

COMMISSIONERS JOURNAL NO. 50 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MARCH 6, 2008

THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY MET IN REGULAR SESSION ON THIS DATE WITH THE FOLLOWING MEMBERS PRESENT:

Present: Kristopher W. Jordan, James D. Ward
Absent: Glenn A. Evans

PUBLIC COMMENT

Commissioner Ward comments on Forbes naming Delaware County one of the “Top Ten” places to live in the US

(For A Complete Record Refer To The Official CD Minutes).

RESOLUTION NO. 08-250

IN THE MATTER OF APPROVING THE RESOLUTIONS AND RECORDS OF THE PROCEEDINGS FROM REGULAR MEETING HELD MARCH 3, 2008 AS CONTAINED IN THE COUNTY’S OFFICIAL ELECTRONIC RECORDINGS OF THE PROCEEDINGS:

It was moved by Mr. Ward, seconded by Mr. Jordan to approve the resolutions and records of the proceedings from regular meeting held March 3, 2008 as contained in the county’s official electronic recordings of the proceedings.

Vote on Motion Mr. Evans Absent Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 08-251

IN THE MATTER OF APPROVING PURCHASE ORDERS, VOUCHERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0305 AND MEMO TRANSFERS IN BATCH NUMBERS MTAPR0305:

It was moved by Mr. Ward, seconded by Mr. Jordan to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0305, memo transfers in batch numbers MTAPR0305 and Purchase Orders and Vouchers as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account Number</u>	<u>Amount</u>
PO’s			
Pomegranate Health Systems	Residential treatment	22511607-5342	\$ 25,000.00
Martrese Geiger	Day Care	22411610-5348	\$ 15,000.00
Increases			
Kiddie Academy	Day Care	22411610-5348	\$ 50,000.00
Mt. Business	Copy Maintenance	22411605-5325	\$ 5,000.00
Add Line			
Samantha Ortiz	Day Care	22511607-5348	\$ 5,000.00
Vouchers			
Design Group	Design Services	40411414-5410	\$ 79,572.23
Trident	Security	10011102-5301	\$ 5,963.63
Kindercare Neverland	Day Care	22411610-5348	\$ 30,410.30
Kindercare Neverland	Day Care	22511607-5348	\$ 1,227.36
CCAO SC	Gas/Utilities	10011105-5338	\$ 24,208.73
Nancy Lucas	Day Care	22411610-5348	\$ 6,010.69
Child Care Unlimited/Sunbury	Day Care	22411610-5348	\$ 6,336.35
Liberty Community Center	Day Care	22411610-5348	\$ 10,915.08
Design Group	Design Services	40411414-5410	\$ 47,956.56
Ameritas Group Dental	Feb Premiums for Mar Invoice	75010903-5370	\$ 20,959.20
Vision Care Inc.	Mar 08 Premium for Vision	75010901-5370	\$ 6,123.28

Vote on Motion Mr. Jordan Aye Mr. Evans Absent Mr. Ward Aye

RESOLUTION NO. 08 -252

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

It was moved by Mr. Ward, seconded by Mr. Jordan to approve the following:

The Environmental Services Department is requesting that Marty Bell and Marshall Yarnell attend a Wastewater Workshop in Columbus, Ohio March 11-12, 2008, at the cost of \$490.00.

Vote on Motion Mr. Evans Absent Mr. Jordan Aye Mr. Ward Aye

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RESOLUTION NO. 08-253

IN THE MATTER OF ADOPTING A RESOLUTION DECLARING A NECESSITY AND THE INTENT OF THE DELAWARE COUNTY BOARD OF COMMISSIONERS TO APPROPRIATE PROPERTY:

PROPERTY OWNER(S): G. FREDERICK SMITH CHEMICAL CO.,
AKA GFS CHEMICALS, INC.

