

CITY OF STRONGSVILLE, OHIO

ORDINANCE NO. 2014 – 073

By: Mayor Perciak and All Members of Council

**AN ORDINANCE REPEALING ORDINANCE NO. 2014-018
AND AUTHORIZING THE MAYOR TO ENTER INTO A
PURCHASE AGREEMENT FOR PRODUCTS AND
SERVICES INCLUDING SYSTEM SUPPORT AND
MAINTENANCE WITH EMERGENCY CALLWORKS, INC.
TO SUPPORT OPERATION OF THE CITY'S 911
DISPATCH SERVICE, IN CONJUNCTION WITH
PARTICIPATION BY CUYAHOGA COUNTY, AND
DECLARING AN EMERGENCY.**

WHEREAS, through passage of Ordinance No. 2014-018, Council previously authorized the Mayor to enter into a contract with AT&T (Public Safety Solutions) for the purchase and installation of a new, updated 911 call handling system to enhance the City's dispatch services; and

WHEREAS, since then, and based upon various discussions with representatives of Cuyahoga County, the City, through its Director of Communication & Technology, has determined that it will be technologically appropriate, consistent with City operating parameters, and substantially more cost effective in the long run for the City's dispatch center to ultimately operate in conjunction with Cuyahoga County pursuant to its master plan for 911 call handling, which assistance and participation will likely be provided at minimal cost to the City; and

WHEREAS, it accordingly will be necessary to operate the system now and in the future with sufficient trunk lines, equipment and capacity to properly serve both the City of Strongsville and its new contractual partner, the City of North Royalton, with regard to providing upgraded dispatch services in an enhanced manner, pending final coordination and support through Cuyahoga County; and

WHEREAS, under such circumstances, the City's proceeding in this manner would obviate any necessity for the City of Strongsville to implement the originally anticipated purchase of a 911 call handling system with equipment from AT&T, as previously contemplated and authorized by prior Ordinance; and

WHEREAS, it is, therefore, the recommendation of the City's Director of Communication & Technology and the Public Safety Director that the City promptly repeal the prior Ordinance, and proceed immediately with ordering and purchasing the call handling system, including applicable hardware, software, installation, training, support and maintenance from Emergency CallWorks, Inc., the vendor for Cuyahoga County and at advantageous pricing.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF STRONGSVILLE, COUNTY OF CUYAHOGA AND STATE OF OHIO:

Section 1. That for the aforesaid reasons, Ordinance No. 2014-018 is hereby repealed in its entirety.

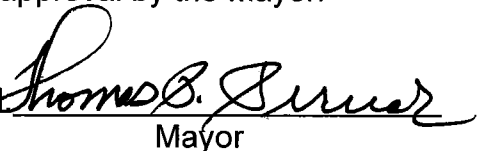
Section 2. That the Mayor be and is hereby authorized and directed to enter into a contract with **EMERGENCY CALLWORKS, INC.**, for the purchase and installation of a 911 call handling system, including various public safety dispatch system hardware, software and appurtenances with system support and maintenance, in accordance with the Purchase Agreement for Products and Services, and for the prices attached thereto all as reflected on Exhibit "1" attached hereto and incorporated by reference, but in a total amount not to exceed \$49,900.00, and with final adjustments therein subject to approval by the Law Director.

Section 3. That the funds for the purposes of said contract have been appropriated and shall be paid from the General Capital Improvement Fund.

Section 4. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council; and that all deliberations of this Council, and any of its committees, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 5. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the City, and for the further reason that it is immediately necessary to enter into such contract in order to replace the existing 911 call system related to providing dispatch services and pending receipt of further support and assistance from Cuyahoga County, to ensure the usual daily operation and continuity of services of the public safety department of the City, and to conserve public funds. Therefore, provided this Ordinance receives the unanimous vote of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor.


