



City Council Memorandum

To: Mayor Fasbender & City Councilmembers
From: City Administrator Dan Wietecha
Date: March 6, 2023
Item: Rural Fire Association Contract

Council Action Requested:

Approve Service Contract for Fire and Ambulance Service to the Hastings Rural Fire Association for 2023-2027.

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. The current contract (2021-2022) ran through 2022, with an MOU extension through March 31, 2023.

Negotiating a renewal contract started in June 2022. Much of the negotiations centered on 1) a general recognition that costs are increasing significantly due to capital expenses and additional staffing, 2) costs for providing fire and ambulance service should include all costs, including those occurring in other cost centers in the City budget (such as insurance and capital expenses, 3) spreading the cost of capital items over several years for consistent and predictable budget impacts, and 4) a proportional split of the costs. Additionally, acknowledging that the cost increase would be notably greater than the Rural Association had been paying, the City Council indicated its willingness to phase in an increase over a few years.

The negotiated contract would run for 5 years, through December 31, 2027. Other than the dollar amounts, it is essentially the same contract terms as in the past.

Financial Impact:

Revenues from Rural Fire Association
2023 – \$584,993 (budgeted \$551,880)
2024 – \$666,892

2025 – \$746,919

2026 – \$821,611

2027 – \$870,907

Committee Discussion:

City Council workshop 10/3/2022 provided overview of finances. City Council indicated willingness to consider phasing in an increase in the contract amount.

Attachments:

- Memo from Ehlers Public Finance Advisors (accountants for the Rural Association)
- Fire and Ambulance Service Contract by and Between the City of Hastings and the Hastings Rural Fire Association

MEMORANDUM

TO: Hastings Rural Fire Association
Hastings City Council

FROM: Bruce Kimmel, Senior Municipal Advisor
Dan Tienter, Municipal Advisor

DATE: March 1, 2023

SUBJECT: Proposed 2023–2027 Fire and Ambulance Service Contract

For decades, the Hastings Rural Fire Association (the “Association”), comprised of the Townships of Denmark, Vermillion, Nininger, Ravenna, Marshan, and the City of Vermillion, procured fire protection and ambulance services from the City of Hastings (the “City”). To govern this relationship, the Association and City entered into a Fire and Ambulance Service Contract (the “Contract”). The current Contract expired on December 31, 2022 and both parties, through a Memorandum of Understanding (MOU), extended it until March 31, 2023.

During that period, representatives of the City and Association negotiated a longer-term extension of the Contract. The Association designated three members to negotiate on their behalf: Jeff Human (Ravenna Township), Bruce Lohmann (Vermillion Township) and Julie Windschitl (Denmark Township). The Association also engaged Ehlers and Associates, Inc. and Kennedy and Graven, Chartered to assist with the process. The group met with the City on January 12, January 25, February 7, February 16, and February 24.

During these meetings, the Association expressed their interest in a longer-term agreement with lower annual increases and the City highlighted their increasing costs to operate their services, especially given a need for additional personnel and anticipated capital costs. Based on these positions, the parties traded several proposals with varying terms. Given the discussion and deadline imposed by the MOU, the Association offered to contribute to both services based on their proportionate calls for service and population or about 22% of the projected costs. Using this approach, the Association proposed service fee increases of 6% in 2023, 14% in 2024, 12% in 2025, 10% in 2026, and 6% in 2027. As a result, the service fee would increase from \$551,880 in 2022 to about \$870,900 in 2027, or an increase of about \$319,000.

Although the City sought greater annual increases and disagreed with the formula used by the Association, their representatives ultimately agreed to submit this offer to the City Council. The following table summarizes the major areas for the proposed Contract.

Contract Terms and Conditions		
Contract Area	Association Benefits	City Benefits
Term	<ul style="list-style-type: none"> Five-Year Contract (predictable expenditures) 	<ul style="list-style-type: none"> Five-Year Contract (predictable revenues)
Service Fee	<ul style="list-style-type: none"> Decreasing Service Fee Increases City-Issued Debt (to level capital costs) Calls for Service and Population Based Formula 	<ul style="list-style-type: none"> “Front-Loaded” Service Fee Increases Greater Support for Anticipated Capital and Personnel Costs Broader Recognition of City Costs

The City Council and Association Board will meet on March 6 and March 13, respectively, to review and consider approval of the proposed Contract (Attachment A). If you have any questions, please feel free to contact Bruce Kimmel or Dan Tienter.

**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, 2023 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 2023: \$584,993
- For calendar year 2024: \$666,892
- For calendar year 2025: \$746,919
- For calendar year 2026: \$821,611
- For calendar year 2027: \$870,907

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 2023 shall be paid on or before August 31, 2023. 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 2023 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 second quarter of 2027 to discuss an extension of the existing contract or a new contract for Emergency Services after 2027. The Parties may meet at additional times if desired by the parties.
7. **Term.** This Contract is effective as of January 1, 2023, and shall expire on December 31, 2027, 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 Lisa Rowan, P.O. Box 67, Vermillion, MN 55085 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

John Maher, Chairperson

Date

Lisa Rowan, Secretary

Date