

AGREEMENT BETWEEN THE CITY OF SOUTH BEND AND HAYES TOWERS

The parties to this agreement, namely Hayes Towers (“Owner”), who is the owner and manager of certain real property and cellular tower equipment (“Hayes Property/ies”) and the City of South Bend acting through its Fire Department (“the City”).

1. **Purpose and Scope.** Owner agrees to allow the City to access and use Hayes Properties for the purpose of conducting tower rescue and technical rescue training exercises (“Training”), subject to the terms and conditions of this Agreement. This Agreement is intended to serve as a general, continuing agreement governing multiple training events at one or more Hayes Properties and shall remain in effect unless and until terminated as provided herein.

2. **Schedule of Training; Notice to Proceed.** The City may request Training event dates as needed. No Training event shall occur unless and until Owner approves the schedule request and issues a written Notice to Proceed for the specific Training event.

a. **Form of Notice.** The Notice to Proceed may be provided electronically by email and shall identify, at a minimum:

- i. the specific Hayes Property approved for use;
- ii. the proposed Training date(s); and
- iii. any reasonable site-specific conditions communicated by Owner.

b. **Effect of Notice.** Upon issuance of a Notice to Proceed, the Training event identified therein shall be governed by the terms of this Agreement without the need for further amendment or execution of a separate contract.

c. **Denial of Request.** Owner may deny approval of any proposed Training event in its reasonable discretion.

3. **Compensation.** The parties acknowledge that the specific purpose of this Training, specifically tower based rescue scenarios, is beneficial to both parties. No compensation shall be paid by either party in connection with Training conducted under this Agreement.

4. **City Liability Funding.** Owner recognizes that the City is wholly self-funded regarding liability for losses or damage to property, or damage from injuries to persons caused by acts of negligence or misconduct under the provisions of Indiana statutes and local ordinance. Specifically, the City is covered by a non-reverting insurance premium and liability reserve fund created by the City of South Bend Ordinance #6657-79. The City's liability is limited in accordance with Indiana Code 34-13-3-4, as amended.

5. **Indemnification.** By agreement between the parties, the City of South Bend hereby agrees to defend and indemnify Owner, its officers, and employees, from any claims or suits arising directly from the City's Training activities. This indemnification does not cover any claims or suits arising out of 1) Owner's, or its agents', negligence or willful misconduct or 2) accidents that are the result of known hazards or defects in the Hayes Property that are not disclosed to the City prior to the applicable Training event. Any obligation of the City to indemnify or defend under this Section shall be limited to and governed by the Indiana Tort Claims Act, Indiana Code 34-13-3-1 et seq., as amended, including all applicable statutory limitations on liability.

6. **Notification of Claims and Cooperation.** As a condition precedent to the right of indemnification under this Act, Owner, officers, or employees shall tender in writing to the South Bend Corporation Counsel any and all suit papers, demands, notices, summonses, complaints, or other process received by Owner arising out of the use of the Hayes Property by the South Bend Fire Department within twenty-four (24) hours of receipt, or as promptly as reasonably possible, so that the City of South Bend can adequately respond in a timely fashion. Owner, officers, and employees

shall fully cooperate with the City in the conduct of its investigations, possible settlement, and defense of any legal proceedings.

7. Property Damage. The City shall be responsible for the reasonable cost of repair or replacement of Hayes Property damaged directly and solely as a result of Training, excluding normal wear and tear or pre-existing conditions.

8. Inspection of Premises. When reasonably requested by either party, a joint inspection of the Training site may be conducted before and after Training. Owner shall make a representative available for such inspection when practicable.

9. Training Cancellation: Weather. Training may be cancelled on short notice due to unsafe weather or hazardous conditions. Either party may cancel an approved Training event for any other reason upon seventy-two (72) hours' notice, which may be provided by email. No compensation shall be owed by either party in connection with the cancellation of any Training event.

10. Rescheduling. In the event that the Training will be rescheduled by either party if the original dates must be cancelled, the parties agree that they will make reasonable efforts to reschedule the Training.

11. Termination of the Agreement. This Agreement may be terminated by either party, without cause, upon thirty (30) days' prior written notice to the other party. Termination shall not affect any rights or obligations arising from Training events conducted prior to the effective date of termination.

12. Severability. Should any part of this Agreement be determined by a court of competent jurisdiction to be invalid, illegal, or against public policy, said offending section shall be void and of no effect, and shall not render any other section herein, nor this Agreement as a whole, invalid. Those rights, interests, obligations, and duties hereunder, which by their nature should survive, shall remain in effect after termination, suspension, or expiration hereof.

13. Governing Law and Jurisdiction. This Agreement shall be governed by the laws of the State of Indiana, and any dispute relating to the subject of or arising out of this Agreement shall be subject to the sole and exclusive jurisdiction of the Circuit and Superior Courts of St. Joseph County, Indiana.

(Signature Page Follows)

HAYES TOWERS

Anne Hayes
Signature

Anne Hayes President
Printed Name and Title

814 Marietta St.
Street Address

So. Bend, IN 46601
City, State, Zip

574-233-1296
Phone

**CITY OF SOUTH BEND
SOUTH BEND FIRE DEPARTMENT**

A/C [Signature]
Signature

Michael Damiano / Assistant Chief
Printed Name and Title of OPERATIONS

**CITY OF SOUTH BEND, INDIANA
BOARD OF PUBLIC WORKS**

[Signature]
Elizabeth A. Maradik, President

Murray L. Miller
Murray L. Miller, Member

Abigail E. Magas, P.E.
Abigail E. Magas, Member

[Signature]
Joseph R. Molnar, Vice President

[Signature]
Breana N. Micou, Member

Hillary R. Horvath
Attest: Hillary R. Horvath, Clerk

Date: July 14, 2026

**BOARD OF PUBLIC WORKS
AGENDA ITEM REVIEW REQUEST FORM**

Date	7/6/26	Department	Fire
BPW Date	7/14/26	Phone	9255
Name	Mike Damiano, Assistant Chief		

Required Prior to Submittal to Board	Legal	☒	Attorney Name	Michael Schmidt
	Controller	☐	Controller review is required for all Contracts \$5,000.00 or more and greater than one year in length per the City Purchasing Policy	
	Purchasing	☐		

Check the Appropriate Item Type – *Required for All Submissions*

☒ Agreement	☐ Contract	☐ Proposal	☐ Addendum
☐ Claim			
☐ Bid Opening	☐ Bid Award	☐ Req. to Advertise	☐ Title Sheet
☐ Quote Opening	☐ Quote Award		
☐ Chg Order No. _____	☐ C/O & PCA No. _____	☐ PCA	
☐ Ease./Encroach.	☐ Traffic Control	☒ Resolution	
☐ Other: _____			

Required Information

Company or Vendor Name	Hayes Towers
New Vendor	☒ Yes ☐ No ☐ If Yes, Approved by Purchasing
MBE/WBE Contractor	☐ MBE ☐ WBE
Project Name	
Project Number	
Funding Source	
Account No.	
Amount	\$ 0.00
Terms of Contract	Continous Agreement; termination by either party upon 30 days prior written notice to the other party.
Purpose/Description	<u>This Agreement governs multiple training events at one or more Hayes Properties.</u>

For Change Orders Only

Amount of	☐	Increase	\$	
	☐	Decrease	\$	
Previous Amount	\$			
Current Percent of Change:	%			
New Amount	\$			
Total Percent of Change:	%			
PO No.				

Dispersal After Approval

Copy	☐	Original	☐	
	☐		☐	