

**TO:** Mayor Althoff and City Council

**FROM:** Jeffrey L. McCormick, Chief of Police

**SUBJECT:** Warning Siren Annual Service Agreement

**DATE:** September 19, 2019

**BACKGROUND**

In 2017 the Warning Siren Joint Power Agreement (JPA) was updated from the 2008 JPA which 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. In 2016 research determined an annual maintenance and monitoring contract was no longer a requirement. The updated JPA was approved by the City Council on September 19, 2017. The 2017 JPA removed that requirement and the process of moving to an annual service agreement was started. A consultant that Dakota County was using on the Byllesby Dam communication equipment assisted in the process.

A request for proposals (RFP) was put out and the consultant reviewed the replies and recommended ANCOM Communication. The service agreement will cover the three (3) sirens that are part of the JPA, it will also cover the City owned siren by the mall. Dakota County is determining if they want to include the siren they own at the Byllesby Dam by this service agreement, but that option is built into the agreement. The cost of the sirens wholly owned will be that government entity's responsibility. The costs of sirens that are part of the JPA will be per the terms of the JPA.

This service agreement is before the City Council for approval because under the terms of the JPA we are the party responsible for related contracts. This service agreement was reviewed and approved by the City Attorney.

The siren service agreement, RFP, vendor proposal and consultant recommendation are included with this memo for reference.

**REQUESTED COUNCIL ACTION**

Motion and approval of the siren service agreement, and authorize the signing of said agreement by designated persons.



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Bloomington, MN 55425  
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Voice 612.216.1502

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April 22, 2019

Chief Jeffrey L. McCormick  
Cannon Falls Police Department  
918 River Road  
Cannon Falls, MN 55009

Re: Reporting Results of Outdoor Warning Siren (OWS) System Maintenance Proposals

Dear Chief,

Background

PSC Alliance (PSC) was commissioned to independently establish requirements, prepare specifications, and solicit proposals from qualified vendors to assess and perform preventative maintenance inspections of the City's Outdoor Warning Siren (OWS) system. Additionally, because of cooperation between the City, Goodhue County, and Dakota County, an assessment inspection and preventative maintenance reviews for Dakota County's Outdoor Warning Siren located at Lake Bylesby Park was also included as a separate line item in the specifications.

The specifications were organized into two (2) Phases of work:

- |          |  |
|----------|--|
| Phase 1: | Assessment & Status Report of Existing OWS Equipment                 |
| Phase 2: | Post Assessment Preventative Maintenance Inspections (6 Year Period) |

The intent of the solicitation was to obtain competitive pricing and responsive service from responsible service personnel.

Vendors were invited to ask questions prior to submission of the proposals and both of the vendors identified below took advantage of that opportunity. Two (2) sealed proposals were received and opened at your offices in the presence of a member of your staff on April 8, 2019. Following receipt, the proposals were evaluated and this letter reports results of our analysis and recommendations.

Proposals were received from:

<b>Vendor</b>	<b>Vendor's Place of Business</b>
Ancom Technical Center	Burnsville & Rochester, MN
West Shore Services	Allendale, MI

At the time of proposal opening, it appeared that the proposal from West Shore Services was the lowest cost response but upon further inspection, analysis, and based on individual discussions which we had with both vendors after receipt, we developed a better understanding of each vendor's offer.

-continued-

Discussion

Vendors were asked to itemize their cost as follows:

- Item 1: Phase 1 Inspection/Assessment of City’s Sirens (One Time)
- Item 2: Phase 1 Inspection/Assessment of County’s Siren (One Time)
- Item 3: Year 1, Twice Annual Preventative Maintenance Inspection (All Sirens)
- Item 4: Years 2-6, Twice Annual Preventative Maintenance Inspection (All Sirens)

The tables below reflect the cost information associated with each vendor’s proposal as they entered it on the proposal response form.

<b>RFP OWS Items</b>	<b>Ancom</b>	<b>West Shore</b>
Item 1: Initial Assessment City Sirens	\$2,080	\$1,120
Item 2: Initial Assessment	\$280	\$620
Item 3: Year One PM Visits All Sirens – Twice Annually	\$2,550	\$3,425
Item 4: Years 2-6 PM Visits All Sirens – Twice Annually	\$14,215 <sup>1</sup>	\$3,625 <sup>2</sup>

**Table 1 - Proposal Cost** See Footnotes below

PSC’s Analysis

We contacted both vendors individually to discuss their proposals. Key takeaways from those discussions are summarized below:

1. West Shore believes that a once annual preventative maintenance (PM) inspection is sufficient.
2. West Shore based their Item 4 pricing on the assumption that the City would elect only a single annual PM inspection; based on that assumption West Shore’s five year price for this item would actually be \$18,125.
3. If twice annual PM inspections are selected from West Shore, the years 2-6 year cost would be \$36,250.
4. Ancom developed their quotes for Items 3 and 4 assuming twice annual PM inspections as called for in specifications. If the City/County elected to move forward with once annual PM inspections, Ancom’s prices would be reduced by one-half of the totals shown for Items 3 and 4 contained in Table 1.
5. Neither vendor’s price included cost of a performance bond. Due to relatively low value of the proposed contract and the nature of the work, we do not think state statute requires a performance bond for this undertaking.
6. West Shore is a Gold Level Federal Warning Siren partner. West Shore’s primary business focus is on OWS technology. West Shore’s proposal contains many client references including some in Minnesota.
7. Ancom is a Minnesota based technology contractor that, among other services, performs OWS inspections/maintenance for clients such as City of Eagan, City of Woodbury, Rice County, and City of Hastings.
8. Both vendors exclude failed replacement parts from their Item 3 and 4 proposed pricing.
9. Both vendors included rate sheets for services outside of those required by the RFP in Items 1 thru 4.
10. Ancom successfully completed the narrowband radio project conversion for all locally owned municipal and township outdoor sirens in Dakota County sirens in 2012.
11. PSC believes that sirens operated by City of Cannon Falls may be due for backup battery replacement during the initial term of the maintenance contract. The Phase 1 assessment will determine this with certainty. We suggest that the City/County budget \$3,500 in aggregate for battery replacement.

<sup>1</sup> Ancom’s Item 4 price was based on *twice* annual PM inspections as identified in the RFP.

<sup>2</sup> West Shore entered their price as an annual cost for *once* annual PM inspections.

PSC Alliance Recommendation

PSC recommends award of the OWS Phase 1 and Phase 2 contract to Ancom as follows:

- A. For Items 1 and 2 System Assessment:  
\$2,360 (\$2,080 share for City of Cannon Falls; \$280 share for Dakota County)
- B. For Item 3:  
Twice annual PM during Year 1. One visit would include battery replacement, at extra material charge, with labor included, for sirens requiring it based on battery age. Total labor cost \$2,550 during Year 1.
- C. For Item 4:  
During Year 1, determine if once annual PM visit is sufficient for Years 2-6. If the City elects to purchase the Federal Digital Commander diagnostic and reporting system, then once annual preventative maintenance physical checks should be adequate, in our opinion since the Digital Commander will annunciate problems at the individual warning siren level. Adjust contract valuation and frequency of PM inspections with Ancom accordingly based upon their proposal submission and content of this letter.

Please let me know if you have questions or need additional information. Thank you for the opportunity to assist with this important project.

Sincerely yours,  
PSC Alliance Inc.

*J.J. Nelson*

Jeff Nelson

ec: Josh Petersen, Dakota County  
BJ Battig, Dakota County  
Diane Richter-Brewer, Goodhue County



**PROPOSAL FOR OUTDOOR  
WARNING SIREN MAINTENANCE**

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*Prepared by ANCOM Communication Inc. for  
the City of Cannon Falls on this 3rd day of  
April, 2019.*

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*Contained herein is ANCOM  
Communication's proposal  
to Maintain the City of  
Cannon Falls' outdoor  
warning siren system*

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**MOTOROLA**  
**SOLUTIONS**

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## Document Organization

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This document is divided into the following sections:

1. Introduction
2. Proposal Documents
3. Additional Documents

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## Section 1) Introduction

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**COVER LETTER**

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April 3, 2019

Chief Jeff McCormick  
Cannon Falls Police Department  
918 River Road  
Cannon Falls, MN 55009

RE: Maintenance of Outdoor Warning Sirens

Dear Chief McCormick,

Pursuant to your Request for Proposals, released March 27th, 2019, kindly allow this letter as formal notification of our intent to provide a Proposal in the attached document.

We would like to thank you for the opportunity to work with you, and hope that you will find our proposal satisfies all requirements set forth in your request.

We understand that your outdoor warning system is an integral part of your City's overall safety and that it's operation must be treated with high regard. Our customer base consists of many public safety entities, and we are no stranger to "mission critical operations."

We can assure you that our technicians are career professionals and they take their work very seriously. Meticulous attention to detail, and professional pride are what set us apart.

We believe that ANCOM Communications Inc. is the perfect fit to provide this solution for your outdoor warning siren system.

