

INTERLOCAL AGREEMENT FOR FIRE STATION
BETWEEN
CITY OF WAVERLY, NEBRASKA
AND
WAVERLY SUBURBAN FIRE DISTRICT

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This INTERLOCAL AGREEMENT (“Agreement”) is entered into effective _____, 2025 (“Effective Date”) by and between the CITY OF WAVERLY, NEBRASKA, a municipal corporation organized under the laws of the State of Nebraska (hereinafter referred to as the “City”), and the WAVERLY SUBURBAN FIRE DISTRICT, a suburban fire protection district organized under the laws of the State of Nebraska (hereinafter referred to as the “SFD”), parties executing this Agreement as further described in Paragraph 1 hereof, all of which are public agencies within the meaning of Neb. Rev. Stat. § 13-803. The City and the SFD may each be referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Article XV, Section 18 of the Constitution of the State of Nebraska and the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-801 et seq. (hereinafter referred to as the “Act”), authorize two (2) or more public agencies to enter into agreements with one another for joint or cooperative action in regard to the exercise or enjoyment jointly of any power or powers, privileges, or authority exercised or capable of exercise by such public agencies and for the creation of a joint entity with the powers delegated to the joint entity by such public agencies, and this Agreement is made and entered into pursuant to these provisions and no separate legal or administrative entity is created under this Agreement;

WHEREAS, the City and the SFD have previously cooperated in providing fire and emergency services to residents of the City and the SFD;

WHEREAS, the Parties have determined that it would be mutually beneficial to jointly construct, own, operate, and maintain a new fire station facility to serve the community more efficiently;

WHEREAS, the Parties previously executed a Letter of Intent outlining their mutual understanding of the key terms regarding the construction, ownership, cost-sharing, and operations of said facility; and

WHEREAS, the Parties desire to clearly define the terms and conditions under which said facility will be constructed, financed, managed, maintained, and operated.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and covenants contained herein, IT IS AGREED BY AND BETWEEN THE PARTIES HERETO, as follows:

ARTICLE I: GENERAL PROVISIONS

Section 1.1. Parties. The Parties to this Agreement are public agencies within the meaning of Neb. Rev. Stat. § 13-803. Each Party understands and agrees that it is a public agency within the meaning of Neb. Rev. Stat. § 13-803. Each Party consents to the participation in this Agreement by the other Parties. Each Party agrees and acknowledges that this

Agreement shall become binding upon each Party upon execution of this Agreement by all Parties.

Section 1.2. Definitions. For the purposes of this Agreement, the following terms shall have the meanings set forth below. Terms may be used in the singular or plural form, as context dictates. Unless otherwise indicated, references to Articles, Sections, or Exhibits mean those contained in this Agreement. Additional defined terms may be provided in other sections of this Agreement.

- a) “Act” means the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-801 et seq., together with Article XV, Section 18 of the Constitution of the State of Nebraska.
- b) “Agreement” means this Interlocal Agreement for Fire Station by and between the City and the SFD, including all exhibits, attachments, and amendments.
- c) “Annexation” means any legal or regulatory process initiated by a jurisdiction (e.g., City of Lincoln) that would alter the existing jurisdictional boundaries of the City of Waverly in a manner affecting the Facility or the Parties’ interests in the Facility.
- d) “Appraisal Process” means the method by which Fair Market Value is established for the Facility or any Party’s interest therein, as required by this Agreement.
- e) “Bonds” means any debt instruments jointly issued, issued by a Party, or otherwise utilized by a Party or by the Parties to finance the Project’s construction. This includes, but is not limited to, general obligation bonds, revenue bonds, lease-purchase financing or other lawful borrowing mechanisms.
- f) “Change Order” means a written amendment or modification to the approved Project plans, specifications, construction contracts, or related agreements that materially affects the scope, design, schedule, materials, or cost of the Project.
- g) “City of Lincoln” means the City of Lincoln, Lancaster County, Nebraska, a separate municipal corporation distinct from the City of Waverly. The City of Lincoln is not a Party to this Agreement but is referenced herein in connection with the potential annexation or boundary changes that could trigger certain rights or obligations set forth in this Agreement.
- h) “City” means the City of Waverly, Nebraska, a municipal corporation organized under the laws of the State of Nebraska with its principal offices located at 14130 Lancashire, Waverly, Nebraska 68462.
- i) “Construction Costs” means all expenses incurred in the planning, design, engineering, procurement, permitting, construction, inspection, testing, installation, and completion of the Facility. Construction Costs include, but are not limited to, the cost of land, professional services (architects, engineers, accountants), legal fees as further discussed in Section 2.2(a), materials, labor, contractor fees, subcontractor fees, insurance during construction, utility connections, landscaping, fixtures, furnishings, equipment, and any other items necessary for the Facility’s completion and commissioning.

- j) “Department Administrator” means the City after the construction is complete and the Facility is operating.
- k) “Dispute” means any disagreement, controversy, or claim arising out of or relating to this Agreement, its interpretation, performance, or breach.
- l) “Donation Fund Expense Policy” means the policy that governs the Donation Fund expenditures which is attached hereto as **Exhibit G** and incorporated herein by this reference.
- m) “Donation Fund” means the dedicated account that holds and manages gifts and donations related to fire protection and emergency services operations, including service fees, grants, and other lawful sources of income. The Donation Fund also includes burn permit fees that are spent according to the Donation Fund Expense Policy. Balances in the Donation Fund may be transferred between the Operation Fund and Equipment Fund or otherwise allocated as set forth in this Agreement.
- n) “Emergency Repair” means an urgent, unanticipated repair required to address immediate risks to life, safety, or property or to prevent significant disruption to the Facility’s operations.
- o) “Equipment Fund” means the designated fund established and maintained by the Parties to support the purchase, replacement, repair, or refurbishment of fire apparatus, vehicles, communication systems, protective gear, and other equipment essential for providing fire protection and emergency response services. Funding levels, contribution schedules, and disbursement procedures shall be as agreed by the Parties and in accordance with the Equipment Fund Expense Policy
- p) “Equipment Fund Expense Policy” means the policy that governs the Equipment Fund expenditures which is attached hereto as **Exhibit H** and incorporated herein by this reference.
- q) “Exhibit” refers to any appendix or attachment referenced in this Agreement and incorporated by reference.
- r) “Facility” means the jointly owned fire station, including the real property, land improvements, building(s), fixtures, utilities, parking and access areas, furnishings, and all associated amenities located at parcels #2421118002000 and #2421118003000 (9810 and 9820 N 135th Street, Waverly, Nebraska 68462).
- s) “Fair Market Value (FMV)” means the price that a knowledgeable, willing buyer would pay and a knowledgeable, willing seller would accept for an interest in the Facility, neither under duress or compulsion, and both having reasonable awareness of relevant facts.
- t) “Force Majeure” means events, circumstances, or conditions beyond the reasonable control of a Party that prevent or delay performance of that Party’s obligations under this Agreement, despite the exercise of due diligence. Such events may include natural disasters (floods, earthquakes, tornadoes), acts of war, terrorism, epidemics, strikes

