

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number \_\_\_\_\_

Meeting Type: Select...

Meeting Date: 8/8/13

Action Requested By:  
Fire and Rescue

Agenda Item Type  
Select...

Subject Matter:

Agreement for a subscription to the National Fire Codes

Exact Wording for the Agenda:

Agreement between the City of Huntsville and the National Fire Protection Association for an On Line Multi-User Subscription to the National Fire Codes.

**Note: If amendment, please state title and number of the original**

Item to be considered for: Action Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

This is a renewal to our subscription to the National Fire Codes.

Associated Cost: \$5850.00

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: BW McFarland Date: 6/26/2013

ROUTING SLIP  
CONTRACTS AND AGREEMENTS

8/8/13 *ye*

Originating Department: Fire and Rescue

Council Meeting Date: 7/11/2013

Department Contact: Lesley Easter

Phone # 427-5053

Contract or Agreement: Agreement

Document Name: NPFA Code Subscription 2013

City Obligation Amount: \$5850.00

Total Project Budget: \$5850.00

Uncommitted Account Balance: \$5850.00

Account Number: 01-5300-0408-1201

**Procurement Agreements**

<b>Not Applicable</b>	<b>Not Applicable</b>
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**Grant-Funded Agreements**

<b>Not Applicable</b>	Grant Name:
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Department	Signature	Date
1) Originating	<i>DWM</i>	6-26-13
2) Legal	<i>Mary Clatus</i>	7-17-13
3) Finance	<i>[Signature]</i>	7/17
4) Originating	<i>DWM</i>	6-26-13
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

**RESOLUTION NO. 13-\_\_\_\_\_**

**BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an Agreement by and between the City of Huntsville and the National Fire Protection Association, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Agreement Between the City of Huntsville and the National Fire Protection Association" consisting of six (6) pages and the date of August 8<sup>th</sup>, 2013, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

**ADOPTED** this the 8<sup>th</sup> day of August, 2013.

\_\_\_\_\_  
President of the City Council  
Of the City of Huntsville,  
Alabama

**APPROVED** this the 8<sup>th</sup> day of August, 2013.

\_\_\_\_\_  
Mayor of the City of Huntsville,  
Alabama



**National Fire Codes© On Line Multi-User Subscription Service**  
**ELECTRONIC LICENSE AND MAINTENANCE AGREEMENT**

THIS AGREEMENT (the "Agreement") is made and entered into so as to be effective as of the date set forth in Attachment 1 by and between, Huntsville Fire & Rescue, (Customer or You) with a usual place of business at 815 Wheeler Avenue, Huntsville, AL and the **National Fire Protection Association**, a Massachusetts Not-for-Profit Corporation with offices at 1 Batterymarch Park, Quincy, MA 02169-7471 (NFPA), to establish the terms and conditions between them for a license by to access and use information from the NFPA. This agreement includes and is further supported by Attachment 1, which sets out further terms and conditions that are hereby incorporated within this Agreement.

**DEFINITIONS**

- 1.1 **Attachment 1.** Attachment 1 shall mean the most recently executed attachment to this Agreement.
- 1.2 **Agreement.** Shall mean this Agreement between the Customer and the NFPA.
- 1.3 **Customer.** Customer (which may be sometimes referred to herein as You or Your shall mean the person or organization, whether or not incorporated, that has entered into this Agreement with the NFPA and is responsible for payment and for enforcement of the obligations hereunder. Within the context of this Agreement, Customer will, unless otherwise clear from context, include the Users, individually and collectively.
- 1.4 **Data Base.** Data Base shall mean the NFPA's electronic storage where the Information that is the subject of this license is maintained.
- 1.4 **Information.** Information shall mean the most recent electronic version of the documents of the National Fire Codes available at [www.nfpacodesonline.org](http://www.nfpacodesonline.org) and any released updates and/or corrections.
- 1.5 **Password.** Password shall mean the code given by the NFPA to the Customer that can be used by the Users to access the data base.
- 1.6 **Subscription Service.** Subscription Service shall mean a commitment by NFPA to the Customer for access to the NFPA Data Base containing the information over a set term for all or part of the National Fire Codes of the National Fire Protection Association.
- 1.7 **User.** User shall mean an individual designated by the Customer as being among the discrete group of authorized employees having regular access to and use of the Information.
- 1.8 **You.** When used in context of rights and restrictions under this agreement You or Your is synonymous with Customer and will include all of the Users.