PROPERTY LOCATION: 3041 HOME ROAD
POWELL, OHIO 43065

PERMANENT PARCEL NUMBERS: 319-240-01-004-000
319-240-01-005-000

PURPOSE OF APPROPRIATION:

CONSTRUCTION OF A HIGHWAY OVERPASS OVER THE CSX RAILROAD TRACKS ON HOME ROAD INCLUDING CONSTRUCTION, RECONSTRUCTION, INSTALLATION, REPAIR, MAINTENANCE AND IMPROVEMENT OF HOME ROAD

It Was Moved By: Mr. Ward And Seconded By: Mr. Jordan To Approve The Following:

PREAMBLE

WHEREAS, the Board of Delaware County Commissioners ("Board") deems it necessary to construct a highway overpass over the CSX railroad tracks on Home Road, including construction, reconstruction, installation, replacement, repair, maintenance and improvement of Home Road at the CSX railroad tracks in Delaware County, Ohio ("Improvement"); and,

WHEREAS, the Board has determined the necessity for such Improvement and the necessity that such Improvement be made; and,

WHEREAS, the Board has determined that additional land is necessary for such Improvement.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED, by the Board of Delaware County Commissioners (the "Board"):

SECTION 1:

That it is deemed necessary and it is hereby declared to be the intention of the Board to appropriate right-of-way in fee simple (Parcel 21 WDV), perpetual easements (Parcels 21 SV and 21 CHV) and temporary easement (Parcel 21 TV) on, across, above, and or under certain real estate owned by G. Fredrick Smith Chemical Company described in Exhibit "A" attached hereto, and by this reference incorporated herein, for construction of a highway overpass over the CSX railroad tracks on Home Road including construction, reconstruction, installation, replacement, repair, maintenance, and improvement of Home Road in Liberty Township, Delaware County, Ohio.

SECTION 2:

That the legal description of said right-of-way in fee simple (Parcel 21 WDV), two perpetual easements (Parcels 21 SV and 21 CHV) and a temporary easement (Parcel 21 TV) are attached hereto as Exhibit "B" and by this reference incorporated herein; and,

SECTION 3:

That the County Administrator be and is hereby authorized to cause written notice of the passage of this Resolution to be given to the owner and any other persons having an interest of record in the herein described property or to their authorized agents. Such notices shall be served and return made in the manner provided for the service and return of summons in civil actions. If such owner, persons or agents cannot be found, notice shall be given by publication once each week for three consecutive weeks in the Delaware Gazette; and,

SECTION 4:

That the Board directs the County Prosecuting Attorney to commence the appropriation proceedings on behalf of the Board; and,

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SECTION 5:

This Resolution shall take effect and be in force immediately upon passage.

(COPIES OF EXHIBITS “A” AND “B” ARE AVAILABLE IN THE DELAWARE COUNTY ENGINEER’S DEPARTMENT.)

Vote on Motion Mr. Jordan Aye Mr. Evans Absent Mr. Ward Aye

RESOLUTION NO. 08-254

IN THE MATTER OF ADOPTING A RESOLUTION DECLARING A NECESSITY AND THE INTENT OF THE DELAWARE COUNTY BOARD OF COMMISSIONERS TO APPROPRIATE PROPERTY:

PROPERTY OWNER(S): HOME ROAD HOLDING LLC

PROPERTY LOCATION: 3046 HOME ROAD
POWELL, OHIO 43065

PERMANENT PARCEL NUMBERS: 319-240-01-006-000
319-240-01-002-000
319-240-01-001-000

PURPOSE OF APPROPRIATION:

CONSTRUCTION OF A HIGHWAY OVERPASS OVER THE CSX RAILROAD TRACKS ON HOME ROAD INCLUDING CONSTRUCTION, RECONSTRUCTION, INSTALLATION, REPAIR, MAINTENANCE AND IMPROVEMENT OF HOME ROAD

It Was Moved By: Mr. Jordan And Seconded By: Mr. Ward To Approve The Following:

PREAMBLE

WHEREAS, the Board of Delaware County Commissioners (“Board”) deems it necessary to construct a highway overpass over the CSX railroad tracks on Home Road, including construction, reconstruction, installation, replacement, repair, maintenance and improvement of Home Road at the CSX railroad tracks in Delaware County, Ohio (“Improvement”); and,

WHEREAS, the Board has determined the necessity for such Improvement and the necessity that such Improvement be made; and,

WHEREAS, the Board has determined that additional land is necessary for such Improvement.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED, by the Board of Delaware County Commissioners (the "Board"):

SECTION 1:

That it is deemed necessary and it is hereby declared to be the intention of the Board to appropriate right-of-way in fee simple (Parcel 23 WDV) and temporary easements (Parcel 23TV1 and Parcel 23TV2) on, across, above, and or under certain real estate owned by Home Road Holdings LLC described in Exhibit “A” attached hereto, and by this reference incorporated herein, for construction of a highway overpass over the CSX railroad tracks on Home Road including construction, reconstruction, installation, replacement, repair, maintenance, and improvement of Home Road in Liberty Township, Delaware County, Ohio.

