site. “Deployment Site” means the specific location at which the Fence is to be assembled.
- (g) Deployment Team. “Deployment Team” means the public works personnel or others assigned by each Member who are responsible for responding to requests by Members to assemble and disassemble the Fencing at a Member’s Deployment Site in accordance with its Fencing Preplan.
- (h) Deployment Team Manager. “Deployment Team Manager” is the member of the Deployment Team designated as supervisor and who has operational control over the deployment and demobilization of the Fencing.
- (i) Effective Date. “Effective Date” means the date this Agreement goes into effect and the date by which Original Members must adopt the Membership Resolution. The Effective Date is September 2, 2022.
- (j) Extended Membership Area. “Extended Membership Area” means the area established by the Board outside of the Seven County Metropolitan Area in which Governmental Units are eligible to request membership in the Fencing Consortium.
- (k) Fencing. “Fencing” means the non-scalable, portable, free-standing fence secured by the Board and made available to Members under this Agreement.
- (l) Fencing Preplan. “Fencing Preplan” means a plan developed by a Governmental Unit showing the general location and length of the Fencing needed and the type and location of gates within the Fencing.
- (m) Governmental Unit. “Governmental Unit” means a local government or other political subdivision of the State that is authorized under Minnesota Statutes, section 471.59 to enter into a joint powers agreement. The term also includes state agencies and joint powers entities that own a public building.
- (n) Lease. “Lease” means the lease agreement between the Board and the Vendor to secure the Fencing for the Fencing Consortium and that sets out the terms for the

storage, delivery, and maintenance of the Fencing. The Lease may also establish the use charge the Requesting Member is required to pay the Vendor for the actual use of the Fencing.

- (o) Member. “Member” means an Original Member or an Additional Member. The term is used generally in this Agreement to refer to an individual current member Governmental Unit or, in its plural form, to all current member Governmental Units. A Governmental Unit must remain in good standing under this Agreement to remain a Member of the Fencing Consortium.
- (p) Member Assessment. “Member Assessment” means the amount determined annually by the Board to pay the costs of the Fencing Consortium and which is invoiced to each Member.
- (q) Membership Resolution. “Membership Resolution” means the resolution form a Governmental Unit adopts to join the Fencing Consortium. Any resolution that is not substantively the same in all respects as the form resolution developed for membership shall not constitute a Membership Resolution.
- (r) Notification System. “Notification System” means the communications or alert system, or systems, selected by the Board to issue a Call Out for the deployment of the Deployment Team and Fencing to a Requesting Member’s Governmental Unit.
- (s) Original Member. “Original Member” means a Governmental Unit that completed all requirements to enter into this Agreement prior to the Effective Date.
- (t) Public Works Mutual Aid Pact. “Public Works Mutual Aid Pact” means the Public Works Joint Powers Mutual Aid Agreement, which was originally effective as of July 1, 2018 and is incorporated herein by reference.
- (u) Requesting Member. “Requesting Member” means a Member who makes a request to the Board for the deployment of the Fencing in its Governmental Unit.
- (v) Seven County Metropolitan Area. “Seven County Metropolitan Area” means the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington.
- (w) Staging Area. “Staging Area” means the location identified for the Deployment Team to gather at in response to a Call Out before convoying to the Deployment Site.
- (x) Surcharge. “Surcharge” means the amount an Additional Member is required to pay to join the Fencing Consortium as determined by the Board. The Surcharge is in addition to the amount the Additional Member is required to pay based on the length of its Fencing needs as shown in its Fencing Preplan. The Surcharge

includes the amount the Member is to pay for the Member Assessment for the year in which the Governmental Unit becomes a Member and any buy-in costs as determined by the Board.

- (y) Vendor. “Vendor” means the fencing company selected to provide the Fencing to the Fencing Consortium.

1.2. **Purpose.** It is the general purpose of this Agreement to:

- (a) To establish the Fencing Consortium, the responsibilities of the Members toward the Fencing Consortium, and to establish the “Fencing Consortium Joint Board” to govern the Fencing Consortium and its operations;
- (b) To authorize the Board to obtain and provide for the storage and deployment of Fencing in response to a Critical Incident and for other purposes as provided in this Agreement and as determined by the Board;
- (c) To authorize the Board to negotiate and enter into an agreement with a Vendor to obtain the Fencing and provide for its storage, delivery to, and return from a Requesting Member’s Governmental Unit;
- (d) To authorize the Board to establish policies and procedures for the deployment of the Fencing, the training and deployment of the Deployment Team, and on other matters as needed to achieve the purposes of this Agreement;
- (e) To authorize the Board to determine the Governmental Units eligible for membership in the Fencing Consortium, including expanding the eligible territory as it determines is appropriate; and
- (f) To authorize the Board, upon deliberation and continued communication with the Members, to revise the initial structure of the Fencing Consortium over time as it may determine is in the best interests of the Members to do things such as moving from a leasing arrangement to purchasing the Fencing and to provide for its storage, maintenance, and transportation.