**2 LICENSE**

- 2.1 Conditioned upon compliance with the terms of this agreement NFPA hereby grants to Customer a nonexclusive, non-concurrent, nontransferable license for use solely within the internal business of the Customer and those limited number of Users set forth in Attachment 1, to use the Password to access the

NFPA Data Base allowing connection to the Information contained therein, pursuant to the provisions of this Agreement as hereinafter set out.

2.2 Use of the Password is limited to the individual Users. The only individuals authorized under this agreement to access the Data Base by means of the Password are those discrete Users, not in excess of the number set out in Attachment 1, authorized by the Customer to make such access at any time.

2.2 All right, title, and interest, including but not limited to the copyright in the Information are the property of NFPA, and shall remain with the NFPA, and Customer obtains only the license as specified herein.

### **3. DELIVERY**

NFPA shall provide to the Customer a common user name and password for the discreet licensed Users to allow such Users to access the Information pursuant to this agreement. NFPA may change the common user name or password at any time for good cause as determined by NFPA including transfer as allowed hereunder or as a result of threatened, perceived or actual copying, or to mitigate the likelihood of same. Delivery of the user name and password shall be the full extent of the NFPA's delivery to the Customer hereunder.

### **4. PRICE, PAYMENT SCHEDULE**

4.1 Fees. Customer shall annually pay the NFPA for the license granted and services rendered the amount as set forth in Attachment 1, which amount NFPA may increase as of the inception of any annual term, having given thirty (30) days notice of such increase.

4.2 Invoicing Terms. Customer will pay within Thirty (30) days of receipt of invoice(s) for the license granted and services rendered under this Agreement, unless the amount of the invoice is subject to a "good faith" dispute. Customer shall notify the NFPA in writing within twenty (20) days of actual receipt of an invoice that it intends to dispute said invoice.

### **5. COPYRIGHT**

The Information stored in the NFPA Data Base to which the Customer (hereinafter You and including all Users individually and collectively) gains access through this Agreement, is owned and copyrighted by NFPA and is protected by U.S. copyright law and international treaty provisions. You may make single copies of insubstantial portions of the Information for your own use, but not for distribution. You may not transmit, or in any manner distribute, or copy onto any storage device, all or any part of the Information whether downloaded, printed or in electronic fashion except in accordance with the fair use principles of the copyright act. You may not make multiple copies of all or any portion of the Information in print, electronic or any other fashion nor may you allow or permit any other person or organization to make such copies. You may not and You may not permit others to prepare derivative works from any or all of the Information, or use the Information in any manner that infringes the intellectual property or other rights of another party. Any Information copied from this product to the extent allowed by this license agreement must bear NFPA copyright attribution. Under no circumstances, may the Information or any significant portion of the Information, be copied, used, displayed and/or distributed in any media without the permission of NFPA.

Should You seek permission to copy, use, display and/or distribute any of the Information or other NFPA material obtained through this agreement, other than as and to the extent allowed herein, request for such permission will be considered based on written request to the Director of Licensing, NFPA, 1 Batterymarch Park, PO Box 9101, Quincy, MA 02169-9101. Except for the license granted in this agreement, all rights, title and interest in the Information in all languages, formats and media throughout the world including all copyrights, are and will continue to be the exclusive property of the NFPA.

### **6. OTHER RESTRICTIONS**

6.1 Use of Password. This license agreement is Your proof of license to exercise the rights granted herein and must be retained by You. The terms of this Agreement are in addition to and not in replacement or derogation of the terms and conditions included in Attachment 1. You may not transfer, assign, lease, rent, display within or outside of your organization or sublicense the Password. You may not in any other way, whether through negligence or intentional act, allow any unlicensed person(s) to become aware of the Password. Except where NFPA has actual notice of loss, theft or unauthorized use of your credentials, (i) you are responsible for all activity occurring in your account, and (ii) NFPA shall have the right, without further inquiry, to rely on the provision of your credentials as sufficient to authenticate your use of the subscription services. You may not use or permit the software to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise. You may transfer your rights under the agreement for the remainder of then current term provided: (i) you cease using the Password or exercising any other rights granted hereunder, (ii) transfer this license agreement along with the written materials (iii) retain no copies of any written or other related material; (iv) the recipient agrees to the terms of this license Agreement; and, (v) NFPA is notified of the transfer.

