

Meeting Date
11/03/15



AGENDA	
Section	Consent
Item No.	I.C.4.

**AGENDA REPORT**  
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	AUTHORIZATION FROM THE BOARD OF COUNTY COMMISSIONERS FOR A CONTRACT AMENDMENT PROVIDING FOR ASSIGNMENT OF CONTRACT FROM FIRST CALL NETWORK TO EMERGENCY COMMUNICATIONS NETWORK
DEPT/OFFICE:	EMERGENCY MANAGEMENT

**Requested Action:**

It is requested that the Board of County Commissioners authorize the Chairman to sign an amendment to the contract with First Call Network, Inc., assigning the contract for emergency notification services to Emergency Communications Network, LLC following ECN's purchase of First Call.

**Summary Explanation & Background:**

The Board of County Commissioners' contract with First Call Network, Inc., commenced on October 1, 2013 after being awarded via Invitation To Bid as the lowest bidder on emergency notification services. Earlier this year, Emergency Communications Network, LLC purchased First Call Network, and will honor the contract in place, providing services through its CodeRED emergency notification system. An amendment assigning the contract to Emergency Communications Network has been reviewed by the County Attorney's Office.

The County is in the third year of the initial three-year contract, for \$52,000 annually; two one-year renewals are available for \$40,000 annually.

**Fiscal impact:** No new charges.

**Clerk to the Board Instructions:**

Exhibits Attached: Copy of the 2013 contract, copy of the contract amendment.

Contract /Agreement (If attached): Reviewed by County Attorney Yes  No  PR

County Manager	Assistant County Manager	Department Director / Extension Kimberly Prosser, Director 637-6670
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Stockton Whitten	Assistant County Manager Frank Abbate	Kimberly Prosser
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Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972

November 4, 2015

MEMORANDUM

TO: Kimberly Prosser, Emergency Management Office Director

RE: Item II.C.4., Amendment to Contract with First Call Network, Inc. for Assignment of Contract from First Call Network, Inc. to Emergency Communications Network, LLC (ECN) for Notification Services

The Board of County Commissioners, in regular session on November 3, 2015, approved the Amendment to Contract with First Call Network, Inc., assigning the Contract for emergency notification services to ECN following ECN's purchase of First Call Network, Inc. Enclosed is fully-executed Amendment to Contract for your action.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

/ds

Encl. (1)

cc: Finance

AMENDMENT TO CONTRACT  
FirstCall/ECN Transition Services

This Amendment to the Contract, made and entered into this 5 day of October, 2015, by and between the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida (hereinafter referred to as 'County'), and Emergency Communications Network, LLC, a Delaware Limited Liability Company (hereinafter referred to as 'ECN') located at 780 W. Granada Boulevard, Suite 200, Ormond Beach, FL, 32174

WITNESSETH

WHEREAS, the Brevard County and FirstCall Network, Inc. entered into a contract on October 1, 2013 to provide large scale emergency telephone, pager, and SMS text message communications; and

WHEREAS, paragraph 10 of the Contract provides "FirstCall shall not assign any portion of this Agreement without the written consent of the County"; and

WHEREAS, the County has been notified that FirstCall Network, Inc. has been purchased by ECN and the services will now be provided through its CodeRED® Emergency Notification System ('CodeRED'); and

WHEREAS, the County agrees to accept assignment of all work previously performed by FirstCall Network, Inc., to ECN;

NOW THEREFORE in consideration of the mutual covenants contained herein the parties agree to amend the Contract commencing on October 1, 2013, as follows:

1. A copy of the Contract (and Attachment) between FirstCall and Brevard County dated October 1, 2013 is attached and incorporated by this reference.
2. All reference to the 'FirstCall' product shall now be referred to as 'CodeRED'.
3. ECN assures the County that there shall be no disruption in services rendered as specified under the Contract and this Amendment.
4. Paragraph 14, NOTIFICATION shall be amended as follows:

Notice under this Contract shall be given as follows:

To the County:  
Brevard County, Florida  
Attn: Cory Dibble  
1746 Cedar Street  
Rockledge, FL 32955

To ECN:

Emergency Communications Network, LLC  
Attn: Contracts Administration

780 W. Granada Boulevard, Suite 200  
Ormond Beach, FL 32174


5. The County and ECN agree that, in the event the County utilizes CodeRED in a manner that results in the County exceeding its allotted minutes, that ECN will immediately refill the County's Minute bank with a block of **10,000** Minutes, at the rate of **five hundred forty dollars (\$540.00)**. The County shall pay ECN for all additional Minute blocks as set forth in the Agreement. The County understands and agrees that it is required to maintain a positive Minutes balance at all times, and agrees to purchase additional Minute blocks as needed. The purpose of this refill feature is to ensure that notifications being placed via CodeRED are not interrupted as the result of the County's depletion of its Minutes.
6. All other terms and conditions of the Contract between the parties commencing on October 1, 2013, shall remain in full force and effect to the extent they are consistent with this Amendment and not specifically amended as provided herein.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal on the date first below written.

