

TAB 22

REVERSE 911

Point Paper

PROBLEM:

The City of Palmetto does not have a stand alone Reverse 911 system. When the need arises to communicate with the citizens of Palmetto, in the event of an emergency situation, the COP cannot act independently of Manatee County Emergency Management (MCEM).

BACKGROUND:

Currently the COP must rely on MCEM to access a Reverse 911 Call System. The system will alert selected residents by way of a mass telephone communication call-up. The COP Department of Public Works, working with MCEM staff, and a 21st Century representative gathered information about a Universal Communications System that would work for City of Palmetto. The system reviewed was the Twenty First Century Communication, Inc. (TFCC) Universal Communications System that will allow the COP to be independent of Manatee County Emergency Management or any other municipality. This system allows the COP to communicate quickly and effectively with Palmetto's residents by way of the telephone.

ALTERNATIVES:

1. – Take No Action and continue to depend on the Manatee County System.
2. – Enter into an agreement with TFCC Universal Communications System exclusively for COP.

RECOMMENDATION:

Staff recommends Alternative #2, to enter into an agreement with 21st Century Communications for the Universal Communications System exclusively for COP.

BUDGET IMPACT:

COST

• One time programming and set-up free-	\$1,000.00
• Out of pocket travel expenses-Airfare/Hotel/Vehicle/Per Diem-	\$ 600.00
• Usage and Notification-5000 @ .20 at 3 minutes (Pre-Paid)	\$3,000.00
• Annual Fee Base Charge	<u>None</u>
	<u>\$4,600.00</u>

Acct# 432-535-3116

The Sewer Department budgeted \$20,000 in account 432-535-3116 (Contract Services). There is currently \$20,000 available. Staff recommends funding this expense from the Contract Services line item.

UNIVERSAL COMMUNICATIONS SYSTEM AGREEMENT

BETWEEN

Twenty First Century Communications, Inc
("Provider")
750 Communications Parkway
Columbus, OH USA 43214

City of Palmetto
("Client")
600 17th Street West
Palmetto, Florida 34221

Effective Date: October 26, 2007

Provider agrees to furnish and Client agrees to subscribe to, access to and the use of the telecommunication system and network of local telecommunication lines, designated number lines, private lines and other means developed by the Provider for overflow crisis or emergency information recovery or information access services. (TFCC's Universal Communications System'), in accordance with the following terms and conditions:

1. Term/Termination.

a. This Agreement shall be effective from the Effective Date set forth above (the "Effective Date") and shall continue in full force and effect for a period of three (3) years from the service 'turn on' date.

b. In the event that either party fails to perform its duties as required herein ("Breaching Party"), the other party ("Non-breaching Party") may terminate this Agreement if, within sixty (60) days of receipt of notice of such failure to perform from the Non-breaching Party, the Breaching Party fails to cure such failure.

c. Either party may terminate this Agreement in the event the other party files a petition in bankruptcy or is adjudicated bankrupt, or a petition in bankruptcy is filed against said party and is not discharged within ninety (90) days from such filing, or said party becomes insolvent or makes an assignment for the benefit of its creditors, or a receiver is appointed for it or its assets.

2. Rates/Payments.

a. Client shall pay Provider an annual subscription charge, as provided in the attached UCS Purchase Order Form ("Base Charge"). The annual fee is billed on the anniversary of the "go live" date of the system. The prices set forth in the UCS Purchase Order form shall be in effect for the term of the contract.

b. In exchange for the Base Charge the Client shall be entitled to the services as provided in the attached UCS Purchase Order Form.

c. In addition to the annual charge, Client shall pay Provider for all usage as set forth in the UCS Purchase Order Form ("Usage Charges"), including without limitation, any other services obtained from Telephone Carriers for Client or Client's customers, provided such services are requested by Client. The Client shall be responsible for all fees and charges. The Provider will submit monthly a schedule showing fees and charges incurred, call minutes for each message initiator of the system and associated back-up information.

d. Unless otherwise provided herein, terms of payment will be made in accordance with the Florida Prompt Payment Act, Florida Statutes Section 218.70, et, seq. All charges due hereunder are exclusive of any taxes, however designated, which shall be the sole responsibility of Client.