6.2 Access to Data Base. You may not access the NFPA Data Base except in the manner and for the purposes as set forth herein. You may not make any attempt to access the Data Base in any other way; you may not reverse engineer, decompile, decrypt, disassemble, correct, write into, or in any way make contact with the Data Base except for the purposes and in the manner set out herein.

## 7. TERMINATION

7.1 Termination by Customer. Customer may terminate this Agreement upon written notice if NFPA is in default of any provision of this Agreement and such default is not cured within thirty (30) days of receipt of written notice of default by NFPA.

7.2 Termination by NFPA. NFPA may terminate this Agreement if Customer is in default of its payment obligations under this Agreement, or if Customer is in violation or default of any other terms or conditions in this agreement, the Attachment or the referenced End User License Agreement and such violation or default is not cured within thirty (30) days of receipt of written notice of such violation or default by Customer, except that Customer's "good faith" dispute of any invoice shall not constitute a default of a payment obligation. Determination of default or violation shall be in the discretion of NFPA based on good cause. Nothing herein shall prevent or inhibit NFPA from immediately denying access to the Information or changing the password without notice in circumstances where such action is taken in order to protect its rights in the Information or under this agreement.

7.3 End of Term Termination. At the end of term specified on Attachment 1, all rights to use the Information will cease and access will be denied.

## 8. WARRANTIES

8.1 Title. NFPA represents and warrants that it has either sufficient license to use or full title to and ownership of the Information and Documentation and all Intellectual Property Rights embodied in or used in connection therewith, free and clear of liens, claims, and encumbrances, and that it has full power and authority to grant the licenses in Section 2 above.

8.2 Disclaimer. EXCEPT FOR THE WARRANTIES IN THIS AGREEMENT, NFPA MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, SUITABILITY, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, OR THAT NFPA SERVICES WILL BE UNINTERRUPTED OR ERROR FREE WITH RESPECT TO THE SUBSCRIPTION SERVICE INCLUDING THE INFORMATION.

8.3 **EXCLUDED LIABILITY.** TO THE MAXIMUM EXTENT ALLOWED BY LAW, EXCEPT FOR LOSS OR DAMAGE CAUSED BY INTENTIONAL TORTIOUS ACTS OR OMISSIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION), OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE PERFORMANCE OR FAILURE OF PERFORMANCE OF ANY PROVISION OF THIS AGREEMENT (INCLUDING SUCH DAMAGE INCURRED BY THIRD PARTIES) OR THE USE OF THE INFORMATION REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY OF CONSEQUENTIAL DAMAGES. UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER FOR DAMAGES (OR AMOUNTS) IN EXCESS OF THE TOTAL FEES PAID AND/OR PAYABLE FOR THE APPLICABLE SERVICES FOR THE FULL INITIAL TERM OR RENEWAL TERM IN WHICH THE INCIDENT GIVING RISE TO THE CLAIM HEREUNDER AROSE.

SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

Customer acknowledges and agrees that NFPA has set its prices and entered into the agreement in reliance upon the disclaimers of warranty and limitation exclusion of liability set forth hereinabove and that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss) and that the same form an essential basis for the bargain between the parties.

## 9. TECHNICAL SUPPORT

During the term of this agreement or any extension hereof, NFPA shall make qualified personnel available to Customer during the hours of 8am-5pm, Eastern Standard Time, on normal business days, excluding holidays, through the following methods:

- E-mail: [nfpa.support@gvpi.com](mailto:nfpa.support@gvpi.com)
- Phone: (703) 548-4657

## 10. MISCELLANEOUS

10.1 **Governing Law and Venue.** This Agreement shall be governed and construed according to the laws of the Commonwealth of Massachusetts, without regard to its conflicts of law principles. The parties agree that the State and Federal courts sitting in Massachusetts will have exclusive jurisdiction over any claim arising out of this agreement and each party consents to the exclusive jurisdiction of such courts.

10.2 **Assignment.** Neither party may assign its rights, duties or interests in this Agreement, without the prior written consent of the other, except that (i) NFPA may assign certain duties in accordance with section 9 hereof and (ii) Customer may transfer all rights under this agreement under the terms of section 6 hereof, and (iii) Customer may assign its rights, duties and interests under this Agreement to an affiliate, subsidiary, successor or parent company of Customer upon written notice to NFPA without NFPA's prior written consent.

