

**CITY OF FALCON HEIGHTS**  
City Council Workshop  
City Hall  
2077 West Larpenteur Avenue

**AGENDA**  
June 3, 2020  
6:30 P.M.

**NOTE: THIS MEETING WILL BE HELD BY WEB CONFERENCE**

- A. CALL TO ORDER:
- B. ROLL CALL: ANDREWS \_\_\_ GUSTAFSON\_\_\_ LEEHY\_\_\_  
                  MIAZGA \_\_\_ WEHYEE\_\_\_  
  
                  STAFF PRESENT: THONGVANH\_\_\_ NANDKUMAR\_\_\_
- C. PRESENTATIONS:
- D. POLICY ITEMS:
  - 1. Fire Services Contract with Lauderdale
- E. INFORMATION/ANNOUNCEMENTS
- F. ADJOURNMENT:

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**The City That Soars!**

## REQUEST FOR COUNCIL ACTION

<b>Meeting Date</b>	June 3, 2020
<b>Agenda Item</b>	Policy D1
<b>Attachment</b>	
<b>Submitted By</b>	Sack Thongvanh, City Administrator

<b>Item</b>	Fire Services to the City of Lauderdale
<b>Description</b>	<p><b>Update:</b> It has come to our attention that the City of Lauderdale has decided to contract fire services with the City of Saint Paul. Their draft contract is included in the packet. The City of Lauderdale has until July 15, 2020 to provide the City of Falcon Heights a termination letter. Per the contract, the City of Falcon Heights will provide fire protection services until December 31, 2020.</p> <p>The fire service discussion runs from 34:13 to 51:00. The link to the meeting video replay is:  <a href="https://webstreaming.ctv15.org/viewer.php?streamid=4187">https://webstreaming.ctv15.org/viewer.php?streamid=4187</a></p> <p>Please review the City of Lauderdale City Council Meeting.</p> <p>At no time was it conveyed to the Falcon Heights their intentions. Mayor Gustafson held a phone conversation with the Mayor of Lauderdale and stated that if they were going to go out for bid, to include Falcon Heights.</p> <p>We have not received a meeting from the City of Lauderdale.</p> <p><b>From May 6<sup>th</sup>:</b>          The City of Falcon Heights has provided fire protection services to the City of Lauderdale for at least three decades and every fall, we sends the City of Lauderdale a letter with cost breakdown that will be invoices in the upcoming year. The cost allocations in readiness to serve, fire inspection services, billable fire calls/false alarms and capital payments for Ladder Truck 757.</p> <p>The City received a total of \$ 40,605 from the City of Lauderdale for Fire Services.</p> <p><b><u>Readiness To Serve</u></b>          The readiness to serve formula is based on the pervious year’s total market value with a multiplier for the City of Lauderdale. The concern with this model structure is that fire operations and serves does not decrease if the City’s total market value decreases. This will put more of the burden on our levy. The alternative would be to base the Readiness To Serve cost on the percentage of calls for service.</p>

	<p><b><u>Fire Inspection Services</u></b> The City also provide fire inspection services to the City.</p> <p><b><u>Billable Fire Calls and False Alarms</u></b> Lauderdale is billed for calls for service and false alarms.</p> <p><b><u>Capital Payment for Ladder Truck 757</u></b> The truck was purchase for 2015 and a calculation was used to determine capital payments from the City of Lauderdale. The City of Lauderdale contributes \$2,250 annually. The formula used was not accurately calculated.</p>
<b>Budget Impact</b>	N/A
<b>Attachment(s)</b>	<ul style="list-style-type: none"> <li>• Fire Contract</li> <li>• Contract Letter</li> <li>• Lauderdale Contract with City of Saint Paul</li> </ul>
<b>Action(s) Requested</b>	Staff is looking for direction on how to proceed.

