



VILLAGE OF WINNEBAGO

SPECIAL BOARD MEETING AGENDA

Wednesday, September 25, 2024 at 6:00 PM

108 West Main Street and Virtually

To access meeting from any device: <https://global.gotomeeting.com/join/671034949>

Or by (Toll Free): 1 866 899 4679 | Access Code: 671-034-949

1. RECORDING OF THE MEETING

2. CALL TO ORDER

3. PLEDGE OF ALLEGIANCE

4. ROLL CALL

5. MEETING GUIDELINES

Discussion and Vote to Allow an Absent Trustee to Vote By Phone or Other Allowable Means.

6. ESTABLISHMENT OF A QUORUM

7. DISCLOSURE OF ANY CONFLICT OF INTEREST

8. CHANGES TO AGENDA

9. APPROVAL OF CHANGES TO AGENDA

10. PUBLIC COMMENT

It is recommended that a written request to address the Village Board by non-members should be submitted via mail, hand delivery, or the Village Website to the Village of Winnebago Office located at 108 West Main Street, Winnebago, Illinois, 61088, by 12:00 Noon on the day of the meeting scheduled by the Village authorities in which the speaker would like to participate. Alternatively, speakers may fill out the form at the meeting to sign up for public comment. Each speaker is limited to three (3) minutes. A maximum of thirty (30) minutes shall be allowed for public comment at each meeting.

11. QUESTIONS FROM TRUSTEES/STAFF

12. ADMINISTRATIVE TEAM/REPORTS/REQUESTS

a. Intergovernmental Agreement with CUSD #323

13. EXECUTIVE SESSION (CLOSED SESSION) Pursuant to 5ILCS 120/2(c)

14. NEW BUSINESS

15. ADJOURNMENT

Posted: September 19, 2024 at 2:15 p.m. at 108 W. Main Street, Winnebago, IL
and online at www.villageofwinnebago.com Tel 815.335.2020 | Fax 815.415-8491
/s/ Rachel Windgassen, Administrative Assistant



Agenda Item Executive Summary

Item Name INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF WINNEBAGO AND THE BOARD OF EDUCATION OF WINNEBAGO COMMUNITY UNIT SCHOOL DISTRICT NUMBER 323, ILLINOIS REGARDING PAYMENT OF DEVELOPMENT FEES Committee or Board Special Board Meeting

BUDGET IMPACT

Amount:	N/A	Budgeted:	N/A
List what fund:	N/A		

EXECUTIVE SUMMARY

The School District requested the waiver of the escrow requirement because auditors recommended that a school district should not hold funds in escrow. The IGA will facilitate the School District's construction projects, such as the Simon Elementary School parking lot, by allowing direct invoicing for services instead of using escrow accounts. This cooperative approach benefits both the Village and the School District and strengthens their working relationship.

This resolution authorizes the Village President to enter into an Intergovernmental Agreement (IGA) with the Winnebago School District #323. The IGA allows the School District to avoid the typical escrow requirement for site plan reviews and other development-related costs, as advised by their auditors. Instead, the Village will directly invoice the School District for these costs, which are to be paid within 60 days. This agreement will apply to all future development projects undertaken by the School District within the Village limits, ensuring compliance with the Village's Unified Development Ordinance.

ATTACHMENTS (PLEASE LIST)

Resolution, IGA

ACTION REQUESTED

- ☐ For Discussion Only
☒ Resolution
☐ Ordinance
☒ Motion:

MOTION: I MOVE TO APPROVE RESOLUTION 2024-__R, A RESOLUTION AUTHORIZING THE VILLAGE PRESIDENT TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF WINNEBAGO AND THE BOARD OF EDUCATION OF WINNEBAGO COMMUNITY UNIT SCHOOL DISTRICT NUMBER 323, ILLINOIS REGARDING PAYMENT OF DEVELOPMENT FEES

Staff: Joseph Dienberg, Village Administrator Date: 9/25/2024

RESOLUTION NO. ____-R

A RESOLUTION AUTHORIZING THE VILLAGE PRESIDENT TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF WINNEBAGO AND THE BOARD OF EDUCATION OF WINNEBAGO COMMUNITY UNIT SCHOOL DISTRICT NUMBER 323, ILLINOIS REGARDING PAYMENT OF DEVELOPMENT FEES