Brevard County, FL Board of County  
Commissioners:

Signature:   
Printed Name: ROBIN FISHER  
Title: CHAIRMAN  
Date: NOVEMBER #, @)!%

Emergency Communications Network, LLC

Signature:   
Printed Name: David DiGiacomo  
Title: CEO/President  
Date: 10/05/2015

Approved for Legal form and Content:



ATTESTED:

  
SCOTT ELLIS, CLERK

APPROVED BY THE BOARD 11/3/15

**EMERGENCY NOTIFICATION SERVICE  
CONTRACT  
BY AND BETWEEN  
FIRSTCALL NETWORK, INC  
AND  
BREVARD COUNTY, FL**

Agreement made this day October 1, 2013 by and between **FirstCall Network, Inc.**, a corporation duly organized and existing under the laws of the State of Louisiana with principal offices located at 5423 Galeria Drive, Baton Rouge, Louisiana 70816, and **Brevard County Board of County Commissioners, Brevard County, FL**, a political subdivision duly organized and existing under the laws of the State of Florida with principal offices located 2725 Judge Fran Jamieson Way, Viera, FL 32940 (hereinafter referred to as "County").

**WHEREAS**, FirstCall Network provides a service, the purpose of which is to assist in large-scale emergency telephone, pager, email, and SMS text message communications.

**WHEREAS**, the County, through its Emergency Management Office, desires to engage the services of FirstCall Network for the purpose of coordinating a program and service within the County's area such that large-scale telephone, pager, email and SMS text message notifications may be implemented.

**NOW, THEREFORE**, in consideration of mutual agreements, covenants, and promises herein contained, the parties agree as follows:

**(1) SCOPE OF WORK**

- (a) First Call will provide a new call notification system to the County that will enable the County's Emergency Management Office various ways to notify large members of the public 'en masse' of emergencies that may affect them. Types of events requiring notifications include evacuations, boil water notices, and launch anomalies that would require citizens to shelter in place. Emergency Management also notifies the public regarding protective actions they need to take in relation to a weather related events such as flooding. Brevard County Fire Rescue utilizes the system to notify the public regarding wildfires or hazardous materials incidents; and Brevard County Sheriff's Office utilizes the system to notify the public regarding incidents related to missing children and the elderly, as well as situations for which the public may be in danger.
- (b) The system must be activated with a functional notification database, and usage of the GIS developed map for geographic location selection within 60 days after notice of award.

- (c) The Scope of Work to be provided by First Call is further described as set forth in Attachment "A." In preparation for activation, First Call shall provide a minimum of eight (8) hours of training regarding the system and its operation "in person" on site at the Emergency Management Office to Emergency Management staff and others designated by Emergency Management staff for training. These training hours are not included in the 320,000 minutes (annually) purchased (see Attachment "A").
- (d) Upon receiving a request from authorized personnel, the services of First Call Network shall be activated and all calls placed as instructed by the County.
- (e) For each requested activation, FirstCall Network shall record the amount of system usage that was used on behalf of the County. FirstCall Network shall email a report of the telephone calls made and the number of messages delivered.
- (f) FirstCall Network agrees to provide trained personnel to activate the County's requested services on a twenty-four (24) hours a day, seven days a week basis, at First Call Network headquarters.

**(2) TERM**

- (a) This agreement shall take effect on October 1, 2013 and shall continue for a period of three (3) years, ending on September 30, 2016.
- (b) The County shall have an option to renew the Agreement for two (2) additional periods of one (1) year for each period by providing First Call with written notice thirty (30) days in advance of the expiration date in effect.

**(3) PAYMENTS**

- (a) The County shall pay First Call the total sum of \$52,000.00 annually for the initial three year term ( \$156,000.00 total). Payment for the first year shall be due upon completed execution of this Agreement. Payment for the second and third year of the Agreement shall be due October 1, 2014 and October 1, 2015, respectively.
- (b) Should the County renew the Agreement, it shall pay First Call \$40,000.00 for each year of renewal.
- (c) The County shall remit payment in accordance with the Florida Prompt Payment Act, Florida Statutes 218.70.

