



STAFF REPORT

DATE: June 16, 2020

CONSENT

AGENDA ITEM: Code Red Joint Powers Agreement

TO: Mayor and City Council

SUBMITTED BY: Kristina Handt, City Administrator

BACKGROUND:

The City has been utilizing the Code Red System through Washington County for a number of years to send messages out via phone and text to residents when emergencies occur. The County is asking for a new joint powers agreement to continue use of the program.

ISSUE BEFORE COUNCIL:

Should the Council approve the joint powers agreement for code red services?

PROPOSAL:

A copy of the joint powers agreement is included in your packet. The county has heard back from all other communities and is waiting on Lake Elmo to finalize it. The agreement goes through December 31, 2022 with 2 additional one year extensions through December 31, 2024. Furthermore, it could be terminated upon 30 days' notice.

FISCAL IMPACT:

The annual fee would be \$634.22

OPTIONS:

- 1) Approve joint powers agreement
- 2) Amend and then approve the joint powers agreement
- 3) Do not approve the joint powers agreement

RECOMMENDATION:

If removed from the consent agenda:

Motion to approve the joint powers agreement with Washington County for Code Red Services

ATTACHMENTS:

- Joint Powers Agreement with Washington County

**JOINT POWERS AGREEMENT BETWEEN THE WASHINGTON COUNTY SHERIFF'S
OFFICE AND THE CITY OF LAKE ELMO**

THIS AGREEMENT is made by and between political subdivisions organized and existing under the Constitution and laws of the State of Minnesota. Washington County a political subdivision by and through its Sheriff's Office (hereinafter "Provider") and the City of Lake Elmo, Minnesota, a municipal corporation, (hereinafter referred to as the "City") are the parties to this agreement.

WHEREAS, both political subdivisions through their law enforcement agencies manage threats to public health and safety.

WHEREAS, Minnesota Statutes Section 471.59 provides that two or more governmental units may by Agreement jointly exercise any power common to the contracting parties.

WHEREAS, The Provider has entered into a contract with OnSolve, LLC, formerly Emergency Communications Network (ECN), for the purpose of providing a Mass Emergency Notification System also known as Code Red.

WHEREAS, The provider has agreed to purchase 150,000 minutes from Emergency Communications Network for the purpose of sending Mass Emergency Notifications to home, business or cell phones.

WHEREAS, the Provider has agreed to purchase the Mass Emergency Communication system to assist agencies within Washington County provide necessary emergency and non-emergency mass notifications.

WHEREAS, The City is in need of having the ability to communicate with the public in a timely fashion during both emergency and non-emergency situations.

WHEREAS, At the request of the City, the Provider is willing to provide a Mass Emergency Notification System.

NOW THEREFORE, Pursuant to the authority contained in Minnesota Statute Section 471.59. commonly known as the Joint Powers Act which authorizes two or more governmental units to jointly exercise any power common to them and /or Minnesota Statutes Sections 626.76 and in consideration of the mutual covenant herein contain and the benefits that each party hereto shall derive hereby the Provider and City agree to the following terms and conditions.

PURPOSE

The purpose of this joint powers agreement is set forth in the recitals contained in the above whereas clauses which are incorporated by references if fully set forth herein.

CITY'S RESPONSIBILITIES

1. When needed, the City's representative shall be able to utilize the Mass Emergency Notification Communication System by notifying the Washington County Sheriff's Office 911 PSAP for Emergency Notifications. Emergency Notifications are those that are related to public safety as defined in the Code Red Policy. The 150,000 minutes purchased by the provider will be used for all Emergency Notifications at no additional cost to the City.
2. The City agrees to pay the Provider \$634.22 for the purpose of purchasing its proportionate share of 150,000 Emergency Notification minutes per year.
3. The City will conform to any Policy developed by Provider related to the use and maintenance of Code Red.
4. The City's representative shall be responsible for determining the content of any Emergency Notification message in addition to the geographic area the message is to be sent.
5. The Washington County 911 PSAP Center personnel will assist in preparing Emergency Notifications as defined in the Code Red Policy and will be responsible for initiating the call procedures through Code Red at the direction of the City's authorized representative.
6. The City's representative will be responsible for sending any General Notifications, as defined in the Code Red Policy, through a web based server. General Notification minutes used will be paid by the City to the Provider at an additional contracted rate of .25 per minute. Those funds will be retained by the provider for the sole purpose of purchasing minutes on the Code Red System.
7. For every additional year this agreement is extended the Provider will invoice the City at a rate of \$ 634.22 per year for emergency notification minutes.

8. City will be responsible for the payment of additional year(s) extension upon receipt of the invoice from the Provider.

