



City Council Memorandum

To: Mayor Fasbender & City Councilmembers
From: City Administrator Dan Wietecha
Date: July 19, 2021
Item: Agreement with Rural Association for Fire/Ambulance Services

Council Action Requested:

Approve Fire and Ambulance Service Contract (2021-2022)

Background Information:

The City of Hastings has had a long-standing contract relationship to provide fire and ambulance service in the City of Vermillion and Ravenna, Marshan, Nininger, Denmark, and Vermillion Townships. Negotiating a renewal contract was difficult and delayed under an email and Zoom format this past year. The most recent contract (2018-2020) expired December 31, 2020; however, I told the Association that the City would not automatically terminate service to the rural areas as we worked toward a renewal.

The agreement we reached last week reflects 3% increases in 2021 and 2022. This is more than the City budgeted for 2021, and the annual percentage is greater than in any year since 2012. More important, is the renewed commitment to improving communication between the City and the rural municipalities and the commitment to discussing the potential comprehensive review of the model for the future.

Financial Impact:

Increased revenues greater than 2021 adopted budget

Committee Discussion:

Not applicable

Attachment:

Fire and Ambulance Service Contract by and between the City of Hastings and the Hastings Rural Fire Association (2021-2022)

FIRE AND AMBULANCE SERVICE CONTRACT BY AND BETWEEN THE
CITY OF HASTINGS AND THE HASTINGS RURAL FIRE ASSOCIATION

This Fire and Ambulance Services Contract (“**Contract**”) is made and entered into effective as of January 1, 2021 by and between the City of Hastings (“**City**”), a Minnesota municipal corporation, and the Hastings Rural Fire Association (“**Association**”), a Minnesota joint powers entity consisting of the following communities: City of Vermillion; Ravenna Township; Marshan Township; Nininger Township; Denmark Township; and Vermillion Township (individually, “**Community**” and collectively, “**Communities**”). The City and the Association may hereinafter be referred to individually as a “party” or collectively as the “parties.”

RECITALS

- A. The Association is a joint powers entity formed under Minnesota Statutes, Section 471.59 and is authorized to negotiate and enter into a single contract on behalf of its members to obtain fire and ambulance service for the Communities.
- B. All the Communities are located within Dakota County, with the exception of Denmark Township, which is located in Washington County.
- C. The City owns and operates the Hastings Fire and Emergency Medical Services Department (“**Department**”), which provides fire, rescue, and emergency medical services including, but not limited to, structural firefighting, general firefighting, grass/forest firefighting, rescue, disaster response, limited hazardous material response, and emergency medical services, including advanced life support and basic life support emergency medical response (collectively “**Emergency Services**”) to the City and, by contract, to the Communities.
- D. The City currently imposes a non-resident service charge for Emergency Services provided to those who do not reside within the limits of the City (“**Non-Resident Service Charge**”).
- E. The parties desire to enter into a contract to provide for the ongoing delivery of Emergency Services to the Communities.

AGREEMENT

In consideration of the mutual promises and agreements hereinafter set forth, the Parties do hereby agree as follows:

1. **Emergency Services.** The Association agrees to purchase from the City, and the City agrees to provide through its Department, Emergency Services to the Communities in accordance with the terms and conditions in this Contract.

(a) **Allocation of Resources.** The parties understand that the City staff in charge of the

- particular scene shall exercise judgment to determine, in consideration of established policies, guidelines, procedures and practices, how best to allocate the available resources of the Department under the circumstances of a given situation. Failure to provide Emergency Services because of poor weather conditions or other conditions beyond the control of the City shall not be deemed a breach of this Contract.
- (b) **No Guarantee.** The parties understand and agree the City will endeavor to provide, through its Department, Emergency Services to the best of its ability given the circumstances, but the City makes no guarantees that the Emergency Services it actually provides in any given situation will meet any particular criteria or standard.
- (c) **Exceptions.** The parties agree that under certain circumstances call volume or other factors may result in a periodic shortage of staffing availability and, as a result, there may be certain circumstances that result in a delay or failure to respond to a certain call within a Community. Furthermore, construction, closure, and maintenance of highways and bridges are beyond the control of the City and may result in a delay or inability to respond to a call for Emergency Services. In such cases the City may need to rely on its mutual aid agreements.
- (d) **Other.** The Department may conduct inspections of properties within the Communities as needed to determine that proper safety measures can be established at the site in the event the Department needs to provide Emergency Services at the site. To the extent it conducts such inspections, the Department shall be responsible for obtaining the owner's permission to the extent such permission is required by law. The City shall not be responsible for the issuance of burning permits or daycare inspections in any property within the Association. Each Community shall provide the City with a contact person so it may refer these matters to the appropriate parties within the Association.
3. **Service Area.** All land within the territorial boundaries of the Communities is included in, and constitutes, the area in which the City shall provide Emergency Services ("**Service Area**"). The Service Area may only be changed by amendment to this Contract and, with respect to ambulance services, approval of the state as required by law.
4. **Payment.** The Association agrees to pay the following Contract Amounts during the term of the Contract:
- For calendar year 2021: \$535,806
For calendar year 2022: \$551,880

