

CONSENT TO CERTAIN ACTION BY THE DIRECTORS
OF OTSEGO COUNTY AMBULANCE CORPS, INC.

The undersigned, being all the directors and members of the Otsego County Ambulance Corps, Inc., a Michigan nonprofit corporation, hereby consent to the following amendment to the Articles of Incorporation (Article VII a.), consistent with MCLA, Section 450.2209 (c) and MCLA 450.2611 (2), as follows:

"A volunteer Director of the Corporation shall not be personally liable to the corporation or its shareholders or members for monetary damages for a breach of the director's fiduciary duty, except as otherwise provided under the law."

Dated this 18th day of JANUARY, 1988.

Raymond J. Winter
Raymond J. Winter

Jon Deming
Jon Deming

Wayne K. Brown
Wayne Brown

Patricia Robarge
Patricia Robarge

Cecelia Schotte
Cecelia Schotte

Beatriz Kelly
Beatriz Kelly

Richard Sawicki
Richard Sawicki

Conrad Schaffer
Conrad Schaffer

**AGREEMENT FOR OPERATING AND MAINTAINING
AMBULANCE AND RESCUE SERVICE FOR OTSEGO COUNTY**

THIS AGREEMENT effective as of this ___ day of _____, 1999, by and among the County of Otsego, Michigan (hereafter County), organized and existing under the constitution and laws of the State of Michigan, and Otsego County Ambulance Corps, Inc. /dba/ Otsego County Emergency Medical Services (hereafter OCEMS), a Michigan non-profit corporation.

WITNESSETH:

WHEREAS, the health, safety, and welfare of the citizens of Otsego County are dependent, in part, upon the availability of advanced life support, ambulance and rescue service, and

WHEREAS, it is in the best interest of the citizens served by the County and OCEMS, to provide advanced life support, ambulance and rescue service for Otsego County, and

WHEREAS, OCEMS has been incorporated pursuant to the provisions of Public Act 327 of 1931, Public Act 258 of 1968 and Public Act 284 of 1972 of the State of Michigan, and

WHEREAS, OCEMS is desirous and equipped to provide such service, and

WHEREAS, on August 3rd, 1999, the electors of Otsego County authorized the County Commissioners (hereafter Commissioners) to levy a tax of up to .4 mills (\$0.40 per \$1,000 of equalized value) for a period of five (5) years, 1999 through 2003 inclusive to provide OCEMS operating funds, and

WHEREAS, the County and OCEMS desire to evidence in writing their understanding and Agreement regarding the basis upon which OCEMS will provide such service, and to clarify the respective roles, responsibilities and obligations of the parties in conducting and providing such service.

NOW, THEREFORE, IT IS AGREED BY AND BETWEEN THE COUNTY AND OCEMS, AS FOLLOWS:

I. GENERAL AGREEMENT:

As of the 30th day of August, 1977, the Otsego County Ambulance Corps, Inc. established an ambulance service which operates under the dba name of Otsego County Emergency Medical Service (OCEMS) to provide advanced life support, ambulance and rescue service in and about Otsego County.

II. TERMS AND AMENDMENT:

A. Terms.

This Agreement contains the entire understanding and Agreement of the parties regarding the subject matter contained herein.

B. Duration.

The terms of this Agreement shall be for five (5) years commencing with the date of execution and shall end with the collection and disbursement of the 2003 property taxes.

C. Extension.

(i) Further, the terms of this Agreement shall be automatically extended, unless otherwise modified in accordance with the terms set forth herein, upon renewal of the OCEMS millage. This automatic extension shall be for the period of the millage renewal.

(ii) Further, this Agreement may be extended for such lengths or periods of time as the parties may mutually agree upon in writing.

D. Amendment.

Further, the terms and conditions of this Agreement, as provided herein, may be amended at any time during the above stated period with the express mutual written consent of the parties who are then bound by the terms hereof.

III. REVENUES:

A. Annual Budget.

(i) OCEMS will present an annual budget to the County prior to October 1st of each year in the form, and as required by the Finance Committee for the operations of OCEMS for the following year beginning January 1st.

(ii) In addition, for the first year of this Agreement the Otsego County Treasurer will, within two weeks of execution hereof, will advance and make available \$50,000, interest free, from the OCEMS operating millage to be used in accordance with the budget. The proposed budget is attached as Appendix A.

