

**AGREEMENT
BETWEEN
COUNTY OF CUYAHOGA, OHIO
AND
EMERGENCY CALLWORKS, INC.
Revision 6 – Cuyahoga County 6.10.13**

This Agreement (the "Agreement") is made and entered into on August 1, 2013 ("Effective Date") by and between County of Cuyahoga, Ohio, on behalf of the Department of Public Safety and Justice Services, having a principal place of business at 1219 Ontario Street 4th Floor, Cleveland, Ohio 44113 (the "County" and Emergency CallWorks, Inc. a corporation having the principal place of business at 1900 International Park, Suite 300, Birmingham, AL 35243 ("ECW"), through its duly authorized representative. ECW and the County shall individually be referred to as a "Party" and jointly be referred to hereinafter as the "Parties."

WHEREAS, the County issued Request for Proposals # 26143 for vendor-hosted next generation 9-1-1 services on December 24, 2012 ("RFP"); and

WHEREAS, ECW has proposed in its Proposal dated January 25, 2013, ("Proposal"), as amended by the Price Proposal dated April 19, 2013, to provide the particular vendor hosted 9-1-1 software license and service and support as further described in this Agreement; and

WHEREAS, the County has decided to engage ECW to provide such services for the County and ECW is willing to provide such services upon all the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I.SCOPE OF SERVICES

A. General

This Agreement sets forth the terms and conditions on which the County buys from ECW, and ECW delivers to County the license, maintenance and technical support and all related services specified in the Price Proposal, the Statement of Work ("SOW"), the Service and Support Guidelines ("Support Guidelines"), the End User License Agreement ("EULA"), the RFP, and the Proposal attached hereto as Exhibits A, B, C, D, and E and F, respectively, and incorporated herein by reference.

B. Scope of Work

1. **Sale and Grant of License:** ECW agrees to sell the products identified in the SOW to the County and concurrently herewith grants to the County a license to use the computer software identified therein in accordance with terms and conditions of this Agreement and ECW's EULA.
2. **Technical Services, Training and Support**



- a) **Installation, Program Management and Training Services.** ECW agrees to provide the County installation, program management and training services as identified in the scope, terms, and conditions of the SOW for the Term of the Agreement. Any and all amendments to the SOW shall be made in writing and shall become a part of this Agreement.
 - b) **Product Service and Support.** ECW provides service and support for its products pursuant to the Support Guidelines. Service and support includes access to ECW Product Support personnel during Phase II of the Term of the Agreement. ECW service and support also includes such periodic product updates or upgrades as ECW may make available from time to time during any period during which the County has a valid service and support agreement in effect with ECW.
3. **Equipment:** ECW shall furnish and install all equipment and cabling as identified in the Statement of Work (SOW) and Price Proposal, required for the proposed system, including but not limited to, controller equipment, network connections, workstations, mapping, MIS, etc..

II. TERM

This agreement shall commence on the Effective Date and shall continue, unless earlier canceled or terminated pursuant to the terms of this Agreement, until December 31, 2024 as follows: *January 31, 2025 pmH, WOO*

1. Phase I - System Installation: 18 months from the Effective Date for design, implementation and installation of the system. System Setup phase is completed at the end of the Final Acceptance Testing period when the system operates for 14 consecutive days without a major alarm failure. Major failures are major system failures that render the system completely unusable or significantly reduce system operability, and are considered to be operationally unacceptable by the County. For this purpose, "Operationally Unacceptable" means that although the system is implemented, complete transition to production operation is not achieved due to failure of material portions of the system to work as intended which is likely to cause significant safety issues to the citizens in Cuyahoga County.
2. Phase II – Product Service and Support: 10 years for system service and support of all hardware, software and on-site maintenance, beginning at the conclusion of System Acceptance Testing (SAT) of System Installation.