The Association shall pay each year's Contract Amount in two payments. One half of the required Contract Amount shall be paid on or before July 31 of each year, and the balance on or before December 31 of each year. Notwithstanding the forgoing, the parties agree the first payment in 2021 shall be paid on or before August 31, 2021. Both the City and the Association reserve the right, based upon observation of the financial

arrangements herein made, unanticipated circumstances, or because the financial arrangements provided by this Contract appear inequitable, to request a renegotiation of the financial arrangements provided for by this Contract. Should either party wish to renegotiate a different financial arrangement they must contact the other party by February 15 of the year preceding the Contract Year. No amendments to this Contract shall have any effect unless reduced to writing and signed by both parties.

5. **Non-Resident Service Charge.** The City will not charge those residing within the territorial boundaries of the Communities of the Association a Non-Resident Service Charge for Emergency Services. The City shall use the service recipient's address for determining residency within the boundaries of the Communities and shall have the discretion to make the final determination as to residency. The parties understand and agree the City will continue to charge a mileage rate for distance traveled to provide such services within the Communities. Nothing herein shall prevent the City from continuing to charge a Non-Resident Service Charge to those who do not reside in the City or in the Communities.
6. **Meetings of the Parties.** The parties agree to meet starting in the fall of 2021 to discuss options for increasing communications between the City and the Association and alternative means of determining the amount the Associations pays for Emergency Services in the future. The parties further agree to meet no later than the third quarter of 2022 to discuss an extension of the existing contract or a new contract for Emergency Services after 2022. The Parties may meet at additional times if desired by the parties.
7. **Term.** This Contract is effective as of January 1, 2021 and shall expire on December 31, 2022, unless terminated earlier as provided herein.
8. **Ownership.** The City owns the buildings, equipment, and any other items associated with the Department and the amounts paid by the Association do not give rise to any ownership interest in, or responsibility toward, those items.
9. **City's Responsibilities.** In addition to any other obligations described herein, the City shall:
 - (a) Annually provide directly to each Community a report detailing the number and types of Emergency Services calls responded to by the Department to the City and to each Community in the year. To the extent reasonably possible, the report will identify calls provided within a Community to someone who is not a resident of that Community, such as a response to a vehicle fire of someone traveling through the Community.
 - (b) Authorize and direct the Department to provide Emergency Services as described herein to the Service Area;
 - (c) Disclose to the Association any proposed action the City intends to take that can reasonably be expected to affect the Insurance Services Office Fire Protection Grade

in any portion of the Service Area or the City's ability to provide Emergency Services; and

- (d) Promptly disclose to the Association any information the City can reasonably anticipate will directly affect its ability to perform its obligations under this Contract.

10. Association's Responsibilities. In addition to any other obligations described herein, the Association shall:

- (a) Promptly pay the City the Contract Amount as calculated above for the year of service, or a prorated share of the Contract Amount for the length of service actually provided if the Contract is terminated early;
- (b) Collect from the Communities sufficient amounts to pay the Contract Amount to the City in accordance with the terms of this Contract. Failure of the Association to collect the amounts owed by the respective Communities shall not serve to reduce the amount the Association is required to pay the City under this Contract unless the City and the Association mutually agree to amend this Contract to reduce the Service Territory and the required Contract Amount;
- (c) Promptly disclose to the City any information the Association can reasonably anticipate will directly affect its ability to perform its obligations under this Contract;
- (d) Provide the City addresses to properties within the Service Area as needed;
- (e) Work with the governing bodies of the Communities to help ensure the Department can gain access to properties as needed to plan for the safe delivery of Emergency Services within the Service Area; and
- (f) Cooperate with the City on evaluating various options to increase safety and security of its residents.