ARTICLE II FENCING CONSORTIUM ESTABLISHED

- 2.1. **Established.** There is hereby established, by the execution of this Agreement, the “Fencing Consortium” as a joint powers entity formed pursuant to Minnesota Statutes, section 471.59, which is to be managed and operated by the Board pursuant to the terms of this Agreement.
- 2.2. **Scope.** This Agreement applies to those Governmental Units that are Members of the Fencing Consortium and provides for the operation of the Fencing Consortium by a Board of Directors elected as provided herein.

ARTICLE III MEMBERSHIP

- 3.1. **Original Members.** A Governmental Unit that adopts and submits the Membership Resolution to join the Fencing Consortium before the Effective Date shall be considered an Original Member under this Agreement. A Governmental Unit is eligible to be an Original Member of the Fencing Consortium if it satisfies all of the following:

- (a) Is a member of the Public Works Mutual Aid Pact;
- (b) Is within the Seven County Metropolitan Area;
- (c) Has submitted a Fencing Preplan prior to the Effective Date; and
- (d) Has properly adopted and submitted a Membership Resolution prior to the Effective Date.

The Governmental Unit shall submit its Membership Resolution to the Chief of Police in the City of Crystal. The Membership Resolutions shall be transferred to the Board once it is formed. Membership Resolutions adopted after the Effective Date shall be sent to the Board.

- 3.2. **Additional Members.** After the Effective Date, a Governmental Unit may request to become an Additional Member of the Fencing Consortium if it satisfies the following:

- (a) Is a member of the Public Works Mutual Aid Pact;
- (b) Is located within the Seven County Metropolitan Area or within the Extended Membership Area as determined by the Board;
- (c) Submits a Fencing Preplan;
- (d) Submits the fully adopted Membership Resolution; and
- (e) The Board votes to accept the Governmental Unit as an Additional Member.

Additional Members are required to pay a Surcharge to the Fencing Consortium in the amount determined by the Board, and to comply with such additional requirements as may reasonably be imposed by the Board.

- 3.3. **Exception.** The membership requirement to be a member of the Public Works Mutual Aid Pact is to establish a mechanism through which local public works staff can be utilized to assist in the mobilization and demobilization of the Fencing within the Governmental Unit. However, there are entities that do not have their own public works staff, desire to become a Member of the Fencing Consortium, and for which local support

can be provided through another Governmental Unit. Therefore, a Governmental Unit that does not have a public works department or public works employees is not required to be a member of the Public Works Mutual Aid Pact to be eligible to become a Member of the Fencing Consortium, provided the following are complied with to the extent applicable:

- (a) If the Governmental Unit is a joint undertaking among other Governmental Units, the community in which any of the Governmental Unit's buildings are located and to which its Fencing Preplan applies must be a member of the Public Works Mutual Aid Pact; or
 - (b) If the Government Unit relies on the county sheriff's department as the primary source of law enforcement services, that county must be a member of the Public Works Mutual Aid Pact.
- 3.4. **Requirement of Good Standing.** Continued membership in the Fencing Consortium shall be contingent upon: paying the annual Member Assessment and any additional charges as determined by the Board as provided herein; making public works staff available to participate as members of the Deployment Team; and on-going compliance with the other requirements, terms, and conditions of this Agreement and the policies and procedures adopted by the Board.
- 3.5. **Withdrawing from Membership.** A Member may withdraw from the Fencing Consortium as provided in Article XI of this Agreement.

ARTICLE IV FENCING CONSORTIUM JOINT BOARD

- 4.1. **Established.** There is hereby established the "Fencing Consortium Joint Board." The Board shall consist of five Directors elected by the Members in accordance with this Article. Directors shall serve without compensation from the Fencing Consortium. The Director positions shall be assigned as follows:
- (a) Two Directors representing law enforcement;
 - (b) One Director representing fire;
 - (c) One Director representing public works; and
 - (d) One Director representing emergency managers.
- 4.2. **Initial Directors.** The Board shall initially be comprised of the following Directors ("**Initial Board**"):

- (a) Ryan Murphy, Commander, Special Operations Unit, Saint Paul Police Department and Ryan Seibert, Chief of Police, City of Chaska, representing law enforcement;
- (b) Ward Parker, Assistant Chief Operations, City of Eden Prairie, representing fire;
- (c) Daniel Ruiz, Director of Operations & Maintenance, City of Brooklyn Park, representing public works; and
- (d) Doug Berglund, Director, Emergency Management, Washington County Sheriff's Office, representing emergency managers.