Sincerely,

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Jeri Elsner  
President



## ABOUT ANCOM COMMUNICATIONS

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Since 1991, ANCOM has been committed to identifying customer communications needs and applications to provide cost-effective, innovative solutions to users in various markets such as public safety, healthcare, education, hospitality, service, utility, manufacturing, construction and chemical.

With locations in Burnsville and Rochester, ANCOM has grown to become one of Minnesota's largest two-way radio equipment and systems' sales, service and rental companies and is recognized as a Platinum Channel Partner and Service Elite Specialist by Motorola Solutions.

ANCOM's installation and service technicians are experienced, certified professionals in the two-way radio and associated technologies. ANCOM offers a full range of technical, implementation, installation and maintenance services tailored to the specific needs of our customers. Products and services range from complete design and installation of legacy two-way radio systems to implementation of complete State of Minnesota ARMER system sites and communications consoles.

Midwest Radio Rentals (MRR) delivers two-way radio and accessory equipment to the event, media, entertainment and sports industries utilizing current, high quality Motorola products. Equipment, technology and coverage options are all available to address your specific requirements. A large inventory is available when it is needed at affordable, daily or long-term rates. MRR has extensive experience providing results to all types of customers and applications.

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## Section 2) Proposal Documents

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Non-Collusion Statement (Attachment A)..... Page 10

**PROPOSAL FORM**

**Item # 1:** Phase 1 – One Time Cost Baseline System Inventory & Assessment:  
Sirens 1 thru 4 as shown in Table 1

**Two Thousand Eighty** Dollars

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Price written out  
( **\$2,080.00** )  
Figures

**Item #2:** Phase 1 – One Time Cost Baseline System Inventory & Assessment:  
Siren ID: DC 1 as shown in Table 1

**Six Hundred Twenty** Dollars

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Price written out  
( **\$620.00** )  
Figures

**Item #3:** Phase 2 – Year One Maintenance (Assume all sirens in Table 1)

**Two Thousand Five Hundred Fifty** Dollars

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Price written out  
( **\$2,550.00** )  
Figures

**Item #4:** Phase 2 – Years Two thru Six Maintenance (Assume all sirens in Table 1)

**Fourteen Thousand Two Hundred Fifteen** Dollars

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Price written out  
( **\$14,215.00** )  
Figures

The above includes all charges and costs which would affect the amount of the Proposal. The undersigned acknowledges receipt of the following addenda to the specifications. (Give number and date of each, respectively.)

Addendum Number	Date
N/A	

By the act of submitting a Proposal for this project, the vendor warrants that:

1. The vendor and subcontractors, if any, have carefully and thoroughly reviewed the Contract Documents and have found them complete, free of ambiguities, and sufficient for the purpose intended; further that,
2. The vendor and all workers, employees, and subcontractors it intends to use are skilled and experienced in the type of work represented by the Contract Documents; further that,
3. The vendor understands the scope of the requested services and is satisfied as to location of work, the character, quality, quantities of materials and difficulties to be encountered, the kind and extent of equipment and other facilities needed to perform the work, the general and local conditions, and other items which may, in any way, affect the work or its performance; further that,
4. This proposal is based solely upon the Contract Documents and properly issued written addenda and not upon any verbal or written representation allegedly authorized or unauthorized from the Owner, Owner employees or agents, including consultants, in assembling the Proposal amount; further that,
5. The vendor hereby agrees, if awarded the contract, to furnish a performance and payment bond equal to one hundred percent (100%) of the contract sum as security for the faithful performance of the contract and to furnish said bond and required certificates of insurance within ten (10) days of date of acceptance of this proposal by the Owner, and further agrees to promptly complete all work after issuance of Notice to Proceed; further that,
6. It is hereby agreed that in case of failure of the undersigned either to execute the contract or to furnish bonds or certificates of insurance which are satisfactory to the Owner within ten (10) days after issuance of Notice of Award, the amount of this proposal guaranty shall be forfeited to the Dakota Communications Center as liquidated damages arising out of the failure of the undersigned to either execute the contract or to furnish bonds or certificates of insurance as proposed. It is understood that in case the undersigned is not awarded the work, the proposal guaranty will be returned as provided in the contract documents.

If awarded the contract, our surety will be (name, address, and telephone):

<b>Name:</b>	Mitchell Sperl
<b>Address:</b>	1800 Cliff Road East, Suite 17
<b>City:</b>	Burnsville, MN 55337
<b>Telephone:</b>	(952) 808-7699

In submitting this Proposal, it is understood that all rights set forth in the specification are reserved for the Owner including the right to reject any and/or all Proposals and to waive all informalities.

