



MEMORANDUM

DATE: October 14, 2024

To: Honorable Mayor & City Council

CC: Dave Bennett, Director of Public Works/City Engineer; Jeff Schroepfer, Police Chief; Jake Reilly, Community Development Director; Lynette Peterson, City Clerk; Michelle Mahowald, Communications & Human Resources Director; Natalie Draper, Director of Library; Brenda Angelstad, Finance Director; Chris Hood, City Attorney

From: Ben Martig, City Administrator

RE: "Supplemental Agenda Background Memo" for October 15, 2024 No. 1.

Summary Report:

The following is an update on agenda items as supplemental background agenda information made available for Tuesday October 15, 2024:

1. 24-621 Annual Presentation of Main Street Program
2. 24-622 Presentation from the Convention and Visitors Bureau

The order of the presentation, as noted in the initial agenda, will be switched. The Convention and Visitors Bureau presentation will be first followed by the Main Street Program.

20. 24-632 Consider Approval of Cost Share Agreement with the City of Dundas for the New Ice Arena.

See attached agreement with the City of Dundas.

COST SHARE AGREEMENT

THIS AGREEMENT (the “Agreement,”) is made and entered into as of this ___ day of _____, 2024, by and between **CITY OF NORTHFIELD**, a municipal corporation under the laws of the State of Minnesota (“Northfield”), and **CITY OF DUNDAS**, a municipal corporation under the laws of the State of Minnesota (“Dundas”); (individually, the Northfield and Dundas may be referred to as a “Party”; collectively, as the “Parties”).

RECITALS

WHEREAS, the Northfield Hockey Association, Inc. (“NHA”) has donated Northfield certain real property located in the City of Northfield, Rice County, Minnesota (PID No. 22.11.1.54.009), legally described on **Exhibit A**, which is attached hereto and incorporated herein by reference (the “Property”); and

WHEREAS, NHA donated the Property to Northfield for construction of a municipal Ice Arena facility to be located on the Property for the benefit of the community, including for the benefit of the citizens of Dundas (the “Project”); and

WHEREAS, Dundas seeks to financially assist Northfield with the construction of the Project on the Property by making capital contributions to Northfield for the Project; and

WHEREAS, the Parties’ shared vision for the Project is depicted in the concept sketches attached hereto as **Exhibit B** to be funded partially by private donations raised by NHA as well as public funding through Northfield, Dundas and the Northfield School District, as well as other possible sources of funds, in order to provide a municipal Ice Arena facility for the betterment of the community and the local economy; and

WHEREAS, Dundas is willing to make capital contributions for construction of the Project to Northfield as more specifically set forth herein; and

WHEREAS, subject to the conditions precedent set forth herein, Northfield is willing to undertake the financing and construction of the Project as soon as practicable pursuant to the terms and conditions set forth herein, and subject to the requirements of applicable law, approval by the Northfield City Council of plans and specifications, bidding, contract(s) award, and completion of financing for the Project; and

WHEREAS, the legal authority for the Parties to enter into this Agreement jointly and cooperatively exercising common powers is contained in Minnesota Statutes, Sections 412.221, 471.15-.191, and 471.59; and

WHEREAS, Northfield and Dundas now desire to enter into this Agreement defining the terms and conditions under which Dundas will make capital contributions to Northfield for the construction of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

ARTICLE ONE
Definitions and Terms

- 1.1 **“Dundas”** means the City of Dundas, a Minnesota municipal corporation, 100 Railway Street N., P.O. Box 70, Dundas, MN 55019.
- 1.2 **“Effective Date”** means the date first above written.
- 1.3 **“Estimated Project Cost”** means \$20,900,000.00, which amount represents the estimated cost to complete the construction of the Project and includes a bond amount for the Project in the estimated amount of \$18,260,000.
- 1.4 **“Expiration Date”** means the date that is twenty years after the date of issuance of bonds for the Project by Northfield or its Economic Development Authority (the “EDA”) for the Total Project Cost, or the date on which both Parties have fully performed their respective obligations hereunder, whichever is later.
- 1.5 **“Final Design”** means the final architectural and engineering design plans and specifications for the Project approved by the Northfield City Council. The Final Design shall consist of construction plans and bidding documents pursuant to Minn. Stat. § 471.345 and 471.463, as applicable and determined by the Northfield City Council in its sole judgment and discretion.
- 1.6 **“Guaranteed Maximum Price”** means the maximum amount that a construction manager at risk is paid pursuant to a contract to construct the Project.
- 1.7 **“Ice Arena”** means the approximately 46,000 square foot Ice Arena facility as depicted in the concept sketches attached hereto as **Exhibit B**.
- 1.8 **“Minimum Components”** means all improvements, including as required by any applicable federal or state statute, regulation, or local ordinance, necessary for or related to the construction of the Project on the Property to include the following minimum components and features:
- (a) Single ice sheet;
 - (b) Modern Entry Lobby, Concession Stand, Multipurpose Rooms; and
 - (c) Youth/Skate School Locker Rooms along with Girls and Boys High School Locker Rooms.