It is understood and agreed that the Association shall have no responsibility whatsoever toward the personnel of the City including any employment related issues such as training, supervision, performance reviews, discipline, compensation, benefits, insurance coverages, compliance with any reemployment-related federal, state, and local laws and rules such as OSHA, ERISA, RLSA, FMLA, FSLA or any other employment related issues. It is further agreed the Association has no responsibility beyond paying the agreed upon Contract Amount for acquiring, operating, maintaining, housing, or replacing vehicles or equipment as needed to provide Emergency Services.

11. Insurance Requirements. City shall maintain general liability insurance for its Emergency Services, and shall also maintain inland marine, automobile and property insurance. City shall, upon request of the Association, name the Association as an

additional insured on its policy and provide the Association with proof of such insurance coverage.

12. **Indemnification.** To the extent allowed by law, the City agrees to defend and indemnify the Association and its members against any claims brought or actions filed against the Association or its members, officers, employees or volunteers of the Association or its members for injury to, death of, or damage to the property of any third person or person, arising from the City's performance under this Contract. Under no circumstances, however, shall the City be required to pay on behalf of itself and the Association or its members any amounts in excess of the limits of liability established by the Minnesota Statutes Chapter 466 applicable to any one party. The limits of liability for the Association and its members and City may not be added together to determine the maximum amount of liability for the City. The intent of this section is to impose on the City a limited duty to defend and indemnify the Association and its members for claims arising out of the performance of this contract subject to the limits of liability under Minnesota Statutes Chapter 466. The purpose of creating this duty to defend and indemnify is to simplify the defense of claims, by eliminating conflicts between the parties and to permit liability claims against the parties from a single occurrence to be defended by a single attorney.
13. **No Waiver.** Nothing herein shall be construed to waive or limit any immunity from, or limitation on, liability available to the City, the Association, or its member Communities, whether set forth in Minnesota Statutes Chapter 466 or otherwise.
14. **Modification.** This writing contains the entire Contract between the parties and no alterations, modifications or waivers of the provisions of this Contract are valid unless reduced to writing, signed by both the City and the Association, and attached hereto.
15. **Subcontracting and Assignment.** City shall not subcontract or assign any portion of this Contract to another without written permission from the Association. Emergency Services provided to the Association pursuant to a mutual aid agreement the City has or may enter into with another entity does not constitute a subcontract or assignment requiring approval of the Association, so long as the City remains primarily responsible for providing Emergency Services to the entire Service Area. This provision does not preclude the periodic usage of private contractors, equipment, or vehicles for certain aspects of providing Emergency Services on calls that require additional assistance.
16. **Termination.** This Contract may be terminated at any time during its term by mutual agreement of the parties. Either party may terminate this Contract by personally serving a 120 day written notice of termination on either party. The Contract shall terminate 120 days from the date of personal service of the written termination notice unless the party serving the notice withdraws the notice in writing before it is effective.

If the Association fails to pay the full Contract Amount to the City as required herein the City may terminate this Contract 60 days from the date of personal service of written termination notice. Notice to the City shall be served on the City Administrator, or City

Clerk, in the absence of the City Administrator, and notice to the Association shall be to Kathleen A. Higgins, 12011 Osprey Avenue South, Hastings, MN 55033 and Troy Gilchrist, Kennedy & Graven, 150 South 5th Street, Suite 700, Minneapolis, MN 55402.

- 17. **Service Contract.** This is a service contract. The parties do not intend to undertake or create, and nothing herein shall be construed as creating, a joint powers agreement, joint venture, or joint enterprise between the parties.
- 18. **Association Obligation.** All covenants, promises, agreements, and obligations of the Association contained herein shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of the Association, and not of any of the member Communities or of the governing body, member, officer, agent, servant, or employee of the Association or a member Community in their individual capacity thereof.
- 19. **No Third Party Rights.** This Contract does not, and is not intended to, confer any rights or remedies upon any person or entity other than the signatories.
- 20. **Minnesota Law Governs.** This Contract shall be governed and construed in accordance with the laws of the State of Minnesota. All proceedings relating to this Contract shall be venued in the State of Minnesota.
- 21. **Recitals.** The recitals contained herein, and the exhibits attached hereto, are incorporated in and made part of this Contract.
- 22. **Severability.** The provisions of this Contract shall be deemed severable. If any part of this Contract is rendered void, invalid, or otherwise unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this contract.

IN WITNESS WHEREOF, the parties have executed this Contract as of the date of the last party to execute it.

CITY OF HASTINGS

Mary Fasbender, Mayor

Date

Kelly Murtaugh , City Clerk

Date

HASTINGS RURAL FIRE ASSOCIATION

Chris Schaffer, Chairperson

Date

Kathleen Higgins, Secretary

Date