PROVIDER'S RESPONSIBILITIES

1. Provider agrees to enter into a contract with OnSolve for the purchase of 150,000 minutes of the Code Red Mass Notification System in 2020.
2. Provider will develop a policy related to the use and maintenance of the Code Red System.
3. Provider will assign an employee as the Code Red System administrator.
4. Provider agrees to train the 911 PSAP personnel in the operation of the Code Red System.
5. Provider agrees to train the City representative in the use of the Code Red System.
6. The Provider will test the Code Red System to ensure the system is operating properly.
7. The Provider will monitor the number of minutes used by all agencies to ensure there is sufficient number of minutes available in the event of an emergency.

TERM OF AGREEMENT

The initial Term of this Agreement shall be from January 01, 2020 and ends December 31, 2022, the date of the signature of the parties notwithstanding, unless earlier terminated in accordance with the termination clause. After the initial Term, this Agreement will automatically renew for 2 additional one year periods with the final termination date of December 31st 2024, unless the automatic extension is cancelled by the City in accordance with the termination clause.

PAYMENT

The City shall pay the Provider within 30 days of being invoiced for the City's annual portion of the Code Red System or for any General Message minute usage.

INDEPENDENT CONTRACTOR

It will be agreed that nothing within the contract is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties or as constituting the City as the agent, representative, or employee of the Provider for any purpose or in any manner whatsoever.

ASSIGNMENT

The City shall not assign any services contemplated under this agreement.

RECORD DISCLOSURES/MONITORING

Pursuant to Minn. Statute 16C.05 SUBD. 5, the books, records, documents and accounting procedures and practices of the contractor relevant to the contract are subject to examination by the County and either the legislative auditor or the state auditor, as appropriate. The contractor agrees to maintain and make available these records for a period of six years from the date of termination of this agreement.

INDEMNIFICATION

- a. The City agrees it will defend, indemnify and hold harmless the Provider, its officers and employees against any and all liability, loss, costs, damages, and expenses which the Provider, its officers, or employees may hereafter sustain, incur, or be required to pay arising out of the negligent or willful acts or omissions of the City in the performance of this agreement.
- b. The liability of the parties under this agreement shall be governed by Minnesota Statutes section 471.59 subdivision 1a. Each party to this agreement shall be liable for its own acts or omissions and shall not be liable for the acts or omissions of any other party to this agreement.

INSURANCE REQUIREMENTS

The City agrees that in order to protect itself, as well as the Provider, under the indemnity provisions set forth above, it will at all times during the term of this Agreement, keep in force the following insurance protection in the limits specified:

1. Maintain membership and participation in the Minnesota League of Cities Trust or Commercial General liability Insurance with contractual liability coverage in the amount of the City's and Provider's tort liability limits set forth in Minnesota Statute Section 466.04 and as amended from time to time.
2. Automobile coverage in the amount of the City's and Provider's tort liability limits set forth in Minnesota Statute Section 466.04 and as amended from time to time.
3. Worker's Compensation in statutory amount.

Prior to the effective date of this Agreement, the City will furnish the Provider, with certificates of insurance as proof of insurance. This provision shall be set as a condition subsequent; failure to abide by this provision shall be deemed a substantial breach of contract. Any policy obtained and maintained under this clause shall provide that it shall not be cancelled, materially changed, or not renewed without thirty days notice thereof to the Provider.

DATA PRACTICES

All data collected, created, received, maintained, or disseminated for any purposes by the activities of the contractor, because of this agreement, is governed by the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as amended, the Minnesota Rules implementing such Act now in force or as adopted, as well as federal regulations on data privacy. For purposes of this agreement each party shall remain the Responsible Authority for all data it generates or creates as part of this agreement.

TERMINATION

- a. Provider may cancel this Agreement with or without cause at any time upon giving a 30 days written notice to the City Administrator or designee. The City may cancel this Agreement with or without cause at anytime upon giving a 30 days notice to the Washington County Sheriff or designee. No monies paid will be refunded to the City upon termination of this contract.
- b. During the initial or subsequent term if the City does not want to exercise the automatic one year renewal, it must provide written notice of such to Provider at least 90 days prior to December 31st of the current year.
- c. If Provider does not renew its contract with OnSolve for 150,000 minutes of the Code Red Mass Notification System for years 2020, 2021 and or 2022, the Provider will notify the City 30 days prior to December 31st 2019, December 31st 2020 or December 31st 2021 respectively.

WASHINGTON COUNTY

LAKE ELMO

BY: _____ DATE: _____
County Board Chair

BY: _____ DATE: _____

BY: _____ DATE: _____
County Administrator

BY: _____ DATE: _____
Sheriff

Approved to as form:

Asst County Attorney