

PROJECT PRE-CONSTRUCTION COST AGREEMENT
FOR NAFRS FACILITY UPGRADE

THIS AGREEMENT (“Agreement”) is made this ____ day of _____, 2017 by and between the City of Northfield, a Minnesota municipal corporation (“City”) and Northfield Area Fire Protection and Rescue Services, a Minnesota municipal joint powers association (“NAFRS”) (each a “Party” or, collectively, the “Parties”).

RECITALS

A. NAFRS is a joint powers organization formed pursuant to Minnesota Statutes, section 471.59, and operating pursuant to that certain Joint Powers Agreement dated April 1, 2014 (the “JPA”);

B. NAFRS provides fire and rescue services in the City and surrounding cities and townships within its designated service area and operates out of a facility located at 301 West 5th Street in the City (“Facility”);

C. The City is a member of NAFRS and, together with NAFRS, has made preliminary approvals for the design, financing and construction of an upgrade to the Facility to be carried out in accordance with a City and NAFRS approved project timeline (“Project”);

D. The Facility is owned by the City, which leases it to NAFRS;

E. Subject to final review of the financing terms and conditions and approval by the City Council of all aspects of the Project, including but not limited to design, financing, document development, bidding, award of contracts and construction, the Parties anticipate that the City will finance the Project through the issuance of General Obligation Bonds (the “Bonds”). The Bonds will be payable from revenues generated by NAFRS’ operations paid to the City as lease payments in an amount equal to the principal of and interest on the Bonds pursuant to an amendment to the existing Fire Station Lease Agreement (the “Lease”) and allocated to each member of NAFRS in the pro rata amount for which each member is responsible to pay pursuant to the JPA. Approval and execution of such amendment to the Lease by the City and NAFRS and approval and execution of a corresponding amendment to Section 17 of the JPA by the parties thereto (City of Northfield, City of Dundas and the Northfield Rural Fire Protection District), and approval and execution of such other documentation as is necessary to issue and secure payment of the Bonds as recommended by the City’s bond counsel, shall be a condition precedent to the City awarding contracts for construction of the Project;

F. The Parties have previously entered into that certain Project Management Agreement for NAFRS Facility Upgrade Project dated _____ (“Project Management Agreement”), wherein, among other things, the Parties agree that the City will be the Owner of all Project contracts with the architect, construction manager and contractors and make the

payments for Project costs. The NAFRS Board will act as the Owner's Representative and manage the Project as set forth in the Project Management Agreement; and

G. The Parties intend hereby to set forth the allocation of responsibility for and repayment of Project Pre-Construction costs.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. This Agreement is to be read in conjunction with the Project Management Agreement. If any term of this Agreement cannot be read consistently with the Project Management Agreement, the terms of this Agreement will prevail.

2. For purposes of this Agreement, "Pre-Construction Costs" means all payments to the architect, construction manager or other third parties providing goods or services for the Project prior to the commencement of Project construction ("Vendor Costs"). Project construction costs shall begin when NAFRS issues the Notice to Proceed to the contractors following approval and the award of construction contracts to contractors by the City Council. Pre-Construction Costs do not include costs that may be incurred for dispute resolution of Pre-Construction costs. If a dispute arises between the Parties over a Pre-Construction cost, the Parties shall seek to resolve the dispute using the process set forth in paragraph 5 below.

3. Pre-Construction Costs are intended to include only those Vendor Costs incurred in the Pre-Construction phase of the Project and incurred whether or not the Project reaches the construction phase.

4. Whether or not the construction phase of the Project is commenced or completed, the City will promptly pay Pre-Construction Costs recommended by NAFRS pursuant to those applicable contracts between the City and the architect, construction manager or such other agent as is a contractor of the City on the Project, and NAFRS will reimburse the City for those Costs by no later than December 31, 2018; provided, however, that if the City determines to reimburse itself for such Pre-Construction Costs from the proceeds of the Bonds, then such Pre-Construction Costs will be paid by NAFRS pursuant to payments under the Lease rather than payable on or before December 31, 2018. The City will notify NAFRS whether the Pre-Construction Costs will be included in the principal amount of the Bonds. The approved Pre-Construction Costs will be allocated among the parties to the JPA in the percentages shown in the JPA, or as such percentages may be adjusted in the future.

5. All disputes between the Parties that arise out of this Agreement shall be addressed promptly and directly by the Parties in an attempt to reach resolution. If the disputed issue is not resolved through direct negotiation, the Parties agree to select a mutually-acceptable mediator to mediate a resolution to the dispute. The Parties shall share costs of the mediator equally. If mediation is unsuccessful, the Parties retain all rights under law.

6. The recitals hereto are made a part hereof.

7. The City and NAFRS shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement or to the Project.

8. The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Agreement as if fully set forth herein.

9. No elected official, officer, board member or employee of the City or NAFRS shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Agreement or the Project.

10. 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 the Contract without regard to its choice of law or conflict of laws principles.

11. The Parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act (Act), Minnesota Statutes, Section 13.01 et seq.

12. 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.

13. This Agreement may be signed in counterpart, with each separate signature page forming a part of the whole Agreement.

IN WITNESS WHEREOF, the undersigned represent that they are duly authorized to sign on behalf of their principals and bind the Parties to this Agreement.

[Signature pages to follow]

CITY OF NORTHFIELD

Dated: _____

By: _____

Rhonda Pownell

Its: Mayor

Dated: _____

By: _____

Deb Little

Its: City Clerk

NORTHFIELD AREA FIRE PROTECTION
AND RESCUE SERVICES

Dated: _____

By: _____

Glen Castore

Its: Board Chair