- 1.9 **“Naming Rights”** shall mean the sale by Northfield of the right of a third-party purchaser to attach its name to the title of the Ice Arena for a specific period of time as agreed upon by Northfield and the naming rights sponsor.
- 1.10 **“Northfield”** means the City of Northfield, a Minnesota municipal corporation, 801 Washington Street, Northfield, MN 55057.
- 1.11 **“Project”** means the construction of the Ice Arena on the Property pursuant to the Final Design.
- 1.12 **“Property”** means that certain real property located in the City of Northfield, Rice County, Minnesota (PID No. 22.11.1.54.009), legally described on **Exhibit A**, which is attached hereto and incorporated herein by reference.
- 1.13 **“NHA”** means Northfield Hockey Association, Inc., a Minnesota nonprofit corporation, whose address for notices purposes is 14 Bridge Square, P.O. Box 111, Northfield, MN 55057.
- 1.14 **“State”** means the State of Minnesota.
- 1.15 **“Substantial Completion Date”** means the date on which the Northfield City Engineer determines that the Ice Arena is complete and authorizes its use for the purposes contemplated in this Agreement.
- 1.16 **“Total Project Cost”** means the Guaranteed Maximum Price of the Project and represents the actual cost to construct the Project, inclusive of all sums paid to contractors for the construction of the Project, all sums paid to professionals to manage the construction of the Project, all principal and interest payments that may accrue on any bonds issued to fund any portion of the Project, excluding the costs for Additional Improvements as set forth in Section 5.3 of this Agreement.

ARTICLE TWO

Purpose and Term of Agreement

- 2.1 **Purpose.** The Parties have joined together for the purpose of sharing in the costs of the Project for the benefit of their citizens.
- 2.2 **Term.** This Agreement shall be in effect and binding on the Parties beginning on the Effective Date and terminating on the Expiration Date, unless earlier terminated pursuant to this Agreement.

ARTICLE THREE

Representations and Warranties

- 3.1 **Representations and Warranties of the Northfield:** Northfield represents and warrants that it is a municipal corporation organized and existing under and by virtue of and

pursuant to the laws of the State of Minnesota and its Home Rule Charter and has the power to enter into this Agreement and carry out its obligations hereunder.

3.2 Representations and Warranties of Dundas: Dundas makes the following representations and warranties:

3.2.1 Dundas represents and warrants that it is a municipal corporation organized and existing under and by virtue of and pursuant to the laws of the State of Minnesota and has the power to enter into this Agreement and carry out its obligations hereunder.

3.2.2 Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by, or conflicts with or results in a breach of, the terms, conditions or provision of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which Dundas is now a party or by which it is bound, or constitutes a default under any of the foregoing.

3.2.3 Dundas will cooperate with Northfield with respect to any litigation commenced with respect to the Ice Arena, as applicable.

3.2.4 Dundas shall promptly advise Northfield in writing of all litigation or claims affecting this Agreement and all written complaints and charges made by any governmental authority materially affecting this Agreement or materially affecting Dundas or its activities related to the Ice Arena.

3.2.5 Dundas acknowledges Northfield's contributions to the Project and to thereafter operating and maintaining the Ice Arena as a public facility, and further warrants that Dundas will not seek subsidies or other financial assistance from Northfield to cover any costs, expenses, or obligations made the responsibility of Dundas hereunder.