The Initial Board shall be responsible for Organizing the Board and the Fence Consortium. The Initial Board shall conduct an election in 2022 for Members to elect three Directors to the Board. An election will then be held in 2023 for Members to elect the remaining two Directors to the Board. Those elected in 2022 shall assume their positions effective on January 1, 2023 and those elected in 2023 shall assume their positions on January 1, 2024. The Initial Board shall determine which positions are up for election in 2022 and 2023, except the two law enforcement Director positions shall be elected in separate years.

- 4.3. **Director Eligibility.** To be eligible to be elected to the Board a person must be currently employed by a Member and actively serving in the profession the person is proposed to represent on the Board. If a Director loses eligibility to continue serving on the Board, the position shall be deemed vacant and the vacancy filled as provided herein.
- 4.4. **Term.** Each Director serves a two-year term commencing on January 1. The terms shall be staggered to minimize the number of Directors up for election in the same year. The Initial Board shall determine the terms and the staggering of the positions as part of adopting the bylaws. A vacancy in the office of Director shall be filled by appointment of the Board until the next election, at which time the position shall be up for election for the remainder of the term.
- 4.5. **Election of Directors.** The annual election of Directors shall occur in accordance with this Agreement and the bylaws established by the Board. This process is not subject to federal, state, or local election laws or procedures. Instead, the intent is to provide a reasonable means for Members to nominate candidates and to select those whom they wish to serve on the Board. Each Member in good standing when the nomination process begins has an opportunity to nominate people from its Governmental Unit for any or all the open positions on the Board. All persons nominated to a position must be eligible to represent that position on the Board. The Board shall collect the nominations and prepare a ballot to be distributed among the Members for a vote. Each Member in good standing shall have one vote on each open position. A Member must determine for itself who is authorized to submit nominations and cast the vote on its behalf. The name of the Member submitting the ballot must be on the ballot. The Board shall tabulate the votes and provide the Members a list of the persons elected to the Board. The conducting of

the nomination and election process shall occur early enough in a year to allow the newly elected Directors to take their positions on the Board as of January 1.

- 4.6. **Director Duties.** Directors are responsible for carrying out the duties of the Board under this Agreement in a diligent and timely manner. If a Director fails to attend three consecutive Board meetings without reasonable cause, the Board may declare the office vacant and fill the position by appointment. The position will then be up for election at the next election for the remainder of the term.
- 4.7. **Board Officers.** Each year at its annual meeting the Board shall elect from among its Directors a Chair and a Vice-Chair. The Board shall also appoint a Secretary/Treasurer, which is not required to be selected from among the Directors. If the Secretary/Treasurer is not a Director, the person shall not have a vote. The Chair shall act as the presiding officer at Board meetings and the Vice-Chair shall act as the presiding officer in the absence of the Chair. The Secretary/Treasurer shall take the minutes of Board meetings and shall serve as the finance manager for the Fencing Consortium. The Board shall adopt by-laws to establish its own procedures, provided such procedures are consistent with the purposes of this Agreement.
- 4.8. **Board Meetings.** The Board shall hold regular meetings on the schedule as established in its bylaws. The Board may also hold special meetings as needed upon the call of the Chair or upon the written request of two Directors given to the Secretary/Treasurer. Meetings of the Board are subject to the Minnesota Open Meeting Law (Minnesota Statutes, chapter 13D). The Secretary/Treasurer shall inform all Directors of special meetings, maintain a schedule of the Board's regular meetings, and shall post notice of any special meetings on the bulletin board designated by the Board for such notices or, if a bulletin board is not designated, upon the outside door of the building in which the Board meets. The Board may hold emergency meetings and such other meetings as allowed by law. The Board shall hold an annual meeting in January or in such other month as designated by the Board. The annual meeting may be held together with a regular meeting.
- 4.9. **Voting.** A majority of the Directors (three) shall constitute a quorum of the Board to meet and conduct the business of the Board. Each Director shall have an equal, non-weighted, vote. Unless specifically indicated otherwise herein, a majority vote of the Directors present at a meeting, if at least a quorum is present, shall be required for the Board to take action on any issue that comes before it. A Director must be present at a meeting to vote and shall not vote by proxy. A Director may be considered present and vote from a remote location to the extent allowed under Minnesota Statutes, chapter 13D.
- 4.10. **Powers of the Board.**
- (a) To take all actions necessary and convenient to discharge its duty to lease Fencing and to make it available to Members pursuant to the terms of this Agreement.