**AGREEMENT FOR FIRE SERVICE BETWEEN  
THE CITY OF FALCON HEIGHTS AND  
THE CITY OF LAUDERDALE**

**AGREEMENT MADE** this 11<sup>th</sup> day of December, 2013 by and between the **City of Falcon Heights**, a Minnesota municipal corporation (“Falcon Heights”), and the **City of Lauderdale**, a Minnesota municipal corporation (“Lauderdale”).

**WHEREAS**, the parties hereto are parties to a previous agreement dated December 14, 2005 relating to the furnishing of fire service by Falcon Heights to Lauderdale; and

**WHEREAS**, the parties wish to make this Agreement for the continued provision of fire service by Falcon Heights to Lauderdale in accordance with the terms and provisions hereinafter set forth; and

**WHEREAS**, Falcon Heights is authorized by prior action of the City Council pursuant to Minnesota Statutes § 438.08 to provide fire service outside the limits of Falcon Heights; and

**WHEREAS**, Minnesota Statutes § 438.09 authorizes municipalities to contract with other municipalities providing fire services as authorized under Minnesota Statutes § 438.08 to contract for compensation for services rendered; and

**WHEREAS**, Falcon Heights and Lauderdale are adjacent communities and Falcon Heights has the means and ability to provide fire protection services for Lauderdale, while at the same time providing adequate fire services within the City of Falcon Heights.

**NOW, THEREFORE**, the parties hereto agree as follows:

1. **SERVICES.** Falcon Heights shall provide the following services to Lauderdale:
  - a. **Fire Services.** Falcon Heights shall furnish fire protection services to all property located within Lauderdale. Falcon Heights shall respond to all fires in Lauderdale with the same level of service and effort as it does in Falcon Heights whenever Falcon Heights is notified of such fire.
  - b. **Routine Fire Inspection Services.** Falcon Heights shall provide routine fire inspection services. The services shall include routine annual inspections of all day care facilities, multi-family residential structures with three or more units, and commercial and industrial structures, and one follow-up inspection per structure.
  - c. **Non-routine Fire Inspection Services.** Falcon Heights shall provide additional fire inspection services necessitated by particular fire code concerns, complaints, or the need for more than one follow-up inspection.
  
2. **COMPENSATION.** For the services provided herein by Falcon Heights, Lauderdale shall pay Falcon Heights the sum of the following:

- a. A readiness-to-serve factor equal to a base rate sum computed by multiplying the previous year's fair market value of all property in Lauderdale, times a standard multiplier of .00009723.
  - b. Charges for service will be based upon a charge for each truck according to the call time as outlined in Appendix A. The fee shall be based on the budgeted costs for operating the Fire Department. Falcon Heights shall provide Lauderdale with a preliminary estimated cost by September 1<sup>st</sup> and a final estimated cost which is no more than three percent (3%) greater than the preliminary cost, by September 30<sup>th</sup> of each year.
  - c. A fee for fire prevention services based upon the fire inspector's hourly rate and mileage and an estimated number of hours of fire prevention inspection activities and associated work will be calculated for the coming year. Any fire prevention services provided that exceed the number of estimated hours will be charged on an "as needed" basis and be pro-rated using the fire inspector's hourly rate and mileage.
  - d. It shall be the responsibility of Lauderdale to recover or pay for any HAZMAT costs incurred in Lauderdale.
  - e. Lauderdale shall make payment to Falcon Heights based on the rates and charges established by Falcon Heights for each calendar year. Falcon Heights shall bill Lauderdale monthly for services received. The bill shall be submitted within thirty (30) days after the end of the month. Lauderdale shall pay on a monthly basis on or before the 1<sup>st</sup> day of each month.
  - f. The City of Lauderdale shall pay a capital share for fire truck replacement of Truck 757 commencing in 2014 and continuing through 2023, of \$2,250 per year, as outlined in Appendix B.
3. **EFFECTIVE DATE AND TERM.** This Agreement shall apply to services rendered and shall continue in force until modified or terminated by agreement of the parties or until termination by either party. This Agreement may be severed by either party by notifying the other party's City Administrator with a written notice of termination on or before July 15<sup>th</sup> of the calendar year of the party's intent to terminate the contract no earlier than midnight, December 31<sup>st</sup> of that same calendar year or after December 31<sup>st</sup> of that calendar year as identified in the notification of termination.
4. **LIABILITY.** Falcon Heights shall not be liable to Lauderdale or any other person or party for loss or damage of any kind whatever resulting from any failure to prevent, control or extinguish any fire, or prevent any personal injury, unless such loss or damage or injury is caused by the gross negligence of Falcon Heights. Lauderdale shall indemnify and hold harmless, and defend Falcon Heights, its officials and employees against any and all liability, loss, costs, damages, expenses, claims or actions arising out of or by reason of the failure of the Falcon Heights's Fire Department to attend a fire, or to put out a fire or for