SECTION 2:

That the legal description of said right-of-way in fee simple (Parcel 23 WDV) and two temporary easements (Parcel 23TV1 and Parcel 23TV2) are attached hereto as Exhibit “B” and by this reference incorporated herein; and,

SECTION 3:

That the County Administrator be and is hereby authorized to cause written notice of the passage of this Resolution to be given to the owner and any other persons having an interest of record in the herein described property or to their authorized agents. Such notices shall be served and return made in the manner provided for the service and return of summons in civil actions. If such owner, persons or agents cannot be found,

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notice shall be given by publication once each week for three consecutive weeks in the Delaware Gazette; and,

SECTION 4:

That the Board directs the County Prosecuting Attorney to commence the appropriation proceedings on behalf of the Board; and,

SECTION 5:

This Resolution shall take effect and be in force immediately upon passage.

(COPIES OF EXHIBITS “A” AND “B” ARE AVAILABLE IN THE DELAWARE COUNTY ENGINEER’S DEPARTMENT.)

Vote on Motion Mr. Ward Aye Mr. Jordan Aye Mr. Evans Absent

RESOLUTION NO. 08-255

IN THE MATTER OF ADOPTING A RESOLUTION DECLARING A NECESSITY AND THE INTENT OF THE DELAWARE COUNTY BOARD OF COMMISSIONERS TO APPROPRIATE PROPERTY:

PROPERTY OWNER(S): JENNIFER L. DAVIS

PROPERTY LOCATION: 2857 HOME ROAD
POWELL, OHIO 43065

PERMANENT PARCEL NUMBER: 319-132-01-008-000

PURPOSE OF APPROPRIATION:

CONSTRUCTION OF A HIGHWAY OVERPASS OVER THE CSX RAILROAD TRACKS ON HOME ROAD INCLUDING CONSTRUCTION, RECONSTRUCTION, INSTALLATION, REPAIR, MAINTENANCE AND IMPROVEMENT OF HOME ROAD

It Was Moved By: Mr. Ward And Seconded By: Mr. Jordan To Approve The Following:

PREAMBLE

WHEREAS, the Board of Delaware County Commissioners (“Board”) deems it necessary to construct a highway overpass over the CSX railroad tracks on Home Road, including construction, reconstruction, installation, replacement, repair, maintenance and improvement of Home Road at the CSX railroad tracks in Delaware County, Ohio (“Improvement”); and,

WHEREAS, the Board has determined the necessity for such Improvement and the necessity that such Improvement be made; and,

WHEREAS, the Board has determined that additional land is necessary for such Improvement.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED, by the Board of Delaware County Commissioners (the "Board"):

SECTION 1:

That it is deemed necessary and it is hereby declared to be the intention of the Board to appropriate right-of-way in fee simple (Parcel 27 WDV) and a temporary easement (Parcel 27 TV) on, across, above, and or under certain real estate owned by Jennifer L. Davis described in Exhibit “A” attached hereto, and by this reference incorporated herein, for construction of a highway overpass over the CSX railroad tracks on Home Road including construction, reconstruction, installation, replacement, repair, maintenance, and improvement of Home Road in Liberty Township, Delaware County, Ohio.

SECTION 2:

That the legal description of said right-of-way in fee simple (Parcel 27 WDV) and a temporary easement (Parcel 27 TV) are attached hereto as Exhibit “B” and by this reference incorporated herein; and,

SECTION 3:

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That the County Administrator be and is hereby authorized to cause written notice of the passage of this Resolution to be given to the owner and any other persons having an interest of record in the herein described property or to their authorized agents. Such notices shall be served and return made in the manner provided for the service and return of summons in civil actions. If such owner, persons or agents cannot be found, notice shall be given by publication once each week for three consecutive weeks in the Delaware Gazette; and,

SECTION 4:

That the Board directs the County Prosecuting Attorney to commence the appropriation proceedings on behalf of the Board; and,

SECTION 5:

This Resolution shall take effect and be in force immediately upon passage.

(COPIES OF EXHIBITS “A” AND “B” ARE AVAILABLE IN THE DELAWARE COUNTY ENGINEER’S DEPARTMENT.)