- (b) Establish policies and procedures for requesting, deploying, using, demobilizing, and returning the Fencing, and on such other operational matters as the Board may determine is appropriate. This power includes, but is not limited to, further refining the definition of Critical Incident as may be needed and otherwise identifying situations in which deployment of the Fencing is automatic and when it is discretionary with the Board.
- (c) Authorize one or more of its Directors to receive request from a Requesting Member and to issue a Call Out of the Fencing to a Critical Incident in accordance with established policies and procedures.
- (d) Obtain the Fencing initially by lease, or purchase with State appropriation, and then determine over time whether to purchase part or all of the Fencing provided under this Agreement. If the Fencing is purchased, to provide for its storage and deployment.
- (e) Select the notification system for the Call Out.
- (f) To adopt bylaws and rules or policies consistent with this Agreement as required to effectively exercise the powers, or accomplish the purposes, of the Fencing Consortium;
- (g) To interpret and apply the provisions of this Agreement in a manner that furthers its purpose and intent including, but not limited to, determining the eligibility of a Governmental Unit to become a Member;
- (h) To adopt an annual operating and capital budget, including a statement of sources of funding and allocation of costs to Members;
- (i) To establish a system to communicate budget and other information of interest to Members;
- (j) To enter into contracts in its own name;
- (k) Contract with an auditing firm to perform financial audits of the Fencing Consortium as the Board determines is appropriate;
- (l) To purchase any insurance and indemnity or surety bonds as necessary to carry out the purposes of this Agreement;
- (m) To seek, apply for, and accept appropriations (including legislative appropriations), grants, gifts, loans of money or other assistance as permitted by law from any person or entity, whether public or private;
- (n) To sue;

- (o) To annually charge and collect from Members a Member Assessment as needed to pay the on-going costs of the Fencing Consortium;
- (p) To determine and require the payment of a Surcharge by Additional Members joining the Fencing Consortium; and
- (q) To exercise all other powers necessary and incidental to carry out the purposes of this Agreement provided such powers are consistent with the purposes of the Agreement and are exercised in accordance with the applicable statutory powers of the Members.

4.11. **Powers Not Delegated.** The Members expressly reserve for themselves the following powers, which shall not be deemed delegated to, and may not be exercised by, the Board:

- (a) Hire employees;
- (b) Purchase real property;
- (c) Issue bonds; or
- (d) Undertake or otherwise perform any functions exceeding the general scope and purpose of this Agreement.

4.12. **Specific Duties of the Board.** The Board shall exercise the powers provided it under this Agreement to perform, in addition to the other duties provided for in this Agreement, the following specific duties:

- (a) Lease Fence. The Board shall enter into a Lease with the Vendor to obtain the Fencing and trailer(s) for transporting the Fencing. The Board shall ensure it secures and maintains a sufficient length of Fencing to cover the Member with the longest Fencing lengths as shown on the Fencing Preplans, rounded up to the nearest 500 feet. Initially, the Board shall base the amount of Fencing on the Fencing Preplans submitted by the Original Members. As Additional Members join the Fencing Consortium, the Board shall consider the Fencing needs and may secure additional Fencing as it determines is needed.
- (b) Fence Storage and Transport. The Lease shall require the Vendor to store the Fencing at a location agreeable to the Board, deliver the Fencing to the identified Staging Area upon the Board's request within the response timeframe identified in the Lease, and to address other transportation needs as specified in the Lease.
- (c) Select Notification System. The Board shall select a Notification Systems that will be used by Directors to Call Out the Deployment Team to a Requesting Member's Governmental Unit.

- (d) **Reports.** The Board shall prepare and distribute such reports to the Members as the Board determines are necessary to keep them informed of the Fencing Consortium's activities. The Board shall determine the best method for distributing such reports.
- 4.13. **Office.** The initial office of the Fencing Consortium shall be selected by the Board. The Board may change the location of the office as it determines is appropriate. The Board will hold its meetings at the designated office, but may also meet at such other locations as it determines appropriate to carry out its duties.
- 4.14. **Disbursements.** Except as otherwise provided, all unbudgeted disbursements and expenditures of the Fencing Consortium shall be approved by the Board. All checks issued by the Fencing Consortium from its funds shall be co-signed by two Directors designated by the Board.
- 4.15. **Fiscal Agent.** The Board may appoint, and enter into agreements with, a fiscal agent for the Fencing Consortium and may change the fiscal agent from time to time as it deems necessary. The fiscal agent may be a Member Governmental Unit. The Board may delegate authority to the fiscal agent to act on its behalf as the Board deems appropriate and in accordance with applicable laws.