damage to property caused by a fire in Lauderdale, except for claims arising as a result of gross negligence by the Falcon Heights's Fire Department in the execution, performance, or failure to adequately perform the Falcon Heights's obligations pursuant to this Agreement.

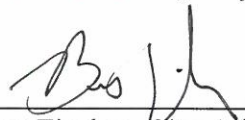
5. **INDEMNIFICATION.** Except as provided in Paragraph 4 above, each City shall be liable for its own acts and the results thereof to the extent provided by law and agrees to defend, indemnify and hold harmless each other (including their officials, employees, volunteers and agents), from any liability, claims, causes of action, judgments, damages, losses, costs or expenses, including reasonable attorney's fees, resulting directly or indirectly from any act or omission of the party, anyone directly or indirectly employed by it, and/or anyone for whose acts and/or omissions it may be liable, in the performance or failure to perform its obligations under this Agreement. Each city's liability shall be governed by the provisions of Minnesota Statutes, Chapter 466 and other applicable law. The parties agree that liability under this Agreement is controlled by Minnesota Statutes § 471.59, subd. 1.a. and that the total liability for the parties shall not exceed the limits on governmental liability for a single unit of government as specified in Minnesota Statutes § 466.04, subd. 1(a).
  - a. **Insurance.** Each City warrants that it has a purchased insurance or has a self-insurance program.
  - b. **Duty to Notify.** Each City shall promptly notify the other of any claim, action, cause of action or litigation brought against the party, its employees, officers, agents or subcontractors, which arises out of the services contained in this Agreement and should also notify the other cities whenever any city has a reasonable basis for believing that the city, and/or its employees, officers, agents or subcontractors, and/or the other cities might become the subject of a claim, action, cause of action or litigation arising out of the services contained in the Agreement.
6. **STATE AID.** Pursuant to the authority granted in Minnesota Statutes § 69.011, et. seq. and in particular Minnesota Statutes § 69.021, Subd. 7, Falcon Heights shall, for the purposes of calculating fire state aid, be entitled to include the population and net tax capacity of Lauderdale in the area for which it furnishes fire protection service and two duly executed copies of this contract shall be filed by Falcon Heights with the Minnesota Commissioner of Revenue, who will in turn, forward one copy of the contract to the Ramsey County Auditor.
7. **FIRE INCIDENT INSPECTIONS.** Fire inspections carried out by the Fire Chief or his or her authorized personnel, including the fire inspector, as part of a fire incident shall be considered as part of over-all fire department services covered by this contract and no separate charge shall be made for these inspections.
8. **MONTHLY REPORTS.** Falcon Heights shall provide monthly fire report summaries within thirty (30) days after the end of the month. Falcon Heights shall provide special fire reports upon Lauderdale's request.