3. Client Responsibilities.

a. Client is solely responsible for the character, content, substance and accuracy of Client's information generated, transmitted, received or stored through TFCC's Universal Communications System, and for the content and nature of all advertising or other communications to induce calls. Further, Client shall be solely responsible for insuring that its use of Provider's Universal Communications System does not violate any applicable local, state or federal rule, regulation or law, including but not limited to, any federal or state law which regulates the use of automated dialing and announcing devices pertaining to residential phone numbers. Provider reserves the right but not the obligation to monitor the Client's information which it

deems to violate any local, state or federal law, or Carrier policy or procedure, and request its immediate correction or removal. In the event that Client fails to correct or remove such information within such amount of time, as determined by Provider, which may be immediately, Provider shall be entitled to remove the information and/or terminate this Agreement.

b. Upon termination of this Agreement, Client may direct disposal of Client's information in possession of the Provider in any manner Client deems appropriate. Client must furnish written instructions to Provider prior to such termination for disposition of such information at Client's expense.

c. Client shall designate one individual within its organization to serve as a contact person to the Provider in the course of the Client's performance under this Agreement ("Point of Contact"), which individual shall be identified on the UCS Purchase Order Form.

d. Client shall insure that at no time shall the TFCC Universal Communications System be use for telemarketing purposes.

4. Provider's Property and Responsibilities.

a. TFCC's Universal Communications System provided hereunder and the tangible and intangible property used to provide TFCC's Universal Communications System are and shall remain the property of the Provider and its Subcontractor; and Provider transfers no right, title or interest in TFCC's Universal Communications System or such property to Client.

b. Provider reserves the right to make changes or permit changes to be made in TFCC's Universal Communications System and in the manner of providing such services with the concurrence of Client. All technical or methodological discoveries, improvements, adaptations or developments made by Provider, even if specifically made for Client, relating to TFCC's Universal Communications System are and shall remain the exclusive property of Provider.

5. Limited Warranty, Disclaimers, and Limitations on Liability.

a. Provider warrants that it shall use reasonable care in providing Client access to and use of TFCC's Universal Communications System.

b. OTHER THAN THE EXPRESS WARRANTIES IN PARAGRAPH 5(A), THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR OR INTENDED USE. FURTHER, IN NO EVENT SHALL PROVIDER BE LIABLE FOR ANY DELAYS, DAMAGES, LOSS OR INJURY CAUSED IN WHOLE OR IN PART BY FIRE, EXPLOSION, LIGHTNING, FLOOD, THEFT, WAR, ACTS OF GOD, POWER SURGES OR FAILURES, PUBLIC OR QUASI-PUBLIC AUTHORITIES, PUBLIC OR PRIVATE UTILITIES OR CARRIERS, INCLUDING WITHOUT LIMITATION PROVIDER'S CARRIERS, FUEL OR ENERGY SHORTAGES, OR ANY OTHER CAUSE BEYOND THE REASONABLE CONTROL OF PROVIDER.

c. Upon the discovery of facts which reasonably indicate that Provider has breached the foregoing expressed warranty or otherwise failed to perform its obligations under this Agreement, or otherwise breached a legal duty, Client shall promptly notify Provider of such facts and follow up any such verbal notification with a written notice within thirty (30) days of such discovery.

d. IN NO EVENT SHALL CLIENT OR PROVIDER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR LOSS OF ANY KIND, INCLUDING LOST PROFITS (WHETHER OR NOT CLIENT OR PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE) BY REASON OF ANY ACT OR OMISSION IN ITS PERFORMANCE UNDER THIS AGREEMENT.

e. Notwithstanding anything in this Agreement to the contrary, Provider's maximum liability to Client under this Agreement or otherwise shall in no event exceed an amount equal to the total Base Charges and Usage Charges actually paid by Client to Provider under this Agreement.