ARTICLE FOUR
Final Design

4.1 Final Design: Northfield shall retain a design professional(s) and complete the architectural and engineering design for the Project as determined by the Northfield City Council in its sole judgment and discretion:

4.1.1 Minimum Components: The Minimum Components shall be included in the Final Design, unless Dundas and Northfield first mutually agree in writing to modify the Minimum Components.

ARTICLE FIVE
Project Funding

5.1 Cost Share: Northfield and Dundas shall make the following cost sharing contributions for the Project:

5.1.1 Estimated Project Cost and Project Bonds: The Parties agree upon the Estimated Project Cost stated herein as the basis for this Agreement, but understand, acknowledge, and agree that the Total Project Cost will be the Guaranteed Maximum Price accepted by Northfield, which may be higher or lower than the Estimated Project Cost stated herein. The Estimated Project Cost includes an estimated Project bond amount of \$18,260,000 payable over 20 years to finance the Total Project Cost.

The principal of and interest on the Project bonds will be paid from lease payments by Northfield. Dundas shall fund its capital contribution by making annual payments to Northfield in an amount equal to the annual debt service on the Project bond multiplied by a percentage equal to the ratio of Dundas' net tax capacity for taxes payable in the year of the Project bond issuance to the combined net tax capacity of Dundas and Northfield in such year (e.g., for taxes payable in 2024 such percentage is approximately 12% [i.e., \$3,231,161 / (\$23,427,842+\$3,231,161)]) (the "Dundas Percentage"). The Dundas annual capital contribution for the estimated Project bond amount is estimated to be approximately \$151,963 per year. Dundas agrees to make the bond capital contribution payments provided herein for its respective cost share of the Project bonds based upon the actual Total Project Cost / Guaranteed Maximum Price notwithstanding the estimates provided in this Agreement.

5.1.2 Annual Bond Payments: Dundas shall make annual capital contribution payments to Northfield in accordance with Section 5.1.1 of this Agreement for a period of 20 years with the first Dundas capital contribution payment commencing the year the Project bonds are issued by Northfield for the Project. Northfield shall invoice Dundas annually for the percentage of the actual bond debt service specified herein. Dundas shall make its annual Project capital contribution payments to Northfield as provided herein within 30 days of receipt of the Northfield invoice or on or before July 31 of each year, whichever is later. The first payment shall be due July 31, 2026.

5.1.3 Professional Fees for Final Design: In addition to the capital contribution payments described in Sections 5.1.1 and 5.1.2 of this Agreement, Dundas shall also pay Northfield the Dundas Percentage of any actual costs of Final Design paid by Northfield for the Project in excess of the amount of such costs financed with the proceeds of the bond. Northfield shall invoice Dundas in the amount specified herein. Dundas shall make payment to reimburse Northfield as provided herein within 30 days of receipt of the Northfield invoice. The invoice provided

to Dundas shall include such documentation evidencing the costs paid by Northfield for Final Design sought for reimbursement by Northfield from Dundas.

5.2 Northfield Financial Obligations:

5.2.1 Total Project Cost: Northfield shall be responsible for payment of Total Project Cost relating to the Project, which costs shall be paid through a combination of issuance of bonds, and contributions from Dundas, NHA, and the Northfield School District, along with such other funding sources as Northfield may obtain in Northfield's judgment and discretion, as applicable. Northfield is relying upon Dundas, NHA, and the Northfield School District to fund the Project and bring the Project to completion.

5.2.2 Bonding: Northfield's obligations under this Agreement are contingent upon satisfaction of all requirements of applicable law for either Northfield or the EDA, as applicable, to issue bonds in an amount sufficient, together with any funds available at the time of issuance of the Project bonds, to fund the Total Project Cost / Guaranteed Maximum Price, and are subject to approval by the Northfield City Council in its sole judgment and discretion. Dundas shall fully cooperate with Northfield and provide any necessary documentation or accounting required for Northfield to complete the bonding process.

5.2.3 Naming Rights: Northfield shall have the right to market and sell the Naming Rights to the Ice Arena, on terms reasonably acceptable to Northfield, in the Northfield City Council's sole judgment and discretion, as part of its efforts to finance the Total Project Cost, but makes no representation that any such amounts will be available.