(excluding those caused by the affected Party), significant supply chain disruptions, and governmental or regulatory actions that directly impede performance.

- u) “Indemnified Party” means the Party that is protected under the indemnification terms of this Agreement and may be entitled to defense and reimbursement for claims or liabilities caused by the other Party.
- v) “Indemnifying Party” means the Party obligated to defend, hold harmless, and indemnify the other Party against claims, liabilities, losses, or damages arising from the Indemnifying Party’s negligent or wrongful acts.
- w) “Joint Insurance Policies” has the meaning set forth in Section 5.1.
- x) “Letter of Intent” or “LOI” means the written instrument executed by the Parties on November 22, 2024, setting forth the principal terms, conditions, and mutual understandings that form the basis of the Project and this Agreement, which is attached hereto as **Exhibit A** and incorporated herein by this reference.
- y) “Major Repair” means an individual expense or related set of expenses exceeding ~~\$_____~~ \$10,000 or involving significant structural modifications, replacement of critical systems, or additions to the Facility.
- z) “Minor Repair” means an individual expense or related set of expenses that does not exceed ~~\$_____~~ \$10,000. This includes routine maintenance and repairs necessary for the Facility’s day-to-day functionality.
- aa) “Operation Fund” means the budgeted account dedicated to collecting and allocating funds essential for the operational needs of fire protection and emergency services, including but not limited to volunteer training, operational supplies, utilities, routine maintenance of the Facility, and other day-to-day expenses not covered by the Equipment Fund. Funding for the Operation Fund is equally contributed by the City and the SFD. The total amount allocated to the Operational Fund ~~is~~ shall be determined annually in coordination between during the City and the SFD as part of the City’s fiscal budget planning process.
- bb) “Option to Purchase” means the right of the SFD, under conditions specified in this Agreement, to purchase the City’s fifty percent (50%) interest in the Facility upon the threat, initiation, or pursuit of Annexation of the City of Waverly by the City of Lincoln. The purchase price shall be determined through the Appraisal Process.
- cc) “Parties” means collectively, the City of Waverly and the Waverly Suburban Fire District, including their respective officers, representatives, agents, and authorized successors and assigns.
- dd) “Performance and Payment Bonds” means surety bonds obtained on behalf of the Parties or their contractors to ensure the faithful performance and completion of the Project’s work and the prompt payment of all suppliers, laborers, and subcontractors. The scope and amount of such bonds shall comply with applicable laws and the terms of this Agreement.

- ee) "Project Administrator" means the City, as appointed by the SFD, to oversee the Project's day-to-day management, administration of construction activities, coordination with contractors and professionals, and ensuring compliance with the approved plans, specifications, and any mutually agreed changes to the Project. The Project Administrator shall serve as the primary point of contact for the SFD on all matters related to the Project. The Project Administrator will provide periodic updates to the SFD on the Project.
- ff) "Project" means the entirety of the endeavor undertaken by the Parties to plan, design, finance, construct, furnish, and equip the Facility, as well as all preparatory, administrative, and support activities necessary to bring the Facility to operational status in accordance with the terms of this Agreement.
- gg) "SFD Representative" means the individual appointed by SFD to attend specified meetings related to the Project, acting as SFD's designated liaison.
- hh) "SFD" means the Waverly Suburban Fire District, a suburban fire protection district organized under the laws of the State of Nebraska with its principal offices located at 14001 Fletcher Avenue, Lincoln, Nebraska 68527 and a Party to this Agreement.
- ii) "Volunteer Firefighters and Emergency Personnel" means individuals who serve the community by providing fire protection and emergency response services on a volunteer basis, operating under the supervision and direction of the City in accordance with applicable laws, regulations, and standards for training and personnel conduct.
- jj) "Work or Work on the Project" means all tasks, actions, services, labor, material procurement, equipment acquisition, and related efforts necessary to plan, design, construct, equip, commission, and place the Facility into service in a manner consistent with the Agreement, approved plans, specifications, applicable laws, and sound professional practices.
- kk) All terms not specifically defined herein shall have their plain and ordinary meanings, except where context clearly indicates otherwise or where specifically defined in another portion of this Agreement.

Section 1.3. Authority. Each Party represents and warrants that it has the legal authority to enter into this Agreement and perform its obligations hereunder, pursuant to the Act and all other applicable laws.

Section 1.4. Duration. This Agreement shall be effective upon execution by both Parties and shall remain in effect until terminated as provided in Article VI.

Section 1.5. Purpose. The purpose of this Agreement is to establish a cooperative framework for the construction, financing, joint ownership, operation, and maintenance of the Facility and to govern the provision of fire protection and emergency rescue services.

Section 1.6. Scope. This Agreement encompasses all activities and obligations related to the design, construction, joint ownership, financing, operation, maintenance, training, staffing, and insurance of the Facility, as well as the provision of fire and emergency services from said Facility.

Section 1.7. Conflict of Interest. Each Party shall comply with all applicable conflict-of-interest laws. No Party shall engage in activities that constitute a conflict of interest under state or local law.