Vote on Motion Mr. Evans Absent Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 08-256

IN THE MATTER OF ADOPTING A RESOLUTION DECLARING A NECESSITY AND THE INTENT OF THE DELAWARE COUNTY BOARD OF COMMISSIONERS TO APPROPRIATE PROPERTY:

PROPERTY OWNERS: RANDOLPH A. SCHIRTZINGER AND
REVA R. SCHIRTZINGER

PROPERTY LOCATION: 3208, 3156, 3232 AND 3174 HOME ROAD
POWELL, OHIO 43065

PERMANENT PARCEL NUMBERS: 319-240-01-010-001
319-240-01-009-000
319-240-01-010-000
319-240-01-018-000

PURPOSE OF APPROPRIATION:

CONSTRUCTION OF A HIGHWAY OVERPASS OVER THE CSX RAILROAD TRACKS ON HOME ROAD INCLUDING CONSTRUCTION, RECONSTRUCTION, INSTALLATION, REPAIR, MAINTENANCE AND IMPROVEMENT OF HOME ROAD

It Was Moved By: Mr. Ward And Seconded By: Mr. Jordan To Approve The Following:

PREAMBLE

WHEREAS, the Board of Delaware County Commissioners (“Board”) deems it necessary to construct a highway overpass over the CSX railroad tracks on Home Road, including construction, reconstruction, installation, replacement, repair, maintenance and improvement of Home Road at the CSX railroad tracks in Delaware County, Ohio (“Improvement”); and,

WHEREAS, the Board has determined the necessity for such Improvement and the necessity that such Improvement be made; and,

WHEREAS, the Board has determined that additional land is necessary for such Improvement.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED, by the Board of Delaware County Commissioners (the "Board"):

SECTION 1:

That it is deemed necessary and it is hereby declared to be the intention of the Board to appropriate right-of-way in fee simple (Parcel 16 WDV) and temporary easements (Parcels 16 TV1, 16 TV2, 16 TV3 and 16 TV4) for construction of a highway overpass over the CSX railroad tracks on Home Road including construction, reconstruction, installation, replacement, repair, maintenance and improvement on Home Road in Liberty Township, Delaware County, Ohio on , across, above and or under certain real estate owned by Randolph A. Schirtzinger and Reva R. Schirtzinger described in Exhibit “A” attached hereto, and by this reference

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incorporated herein; and,

SECTION 2:

That the legal description of said right-of-way in fee simple (Parcel 16 WDV) and four temporary easements (Parcels 16 TV1, 16 TV2, 16 TV3 and 16 TV4) are attached hereto as Exhibit “B” and by this reference incorporated herein; and,

SECTION 3:

That the County Administrator be and is hereby authorized to cause written notice of the passage of this Resolution to be given to the owner and any other persons having an interest of record in the herein described property or to their authorized agents. Such notices shall be served and return made in the manner provided for the service and return of summons in civil actions. If such owner, persons or agents cannot be found, notice shall be given by publication once each week for three consecutive weeks in the Delaware Gazette; and,

SECTION 4:

That the Board directs the County Prosecuting Attorney to commence the appropriation proceedings on behalf of the Board; and,

SECTION 5:

This Resolution shall take effect and be in force immediately upon passage.

(COPIES OF EXHIBITS “A” AND “B” ARE AVAILABLE IN THE DELAWARE COUNTY ENGINEER’S DEPARTMENT.)

Vote on Motion	Mr. Ward	Aye	Mr. Jordan	Aye	Mr. Evans	Absent
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RESOLUTION NO. 08-257

IN THE MATTER OF ADOPTING A RESOLUTION DECLARING A NECESSITY AND THE INTENT OF THE DELAWARE COUNTY BOARD OF COMMISSIONERS TO APPROPRIATE PROPERTY:

PROPERTY OWNER(S): T. CARMICHAEL, INC.

PROPERTY LOCATION: 3129 HOME ROAD
POWELL, OHIO 43065

PERMANENT PARCEL NUMBER: 319-240-01-008-000

PURPOSE OF APPROPRIATION:

CONSTRUCTION OF A HIGHWAY OVERPASS OVER THE CSX RAILROAD TRACKS ON HOME ROAD INCLUDING CONSTRUCTION, RECONSTRUCTION, INSTALLATION, REPAIR, MAINTENANCE AND IMPROVEMENT OF HOME ROAD

It Was Moved By: Mr. Ward And Seconded By: Mr. Jordan To Approve The Following:

PREAMBLE

WHEREAS, the Board of Delaware County Commissioners (“Board”) deems it necessary to construct a highway overpass over the CSX railroad tracks on Home Road, including construction, reconstruction, installation, replacement, repair, maintenance and improvement of Home Road at the CSX railroad tracks in Delaware County, Ohio (“Improvement”); and,

WHEREAS, the Board has determined the necessity for such Improvement and the necessity that such Improvement be made; and,

WHEREAS, the Board has determined that additional land is necessary for such Improvement.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED, by the Board of Delaware County Commissioners (the "Board");

SECTION 1:

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That it is deemed necessary and it is hereby declared to be the intention of the Board to appropriate right-of-way in fee simple (Parcel 19 WDV) on, across, above, and or under certain real estate owned by T. Carmichael, Inc. described in Exhibit “A” attached hereto, and by this reference incorporated herein, for construction of a highway overpass over the CSX railroad tracks on Home Road including construction, reconstruction, installation, replacement, repair, maintenance, and improvement of Home Road in Liberty Township, Delaware County, Ohio.

SECTION 2:

That the legal description of said right-of-way in fee simple (Parcel 19 WDV) are attached hereto as Exhibit “B” and by this reference incorporated herein; and,

SECTION 3:

That the County Administrator be and is hereby authorized to cause written notice of the passage of this Resolution to be given to the owner and any other persons having an interest of record in the herein described property or to their authorized agents. Such notices shall be served and return made in the manner provided for the service and return of summons in civil actions. If such owner, persons or agents cannot be found, notice shall be given by publication once each week for three consecutive weeks in the Delaware Gazette; and,

SECTION 4:

That the Board directs the County Prosecuting Attorney to commence the appropriation proceedings on behalf of the Board; and,

SECTION 5:

This Resolution shall take effect and be in force immediately upon passage.

(COPIES OF EXHIBITS “A” AND “B” ARE AVAILABLE IN THE DELAWARE COUNTY ENGINEER’S DEPARTMENT.)

Vote on Motion Mr. Evans Absent Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 08-258

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

It was moved by Mr. Ward, seconded by Mr. Jordan to approve the following:

Recommendation to hire Darci Hunsaker as a Customer Services Specialist with the Child Support Enforcement Agency; effective date March 10, 2008

Vote on Motion Mr. Ward Aye Mr. Jordan Aye Mr. Evans Absent

RESOLUTION NO. 08-259

IN THE MATTER OF APPROVING A CODERED SERVICE AGREEMENT BETWEEN THE DELAWARE COUNTY COMMISSIONERS AND EMERGENCY COMMUNICATIONS NETWORK INC.:

It was moved by Mr. Ward, seconded by Mr. Jordan to approve the following:

CODERED SERVICES AGREEMENT

This Services Agreement (“Agreement”) is made and effective as of the last date written below by and between Emergency Communications Network, Inc. a Florida Corporation (“Licensor”) located at 9 Sunshine Boulevard. Ormond Beach, FL 32174 and Delaware County Board of Commissioners, a body politic and corporate of the State of Ohio (“Licensee”) located at 101 North Sandusky Street, Delaware, OH 43015.

Licensor is the owner of a service identified as "CodeRED® Emergency Notification System" (The "Service"), which allows users to place prerecorded telephone calls at high speed to call recipients. Licensee desires to utilize the "Service" for the purpose of communicating matters of public interest and concern.

In consideration of the promises set forth, the parties agree as follows:

- 1. **License:** Licensor grants Licensee a non-exclusive and non-transferable license to use the "Service" (hereinafter referred to as "The License") for Licensee's own purposes in

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accordance with the terms outlined in this Agreement. Licensee understands and agrees that they are fully responsible for the use of such services by anyone whom Licensee authorizes or permits to use the "Service", and anyone who accesses the "Service" by utilizing Licensee's Confidential access codes.