**We have submitted a time and material rate sheet valid thru calendar 2019 with the proposal which identifies costs for ancillary services which may be requested by the City which fall outside the scope of the requirements of this RFP.**

<b>Vendor Name:</b>	ANCOM Communications Inc.	<b>Signature:</b>	
<b>Business Address:</b>	1800 Cliff Road East, Suite 17	<b>Title:</b>	Vice President
<b>City, State, Zip:</b>	Burnsville, MN 55337	<b>State of Incorporation:</b>	Minnesota
<b>Federal Tax ID:</b>	41-1762318	<b>Telephone Number:</b>	(952) 808-7699
<b>E-mail of Signor:</b>	Mitch.sperl@ancom.org	<b>FAX Number:</b>	(952) 808-0034

**ATTACHMENT A**

**NON-COLLUSION STATEMENT**

Please print or type (in ink)

COMPANY NAME: ANCOM Communications Inc. FEDERAL TAX ID NUMBER: 41-1762318

Company Address: 1800 Cliff Road East, Suite 17

City: Burnsville State: MN Zip Code: 55337

Contact Person: Mitchell Sperl Title: Vice President

Phone Number: (952) 808-7699 Fax Number: (952) 808-0034 E-mail: Mitch.sperl@ancom.org

In signing this Proposal, we certify that we have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of the competition; that no attempt has been made to induce any other person or firm to submit or not to submit a Proposal; that this Proposal has been independently arrived at without collusion with any other Proposer, competitor or potential competitor, that this Proposal has not been knowingly disclosed prior to the opening of the Proposals to any Proposer competitor; that the above statement is accurate under penalty of perjury.

This company will comply with all terms, conditions, specifications required by the Proposer in this Request for Proposal and all terms of our Proposal response.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
**Vice President**  
Title

\_\_\_\_\_  
**April 3rd 2019**  
Date

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## Section 3) Additional Documents

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**TECHNICAL SERVICES**

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Phase 1 (Baseline Inventory and System Assessment)

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Services in this Phase include all required inspection and documentation set forth in this RFP.

ANCOM will perform a baseline assessment of each siren to determine its health and welfare. The battery and charging system will be tested under load to verify integrity. Antenna, coax cable, and radio receiver are tested for proper performance.

Over-the-air activation function via the siren's radio/antenna system will be evaluated. The Federal controller board in the siren will be tested, as well as output relays, amplifiers, and any sensors that are used to determine system functionality.

The Federal siren speaker system will be tested to determine if any amplifiers and/or speakers require service. Physical condition of cabinet, grounding, and electrical system will be evaluated. Age of battery system will be given if possible. (Batteries are recommended to be replaced every 3-5 years)

All results will be documented on a standardized form that will be delivered to the City upon completion of the inspection.

Any deficiencies identified shall be noted on the form and brought to the attention of the City.

Photos will be taken to document the condition of the site and will also be submitted on the form.

Phase 2 (Periodic Preventative Diagnostic Services)

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Services in this Phase include two (2) maintenance checks per calendar year at each site consisting of all required diagnostics and documentation set forth in this RFP.

Each site will be thoroughly tested with calibrated test equipment. Emphasis during these periodic inspections will be placed on the battery and charging systems, as they are one of the most critical aspects of siren operation. We will also emphasize that the siren controller and radio/antenna systems are in good working order as their function is required to receive and process over-the-air activation codes. All results will be documented on a standardized form that will be delivered to the City upon completion of the inspection.

Any deficiencies identified shall be noted on the form and brought to the attention of the City.

Photos will be taken to document the condition of the site and will also be submitted on the form.



Phase 3 ("On-Call" Maintenance and Repair Services)

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Services for this Phase are made up of two categories: Daytime Hours and After-Hours. An explanation of how these differ is outlined below.

For either On-Call category, any equipment found to be defective will be repaired or replaced, and incur a shop supply surcharge. Diagnostic and Repair costs will be billed at the appropriate hourly rate listed in the table below. Replacement costs will be Manufacturer List price plus shipping.

If Specialty Equipment is required for any repair, (i.e. Bucket Truck) there will be an additional Specialty Equipment charge billed at the hourly rate listed in the table below.

During the Baseline Inventory and System Assessment, ANCOM will identify a list of spare equipment that we suggest the City have "on-hand" to reduce down time. This equipment should be housed in a City-owned facility that on-call technicians would be able to access on a 24/7/365 basis.

Daytime Hours

Work that is performed during daytime hours (Monday thru Friday, 8:00 AM – 4:30 PM) will be billed at the Daytime Technician Rate listed in the table below, and will not incur a mobilization fee. Our response time for Daytime work will be two (2) hours or less.