Section 1.8. Public Records and Transparency. All records relating to the Facility and this Agreement shall be maintained in accordance with applicable public records laws. Both Parties agree to operate with transparency and in compliance with Nebraska public records and open meetings laws.

ARTICLE II: CONSTRUCTION OF THE FACILITY

Section 2.1. Project Execution. The Parties shall proceed with the planning, design, and construction of the Facility in a manner that is efficient, cost-effective, and compliant with all applicable laws, codes, and professional standards.

- a) Cooperation. The Parties shall act in good faith and cooperate fully with each other to achieve timely and satisfactory completion of the Project.
- b) Preparation of Plans. The Project Administrator shall coordinate the preparation of preliminary plans, drawings, and specifications by qualified professionals that reflect the Facility's intended functions and meet the agreed-upon budget and operational needs. The agreed-upon budget and operational needs are further described on **Exhibit B** which is referenced hereto and incorporated herein to this Agreement.
- c) Review and Approval. The Parties shall jointly review the final design documents. No final design shall be implemented without each Party's written approval, confirming compliance with applicable legal requirements, performance standards, and cost parameters. The final design and estimated cost of the Project shall be mutually agreed upon by the Parties and inserted into this Agreement under **Exhibit C** and incorporated herein by this reference.
- d) Procurement Compliance. The Project Administrator shall conduct procurement activities in accordance with the Act, other applicable laws, and any applicable City or SFD procurement policies.
- e) Contractor Selection. The City shall select the primary construction contractor(s) with the SFD's advice and consent. The SFD shall provide or withhold its consent in writing within seven (7) calendar days after receiving the City's proposed selection and supporting materials. If no response is provided within that time, consent shall be deemed granted. The SFD shall not unreasonably withhold or delay its consent and shall approve the City's selection if at least one of the bids received qualifies as a responsible bid. Both Parties shall be listed as parties in the contracts with contractors. Award criteria may include cost, qualifications, relevant experience, compliance with bidding requirements, and ability to meet the Project schedule.

- f) Contract Administration. The Project Administrator shall administer all construction contracts, ensuring that contractors fulfill their obligations, meet quality and safety standards, comply with schedules, and maintain required insurance and bonding.

Section 2.2. Budget and Financing.

- a) Cost-Sharing. Construction Costs shall be shared as set forth in this Agreement, taking into account the City's land acquisition credit in the amount of approximately \$ _____, ~~potential-any additional credits~~ for soil compaction testing and acquisition of additional soil, and the equal division of remaining costs. Seventy-Five Percent (75%) of the City's legal fees associated with this Agreement and the Project shall be considered part of the Construction Costs and shall be equally split between the Parties. Detailed budgets outlining the allocation of costs between the Parties shall be referenced in **Exhibit D** which is incorporated herein by reference. Each Party shall establish a contingency fund to cover unforeseen expenses or cost overruns related to the Project. The amount to be contributed by each Party shall be as specified in **Exhibit D**.
- b) Bond Proceeds. If Bonds are issued by a Party to finance all or a portion of the Construction Costs, the proceeds of the Bonds shall be used exclusively to pay Construction Costs in accordance with this Agreement, applicable law, and in accordance with the terms of any tax compliance agreement or tax certificate entered into or delivered by a Party in connection with issuing Bonds on a tax-exempt basis., The Project Administrator shall apply any such Bond proceeds to Construction Costs in accordance with this Section 2.2 and in accordance with directions of a Party or a Party's Bond Counsel. Proceeds from the issuance of Bonds which are expended by the Project Administrator for Construction Costs shall be treated for all purposes hereunder as an expenditure for costs of the Project by the Party contributing such Bond proceeds. If, after the Project is completed, a Party or the Project Administrator has funds which represent the proceeds from issuing Bonds and which are not required to be used for Construction Costs, such funds shall be applied to payment of interest and/or principal on such Bonds as directed by the Party issuing the Bonds or such party's Bond Counsel.
- c) Payment Schedule and Reports. The Project Administrator, in coordination with the appointed engineering team, shall establish a clear payment schedule aligned with construction milestones or deliverables, as detailed in **Exhibit E**, which is incorporated herein by this reference. Contractors shall submit monthly pay applications to the engineer, who will review these applications and subsequently forward them to the Project Administrator for approval and processing. Similarly, engineers will submit monthly invoices for progress payments directly to the Project Administrator. Upon approval, the Project Administrator will facilitate the payment process, ensuring that each Party contributes equally, covering 50% of the pay applications and invoices. The Project Administrator shall provide periodic financial reports to enable both Parties to monitor expenditures and remaining funds.

Section 2.3. Regulatory Compliance.

- a) Environmental and Regulatory Requirements. The Parties shall comply with all applicable environmental laws and secure any necessary permits, approvals, and licenses. All costs associated with securing and maintaining compliance with environmental and regulatory requirements shall be included in the Construction Costs.
- b) Permits and Approvals. The Project Administrator shall obtain or cause to be obtained all required permits, inspections, and occupancy approvals. The Parties shall cooperate as needed to facilitate timely issuance of such approvals.

Section 2.4. Change Orders, Delays, and Adjustments.

- a) Change Orders. Any Change Order that materially affects the Facility's design, schedule, or exceeds \$~~_____~~ \$10,000 requires prior written approval by both Parties.
- b) Delays. In the event of delays, the Project Administrator shall promptly notify both Parties. The Parties shall confer in good faith regarding schedule adjustments, cost mitigation, or other remedies.
- c) Cost Adjustments. If approved Change Orders or delays significantly alter the Project's total cost, the Parties shall proportionately adjust their financial contributions in accordance with the cost-sharing principles outlined in this Agreement.

Section 2.5. Joint Ownership and Deed Documentation.

- a) Ownership Interests. Upon completion and acceptance of the Facility, ownership shall vest equally in the Parties. Each Party shall hold an undivided fifty percent (50%) interest in the Facility.
- b) Deed Form. A standard joint ownership deed form, as attached in **Exhibit F** and incorporated herein by this reference, shall be prepared to reflect the equal ownership interests of the Parties. Any modifications to the deed form must be mutually agreed upon in writing by both Parties and attached as an amended exhibit.
- c) Execution. Both Parties shall execute the deed in the presence of a notary public to ensure its validity and enforceability.
- d) Recording. The executed deed shall be recorded with the appropriate county recorder's office within thirty (30) days of execution to establish official joint ownership of the Facility.
- e) Maintenance of Ownership Records. Both Parties agree to maintain accurate and up-to-date records of ownership interests and any future changes thereto. Any amendments or modifications to ownership interests shall be documented in writing and, if necessary, reflected in updated deeds filed with the county recorder's office.

