

RESOLUTION NO. R15-15

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A
CODE RED NEXT SERVICES AGREEMENT WITH
EMERGENCY COMMUNICATIONS NETWORK LLC FOR
LAW ENFORCEMENT/EMERGENCY SERVICES PURPOSES.**

BE IT RESOLVED by the City Council of the City of Laurel, Montana:

Section 1: Approval. The agreement between the City of Laurel and Emergency Communications Network LLC is accepted and approved. A copy is attached hereto for convenience.

Section 2: Execution. The Mayor and City Clerk/Treasurer of the City of Laurel are hereby given authority to accept and execute said agreement on behalf of the City.

Section 3: Effective date. The effective date for the attached agreement is hereby approved upon approval by the City Council.

Introduced at a regular meeting of the City Council on March 17, 2015, by Council Member Poehls.

PASSED and APPROVED by the City Council of the City of Laurel this 17th day of March, 2015.

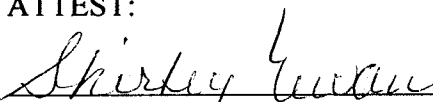
APPROVED by the Mayor this 17th day of March, 2015.

CITY OF LAUREL



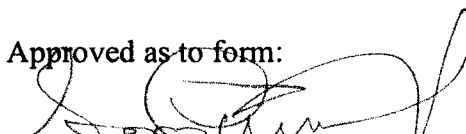
Mark A. Mace, Mayor

ATTEST:



Shirley Ewan, Clerk/Treasurer

Approved as to form:



Sam S. Painter, Civil City Attorney

CODERED NEXT SERVICES AGREEMENT

CityWatch Online Service Transition

This CodeRED® NEXT Services Agreement ("Agreement") is made and effective as of October 1, 2014 (the "Effective Date") by and between Emergency Communications Network, LLC, a Delaware Limited Liability Company ("Licensor") located at 780 W. Granada Boulevard, Suite 200, Ormond Beach, FL 32174 and the following licensee ("Licensee"):

City of Laurel, Montana
215 West 1st Street
Laurel, MT 59044

Licensor is the owner of a service identified as "CodeRED® Emergency Notification System" (the "Service"), which is designed to allow authorized licensed users to have access 24 hours a day, 7 days a week for the purpose of generating high-speed notifications to targeted groups via an Internet-hosted software application. Licensee desires to upgrade and replace its existing CityWatch Online Service account with the Service for the purpose of communicating matters of public interest and concern. The parties agree as follows:

1. **License:** Licensor grants Licensee a non-exclusive and non-transferable license (the "License") to use the Service for Licensee's own purpose, in accordance with the terms of this Agreement. Licensor reserves the right to either charge additional fees or terminate this Agreement if other parties not contemplated in this Agreement are granted access to the Service by Licensee. Licensee assumes full and complete responsibility for the use of the Service by anyone whom Licensee permits to use the Service or who otherwise uses the Service through Licensee's access codes. Licensee may not assign, license, sublicense, rent, sell or transfer the License, the Service, those codes used to access the Service, or any rights under this Agreement. To access the Service, Licensor will provide Licensee with up to eleven (11) unique user name(s) and password(s). Additional users pass codes may be obtained at an additional annual fee as outlined in Exhibit A, attached hereto and incorporated by reference.
2. **Functionality:** The Service provides Licensee the ability to access pre-defined geographically selected calling areas or listed databases via an Internet-based software application. Licensee's database(s) shall be limited by Licensor to the geographic boundaries (determined by Lat/Lon coordinates) of the City of Laurel, Montana (the "Calling Area"). The Service will also allow Licensee to utilize an interactive voice response telephone service to record messages and initiate call out projects. Licensee may only place calls via the system to telephone numbers assigned within the 48 contiguous United States of America. International call rates may be set by separate agreement. Any additional Service functions will be charged at the rates on Exhibit A.
3. **Costs for the Service:** During the Term of this Agreement, Licensee agrees to pay all costs and fees for utilizing the Service, as described in Exhibit A, and as set forth in this paragraph. Payment for the Service or System Minutes 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. All payments due under this Agreement shall be paid to: Emergency Communications Network, LLC at 780 W. Granada Boulevard, Suite 200., Ormond Beach, FL 32174.
4. **Term of the Service Agreement:** This Agreement, and the License extended herein, will continue for a period of one (1) year (the "Initial Term") commencing on the Effective Date. Upon termination of this Agreement, whether by expiration of the Initial Term, any Renewal Term (as hereinafter defined) (the Initial Term and any Renewal Term, collectively, the "Term"), or as otherwise set forth herein, Licensee's access to the Service will be terminated.
5. **Free Testing and Training Minute Blocks:** Licensee is allotted free time on the system which runs the Service for the purpose of testing and training. Licensee understands and agrees that the following conditions must be met in order for Licensee to utilize the free minute bank specified in Exhibit A.
 - a) Minutes used for testing and training 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 from the date the Service was used for testing or training, specifying qualified project(s) and minutes used, to request that such minutes be designated as free minutes and restored to the minutes that were deducted from Licensee's System Minute bank. Licensee understands and agrees that, if Licensee fails to notify Licensor within 60 days of the use of the Service, the minutes used will not be eligible for restoration as free minutes, and will remain deducted from Licensee's System Minute bank as described above;
 - c) Any unused minutes are not transferable, and shall only roll over by written agreement; and
 - d) Licensor will have the final right to determine whether minutes are eligible or ineligible for reimbursement hereunder.
6. **Contract Extension:** Upon completion of the Initial Term or any Renewal Term (as hereinafter defined), the term of this Agreement will extend for additional one-year periods (each a "Renewal Term"). This contract extension provision will continue to extend the Agreement by one additional year at the end of each Initial Term or Renewal Term. **Either party may**

