

**RESOLUTION**  
of the  
**BOROUGH OF NEW PROVIDENCE**  
Resolution No. 2011-318

Council Meeting Date: 11-28-2011

Date Adopted: 11-28-2011

TITLE: RESOLUTION AUTHORIZING AGREEMENT FOR CODERED  
EMERGENCY NOTIFICATION SYSTEM BETWEEN THE BOROUGH OF  
NEW PROVIDENCE AND EMERGENCY COMMUNICATIONS NETWORK,  
INC.

Councilperson Galluccio submitted the following resolution, which was duly seconded by  
Councilperson Vyzas.

BE IT RESOLVED by the Mayor and Council of the Borough of New Providence,  
in the County of Union and State of New Jersey, that they do hereby approve and  
authorize an agreement between Emergency Network Communications, Inc. and the  
Borough of New Providence, in the form attached hereto, and they do further authorize  
and direct the Mayor and Borough Clerk to execute same on behalf of the Borough of  
New Providence.

APPROVED, this 28<sup>th</sup> day of November, 2011.

## RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
CUCCO	X			
GALLUCCIO	X			
GENNARO	X			
LESNEWICH	X			
MUÑOZ			X	
VYZAS	X			
HERN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 28<sup>th</sup> day of November, 2011

Wendi B. Barry, Borough Clerk

## CODERED SERVICES AGREEMENT

This Services Agreement ("Agreement") is made and effective as of October 13, 2011 by and between Emergency Communications Network, Inc. a Florida Corporation ("Licensor") located at 9 Sunshine Boulevard, Ormond Beach, FL 32174 and the Borough of New Providence, a body politic and corporate of the State of New Jersey ("Licensee") located at 360 Elkwood Avenue, New Providence, NJ 07974.

Licensor is the owner of a service identified as "CodeRED<sup>®</sup> Emergency Notification System" (The "Service"), which is designed for 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 utilize 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 to use the "Service" by Emergency Management, Police, Fire, Borough Administration, Public Works, Board of Education, and Parks and Recreational Services department personnel only. 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 authorizes or permits to use the "Service". Licensee may not assign, license, sublicense, rent, sell or transfer the "Service". To access the "Service" Licensor will provide Licensee with up to five (5) unique user name(s) and password(s). Additional users pass codes may be obtained at an additional annual fee as outlined in Exhibit A. The Licensee's license confers no title or ownership in the "Service".
2. **Functionality:** The "Service" provides the ability for the Licensee to generate high-speed notifications to geographically selected calling areas and/or listed databases via an Internet-hosted software application. The "Service" will utilize an interactive voice response telephone service to record Licensee voice messages and initiate telephone call out projects. Licensee's community database(s) shall be limited to containing residential and/or business contact data residing within the geographic boundaries (determined by Lat/Lon coordinates) of the Borough of New Providence, New Jersey (the CALLING AREA). Licensee may input up to two (2) phone numbers per household into the calling database. Licensee may only place calls via the system to telephone numbers assigned within the 48 contiguous United States of America. Any additional "Service" functions will be listed on "Exhibit A" attached to this agreement.
3. **Term and Termination:** The License will extend for a period of three (3) years beginning on October 13, 2011. Upon expiration, Licensee's access to the "Service" will be terminated. Licensee may terminate this Agreement by notifying the Licensor in writing no less than 30 days advance notice. Licensee will return all Confidential Information and copies to Licensor. In the event that Licensor terminates this agreement for reasons other than Licensee's failure to abide by this agreement, Licensor will refund to Licensee an amount equal to the monthly-prorated balance of the annual fee based on the number of days left in the term of the agreement. It is at the Licensor's discretion to honor the service agreement quoted fees for an agreement which has not been returned to the Licensor for over 90 days from the date it was drafted for the Licensee.
4. **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. Pricing for the "Service" is predicated on a population within the CALLING AREA not to exceed 13,000 at the time of the effective date of this agreement, and a student and staff count for Schools within the CALLING AREA not to exceed 2,500 as of the effective date of this agreement. A deviation above 10% in Licensee's population effective at the time of renewal of any term may affect pricing. 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. All payments due under this agreement shall be paid to: Emergency Communications Network, Inc. at 9 Sunshine Blvd., Ormond Beach, FL 32174.
5. **Discount Contract Extension:** Upon completion of the original term of this Agreement as outlined above in section three (3), the term of this Agreement will extend for an additional three-year period. This contract extension provision (the "extension provision") will continue to extend the contract period by three (3) additional years at the end of each three (3) year contract period. **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 current term of this Agreement.** Upon extension of the agreement:
  - a) Licensor will update its systems to extend the active software license and associated access codes for one additional year of use;

b) Licensor will invoice Licensee for additional year(s) of service at the rate of twelve thousand seven hundred twenty dollars (\$12,720) per year for a total amount of thirty-eight thousand one hundred sixty dollars (\$38,160) over the 3-year term.

c) Licensee will be responsible for payment of the contract extension fee upon receipt of invoice from the Licensor.