WHEREAS, the Village of Winnebago (the “Village”) and the Winnebago School District #323 (the “School District”) recognize the importance of fostering a strong, cooperative relationship in the best interest of both entities and the community; and

WHEREAS, the School District, as a governmental entity, has requested a waiver of the escrow requirement typically associated with site plan reviews and other development-related costs due to the recommendation of its auditors, as holding funds in escrow is not advisable for a School District; and

WHEREAS, the School District agrees to be invoiced directly by the Village for all site plan review costs and other development-related costs that would traditionally be charged to an escrow account, and agrees to pay such invoices within sixty (60) days of receipt; and

WHEREAS, the terms of this agreement are intended to apply to all future development projects undertaken by the School District within the Village limits of the Village of Winnebago, unless otherwise revised by either entity; and

WHEREAS, the Village is authorized under Illinois law to enter into intergovernmental agreements with other governmental entities for purposes of cooperation and efficiency pursuant to Article VII, Section 10 of the Illinois Constitution and the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.); and

WHEREAS, the Village desires to authorize this agreement to accommodate the School District’s desire to begin construction on the Simon Elementary School Parking Lot, a project that will benefit both the Village and the School District; and

NOW, THEREFORE, BE IT RESOLVED by the President and the Board of Trustees of the Village of Winnebago, Illinois, as follows:

SECTION I: AUTHORIZATION TO ENTER AGREEMENT

The Village President is hereby authorized and directed to enter into an Intergovernmental Agreement (IGA) with the Winnebago School District #323, substantially in the form attached hereto as Exhibit A, subject to any technical revisions deemed necessary by the respective Village and School District attorneys. Any material deviation from the points outlined in this resolution shall require further approval by the Village Board.

SECTION II: WAIVER OF ESCROW REQUIREMENT

The IGA will specify that the School District is exempt from the requirement under section 8.01.02 of the Village’s Unified Development Ordinance to place funds in an escrow account for site plan reviews and other development-related costs described therein. Instead, the Village will invoice the School District directly for all such costs incurred.

SECTION III: PAYMENT OF INVOICES

The School District agrees to pay all invoices issued by the Village for site plan reviews and other development-related costs within sixty (60) calendar days of receipt.

SECTION IV: APPLICABILITY TO FUTURE DEVELOPMENTS

The agreement shall apply to all future development projects undertaken by the School District within the village limits of the Village of Winnebago, unless otherwise revised by either entity per agreement.

SECTION V: COMPLIANCE WITH UDO

The School District shall comply with all other applicable development requirements as outlined in the Village's Unified Development Ordinance (UDO), as amended from time to time, or as required by other village ordinance.

SECTION VI: EFFECTIVE DATE

This Resolution shall be in full force and effect from and after its passage and approval in accordance with law.

APPROVED this _____ day of _____, 2024

Franklin J. Eubank, Jr.,
Village President

ATTEST:

Sally Jo Huggins, Village Clerk

PASSED: _____
APPROVED: _____
PUBLISHED IN
PAMPHLET FORM: _____

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF
WINNEBAGO AND THE BOARD OF EDUCATION OF WINNEBAGO COMMUNITY
UNIT SCHOOL DISTRICT NUMBER 323, ILLINOIS REGARDING PAYMENT OF
DEVELOPMENT FEES**

THIS INTERGOVERNMENTAL AGREEMENT (“IGA”) is made the latest date below written, between the Village of Winnebago, Illinois, an Illinois Municipal Corporation (“Village”), and the Board of Education of Winnebago Community Unit School District Number 323, Illinois (“School District”).

