

TO: Mayor Robinson and City Council

FROM: Jeffrey L. McCormick, Chief of Police

SUBJECT: Warning Siren Joint Power Agreement (JPA)

DATE: September 14, 2017

BACKGROUND

In 2008 the Warning Siren Joint Power Agreement (JPA) was updated to provide for replacement of the old sirens with the current omni-directional warning sirens. That resulted in the installation of three new sirens under the JPA terms, but it also required an annual maintenance and monitoring contract with a siren install vendor. That provision was part of the Federal Energy Regulatory Commission (FERC) requirements at the time.

Since the 2008 agreement was signed the City and Dakota County each installed an additional siren that was not part of the JPA, but these sirens are integrated into our warning system. In 2015/2016 the cost of the annual maintenance and monitoring contract was discussed and research was done to determine that it was no longer a requirement, but could not be discontinued because of the terms of the JPA. The cost share provisions were also discussed in the context of ongoing versus capital costs.

From the research and discussions the framework for updating the JPA occurred. The two areas of change is the removal of the language requiring an annual maintenance and monitoring contract, and the addition of cost share for ongoing costs. The basic provisions of the JPA remained the same with the following changes:

- The requirement for an annual maintenance and monitoring contract is removed. That is replaced with the requirement for an Annual Maintenance Plan. The plan would include purchasing a computer program and related hardware to conduct ongoing monitoring and testing of the sirens remotely, as well as a schedule for checks and inspections. It is felt that this combined with the periodic monitoring of the sirens during activations that issues may be discovered faster than before. The cost of this new monitoring method is expected to be recouped over a 18 month period or less, based on the current cost of the annual maintenance and monitoring contract.
- The cost share for ongoing expenses included in accordance with the JPA would change to 1/3 for each of the three entities. It was felt that cost share was simpler and better reflected the benefit the City derives from the use of the warning sirens for purposes outside just a flood warning. Based on past costs I expect that difference to be minor and no additional adjustment is planned for the budget.

The JPA changes took some time for the two County Attorney's Offices to agree on the language used in the changes, but they reached a final version in August. The revised JPA has been reviewed by Roger Knutson, the City's Attorney, and was acceptable to him. Dakota County Board has already approved the revised JPA and it will be going to the Goodhue County Board soon.

REQUESTED COUNCIL ACTION

Motion and approval of revised the JPA for the Byllesby Dam Downstream Warning System, and authorize the signing of that agreement

**JOINT POWERS AGREEMENT BETWEEN
COUNTY OF DAKOTA, COUNTY OF GOODHUE
AND THE CITY OF CANNON FALLS
FOR COST SHARING AND MAINTENANCE OF
BYLLESBY DAM DOWNSTREAM WARNING SIRENS**

This joint powers agreement (Agreement) is between the County of Dakota; the County of Goodhue; and the City of Cannon Falls, political subdivisions of the State of Minnesota, herein referred to at times as Party or the Parties.

WHEREAS, Minn. Stat. §471.59 allows two or more governmental units to enter agreements to jointly or cooperatively exercise any power common to the contracting parties or any similar powers; and

WHEREAS, Dakota County is the owner of the Byllesby Dam; and

WHEREAS, the Counties' Emergency Action Plan for the Byllesby Dam includes a siren to warn people downstream of the dam if a dam breach or failure results in unsafe high water (flooding) of the Cannon River; and

WHEREAS, the City of Cannon Falls and Goodhue County are adjacent to and downstream from the Byllesby Dam; and

WHEREAS, under a joint powers agreement executed by the Parties in 1996, a Warning Siren was installed and the 1996 siren was replaced on April 18, 2008 with a new siren; and

WHEREAS, the parties previously entered into a Joint Powers Agreement dated November 3, 2003, for sharing costs and responsibilities related to the 1996 Warning Siren, its ownership, maintenance, repair and replacement; and

WHEREAS, the Parties entered into a revised joint powers agreement on or about January 9, 2009 to provide for the cooperative installation and maintenance of additional Warning Sirens; and

WHEREAS, a siren location analysis recommends placement of sirens to provide comprehensive warning coverage of the potential flood inundation areas to serve a larger geographic area; and

WHEREAS, the Warning Sirens will provide warnings for severe weather and flooding; and

WHEREAS, the Parties wish to revised the terms of the 2009 Joint powers agreement regarding the operation and maintenance of the Warning Sirens; and

WHEREAS, the governing bodies enter this amended and restated Agreement to protect public safety and welfare.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein the Parties agree as follows:

1. GENERAL TERMS

1.1 **Recitals.** The recitals set forth in the preamble clauses above are incorporated herein by reference.

1.2 **Purpose.** The purpose of this Agreement is to define responsibilities of each Party for the purchase, installation, ownership, maintenance, repair and replacement of Warning Sirens and one Severe Weather Siren in the vicinity of the City of Cannon Falls.