(iii) The budget shall estimate the maximum amount of revenue, which the OCEMS can obtain from:

- (1) Service payments, including but not limited to, fees and charges, medical transport contracts, and
- (2) The OCEMS Operating Millage during the next fiscal year, and
- (3) Other sources including, but not limited to, gifts, grants, and donations, and
- (4) Any unexpended amounts from the prior year's operations.

(iv) Prior to August 1 st of each year, the Commissioners shall approve a final budget for the operation of the OCEMS which approval shall be accompanied by a resolution authorizing the levy of such amounts of the OCEMS operating millage as the Commissioners deem appropriate.

B. REPORTS.

Beginning in January 2000 OCEMS shall provide monthly accounting reports to the County Treasurer.

C. BALANCED BUDGET

OCEMS agrees to operate within the budget approved by the Commissioners.

D. 2000 OPERATIONS AND 1999 TAX LEVV:

It is the intention of the County to levy the full OCEMS millage permitted by law beginning in December of 1999.

IV OPERATING YEAR.

OCEMS shall have, as its operating year, one which shall coincide with the County's fiscal year which is the calendar year beginning in January.

V FUNDS:

A. Operating Funds Allocation.

(i) Any amount of operating funds, which are appropriated to OCEMS by the Commissioners from the OCEMS operating millage, shall be expended for daily operations or capital improvements.

(ii) Such expenditures shall only be completed if they are included in the budget required by paragraph III A (i) above or approved by a specific resolution of the Board of Commissioners.

(iii) All revenues raised by rates and charges of OCEMS shall be used solely for the operation and maintenance of OCFMS. Such funds shall be deposited in an account designated by the County Treasure and shall be immediately transferred to the the OCEMS receiving fund as described below.

B. Receiving Fund.

(i) All revenues, except tax revenues, received from the OCEMS shall be set aside as collected in a fund to be designated receiving fund.

(ii) Operating tax revenues shall be deposited in this Fund as follows:

(a) Prior to March 1st, and as soon as received by the County Treasure such taxes as have been received by the County Treasurer shall be deposited in accordance with applicable Michigan Law, and

(b) On May 1st, or as soon thereafter as the County Treasurer receives such taxes from the delinquent tax revolving fund, the balance of such taxes.

(iii) Every quarter, from the revenues in the receiving fund, there shall first be set aside, such amounts as are required, taking into account the monies expected to be received from the OCEMS operating levy, to provide for the payment of the OCEMS's current expenses of administration, operation, and such maintenance as may be necessary on a quarterly basis to OCEMS equipment and structures in good repair and working order.

C. Capital Outlay Fund.

(i) Out of the remaining revenues in the receiving fund, there shall be next set aside, in the capital outlay fund, such sums, as OCEMS may deem advisable. All monies in the capital outlay fund shall be used solely for equipment (heavy rescue,

ambulances and appropriate medical equipment), and repairs, replacements or improvements.

(ii) Any and all equipment required, by law, will be purchased by OCEMS in the name of Otsego County to insure proper licensing and insuring of such equipment.

D. Education Fund.

All contributions, donations, and education fees generated by and/or paid to OCEMS from these operations shall remain the exclusive property of OCEMS, and shall be deposited in this fund. Monies from this fund may only be obligated, transferred or disbursed by action of the Ambulance Board. The board may, at its discretion, transfer funds from this fund to other listed funds, as is required.

E. Surplus Fund.

Subject to having been approved in the budget required by paragraph III A i above, or to a specific approval by the Commissioners, revenues remaining in the receiving fund at the end of any fiscal year, after all required periodic transfers have been made therefrom, shall be deemed to be surplus OCEMS operating funds. Such surplus shall be left in the receiving fund or, upon approval of the Ambulance Board, may be transferred to a fund to be designated the Surplus Fund and subsequently transferred to any of the funds herein authorized.

VI ACCOUNTABILITY.

A. Monthly Statements.

The Treasurer of OCEMS shall provide monthly bank reconciliation statements to the County Treasurer.

B. Corporate Records.

All corporate records of OCEMS shall be available to the County or its auditors upon reasonable request.

C. Financial Records.

All financial records of OCEMS shall be maintained in accordance with the Uniform Budget Accounting Act, being Public Act 621 of 1978, as amended.

