

RESOLUTION NO. R2021-58A RESOLUTION APPROVING A FACILITY USE AGREEMENT
WITH TUNES OF GLORY PIPE & DRUMS, INC.

WHEREAS, the City is a home rule municipal corporation pursuant to Article VII, Section 6(a) of the Constitution of the State of Illinois of 1970; and

WHEREAS, Tunes of Glory Pipes & Drums, Inc. ("**Tunes of Glory**") is a registered 501(c)(3) non-profit organization and a competition, parade, performance, and teaching bagpipe band; and

WHEREAS, for many years, Tunes of Glory has been permitted to rehearse at City Hall pursuant to an agreement with the City ("**Prior Agreement**"); and

WHEREAS, the Prior Agreement has expired; and

WHEREAS, the City and Tunes of Glory desire to enter into a new facility use agreement ("**Agreement**") to allow Tunes of Glory to rehearse at City Hall subject to certain conditions and restrictions; and

WHEREAS, the Mayor and the City Council have determined that it is in the best interest of the City and the public to approve the Agreement with Tunes of Glory;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF WARRENVILLE, DUPAGE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: Recitals. The recitals listed above are incorporated in this Resolution as if fully set forth in this Resolution.

SECTION 2: Approval of Agreement. The Agreement with the Tunes of Glory, is approved in substantially the form attached to this Resolution as **Exhibit A**.

SECTION 3: Execution. The City Administrator is hereby authorized and directed to execute, on behalf of the City, the Agreement only after receipt by the City Clerk of at least two original copies of the Agreement executed by Tunes of Glory.

SECTION 4: Effective Date. This Resolution shall be in full force and effect following its passage and approval in the manner provided by law.

[Voting Record and Signature Page Follows]

PASSED THIS ____ day of _____, 2021.

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED THIS ____ day of _____, 2021.

MAYOR

ATTEST:

CITY CLERK

#62148008_v1

EXHIBIT A
AGREEMENT

FACILITY USE AGREEMENT
BETWEEN THE CITY OF WARRENVILLE AND TUNES OF GLORY PIPE & DRUMS, INC.

This Facility Use Agreement ("**Agreement**") is made and entered into as of the ___ day of _____, 2021 ("**Effective Date**") by and between the **CITY OF WARRENVILLE**, an Illinois home rule municipal corporation ("**City**"), and **TUNES OF GLORY PIPES & DRUMS, INC.**, an Illinois not-for-profit corporation ("**User**") (collectively, the City and User are the "**Parties**" and individually each is a "**Party**").

SECTION 1. RECITALS.

A. The City owns the parcel of real property located at 28W701 Stafford Place, Warrenville, Illinois ("**City Hall**").

B. User desires to use and occupy certain areas within City Hall on specified days and times for User's band rehearsal ("**Proposed Use**").

C. The City desires to permit the User to use the Property for the Proposed Use, and User desires to use the Property for the Proposed Use, in accordance with and pursuant to the terms, conditions, and restrictions of this Agreement.

SECTION 2. USE OF PROPERTY.

A. Locations and Term.

1. The User may only use and occupy the following locations within the Property for the Proposed Use: The City Council Chambers, the Gallery Conference Room, and the Stafford Place second-floor lobby ("**Permitted Locations**").

2. The User may use the Permitted Locations for the Proposed Use on Wednesday nights from 6:00 p.m. to 10:00 p.m. beginning on the Effective Date of this Agreement and ending December 31, 2025 (collectively, the "**Term**").

B. Community Performances. In consideration for the use of the Property, User will perform annually at the Independence Day Celebration Parade and Holly Days events at no additional cost ("**Community Performances**"). The City will confirm the dates of Community Performances with the User at least 30 days prior to each event.

C. Additional Dates. Upon the mutual written agreement of the City Administrator and User, User may use and occupy the Permitted Locations on additional dates, upon the same terms set forth in this Agreement for the use and occupancy by User of the Property during the Term. The City Administrator shall have the right, in their sole discretion to deny any request made by User pursuant to this Section 2.B for the use and occupancy of the Property.

D. Reserved Right. The City may require the use of the Property during the Term for maintenance, City meetings, or other City purposes. The City will endeavor to provide at least 48 hours' notice to User if the Property will not be available for use by the User and the City will attempt to provide an alternative practice area, date, or time, if possible.

SECTION 3. CONDITIONS.

User agrees to use the Property in strict accordance with the following:

A. As Is. User shall accept the Property in its condition as at the time of use and occupancy of the Property pursuant to this Agreement, WHERE-IS and AS-IS, and subject to applicable requirements of law. User acknowledges and agrees that (1) the City has made no representation or warranty as to the suitability of the Property for the User's Proposed Use of the Property, or any personal property or equipment therein, and (2) the City shall not be liable for, or responsible for the repair of, any defects on or within the Property. User waives any implied warranty that the Property is suitable for User's intended purposes.