6. Proprietary Nature of Data.

a. Any advertising, publication or use by either party of the other party's name, logo, image or other symbol shall be submitted by the party desiring to make such use to the other party for approval prior to such use. Client/Provider shall not use the symbol, trademark or logo of any of the "Involved Parties" or Carriers in its advertising or imply that any of the "Involved Parties" or Carriers endorse or approve of Client and Provider or their services. Client agrees to the release of their name to Provider for use in conjunction with advertising TFCC's Universal Communications System.

b. It is agreed that all information furnished to or utilized by the parties, except information of a party which it intends to disclose to the public, shall be regarded as confidential. Such information shall remain the sole property of the original owner and shall be held in confidence and safekeeping. Both Provider and Client agree to exercise good business judgment and discretion in the disclosure of such information to any person and shall take appropriate precautions to limit use or disclosure to those personnel in its organization who are directly concerned with performance of this Agreement.

7. Indemnification/Third Parties.

a. Except for related entities, Client shall not assign this Agreement or resell or allow third parties access to or use of TFCC's Universal Communications System without Provider's prior written consent which Provider may withhold at its sole discretion.

b. Except for Related Affiliates, Client and Provider shall not disclose any of the terms or conditions or nature of the services provided hereunder to any third party without prior written consent of the other party, except as may be required by law or regulatory requirement. Nothing in this paragraph shall prevent Provider from freely negotiating contract terms and conditions with any and all present and prospective customers.

c. Client shall indemnify and hold Provider harmless from (i) all claims, judgments, actions, suits or demands, whether civil, criminal or administrative, which are directly or indirectly related to Client's use of TFCC's Universal Communications System, including but not limited to any claims made by Client's customers with respect to use of Client's products or services, that Client's information or information derived from it violates a copyright or other proprietary right or is defamatory or that Client's use of TFCC's Universal Communications System violates any law, rule, regulation, or tariff (including any federal or state law/regulation pertaining to the use of automated dialing and announcing devices), and (ii) all damages, costs and/or expenses (including reasonable attorney fees) related to or resulting from such claims, actions, suits or demands.

8. General.

a. Except as expressly provided in a written agreement, which is mutually binding upon both parties, this Agreement shall govern the entire relationship between the parties and any and all services and/or goods provided by Provider to Client regardless whether such services and/or goods are referred to herein. Provider will acknowledge and adhere to any terms and conditions that are incorporated in Client's purchase order providing those terms and conditions are not inconsistent with provisions herein.

b. No modifications of this Agreement or waiver of any of its terms shall be effective unless set forth in a written document signed by an officer of the Client and Provider. Both parties acknowledge that no person has authority to modify this Agreement or waive any of its terms on behalf of the other party except as expressly provided in this Agreement. Neither forbearance nor indulgence by either party shall result in a waiver or modification of any of the terms of this Agreement.

c. If any term of this Agreement is held to be invalid, the remainder of the Agreement shall remain in full force and effect, unless the invalid term affects the essence of the Agreement.

d. All questions regarding the validity, intention or meaning of this Agreement or any modifications of it relating to the rights and obligations of the parties shall be construed and resolved under the laws of Ohio and in Franklin County District Court. Each party consents to the jurisdiction of such courts.

e. The following paragraphs shall survive the termination of this Agreement, regardless of the reason of termination: 2, 3, 4, 5, 6, 7 and 8.

f. Any notice required to be given or made herein shall be given or made in writing to the parties at the addresses first written above, or such other address as the parties may hereafter designate in

writing, and shall be sent by either certified mail or by facsimile (provided, that for any facsimile a hard copy is mailed by first class mail within three (3) business days.) However, actual receipt of any written notice by the party shall be effective regardless of the manner employed.

g. This Agreement, including attached addenda, signed by both parties, constitutes the entire and only agreement between the parties concerning its subject matter and supersedes all prior and contemporaneous proposals, oral or written, and all prior and contemporaneous negotiations, conversation, and other communications between the parties. Neither party is justified in relying on such proposals, negotiations, conversations or other communications.