**(4) COUNTY'S OBLIGATIONS**

- (a) The County shall establish and designate specific telephone, pager and wireless device fixed calling lists.

- (b) The County shall identify the administrative offices and personnel thereof, who shall be authorized to access said services. A written list of these authorized users must be provided to First Call Network and signed by an authorized representative of Cenlar, FSB. Any changes to the list of authorized users must be submitted in the same manner. The County Subscriber and FirstCall Network shall coordinate efforts to train those personnel who are authorized to access the services of FirstCall Network.

**(5) INDEMNIFICATION**

- (a) The County shall be held harmless against any and all claims for bodily injury, sickness, disease, death, personal injury, damage to property or loss of use of any property or assets resulting therefrom, arising out of or resulting from the performance of the products or from the services for which the County is contracting hereunder, provided such is caused in whole or in part by any negligent act or omission of the First Call, or any subcontractor or any of their agents or employees, or arises from a job-related injury.
- (b) First Call agrees to indemnify the County and pay the cost of the County's legal defenses, including fees of attorneys as may be selected by the County, for all claims described in the hold harmless clause herein. Such payment on behalf of the County shall be in addition to any and all other legal remedies available to the County and shall not be considered to be the County's exclusive remedy.
- (c) It is agreed by the parties hereto that specific consideration has been received by First Call under this Agreement for this hold harmless/indemnification provision.
- (d) FirstCall Network shall not be responsible for any acts or omissions of the County or its officers, employees, agents, contractors, or directors.

**(6) MODIFICATIONS TO AGREEMENT**

This Agreement, together with any attachments, constitutes the entire Agreement between the County and First Call and supersedes all prior written or oral understandings. This Agreement and its attachments may only be amended, supplemented or canceled by a written instrument duly executed by the parties or as otherwise authorized by the Board of County Commissioners.

**(7) INSURANCE**

- (a) First Call will be required to procure and maintain, at their own expense and without cost to the County, until expiration of the Agreement and any options for renewal that are implemented, the following types of insurance. The policy limits required are to be considered minimum amounts:

(i) General Liability Insurance policy with a \$ 1,000,000 combined single limit for each occurrence to include the following coverage: Operations, Products and Completed Operations, Personal Injury, Contractual Liability covering this contract, "X-C-U" hazards, and Errors & Omissions.

(ii) Auto Liability Insurance which includes coverage for all owned, non-owned and rented vehicles with a \$ 1,000,000 combined single limit for each occurrence.

(iii) Workers' Compensation and Employers Liability Insurance covering all employees of the vendor and subcontractors, as required by law.

(iv) In the event that the Agreement involves professional or consulting services, in addition to the aforementioned insurance requirements, the vendor shall also be protected by a Professional Liability Insurance Policy in the amount of \$1,000,000 per claim.

(b) First Call shall provide certificates of insurance to the County, within five (5) days of the Agreement being fully executed, demonstrating that the aforementioned insurance requirements have been met prior to the commencement of work under this Agreement. The certificates of insurance shall indicate that the policies have been endorsed to cover the County as an additional insured (a waiver of subrogation in lieu of additional insured status on the workers compensation policy is acceptable) and that these policies may not be canceled or modified without thirty (30) days prior written notice to the County.

(c) The insurance coverage enumerated above constitutes the minimum requirements and shall in no way lessen or limit the liability of First Step under the terms of the Agreement. Sub-Contractor's insurance shall be the responsibility of First Call.

#### **(8) TERMINATION**

Either party, for convenience, may terminate this agreement with a thirty (30) day written notice to the other party. In the event County deems that First Call has failed to maintain the terms of this Agreement, County may terminate this Agreement without prior written notice

#### **(9) INDEPENDENT CONTRACTOR.**

The parties expressly acknowledge that FirstCall Network is contracted by the County only for the purposes and to the extent set forth in this Agreement, and the relationship of First Call Network to the County shall, during the period or periods

hereunder, be that of an independent contractor. FirstCall Network shall not be considered as having employee, subcontractor, agent, or joint venture status.

**(10) ASSIGNMENT**

First Call shall not assign any portion of this Agreement without the written consent of the County.

**(11) EMPLOYMENT OF COUNTY STAFF**

First Call shall not engage, retain or otherwise employ the services or any person or persons employed by the County, including any department, agency, board or commission thereof, to provide services relating to this Agreement without written consent from the County.