After Hours

Work that is performed outside of the aforementioned daytime hours Monday thru Saturday (excluding Holidays) will be billed at the After-Hours Technician Rate listed in the table below beginning when the call-out is received by the technician, and ending when the technician has returned home. This is commonly referred to as "portal to portal pay," and carries a four (4) hour minimum charge. This work will also incur a mobilization fee. (listed in the table below) Our response time for After-Hours work will be four (4) hours or less.

Work performed on Sundays and Holidays will be billed as After-Hours work, but at the Sunday / Holiday rate listed in the following table.

**COST BREAKDOWN**

The costs outlined in the above proposal form break down as follows:

<b>Siren Maintenance Cost Breakdown</b>		
<b>Proposal Form Item #:</b>	<b>Description of service:</b>	<b>Cost:</b>
<b>Phase 1 (Baseline Inventory and System Assessment)</b>		
1	Baseline Inventory and Assessment of Sirens 1-4	\$ 1,920.00
1	Trip Charge for Sirens 1-4	\$ 160.00
2	Baseline Inventory and Assessment of Siren DC-1	\$ 580.00
2	Trip Charge for Siren DC-1	\$ 40.00
<b>Phase 2 (Periodic Preventative Diagnostic Services)</b>		
3	Year 1 Maintenance	\$ 2,550.00
4	Year 2 Maintenance	\$ 2,677.50
4	Year 3 Maintenance	\$ 2,757.83
4	Year 4 Maintenance	\$ 2,840.56
4	Year 5 Maintenance	\$ 2,925.78
4	Year 6 Maintenance	\$ 3,013.33
<b>Phase 3 ("On-Call" Maintenance and Repair Services)</b>		
N/A	Daytime (8:00AM -4:30 PM) Technician Hourly Rate	\$ 120.00
N/A	After-Hours Technician Hourly Rate	\$ 180.00
N/A	Sunday / Holiday Hourly Rate	\$ 240.00
N/A	After Hours Mobilization Fee (per Mobilization)	\$ 80.00
N/A	Specialty Equipment Hourly Rate (If Required)	\$ 110.00
N/A	Shop Supply Surcharge (per Mobilization)	\$ 50.00
N/A	Replacement Siren Components	List Price

**VENDOR REFERENCES**

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ANCOM currently maintains a verity of Outdoor Warning Sirens for a host of Public Safety entities throughout the Minnesota Metropolitan area and southern Minnesota.

ANCOM has had employees who were certified on Federal Warning System and those personnel have provided training both in-house, and in the field for our current technical staff. The previous employees have since moved on to other opportunities. However, with the training previously received, we are comfortable accepting the responsibility of performing the services being sought in this RFP

ANCOM is, at present, making arrangements for the training of several of our technicians; to obtain current certifications on Federal Warning Systems equipment.

ANCOM's current technicians with the training mentioned above are Matt Klema and Rollie Frank.

Our References are listed in the following table:

Vendor References		
Customer Name and Address:	Contact Person, Phone Number, and Email:	Scope of Work
<p><b>City of Eagan</b> 3830 Pilot Knob Rd Eagan, MN 55122</p>	<p><b>Jeremy Klein</b> Support Services Manager (651) 675-5805 jklein@cityofeagan.com</p>	<p>ANCOM supports, on contract, twelve (12) Federal Signal outdoor warning sirens in the city of Eagan. Sirens are part of a 2-way digital system. Customer owns a Federal Commander PC that monitors the health of the siren system. Annual preventive maintenance is performed.</p>
<p><b>City of Woodbury</b> 2100 Radio Drive Woodbury, MN 55125</p>	<p><b>Mike Richardson</b> Emergency Services Commander (651) 714-3600 mike.richardson@woodburymn.gov</p>	<p>ANCOM supports, on a T&amp;M basis, fourteen (14) Federal Signal outdoor warning sirens for the City of Woodbury and a Federal Commander PC that monitors the health of the digital 2-way system. The City of Cottage Grove has eight (8) Federal Signal sirens that are a part of this 2-way system. City of Lake Elmo also has nine (9) Federal Signal sirens on this 2-way system.</p>
<p><b>Rice County</b> 118 3rd St NW Faribault, MN 55021</p>	<p><b>Jennifer Hauer-Schmitz</b> Emergency Management Director RCSO Deputy Sheriff, #1122 (507) 332-6119 jhauer@co.rice.mn.us</p>	<p>ANCOM supports, on contract, eight (8) Federal Signal sirens in Rice county and a Federal Commander PC. This is a digital 2-way system that ANCOM implemented for Rice County. Sirens are tested annually during preventive maintenance.</p> <p>There are an additional thirteen (13) Federal Signal sirens in the cities of Faribault, Lonsdale, and Millersburg that are also a part of this 2-way system that are supported on a T&amp;M basis.</p>
<p><b>Wabasha County</b> 848 17th St E # 1 Wabasha, MN 55981</p>	<p><b>Blaine Hentz</b> Dispatch Supervisor 651-565-3361 bhentz@co.wabasha.mn.us</p>	<p>Wabasha county currently has twenty (20) Federal Signal outdoor warning sirens and a Federal Commander PC that monitors their digital 2-way system. ANCOM performed the work to convert this to a 2-way digital system.</p>
<p><b>City of Hastings</b> 150 3rd Street East Hastings, MN 55033</p>	<p><b>David Wilske</b> Deputy Chief 651-480-2332 DWilske@hastingsmn.gov</p>	<p>ANCOM supports, on contract, seven (7) Federal Signal sirens. Sirens are currently operating in 1-way mode. Preventive maintenance is performed on an annual basis.</p>