President of Council

Approved 
Mayor

Date Passed: April 7, 2014

Date Approved: April 7, 2014

	<u>Yea</u>	<u>Nay</u>
Carbone	<u>✓</u>	_____
Daymut	<u>✓</u>	_____
DeMio	<u>✓</u>	_____
Dooner	<u>✓</u>	_____
Maloney	<u>✓</u>	_____
Schonhut	<u>✓</u>	_____
Southworth	<u>✓</u>	_____

Attest: 
Clerk of Council

ORD. No. 2014-073 Amended: _____
1st Rdg. 04/07/14 Ref: _____
2nd Rdg. suspended Ref: _____
3rd Rdg. suspended Ref: _____

Pub Hrg. _____ Ref: _____
Adopted: 04/07/14 Defeated: _____

EMERGENCY CALLWORKS

PURCHASE AGREEMENT FOR PRODUCTS AND SERVICES

This Purchase Agreement CD032514A-1 is entered into this 26th day of March, 2014 ("Effective Date") between Emergency CallWorks, Inc., a Delaware corporation ("ECW") and the entity identified below as "END USER."

PURCHASE SCHEDULE

END USER INFORMATION

End User Name: **Strongsville, OH**
Address:
City: Strongsville State: OH Zip: 44146
Contact Name: John Bedford
Phone: 440-343-2540
Fax: 440-498-4412
Email: john.bedford@strongsville.com

ECW CONTACT INFORMATION

Emergency CallWorks, Inc.
1900 International Park, Suite 300
Birmingham, AL 35243
Contact Name: Craig Dollar
Phone: 855-329-1911
Fax: 205-977-7940
Email: cdollar@EmergencyCallWorks.com

PRODUCTS AND SERVICES PURCHASED

The products and services purchased hereunder and their respective prices are set forth in Quotation No. CD032514A-1 attached to the Agreement as **Schedule E**.

Estimated delivery date: Cut-Over by 5-31-14

TOTAL PURCHASE AGREEMENT AMOUNT

\$ 49,900

TECHNICAL SERVICES, TRAINING AND SUPPORT

Installation/Implementation Services:

☒ Yes ☐ No

Project Management Services:

☒ Yes ☐ No

Training Services:

☒ Yes ☐ No

Remote Software Support Program:

Term: 1 Yr.

On-Site Maintenance Service from ECW:

☒ Yes ☐ No

Standard Hardware Repair & Warranty

☒ Yes ☐ No

Extended Hardware Repair & Warranty

☐ Yes ☒ No ☐ Term: ___ Yrs.

PAYMENT TERMS

☒ 100% net 15 days from the date of invoice. ECW shall invoice upon contract signature.

END USER ACCEPTANCE OF AGREEMENT

When the END USER and ECW sign this Agreement, it shall constitute a binding agreement. END USER acknowledges receipt of a copy of this Agreement. The Terms and Conditions and Schedules attached hereto are incorporated herein by reference and made a part of this Agreement. This Agreement, including the Terms and Conditions and the Schedules attached hereto shall constitute the entire understanding between the parties concerning the subject matter hereof and shall supersede all prior discussions, agreements and representations, whether oral or written and whether or not executed by END USER and ECW.

END USER AUTHORIZED SIGNATURE

Signature:

By:

CITY OF STRONGSVILLE

Thomas P. Perciak

Print Name:

Title:

Mayor

Emergency CallWorks, Inc. (ECW)

Signature:

Print Name:

Title:

Craig Dollar

President

EX.1

PURCHASE AGREEMENT - TERMS AND CONDITIONS

1. Sale and Grant of License: ECW agrees to sell the products identified on the Purchase Schedule (the "Products") to END USER and concurrently herewith grants to END USER a license to use the computer software identified therein in accordance with terms and conditions of this Agreement and ECW's End User License Agreement attached hereto as **Schedule A** and incorporated herein by reference.

2. Order. This Agreement shall be construed as an order for the Products and services identified on the Purchase Schedule and or Quotation. End User's own record-keeping requirements may necessitate its issuance of a purchase order. Such purchase order may be sent to ECW Inside Sales. However, such purchase order, and any pre-printed terms and conditions thereon, shall not be binding on ECW.

3. Prices and Payment. The purchase price for Products and services, if any, are listed on the Purchase Schedule and or Quotation. Payment for Products and services shall be in accordance with the terms listed on the Purchase Schedule. If Products are purchased pursuant to an installment payment plan, END USER agrees to grant ECW a security interest in all Products purchased until such payments are made in full. ECW may withhold shipment of the Products until END USER makes any pre-shipment payment required (if applicable). ECW may revoke any credit extended to END USER for its failure to pay any amount when due or for any other reason affecting END USER's creditworthiness.