ARTICLE V DEPLOYMENT OF THE FENCING

- 5.1. **Automatic Deployment.** The Fencing shall be made available for automatic deployment upon the occurrence of a Critical Incident in a Member's Governmental Unit. The Requesting Member shall notify a Director of a Critical Incident and a Director shall utilize the designated Notification System to Call Out the Deployment Team for deployment of the Fencing. The Deployment Team shall then respond to the Requesting Member to unload and assemble the Fencing at the Deployment Site. The process to request deployment and demobilization of the Fencing shall occur in accordance with this Agreement and the policies and procedures adopted by the Board. The Deployment Team Manager shall be responsible for coordinating the deployment and demobilization of the Fencing.
- 5.2. **Requesting Member Obligations.** A Requesting Member requesting deployment of the Fencing for a Critical Incident occurring in the Member's jurisdiction shall be responsible for the following:
 - (a) Providing security for the Deployment Team while it is conducting its work at the Deployment Site;
 - (b) Provide any equipment that may be needed to deploy or demobilize the Fencing that is not provided by the Vendor;

- (c) Pay the Vendor charges for the actual use of the Fencing. Such payments are to be made directly to the Vendor unless directed otherwise by the Board;
 - (d) Providing food, water, first aid, and similar support to the Deployment Team as may reasonably be needed;
 - (e) Contacting the Board or the Board's designee if there are any issues with the Fencing once it is in place; and
 - (f) Complying with Board policies and procedures applicable to a Requesting Member, including avoiding any activities that may unreasonably damage the Fencing or expose the Deployment Team to an unreasonable risk.
- 5.3. **Discretionary Deployment.** A Member may make a request to the Board for the deployment of the Fencing in the Member's Governmental Unit for an event or occurrence other than a Critical Incident. The deployment of the Fencing for something other than a Critical Incident is left to the sole discretion of the Board. The Board shall consider all such requests at a meeting and determine whether to approve the Member's request. The Board shall adopt criteria or standards for determining when to allow the discretionary deployment of the Fencing and the requesting Member's obligations if the request is approved. The Board may delegate the authority to one or more Directors to determine whether to allow the discretionary deployment of the Fencing based on the criteria established by the Board.
- 5.4. **Non-Member Deployment.** The Board shall adopt standards and requirements for determining whether to allow the deployment of the Fencing in response to a Critical Incident that occurred in a non-member Governmental Unit. Nothing in this Agreement obligates the Fencing Consortium to deploy the Fencing to a non-member Governmental Unit.
- 5.5. **No Guarantee.** The Members understand and agree the deployment of the Fencing by the Deployment Team is a cooperative undertaking and that the Fencing Consortium cannot guarantee a certain response time or make any representations or warranties regarding response times, the Fencing, its assembly, or effectiveness. The Deployment Team will endeavor to respond as quickly as possible to a Critical Incident and to place the Fencing as shown in the Requesting Member's Fencing Preplan as provided in this Agreement and in accordance with Board policies and procedures.
- 5.6. **Demobilization.** The Member who receives the Fencing in response to a Critical Incident shall work with the Fencing Consortium to determine when to initiate the demobilization of the Fencing from the Deployment Site. For a discretionary deployment of the fence, the demobilization date shall be determined prior to the deployment. The Deployment Team shall be responsible for disassembling the Fencing as part of the demobilization. The Board shall establish such procedures and policies as may be needed to address the demobilization of the Fencing. The Board has the authority to recall the Fencing from a Member if it determines there is a more critical need for the Fencing in

another Governmental Unit that cannot be fulfilled by the remaining Fencing held by the Fencing Consortium.