## AGREEMENT

**AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the **CITY OF CANNON FALLS**, a Minnesota municipal corporation ("City") and **Ancom Communications, Inc.**, ("Contractor").

### **IN CONSIDERATION OF THEIR MUTUAL COVENANTS, THE PARTIES AGREE AS FOLLOWS:**

**1. SCOPE OF SERVICES.** The City retains Contractor to perform the services outlined in the Contract Documents. Contractor agrees to perform the services.

**2. CONTRACT DOCUMENTS.** The following documents shall be referred to as the "Contract Documents," all of which shall be taken together as a whole as the contract between the parties as if they were set verbatim and in full herein:

- A. This Agreement.
- B. The Request for Proposals and addenda, if any
- C. Contractor's Proposal

In the event of conflict among the provisions of the Contract Documents, the order in which they are listed above shall control in resolving any such conflicts, with Contract Document "A" having the first priority and Contract Document "C" having the last priority.

**3. COMPENSATION.** Contractor shall be paid by the City for the services described in the Contract Documents in accordance with the Contractor's proposal. The fees shall not be adjusted if the estimated hours to perform a task or any other estimate or assumption are exceeded.

**4. INDEPENDENT CONTRACTOR.** Contractor is an independent contractor and nothing in this Contract shall be construed to create the relationship of agents, partners, joint venturers, associates, or employer and employee between the City and Contractor.

**5. TIMELINESS**  
Time is of the essence in this Contract. The failure of either party to perform its obligations in a timely manner may be considered by the other party as a material breach.

**6. FORCE MAJEURE.** Neither party shall be liable to the other party for any loss or damage resulting from a delay or failure to perform due to unforeseeable acts or events outside the defaulting party's reasonable control, providing the defaulting party gives notice to the other party as soon as possible. Acts and events may include acts of God, acts of terrorism, war, fire, flood, epidemic, acts of civil or military authority, and natural disasters.

**7. LICENSES.** At its own expense, Contractor shall procure all licenses, permits or other rights required for the provision of services contemplated by this Contract. Contractor shall inform the City of any changes in the above within five (5) days of occurrence.

**8. INDEMNIFICATION.** Any and all claims that arise or may arise against Contractor, its agents, servants or employees as a consequence of any act or omission on the part of Contractor or its agents, servants, employees while engaged in the performance of the Contract shall in no way be the obligation or responsibility of the City. Contractor shall indemnify, hold harmless and defend the City, its officers and employees against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney's fees which the City, its officers or employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any act or omission of Contractor, its agents, servants or employees, in the execution, performance, or failure to adequately perform Contractor's obligations pursuant to this Contract.

**9. ASSIGNMENT/SUBCONTRACTING.** The Contractor shall not assign or subcontract this Contract without prior written consent of the City, in which case Contractor is responsible for the performance

of its subcontractors or assignees. Contractor shall follow the requirements of Minn. Stat. § 471.425 (payments to subcontractors), shall require the subcontractor to provide proof of the below-described insurance to the City prior to beginning work under this Agreement and shall require the subcontractor to agree in writing to defend, hold harmless and indemnify the City from any and all liability arising out of the subcontractor's performance of its duties. Contractor shall require each subcontractor, to the extent of the work to be performed by the subcontractor, to be bound by the terms of this Contract.