cancel this renewal provision by submitting written notice to the other no less than 30 days prior to the end of the then-current Initial Term or Renewal Term. In the event the Agreement is extended:

- a) Licensee's System Minute bank will be replenished to the original 10,000 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 of Service at the rate of four thousand nine hundred fifty dollars (\$ 4,950);
- d) Licensee agrees to pay the additional fee set forth in this paragraph for each Renewal Term upon receipt of invoice from the Licensor, subject to the terms set forth in paragraph 3;

7. **Minute Bank Refill Feature:** Licensee understands and agrees that it will purchase prepaid minutes for the Service ("System Minutes"). Licensee further understands and agrees that whenever Licensee utilizes the Service, the actual calling minutes used by Licensee while utilizing the Service will be deducted from the balance of System Minutes remaining in Licensee's System Minutes account or bank. The parties recognize that Licensee may utilize the Service in a manner that results in Licensee exceeding the amount of prepaid System Minutes in Licensee's System Minute bank. In the event that using the Service completely exhausts Licensee's remaining prepaid System Minute bank, Licensor will immediately refill Licensee's System Minute bank with a block of 1,000 System Minutes, and will invoice Licensee for this block of minutes at the Additional System Minute price as indicated in Exhibit A. Licensee shall pay Licensor for all Additional System Minute blocks upon ROI, subject to paragraph 3. Licensee understands and agrees that it is required to maintain a System Minutes balance in its System Minutes bank at all times, and agrees to purchase Additional System Minute blocks as needed in order to maintain a positive 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 its System Minutes.

8. **Termination:** Licensee or Licensor may terminate this Agreement at the completion of the Initial Term or the then-current Renewal Term by providing the other with no less than 30 days advance written notice prior to the end of the Term. Licensee understands and agrees that failure to provide notice as set forth herein shall result in automatic renewal. Upon termination of this Agreement, Licensee will return all Confidential Information (as hereinafter defined) and copies to Licensor. Licensor, in its sole discretion, may also terminate this Agreement: a) for any reason by providing no less than 30 days advance notice, and in such case, Licensor will refund to Licensee an amount equal to the lesser of the monthly-prorated balance of the annual fee based on the number of days left in the term of the Agreement or the value of the balance of System Minutes in Licensee's System Minute bank as calculated by multiplying the remaining System Minutes by the additional system minute price on Exhibit A; or b) immediately, and without further notice, as a result of Licensee's breach of this Agreement, and in such case, no fees paid hereunder shall be refunded. Upon termination, Licensee agrees to remove from Licensee's computer(s), and any computers within Licensee's control, any and all files and documents related to the Service.