B. Permitted Activities and Uses; Compliance with Laws.

1. User shall use and occupy the Property solely for the Proposed Use in accordance with the Facility Usage Guidelines attached to this Agreement as *Exhibit A*.

2. User shall not do or permit anything to be done upon the Property which in any way may create a nuisance, or injure the reputation of the Property or the City.

3. User's use and occupancy of the Property shall at all times comply with all applicable federal, state of Illinois, and City codes, ordinances, statutes, and regulations.

4. User may not use the Property to give lessons for which a fee is charged.

C. Alterations. User shall not make any decorative or structural changes or interior or exterior modifications to, nor install or alter any sign located on, any portion of the Property.

D. Maintenance; Clean Up and Repair. During the Term, User shall keep, or cause to be kept, all areas of the Property in a neat and safe condition. So as to leave the Property and any personal property or equipment therein in the same condition as it existed at the beginning of each calendar day within the Term of this Agreement, User shall, at its sole cost and expense: (1) clean the Property and any personal property and equipment therein at the conclusion of each calendar day within the Term of this Agreement; and (2) immediately notify the City Administrator of any damage caused during the use or occupancy of the Property by User, its agents, employees, contractors, and participants in its programs. The User is responsible for the cost of any repairs made or replacements necessitated by such damage and agrees to pay any invoice presented to it for such repairs or replacements within 30 days of the invoice date.

E. Supervision. User shall be solely responsible for supervising and monitoring the use and occupancy of the Property pursuant to this Agreement by User and its agents, employees, contractors, invitees, guests, and participants. User acknowledges and agrees that the City and its employees, officers, members, officials, agents, attorneys, and representatives shall have no responsibilities, duties, or obligations whatsoever to supervise or monitor the Property or any person permitted by User to use or occupy the Property during the Term of this Agreement.

F. Insurance. User, at its sole cost and expense, shall provide, and maintain at all times under this Agreement: (i) general liability insurance in the amount of \$1,000,000

combined single limit per occurrence and \$2,000,000 aggregate for bodily injury, personal injury, death and property damage, which insurance shall include, without limitation, protection for the occupancy, use, and maintenance of the Property by User; and (ii) umbrella insurance in the amount of \$2,000,000 aggregate. User shall cause the City to be named as an additional insured on the insurance policies required by this Section 3.F. Prior to the start of the Term of this Agreement, User shall provide the City with either (a) a copy of the entire insurance policies, or (b) a Certificate of Insurance along with a copy of the actual additional insured endorsement and a letter from the broker issuing the insurance policies to the effect that the Certificate of Insurance accurately reflects the contents of the insurance policies. The Certificate and policies shall also provide that the policy shall not expire without 30 days advance written notice to the City.

G. Indemnification. User shall, without regard to the availability or unavailability of any insurance of the City, indemnify the City, and its respective officers, members, officials, employees, agents, attorneys, and representatives against, and hold the City, and its respective officers, members, officials, employees, agents, attorneys, and representatives, harmless from, any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses (including attorneys' fees and administrative expenses), that may be sustained or incurred as a result of or in connection with User's use or occupancy of the Property, or with the performance of, or failure to perform, its obligations under this Agreement, whether or not due or claimed to be due in whole or in part to the active, passive, or concurrent negligence of the City, but not including lawsuits, claims, demands, damages, liabilities, losses, and expenses (including attorneys' fees and administrative expenses) sustained or incurred solely as a result of the negligence or due to the willful misconduct of the City. User's obligations required pursuant to this Section 3.G shall survive the termination of this Agreement.

I. Assumption of Risk. User agrees to assume the full risk of any injuries, including death, and all costs, damages, and losses that User or its members, employees, agents, contractors, officers, representatives, and participants in its programs may sustain while on the Property or participating in any program sponsored by User, or as a result of the reasonable condition, reasonable maintenance, and use of the Property.

J. Waiver of Liability. User shall, and does hereby, waive, release, and relinquish all claims of every kind, known and unknown, present and future, that User may have against the City and its officers, agents, servants, and employees, arising out of, connected with or in any way related to the use of the Property, or as a result of the condition, maintenance, and use of the Property.

SECTION 4. ENFORCEMENT.

A. General. The Parties may, in law or in equity, by suit, action, mandamus, or any other proceeding, enforce this Agreement. User agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against the City or any elected or appointed officials, officers, employees, agents, representatives, engineers, or attorneys of the City, on account of the negotiation, execution or breach of any of the terms and conditions of this Agreement.

B. Prevailing Party. In the event of a judicial proceeding brought by one Party against the other Party, the prevailing Party in such judicial proceeding shall be entitled to reimbursement from the unsuccessful Party of all costs and expenses, including reasonable attorneys' fees, incurred in connection with such judicial proceeding.