**10. INSURANCE TERMS.**

Contractor shall provide to the City, prior to or concurrent with the execution of this Contract, certificate(s) of insurance naming The City as certificate holder or certified copies of such existing policies of insurance, demonstrating:

- General liability coverage of at least \$1,500,000 per occurrence and aggregate and **naming The City as an additional insured;**
- Automobile liability coverage of at least \$1,500,000 per occurrence and aggregate and **naming The City as an additional insured,**
- Workers' compensation coverage or certification of excluded employment from workers' compensation requirements.

Contractor shall pay all retentions and deductibles under such policies of insurance. *If Contractor does not have existing coverage(s) or has coverage(s) in limits less than that set out above, Contractor must obtain from the City, prior to or concurrent with the execution of this Contract, a waiver of the coverage(s) or agreement to lower coverage limits from the City.*

**11. RECORDS/AUDITS.** Contractor's bonds, records, documents, papers, accounting procedures and practices, and other evidences relevant to this Contract are subject to the examination, duplication, transcription and audit by the City and either the Legislative or State Auditor, pursuant to Minn. Stat. § 16C.05, subd. 5. Such evidences are also subject to review by the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. The Contractor agrees to maintain such evidences for a period of six (6) years from the date services or payment were last provided or made or longer if any audit in progress requires a longer retention period.

**12. DATA PRIVACY.** For purposes of this Contract all data on individuals collected, created, received, maintained or disseminated shall be administered consistent with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, and the Minnesota Rules implementing the Act now in force or hereafter adopted as well as Federal laws on data privacy, and Contractor must comply with those requirements as if it were a governmental entity. The Contractor will strictly comply with these statutes and rules. All subcontracts shall contain the same or similar data practices compliance requirements.

**13. CONFIDENTIALITY CLAUSE.** Contractor acknowledges that the City in connection with Contractor's performance of this Agreement may transmit certain private or Confidential Information, as defined in the Minnesota Data Practices Act, to Contractor. Contractor agrees to implement such procedures as are necessary to assure protection of the private and Confidential Information.

**14. COMPLIANCE WITH LAWS/STANDARDS.** Contractor shall abide by all Federal, State and local laws; statutes, ordinances, rules and regulations pertaining to this Contract and this Contract shall be construed in accordance with the substantive and procedural laws of the State of Minnesota. All proceedings related to this Contract shall be venued in the County of Goodhue, State of Minnesota.

**15. NON-DISCRIMINATION.** Contractor agrees that, in the hiring of all labor for the performance of any work under this Contract, it will not, by reason of race, creed, color, sex, national origin, disability, sexual orientation, age, marital status or public assistance status, discriminate against any person who is a citizen of the United States and who qualifies and is available to perform the work to which such employment relates. Contractor agrees to comply with all Federal, State, and local non-discrimination laws and ordinances, in particular the applicable provisions of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972. When required by law or requested by the City, Contractor shall furnish a written affirmative action plan.

**16. CONTRACTOR DEBARMENT, SUSPENSION AND RESPONSIBILITY CERTIFICATION.**

By signing this Contract the Contractor is certifying that the federal government or the Minnesota Commissioner of Administration has not suspended or debarred the Contractor or its Principals and Employees, based upon Federal Regulation 45 CFR 92.35 and Minn. Stat. §16C.03, subd. 2 respectively. Contractors may be suspended or debarred when it is determined, through a duly authorized hearing process, that they have abused the public trust in a serious manner.

**17. EXPRESS WARRANTIES.** Contractor expressly warrants that all goods and products and workmanship provided under this Agreement shall conform to the City's specifications as described in this Agreement. Contractor shall replace any non-conforming goods and products and remedy any defects in the work and pay for any damage to other work resulting from the non-conforming work, at its own expense, and pay for any damage to other goods or products resulting from the non-conforming goods or products, that shall appear within a period of SIX MONTHS from the date of final acceptance by City of the goods or products. Neither the final certificate of payment nor any provision in the contract documents nor partial or entire use of the final products and work by the City shall constitute an acceptance of work not done in accordance with the contract documents or relieve Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The City will give notice of observed defects with reasonable promptness.

**18. TERMINATION WITHOUT CAUSE.** The City upon thirty (30) days written notice to the Contractor may terminate this Contract without cause.

**19. TERMINATION FOR CAUSE.** In addition to other specifically stated terms of this Contract or as otherwise provided by law, the following conditions, unless excused shall warrant termination of this Contract for cause:

- A. Making material misrepresentations either in the attached exhibits and documents or in any other material provision or condition relied upon in the making of this Contract.
- B. Failure to provide services or payment called for by this Contract within the time specified herein or any extension thereof.
- C. Failure to perform any other material provision of this Contract.
- D. Failure to diligently administer the work so as to endanger performance of the terms of this Contract.