**(12) PUBLIC RECORDS AND RIGHT TO AUDIT RECORDS**

- (a) In the performance of this Agreement, First Call shall keep books, records, and accounts of all activities, related to this Agreement, in compliance with generally accepted accounting principles and procedures and in compliance with the Public Records Laws of the State of Florida (including, but not limited to Chapter 119, Florida Statutes). Books, records and accounts related to the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the County and shall be retained by First Call for a period of five years after termination of the Agreement unless otherwise specified herein. All records or documents created by First Call or provided to First Call by the County in connection with the activities or services provided by First Call under the terms of this Agreement, are public records and First Call agrees to comply with any request for such public records or documents made in accordance with Florida Statute Chapter 119.
- (b) Records, documents, books and accounts ordinarily and necessarily required for related to the performance of this Agreement shall be kept, maintained and open to inspection by the County, or County's representative, and members of the public during regular business hours. First Call shall provide the public with access to public records on the same terms and conditions that the public agency provides the records and at a cost that does not exceed the cost provided for in Florida Statute Chapter 119 or as otherwise provided by law (see also County Administrative Order, AO-47).
- (c) First Call shall also ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

- (d) Should any person or entity make a public request of the County which requires or would require the County to allow inspection or provide copies of records which First Call maintains, First Call shall cooperate in complying with Florida Statute Chapter 119 are exempt from Public Records Law or are confidential, it shall be First Call's obligation to provide the County, within 24 hours (not including weekends and legal holidays) of notification by the County to the First Call of the request, of the specific exemption or confidentiality provision so the County will be able to comply with the requirements of Fla. Stat. 119.07(1)(e) and (f). Should the County face any kind of legal action to require or enforce inspection or production of any records provided by the First Call to the County which First Call maintains are exempt or confidential from such inspection/production as a public record, then First Call shall hire and compensate attorney(s) who shall represent the interest of the County as well as First Call in defending such action. First Call shall also pay any costs to defend such action and shall pay any costs and attorneys fees which may be awarded pursuant to Fla. Stat. 119.12.
- (e) First Call shall meet all requirements for retaining public records and shall transfer, at no cost, to the County all public records in possession of First Call upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County.
- (f) Failure to comply with the provisions of this Paragraph 12, shall result in the County taking enforcement action against First Call including the cost to the County for gaining First Call's compliance which will include, but are not limited to, the gross hourly rate of the County's employee(s) contacts to First Call to obtain compliance with this section as well as litigation filing fees, costs and attorneys fees.

**(13) FEDERAL TAX ID NUMBER**

First Call shall provide the County with its federal tax ID number.

**(14) NOTICE**

Notice under this Agreement shall be given as follows:

To Brevard County:

To First Call:

(15) **COMPLIANCE WITH LAWS**

First Call warrants that it is its responsibility to be aware of and to comply with all local, State and Federal laws and regulations applicable to the performance of its duties under this Agreement.

(16) **GOVERNING LAW**

This Agreement shall be governed, interpreted and construed according to the ordinances and laws of Brevard County and the State of Florida. Any action brought to enforce the terms or litigate the terms of this Agreement shall be brought in Brevard County, Florida.

(17) **ATTORNEY'S FEES**

In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs.

(18) **SEVERABILITY**

If any provision of this Agreement is invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the remaining provisions of the Agreement shall remain intact.

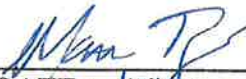
(19) **CONSTRUCTION OF AGREEMENT**

The parties hereby acknowledge that they have fully reviewed this Agreement, its attachments and have had the opportunity to consult with legal counsel of their choice, and that this Agreement shall not be construed against any party as if they were the drafter of this Agreement.

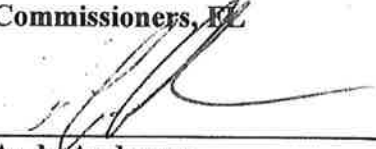
**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals on the day and year first above written.

**FirstCall Network, Inc.**

**Matt Teague  
President**

  
\_\_\_\_\_  
DATE: 10/15/2013

**Brevard County Board of County  
Commissioners, FL**

  
\_\_\_\_\_  
Andy Anderson  
DATE: 10/25/13

As approved by the Board on 7-23-13

Item # 111.D.3

Attest:   
\_\_\_\_\_  
Scott Ellis, Clerk

Reviewed for legal form and  
content: Shannon K. Kubin, 10/16/13  
(Assistant) County Attorney