5.3 Additional Improvements: The Total Project Cost shall not include Additional Improvement costs incurred by Northfield for improvements that are not part of the Final Design and/or not included in the Guaranteed Maximum Price, with the exception of Northfield approved change orders. "Additional Improvements" are defined for purposes of this paragraph as improvements to the Ice Arena not included in the Project and which constitute a separate project with separate Northfield approval, bidding, contract award, and financing, but may otherwise be made by Northfield in conjunction with the construction of the Project. Such Additional Improvement costs may be paid through a variety of sources to be determined by the Northfield City Council in its judgment and discretion. Any cost share by Dundas for such Additional Improvements shall only be by amendment of this Agreement or through a separate agreement between the Parties duly approved by their respective governing bodies.

5.4 Grant Funds: The Parties understand and acknowledge that Northfield may pursue grants from multiple sources on terms reasonably acceptable to Northfield, in the Northfield City Council's sole judgment and discretion, so as to fund some or all of the Total Project Cost, but makes no representation that any such amounts will be available. Dundas shall remain responsible for the payments provided herein above notwithstanding any grant

funds that are received by the Northfield for the Project since such grant funds awarded for the Project will correspondingly reduce the bond amount needed for the Project, which is mutually beneficial to the Parties. Dundas shall fully cooperate with Northfield and provide any necessary documentation or accounting required for Northfield to complete the grant funding process.

ARTICLE SIX **Construction**

- 6.1 **Project Construction:** Subject to the requirements of applicable law, approval by Northfield's City Council of Final Design, bidding, contract(s) award, and completion of financing for the Project, Northfield shall be responsible for all aspects of construction of the Project in accordance with the Final Design approved by the Northfield City Council, in its sole judgment and discretion and pursuant to the following requirements:
- 6.1.1 **Competitive Bids / Construction Manager At Risk:** Northfield shall solicit competitive bids and award the contract(s) for construction of the Project in accordance with the Final Design and in compliance with the Uniform Municipal Contracting Law, Minn. Stat. § 471.345 and/or through the construction manager at risk process pursuant to Minn. Stat. § 471.463 in the Northfield City Council's sole judgment and discretion.
 - 6.1.2 **Lowest Responsible Bid / Guaranteed Maximum Price:** The Northfield City Council shall identify, in its sole judgment and discretion either: (i) the lowest responsible bid(s) for the contract(s) to construct the Project; or (ii) the Construction Manager at Risk and corresponding Guaranteed Maximum Price Contract and related bids.
 - 6.1.3 **Conditions Precedent:** Northfield's obligations to award the contract(s) for construction of the Project and to cause the Project to be constructed under this Article are subject to the conditions precedent that: (i) Northfield receives NHA's donations to the Project; (ii) Northfield is able to secure financing for the Total Project Cost at rates acceptable to the Northfield City Council; (iii) Northfield and Dundas have timely executed this Agreement; (iv) Northfield has entered into a Project funding agreement with the Northfield School District in an amount and under terms mutually agreeable to Northfield and the Northfield School District; and (v) Northfield has closed on and is the fee owner of the Property upon which the Project is to be constructed.
 - 6.1.4 **Substantial Completion:** Upon satisfaction of the conditions precedent pursuant to Section 6.1.3 of this Agreement, Northfield shall award the contract(s) for construction of the Project and exercise all reasonable diligence to cause the construction of the Project to be substantially completed as soon as practicable thereafter in accordance with the Final Design.

6.1.5 Ownership of Property and Ice Arena Improvements: The Ice Arena to be constructed and the Property, together with any improvements thereon, whether existing on the Effective Date or installed thereafter, shall at all times be and remain under the sole ownership of Northfield or the EDA. Dundas shall gain no property interest in the Property or Ice Arena as a result of or by virtue of this Agreement.

ARTICLE SEVEN
Insurance and Indemnification

7.1 Northfield's Required Insurance: Northfield shall obtain and maintain, or require the Project contractor selected to construct the Project, at such times as specified below, the following insurance policies:

7.1.1 Builder's Risk Insurance: Purchase and maintain at all times during the process of constructing the Project prior to the Substantial Completion Date, builder's risk insurance in an amount equal to one hundred percent (100%) of the insurable value of the Project on the Substantial Completion Date.

7.1.2 Property Insurance: Purchase and maintain, at all times while this Agreement is in effect, property insurance covering the Property and the Ice Arena thereon.