ARTICLE VI MEMBERSHIP COSTS AND ASSESSMENTS

- 6.1. **Original Member Costs.** Each Original Member shall be responsible for paying a share of the Fencing costs based on the length of fence indicated in its Fencing Preplan as a percentage of the total amount of initial Fencing to be leased by the Board. The Board shall determine the amount each Original Member is required to pay and provide each an invoice together with a sheet showing the division of costs. Invoice shall be paid within 45 days of receipt.
- 6.2. **Additional Member Costs.** Each Additional Member shall be required to pay their share of the Fencing costs calculated as if they were an Original Member. Each Additional Member shall also be required to pay a Surcharge in the amount determined by the Board. The Surcharge is to pay the Additional Member's portion of the Member Assessment, any buy-in costs to cover a share of the Fencing and related costs, and to partially reimburse the costs paid by the existing Members. The Board shall apply the buy-in amounts collected to reduce the future charges to the existing Members.
- 6.3. **Member Assessments.** In addition to the initial Fencing costs each Member is required to pay, Members shall also be assessed for the on-going costs to operate and maintain the Fencing Consortium. These operational costs will be divided based on the Fencing costs formula and paid by each Member as a Member Assessment. The formula shall take into account the total length of Fencing held by the Fencing Consortium and then divided by the length of each Member's Fencing needs as indicated in the Fencing Preplan. The Board shall, as part of the annual budget, determine the total amount of the Member Assessments and the specific amount to be assessed each Member to pay the anticipated Fencing Consortium costs in the upcoming year.
- 6.4. **Payment of Member Assessments.** The Fencing Consortium shall invoice Members for their Member Assessment amount for the upcoming year. Invoices are to be sent no later than January 15th in the year for which the assessment is being imposed. Members shall pay their invoices in full within 45 days from the date of the invoice.
- 6.5. **Default.** Any Member who breaches or otherwise fails to comply with the terms and conditions of this Agreement including, but not limited to, failure to pay its Member Assessment in full by the due date, shall be considered in default of this Agreement. Any dispute regarding whether a Member is in default shall be determined by a vote of the Board. A Member shall not be considered in default until it has been notified in writing by the Board of the condition placing it in default. The notice of default shall indicate the Member is not in good standing and may be expelled if the default is not cured within 90 days. If a Member fails to fully cure a default within 90 days of the notice of default, the Board may issue a written notice of expulsion from the Fencing Consortium. Upon such notice, the Governmental Unit is no longer a Member of the Fencing Consortium as if the

Governmental Unit voluntarily elected to terminate its membership in the Fencing Consortium as provided herein.

ARTICLE VII MEMBER STAFFING REQUIREMENTS

- 7.1. **Public Works Staff.** Each Member is expected to assign member(s) of its public works staff to serve on the Deployment Team to train with the Fencing and to participate in the unloading, assembly, and demobilization of the Fencing at a Deployment Site. The providing of public works staff is through the Public Works Mutual Aid Pact and is at each Member's own cost.
- 7.2. **Training.** The Deployment Team shall train with the Fencing at least three times a year to familiarize the Deployment Team with the Fencing and to help ensure its rapid assembly at a Deployment Site in response to a Call Out. The Board shall work with the Deployment Team to determine a reasonable training schedule that does not negatively impact their regular duties.
- 7.3. **Employees.** The members of the Deployment Team are not employees of the Fencing Consortium. The assigned members shall remain employees of their Governmental Unit for all purposes including, but not limited to, workers' compensation coverage.
- 7.4. **Equipment.** Any damage to or loss of Member equipment utilized by the Deployment Team shall be addressed as provided in the Public Works Mutual Aid Pact.
- 7.5. **Liability.** Liability for the acts of the Deployment Team when responding to a Call Out shall be addressed in accordance with the terms of the Public Works Mutual Aid Pact. For the purposes of the Public Works Mutual Aid Pact, the Requesting Member shall be the "Requesting Party" and each of the Members assigning personnel to the Deployment Team shall be a "Sending Party."

ARTICLE VIII BUDGETING AND FINANCIAL REPORTING

- 8.1. **Fiscal Year.** The fiscal year of the Fencing Consortium is the calendar year.
- 8.2. **Annual Budget.** The Board shall prepare and adopt an annual budget as provided in this section.
 - (a) **Proposed Budget.** The Board shall prepare and approve a proposed budget for the upcoming fiscal year. The proposed budget shall account for all anticipated costs in

the upcoming year and indicate the amounts proposed to be assessed to the Members.

- (b) Notice to Members. The Board shall adopt a proposed budget and distribute it to the Members by no later than June 1st each year. Members may submit written comments to the Board regarding the proposed budget by no later than July 1st.
- (c) Final Budget. The Board shall consider the comments received from Members and shall act to adopt a final budget by no later than August 31st. The Board shall distribute a copy of the adopted annual budget to the Members. To reduce administrative costs given the potential number of Members, the Board may send notices and otherwise communicate with Members using email messages in lieu of mailing.