C. Force Majeure. If the City is delayed or hindered in or prevented from the performance of any act required hereunder because of strikes, lockouts, inability to procure labor or materials, failure of power, restrictive laws, riots, insurrection, war, fire, inclement weather or other casualty or other reason of a similar or dissimilar nature beyond the reasonable control of the City, financial inability excepted (each, a “Force Majeure Event”), performance of such act shall be excused for the period of delay caused by the Force Majeure Event.

SECTION 5. TERMINATION.

Either Party may terminate this Agreement for convenience with 14 days’ notice to the other Party.

SECTION 6. GENERAL PROVISIONS.

A. Notices. All notices required or permitted to be given under this Agreement shall be given by the Parties by (i) personal delivery, (ii) deposit in the United States mail, enclosed in a sealed envelope with first class postage thereon, or (iii) deposit with a nationally recognized overnight delivery service, addressed as stated in this Section 6.A. The address of either Party may be changed by written notice to the other Party. Any mailed notice shall be deemed to have been given and received within three days after the same has been mailed and any notice given by overnight courier shall be deemed to have been given and received within 24 hours after deposit.

Notices and communications to the City shall be addressed to, and delivered at, the following address:

If to the City:	City of Warrenville 3S258 Manning Avenue Warrenville, IL 60555 Attention: John Coakley, City Administrator Email: jcoakley@warrenville.il.us
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If to User:	Tunes of Glory Pipes & Drums, Inc. P.O. Box 54 Warrenville, IL 60555 Attention: Timothy Heywood Email: <i>sandwich0972@yahoo.com</i>
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B. Amendments and Modifications. No amendment or modification to this Agreement shall be effective unless and until it is reduced to writing and approved and executed by the parties to this Agreement in accordance with all applicable statutory procedures.

C. Assignment. User shall not assign its rights or responsibilities under this Agreement except upon the express prior written consent of the City.

E. No Property Interest. It is specifically agreed and understood that this Agreement is for permissive, temporary use only and that the exercise of the rights and privileges granted in this Agreement shall not operate to create or vest any property right in and to the Property or any part thereof in User.

F. No Third-Party Beneficiaries. This Agreement is for the sole benefit of User and the City, and no other party shall be deemed a third-party beneficiary hereof, and accordingly, no third-party shall have the right to enforce the provisions of this Agreement. No claim as a third-party beneficiary under this Agreement by any person, firm, or corporation shall be made or be valid against the City and its employees, officers, members, officials, agents, attorneys, and representatives.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

ATTEST:

CITY OF WARRENVILLE, an Illinois home rule municipal corporation

By: _____
Julie Clark, City Clerk

By: _____
John M. Coakley, City Administrator

ATTEST:

TUNES OF GLORY PIPES & DRUMS, INC., an Illinois not-for-profit corporation

By: _____

By: _____

Title: _____

Its: _____

EXHIBIT A
FACILITY USAGE GUIDELINES



**GUIDELINES FOR USE OF PUBLIC MEETING ROOMS AT
CITY HALL
28W701 STAFFORD PLACE
WARRENVILLE, IL**

Two rooms are available for public use Monday - Friday, from 5:00 p.m. to 11:00 p.m., and Saturday and Sunday from 8:00 a.m. to 11:00 p.m.

The Council Chamber consists of a formal dais with seating for 15 and seating for approximately 50 in the audience area. The Gallery Conference Room consists of a conference table for 14 people and additional seating for 8.

Reservations should be made at least two weeks in advance by submitting an application for facility usage to the Executive Assistant in the Administration Department or by calling the Administration Department at (630) 393-9427. Meetings/events will be scheduled on a "first come" basis.

City Departments and City Council have first right of access to meeting rooms and may cancel or relocate other groups if needed. In such instances, the group coordinator will be notified.

Use of the meeting room (s) is intended for community groups, service organizations, homeowner associations and other local government districts. No fee may be charged the persons to attend the meeting.

The use of the meeting room (s) for commercial sales or for presentations promoting a specific business or product is not permitted.

No rental fee or deposit required.

Groups are responsible for cleaning up, straightening chairs, replacing furniture in their original locations, turning off lights, locking the doors, and locking the building when their occurrence is completed. (There is no janitorial staff available to clean up.)

It will be the responsibility of the group/individual to pay for repair or replacement of any damage to building or equipment caused by that group/individual use of the premises.

The group coordinator is responsible for the actions of the group, security of the building, and setup/cleanup. ***(Building Key must be picked up during business hours. Building Key must be returned in the water payment box located outside of the Manning Avenue entrance)***

Lit candles or open flames are not permitted.

Do not adjust thermostat.

Food and non-alcoholic beverages are allowed on a limited basis; any spills or stains are to be cleaned up by the user.

Alcoholic beverages are not permitted in the building unless they are served in conjunction with a City-sponsored event.