6. **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.
7. **Warranty:** (a) The "Service" is designed to be active 24 hours per day 365 days per year. (b) Licensee acknowledges that software in general is not error-free and agrees that the existence of such errors in Licensee's software used in conjunction with the "Service" shall not constitute a breach of this License. (c) 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 restore access to the "Service", provided that such error has not been caused by Licensee's 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. (d) 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). (e) 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 and may not be secure. 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. (f) Licensor cannot guarantee the integrity of any Licensee supplied data. Any errors, duplications, or inaccuracies related to Licensee supplied data will be the responsibility of the Licensee. (g) In no way will either party to this agreement, its officers, employees or agents be liable for indirect, punitive, special, consequential or indirect damages to the other arising from or related to this Agreement. (h) To the extent permitted by the applicable law, Licensor disclaims all warranties with respect to the "Service", either expressed or implied. (i) Licensee recognizes that once email and text messages have been released from Licensor's equipment, the ultimate delivery of the messages depends on the message recipient's local network. As a result Licensor cannot guarantee the delivery of email and text messages to a recipient. (j) Under certain rare instances not all technologies are compatible without manual intervention by both parties. Licensee agrees that their staff will cooperate with Licensor's staff to make necessary modifications to allow the Service to perform as required for satisfaction.
8. **Obligations:** Licensee agrees to use the "Service" in a way that conforms with all applicable laws and regulations. Licensee may not initiate a call to be delivered to two (2) or more lines of a business. Licensee agrees that Licensor shall not be responsible or liable for the content of the message(s) created by Licensee or delivered by the "Service" on behalf of Licensee. Licensee agrees to defend, indemnify and hold harmless Licensor and its affiliates, employees and agents from any and all liabilities, costs, and expenses, including reasonable attorneys' fees, arising from any use of the "Service".
9. **Confidentiality:** Licensor 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 Licensor of any such data and files unless Licensor and Licensee mutually agree in writing otherwise. 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. Licensor shall disclose to Licensee certain confidential, proprietary trade secret information of Licensor ("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 Licensor, disclose any Confidential Information or any part thereof to any third party. 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. 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.

10. **Entire Agreement:** This Agreement supersedes all prior understandings or agreements between the parties. The terms and conditions of this agreement will supersede any additional terms provided unless mutually agreed to by both parties, including additional terms contained in standard purchase order documents and third party application terms.
11. **Notices:** All notices or requests, demands and other communications hereunder shall be addressed to the parties as follows:
- As to **Licensor:** Emergency Communications Network, Inc. 9 Sunshine Blvd. Ormond Beach, FL 32174
- As to **Licensee:** **Borough of New Providence, Attn: Anthony Bucelli, Jr/Chief, 360 Elkwood Avenue, New Providence, NJ 07974**
12. **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. 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, in Arbitration, a Court of first jurisdiction and all Courts of Appeal.

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

**Licensee:** **Borough of New Providence, New Jersey**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Licensor:** **Emergency Communications Network, Inc.**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit A – Service Charges

Three (3) year Discount CodeRED Service Agreement \$ 38,160.00

Payments due in three (3) annual installments as follows:

\$ **12,720.00** Installment one (1)

\$ ( 5,000.00) One time credit for previous Borough of New Providence, NJ CodeRED Services Agreement

\$ **7,720.00** Total due for Installment one (1) due on or before **October 13, 2011**

\$ **12,720.00** Installment two (2) due on or before **October 13, 2012**

\$ **12,720.00** Installment three (3) due on or before **October 13, 2013**

Unlimited CodeRED System Minutes \$ Included

Up to 5 CodeRED user pass codes \$ Included

Additional pass codes may be purchased for an annual fee of \$150.00 per pass code.

One (1) CodeRED distance training session \$ Included

Additional distance training sessions may be purchased for \$150.00 per hour (one hour minimum).

Initial Residential Database Upload \$ Waived

Standard CodeRED data collection website \$ No Charge

Standard CodeRED mapping interface and data layers \$ No Charge

Email and Text Messaging \$ No Charge

Annual System Maintenance, including all Software Upgrades \$ No Charge

### Database Accuracy Updates:

Licensors 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.