9. **Limited Warranty:** Licensee understands that the general reliability of the network and related connections may be shared and controlled by factors beyond the control of Licensor. Accordingly, Licensor cannot guaranty that Licensor's provisions of the Service will be uninterrupted, that Licensee will be able to properly access and use the Service, or that the Service will be provided without error. Licensor warrants that it will make every reasonable effort to promptly correct any Service problems brought to its attention during the term of this Agreement, provided that such error has not been caused by incorrect use, abuse or corruption of the Service by Licensee or a third party accessing the Service through Licensee's License. Licensor shall have no obligation to remedy any such interruptions, inabilities or errors that were caused by or resulted from: (a) the failure of the Licensee's computer hardware and/or software; (b) Licensee's failure to use the Service and its associated services within the operational guidelines established by Licensor; (c) the acts or omissions by local, regional or national carriers that provide transport services to Licensor or (d) Licensor's provision of scheduled maintenance activities. Neither Licensor nor its directors, officers, employees or agents involved in creating, acquiring or delivering the Service shall be liable for any direct, indirect, special, punitive or consequential damages or commercial loss resulting from Licensee's use or inability to use the Service or arising out of breach of any warranty and the provisions of this section. Licensee understands that the cumulative liability of Licensor for any and all claims relating to the Service provided by Licensor shall not exceed that total amount paid by Licensee for the most recent payment made by Licensee to Licensor. The Service is provided as-is, and Licensor disclaims all warranties, statutory, express or implied, and does not warrant for merchantability or fitness of a particular purpose. Licensor does not warrant that operation of the service will be uninterrupted or error free. Further, although Licensor's service is designed to be reasonably secure from unauthorized intrusions, they are not invulnerable to fraud or 'hacking'. Therefore Licensor makes no express or implied warranty against such fraud or 'hacking'.

10. Support Services

a) **Emergency Response.** Licensor shall use its best efforts to respond to emergency calls (the inoperability of the Service) within four (4) hours after receiving notice thereof. Inoperability is defined as: Unscheduled total system outage or failure to reboot, failure of 25% or more of all trunk or station lines, failure of any Licensor developed call processing application.

b) Non-Emergency Response. Licensor shall use its best efforts to respond to non-emergency malfunctions (not affecting major portions of the Service) within twenty-four (24) hours after receipt thereof. Non-emergency response times are understood to be Monday Through Friday during Licensor's normal business hours, excluding holidays.