4. Taxes. Unless otherwise specified, prices shown do not include applicable federal, state, or local sales tax, transportation tax, or other tax which is required to be imposed upon the items ordered by reason of their sale or delivery. Such tax, if any, will be charged and listed as separate items on the invoice unless END USER furnishes ECW applicable tax-exemption certificates.

5. Default and Late Charges. ECW may cancel the Agreement for default if: (a) the END USER breaches any material provision of this Agreement, or (b) END USER becomes insolvent or a petition under any bankruptcy act or similar statute is filed by or against END USER and is not vacated within thirty (30) days after such filing. Cancellation shall be effective upon END USER's receipt of a written cancellation notice issued by ECW.

6. Cancellation of Agreement by END USER. Non-standard ECW products, such as special order servers, workstations, modems, computer hardware, racks, switches, monitors, peripherals, etc. are non-cancelable and non-returnable. Agreements for standard ECW products may be canceled up to 15 business days prior to the scheduled delivery date. Agreements to purchase standard ECW products that are canceled less than fifteen (15) calendar days prior to the scheduled delivery date shall be subject to a cancellation fee in the amount of 10% of the purchase price stated on the Purchase Schedule. Delivery Schedules for standard ECW products may be rescheduled at any time prior to the scheduled delivery date, provided that the rescheduled delivery date is no more than 30 calendar days from the originally scheduled delivery date. In the event the rescheduled delivery date is greater than 30 calendar days from the originally scheduled delivery date, the rescheduling shall be treated as a cancellation and a cancellation fee in the amount of 10% of the purchase price stated on the Purchase Schedule may be charged.

7. Delivery, Title and Risk of Loss. Unless otherwise specifically set forth in this Agreement, shipments by ECW shall be FOB point of origin, freight prepaid. Title to items purchased shall pass to END USER and all risk of loss or damage to such items in transit shall be borne by END USER from the time such items are delivered by ECW to the first common carrier. If a delivery is delayed as a result of any unilateral action or inaction of END USER, ECW may invoice END USER for completed items that are ready for delivery on the scheduled delivery date and may charge END USER for warehousing and other expenses incurred because of the delay caused by END USER.

8. Technical Services, Training and Support

A. Installation Services. ECW agrees to provide END USER installation services, if purchased, as identified on the Purchase Schedule and or Quotation. The scope, terms and conditions of any installation services purchased are described in the Statement of Work ("SOW") attached hereto as **Schedule D** and incorporated herein by reference. It is anticipated that amendments to the SOW may be necessary to accommodate the END USER's specific needs. Any and all amendments to the SOW shall be made in writing and shall become a part of this Agreement.

B. Project Management Services. ECW agrees to provide END USER project management services, if purchased, as identified on the Purchase Schedule and or Quotation. The scope, terms and conditions of any project management services purchased are described in detail in the attached SOW and any amendments thereto.

C. Training Services. ECW agrees to provide END USER training services, if purchased, as identified on the Purchase Schedule and or Quotation. The scope, terms and conditions of any training services purchased are described in detail in the attached SOW and any amendments thereto.

D. Product Support and Maintenance. ECW provides support for its products pursuant to an annual support and maintenance agreement. Support and maintenance includes access to ECW Product Support personnel during the time frames set forth in the Purchase Schedule. ECW support and maintenance also includes such periodic product updates or upgrades as ECW may make available from time to time during any period during which End User has a valid support and maintenance agreement in effect with ECW at the time the specific product update or upgrade is first made available. Support and maintenance during the Limited Warranty Period is included as part of the initial purchase price. At the end of the Limited Warranty Period or any applicable Renewal Term, End User's annual support and maintenance agreement with ECW shall be automatically extended for another twelve month period (a "Renewal Term") unless no later than thirty days (30) days prior to the end of the Limited Warranty Period or Renewal Term (as the case may be), End User delivers to ECW a signed notice of non-renewal in the form attached hereto as **Schedule G**. Upon any such automatic renewal, End User shall be obligated to pay for the following year's support and maintenance at the renewal rate then in effect, and End User hereby agrees to remit to ECW the applicable charge for the next year's support and maintenance by no later than the scheduled renewal date.