III. PRICES AND PAYMENT

- A. **Price and Payment amounts.** The County agrees to pay ECW an amount not to exceed \$11,612,184.00 in accordance with the payment schedule set forth in the SOW. The County shall pay ECW as follows: 1) \$3,000,000 for Phase I in non-recurring charges in increments as listed in the SOW; 2) a monthly fee of \$512.63 per position for service and support during Phase II, payable starting at the beginning of the following month after completion of Phase I.
- B. County shall pay ECW no later than forty-five (45) days after receipt of invoice. The County has the right to withhold payment, for a disputed item(s), where the County in good faith disputes a charge within thirty (30) days after receipt of the invoice.
- C. **Travel and related Expenses.** Fees include all ECW's standard business expenses (e.g., transportation, food, lodging) incurred in connection with the delivery of the products and services to the County facilities under the terms of this Agreement.
- D. Provided that the Agreement is in effect and no breach of contract has occurred and continued beyond any applicable notice, grace or cure period hereunder, at the end of Phase II of the Term hereof the County shall have the option to purchase all the system equipment and a perpetual

license to use the licensed software identified in the SOW for the total amount of \$1.00. The County may exercise this option to purchase the system equipment by giving ECW written notice thereof and such notice by the County shall create a binding purchase agreement between the ECW and County upon the price, terms and conditions of the offer.

IV. TERMINATION

- A. By ECW.** If the County breaches the Agreement, ECW shall supply written notice to the County of intent to terminate. The County shall have forty-five (45) calendar days to cure the breach from the date of its receipt of the notice of breach. If the County successfully cures the breach, the Agreement shall not terminate and the non-breaching party must resume performance. If the County fails to cure the breach within forty-five (45) calendar days, the Agreement shall terminate for cause after twenty-four (24) months from receipt of the notice of breach.
- B. By the County.** The County shall have the right to terminate this Agreement as follows:
- 1) For breach of the Agreement. The County shall have the right to terminate this Agreement for breach of any of the terms and conditions of this Agreement. ECW has thirty (30) calendar days to cure the breach from the date of its receipt of the notice of breach. If ECW successfully cures the breach, the Agreement shall not terminate and ECW will resume performance; 2) For convenience. The County shall have the right to terminate this Agreement at any time during Phase II with twelve (12) months advance written notice to ECW. ECW shall have no right of termination other than for cause as specified in Section IV(A) above.
- C. Termination for Financial Instability.** In the event that ECW becomes financially unstable to the point of (i) ceasing to conduct business in the normal course, (ii) making a general assignment for the benefit of creditors, or (iii) suffering or permitting the appointment of a receiver for its business or its assets, or (iv) there is a filing by or against ECW of a meritorious petition in bankruptcy under any bankruptcy or debtor's law, the County may, at its option, immediately terminate this Agreement under paragraph (B) above, by giving written notice thereof.
- D. Annual Appropriations.** The County agrees to encumber the funds necessary for Phase I and the first year of Phase II at the time the County executes this Agreement. ECW acknowledges and agrees that all of the County's financial obligations for Phase II under this Agreement are contingent upon the County Council's appropriating the funds on an annual basis for the continuation of this Agreement for every contract year. The County agrees to submit the request for such appropriation to Council, and in the event that the County Council does not appropriate sufficient funds for the continuation of this Agreement, the County shall provide written notice to ECW of same within thirty days. In the event the funds necessary for the continuation of any year during Phase II are not appropriated or approved this Agreement shall thereafter terminate and be rendered null and void twelve (12) months from the date notice is sent to ECW. Such termination is made pursuant to and in accordance with the terms of this Agreement and shall not be considered to be a breach or default on the part of the County, and shall not result in the County paying termination charges or having liability to ECW or any third party for any penalty, liability or any other expense.

V. INSURANCE REQUIREMENTS



ECW shall procure, maintain and pay premiums for the insurance coverage and limits of liability outlined below with respect to products, services, work and/or operations performed in connection with this Agreement:

A. Mandatory Insurance

1. Worker's Compensation Insurance as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC).

For vendors with employees working outside of Ohio, Worker's Compensation Insurance as required by the various state and Federal laws as applicable including Employers' Liability coverage with limits of liability not less than:

\$1,000,000 each accident for bodily injury by accident;
\$1,000,000 each employee for bodily injury by disease;
\$1,000,000 policy limit for bodily injury by disease.