- a. The Licensee may not modify the "Service", disable any license or control features of the "Service." Licensee may not (i) assign, license, sublicense, rent, sell, transfer the "Service", this Agreement, or any portion thereof or (ii) utilize the "Service" except as expressly permitted in the Agreement between Licensee and Licensor. The License will include pass codes for up to **five (5)** authorized "Service" users. Additional users pass codes may be obtained at an additional annual fee as outlined in Exhibit A.
- 2. Ownership:** The "Service" is owned and copyrighted by Licensor. The Licensee's license confers no title or ownership in the "Service" whatsoever.
- 3. Copyright:** United States copyright laws and international treaty provisions protect the "Service". Except for the limited license provided, Licensor reserves all rights in and to the "Service" and all underlying data, compilations, and information maintained by Licensor relating to the "Service", including but not limited to, the source or object code.
- 4. Functionality:** The "Service" provides Licensee the ability to access pre-defined geographically selected calling areas or listed databases via an Internet based software application. The "Service" has the ability to select calling databases via a geographic mapping component. Licensee's database(s) shall be limited by Licensor to the geographic boundaries (determined by Lat/Lon coordinates) of Delaware County, Ohio. The "Service" will also allow Licensee to utilize an interactive voice response telephone service to record messages and initiate call out projects. The "Service" is designed to be active 24 hours per day/ 365 days a year.
- 5. Costs for The "Service":** During the term of this Agreement Licensee agrees to pay all costs for utilizing the "Service" as described in Exhibit A - Service Charges; attached to and made a part of this Agreement. Licensee will purchase prepaid "Service" (Prepaid System Minutes). Whenever Licensee utilizes the "Service" the actual calling minutes used by Licensor while utilizing the "Service" will be deducted from the balance of Prepaid System Minutes remaining in Licensee's Prepaid Minutes account. Licensee is responsible to maintain a sufficient balance of Prepaid System Minutes on account. Payment for the "Service" is due and payable upon receipt of invoice (ROI). Finance charges at a rate of 1% per month (12% per annum) will be charged on all balances outstanding beyond 60 days. If a law which applies to this finance charge is interpreted so that the interest or other finance charges collected or to be collected in connection with this Agreement exceed the permitted limits, then (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and (ii) any sums already collected from Licensee which exceed permitted limits will be refunded to Licensee. All payments due under this Agreement shall be paid to: Emergency Communications Network, Inc. at 9 Sunshine Blvd., Ormond Beach, FL 32174.
- 6. Free Minute Blocks:** Licensee is allotted free time on the system for the purpose of testing and training. The following must be met in order for Licensee to utilize the free minute bank specified in Exhibit A:
 - a. Minutes will be deducted from Licensee's minute bank at the time of using the "Service".
 - b. Licensee must notify Licensor in writing within 60 days of the use of the "Service" specifying qualified project(s) to obtain eligible free minutes and restoration of the deducted minutes into Licensee's minute bank. If Licensee fails to notify Licensor within 60 days of the use of the "Service", the minutes used will not be eligible for consideration as free minutes and will remain as a deduction from Licensee's minute bank as described above in paragraph 5.
 - c. Any unused minutes remaining in these blocks are not transferable.
 - d. Licensor will have the final right to deem all free calling minutes eligible or ineligible.
- 7. Term of Service Agreement:** The License will extend for a period of **one (1) year** beginning on the last date this Agreement is signed by both Licensee and Licensor. On the date this Agreement terminates, Licensee will forfeit all Prepaid System Minutes remaining on account.

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- 8. Contract Extension:** Upon each annual anniversary of the effective date of this Agreement, the term of this Agreement will extend for additional one-year periods. This contract extension provision (the "extension provision") will continue to extend the contract period by one additional year annually. **Either party may cancel this extension provision by submitting notice to the other no less than 30 days prior to the annual anniversary of the effective date of the Agreement.**

The activation of the extension provision will trigger the following events:

- a) Licensee's System Minute bank will be replenished to the original *100,000* minute balance;
- b) Licensor will update its systems to extend the active software license and associated access codes for one additional year of use;
- c) Licensor will invoice Licensee for one additional year service extension at the rate of *twenty-four thousand nine hundred dollars (\$ 24,900).*
- d) Licensee will be responsible for payment of the contract extension fee upon receipt of invoice from the Licensor.

- 9. Minute Bank Refill feature:** The parties recognize that Licensee may utilize the "Service" in a manner that results in the actual System Minute usage exceeding Licensee's active Prepaid Minute Bank. In the event using the "Service" completely exhausts Licensee's remaining Prepaid Minute Bank Licensor will immediately refill Licensee's Prepaid Minute Bank with a block of **10,000** System Minutes. and will invoice Licensee for this block of minutes at the Additional System Minute price as indicated in Exhibit A. Licensee will be responsible for payment of Additional System Minute blocks upon receipt of invoice from Licensor. Licensee agrees to purchase all such additional blocks of minutes as needed in order to maintain a positive Prepaid System Minute balance. The purpose of this refill feature is to ensure that calls being placed via the "Service" are not interrupted as the result of Licensee's depletion of their Prepaid Minute Bank

- 10. Appropriate Use of The Service:** To access the "Service" Licensor will provide Licensee with unique user name(s) and password(s). Licensee agrees to maintain such user name(s) and password(s) as private and confidential information. Licensee agrees to use the "Service" in a way that conforms with all applicable laws and regulations. Licensee specifically agrees not to make any attempt to gain unauthorized access to any of Licensor's systems or networks. Licensee agrees that Licensor shall not be responsible and liable for the content of the message(s) delivered by the "Service" on behalf of Licensee.