9. Warranties and Disclaimer.

A. Limited Hardware and Software Warranty. ECW software is covered by a twelve (12) month warranty as described in ECW's End User License Agreement, attached hereto as **Schedule A** and incorporated herein by reference. Hardware products provided by ECW are covered by the warranty as described in the Hardware and Software Repair and Warranty Policy attached hereto as **Schedule B** incorporated herein by reference.

B. END USER Remedies. END USER's sole remedy and ECW's entire liability whether based on breach of warranty, contract, tort, or negligence in the manufacture and/or functioning of Products, shall be limited to replacement or repair of the Product at ECW's election. Any replacement of the Product(s) will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

C. 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) 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, AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH THE END USER.

D. END USER's Evaluation. END USER accepts sole responsibility for (a) END USER's system configuration, design and requirements, (b) the selection of the software, firmware and hardware, any third party software, firmware, hardware and tools to achieve END USER's intended results, (c) use of the software, firmware and/or hardware (d) the results obtained from the software, firmware and/or hardware and (e) any END USER modifications, changes or alterations thereto. END USER 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 END USER's systems and supporting END USER's business and that END USER has made its own evaluation in deciding to purchase the Products and any related services.

10. Limitation of Liability.

A. 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.

B. 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.

11. Acceptance. Acceptance of the Products shall occur upon successful completion of the first to occur of (i) any acceptance tests described in the SOW, and (ii) first productive use by End User of the Products. In the event acceptance tests are not successfully completed, END USER shall notify ECW of its determination of non-compliance with applicable acceptance tests, stating in detail the nature of such non-compliance, within ten (10) days of the completion of the acceptance tests. If END USER fails to provide its notice of non-acceptance within the ten (10) days following completion of acceptance tests, the Products shall be deemed accepted.

12. End User Warranty and Indemnity. END USER represents and warrants that: (i) END USER 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 END USER'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.

13. ECW Infringement Indemnity. ECW agrees to hold END USER harmless 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 an equitable portion of the license fee paid therefore. Except as specified above, ECW will not be liable for any costs or expenses incurred without its prior written authorization. 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 END USER's specifications, (iii) that is modified after the software is delivered by ECW, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) 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.

14. 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.

15. Notices. All notices given under this Agreement shall be in writing and shall be delivered either by (i) personal delivery; (ii) expedited messenger service; (iii) postage prepaid return receipt requested certified mail; or, (iv) facsimile confirmed by postage prepaid U.S. mail, addressed to the party or parties for whom it is intended, at the addresses specified on the Purchase Schedule. Notice by certified mail or expedited messenger service 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 in person or by facsimile shall be deemed to have been delivered to and received by the addressee and shall be effective on the date of actual receipt of delivery.

16. Amendment or Waiver. No provision of this Agreement shall be deemed waived, amended, or modified by either party unless such waiver, amendment or modification is in writing and signed by the party against whom it is sought to be enforced.

17. Severability. In the event any one or more of the provisions of this Agreement is held to be unenforceable under applicable law, (i) such unenforceability shall not affect any other provision of this Agreement; (ii) this Agreement shall be construed as if said unenforceable provision had not been contained herein; and (iii) the parties shall negotiate in good faith to replace the unenforceable provision by such as has the effect nearest to that of the provision being replaced.

18. Governing Law, Consent to Jurisdiction and Attorneys' Fees. The validity, performance, and all matters relating to this Agreement, its Schedules and any amendment thereto shall be governed by the laws of the State of Ohio without reference to conflicts of law principles. The parties hereby consent to jurisdiction and venue in the federal and state courts of the State of Ohio. If any legal action or other proceeding is brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs incurred in the action or proceeding, in addition to any other relief to which the prevailing party may be entitled.

19. Assignment and Subcontracting. Neither this Agreement nor any right hereunder may be transferred, assigned or delegated by either party without the prior written consent of the other. Any attempted assignment, delegation or transfer shall be void except in the case of assignment by a party to a wholly-owned subsidiary, or as a result of a merger or sale of all/substantially all of a party's assets. Notwithstanding the foregoing, ECW shall have the right to subcontract all or a portion of any services provided hereunder. This Agreement shall inure to the benefit of and bind the parties' successors and permitted assigns.