9. **COMMUNICATION.** Falcon Heights shall make every reasonable effort to notify Lauderdale of a major fire or related incident in a timely way on the first business day following the incident.
10. **MUTUAL AID.** Falcon Heights shall, in providing the services under this Agreement, utilize the mutual aid assistance available to it pursuant to various mutual aid agreements with other governmental units while serving Lauderdale including the authority to request assistance from a HAZMAT unit when the situation warrants it.
11. **MINNESOTA GOVERNMENT DATA PRACTICES ACT.** All data collected, created, received, maintained, or disseminated, in any form, for any purposes because of this Agreement is governed by the Minnesota Government Data Practices Act (Minnesota Statutes, Chapter 13 and related statutes), as amended, the Minnesota Rules implementing such Act, as amended, as well as Federal Regulations on data privacy. The person responsible for release of all data under this Agreement shall be identified by each party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

**CITY OF FALCON HEIGHTS**

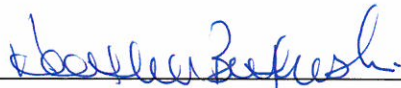
By:   
Peter Lindstrom, Mayor

By:   
Bart Fischer, City Administrator

Date: 12/11, 2013

**CITY OF LAUDERDALE**

By:   
Jeffrey E. Dains, Mayor

By:   
Heather Butkowski, City Administrator

Date: December 10, 2013



**APPENDIX A**

**Response to fire calls and false alarms**

	<b>0-45 Minutes</b>	<b>46-120 Minutes</b>	<b>121-360 Minutes</b>	<b>Over 360 Minutes (Extreme)</b>
<b>Fire Call (per truck)</b>	\$457.68	\$457.68	\$893.83	\$1,420.03
<b>Identified False Alarm (per call)</b>	\$228.85	\$457.68	<i>Not Applicable</i>	<i>Not Applicable</i>

**Appendix B**  
**Lauderdale Capital Payment for Truck 757**

<b>Year</b>	<b>Payment Amount</b>
2014	\$2,250
2015	\$2,250
2016	\$2,250
2017	\$2,250
2018	\$2,250
2019	\$2,250
2020	\$2,250
2021	\$2,250
2022	\$2,250
2023	\$2,250



# CITY OF FALCON HEIGHTS

2077 W. Larpenteur Avenue  
Falcon Heights, MN 55113-5594

email: [mail@falconheights.org](mailto:mail@falconheights.org)  
website: [www.falconheights.org](http://www.falconheights.org)

*The City That Soars!*

Phone - (651) 792-7600  
Fax - (651) 792-7610

September 17, 2019

Heather Butkowski  
City Administrator  
City of Lauderdale  
1891 Walnut Street  
Lauderdale, MN 55113

Dear Heather:

On behalf of the Mayor Council members and firefighters of Falcon Heights, I want to express our enthusiasm for continuing our long-term relationship in sharing fire services. As you know, this has been a cost-effective way of providing services to both of our communities, and we look forward to serving Lauderdale in 2020.

Per the *Agreement for Fire Services between the City of Falcon Heights and the City of Lauderdale* signed in 2013, the below serves as the costs for the City of Lauderdale in 2020 as defined in the said agreement.

**1. Readiness to serve:**

The readiness to serve factor covers partial cost for guaranteeing fire service. This is billed in January 2020.

Estimated 2020 Market Value	\$226,256,200
X Multiplier	<u>.00009723</u>
Total	\$21,998.89

**2. Fire Inspection Services:**

The City of Falcon Heights will continue to provide Fire Inspection services to Lauderdale at the following estimated rate:

Estimated budget is **\$31.50** per hour X 140 hours=\$4,410.00

**3. Response to fire calls and false alarms:**

	<i>0-45 Minutes</i>	<i>46-120 Minutes</i>	<i>121-360 Minutes</i>	<i>Over 360 Minutes (Extreme)</i>
<i>Fire Call (per truck)</i>	\$457.68	\$457.68	\$893.83	\$1,420.03
<b>Identified False Alarm (per call)</b>	\$228.85	\$457.68	<i>Not Applicable</i>	<i>Not Applicable</i>

**4. Capital Payment for 2016 Replacement of Truck 757**

\$2,250 annually based upon the updated 2013 Fire Agreement.