- 11. Ownership and Copyright:** Licensee understands and agrees that United States copyright laws and international treaty provisions protect the Service. Except for the limited License provided for herein, 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. Licensee shall not make any ownership, copyright or other intellectual property claims related to the Service or data processed through the Service. Licensee also agrees that it shall not duplicate, translate, modify, copy, printout, disassemble, decompile or otherwise tamper with the Service or any software provided. The Licensee's License confers no title or ownership in the Service or its underlying technology.
- 12. 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 agrees not to initiate a call, such that the same call is to be delivered to two (2) or more lines of a business. 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 or liable for the content of the message(s) created by Licensee, or by those who access the Service using Licensee's codes, or otherwise delivered by the Service on behalf of Licensee. Licensee agrees to defend, indemnify and hold harmless Licensor and its affiliates, employees, officers, directors, managers, members and agents from any and all liabilities, costs, and expenses, including reasonable attorneys' fees, whether brought by a third party, arising from any violation of this Agreement by Licensee; from the content, placement, or transmission of any messages or materials sent or maintained through Licensee's accounts, or use of the Service through Licensee's account. 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 and shall defend, indemnify and hold Licensor harmless from all lawsuits, demands, liabilities, damages, claims, losses, costs or expenses, including attorneys' fees (whether by salary, retainer or otherwise), arising out of or resulting from, in whole or in part, a violation of such laws.
- 13. Security:** Licensor will use commercially reasonable practices and standards to secure and encrypt data transmissions. 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 which may not be secure. Licensee agrees that 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. Licensee agrees that Licensor cannot guarantee the integrity of any Licensee supplied or user supplied data. Any errors, duplications, or inaccuracies related to Licensee or user supplied data will be the responsibility of the Licensee.
- 14. Representations and Warranties:** Licensee acknowledges and agrees that: (a) Licensee is responsible for maintaining access to the Internet in order to use the Service; Licensor in no way warrants Licensee's access to the Internet via Licensee's Internet Service Provider(s); (b) Under certain rare instances not all technologies are compatible without manual intervention by both parties. Licensee agrees that its staff will cooperate with Licensor's staff to make necessary modifications to allow the Service to perform; and (c) the individual signing on behalf of Licensee is an authorized officer, employee, member, manager, director or agent for Licensee and has full authority to cause Licensee to enter into and be bound by the terms of this Agreement; and (d) this Agreement fully complies with all laws, ordinances, rules, regulations, and governing documents by which Licensee may be bound.
- 15. Confidentiality:** Licensor acknowledges the confidential nature of Licensee and user supplied data and files that it is to prepare, process or maintain under this Agreement, and agrees to perform its duties in such a manner as to prevent the disclosure to the public or to any persons not employed by Licensor, any confidential data and files. Data collected by Licensor will remain secured on Licensor's equipment and will only be released upon mutual agreement by both parties or a court order of sufficient jurisdiction. Licensee understands and agrees that private citizens and other persons in the Calling Area may voluntarily contribute their contact information to be used in the Service, and that Licensor shall develop and maintain a database of such information, along with other information privately developed by Licensor (the "Data"). Licensee acknowledges and agrees that Licensor desires to maintain the privacy of the Data, and that Licensee shall take no steps to compromise the privacy of the Data. Licensee further acknowledges that Licensor shall disclose to Licensee certain confidential, proprietary trade secret information of Licensor (along with the Data, "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, user data, Calling Area data, financial information or business plans. Licensee agrees that, at all times during and after the termination of this Agreement, Licensee will not, without the express prior written consent of Licensor, disclose any Confidential Information or any part thereof to any third party. Nothing in this Agreement will be deemed to require Licensor to disclose any Confidential Information to Licensee or to prohibit the disclosure of any information in response to a subpoena or other similar order by a court or agency. The Licensee will promptly notify the Licensor of the receipt of any subpoena or other similar order and of any request under the

Public Information Act or any other similar law, and will assist Licensor in preventing the disclosure of the Confidential Information pursuant to same to the extent required by Licensor.

16. Entire Agreement: This Agreement supersedes all prior understandings or agreements, whether oral or written, on the subject matter hereof between the parties. Only a further writing that is duly executed by both parties may modify this Agreement. The terms and conditions of this Agreement will govern and supersede any additional terms provided by Licensee, including but not limited to additional terms contained in standard purchase order documents and third party application terms, unless mutually agreed to, via written signature, by Licensor. The terms of this Agreement shall not be waived except by a further writing executed by both parties hereto. The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall any waiver under this Agreement constitute a waiver of any subsequent action.

17. Notices: All notices or requests, demands and other communications hereunder shall be in writing, and shall be deemed delivered to the appropriate party upon: (a) personal delivery, if delivered by hand during ordinary business hours; (b) the day of delivery if sent by U.S. Mail, postage pre-paid; (c) the day of signed receipt if sent by certified mail, postage pre-paid, or other nationally recognized carrier, return receipt or signature provided and in each case addressed to the parties as follows:

As to Licensor: Emergency Communications Network, LLC, 780 W. Granada Boulevard, Suite 200, Ormond Beach, FL 32174

As to Licensee: City of Laurel, Attn: Rick Musson/Police Chief, 215 West 1st Street, Laurel, MT 59044

Either party may change the address provided herein by providing notice as set forth in this paragraph.

18. 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, and administered by, the American Arbitration Association, and that any award granted pursuant to such arbitration may be rendered to final judgment. If any dispute arises hereunder, the prevailing party shall be entitled to all costs and attorney's fees from the losing party for enforcement of any right included in this Agreement, whether in Arbitration, a Court of first jurisdiction and all Courts of Appeal.

19. Interpretation and Severability: In the event any provision of this Agreement is determined by an arbitrator or court of competent jurisdiction to be void, the remaining provisions of this Agreement shall remain binding on the parties hereto with the same effect as though the void provision(s) had been limited or deleted, as applicable.

20. Counterparts and Construction: This Agreement may be executed in counterparts, each of which shall constitute an original, with all such counterparts constituting a single instrument. The headings contained in this agreement shall not affect the interpretation of this Agreement and are for convenience only. Licensee agrees that this Agreement shall not be construed against the Licensor as the drafter, and that Licensee has read and understands this Agreement, and had the opportunity to review this Agreement with legal counsel.