20. Authority. Each party hereto represents and warrants that (i) it has obtained all necessary approvals, consents and authorizations of third parties and governmental authorities to enter into this Agreement and to perform and carry out its obligations hereunder, (ii) the persons executing this Agreement on its behalf have express authority to do so, and, in so doing, to bind the party thereto; (iii) the execution, delivery, and performance of this Agreement does not violate any provision of any bylaw, charter, regulation, or any other governing authority of the party; and (iv) the execution, delivery and performance of this Agreement has been duly authorized by all necessary partnership or corporate action and this Agreement is a valid and binding obligation of such party, enforceable in accordance with its terms.

21. Survival of Provisions. The parties agree that where the context of any provision indicates an intent that it shall survive the term of this Agreement then it shall survive.

List of Associated Schedules

The following schedules (the "Schedules") are hereby incorporated by reference herein. Capitalized terms used in the Schedules shall have the same meaning as set forth herein unless otherwise defined. In the event of a conflict between this Purchase Agreement and any Schedule, the provisions of the Schedule shall govern and control.

Schedule A	End User License Agreement (EULA) - Included
Schedule B	ECW Hardware Repair and Warranty Policy
Schedule C	ECW Service and Support Guidelines
Schedule D	ECW Statement of Work (SOW)
Schedule E	ECW Quote/Proposal (QEP)

END USER LICENSE AGREEMENT (EULA)
FOR Emergency CallWorks, Inc. (ECW) SOFTWARE

"Schedule A"

Notice to End User.

IMPORTANT – READ CAREFULLY: This Emergency CallWorks, Inc. ("ECW") End-User License Agreement ("EULA") is a legal agreement between you, an individual or entity who is the registered user of the Licensed Software (defined below) and its authorized employees ("you" or "end user") and ECW. This EULA governs your right to use the software and associated documentation that accompanies this EULA and/or the software and associated documentation that is purchased by you from ECW or an ECW distributor (the "Licensed Software"). The Licensed Software may contain embedded or pre-loaded software or other software provided on media such as CD-ROM, Computer Hard Drives, and DVD or down loadable from ECW approved locations. Further, the Licensed Software may include third party software that ECW does not own but is authorized to distribute. The terms of this EULA apply to any such third party software unless an additional license agreement pertaining to the third party software is enclosed, in which case the terms of such license applies to the third party software. By signing this EULA or by installing, copying, downloading, accessing or otherwise using the Licensed Software, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, you are not authorized to possess or use the ECW Software and you must return any copies of the Licensed Software in your possession or under your control to ECW.

Software License.

- A. **Grant of License.** Subject to all the terms and conditions of this EULA, ECW hereby grants you a non-transferable, non-exclusive license to use the Licensed Software, in object code form only, for the purposes for which the Licensed Software was designed and in accordance with the terms and conditions of this EULA.
- B. **Restrictions on Use.** You may not, directly or indirectly, (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Licensed Software (ii) modify, translate, or create derivative works based on the Licensed Software; (iii) copy (except for archival purposes), rent, lease, resell, sub-license, distribute, assign, or otherwise transfer rights to the Licensed Software, except as otherwise provided herein; (iv) use the Licensed Software other than as provided by this EULA; (v) use or allow the transfer, transmission, export, or re-export of the Licensed Software in violation of any export control laws or regulations administered by the U.S. Commerce Department, or any other government agency; or (vi) remove any proprietary notices or labels on the Licensed Software.
- C. **Dual Media.** You may receive the Licensed Software in more than one medium. Regardless of the type or size of medium you receive, you may use only one medium that is appropriate for your deployment. You may not use or install the other medium on another computer. You may not loan, rent, lease, or otherwise transfer the other medium to another user, except as part of the permanent transfer of the Licensed Software as provided herein.
- D. **Beta, Partner Release or Pre-Release Versions.** In the event the Licensed Software is a beta release, development partner agreement or pre-release version, the terms of this section and this EULA in its entirety shall apply. Your license to use the Licensed Software shall expire on the date set forth in the Partner or Beta Site Agreement signed by you or, in the absence of such agreement, 120 days after installation. The Licensed Software you are receiving may contain more or less features than the commercial release of the software ECW ultimately intends to distribute. While ECW intends to distribute a commercial release of the Licensed Software, ECW reserves the right at any time not to release a commercial release of the Licensed Software or, if released to alter features, specifications, capabilities, functions, licensing terms, release dates,

general availability or other characteristics of the commercial release. You agree that the beta or partner release or pre-release versions are not suitable for production use and may contain errors affecting their proper operation. In the event the beta, partner or pre-release Licensed Software was provided to you at no charge, for purposes of the total liability limitation set forth in the section entitled "Limitation of Liability" the "amount actually paid by you" shall be deemed to be the ECW's list price for the Licensed Software, or other amount as expressly stated in any Beta or Partner Site Agreement signed by you and ECW.