Such insurance shall be written on the National Council on Compensation Insurance (NCCI) form or its equivalent.

2. Commercial General Liability Insurance with limits of liability not less than:

\$1,000,000 each occurrence bodily injury & property damage;
\$1,000,000 personal & advertising injury;
\$2,000,000 general aggregate;
\$2,000,000 products/completed operations aggregate.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

3. Business Automobile Liability Insurance covering all owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident;

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

4. Errors & Omissions Liability Insurance providing coverage for claims arising out of the provision of professional services with a limit of liability not less than:

\$1,000,000 per claim;
\$1,000,000 aggregate.

Such insurance may be written on either an occurrence or claims-made basis. However, if written on a claims-made basis, the claims-made retroactive date on the policy shall be prior to the commencement of any design, architectural, engineering or other professional activity related to this Contract.



B. Mandatory Requirements for All Insurance Coverage

1. The insurance policies of ECW required above, with the exception of the Errors & Omissions Insurance, shall each name the "County of Cuyahoga, Ohio and its employees" as an Additional Insured and shall contain the following provisions:
 - a) Thirty (30) days prior notice of cancellation or material change;
 - b) A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.
2. All insurance coverage shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A VII or above.
3. These insurance provisions shall not affect or limit the liability of ECW stated elsewhere in this Agreement or as provided by law.
4. ECW shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Agreement.
5. ECW shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by the County shall not constitute a waiver of any rights of the parties under this Agreement.

VI. PERFORMANCE BOND

- A. ECW shall secure this Agreement with a performance bond to indemnify the County against damages as may be suffered by failure of ECW to perform its duties and obligations under this Agreement.
- B. ECW shall secure a bond in force for Phase I of the Agreement (18 months) in an amount equal to 20% of the cost of Phase I, as further indicated in Exhibit A, Price Proposal. ECW shall notify the County sixty (60) days prior to expiration of the bond that the bond has been renewed for an additional one-year term of Phase II of the Agreement. A performance bond in the amount of 5% of contract value shall be in effect for each year during Phase II for the remainder of the Term of this Agreement. Proof of renewal shall be in the form of a renewal certificate or document submitted by the surety evidencing continuation of the bond. If a bond is not renewed, ECW shall notify the County sixty (60) days prior to expiration and/or cancellation of the bond.
- C. Performance bonds must be issued by a surety company, authorized to do business in the State of Ohio with an A.M. Best's rating of A or higher, in the exact legal business name of the ECW. The bond shall be accompanied by a certified power of attorney and a certificate of compliance from the bonding company for the State of Ohio signed by an authorized representative of the vendor.

VII. INDEMNIFICATION



- A. ECW hereby indemnifies, defends and holds harmless the County and its respective officers, officials, directors, board members, employees, and agents, from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, that result from (a) the negligent acts or omissions of ECW, including all of its officers, owners, principals, subcontractors, employees, and agents.
- B. ECW acknowledges that as an Ohio political subdivision, the County does not indemnify any person or entity. ECW agrees that no provision of this Agreement or any other contract or agreement between ECW and the County may be interpreted to obligate the County to indemnify or defend ECW or any other party.

VIII.WARRANTIES

- A. THE COUNTY represents and warrants that: (i) THE COUNTY is the owner, valid licensee, or authorized user of all data provided to the ECW products and/or ECW under this Agreement from whatever source; and (ii) the use of THE COUNTY'S data by ECW as set forth in this Agreement will not infringe the intellectual property rights of any third party or constitute a misappropriation of any third party trade secrets, or constitute a defamation, invasion of privacy, or violation of any right of publicity or other third party right.