- f) Dispute Resolution. In the event of any disputes regarding ownership interests or deed-related matters, the Parties agree to resolve such disputes in accordance with the Dispute Resolution procedures outlined in Article VII of this Agreement.
- g) Transfer of Ownership Interest. Any transfer, sale, or encumbrance of a Party's ownership interest in the Facility shall require the prior written consent of the other Party, except as otherwise provided in this Agreement or required by law.

Section 2.6. Insurance.

- a) Required Construction Insurance Policies. During the construction of the Facility, the Parties shall jointly obtain and maintain the following insurance policies:
 - 1. Builder's Risk Insurance. A policy to cover physical loss or damage to the Facility during construction, including theft and vandalism. This policy shall remain in effect for the entire construction period.
 - 2. General Liability Insurance. A policy with minimum coverage of \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage caused by construction activities.
 - 3. Performance and Payment Bond. A performance bond with regard to the contractor constructing the facility to the extent determined by the Project Administrator.
- b) Insurance Procurement. The contractors or subcontractors shall procure and maintain all required construction insurance policies and name the City and the SFD as additional insureds on General Liability and Builder's Risk Insurance. Proof of all required construction insurance, including certificates of insurance, must be provided to the Project Administrator before work commences.
- c) Premium Allocation. All costs associated with the construction insurance policies shall be included in the overall construction budget and shared equally between the City and the SFD unless otherwise agreed upon in writing.
- d) Indemnification by Contractors. All contractors and subcontractors shall indemnify, defend, and hold harmless the City and the SFD for claims, liabilities, and losses arising from their work, except to the extent caused by the negligence or misconduct of the City or the SFD.
- e) Claim Procedures for Construction Insurance. The Party affected by a claim under any construction insurance policy shall promptly notify the other Party and provide all relevant details.

Section 2.7 Option to Purchase.

- a) Preservation of Rights. Nothing in this Article shall limit, amend, or supersede the SFD's Option to Purchase the City's interest in the Facility, as set forth elsewhere in

this Agreement. The Option to Purchase may be exercised if the City of Lincoln initiates the Annexation of the City of Waverly in a manner that affects the Parties' interests in the Facility.

- b) Notice of Triggering Event. If the City or the SFD becomes aware of any official action or proceeding that triggers the Option to Purchase, that Party shall promptly notify the other Party in writing. Such notice shall include any available documentation or evidence of the impending Annexation action.
- c) Exercise of the Option.
 - 1. Written Exercise. To exercise the Option, the SFD shall deliver written notice to the City, referencing the applicable section of this Agreement, within thirty (30) days after receiving or issuing the notice of the triggering event.
 - 2. Acknowledgment by the City. Upon receipt of the SFD's exercise notice, the City shall acknowledge it in writing within fifteen (15) days. Both Parties shall then proceed with the valuation process, unless otherwise agreed in writing.
- d) Valuation Process.
 - 1. Fair Market Value Determination. The Parties shall establish the Fair Market Value of the City's interest in the Facility through the Appraisal Process defined in this Agreement.
 - 2. Selection of Appraiser(s). Within ten (10) days of agreeing to the Appraisal Process, the Parties shall jointly select a mutually acceptable independent appraiser. If required, a second or third appraiser may be engaged as described in the Agreement to resolve any significant discrepancies in valuation.
 - 3. Final and Binding Valuation. The final valuation reached through the Appraisal Process shall be binding on both Parties and shall constitute the purchase price for the City's interest in the Facility.
- e) Documentation and Closing.
 - 1. Purchase Agreement. Following determination of the purchase price, the Parties shall negotiate and execute a purchase agreement or similar document outlining the terms of the transfer, including payment method, closing date, and any remaining conditions precedent.
 - 2. Transfer of Title. Upon the SFD's full payment of the agreed-upon purchase price and satisfaction of all applicable conditions, the City shall execute and deliver all necessary deeds, assignments, and related instruments to transfer its fifty percent (50%) interest in the Facility to the SFD. The Parties shall record any required documents with the appropriate county recorder's office.
 - 3. Transition of Responsibilities. After closing, the SFD shall assume full responsibility for operations, maintenance, insurance, and all other aspects of

Facility ownership, as set forth in the purchase agreement and other applicable sections of this Agreement.

- f) Costs and Expenses. Unless otherwise agreed in writing, all reasonable costs associated with the Appraisal Process, including appraiser fees, shall be allocated between the Parties as described in this Agreement. Each Party shall bear its own attorney fees, accounting fees, and other incidental expenses unless the Agreement specifies otherwise.
- g) Good Faith and Cooperation. The Parties agree to act in good faith and cooperate fully throughout the Option to Purchase process, including promptly providing documents, financial records, operational data, and other information reasonably necessary to facilitate a smooth and timely transaction.

ARTICLE III: OPERATION OF THE FACILITY & THE DEPARTMENT

Section 3.1. Termination of Previous Agreement. Any prior interlocal or service agreements addressing similar subject matter, including but not limited to, the Fire Protection and Emergency Rescue Services Agreement dated on or around September 25, 2018, and as amended on or around September 8, 2020, are hereby terminated upon the Effective Date of this Agreement, as evidenced by written notice by both Parties.

Section 3.2. Responsibilities of the City.

- a) Facility Management. The City shall provide day-to-day management of the Facility, including volunteer fire protection and emergency rescue services, training of volunteers, and operational oversight in accordance with applicable standards and regulations.
- b) Revenue Management. The City shall manage all revenue from services rendered, including maintaining the Donation Fund. This includes overseeing the collection of services fees and burn permit fees as detailed in the Donation Fund Expense Policy. The City will ensure proper accounting of the Donation Fund, Operation Fund, and Equipment Fund. Surpluses or deficits at fiscal year-end shall be addressed through strategic transfers between the Donation Fund, Operation Fund, and Equipment Fund as agreed by the Parties.
- c) Staffing and Administration. The City shall be responsible for the administrative functions of the Facility, including staffing, scheduling, and procurement of supplies.