D. Audits.

The County, upon reasonable request, may audit the financial records of OCEMS. OCEMS shall conduct an annual audit of its financial records in accordance with applicable law (Section 501 (c) (3) of the Internal Revenue Regulations) and generally accepted accounting principals at annual intervals. OCEMS shall complete such audit and shall, upon reasonable request, provide copies to the County.

VII MAINTENANCE AND REPAIRS.

A. Repairs-Premises.

OCEMS shall, at its own expense, at all times during the term of this Agreement, keep the equipment and premises in good condition and repair, and shall make all necessary and desirable repairs, restorations and replacements, both structural and nonstructural, foreseen or unforeseen, and shall use all reasonable precautions to prevent waste, damage or injury.

B. Repair-External.

OCEMS shall, at its own expense, also maintain in good repair and free from dirt, snow, ice, rubbish and other obstructions or encumbrances, the sidewalks, parking areas, yards, plantings, gutters and curbs in front of and adjacent to the premises.

VIII OPERATION AND MAINTENANCE.

A. Operation and Maintenance.

OCEMS shall, at its own expense, at all times during the term of this Agreement, operate and maintain the equipment and the premises.

B. Definitions.

Operation and maintenance shall include (but not be limited to) the providing of all utilities, snow removal, exterior ground care and all personnel services, equipment and supplies of whatever nature as shall be necessary or expedient for the operation.

IX ALTERATIONS.

A. Alterations to the Premises.

OCEMS will make such alterations, changes, additions or improvements in or to the interior or exterior of the premises as it shall determine to be beneficial. OCEMS shall make any changes or alterations in, on or about the premises, which may be required by any applicable statute, charter, ordinance or governmental regulation or order.

B. Costs and Expenses of Alterations.

All alterations and improvements shall be at OCEMS 's sole expense.

C. Ownership of improvements.

All alterations and improvements shall be the property of the County.

D. Liability.

OCEMS shall save the County and the Commissioners harmless and free from all cost or damage in respect to any alterations to the premises.

X PROPERTY INSURANCE.

A. Cost of Insurance.

The County, at its expense, shall provide property insurance, which shall cover all real and personal property on the premises on a 100% replacement cost basis. Premiums for insurance required to be carried upon or with respect to the premises or the use thereof shall be deemed operation and maintenance expenses.

B. Policy Type.

Such policy shall be an all risks policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without limitation, flood, theft, vandalism, wind, lightning, act of war or terrorism, and malicious mischief. Coverage shall also include the cost of extra expense, for a period of 12 months, incurred by reason of the total or partial loss or damage to the premises caused by an insured peril.

XI LIABILITY INSURANCE.

A. Cost of Insurance.

The County, at its expense, shall provide comprehensive/commercial general liability insurance protecting OCEMS, the County and the Commissioners of the County, the members of the Ambulance Board and their respective agents, officers and employees.

B. Policy Type.

(i) Such insurance shall provide coverage for the defense of actions brought against OCEMS, its Board, Officers, and Employees for, including but not limited to, negligence, malfeasance, misfeasance, errors, omissions, neglect, damages, intentional acts, or other actions arising out of the operation, maintenance and activities of OCEMS.

(ii) Further, the County agrees to maintain coverage, for malpractice or medical negligence to cover OCEMS, its Board, Officers, and Employees.

(iii) Such insurance shall be in limits of not less than \$1,000,000 per occurrence for injury or death to any one person, not less than \$3,000,000 per occurrence for injury or death to more than one person, and not less than \$500,000 per occurrence for property damage.

C. Named Insureds.

(i) OCEMS and the County shall all be named insureds on all insurance policies required hereunder and all insurance proceeds shall be payable to OCEMS and the County according to their respective interests.

(ii) Upon request, the County shall provide OCEMS or the Ambulance Board with certified copies of the insurance policies or other evidence indicating that the insurance is in effect.

(iii) In addition, OCEMS or the Ambulance Board shall be notified in writing at least thirty (30) days prior to cancellation, non-renewal or any material reduction of any coverage.

(iv) All insurance maintained pursuant to this Agreement shall contain a clause or endorsement under which the insurer waives all rights of subrogation against any and all of the parties to this Agreement and their respective officers, commissioners, agents, and employees, with respect to losses payable under the policy.

(v) Claims for loss due to damage to the premises under any policies maintained pursuant to this Agreement shall be adjusted with the insurance companies by the County after advice from OCEMS or the Ambulance Board.