Disclaimer of Warranties. THE WARRANTIES IN THIS AGREEMENT AND THE SCHEDULES HERETO, IF ANY, ARE GIVEN IN LIEU OF AND EXPRESSLY EXCLUDE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION: (A) ANY WARRANTY OR CONDITION THAT ANY OF THE PRODUCTS PURCHASED HEREUNDER ARE ERROR-FREE, WILL OPERATE WITHOUT INTERRUPTION, OR ARE COMPATIBLE WITH ALL EQUIPMENT, FIRMWARE AND SOFTWARE CONFIGURATIONS; (B) ANY AND ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY, QUALITY, AND NONINFRINGEMENT; AND (C) AND ANY AND ALL WARRANTIES OR CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE; AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED. EXCEPT FOR EXPRESS WARRANTIES STATED IN THIS AGREEMENT, IF ANY, THE PRODUCTS ARE PROVIDED "AS IS" AND WITH ALL FAULTS.

IX.ECW INFRINGEMENT INDEMNITY; LIMITATION OF LIABILITY

- A. ECW shall indemnify and hold harmless the County and its respective officers, agents, employees, and assigns from liability to third parties resulting from infringement of any United States patent or copyright or trade secret by the software purchased hereunder, and to pay all damages and costs, including reasonable legal fees, which may be assessed against END USER under any such claim or action. ECW shall be released from the foregoing obligation unless END USER provides ECW with (i) written notice within fifteen (15) days of the date END USER first becomes aware of such a claim or action, or possibility thereof; (ii) sole control and authority over the defense or settlement thereof; and (iii) proper and full information and assistance to settle and/or defend any such claim or action. Without limiting the foregoing, if a final injunction is, or ECW believes, in its sole discretion, is likely to be, entered prohibiting the use of the software by END USER as contemplated herein, ECW will, at its sole option and expense, either (a) procure for END USER the right to use the infringing software as provided herein or (b) replace the infringing software with non-infringing, functionally equivalent products, or (c) suitably modify the infringing software so that it is not infringing, or (d) in the event (a), (b) and (c) are not commercially reasonable, terminate the license, accept return of the infringing software and refund to END USER the license fee paid therefore. Notwithstanding the foregoing, ECW assumes no liability for infringement claims with respect to software (i) not supplied by ECW, (ii) made in whole or in part in accordance to specifications changed by END USER after the date hereof, (iii) that is modified after delivery by ECW, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (iv) where END USER

continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where END USER's use of the software is not strictly in accordance with this Agreement. THE FOREGOING PROVISIONS OF THIS SECTION STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF ECW AND THE EXCLUSIVE REMEDY OF END USER WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT BY THE PRODUCT.

The County accepts sole responsibility for (a) the selection of the any third party software, firmware, hardware and tools to achieve the County's intended results, (and (b) any County modifications, changes or alterations thereto. The County acknowledges that it has had an opportunity to review all documentation and specifications relating to the Products, including software, purchased hereunder and understands the functionality of the same and its capability of working with County systems and supporting County business and that the County has made its own evaluation in deciding to purchase the Products and any related services.