- E. **Demonstration Software.** In the event the Licensed Software has been provided as a demonstration copy of the Licensed Software, whether for a fee or at no charge, the terms of this section and this EULA in its entirety shall apply. Your license to use the Licensed Software shall expire 120 days after installation. In the event the demonstration copy of the Licensed Software was provided to you at no charge, for purposes of the total liability limitation set forth in the section entitled "Limitation of Liability" the "amount actually paid by you" shall be deemed to be the ECW's list price for the Licensed Software.
- F. **Updates and Upgrades.** When under effective Software Support Agreements, updates or upgraded versions of the Licensed Software may be made available by ECW from time to time. If the Licensed Software is an update or upgrade of an ECW product, you are bound by the terms of this EULA and may only use that updated or upgraded Licensed Software in accordance with this EULA. ECW may, at its sole discretion, require the installation of software updates or upgrades to maintain the warranty provisions contained herein.
- G. **Intellectual Property, Trademark and Copyright.** This EULA does not grant you any rights in connection with any trademarks or service marks of ECW, its suppliers or licensors. All right, title, interest and copyrights in and to the Licensed Software (including but not limited to any images, photographs, animations, video audio, music, text and "applets" incorporated in the Licensed Software), the associated documentation and any copies of the Licensed Software are owned by ECW, its suppliers or licensors. All title and intellectual property rights in and to the content which may be accessed through use of the Licensed Software is the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. This EULA grants you no rights to use such content. You may not copy the associated documentation accompanying the Licensed Software. You must keep the Licensed Software free and clear of any liens, claims or encumbrances.
- H. **Third Party Rights.** ECW's suppliers and licensors holding any intellectual property rights in any Licensed Software, and any third party owning any intellectual property rights in software from which the Licensed Software was derived, are intended third party beneficiaries of this EULA. All grants of rights to intellectual property intended to be accomplished by this EULA are explicitly stated. No other grants of rights shall be inferred or shall arise by implication.
- I. **Confidentiality.** You acknowledge that the Licensed Software and any accompanying printed materials contain proprietary and confidential property of ECW and/or ECW's suppliers and licensors (collectively, "Confidential Information"). You will not disclose provide or otherwise make available any such Confidential Information to any third parties, unless required by Ohio Law.
- J. **U.S. Government Restricted Rights.** The Licensed Software and associated hardware and documentation are provided with RESTRICTED RIGHTS. With respect to any acquisition of the Licensed Software by or for any unit or agency of the United States Government ("Government"), the Licensed Software shall be classified as "commercial computer software," as that term is defined in the applicable provisions of the Federal Acquisition Regulation ("FAR") and supplements thereto, including the Department of Defense (DoD) FAR Supplement ("DFARS"). The Licensed Software was developed entirely at private expense and no part of the Licensed Software was first produced in the performance of a Government contract. If the Licensed Software is supplied for use by DoD, the Licensed Software is delivered subject to the terms of this EULA.

- K. **Reservation of Rights.** ECW, its suppliers and/or licensors retain ownership of the Licensed Software, any portions or copies thereof, and all rights therein. ECW reserves all rights not expressly granted to you.

Limited Warranty.