1.3 **Cooperation.** The Parties will cooperate and use reasonable efforts to carry out the terms of this Agreement. The Parties will in good faith resolve disputes in an equitable and timely manner.

1.4 **Term.** This Agreement shall be effective on the date all Parties have executed this Agreement and will continue in effect until terminated under the law or by the terms of this Agreement.

2. PURCHASE AND INSTALLATION OF WARNING SIRENS

2.1 **Purchase of Warning Sirens by the City of Cannon Falls.** At a future date, continued growth of the City of Cannon Falls may require additional Warning Sirens to be added for flood warning purposes. The City may enter into one or more contracts to install sirens upon the agreement of Dakota and Goodhue Counties. The Parties will work together to prepare the appropriate requests for services or bids, review responses, and select the contractor with whom the City will contract for installation of the new sirens. The contract must include all costs associated with monitoring, backup control equipment and software.

2.2 **Share of Contract Costs.** The Parties agree to share in the costs to buy and install future Warning Sirens as follows:

- A. The City will pay 25% of the costs of the Sirens. Dakota County will pay 60% and Goodhue County will pay 40% of the remaining costs of the Sirens.
- B. The City will provide sites for all sirens at no cost to the Counties.
- C. The City will send an invoice to Dakota County and Goodhue County individually and each Party will pay their respective share of the costs within 60 days.

2.3 **Grant or Other Funds.** The Parties will cooperate to secure grants that could be used to reimburse the parties for the purchasing and installing of the Sirens. The Parties agree to deduct the full grant amount from the Siren project costs to determine the final costs owed by each Party under this Agreement. If the City applies for and is granted external funding for one or more Sirens, all such funding will go towards the costs associated with that siren(s).

2.4 **Project Phasing.** The Sirens may be bought and installed in phases as grant funding is available to reduce the cost to the Parties while still meeting public safety needs and FERC requirements.

3. OPERATION, MAINTENANCE, REPAIR AND REPLACEMENT OF DUAL WARNING SIRENS

3.1 **Electric Services.** The City agrees to pay the monthly cost of providing electric service to all warning sirens at no cost to the Counties.

3.2 **Monitoring, Maintenance and Repairs.** The City agrees to maintain and insure operation of the sirens when issues occur or maintenance is needed. The Parties agree to share in the cost of the annual maintenance as follows: The City will pay 33%, Dakota County will pay 33% and Goodhue County will pay 33% of the cost. The City will coordinate the maintenance services and send an invoice to Dakota County and Goodhue County separately for reimbursement. Each party will pay their respective share of the costs within 60 days of invoice receipt. The Parties will create an annual maintenance plan for the Warning Siren system and will review the Plan at least once every three years. The Plan will include the following concepts. The City will provide monitoring services as "in-kind" and will utilize city staff to complete those services. Some equipment may be required to conduct monitoring (receiver, etc.) for the initial purchase and replacement. The City will use existing computers to operate the software required. If the City lacks the technical or physical resources to complete its maintenance obligations, the Parties will confer and coordinate system monitoring and maintenance. The Parties will coordinate the routine testing of the radio linkage from the Dam to the Sirens. The City will first notify and get the written approval of the Dakota County Environmental Resources Director if the costs incurred under this subparagraph exceed \$5,000. Before giving written approval, the Dakota County Water Resources Director will give notice to the Goodhue County Public Works Director and get Goodhue County's approval for such costs.

4. OWNERSHIP

4.1 **Ownership.** The Sirens serving the inundation area will be jointly owned by the Parties in proportion to their cost share obligations.

- 4.2 **Changes to Sirens.** All Parties must approve in writing all changes, modifications or additions to the Warning Sirens. Any changes, modifications, or additions to the stand-alone Severe Warning Siren will be made at the sole discretion of the City.

5. INDEMNIFICATION.

Each Party to this Agreement is liable for the acts or omissions (collectively acts) of its own officers, employees and agents and the results of the acts to the extent allowed by law. A Party is not responsible for the acts of another Party, its officers, employees and agents and the results of the acts. The terms of the Municipal Tort Claims Act, Minnesota Statutes Chapter 466 and other applicable laws apply to this Agreement. Under Minnesota Statute Section 471.59 subdivision 1a, for the purpose of this JPA the Parties are deemed to be a single governmental unit and the total cumulative liability for the Parties shall not exceed the limits on governmental liability for a single governmental unit as specified in Minnesota Statute Section 466.04, subdivision 1. This paragraph does not protect a Party from liability for its own independent acts or omissions not directly related to this Agreement.

6. DEFAULT - FORCE MAJEURE.

None of the Parties shall be held responsible for delay or failure to perform when such delay or failure is due to any of the following, unless the act or occurrence could have been foreseen and reasonable action could have been taken to prevent the delay or failure: fire, flood, epidemic, strikes, wars, acts of terrorism, acts of God, unusually severe weather, acts of public authorities, or delays or defaults caused by public carriers; provided the defaulting Party gives notice as soon as possible to the other Party of the inability to perform.