21. Survival: Certain obligations set forth herein represent independent covenants by which either party hereto may be bound and shall remain bound regardless of any breach of this Agreement and shall survive termination of this Agreement.

IN WITNESS WHEREOF, the parties execute this Agreement on the date(s) indicated below.

Licensee: City of Laurel, Montana

Licensor: Emergency Communications Network, LLC

Signature: Mark A. Mace

Signature: [Signature]

Printed Name: Mark A. Mace

Printed Name: David DiGiacomo

Title: Mayor

Title: President

Date: 03/17/2015

Date: 03/10/2015

Exhibit A – Service Charges

Initial block purchase(s) of Prepaid System Minutes:

One (1) year CodeRED NEXT Service Agreement <i>Access provided via phone or web Pricing excludes any applicable tax</i>	PAID IN FULL THROUGH SEPTEMBER 30, 2015.
10,000 CodeRED System Minutes	\$ <u>Included</u>
Additional System Minutes	\$ <u>0.09 per minute</u>
500 minutes for testing and training <i>7X24X365 Technical Support Services via a 1-800 Number</i>	\$ <u>No Charge</u>
Email and Text Messaging	\$ <u>No Charge</u>
Up to 11 CodeRED user pass codes <i>Additional Pass codes may be purchased for an annual fee of <u>\$150.00</u> per pass code</i>	\$ <u>Included</u>
GIS Upload and Hosting <i>GIS information must be in a standard format recognizable and electronically transferable to the CodeRED system. A full GIS map must be provided to be used in the Service.</i>	\$ <u>No Charge</u>
Initial Residential Database Upload <i>Includes GIS mapping and geocoding for Licensor supplied data and Licensee supplied data</i>	\$ <u>Waived</u>
One (1) CodeRED distance training session <i>Remote Web Based User Training available at No Additional Charge. Onsite training extra</i>	\$ <u>Included</u>
Annual System Maintenance, including all Software Upgrades	\$ <u>No Charge</u>

System usage will be charged against Prepaid System Minutes at actual minutes of time connected while delivering prerecorded System calls. All calls will be billed in 6-second increments. Only connected calls (live connections, answering machine connections and fax tone connections) will result in connection charges being incurred.

Database Accuracy Updates

Licensor Supplied Database: "Database Accuracy Updates" ensure that the data population maintained by Licensor under this Agreement undergoes periodic accuracy checks using the Licensor's most current in-house compiled database including, but not limited to, household addresses and telephone numbers. It will be the sole responsibility of the Licensee to maintain database accuracy and request updates from the Licensor.

One annual "Database Accuracy Update" will be performed by the Licensor upon request by the Licensee at no charge. Additional updates requested by Licensee will incur charges at the rate listed below after the update service is completed by Licensor.

3¢ per record in final updated database population.

Licensee Supplied Database: A service labor fee of One Hundred Dollars (\$100.00) per hour will be billed to Licensee for any data importing, manipulating, and loading any database supplied by Licensee or on Licensee's behalf to Licensor.

\$100 per hour for database maintenance

Professional Services Upon Request: \$135/hour, Licensor shall perform professional services as requested from time to time by Licensee in its sole discretion.

August 28, 2017

ORIGINAL VIA FEDEX

Mark Mace, Mayor
City of Laurel, Montana
215 West 1st Street
Laurel, MT 59044

RE: City of Laurel, Montana CodeRED® NEXT Services Agreement

Dear Mayor Mace,

In accordance with your letter dated July 13, 2017, canceling the CodeRED® service for the City of Laurel, Montana ("Laurel"), ONSOLVE, LLC f/k/a Emergency Communications Network, LLC ("ONSOLVE") will deactivate the Login Pass Codes, PINs and Launch Codes for Laurel as of 12:01 am on October 1, 2017. Please return and any all CodeRED® materials marked as "Confidential" to our office as soon as possible.

In the event Laurel desires to retain the CodeRED® service, please contact us at your earliest convenience. Should Laurel need ONSOLVE's services again, please feel free to contact us.

Sincerely,



Jodi Baker
Contract Manager
ONSOLVE, LLC