- B. LIMITATION ON LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ECW, ITS OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, SUPPLIERS, AGENTS, REPRESENTATIVES, LICENSEES, CONTRACTORS OR SUBCONTRACTORS, BE LIABLE FOR ANY SPECIAL, EXEMPLARY, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF TIME, SAVINGS, DATA, GOODWILL OR ANY OTHER PECUNIARY LOSS ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, EVEN IF ECW HAS BEEN ADVISED OF THE LIKELIHOOD OR POSSIBILITY OF SUCH DAMAGES OR LOSSES OCCURRING. TO THE FULLEST EXTENT PERMITTED BY LAW, AND NOT WITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE TOTAL LIABILITY OF ECW TO THE COUNTY AND ANYONE CLAIMING BY OR THROUGH THE COUNTY, FOR ANY AND ALL CLAIMS, LOSSES, COSTS OR DAMAGES, INCLUDING ATTORNEY'S FEES AND COSTS AND EXPERT-WITNESS FEES AND COSTS OF ANY NATURE WHATSOEVER OR CLAIMS EXPENSES RESULTING FROM OR IN ANY WAY RELATED TO THE SERVICES PROVIDED UNDER THIS AGREEMENT FROM ANY CAUSE OR CAUSES SHALL NOT EXCEED THE TOTAL AMOUNT OF LIABILITY INSURANCE POLICY LIMITS AS REQUIRED UNDER THIS AGREEMENT, IN THE AMOUNT OF ONE MILLION DOLLARS (\$1,000,000). IT IS INTENDED THAT THIS LIMITATION APPLY TO ANY AND ALL LIABILITY OR CAUSE OF ACTION HOWEVER ALLEGED OR ARISING. THIS LIMITATION ON LIABILITY DOES NOT APPLY TO ANY INFRINGEMENT CLAIMS THAT MAY ARISE UNDER THIS AGREEMENT.**
- C. THE PARTIES AGREE TO THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION. END USER ACKNOWLEDGES THAT WITHOUT ITS AGREEMENT TO THE LIMITATIONS CONTAINED HEREIN, THE FEES CHARGED FOR THE PRODUCTS AND SERVICES WOULD BE HIGHER.**

X.MISCELLANEOUS TERMS AND CONDITIONS

- A. Amendments.** Any modification of this Agreement or any SOW must be set forth in a writing signed by each Party.
- B. Assignment and Subcontracting.** ECW shall not assign, transfer or delegate directly or indirectly, all or part of its rights or obligations under this Agreement without prior written consent from the County. If permitted by the County, ECW shall have the right to subcontract all or a portion of any services provided hereunder and shall provide the County with a list of all subcontractors and the description of the scope of work performed by such subcontractors.



Subcontracting, if permitted, shall not relieve ECW of any of its obligations under this Agreement. ECW shall be and remain solely responsible to the County for the negligent or intentional acts or faults of any such subcontractors and of such subcontractor's officers, agents and employees, each of whom shall for this purpose, be deemed to be an agent or employee of ECW to the extent of its subcontract. As a prior condition to approval of a subcontractor, ECW shall file a copy of the applicable subcontract with the County.

- C. **Background checks.** ECW certifies that its employees and subcontractors performing work under this Agreement have undergone background checks.
- D. **Certifications.** ECW shall ensure that all of its certifications, representations, and warranties under this Agreement shall remain true throughout the Term of the Agreement as if they are continuing commitments, and ECW shall immediately notify the County in writing in the event that any of the certifications, representations, and warranties ceases to be true. For instance, ECW shall ensure that the geodiverse data centers created under the provisions of this Agreement shall maintain their SSAE-16 certifications and ECW shall immediately notify the County in the event any such certification is suspended or terminated. At its sole discretion, the County has the unequivocal right to review and audit ECW's continuing certifications, representations, and warranties.
- E. **Governing Laws/Jurisdiction.** This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of Ohio. The parties agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this Agreement, and each party consents to the exclusive jurisdiction of such courts. ECW hereby agrees not to challenge this Governing Law and Jurisdiction provision, and further agrees not to attempt to remove any legal action outside of Ohio for any reason.
- F. **Compliance with Laws.** The Parties agree to comply with all Federal, State, County, and municipal laws, ordinances, resolutions, and policies applicable to the work to be done under this Agreement.
- G. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, and all of which shall together constitute one and that same document, and shall be binding on the signatories; and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart. In the event that any signature is delivered by facsimile transmission, by email delivery of a ".pdf" format data file, or by uploading of a ".pdf" format data file on the County's website, such signatures shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.
- H. **Ethics Requirements.** ECW agrees to remain in compliance with all County Ethics requirements including, as applicable, Vendor Ethics Registration, Vendor Ethics Training, and Registration of all Lobbyists retained by the Contractor. ECW shall consult the Cuyahoga County Office of Inspector General to ensure it is in full compliance with all County Ethics requirements. The Inspect General's website may be found at: <http://inspectorgeneral.cuyahogacounty.us/>.
- I. **Debarment.** Notwithstanding any provision herein to the contrary, in the performance of any of ECW's obligations herein, ECW shall not use or subcontract any individual or entity (including any entity that is owned or controlled by any individual) which is the subject of a debarment or suspension hearing or has otherwise been debarred or suspended by the County or any other governmental entity from performing work or services for the County. ECW shall provide to the County a list of all proposed affiliates, subcontractors, individuals and entities intended to perform any of the services prior to any engagement or entering into any contract or purchase order with respect to any services to be performed under this Agreement.