City of Palmetto

Accepted By: _____ Date: _____

Title: _____

TWENTY FIRST CENTURY COMMUNICATIONS, INC.

Accepted By: _____ Date: _____

Gerald L. Robertson

Title: _____
Chief Operating Officer
Chief Financial Officer

UNIVERSAL COMMUNICATIONS SYSTEM PURCHASE ORDER FORM

BETWEEN

Twenty First Century Communications, Inc
("Provider")
750 Communications Parkway
Columbus, OH USA 43214

City of Palmetto
("Client")
600 17th Street West
Palmetto, Florida 34221

Effective Date: October 26, 2007

SERVICES:

1. A system designed to support up to 10 message initiators. (A message initiator holds a unique code identification and is one for whom separate usage records are maintained).
2. A system providing outdial functionality.
3. Access to a toll-free (800) number which citizens served by City of Palmetto may call in the event of an emergency.
4. Access to toll-free numbers that local area agencies may direct calls from "hot lines," toll-free numbers and POTS lines.
5. Web activation, control and monitoring.
6. Notification can be by phone, fax, pager or e-mail.
7. 24/7 Help Desk support.
8. Text-to-Speech and Call Redirection as required.
9. Training and support as required.

COST:

A one-time programming and setup fee of \$1,000 will be required within 30 days of the signing of this UCS Purchase Order Form.

Out-of-pocket travel expenses related to the installation and maintenance of the TFCC's Universal Communications System program are billed as incurred and invoiced at actual cost. Expenses typically do not exceed 10% of installation and annual maintenance fees.

An annual telephone hosting database charge will apply at the rate of \$0.00498 per record for records in excess of 10,000.

Four (4) hosted telephone database updates will be provided annually at no charge. Additional hosted telephone database updates in excess of four (4) per year will be billed at the rate of \$98.75 per hour.

ADDITIONAL PROGRAMMING:

Programming charges are provided on a per-project basis at the rate of \$161.59 per hour.

USAGE AND NOTIFICATION CHARGES:

The basic usage charge is \$0.2982 per/minute. Pre-paid minutes may be purchased at the rate of \$0.20/minute. All call traffic is billed on a second-by-second basis with a thirty second minimum.

ANI (if applicable) is charged at the rate of \$0.01985/call. (This is a pass through charge).

Text-to-Speech messaging (either inbound or outdial) is subject to a \$0.02982/call surcharge.

E-mails and text messages transmitted to Internet-based addresses using the UCS Service are free. Facsimiles transmitted using the UCS Service will be billed at the rate of \$0.24871 per page.

Usage does not include Advanced Network charges. Payments later than 30 days, will be assessed a penalty of 1.5% per month.

Under a FCC ruling, calls made to an 800 number directly from a payphone will be assessed a per-call charge (currently \$0.47149 per call). This charge is beyond the control of Twenty First Century Communications, Inc and will be passed directly through to Client with no markup. Client has the capability under FCC rules to block calls from payphones to an 800 number; however, this is not recommended.

Client must notify Provider of any disputed charges within nine (9) months from the date of invoice, otherwise Client will be deemed to agree to such charges, will be precluded from disputing such charges, and Provider will not be subject to making any adjustments to such charges or invoices.

COST OF TELEPHONE NUMBER DATABASE:

Initial cost of the telephone number database is \$0.02982 per record. The cost of updating the telephone number database is \$0.002982 per record.

POINT OF CONTACT:

The following shall be designated as the Point of Contact (POC) for the respective companies:

For Twenty First Century Communications, Inc.
For City of Palmetto

CITY OF PALMETTO

Accepted By: _____

Date: _____

Title: _____

TWENTY FIRST CENTURY COMMUNICATIONS, INC.

Accepted By: _____

Date: _____

Gerald L. Robertson

Title: _____
Chief Operating Officer
Chief Financial Officer