ARTICLE IX INSURANCE AND INDEMNIFICATION

- 9.1 **Insurance.** The Fencing Consortium shall purchase and maintain such insurance policies as the Board determines is necessary and appropriate to cover the Fencing Consortium, the Board, its operations, and, if required, the Fencing. By purchasing insurance the Members, the Fencing Consortium, and the Board do not waive, and shall not be construed as having waived, any exemptions, immunities, or limitations on liability provided by any applicable Minnesota Law, including Minnesota Statutes, Chapter 466 and section 471.59, subdivision 1a. Any uninsured liabilities incurred by the Fencing Consortium shall be paid by the Members in the same percentage as their Member Assessments as set out in this Agreement.
- 9.2 **Director Indemnification.** The Fencing Consortium shall defend and indemnify its Directors from any claim or damages levied against a Director arising out of the Director's lawful acts or omissions made or occurring in the good faith performance of their duties on the Board. The Fencing Consortium is not required to indemnify a Director for any act or omission for which the Director is guilty of malfeasance, willful neglect of duty, or bad faith.
- 9.3 **Member Indemnification.** The Fencing Consortium shall hold the Members harmless, individually and collectively, and will defend and indemnify the Members for any claims, suits, demands or causes of action for any damages or injuries based on allegations of negligence or omissions by the Fencing Consortium. The Fencing Consortium's duty to indemnify does not constitute, and shall not be construed as, a waiver by either the Fencing Consortium or any or all Members of any exemptions, immunities, or limitations on liability provided by law or of being treated as a single governmental unit as provided in Minnesota Statutes, section 471.59, subdivision 1a.
- 9.4 **Liability.** To the fullest extent permitted by law, this Agreement and the activities carried out hereunder thereof are intended to be and shall be construed as a "cooperative activity" and it is the intent of the Members that they, together with the Board, shall be

deemed a “single governmental unit” for the purposes of liability, all as set forth in Minnesota Statutes, section 471.59, subdivision 1a. For purposes of the statute, each Member to this Agreement expressly declines responsibility for the acts or omissions of the other Members.

SECTION X DISPUTE RESOLUTION

10.1 Dispute Resolution Process. The Members agree to engage in good faith to attempt to resolve any disputes that may arise over the establishment, operation, or maintenance of the Fencing Consortium. If a dispute is not resolved informally, the Members agree to use the following process to attempt to resolve any dispute they may have related to the Fencing Consortium.

- (a) Written Notice of Dispute. Any Member with a dispute regarding the Fencing Consortium or the Board may submit a written explanation of its dispute to the Fencing Consortium and to each Member. The Board shall make the email list of Members available for the purpose of providing this notice. The explanation of the dispute must be detailed, not repetitive of a dispute already addressed by the Board regarding the same Member, relate directly to a matter within the scope of the Fencing Consortium or of the Board’s powers, and must suggest a solution.
- (b) Review and Response by Board. Upon the Fencing Consortium’s receipt of a written dispute it shall be placed on the agenda of the Board’s next scheduled regular meeting for consideration. The Board shall respond in writing to all properly submitted disputes within three months and shall provide each Member a copy of its response.
- (c) Mediation. If the Member with the dispute is not satisfied with the Board’s response, it may file a written request with the Board for mediation. If the Member and the Board are not able to mutually agree on a mediator, the Member and the Board shall each select a mediator and the two mediators shall select a third. Each party to the mediation shall be responsible for the cost of the mediator it selected and shall share equally in the costs of the mediation and of the third mediator.
- (d) Binding Arbitration. If the dispute is not resolved in mediation, the aggrieved Member and the Board may agree to submit to a binding arbitration process. The arbitration shall be conducted in accordance with Minnesota Statutes, chapter 572B following the Commercial Arbitration Rules of the American Arbitration Association, unless the Board and the Member agree to follow different rules. The Members and the Board agree the decision of the arbitrator shall be binding on the Fencing Consortium and its Members.

SECTION XI WITHDRAWAL OF A MEMBER

- 11.1 **Process.** A Member may withdraw from the Fencing Consortium by providing written notice to the Board of its intent to withdraw. To avoid a withdrawal from interrupting the on-going payments for the costs of the Fencing, the effective date of the withdrawal will depend on its timing with respect to the Board's work to set the budget for the upcoming year. If the Board receives the withdrawal notice prior to May 1st in a year, the effective date of the withdrawal will be December 31st of the same year. If the Board receives the notice after May 1st, the withdrawal will be effective December 31st of the following year.
- 11.2 **Effect of Withdrawal.** The withdrawing Member shall be responsible for paying its full Member Assessment for the full year in which the withdrawal is effective. Recognizing the Fencing Consortium is an ongoing concern, the Members agree the withdrawing Member shall not receive any reimbursement of the amounts it has paid and is not entitled to any share in the assets of the Fencing Consortium. Upon the effective date of the withdrawal, the former Member shall no longer be considered a Member under this Agreement.