10.3 **Waiver.** No waiver of any breach or failure by either party to enforce any of the terms or conditions of this Agreement will, at any time, in any manner, limit or waive such party's right thereafter to enforce and to compel strict compliance with every term and condition hereof.

10.4 **Force Majeure.** No delay in or failure of performance by either party under this Agreement will be considered to be a breach hereof if and to the extent that such delay or failure of performance is caused by an occurrence or occurrences beyond the reasonable control of the party affected.

10.5 **Notices.** Unless otherwise provided in this Agreement, any notice required to be given hereunder will be addressed to the respective parties hereto at the following address:

To Customer: Huntsville Fire & Rescue  
P O Box 308  
815 Wheeler Avenue  
Huntsville  
AL  
35804  
**Attention:** \_\_\_\_\_

To NFPA: National Fire Protection Association  
1 Batterymarch Park  
Quincy, MA 02169-7471  
**Attention:** National Sales Manager

Notices shall be sent by first class mail postage prepaid or by recognized commercial express mail with a record or tracking method to verify receipt.

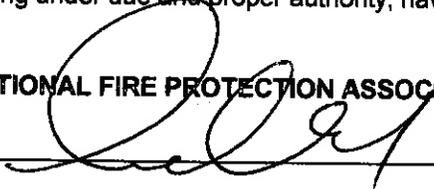
10.6 **Entire Agreement.** This Agreement, including the Attachment 1 appended hereto and the End User License Agreement provided as part of the electronic access, constitutes the entire agreement and understanding between Customer and NFPA with respect to the subject matter hereof. No modification of this Agreement will have any force or effect unless such modification is in writing and signed by duly authorized representatives of both parties.

**IN WITNESS WHEREOF**, the parties hereto each acting under due and proper authority, have executed this agreement, as of the date first set forth above.

**CUSTOMER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**NATIONAL FIRE PROTECTION ASSOCIATION**

By:  \_\_\_\_\_  
Name: Andrew Wandell  
Title: AVP, Marketing  
Date: 8/19/13

**National Fire Codes® On Line Multi-User Subscription Service**  
**ELECTRONIC LICENSE AND MAINTENANCE AGREEMENT**  
**ATTACHMENT 1**

This Attachment 1 is a part of, subject to, and incorporates by reference the terms and conditions of the Electronic License and Maintenance Agreement (the Agreement). All terms not defined herein shall have the meanings ascribed to them in the Agreement. This attachment may be amended from time to time.

**1. DEFINITIONS**

1.1 Term of Use. Term of Use shall mean the 12 months from the 1<sup>st</sup> day of the month in which a signed copy of the Agreement and a paper copy of a purchase order or payment in full is received by NFPA.

1.2 License. The License shall be a right of electronic access to the NFPA Data Base including the Information, granted to the Customer by NFPA. Such right being specifically limited by all terms and conditions of the Entire Agreement as defined in Section 10.6 of the Agreement.

1.4 Fee. Fee shall mean Customer's payment for the rights granted herein.

**2. TERM OF USE**

The Agreement is made and entered into so as to be effective on 9/1/2013 until 8/31/2014.

**3. LICENSED USERS**

3.1 Notwithstanding any other provisions of Section 2 of the Agreement, NFPA hereby grants to Customer 13 licenses for a term of one year, or for a lesser term upon default of the Agreement, for not more than a total of 13 users as selected by the Customer.

3.2 The Subscription Service is available ONLY for the number of designated users identified pursuant to paragraph 3.1 of Attachment 1 and may not be shared with other non-designated persons or entities. The Customer and each designated User are responsible for the confidentiality and use of the user's name and password and all activity and use under the user name and password.

**4. FEES**

The Customer shall pay to NFPA an annual fee of \$5,850.00 for the license defined in this Attachment 1, in accordance with the provisions of Section 4 of the Agreement.

**IN WITNESS WHEREOF**, the parties hereto each acting under due and proper authority, have executed this agreement, as of the date first set forth above.

**CUSTOMER**

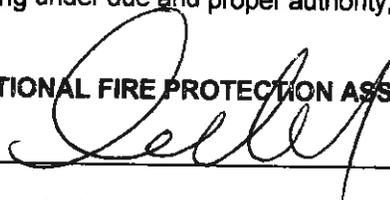
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**NATIONAL FIRE PROTECTION ASSOCIATION**

By:  \_\_\_\_\_

Name: Andrew Wandell

Title: AVP, Marketing

Date: 6/19/13