Section 3.3. Responsibilities of the SFD.

- a) Operational Payment. The SFD shall pay fifty percent (50%) of the annual budget of the Operation Fund, with payments due on the first day of each month, or on an alternative date mutually agreed upon by the Parties.
- b) Equipment and Maintenance Costs. The SFD shall equally share (50%) in the cost of repairs, maintenance, and improvements of the Facility and jointly used fire-related equipment.

- c) Large Unforeseen Expense. In the event of an expense not anticipated and not included in the planned budgets for the Operational, Equipment, and Donation Funds, and that exceed \$_____-\$3,000 (a "Large Unforeseen Expense"), both Parties shall convene to discuss and agree upon the allocation of additional funds. Decisions regarding such additional contribution or adjustments to the funding commitments shall be documented in writing and require mutual agreement by both Parties, in accordance with the terms of the Agreement.]

Section 3.4. Reporting. The Parties shall provide regular operational and financial reports to each other upon request and not less than once per calendar year.

Section 3.5. Use of Facility. The Facility shall be used for fire protection, emergency response services, and training and administrative functions. The Parties shall work together in good faith to establish the rules for any other uses of the Facility that are not directly related to fire department operations. Any ancillary use by the SFD shall require the City's consent. The SFD shall coordinate its meetings and other uses of the Facility with the fire department administration to avoid conflicts with previously scheduled events or operational needs.

Section 3.6. Repairs and Maintenance. Both Parties shall share equally in all costs related to repairs and maintenance of the Facility. The City, as Department Administrator, shall arrange for all maintenance activities to ensure the Facility remains in good working order. Repairs and maintenance are categorized as follows:

- a) **Routine Maintenance and Minor Repairs.** Routine maintenance and Minor Repairs shall be paid directly from the Operation Fund and do not require prior approval from either Parties. The City shall provide the SFD with a quarterly summary of all minor repairs and maintenance expenses for review.
- b) **Major Repairs.** Major Repairs must be jointly planned, budgeted, and approved in writing by both Parties before work begins, except in emergencies as outlined in Section 3.6(c). Costs for Major Repairs shall not be paid from the Operation Fund unless expressly agreed upon in writing. Costs for Major Repairs shall be shared equally by the Parties and budgeted as needed.
- c) **Emergency Repairs.** In the event of an emergency repair exceeding \$_____, \$5,000, the City is authorized to proceed without prior joint approval. The City shall notify the SFD as soon as practicable and provide detailed documentation of the repair and associated costs. Emergency repairs shall be shared equally between the Parties and reimbursed as part of the next financial reconciliation.
- d) **Reporting and Reimbursement.** The City shall provide the SFD with detailed quarterly reports summarizing all repairs, maintenance activities, and associated costs. Reports for Major Repairs or Emergency Repairs shall be provided promptly upon completion of the work. For any repair or maintenance expense requiring reimbursement outside of the Operation Fund, the City shall submit an invoice with supporting documentation. The SFD shall remit payment within 30 days of receipt.

Section 3.7. City's Management of Volunteers. The City shall be responsible for recruiting, training, supervising, and supporting volunteer firefighters and emergency personnel. This includes providing necessary equipment and resources, ensuring compliance with all health and safety regulations, implementing effective scheduling systems to guarantee adequate coverage, recognizing and rewarding volunteer contributions, and maintaining open channels for feedback and continuous improvement.

Section 3.8. Health and Safety. The Parties shall adhere to all federal, state, and local health and safety regulations, ensuring a safe environment for personnel and the public.

Section 3.9. Operational Efficiency and Audits. The Parties may conduct joint operational audits or engage independent professionals to evaluate the efficiency, costs, and effectiveness of fire and emergency services. Findings from such audits shall be used to improve operational practices and resource allocation.

Section 3.10. Taxes. Each Party shall be responsible for its own tax obligations arising from this Agreement or ownership interest in the Facility. The Parties shall ensure compliance with all applicable tax laws and regulations.

ARTICLE IV: INDEMNIFICATION

Section 4.1. Mutual Indemnification.

- a) The City's Indemnification Obligations. The City shall indemnify, defend, and hold harmless the SFD, its officers, agents, employees, and volunteers from and against any and all claims, liabilities, damages, losses, and expenses (including reasonable attorney fees and court costs) arising out of or resulting from:
 - 1. The City's negligence, willful misconduct, or failure to perform its obligations under this Agreement.
 - 2. Any injury to persons (including death) or damage to property caused by the City's operations at the Facility, except where such injury or damage is directly caused by the SFD's negligence or misconduct.
- b) The SFD's Indemnification Obligations. The SFD shall indemnify, defend, and hold harmless the City, its officers, agents, employees, and volunteers from and against any and all claims, liabilities, damages, losses, and expenses (including reasonable attorney fees and court costs) arising out of or resulting from:
 - 1. The SFD's negligence, willful misconduct, or failure to perform its obligations under this Agreement.
 - 2. Any injury to persons (including death) or damage to property caused by the SFD's operations at the Facility, except where such injury or damage is directly caused by the City's negligence or misconduct.

- c) Exceptions to Indemnification. Neither Party shall indemnify the other for claims arising from the indemnified Party's sole negligence, willful misconduct, or intentional acts.

Section 4.2. Third-Party Claims.

- a) Notification. Both Parties agree to promptly notify the other Party in writing of any third-party claims, demands, or lawsuits that may give rise to indemnification obligations under this Agreement.
- b) Defense Control. The indemnifying Party shall assume control of the defense and settlement of such claims, provided that no settlement compromising the indemnified Party's rights shall be made without the indemnified Party's prior written consent.

ARTICLE V: INSURANCE REQUIREMENTS

Section 5.1. Insurance Obligations.