- A. **Limited Warranty.** ECW warrants, for a period of twelve (12) months from the date of shipment of the Licensed Software from ECW, as evidenced by dated ECW shipping documents (the "Limited Warranty Period"), that (i) the Licensed Software will materially conform to ECW's published specifications for such Licensed Software as of the date of shipment; (ii) and that the Licensed Software will be free from defects in material, workmanship, and manufacture under normal use. This warranty covers only problems reported to ECW during the warranty period. This Limited Warranty is void if failure of the Licensed Software has resulted from accident, abuse, misuse, misapplication or other conduct or conditions outside the control of ECW.
- B. **No Other Warranties.** ECW makes no warranty or representation that the information or functions contained in the Licensed Software will meet your requirements, that the operation of the Licensed Software will be uninterrupted or error free, or that all Licensed Software and documentation defects are correctable or will be corrected. ECW makes no warranty or representation that updated versions of the Licensed Software will be created or issued with specific functional enhancements or modifications. ECW does not warrant performance of any third party hardware, software or services provided by ECW or endorsed for the specific purpose of operating with the Licensed Software. However, where reasonably possible and permitted under ECW's agreements with such third party, ECW shall pass on to you any such third party warranty. ECW is not responsible for problems caused by changes in the operating characteristics of computer hardware or computer operating systems which are made after release of the Licensed Software, or problems resulting from use of the Licensed Software with third party computer hardware components, systems or configurations.

Disclaimer of Warranties.

- A. EXCEPT AS EXPRESSLY STATED IN THIS EULA, THE LICENSED SOFTWARE AND ASSOCIATED DOCUMENTATION IS PROVIDED "AS IS" AND WITH ALL FAULTS, AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH THE USER.
- B. THE WARRANTIES IN THIS EULA 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 END USER- OR THIRD PARTY- PROVIDED EQUIPMENT, FIRMWARE AND SOFTWARE CONFIGURATIONS; (B) ANY AND ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY, QUALITY, AND NONINFRINGEMENT; AND (C) 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 EULA, IF ANY, THE PRODUCTS ARE PROVIDED "AS IS" AND WITH ALL FAULTS, AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH THE END USER.
- C. **Customer Remedies.** All warranty claims must be made within the warranty period. ECW's, its suppliers' and licensors' entire liability and your exclusive remedy shall be, at ECW's option, either (i) return of the price paid for the Licensed Software; or (ii) repair or replacement of the Licensed Software that does not meet the Limited Warranty. In the event of repair or replacement, ECW will undertake to correct, within a reasonable period of time, any reported "Software Error" (failure of the Licensed Software to perform substantially the functions described in the published specifications for such Licensed Software as of the date of shipment), correct significant errors in the documentation, and replace any magnetic media which proves defective

in materials, workmanship or manufacture. Such report of a Software Error shall be made in writing to Emergency CallWorks, Inc. Customer Service, 1900 International Park, Suite 300, Birmingham, AL., 35758. Any replacement Licensed Software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

- D. Exclusion of Liability/Damages.** The following is without prejudice to any rights you may have at law which cannot legally be excluded or restricted. You acknowledge that no promise, representation, warranty or undertaking has been made or given by ECW or its suppliers, licensors, authorized representatives or distributors to any person or company on its behalf in relation to the profitability of or any other consequences or benefits to be obtained from the delivery or use of the Licensed Software and any accompanying hardware, software, manuals or associated documentation. You have relied upon your own skill and judgment in deciding to acquire the Licensed Software and any accompanying hardware, manuals and associated documentation for use by you.

Limitation of Liability.

A. 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.

B. 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.

General Provisions.

- A. Term and Termination.** This EULA and all licenses will terminate if you fail to comply with the terms and conditions of this EULA. Upon notice of termination, or if a license ceases to be effective, you shall immediately, at ECW's option, destroy, or return to ECW at your expense, the Licensed Software, all copies thereof, any updates, and all ECW documentation and materials.
- B. Governing Law.** This EULA will be governed by and construed under the laws of the State of Ohio without regard to conflicts of law provisions, and you hereby consent to the exclusive jurisdiction of the state and federal courts sitting in the State of Ohio. Any and all disputes relating in any way to, or arising out of, the Licensed Software, your use of the Licensed Software or this EULA shall be submitted to arbitration in the State of Ohio; except that, to the extent that you have breached or have indicated your intention to breach this EULA in any manner which

violates or may violate ECW's or its supplier's intellectual property rights, or may cause continuing or irreparable harm to ECW or its supplier's, ECW shall be entitled to injunctive relief, or any other appropriate relief, in any court of competent jurisdiction. Any arbitration or dispute under this EULA shall be conducted in accordance with the then prevailing rules of the American Arbitration Association. The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction. This EULA will not be governed by the United Nations Convention of Contracts for the International Sale of Goods, the application of which is hereby expressly excluded. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorney's fees and costs in connection with such action.