**20. NOTICE.** Either party may terminate this Contract for cause by giving seven (7) days written notice of its intent to terminate to the other party unless a different procedure and/or effective date is provided within the specific article or paragraph of this Contract under which the default, failure or termination occurs. Said notice shall specify the circumstances warranting termination of the Contract. The terminating party has the option, but is not required, to provide the other party an opportunity to cure the specified default. If an opportunity to cure is provided, it shall be specifically described in the notice of termination.

**21. DELIVERY OF NOTICE/EFFECTIVE DATE.** Notice of termination for cause or without cause shall be made by certified mail or personal delivery to the authorized agent of the other party. Notice is deemed effective upon delivery of the Notice of Termination to the name and address of the person who signs this Contract for each party.

**22. DUTIES OF CONTRACTOR UPON TERMINATION WITH CAUSE OR WITHOUT CAUSE.**

Upon delivery of the Notice of Termination, and except as otherwise provided, Contractor shall:

- A. Discontinue provision of services under this Contract on the date and to the extent specified in the Notice of Termination.
- B. Immediately notify all clients who are receiving services pursuant to this Contract.
- C. Cancel all orders and subcontracts to the extent that they relate to the performance of services cancelled by the Notice of Termination.
- D. Complete performance of such services as shall not have been cancelled by the Notice of Termination.
- E. Return all City property in their possession within seven (7) days to the extent that it relates to the performance of services cancelled by the Notice of Termination.

- F. Submit an invoice for the performance of services prior to the effective date of termination within thirty (30) days of said date.
- G. Maintain all records relating to the performance of the Contract as may be required by the City or State law.

**23. DUTIES OF CITY UPON TERMINATION OF THE CONTRACT FOR CAUSE OR WITHOUT CAUSE.** Upon delivery of the Notice of Termination, and except as otherwise provided, the City:

- A. Shall make within 30 days of its receipt of Contractor's invoice referenced in paragraph F above, final payment for any services satisfactorily provided up through the date of termination in accordance with the terms of this Contract.
- B. Shall not be liable for any services provided after notice of termination, except as stated above or as authorized by the City in writing.

**24. EFFECT OF TERMINATION FOR CAUSE OR WITHOUT CAUSE.** Termination of this Contract 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 Contract prior to the effective date of termination.

**25. TERMINATION BY CITY – LACK OF FUNDING.** Notwithstanding any provision of this Contract to the contrary, the City may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, Minnesota Agencies or other funding source, or if its funding cannot be continued at a level sufficient to allow payment of the amounts due under this Contract. Written notice of termination sent by the City to Contractor by facsimile is sufficient notice under the terms of this Contract. The City is not obligated to pay for any services that are provided after written notice of termination for lack of funding. The City will not be assessed any penalty or damages if the Contract is terminated due to lack of funding.

**26. DAMAGES FOR BREACH/SET-OFF.** Notwithstanding any other provision of this Contract to the contrary, upon breach of this Contract by Contractor the City may withhold final payment due Contractor for purposes of set-off until such time as the exact amount of damages due is determined.

**27. MODIFICATIONS.** Any alterations, variations, modifications, or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing and signed by the authorized representatives of the parties.

**28. WAGE WITHHOLDING TAX.** Pursuant to Minn. Stat. §290.97, The City shall make final payment to Contractor only upon satisfactory showing that contractor and any subcontractors have complied with the provisions of Minn. Stat. §290.92 with respect to withholding taxes, penalties, or interest arising from this contract. A certificate by the commissioner of revenue (Minnesota Department of Revenue Form IC-134, entitled "Withholding Affidavit for Contractors") shall satisfy this requirement with respect to the contractor or subcontractor. Form IC-134 Form and Instructions are found at <http://www.taxes.state.mn.us/forms/ic134.pdf>

**29. PERFORMANCE AND PAYMENT BONDS.** Within fifteen (15) calendar days after the execution of this Agreement and before any work or Services are rendered, the Contractor shall furnish a performance bond and payment bond each in the amount of the Contract insuring the faithful performance of the Agreement and payment of all obligations arising thereunder. If the bonds are not submitted within the time frame, then the Agreement shall be considered void.

Commented [AS1]: Do you want to require these or not?



**THIS AGREEMENT** is entered into by the undersigned parties as of the date written above.

**CITY OF CANNON FALLS**

By: \_\_\_\_\_  
John Althoff, Its Mayor

Attest: \_\_\_\_\_  
Dave Maroney, City Administrator

**Ancom Communications, Inc**

BY: \_\_\_\_\_  
Its \_\_\_\_\_