**5. Estimated total costs:**

Capital Share (Last Payment 2023)	\$2,250
<b>Readiness to Serve</b>	\$21,998.89
Fire Inspections	\$4,410
Fire Protection	\$20,000 (estimate)
<b>Total Estimate:</b>	<b>\$48,658.89</b>

We are very pleased to be continuing our service to Lauderdale in this capacity. If you have any questions or concerns, please feel free to contact me at (651) 792-7611 or sack.thongvanh@falconheights.org.

Sincerely,

Sack Thongvanh  
City Administrator

cc: Roland Olson  
Amanda Lor

JOINT POWERS AGREEMENT BETWEEN THE CITY OF SAINT PAUL AND THE CITY  
OF LAUDERDALE

THIS JOINT POWERS AGREEMENT (the "Agreement"), is made and entered into effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between the City of Lauderdale (hereinafter called "**Lauderdale**"), a Minnesota municipal corporation, whose principal office is located at 1891 Walnut Street, Lauderdale, Minnesota 55113, and the City of Saint Paul, through its Saint Paul Fire Department (hereinafter called "**Saint Paul**"), a Minnesota municipal corporation, whose principal office is located at 15 West Kellogg Boulevard, Saint Paul, Minnesota 55102, Lauderdale and Saint Paul are hereinafter collectively called the "**Cities**".

WHEREAS, Lauderdale intends to engage Saint Paul's Fire Department (the "**Fire Department**") to provide Fire and the Hazardous Materials Response Team Services to all of Lauderdale; and

WHEREAS, the Cities are authorized under Minnesota Statutes, section 471.59 to cooperatively exercise their commonly held powers and an aid agreement is critical to providing and supporting emergency services; and

WHEREAS, Saint Paul through the Fire Department is willing and able to provide the year-round services and equipment desired by Lauderdale when requested.

NOW, THEREFORE, subject to the terms and conditions set forth below, Lauderdale and Saint Paul agree as follows:

**SECTION 1. Definitions.**

1. **Emergency** means fires, medical, drowning(s), building damages, cave-ins, accidents, explosions, or other types of incidents which a fire department would respond to for the protection of life, health, and property. This term shall be interpreted broadly to effect the purpose of this Agreement.
2. **Fire Chief** means the Chief of the Saint Paul Fire Department.
3. **Fire Fighting Services** means those services directed at rescue, fire suppression, property conservation or special operations involving individuals, buildings on property involved in a fire or other emergency.
4. **Fire Preventative Services** means those services directed at fire cause investigation and determination, pre-fire planning and inspection, hazard identification and elimination, public education and other activities intended to proactively improvement the safety of life and property.

5. *Hazardous Materials Response Services* means those services directed at the identification, isolation, mitigation or removal of hazardous materials.

## **SECTION 2. Scope of Services from Saint Paul.**

### A. Services.

The Fire Department will provide the following services to Lauderdale pursuant to the terms and conditions set forth herein:

1. Fire Fighting Services and Fire Prevention Services from Saint Paul Fire Stations as needed in the performance of the services described herein, including mutual aid services as deemed necessary by situation.
2. Hazardous Materials Response Services of the Saint Paul Hazardous Materials Response Team.

### B. Equipment.

The Fire Department will provide all personnel and equipment that they have available in Saint Paul that may be required to perform the above services.

The Fire Chief, or, in case of his absence or disability, the person in active charge of the Fire Department, may in his discretion retain in Saint Paul such equipment and personnel as may in his opinion be necessary for the proper and adequate protection of Saint Paul, and will dispatch for the protection of Lauderdale only such personnel and equipment in response to the request for services by authorized persons as in his opinion can for the time being be safely spared from Saint Paul.

In case an emergency arises within Saint Paul while the equipment and personnel of the Fire Department are engaged in fighting a fire for Lauderdale, the Fire Chief or other person in active charge of the department may in his discretion recall to Saint Paul from the service of Lauderdale such equipment and personnel as he may in his opinion consider necessary to meet said emergency. The determination of the Chief or the active head of the department as to what equipment shall be furnished or withdrawn, as provided herein, will be final and conclusive.