- J. **Findings for Recovery.** ECW represents and warrants that it is not subject to an "unresolved" finding for recovery under Ohio Revised Code Section 9.24.
- K. **Force Majeure.** In the event that either party's performance (other than the payment of fees) is delayed, prevented, obstructed or inhibited because of any act of nature, fire, casualty, delay or disruption in transportation, flood, war, strike, lockout, epidemic, destruction or shut-down of facilities, shortage or curtailment, riot, insurrection, governmental acts or directives, any full or partial failure of any communications or computer network or any cause beyond such party's reasonable control, the party's performance will be excused and the time for the performance will be extended for the period of delay or inability to perform resulting from such occurrence. The occurrence of such event will not constitute grounds for a declaration of default by either party.
- L. **Foreign Corporation.** ECW certifies has been duly organized and is a validly existing corporation under the laws of the State of Delaware, is in good standing and qualified to do business in the State of Ohio as a foreign corporation, has the full legal authority to enter into this Agreement and perform its obligations hereunder, and has all requisite power, corporate or otherwise, to conduct its business, as presently conducted and will remain so qualified and in good standing during the term of this Agreement.
- M. **Integration Clause.** This Agreement constitutes the entire agreement between the Parties with respect to the services described in the SOW. This Agreement supersedes all prior oral and written agreements, communications, and understandings between the Parties with respect to the services.
- N. **Non-solicitation.** While this Agreement is in effect and for one (1) year after its termination, each Party shall not, directly or indirectly, solicit for employment any personnel of the other Party or its subcontractors or agents performing services unless the Party being solicited has given its prior written consent.
- O. **Notices.** All notices given under this Agreement shall be in writing and shall be delivered either by (i) postage prepaid return receipt requested certified mail; or, (ii) facsimile confirmed by postage prepaid U.S. mail, addressed to the party or parties for whom it is intended, at the following addresses:

County of Cuyahoga, Ohio
Department of Public Safety and Justice Services
1219 Ontario Street 4th Floor
Cleveland, Ohio 44113
ATTN: Public Safety Director

Emergency CallWorks, Inc.
1900 International Park, Suite 300
Birmingham, AL 35243
ATTN: Craig Parker, CEO
Phone: 205-979-1412
Fax: 256-977-7940
Email: Cparker@emergencycallworks.com

Notice by certified mail shall be effective on the date it is officially recorded as delivered to or refused by the intended recipient by return receipt or equivalent. All other notices given under this Agreement that are delivered by facsimile shall be deemed to have been delivered to and received by the addressee.

- P. **Parties' Relationship.** The Parties' relationship, including that of their respective subcontractors, is strictly one of independent contractors. Accordingly, ECW's performance of this Agreement in



no event is intended, or to be construed, as an agency, employment, joint venture, or partnership relationship.

Q. **Priority.** The following documents are attached and incorporated into this Agreement and shall govern in the following order:

1. Exhibit "A" – Price Proposal Rev. 4 (Dated April 19, 2013)
2. Exhibit "B" – ECW's Proposal RFP #26413 (Dated January 25, 2013) (unless otherwise modified by Exhibits C, D and E)
3. Exhibit "C" – Statement of Work (SOW) (Dated May 23, 2013)
4. Exhibit "D" – Service and Support Guidelines (Dated May 23, 2013)
5. Exhibit "E" – End User License Agreement (EULA)
6. Exhibit "F" – Request for Proposals # 26143

R. **Public Records.** ECW acknowledges that the County is a political subdivision in the State of Ohio and as such is subject the Ohio Revised Code and other law related to the keeping and access to Public Records, including any and all applicable Sunshine Laws, open meeting requirements, and retention schedules effecting any and all manner of communication with the County and any and all documents in any format or media.