7.2 Required Insurance: In order to protect Northfield and Dundas, Northfield shall require that the design professionals and contractors designing and working on the Project maintain the following insurance policies in the listed amounts at all times while this Agreement is in effect, and for a date of at least two years after the date of Substantial Completion Date of the Project.

7.2.1 Commercial General Liability (including contractual liability) with policy limits of not less than the following:

- 7.2.1.1 \$4,000,000 General Aggregate (per project)
- 7.2.1.2 \$2,000,000 Products/Completed Operations
- 7.2.1.3 \$2,000,000 Each Occurrence
- 7.2.1.4 \$2,000,000 Personal/Advertising Injury (any one person or organization)
- 7.2.1.5 \$50,000 Fire Damage (any one fire)
- 7.2.1.6 \$5,000 Medical Payments (any one person or occurrence)

7.2.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Design Professionals with policy limits of not less than \$1,000,000 per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage such as statutory personal injury protection.

- 7.2.3 The Project professionals and contractors may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required herein and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.
- 7.2.4 Workers' Compensation at statutory limits.
- 7.2.5 Employers' Liability with policy limits not less than \$1,000,000 each accident, \$1,000,000 each employee, and \$1,000,000 policy limit.
- 7.2.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than \$2,000,000 per claim and \$4,000,000 in the aggregate.
- 7.3 Mutual Indemnification: Each Party shall be liable for its own acts of omissions. Northfield and Dundas shall indemnify and hold harmless the other and its respective officers, directors, employees and members and agents, from and against any and all claims and demands for, or litigation with respect to, all damages, losses and judgments attributable to the negligent or otherwise wrongful acts or omissions of the non-indemnified party or its agents, employees, contractors, or subcontractors with respect to the non-indemnified party's performance of its obligations under this Agreement. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of the indemnified party or its officers, directors, employees and members and agents. All indemnification obligations shall survive termination, expiration or cancellation of this Agreement. Nothing this Agreement shall be construed to waive any immunities or limitations to which the either Party is entitled under Minn. Stat. Chapter 466 or otherwise.

ARTICLE EIGHT

Termination

- 8.1 Termination: Notwithstanding the foregoing, this Agreement may be terminated; (i) by mutual agreement of the parties at any time; (ii) by Northfield, upon 15 days' written notice to Dundas in the event Dundas fails to timely satisfy any material term or condition of this Agreement and Dundas fails to cure such Default within the notice period; (iii) by Northfield, upon 15 days' written notice to Dundas, if the conditions precedent in Section 6.1.3 of this Agreement or the conditions for Northfield's or the EDA's, as applicable, issuance of bonds for the Project are not satisfied to Northfield's reasonable judgment and discretion; (iv) by Northfield in the event NHA loses its tax exempt, nonprofit fundraising status; or (v) by either Party for uncured default of the Other Party, upon 60 days' written notice to the Other Party.

ARTICLE NINE
Default and Remedies

- 9.1 Dundas Default: If Dundas shall default in the payment of any sum required to be paid or provided by Dundas under this Agreement, and such default shall continue for 15 days after written notice to Dundas, or if Dundas shall default in the observance or performance of any of the other covenants, obligations or conditions in this Agreement, which Dundas is required to observe or perform, and such default shall continue for 15 days after written notice to Dundas, or if any voluntary petition in bankruptcy or for corporate reorganization or any similar relief shall be filed by Dundas, or if any involuntary petition in bankruptcy shall be filed against Dundas under any federal or state bankruptcy or insolvency act and shall not have been dismissed within 30 days following the filing thereof, or if a receiver shall be appointed for Dundas or any of the property of Dundas by any court and such receiver shall not be dismissed within 30 days from the date of appointment, or if Dundas shall make an assignment for the benefit of creditors, then Northfield may treat the occurrence of any one or more of the foregoing events as a breach of this Agreement and thereupon at its option may, in accordance with Section 8.1 of this Agreement, terminate this Agreement in addition to exercising all other rights and remedies provided at law or in equity.
- 9.2 Northfield Default: If Northfield shall default in the observance or performance of any of its covenants, obligations or conditions in this Agreement, which Northfield is required to observe or perform, and such default shall continue for 30 days after written notice to Northfield, then Dundas may treat the occurrence of any one or more of the foregoing events as a breach of this Agreement and thereupon at its option may, in accordance with Section 8.1 of this Agreement, terminate this Agreement.