- a) Operational Insurance Policies. The Parties shall jointly procure and maintain the following three insurance policies for ongoing operations, with both parties named as insureds: (i) Property/Liability/Auto Policy, (ii) Worker's Compensation Policy, and (iii) Life Insurance Policies for volunteers (collectively, the "Joint Insurance Policies").
- b) Premium Allocation. All premiums for the Joint Insurance Policies shall be shared equally between the City and the SFD.
- c) Continuous Coverage. The Parties shall ensure the Joint Insurance Policies remain in full force and effect at all times. Any lapse in coverage shall be considered a material breach.

Section 5.2. Types of Insurance and Coverage Limits.

- a) Property/Liability/Auto Policy. The Property/Liability/Auto Policy shall include the following: (i) general liability insurance with a minimum coverage of \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, property damage, personal injury, and advertising injury; (ii) property insurance with replacement cost coverage for the Facility against all risks of physical loss or damage, including fire, theft, vandalism, and natural disasters; and (iii) automobile liability insurance with a minimum coverage of \$1,000,000 combined single limit for bodily injury and property damage for any vehicles owned, operated, or used by the Parties in connection with the Facility.
- b) Workers' Compensation Insurance. The Workers' Compensation Policy shall include the statutory coverage for all employees engaged in operations at the Facility.
- c) Life Insurance. Life Insurance Policies for volunteers.

Section 5.3. Additional Insureds. The Joint Insurance Policies shall include both the City and the SFD as named insureds, along with their respective officers, agents, and employee. Certificates of insurance confirming this status shall be provided upon request.

Section 5.4. Proof of Insurance.

- a) Ongoing Proof of Insurance. Updated certificates of insurance shall be provided immediately upon renewal of policies and immediately upon any material changes to coverage, including cancellations or non-renewals.
- b) Failure to Maintain Insurance. If any required policy lapses, the non-defaulting Party may obtain the necessary coverage at the defaulting Party's expense, without prejudice to any other remedies under this Agreement.

Section 5.5. Additional Provisions.

- a) Regulatory Changes. If there are any changes in applicable laws or regulations that affect the insurance or indemnification requirements of this Agreement, the Parties shall promptly discuss and implement necessary adjustments to comply with such changes.
- b) Insurance Brokers. The Parties may choose to engage the same insurance broker or different brokers to procure and manage their respective insurance policies. All broker agreements shall comply with the requirements of this Agreement.

ARTICLE VI: TERMINATION

Section 6.1. Termination for Cause.

- a) Material Breach.
 - 1. Notice of Breach. If either Party commits a material breach of any provision of this Agreement, the non-breaching Party shall provide written notice detailing the nature of the breach.
 - 2. Cure Period. The breaching Party shall have thirty (30) days from the receipt of such notice to cure the breach to the satisfaction of the non-breaching Party.
 - 3. Failure to Cure. If the breach is not cured within the specified period, the non-breaching Party may terminate this Agreement by providing written notice of termination to the breaching Party.
- b) Insolvency or Bankruptcy. Either Party may terminate this Agreement immediately upon written notice if the other Party becomes insolvent, makes an assignment for the benefit of creditors, files for bankruptcy, or has a receiver appointed for its assets.

- c) Failure to Maintain Insurance. If either Party fails to maintain the required insurance coverage as specified in Article V for a period exceeding sixty (60) days after receiving written notice of such failure, the non-defaulting Party may terminate this Agreement immediately upon providing written notice.

Section 6.2. Termination for Convenience.

- a) Mutual Agreement. The Parties may terminate this Agreement at any time for any reason by mutual written consent. Such termination shall specify the effective date and any conditions agreed upon by both Parties.
- b) Unilateral Termination. Notwithstanding mutual agreement, either Party may terminate this Agreement for convenience by providing one hundred and eighty (180) days' written notice to the other Party. The terminating Party shall outline the reasons for termination and any obligations that will continue post-termination.
- c) Automatic Termination. If any change in federal, state, or local law makes it unlawful to continue the Agreement, either Party may terminate the Agreement by providing written notice. The termination shall be effective thirty (30) days after receipt of such notice, unless a shorter period is required by law.

Section 6.3. Disposition of Assets Upon Termination.

- a) Equitable Distribution. Upon termination of this Agreement, the Parties shall engage in good faith negotiations to determine a fair and equitable method for disposing of jointly owned assets, including but not limited to the Facility and related equipment.
- b) Options for Disposition.
 - 1. Purchase Option. One Party may have the option to purchase the other Party's interest in the Facility at Fair Market Value, as determined through the Appraisal Process outlined in Article II.
 - 2. Sale to Third Party. The Parties may agree to sell the Facility to a third party, with proceeds distributed according to each Party's ownership interest.
 - 3. Other Arrangements. Any other mutually acceptable arrangement that ensures a fair distribution of assets and liabilities.
- c) Transfer of Ownership. Any transfer of ownership interests pursuant to termination shall be documented through legally binding instruments, including deeds or purchase agreements, and recorded with the appropriate county recorder's office as required.

Section 6.4. Post-Termination Obligations.

- a) Surviving Provisions. Provisions of this Agreement that by their nature extend beyond termination, including but not limited to Article IV, Article VI, and Article VII, shall survive termination and continue to bind the Parties.

- b) Final Accounting. The Parties shall conduct a final accounting of all financial obligations, including the settlement of any outstanding payments, reimbursements, or obligations related to Construction Costs, Operational Funds, and Equipment Funds.
- c) Return of Property. Each Party shall return any property, documents, or confidential information belonging to the other Party within thirty (30) days of termination, unless otherwise agreed upon in writing.

Section 6.5. Transition Assistance.

- a) Cooperation During Transition. Upon termination, the Parties shall cooperate to ensure a smooth transition of responsibilities, including the transfer of records, training of new personnel, and the continuity of services to the community.
- b) Transition Period. The Parties may agree to a transition period following termination during which the City shall provide support and assistance to the SFD (or vice versa) to facilitate the ongoing provision of fire protection and emergency services.

Section 6.6. Termination Procedures. All termination notices shall be in writing and delivered to the other Party's designated notice address as specified in Section 8.3. Upon termination, both Parties shall document the reasons for termination, actions taken to address any breaches, and the agreed-upon method for asset disposition and final accounting.