S. **Remedies.** Except where specified otherwise, remedies under this Agreement are cumulative, not sole and exclusive. Neither Party will retain the benefit of inconsistent remedies.

T. **Severability.** If a provision is held to be illegal, invalid, or unenforceable, it will be severed and, to the extent that doing so does not materially and adversely affect either Party's economic rationale for entering into this Agreement, the remaining provisions will remain in force.

U. **Survival.** Provisions on compliance with laws, indemnification, infringement, warranties, and such other provisions that, by their nature, would reasonably continue, will survive this Agreement.

V. **Third-Party Beneficiary.** No provision of this Agreement will inure to the benefit of a third person (including the public at large) so as to constitute such person a third-party beneficiary under this Agreement, or otherwise give rise to a cause of action in any person not a Party.

W. **Trademarks.** Neither Party will display or use, in advertising or otherwise, any trade name, logo, trademark, service mark, or other indicia of origin of the other Party without that Party's prior written consent, which consent may be revoked at any time by notice.

X. **Waiver.** For the waiver of a right or condition for the benefit of a Party to be effective, it must be given in writing by the waiving Party. No course of dealings or failure of a Party to strictly enforce a term, right or condition of this Agreement will be construed as a general waiver or relinquishment of that term, right or condition. A Party's waiver of a default will not be deemed a waiver of any other default.

XI.ELECTRONIC SIGNATURE

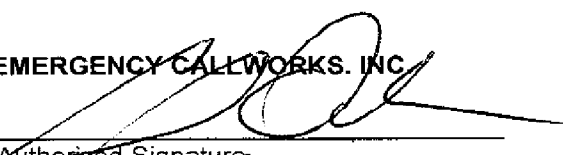
ECW AGREES ON BEHALF OF THE SUBMITTING BUSINESS ENTITY, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, SUBGRANTEES, AGENTS OR ASSIGNS, THAT ALL CONTRACT DOCUMENTS REQUIRING COUNTY SIGNATURES MAY BE EXECUTED BY ELECTRONIC MEANS, AND THAT THE ELECTRONIC SIGNATURES AFFIXED BY THE COUNTY TO SAID DOCUMENTS SHALL HAVE THE SAME LEGAL EFFECT AS IF THAT SIGNATURE WAS MANUALLY AFFIXED TO A PAPER VERSION OF THE



DOCUMENT. ECW ALSO AGREES ON BEHALF OF THE AFOREMENTIONED ENTITY AND PERSONS, TO BE BOUND BY THE PROVISIONS OF CHAPTERS 304 AND 1306 OF THE OHIO REVISED CODE AS THEY PERTAIN TO ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC SIGNATURE POLICY OF CUYAHOGA COUNTY.

IN WITNESS WHEREOF, the County and ECW have each caused this Agreement to be signed and delivered by its duly authorized representative as of the date first written.

EMERGENCY CALLWORKS, INC



Authorized Signature

Craig Dollar
Printed Name

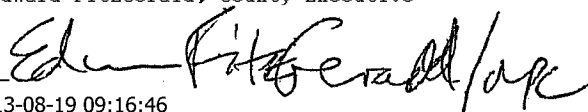
President
Title

COUNTY OF CUYAHOGA, OHIO

Edward FitzGerald, County Executive

BY: _____

Edward FitzGerald, County Executive 2013-08-19 09:16:46



The legal form and correctness
of this Agreement is hereby approved:

Law Department
County of Cuyahoga, Ohio
Majeed G. Makhlouf, Director of Law

By: _____

Assistant Director of Law

Date: _____