Notwithstanding the above, in the exercise of discretion regarding the personnel and equipment available for services in Lauderdale, the Fire Chief or designee will use best efforts to ensure that the level of service provided in Lauderdale is comparable to that provided by the Fire Department in Saint Paul.

C. Reports.

The Fire Department will provide Lauderdale a quarterly report of 911 Responses to Lauderdale. The report will include numbers and purpose of calls, building/property involved, and result of call/response.

If Lauderdale desires specific patient care reports for risk management or insurance purposes, Lauderdale may request that the patient obtain the report from Saint Paul. Lauderdale will not receive patient care reports directly from the Fire Department.

D. Chain of Command.

The chain of command for purposes of making emergency decisions in incidents relating to fire and hazardous materials services provided by Saint Paul pursuant to this Agreement will be as follows when Saint Paul staff are in Lauderdale providing such services:

1. The Fire Department will implement the Incidental Command System (ICS) as per department procedures.
2. The Fire Department will respond with an Incident Commander who holds the title of either District Chief, Deputy Chief or Assistant Chief of Operations.
3. Lauderdale will provide a city representative for large scale events to communicate with the Fire Department.

**SECTION 3. Obligations of Lauderdale.**

1. Lauderdale will provide any additional City services necessary for response to an Emergency outside of the fire services provided by Saint Paul, including but not limited to:
  - a. Any required Public Works services;
  - b. Any required Police services;
  - c. Any required Code Enforcement/Safety and Inspections services; and
  - d. General emergency management needs.

Lauderdale will coordinate any required water services with St. Paul Regional Water Services.

A. Information.

Lauderdale will provide the following information upon written request by Saint Paul or, in the case of an Emergency, as promptly as reasonably possible after any request:

B. Request For Services.

A call for an Emergency in Lauderdale shall be received by the Ramsey Count Public Safety Answering Point (PSAP) at the Ramsey County Emergency Communication Center (RCECC) and will be routed to the Fire Department. The Fire Department shall coordinate with RCECC to provide the Fire Department the following information, as available, at the time of the request to Saint Paul for services.

1. A description of the incident, including what happened, the time, the type of materials involved, if any, the geographic area, and any other detail which may be helpful; and
2. A description of the most favorable response route to minimize the response time.

C. Incident Risk Management

At the request of the Incident Commander, Lauderdale may provide, at its option and at its own expense, one or more of the following:

1. Crowd Control;
2. Evacuation of the site and surrounding area, as necessary;
3. Site Security (during and post-incident);
4. Heavy equipment;
5. Diking material (as required by scope of incident); and
6. Hazardous Materials recovery by private contractor, if necessary.

**SECTION 4. Term.**

A. Term.

This Agreement shall commence on \_\_\_\_\_, 2020 and shall remain in full force for a period of one year from that date, expiring on \_\_\_\_\_, 2021, unless terminated earlier pursuant to the terms of this Agreement.

B. Renewal.

After expiration of the initial one year term, this Agreement shall automatically renew for successive periods of one year unless either party provides written notice to the other as provided in Section 11 of this Agreement



**SECTION 5. Contacts/Authorized Agents for Services Provided.**

Lauderdale's contact person/liaison officer and authorized agent for Emergency services to be provided pursuant to this Agreement is its City Administrator.

Saint Paul's contact person/liaison officer and authorized agent for Emergency services to be provided pursuant to this Agreement is:

**SECTION 6. Compensation and Billing.**

A. Compensation.

1. Lauderdale agrees to compensate Saint Paul at a rate of \$75,000.00 for fire and hazardous materials response team services performed under this Agreement for the first year. The amount of compensation paid by Lauderdale each subsequent year will increase by 2.25%.
2. Saint Paul may request additional administrative cost compensation based on an itemized invoice for actual costs incurred when extraordinary circumstances result from a specific Lauderdale authorized hazardous emergency response and such costs are authorized by Lauderdale in writing in advance.
3. Saint Paul will be responsible for and pay, when due, all taxes and other withholdings due on compensation paid to employees of Saint Paul.
4. Saint Paul will accept no income, payment, or compensation of any kind from any third party in connection with or related in any way to the provision of the services to Lauderdale under this Agreement.