SECTION XII DISSOLUTION OF FENCING CONSORTIUM

- 12.1 **Dissolution Process.** The Fencing Consortium may only be dissolved by a joint resolution approved by four-fifths of the then current Members or by a unanimous vote of the entire Board on a dissolution resolution. Dissolution shall not be effective for at least six months from the adoption the resolution unless an earlier dissolution date is approved as part of the resolution. Prior to the effective date of the dissolution, the Board shall use the Fencing Consortium's assets to pay its outstanding obligations. If the assets on hand are not sufficient to pay all outstanding obligations, the Board shall impose a Member Assessment to collect sufficient funds to pay the outstanding amounts. The Board shall divide the amount needing to be collected by a Member Assessment using the same formula for other Member Assessments. The Fencing Consortium shall not be finally dissolved until its outstanding obligations are paid in full.
- 12.2 **Distribution of Assets and Property.** Upon dissolution, the Board shall distribute any remaining assets to the Members in proportion to the Member Assessment of each Member in effect as of the date of dissolution. The Board shall have the power to determine the best method for distributing the assets and to decide any disputes that may arise among the Members concerning such distribution.

SECTION XIII MISCELLANEOUS PROVISIONS

- 13.1 **Official Copy.** This Agreement is being entered into through the adoption by each Member and the Membership Resolution. The Board shall maintain the official copy of this Agreement and maintain a list of the Original Members and the Additional Members.

The official copy shall constitute the Agreement, which shall be binding on all of the Members.

- 13.2 **Data Practices.** The Fencing Consortium shall comply with the requirements of Minnesota Statutes, chapter 13, the Minnesota Government Data Practices Act (“Act”). The Vendor shall be required to comply with the Act as provided in Minnesota Statutes, section 13.05. The Vendor shall be required to notify the Board if it receives a data request and to work with the Fencing Consortium to respond to it.
- 13.3 **Notices.** Any notice required or permitted to be given to the Fencing Consortium under this Agreement shall be given in writing, and shall be sent by first class mail to its current address. Notice to each Member shall be given in writing by first class mail or email to the Member’s chief of police or other designated contact person.
- 13.4 **Waiver.** The delay or failure of any party of this Agreement at any time to require performance or compliance by any other party of any of its obligations under this Agreement shall in no way be deemed a waiver of those rights to require such performance or compliance.
- 13.5 **Governing Law.** The respective rights, obligations and remedies of the parties under this Agreement and the interpretation thereof shall be governed by the laws of the State of Minnesota which pertain to agreements made and to be performed in the State of Minnesota.
- 13.6 **Headings and Captions.** The headings and captions of these paragraphs and sections of this Agreement are included for convenience or reference only and shall not constitute a part hereof.
- 13.7 **No Third-Party Rights.** This Agreement is entered into for the sole benefit of the Members and no other parties are intended to be direct or incidental beneficiaries of this Agreement, and no third party shall have any right in, under, or to this Agreement.
- 13.8 **Good Faith.** Each Member shall act in good faith. In exercising its rights and fulfilling its obligations under this Agreement, each party acknowledges that this Agreement contemplates cooperation between and among the parties.
- 13.9 **Entire Agreement.** This Agreement, including the recitals and all of the Membership Resolutions, contains the entire understanding between the Members concerning the subject matter hereof.
- 13.10 **Amendments.** Amendments to this Agreement may be proposed by the Board or by at least 10% of the Members submitting a proposed amendment to the Board. The Board shall forward proposed amendments to the Members in the form of an amendment resolution. The Board will only forward amendments proposed by Members if it determines the proposed amendments are lawful and not contrary to the primary purposes of this Agreement. Members adopting the amendment resolution shall return a copy of

the executed resolution to the Board. A proposed amendment shall be considered approved if the amendment resolution is adopted by at least 90% of the then current Members.

- 13.11 **Examination of Books.** Pursuant to Minnesota Statutes, section 16C.05, Subd. 5, the books, records, documents and accounting procedures and practices of the Fencing Consortium and the Vendor are subject to examination by the State. Members may examine the financial records of the Fencing Consortium upon reasonable request.
- 13.12 **Recitals and Exhibits Incorporated.** The recitals contained herein, and the Membership Resolutions, are incorporated in and made part of this Agreement.

IN WITNESS WHEREOF, the Members have, by adoption and execution of the Membership Resolution, entered into this Agreement as of the Effective Date or, if an Additional Member, as of the date of acceptance by the Board of the Membership Resolution.

[A list of all Members is maintained by the Fencing Consortium.]