RECITALS

WHEREAS, Article VII, Section 10, of the Constitution of the State of Illinois of 1970 provides that units of local government may contract or otherwise associate among themselves to obtain or share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law or by ordinance and may use their credit, revenues, and other resources to pay costs related to intergovernmental activities; and

WHEREAS, intergovernmental cooperation is further authorized by the Intergovernmental Cooperation Act (“the Act”), 5 ILCS 220/1 *et seq.* (2007); and

WHEREAS, the School District and the Village are both public agencies as that term is defined by the Act, 5 ILCS 220/2; and

WHEREAS, the Village currently has in effect a Unified Development Ordinance which requires, pursuant to Article 8.01.01 that a Developer Escrow Agreement be executed and an escrow deposit be made with the Village for costs and staff and professional fees incurred by the Village that are typically associated with site plan reviews and other development-related costs; and

WHEREAS, the school district currently desires to proceed with a project involving construction of a parking lot next to Simon Elementary School located in the Village of

Winnebago, which property previously housed a residence before purchase of the property by the School District; and

WHEREAS, the School District, as a governmental entity, has requested a waiver of the escrow requirement typically associated with site plan reviews and other development-related costs due to the recommendation of its auditors, as holding funds in escrow is deemed by its auditors to not be advisable for a school district; and

WHEREAS, the Village Board of Trustees of the Village of Winnebago has authorized its President to execute this Agreement on behalf of the Village; and

WHEREAS, the Board of Education of the Winnebago Community Unit School District 323 has authorized the Superintendent of the District to execute this Agreement on behalf of the District.

NOW, THEREFORE, pursuant to statutory authority and their powers of intergovernmental cooperation, in consideration of the mutual promises and covenants provided herein, it is hereby agreed by and between the Village and the School District as follows:

1. Escrow Development Agreement Execution Requirement Waived. Subject to the terms of this Agreement, the Village hereby waives the requirement contained in Article 8.01.02 of the Village's Unified Development Ordinance which requires that all developers shall enter into a Development Escrow Agreement with the Village in substantially the form contained in the Development Escrow Agreement reproduced within the UDO, before the Village, its employees, engineers, or attorneys are expected to consider, to take any action in regard to a proposed development. Said Development Escrow Agreement would require, simultaneously with execution of the Escrow Development Agreement, an escrow deposit to be made with the Village of not less than \$5,000.00 nor more than \$10,000.00, as determined

by the Village President after considering the anticipated complexity of the development and staff and professional services time involved, with replenishment required after the escrow deposit balance has decreased below \$2,500.00. In lieu thereof, the Village shall directly invoice the School District for all site plan reviews and other development related costs incurred, and the School District shall promptly pay the same within sixty (60) calendar days of receipt of a given invoice according to the terms and conditions of this agreement.

2. Scope of Agreement. Until terminated by either Party according to the terms stated in this Agreement, this Agreement shall apply not only to the referenced project, but to all future development projects undertaken by the School District within the corporate limits of the Village of Winnebago, IL, unless revised by further written agreement between the parties.

3. Term. The initial term of this Agreement shall be for a period of one (1) year commencing at 12:01 a.m. on October 14, 2024, and ending at 11:59 p.m. on October 13, 2025, and as may be automatically renewed annually for another year on the anniversary date unless either party notifies the other in writing at least sixty (60) days prior to the expiration of the term of the intent to cancel the Intergovernmental Agreement. All other terms besides the inclusive dates of the Agreement for a given year shall remain unchanged upon renewal.

4. Required Compliance with Other UDO Provisions. Except for the Development Escrow Agreement requirement of the Village's Unified Development Ordinance (UDO), for the current and any future development within the corporate limits of the Village of Winnebago, the School District shall comply with all other applicable development requirements outlined in the Village's UDO, as amended from time to time, or as required by any other law or Village ordinance.

5. Default. In the event of default by the School District of the payment terms under this Agreement, Village shall, before taking further action, first provide the School

District with an opportunity to cure the default within fifteen (15) business days of the default by tendering full payment within that time period, along with payment of late payment interest as described hereinbelow. If not resolved, the matter may proceed to arbitration, as detailed below.

6. Assignment. The School District shall not assign this Agreement without the prior written approval of the Village, which written approval may not be unreasonably withheld. This Agreement shall otherwise inure to the benefit of and be binding upon the successors and assigns of the parties.

7. Late Payment Interest. If any payment required by this Agreement is not made within five (5) calendar days after payment is due, a late rate charge of twelve per cent (12%) per annum, or the maximum rate allowed by applicable law, whichever is less, shall be assessed from the date on which it was due until the date on which it is paid in full with accrued interest.

8. Time of the Essence. Time is of the essence of each and every provision of this Agreement.

9. Effect of Any Waiver. The waiver by either party of any agreement, condition, or provision contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition, or provision contained in this Agreement.

10. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and shall be given: (a) by United States first class mail, with return receipt requested, and postage prepaid, or by courier, and (b) by e-mail. Any such notice or other communication sent via certified United States first class mail, postage prepaid, with Certified Mail, Return Receipt Requested designation, shall be addressed to the party for whom it is intended at its address set forth hereinbelow, and shall be deemed to be effective when

actually received or refused. E-mail is a secondary required form of notification and may only be used to evidence receipt if the recipient refuses receipt in a reply e-mail. Either party may, by similar notice given, change the address to which future notices or other communications shall be sent.

If to Village:

Village of Winnebago
108 W. Main St.
Winnebago, IL 61088
Attn: Village President

If to School District:

Winnebago Community School District #323, Illinois
304 E. McNair Rd.
Winnebago, IL 61088
Attn: Superintendent of Schools

11. Disputes.

a. Any claim, controversy or dispute, whether sounding in contract, statute, tort, fraud, misrepresentation, or other legal theory, related directly or indirectly to this Agreement, whenever brought, shall be resolved by arbitration as prescribed in this section. The Federal Arbitration Act, 9 U.S.C. Sections 1-15, not state law, shall govern as to whether arbitration is allowed for claims.

b. Notwithstanding the foregoing, at the Village's option, the following claims, controversies or disputes need not be resolved by arbitration: (i) any action by the Village seeking an injunction or temporary restraining order, and (ii) any action by the Village seeking any prejudgment remedy.

c. The arbitration shall be conducted under the then-current rules of the American Arbitration Association (the "AAA"). The arbitration shall be conducted in the regional AAA office closest to the Premises, or at another location agreed by the Parties.

d. The arbitrator or arbitrators shall have authority only to award compensatory damages, and shall not have authority to award punitive damages, or other non-compensatory damages; the parties hereby waive all rights to and claims for monetary awards other than

compensatory damages. The parties shall share equally the fees and expenses of the arbitrator or arbitrators. The non-prevailing party shall pay the reasonable costs and attorneys' fees of the prevailing party, as determined by the arbitrator. The decision and award of the arbitrator or arbitrators shall be final and binding, and judgment on the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof.

e. If any party files a judicial or administrative action asserting claims subject to arbitration as prescribed herein, and the other party successfully stays such action, or compels arbitration of said claims, the party filing said action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including, but not limited to, reasonable attorneys' fees.

12. Authority. The School District and the party executing this Agreement on behalf of the School District represent to the Village that such party is authorized to do so by requisite action of the board of the School District and agree, upon request, to deliver to the Village a resolution or similar document to that effect.

13. Counterparts. This Agreement may be executed in counterparts, and when each of the parties hereto has executed and delivered one or more counterparts, this Agreement shall be binding and effective, even though no single counterpart has been executed by both parties.

14. Entire Agreement. This Agreement embodies the entire agreement between the parties hereto relative to the subject matter hereof. No amendment, alteration, modification of, or addition to the Agreement shall be valid or binding unless expressed in writing and signed by the Village and the School District.

15. Severability. If any provision of this Agreement proves to be illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected by such finding, and in lieu of each provision of this Agreement that is illegal, invalid, or unenforceable, a provision shall be added

as a part of this Agreement as similar in terms to such illegal, invalid, or unenforceable provision as may be possible, and be legal, valid, and enforceable.

16. Captions. The captions of the various paragraphs of this Agreement are for convenience only, and do not necessarily define, limit, describe, or construe the contents of such paragraphs.

17. Governing Law. This Agreement shall be governed by the laws of the State of Illinois.

18. Recordation. The School District shall not record this Agreement or a memorandum thereof in the public records without the prior written consent of the Village, unless this Agreement or a memorandum is required to be recorded under state or federal law.

EXECUTED as of the day and year first above written.

VILLAGE: Village of Winnebago,
Illinois, a Municipal Corporation

Name: Franklin J. Eubank, Jr.
Title: Village President
Date: _____

THE SCHOOL DISTRICT: Winnebago
Community Unit School District #323

Name: John Schwuchow
Title: Superintendent of Schools
Date: _____

Name: Heather Dunaway
Title: Board of Education President
Date: _____

PREPARED BY:
Attorney Mary J. Gaziano
Village Attorney