B. Billing.

Saint Paul agrees to invoice Lauderdale for regular services provided under this Agreement within 30 days of the end of each calendar quarter beginning with the quarter ending \_\_\_\_\_, 2020. Saint Paul also agrees to invoice Lauderdale by January 31 of each year for all labor and/or other miscellaneous expenses incurred during the previous calendar year due to extraordinary circumstances as previously approved by Lauderdale. Upon review and verification, Lauderdale will pay Saint Paul the required amount within 35 days of receipt of each invoice.

**SECTION 7. Independent Contractor.**

In providing services to Lauderdale under this Agreement, Saint Paul will be acting as an independent contractor, and nothing will be deemed to create a relationship of employer-employee,

common law employee, principal-agent, partner, or joint venture between Saint Paul and Lauderdale. Neither party has any authority to bind the other to any contract or agreement without the other's written permission. Saint Paul will be responsible for all of its own federal, state, and local taxes, withholding, social security, insurance, and other employee benefits.

**SECTION 8. Liability.**

Lauderdale agrees to release Saint Paul, its officers, agents and employees, from all claims for damages or loss resulting from failure to furnish or delay in furnishing personnel or equipment, or from failure to prevent, control or extinguish any conflagration resulting from the reasonable exercise of discretion by Saint Paul. Each party agrees to indemnify and hold harmless the other party, its officers, agents and employees, from all claims for injury, loss or damage to persons or property occurring in connection with performance of the services hereunder and arising out of and caused by the negligent act or omissions of that party's officers, agents or employees.

Lauderdale will reimburse Saint Paul for all loss and damage to equipment while being used in Lauderdale in connection with the furnishing of services under this Agreement, ordinary wear and tear excepted.

**SECTION 9. Insurance.**

Both Lauderdale and Saint Paul are municipal subdivisions under the statutes of the State of Minnesota and represent and warrant that they are authorized as self-insured or have in place insurance policies for purposes of all property damage and general liability claims. Both Lauderdale and Saint Paul also represent that they have in full force and effect applicable health insurance, including worker's compensation or disability insurance for themselves and their employees performing work under this Agreement. Liability limitations and exceptions apply to both cities pursuant to Minn. Stat., Chapter 466 and laws related thereto and no party shall recover damages against Lauderdale and Saint Paul any amounts greater than the limits on liability for any one party as provided in Minn. Stat., Chapter 466. The cities shall both provide a copy of their certificate or letter evidencing self-insurance as described herein.

**SECTION 10. Saint Paul's Warranties and Covenants.**

Saint Paul hereby represents, warrants, and covenants as follows:

1. Saint Paul is financially solvent; able to pay its debts and is possessed of sufficient working capital to provide the services/equipment in accordance with the Agreement.
2. Saint Paul warrants that it has complied with all applicable registration and licensing requirements to enable Saint Paul to act as an independent contractor under the terms of this Agreement.

3. Saint Paul has the experience and skills necessary to perform and provide the services and equipment required pursuant to this Agreement. All services provided by Saint Paul will be performed:
  - a. In a professional manner, with a high grade, nature, and quality commensurate with that which is customary in the industry;
  - b. In compliance with all applicable federal, state, and local laws, rules, regulations and ordinances, including, without limitation, the laws, rules and regulations of the federal Occupational Safety and Health Act (OSHA).

#### **SECTION 11. Termination of Agreement.**

This Agreement may be terminated by mutual consent of the parties at any time. This Agreement may be terminated by either party for material breach upon 30 days' written notice to the other party and that party's failure to cure the default within said period of time. This Agreement is subject to termination without cause by either party upon ninety (90) days' written notice. Upon termination, Saint Paul will invoice Lauderdale for the pro-rated portion of the total work already completed of the total up to the time of termination.