2.5¢ 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

**OPTIONAL: GIS Upload and Hosting upon request: \$ 2,500**

*GIS information must be in a standard format recognizable and electronically transferable to the CodeRED system. Up to 10 layers may be loaded for use in the System. Licensee may update up to 10 layers annually at Licensees discretion.*

*GIS Custom Street "single layer" Upload and Hosting upon request: \$250*

## CodeRED® Weather Warning Service Addendum

This is an Addendum to the CodeRED Services Agreement ("Agreement") entered into by and between the **Borough of New Providence** (hereinafter "Licensee") a body politic of the State of **New Jersey** located at **360 Elkwood Avenue, New Providence, NJ 07974** and Emergency Communications Network, Inc. (hereinafter "Licensor"). In consideration of the promises set forth herein and outlined in the Agreement, Licensee and Licensor agree to amend the CodeRED Services Agreement in the following manner:

1. The following terms shall be added to the original CodeRED Service Agreement:

**CodeRED® Weather Warning Service:** Licensor's CodeRED Weather Warning Service (CRWW) expands the benefits of the CodeRED service to include the automatic launching of prerecorded Weather Warning call-out projects to Licensee approved subscribers. These automated call-outs are initiated by the issuance of a Severe Weather Bulletin by the National Weather Service (NWS), with no intervention on the part of Licensee or Licensor. Call recipients are determined by matching the geographic locations associated with a database of opt-in subscribers against the geographic polygon(s) associated with Severe Weather Warnings issued by NWS.

### CRWW Terms of Use:

**Subscribers:** Severe weather events can occur at any time of day or night. Accordingly, CRWW calls will automatically be launched in response to the issuance of NWS Bulletins at any time, 24 hours/day. Unlike the CodeRED service which is pre-populated with calling data for residential and business telephones, the CRWW service targets the telephone numbers of ONLY those households and business that have CHOSEN to participate through an opt-in process. Residents and businesses within **Borough of New Providence, New Jersey** who wish to receive the CRWW calls can add their name and geographic location to the CRWW subscriber database via the Licensee's CodeRED Residential Update Website. This site is hosted by Licensor for the purposes of allowing citizens to add their contact information to both the CodeRED database and the CRWW database via the Internet. Subscribers shall be subject to the terms and conditions of the CRWW service, which can be reviewed at: <http://www.coderedweb.com/codereddataentry/terms.cfm>. ONLY THOSE CITIZENS WHO OPT-IN TO THE CRWW SERVICE WILL BE ELIGIBLE TO RECEIVE WEATHER WARNING CALLS. LICENSEE MUST APPROVE ALL SUBSCRIBER ENTRIES PRIOR TO THEIR BEING ACTIVATED AND ENTERED INTO THE CALLING DATABASE. All subscriber data is the sole and exclusive property of Licensor.

**Limits on Calling Database:** Citizens are allowed to enter up to two (2) telephone contact numbers for each CRWW address. Only addresses falling within the geography covered under the CodeRED Services Agreement are eligible to receive CRWW calls. Licensee is responsible for removing subscriber addresses that fall outside of their covered municipality prior to approving records via the on-line Residential Update approval process.

**CodeRED Minute Bank Balance:** Calls placed automatically via the CRWW Service have no effect on the minute bank balance associated with the CodeRED Service. The additional fees (described below) for the CRWW Service include all minutes used in the delivery of all warning calls made during the term of this agreement.

**License:** The CRWW Service is available only as an add-on service module for Licensees of the CodeRED Service. The CRWW service license will not be provided under the terms of this agreement unless a current active Standard CodeRED Services agreement is in effect.

**COST FOR CRWW:** As a value added service to the Licensee's current CodeRED Services Agreement, Licensors will include the CRWW Service at **NO COST** to Licensee as long as Licensee maintains an active CodeRED Services Agreement. The CRWW service can be removed from the CodeRED Service by Licensee at the time of annual renewal with thirty (30) days written notice. Licensors reserves the right to cancel the CRWW Service for convenience by providing the Licensee with thirty (30) days written notice. Licensee will be notified of any price change for CRWW a minimum of ninety (90) days in advance of annual renewal date.

**TERM:** The term of the CRWW Addendum shall commence as of the effective date of Licensee's CodeRED Services Agreement and shall be for so long as Licensee maintains an active CodeRED Services Agreement. Upon termination of the CodeRED Services Agreement, access to the CRWW system will terminate and Licensors shall terminate all individual subscriber accounts.

2. All other terms and conditions shall remain in force and effect for the term of the Agreement.

**EMERGENCY COMMUNICATIONS NETWORK**  
Licensor

**BOROUGH OF NEW PROVIDENCE, NEW JERSEY**  
Licensee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_