7. TERMINATION AND WITHDRAWAL

- 7.1. **Termination by Agreement.** Any Party may terminate this Agreement by providing written notice to the other Parties of its intent to terminate at least three years before the effective date of the termination. This Agreement may also be terminated by agreement of all the Parties.

- 7.2. **Effect of Termination.** Termination of this Agreement shall not discharge any liability, responsibility or right of any Party that arises from the performance of, or failure to adequately perform, the terms of this Agreement prior to the effective date of termination. Termination shall not discharge any obligation that by its nature would survive after the date of termination, including the Standard Assurances attached to this Agreement as Exhibit 2.

- 7.3. **Disposition of Dual Warning Sirens On Termination of this Agreement.** Prior to the termination date, the Parties will decide if the Dual Warning Sirens should be sold or disposed of on termination of this Agreement or continued to be used by the City as its warning sirens. The Parties will share the profit or costs for disposal proportionate to their respective contribution for the initial purchase and installation of the Dual Warning Sirens. If this Agreement is terminated, the City has a right of first refusal to buy the equipment at the disposal value and pay the Counties their proportionate shares.

8. CONTRACT RIGHTS/REMEDIES

- 8.1. **Rights Cumulative.** All remedies available to a Party under the terms of this Agreement or by law are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

- 8.2. **Waiver.** The waiver of any default by a Party, or the failure to give notice of any default, shall not constitute a waiver of any subsequent default or be deemed to be a failure to give such notice with respect to any subsequent default.

9. AUTHORIZED REPRESENTATIVES AND LIAISONS

- 9.1 **Authorized Representatives.** The following persons are the authorized representatives of the Parties for purposes of this Agreement. They have authority to bind the Party they represent and

to consent to modifications and subcontracts, except that, as to each Participant, the authorized representative shall have only the authority specifically or generally granted by their governing body. Notification required to be provided under this Agreement must be mailed by Certified U.S. Mail to:

Dakota County
Director, Physical Development Division
14955 Galaxie Ave.
Apple Valley, MN 55124
(952) 891-7000

Goodhue County
County Administrator
509 W. 5th St.
Red Wing, MN 55066
(651) 385-3000

Cannon Falls
City Administrator
918 River Road
Cannon Falls, MN 55009
(507) 263-9300

- 9.2 **Liaisons.** To assist the Parties in the day-to-day performance of this Agreement and to develop service, ensure compliance and provide ongoing consultation, a liaison shall be designated by each Participant. The Parties shall keep each other informed in writing of any change in their liaison. At the time of execution of this Agreement the following persons are the liaisons:

Dakota County:
Georg Fischer, Director
Environmental Resources Department
Western Service Center
14955 Galaxie Ave.
Apple Valley, MN 55124
(952) 891-7554
georg.fischer@co.dakota.mn.us

Goodhue County:
Greg Isakson
County Engineer
Goodhue County Public Works
PO Box 404
Red Wing, MN 55066
(651) 385-3025
greg.isakson@co.goodhue.mn.us

City of Cannon Falls:
Jeff McCormick
Emergency Management Director
City Hall
918 River Road
Cannon Falls, MN 55009
(507) 263-2278
jmccormick@cannonfallsmn.gov

10. **AMENDMENTS.**

Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing and signed by the authorized representatives of all Parties.

11. **SEVERABILITY.**

The provisions of this Agreement are severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to any Participant.

12. **MERGER.**

This Agreement is the final expression of the agreement of the Parties and the complete and exclusive statement of the terms agreed upon, and shall supercede all prior negotiations, understandings and agreements. There are no representations, warranties, or stipulations, either oral or written, not herein contained. The parties agree that upon execution of this Agreement the Joint Powers Agreements executed by the parties dated November 3, 2003 and January 9, 2009 are terminated and superseded by this Agreement.

13. COUNTERPARTS.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below:

[The remainder of this page has intentionally been left blank.]

Approved as to form:

[Signature]
Assistant Dakota County Attorney/Date

Approved by Dakota County Board
Resolution No. 17-434

COUNTY OF DAKOTA

By [Signature]
Mike Slavik, Chair
Dakota County Board of Commissioners
Date of Signature 8-29-17

Attest:
[Signature]
Clerk to the Board
Dated: 8-29-17

Approved as to form:

Assistant Goodhue County Attorney/Date

COUNTY OF GOODHUE

By: _____
Dan Rehtzigel, Chair
Goodhue County Board of Commissioners
Date of Signature _____

By: _____
Scott Arneson
Goodhue County Administrator
Date of Signature _____

CITY OF CANNON FALLS

By: _____
Lyman M. Robinson, Mayor
Date of Signature _____

By: _____
Ronald S. Johnson, City Administrator
Date of Signature _____

KS16-38 2016 Byllesby Dam Warning Sirens JPA v4 (Final)