ARTICLE TEN
Miscellaneous

- 10.1 Notices: Any notice, demand, or other communication required or permitted to be given hereunder shall be deemed delivered and effectively given when delivered personally to the representatives of Northfield and Dundas identified below or three (3) business days after being mailed by registered or certified mail, return receipt requested, addressed as follows:

To Northfield:
City of Northfield
Attn: City Administrator
801 Washington Street
Northfield, MN 55057

To Dundas:
City of Dundas
Attn: City Administrator
100 Railway Street N., P.O. Box 70
Northfield, MN 55019

Either Party may change its address or the identity of its designated representative named above by written notice to the other Party in the manner stated in this paragraph.

- 10.2 Voluntary and Knowing: The Parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
- 10.3 Authorized Signatories: The Parties each represent and warrant to the other that (i) the persons signing this Agreement are authorized signatories for the entities represented; and (ii) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each Party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- 10.4 Governing Law: This Agreement shall be deemed to have been made and accepted in Rice County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of this Agreement without regard to its choice of law or conflict of laws principles.
- 10.5 Data Practices: The Parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minn. Stat. § 13.01 *et seq.*
- 10.6 Records – Availability and Retention: Pursuant to Minn. Stat. § 16C.05 subd. 5, the Parties agree that the either Party, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of each Party NHA and involve transactions relating to this Agreement. Each Party agrees to maintain these records for a period of six years from the date of termination of this Agreement.
- 10.7 Compliance with laws: The Parties shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement.
- 10.8 Dispute Resolution: Northfield and Dundas agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law. Any claims or disputes unresolved after good faith negotiations shall first be submitted to mediation utilizing the Minnesota District Court Rule 114 Roster. Following mediation, neither party is prohibited from pursuing unresolved disputes in the District Court in Rice County, Minnesota, including all rights of appeal.
- 10.9 Force Majeure: The Parties shall each be excused from performance under this Agreement while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act

of government or military authority. In the event either party is rendered unable wholly or in part by force majeure to carry out its obligations under this Agreement then the party affected by force majeure shall give written notice with explanation to the other party immediately.

- 10.10 No waiver: Any party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving party.
- 10.11 Severability: The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.
- 10.12 Headings, Captions and Recitals: Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement and shall not be used for the interpretation of the validity of this Agreement or any provision hereof. The recitals set forth at the beginning of this Agreement are incorporated herein by reference and made a part of this Agreement.
- 10.13 Survivability: All covenants, indemnities, guarantees, releases, representations and warranties by any Party or Parties, and any undischarged obligations of the Northfield and Dundas arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.
- 10.14 Exhibits: The exhibits attached to this Agreement are considered an integral part of it as if fully set forth within it.
- 10.15 Entire Agreement: All prior understandings, discussions and agreements are merged in the governing terms of this Agreement, which is a complete and final written expression of the intent of the parties. Every warranty or representation binding upon each Party is set forth in this Agreement. Each Party makes no further warranties or representations and each Party has not relied on any other warranties or representations, express or implied, relative to the terms of this Agreement. In the event of a conflict or inconsistency between the terms of this Agreement and those of any other agreement between the Parties with respect to the subject matter hereof, the terms of this Agreement shall govern.
- 10.16 Modification/Amendments: Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been

reduced to writing, approved by the Dundas City Council and the Northfield City Council, and signed by an authorized representative of each Party.

- 10.17 Execution: This Agreement may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any Party to the counterpart shall be deemed a signature to the Agreement, and may be appended to, any other counterpart. Facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing Party.

[Signature page to follow]

IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement effective as of the date first above written.

CITY OF NORTHFIELD

By: _____
Rhonda Pownell, Its Mayor

Date: _____

By: _____
Lynette Peterson, Its City Clerk

Date: _____

CITY OF DUNDAS

By: _____
Glenn Switzer, Its Mayor

Date: _____

By: _____
Jenelle Teppen, Its City Administrator/Clerk

Date: _____

EXHIBIT A

Legal Description of Property

Outlot C, in Gleason Third Addition, in the City of Northfield, Rice County, Minnesota.

EXHIBIT B

Concept Depiction of Ice Arena

Floor Plan

Approx 53,000 SF

Approx 49,000 SF w/out Dryland

