

PROJECT MANAGEMENT AGREEMENT
FOR NAFRS FACILITY UPGRADE PROJECT

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. The Parties anticipate final approval of the Project by each public body and agree that, if the Project goes forward, the following project administration terms as between the City and NAFRS are in the best interest of each entity for a prudent and efficient allocation of duties and policies for the Project, it being expressly understood, however, that the Project is a City-owned project and that NAFRS is acting in the capacity of a consultant to and representative of the City with respect to the Project; and

F. Subject to final review of 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.

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

1. The City will be the “Owner” as that term is used on all bidding, contract and construction documents, including but not limited to those with the architect, construction manager and contractors for all aspects of the Project, including but not limited to the Facility design, bidding, award of contracts, supervision and construction of the Project with the City retaining in all respects the express and exclusive authority to approve, modify or reject the same, in the City’s sole judgment and discretion.

2. With respect to the contracts entered into between the City and the architect, construction manager and multiple prime contractors for the Project, the NAFRS Board shall be designated as the “Owners Representative,” as the term is therein referenced, to advise and assist the City in making administrative and Project management decisions with respect to the Project as the same may be recommended by the City Engineer, Architect and/or Construction Manager from time to time.

3. As Owners Representative, the NAFRS Board shall be responsible for the following Project management duties and responsibilities, unless the City terminates such duties and responsibilities in its reasonable discretion at set forth in paragraph 8, below:

- a. working with the architect to review, modify and recommend bidding and contract documents on those certain AIA forms prepared by the architect for the Project and subsequently approved by the City Administrator and City Council;
- b. reviewing, evaluating and recommending design, construction documents, bidding documents, bids, and selecting qualified contractors for the Project to be approved by the City Administrator and City Council;
- c. Approvals for making the above recommendations to the City Council shall be as memorialized by resolutions adopted by the NAFRS Board; and
- d. carrying out all necessary communications with the Project architect, construction manager and contractors during the Project period, considering and approving, modifying or rejecting all applications for payment for services or work as recommended for approval by the architect, including but not limited to change orders modifying the contract price or time for contract performance, as the same may be recommended by the City Engineer, Architect and/or Construction Manager from time to time.

4. As Owner's Representative, the NAFRS Board shall adopt appropriate resolutions reflecting its action and send notice of such action to the City Administrator. Immediately upon NAFRS Board approval of payment applications or change orders, the Board shall send notice of such approval to the City Finance Director who will be authorized by the City Council to pay the approved payments subject to paragraphs 3, 5 and 7 herein.

5. Any change order that either exceeds ten percent of the total Project cost or is in the amount of \$25,000 or more, shall be recommended to the City Council for review and approval by the City Council, in its discretion, based upon the NAFRS Board's recommendation. With respect to change orders, the NAFRS Board shall follow the City's Change Order Policy, which is incorporated herein by reference.

6. The Project contracts shall satisfy City requirements for insurance coverage, including builder's risk insurance, and contractor posting of payment and performance bonds. The City and NAFRS shall investigate the use of sales tax exemptions for certain equipment purchased in connection with Project. The City and NAFRS must mutually agree on the use of sales tax exemptions on equipment or materials purchased for the Project based on the costs and benefits of such utilization pursuant to Minnesota law. Upon approval of use of the sales tax exemption, NAFRS shall incorporate necessary contract provisions with the Project contractors to carry out the requirements under Minnesota law.

7. All notices between the NAFRS Board and City shall be provided by regular mail and email to the persons below. Subject to paragraph 5, NAFRS shall provide the City with notice as soon as possible of any potential change order increasing or decreasing a contract price or time, or other matter affecting the cost of the Project. A representative of NAFRS shall inform the City as to the facts giving rise to the potential increase or decrease in contract price or time or other matter and continue to timely advise the City as such changes during the Project.

CITY OF NORTHFIELD:

Ben Martig
City Administrator
City of Northfield
801 Washington Street
Northfield, MN 55057-2565
Email: Ben.Martig@ci.northfield.mn.us

**NORTHFIELD AREA FIRE PROTECTION
AND RESCUE SERVICES:**

Glen Castore
Board Chair
Northfield Area Fire and Rescue Service
301 5th Street West
Northfield, MN 55057
Email: glen.castore@nafrs.org

8. If, at any time during the Project, in its reasonable discretion, the City Council deems it in the best interest of the City to temporarily or for the duration of the Project terminate, modify or suspend some or all of the Owners Representative's duties of the NAFRS Board, the City shall give at least ten days written notice of its intention to do so and describe the duty or duties to terminate, modify or suspend. The Parties agree to communicate at the earliest possible time regarding such notice in an attempt to resolve any issues that have led the City to consider termination, modification or suspension of such duties to be carried out by the NAFRS Board.

9. The City shall appoint a representative to attend NAFRS Board meetings or otherwise communicate with the Board for the purposes of remaining apprised of Project progress and of matters that arise during the Project. Upon NAFRS Board approval of payment applications to Project contracting parties, the City shall promptly pay such approved applications without delay unless the City acts in its reasonable discretion in rejecting payment or making a claim or claims in accordance with the contract documents between the City and the respective contractor.

10. Services provided by the NAFRS Board under this Agreement will be conducted to put forth reasonable efforts to complete its duties in a timely manner and for the best interests of the City and NAFRS.

11. This Agreement shall commence on March 22, 2017 and be in effect until such time as the Project is completed, December 31, 2018, or as otherwise provided in this Agreement, whichever comes first.

12. Any dispute that arises out of this Agreement shall be resolved first by good faith attempts of the Parties to reach agreement. If such negotiations fail, the Parties agree to select a mutually-acceptable mediator to hold mediation between the Parties at the earliest convenient time. The fees and expenses of the mediator shall be borne equally by the Parties, who shall each bear their own other costs to resolve disputes. If mediation is unsuccessful, the Parties retain all rights under law.

13. The recitals hereto are made a part hereof.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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