Section 6.7. Effect of Termination.

- a) Release of Claims. Upon termination, each Party releases the other from any future claims, demands, or liabilities related to the Agreement, except for those arising from indemnification obligations or other surviving provisions.
- b) Non-Waiver. Termination of this Agreement shall not constitute a waiver of any rights or remedies that a Party may have under this Agreement or applicable law.

ARTICLE VII: DISPUTE RESOLUTION

Section 7.1. Good Faith Negotiations.

- a) Notification. In the event of any Dispute, the initiating Party shall provide written notice to the other Party detailing the nature of the Dispute.
- b) Negotiation Period. Upon receipt of such notice, the Parties agree to engage in good faith negotiations to resolve the Dispute within thirty (30) days. The Parties shall designate representatives to participate in these negotiations and shall meet at mutually convenient times and locations.

Section 7.2. Mediation.

- a) Agreement to Mediate. If the Dispute is not resolved through good faith negotiations within the specified period, the Parties agree to submit the Dispute to mediation before pursuing any other form of dispute resolution.
- b) Selection of Mediator. The Parties shall mutually select a neutral, qualified mediator with experience in interlocal agreements and public sector disputes. If the Parties cannot agree on a mediator within fifteen (15) days of agreeing to mediate, either Party may request the appointment of a mediator by a recognized mediation organization in Nebraska.
- c) Mediation Process. Mediation shall be conducted in accordance with the rules of the selected mediation organization. The mediation shall take place in Lancaster County, Nebraska, unless otherwise agreed by the Parties. Each Party shall bear its own costs of mediation, and the Parties shall equally share the mediator's fees and any administrative costs unless otherwise agreed.
- d) Confidentiality. All mediation sessions, discussions, and any resulting settlement agreements shall be confidential and shall not be disclosed to any third party, except as required by law or as necessary to enforce a settlement agreement.
- e) Failure to Mediate. If mediation does not result in a settlement within sixty (60) days of commencing mediation, the Parties may proceed to arbitration as outlined in Section 7.3.

Section 7.3. Arbitration.

- a) Binding Arbitration. If mediation fails to resolve the Dispute, the Parties agree to submit the Dispute to binding arbitration before pursuing litigation.
- b) Selection of Arbitrator. The Parties shall mutually select a single, neutral arbitrator with expertise in public sector agreements and the subject matter of the Dispute. If the Parties cannot agree on an arbitrator within fifteen (15) days of agreeing to arbitrate, either Party may request the appointment of an arbitrator by the American Arbitration Association (AAA) or another recognized arbitration body in Nebraska.
- c) Arbitration Process. Arbitration shall be conducted in accordance with the rules of the selected arbitration organization. The arbitration shall take place in Lancaster County, Nebraska, unless otherwise agreed by the Parties. The arbitrator's decision shall be final and binding on both Parties, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
- d) Costs and Fees. Each Party shall bear its own costs and attorney's fees associated with arbitration. The Parties shall equally share the arbitrator's fees and any administrative costs unless otherwise agreed.
- e) Confidentiality. All arbitration hearings, documents, and the arbitrator's decision shall be confidential and shall not be disclosed to any third party, except as necessary to enforce the arbitration award or as required by law.

- f) Limited Right to Appeal. The right to appeal the arbitration award is limited to cases of arbitrator misconduct or a significant procedural error that affects the fairness of the arbitration process.

Section 7.4. Litigation. If the Dispute is not resolved through mediation or arbitration, either Party may initiate litigation in a court of competent jurisdiction in Lancaster County, Nebraska.

Section 7.5. Waiver of Rights. By agreeing to mediation and arbitration, the Parties waive any rights to seek immediate judicial intervention or to appeal any mediation or arbitration outcomes, except as provided under applicable law.

Section 7.6. Venue and Jurisdiction. The Parties agree that any litigation arising out of this Agreement shall be filed and heard in the appropriate court located in Lancaster County, Nebraska. The Parties hereby consent to the exclusive jurisdiction and venue of such courts.

Section 7.7. Costs and Fees.

- a) Allocation of Costs. Except as otherwise provided, each Party shall bear its own costs and expenses incurred in any dispute resolution process, including but not limited to legal fees, mediation fees, and arbitration fees.
- b) Shared Costs. The costs of mediation, including the mediator's fees and administrative expenses, shall be shared equally by the Parties unless otherwise agreed.

Section 7.8. Enforcement of Dispute Resolution.

- a) Binding Effect. The Parties agree that the dispute resolution provisions outlined in this Article are binding and enforceable.
- b) Court Enforcement. Any Party may seek enforcement of the dispute resolution provisions or any resulting settlement agreement or arbitration award in a court of competent jurisdiction.
- c) Exclusions. The dispute resolution process outlined in this Article does not apply to matters that are non-disputable under the laws of the State of Nebraska or that are expressly excluded by this Agreement.
- d) Good Faith Obligation. The Parties commit to acting in good faith throughout the dispute resolution process, striving to reach a fair and equitable resolution without unnecessary delay or obstruction.

ARTICLE VIII: MISCELLANEOUS

Section 8.1. Public Announcements.

~~Control and Coordination. The City shall have exclusive control over all public announcements, press releases, and public statements related to this Agreement and the~~

~~Facility. The SFD must obtain prior written approval from the City for any public communication or disclosure concerning the Facility, its operations, or this Agreement. The City reserves the right to review and edit any proposed public announcements to ensure consistency, accuracy, and alignment with the Agreement's objectives.~~

~~a)~~

~~b)~~a) Joint Press Releases. Any press releases jointly issued by the Parties must be approved by the City's designated spokesperson before distribution.

~~c)~~b) Media Inquiries. The City shall manage all media inquiries related to the Facility and this Agreement. The SFD shall direct all such inquiries to the City's spokesperson unless otherwise agreed in writing.

~~d)~~c) Facility Events. Announcements regarding events at the Facility, such as grand openings, training sessions, or community outreach programs, shall be coordinated and approved by the City.