- 11. Security:** Licensee understands that Internet communications are not secure, and may be subject to interception or loss. Licensee understands and acknowledges that Licensor is providing the "Service" on the World Wide Web through an "upstream" third party Internet Service Provider, utilizing public utility services. Licensor shall not be liable to Licensee in the event of any interruption of service or lack of presence on the Internet as a result of any disruption by the third party Internet Service Provider or public utility. In the event of any disruption of service, Licensor will use its best efforts to notify Licensee and to expedite resumption of service.

- 12. Warranty:** (a) Licensee acknowledges that software in general is not error-free and agrees that the existence of such errors in software used in conjunction with the "Service" shall not constitute a breach of this License.

(b) In the event that Licensee discovers a material error which substantially affects Licensee's use of the "Service" and notifies Licensor of the error, Licensor shall use reasonable measures to correct that part of the "Service" which does not so comply, provided that such non-compliance has not been caused by any modification, variation or addition to the "Service" not performed by Licensor, its agents or contractors, or caused by its incorrect use, abuse or corruption of the "Service" software, or by use of the "Service" with other software or on equipment with which it is incompatible.

(c) Licensee is responsible for maintaining access to the Internet. Licensor in no way warrants Licensee's access to the Internet via Licensee's Internet Service Provider(s).

- 13. Warranty Disclaimer:** To the extent permitted by the applicable law, Licensor disclaims all other warranties with respect to the "Service", either express or implied, including but not limited to any implied warranties of merchantability or fitness for any particular purpose. In no event (even should circumstances cause any or all of the exclusive remedies to fail of its/their essential purpose and even if Licensor has been advised of the possibility of such damages) shall Licensor be liable for any special, indirect, incidental or consequential

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damages of any nature (regardless of whether such damages are alleged to arise in contract, tort or otherwise), including, but not limited to, loss of anticipated profits or other economic loss in connection with or ensuing from the existence, furnishing, function, or Licensee's use of any item of products or services provided for in this Agreement.

- 14. Indemnification:** Licensee understands that Licensors does not restrict the use of the "Service" by Licensee and therefore Licensee agrees that Licensors shall not be responsible and/or liable for the content of the message(s) created by Licensee delivered by the "Service" on behalf of Licensee. Licensee shall be responsible for compliance with all applicable laws regarding outbound telemarketing, which may include, but are not limited to the Federal Telephone Consumer Protection Act of 1991, The Telemarketing and Consumer Fraud and Abuse Prevention Act of 1999 and the rules and regulations promulgated thereunder, as well as State and Local telemarketing laws and requirements. Licensee will be solely responsible and liable for any such violations. The provision of this Article shall survive termination of this Agreement.

- 15. Non-Disclosure:** (a) Licensee acknowledges and agrees that in providing the "Service", Licensors may disclose to Licensee certain confidential, proprietary trade secret information of Licensors ("Confidential Information"). Confidential Information may include, but is not limited to, the "Service", computer programs, flowcharts, diagrams, manuals, schematics, development tools, specifications, design documents, marketing information, financial information or business plans. During this Agreement and for a period of five (5) years thereafter, Licensee agrees that it will not, without the express prior written consent of Licensors, disclose any Confidential Information or any part thereof to any third party. At the termination of this Agreement, Licensee will cease utilizing the "Service" and will return all Confidential Information to Licensors unless Licensee renews the "Service" as outlined in this Agreement. Nothing in this Agreement will be deemed to prohibit the disclosure of any information in response to a subpoena or other similar order by a court or agency with jurisdiction to issue it relevant to the resolution of any dispute between the parties. The Licensee will promptly notify the Licensors of the receipt of any subpoena or other similar order and of any request under the Public Information Act or any other similar law. The Licensee will cooperate with the Licensors in defending against disclosure of any confidential information under any such subpoena, order or request. (b) Licensee also agrees that it shall not duplicate, translate, modify, copy, printout, disassemble, decompile or otherwise tamper with the "Service" or any software provided.