- C. **Miscellaneous.** ECW may assign this EULA in whole or in part. No failure or delays in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. If any provision of this EULA shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this EULA shall otherwise remain in full force and effect and enforceable. This EULA shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of Ohio. Any waivers or amendments shall be effective only if made in writing and signed by ECW. This EULA is the complete and exclusive statement of the mutual understanding of the parties relating to the subject matter of this

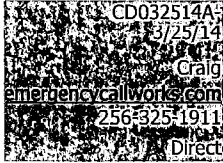
QEP #
Date:

Sales Rep:

E-Mail:

Phone:

For:



Next Generation Solution
From Emergency CallWorks, Inc.
Quotation / Estimate / Proposal
Short Quote / ROM

EMERGENCY
CALLWORKS

Innovation. Beyond Next Generation.

Configuration:

Temporary PSAP for Strongsville, OH

Utilize Cuyahoga County, OH parts to highest degree possible

ECW to provide temporary Site based Server solution

All temp parts provided will be recovered from OV once cut to Countywide system

Eight (8) CAMA Trunks, Eight (8) Admin Line. SIP trunk to Cisco provided after cut-over.

Strongsville responsible for all Workstation equipment, cabling and labor for this option

Site Name:

Strongsville, OH

Solution being Delivered:

"CallStation"

Qty	Part Number	Description
1	ECX100110-HA	ECX Dual Server, HA Appliance Assembly, 2U
2	ECX100312	Media Gateway, 4 Port FXS or (CAMA) to SIP
2	ECX100313	Media Gateway, 4 Port FXO to SIP
2	ECX100315	Rack Shelf, Media Gateway, 2 GW per Shelf
2	ECX500003	SWITCH, CISCO, 24-PORT POE, 10/100/1000
1	ECX500007-R	MISC. MAT., CABLES, RMTE., LOT
1	ECX500017	IP to Serial Dist., 16 port, Dual NIC, w/modem
1	ECX500103	UPS - Smart-UPS X 3000VA
2	ECX500008-1	ALI MODEM, E911 CSU/DSU GD
1	ECX600001	CS USER/ADMIN OPPS TRN (up to 8 students)
1	ECX700001	PROJECT MANAGEMENT, UNIT
1	ECX700002	SYSTEM INSTALLATION
1	ECX800001	SYSTEM ENGINEERING, (1) Lot

Sub-Total

\$41,734.56

***** **TOTAL NR Charges:**

\$41,734.56

Qty	Part Number	Recurring Maintenance Charges (900)
1	ECX900001	SYSTEM SUPPORT, 1 YEAR
1	ECX900004	ONSITE MAINTENANCE, Per YEAR

Sub-Total Recurring Charges:

\$8,165.44

TOTAL COST OF OWNERSHIP ((1 years))

\$49,900.00

Solutions Powered by Emergency CallWorks, Inc.

No order based on this Quotation/Estimate/Proposal (QEP) shall be accepted in the absence of a signed purchase agreement or other purchase contract with Emergency CallWorks, Inc. governing the specific terms of sale.

Lead Time: Call or consult purchase agreement/RFP response

Quotation/Proposal is valid for 120 days from Proposal Date

Payment Terms:

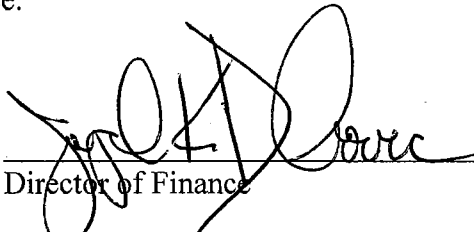
Due on Contract Signing

Net-15, FOB Birmingham, AL

CERTIFICATION OF FUNDS

I, Joseph K. Dubovec, Director of Finance for the City of Strongsville, Ohio hereby certify that the money to meet this Agreement has been lawfully appropriated for the purpose of the Agreement and is in the treasury of the City, or is in the process of collection to the credit of the appropriate fund free from prior encumbrance.

April 8, 2014
Date



Director of Finance

CERTIFICATE OF LAW DIRECTOR

I hereby certify that I have reviewed and approved the form of the foregoing Agreement this 8th day of April, 2014.



Kenneth A. Kraus, Law Director