#### **SECTION 12. Data Practices.**

Saint Paul and Lauderdale agree to abide strictly by Minn. Stat., Chapter 13, the Minnesota Government Data Practices Act. All of the data created, collected, received, stored, used, maintained, or disseminated by Saint Paul in performing functions under this Agreement is subject to the requirements of the Minnesota Government Data Practices Act and any service provider must comply with those requirements as if it were a governmental entity. The remedies in the Minnesota Government Data Practices Act apply to Saint Paul and Lauderdale. If any provision of this Agreement is in conflict with the Minnesota Government Data Practices Act or other Minnesota state laws, state law shall control.

#### **SECTION 13. Legal Responsibilities to the Public.**

Saint Paul will, while in Lauderdale or performing any of the services hereunder, comply with all applicable local, state and federal safety laws and regulations including, without limitation, laws and regulations under the federal Occupational Safety and Health Act.

#### **SECTION 14. Access to Financial Records.**

Lauderdale may request statements of account regarding income or expenses generated pursuant to this Agreement. Saint Paul agrees to provide such statements of account within a reasonable period of time, not to exceed 45 days, after receipt of the request from Lauderdale.

**SECTION 15. Assignment or Transfer of Duties.**

Saint Paul and Lauderdale acknowledge that the services to be rendered under this Agreement are unique and personal. Neither party may assign, transfer or delegate its rights, duties or obligations under this Agreement without the prior written consent of the other party.

**SECTION 16. Amendments.**

All alterations, amendments, deletions or waivers of the terms of this Agreement shall be valid and enforceable only when they have been agreed upon by both parties and executed by both parties in writing.

**SECTION 17. Entire Agreement.**

It is understood and agreed that this Agreement constitute the entire agreement by the parties concerning the subject matter hereof and supersedes all oral agreements and negotiations between the parties relating to the subject matters herein.

**SECTION 18. Interpretation of Agreement, Venue.**

This Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this agreement shall be venued in the District Court of the County of Ramsey, Second Judicial District, State of Minnesota.

**SECTION 19. Waiver.**

The waiver by either of the Cities of any breach under the terms of this Agreement or the failure by a City to enforce the rights or remedies arising under the terms of this Agreement shall not constitute a waiver of a City's rights and/or remedies with respect to any subsequent breach or default of the terms of this Agreement. The rights and remedies of the Cities provided or referred under the terms of this Agreement are cumulative and not mutually exclusive.

**SECTION 20. Notices.**

Unless otherwise specified in this Agreement, all notices or other written communications required under this Agreement shall be delivered in person, recognized private delivery service or deposited in United States Certified Mail, Return Receipt Requested. Any notices or other communications shall be addressed as follows:

**To Saint Paul:**

Saint Paul Fire Department  
645 Randolph Avenue  
Saint Paul, MN 55102  
Attn:

**To Lauderdale:**

1891 Walnut Street  
Lauderdale, Minnesota 55113  
Attn: City Administrator

**SECTION 21. Severability.**

The provisions of this Agreement are severable. If any part of this Agreement is rendered void, invalid or otherwise unenforceable by a court of competent jurisdiction, such rendering shall not affect the validity and enforceability of the remainder of this Agreement.

IN WITNESS WHEREOF, the respective parties have executed this Agreement, intending to be bound hereby effective the date and year indicated above.

**Lauderdale**

\_\_\_\_\_  
Mary Gaasch, Mayor

\_\_\_\_\_  
Heather Butkowski, City Administrator-Clerk

**Saint Paul**

\_\_\_\_\_  
Mayor or Designee

\_\_\_\_\_  
Director of Financial Services

\_\_\_\_\_  
Fire Chief

Approved as to Form

\_\_\_\_\_  
Assistant City Attorney

DRAFT