- 16. Termination:** Licensee may terminate this Agreement by notifying the Licensors in writing no less than 30 days in advance of desired termination. Licensee will return all Confidential Information and copies to Licensors. Licensee will forfeit all Pre-Paid System Minutes upon termination of this Agreement. Licensee understands that Licensors reserves the right to terminate Licensee's account at any time for reasons including, but not limited to, failure to abide by the terms of this Agreement or failure to pay any fees or charges when due. In the event that Licensors terminates this Agreement for reasons other than Licensee's failure to abide by this Agreement, Licensors will refund to Licensee an amount equal to the balance of Prepaid System Minutes in Licensee's account. Upon termination, Licensee agrees to remove from Licensee's computer(s) any files related to the "Service".

- 17. Merger:** This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. Only a further writing that is duly executed by both parties may modify this Agreement.

- 18. Confidential Data:** Licensors agrees that in view of the confidential nature of Licensee supplied data and files that it is to prepare, process or maintain under this Agreement, it will perform its duties in such a manner as to prevent the disclosure to any persons not employed by Licensors of any such data and files unless Licensors and Licensee mutually agree in writing otherwise.

- 19. Integrity of Data:** Licensors cannot guarantee the integrity of any Licensee supplied data. As such, any errors, duplications, or inaccuracies related to Licensee supplied data will ultimately reside with Licensee.

- 20. Notices:** All notices or requests, demands and other communications hereunder shall be addressed to the parties as follows:

As to **Licensors:** Emergency Communications Network, Inc. 9 Sunshine Blvd. Ormond Beach, FL 32174

As to **Licensee:** Delaware County Board of Commissioners, Attn: Patrick Brandt/Systems Administrator, Public Safety, 101 North Sandusky St, Delaware, OH 43015

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21. **General:** Each party to this Agreement agrees that any dispute arising under this Agreement shall be submitted to binding arbitration according to the rules and regulations of the American Arbitration Association. If any dispute arises the prevailing party shall be entitled to the costs and attorney's fees from the losing party for enforcement of any right included in this Agreement. both a Court of first jurisdiction and all Courts of Appeal.
22. **Severability:** If any provision of this Agreement shall ever be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Agreement. and such other provisions shall continue in full force and effect.
23. **Governing Law:** This Agreement and all disputes arising therefrom or related thereto shall be governed by the laws of the State of Ohio. Any and all disputes submitted to a court shall be filed in and heard before the courts of Delaware County, Ohio. Any and all disputes submitted to arbitration shall be heard in a locale within fifty (50) miles of the Licensee's location as indicated in the Agreement.
24. **Findings for Recovery:** Licensor certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.
25. **Homeland Security:** Licensor certifies that it does not provide material assistance to any organization on the United States Department of State Terrorist Exclusion list. Pursuant to R.C. § 2909.33, Licensor agrees to make such certification by completing the declaration of material assistance/nonassistance described in R.C. § 2909.33(A) and understands that this Agreement is contingent upon full completion of such certificate and "No" being the response to all questions in the Declaration portion of the certificate. Such certification is attached to this Agreement and by this reference made a part of this Agreement.

Campaign Finance: Ohio Revised Code Section 3517.13 1(3) and J(3) requires that no political subdivision shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars in a calendar year or services with a cost aggregating more than ten thousand dollars in a calendar year to a corporation, business trust, individual, partnership or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust unless the political subdivision has received for that calendar year, or the contract includes, a certification that the individuals named in Revised Code Sections 3517.13(1)(1) and (J)(1) are in compliance with the aforementioned provisions. The Licensor, therefore, is required to complete the attached certificate/affidavit entitled "Certification/Affidavit in Compliance With O.R.C. Section 3517.13." **Failure to complete and submit the required aforementioned certificate/affidavit with the Contract will prohibit the County from entering, proceeding, and/or performing the Contract.** Such certification is attached to this Contract and by this reference made a part thereof.

Further Be it Resolved, that the Commissioners approve a Purchase Order Request to Emergency Communications Network, Inc. in the amount of \$24,900.00 (21411306-5330).

Vote on Motion Mr. Evans Absent Mr. Jordan Aye Mr. Ward Aye

There being no further business the meeting adjourned.

Glenn A. Evans

Kristopher W. Jordan

James D. Ward

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Letha George, Clerk to the Commissioners