~~e)~~d) Joint Events. For events co-hosted by the City and the SFD, both Parties must agree on the messaging and content, with the City retaining final approval authority.

~~f)~~e) Emergency Situations. In the event of an emergency or crisis involving the Facility, the City shall lead all public communications, ensuring timely and accurate information is disseminated to the public.

~~g)~~f) Unified Messaging. The Parties shall present a unified message to the public to maintain trust and clarity during crisis situations.

Section 8.2. Force Majeure.

a) Notification and Mitigation. The Party affected by a Force Majeure event shall promptly notify the other Party in writing, detailing the nature of the event and its anticipated impact on performance. The affected Party shall use all reasonable efforts to mitigate the effects of the Force Majeure event and resume performance as soon as possible.

b) Suspension of Obligations. Obligations under this Agreement shall be suspended for the duration of the Force Majeure event, provided that the affected Party continues to use reasonable efforts to overcome the impediment. If the Force Majeure event continues for a period exceeding sixty (60) days, either Party may terminate this Agreement upon providing written notice to the other Party.

Section 8.3. Notice. All notices and other communications under this Agreement shall be in writing and shall be deemed duly given on (a) the date of delivery if delivered personally, (b) on the date sent by fax (with confirmation of transmission) or electronic mail if sent during normal business hours of the recipient during a business day, and otherwise on the next business day, if sent after normal business hours of the recipient, provided that in the case of electronic mail, each notice or other communication shall be confirmed within one business day by dispatch of a copy of such notice pursuant to one of the other method described herein, (c) if dispatched via a nationally recognized overnight courier service (delivery receipt

requested) with charged paid by the dispatching party, on the later of (1) the first Business day following the date of dispatch, or (ii) the scheduled date of delivery by such service, or (d) on the fifth Business day following the date of mailing, if mailed by registered or certified mail, return receipt requested, postage prepaid, to the party to receive notice, at the following addresses, to such other addresses as a party may designate from time to time by notice in accordance with this Section.

If to the City:

City of Waverly, NE
Attn: City Administrator
PO Box 427
14130 Lancashire Street
Waverly, Nebraska 68462

With a copy to:

City Attorney
Mark Fahleson
Rembolt Ludtke LLP
1128 Lincoln Mall, Suite 300
Lincoln, NE 68508

If to the SFD:

Waverly Suburban Fire District
14001 Fletcher Avenue
Lincoln, NE 68527

Section 8.4. Severability. If any provision of this Agreement is found to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect. The Parties agree to replace any invalid or unenforceable provision with a valid and enforceable provision that most closely reflects the original intent of the Parties.

Section 8.5. Assignment. Neither Party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party. Any permitted assignment shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

Section 8.6. Legal Representation. The City acknowledges that Rembolt Ludtke LLP represents it in matters related to this Agreement. The SFD retains the right to appoint its own legal counsel at its own expense to review and negotiate this Agreement. The Parties agree that no third-party entity or individual shall have any authority to bind either Party or influence the terms of this Agreement.

Section 8.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska, without regard to its conflict of laws

principles. The Parties agree to comply with all applicable federal, state, and local laws, regulations, and ordinances in the performance of their obligations under this Agreement.

Section 8.8. Good Faith. The Parties agree to act in good faith to carry out the terms and intent of this Agreement, fostering a cooperative and mutually beneficial relationship. In the spirit of good faith, the Parties shall address and resolve any issues or concerns promptly and constructively, seeking solutions that uphold the objectives of this Agreement.

Section 8.9 Entire Agreement. This Agreement constitutes the entire understanding between the Parties regarding its subject matter and supersedes all prior discussions, negotiations, and agreements, whether written or oral, relating thereto. Notwithstanding the foregoing, this Agreement is intended to implement and be consistent with the terms outlined in the LOI.

Section 8.10. Amendments. Any amendments or modifications to this Agreement must be made in writing and signed by duly authorized representatives of both Parties. Amendments shall be attached to this Agreement as additional Exhibits and shall be incorporated by reference as if fully set forth herein.

Section 8.11. Authority to Bind. Each signatory represents and warrants that they have the requisite authority to execute this Agreement on behalf of their respective Party and to bind their Party to the terms and conditions herein. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

Section 8.12. Headings, Gender, and Number. Headings used in this Agreement are for convenience only and shall not affect the interpretation of any provision. Words of any gender shall include all genders, and words in the singular shall include the plural and vice versa, unless the context clearly dictates otherwise.

Section 8.13. Non-Discrimination. The Parties agree to comply with all applicable federal, state, and local laws prohibiting discrimination in all aspects of their operations, including employment, services, and public interactions. The Parties shall ensure equal opportunity and fair treatment for all individuals without regard to race, color, religion, sex, national origin, age, disability, or any other protected characteristic.

Section 8.14. Timely Response Requirement. Whenever this Agreement requires that the City seek consent, approval, or input from the SFD, the SFD shall provide its written response within seven (7) calendar days of receiving the City's written request and any supporting materials. If the matter requires a formal vote of the SFD board, the SFD shall provide its written response within ten (10) calendar days. If no response is received within the applicable time period, the SFD's approval shall be deemed granted. The SFD shall not unreasonable delay or withhold any required response, particularly where the proposed action is consistent with the terms of this Agreement and applicable standards. Both Parties acknowledge that the subject matter of this Agreement involves time-sensitive decisions and that timely coordination, approvals, and communication are a high priority to avoid unnecessary delays or disruptions.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Interlocal Agreement for Fire Station as of the Effective Date.

CITY OF WAVERLY, NEBRASKA

By: _____
Name: _____
Title: _____

WAVERLY SUBURBAN FIRE DISTRICT

By: _____
Name: _____
Title: _____

EXHIBIT A

LOI

EXHIBIT B
Preliminary Plans

EXHIBIT C
Final Design Plans

EXHIBIT D
Cost Allocation

EXHIBIT E
Payment Schedule

EXHIBIT F

Deed

Exhibit G
Donation Fund Expense Policy

Exhibit H
Equipment Fund Expense Policy

| [4914-9955-1314, v. 14896-6228-5852, v. 1](#)