(vi) The proceeds of any insurance shall be paid to the County, which shall deposit the funds in the capital improvement fund for the purpose of paying the cost of repair and restoration of the OCEMS premises and equipment.

(vii) All policy forms, limits and deductibles shall be subject to approval by the County and OCEMS.

XII OPERATIONAL INTEGRITY.

A. Operations.

The County covenants and agrees with OCEMS, subject to the performance by OCEMS of all of the terms, covenants, and conditions of this Agreement to permit OCEMS to operate the service for the County. OCEMS may employ such persons in such capacities as it deems advisable and may make such rules and regulations as it deems advisable and necessary to assure the efficient management and operation of OCEMS. Further, OCEMS, with the approval of the Ambulance Board, shall have the authority, power, and ability to obtain, lease, purchase, acquire or transfer, sell, or dispose of such equipment as is necessary to carry out its obligations to the citizens of Otsego County.

B. Management.

All management and administrative matters relating to the operation and maintenance of the ambulance and rescue service shall be under the sole authority and control of the OCEMS and the Ambulance Board, subject to the laws, and terms of this Agreement.

C. Mutual Aid Agreements.

The OCEMS and the Ambulance Board may enter into such mutual aid Agreements with townships or other political entities as it deems appropriate for the protection of health, safety, and welfare of the citizens of Otsego County.

D. Charges for Services.

The establishment of all charges for advanced life support, ambulance or rescue services shall be under the complete and exclusive control of OCEMS and the Ambulance Board. All bill processing for these services shall be the sole responsibility of OCEMS.

E. Personnel.

All personnel staffing OCEMS equipment and premises, other than township personnel staffing rescue vehicles, first responders or personnel staffing fire equipment, shall be deemed to be employees of OCEMS.

F. Contracting.

OCEMS, with the approval of the Ambulance Board, shall have the exclusive authority to enter into such transport, standby and special event contracts or other agreements or contracts for services as deemed necessary to carry out its obligations to the citizens of Otsego County.

XIII INSPECTION.

Without notice and at reasonable times of the day, the County, through its officers, employees or agents, may enter upon the premises at any time during the term of this Agreement for the purpose of inspecting the premises and determining whether OCEMS is complying with the covenants, Agreements, terms, and conditions of this Agreement.

XIV OCEMS REPRESENTATIONS AND WARRANTIES.

OCEMS represents and warrants that:

A. OCEMS is a Michigan nonprofit corporation, which is exempt from federal income taxation under Section 501 (c) (3) of the Internal Revenue Code, duly organized, validly existing, and in good standing under the laws of the State of Michigan. A copy of the authorizing letter is attached as appendix B.

B. The execution, delivery, and performance by OCEMS of this Agreement is within its corporate powers, has been duly authorized by all necessary action of its board, and does not contravene or constitute a default under any provision of applicable law, regulations, the Articles of Incorporation, the Bylaws of OCEMS, or of any Agreement, judgment, injunction, order, decree, or other instrument binding upon it.

C. The officers of OCEMS who will execute this Agreement, and all other documents, instruments, and Agreements required to be delivered or contemplated under this Agreement are or will be duly authorized by the Ambulance Board to execute the Agreement.

D. This Agreement constitutes a valid and binding Agreement of OCEMS, except as may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the enforcement of creditors, rights and by general principles of equity.

E. To the knowledge of OCEMS, there is no action, suit, or proceeding pending or, threatened against OCEMS before any court or arbitrator or any governmental body, agency, or official, in which an adverse decision would materially and adversely affect the ability of OCEMS to keep any of its obligations under this Agreement or which in any manner questions the validity this Agreement.

XV OCEMS COVENANTS.

OCEMS covenants and agrees that so long as this Agreement shall remain in effect, unless the County waives compliance in writing:

A. OCEMS will promptly inform the County of any occurrence which constitutes an event of default as defined in this Agreement or which, with the giving of notice or the lapse of time, or both, would constitute such an event of default and of any other occurrence which materially affects its financial condition adversely or its ability to comply with its obligations under this Agreement.

B. It is expected that the premises will be exempt from payment of real estate taxes. To the extent that the premises become subject to any form of ad valorem taxation, taxes or assessments levied upon any party hereto on account of the ownership or use or rentals or income therefrom, OCEMS shall pay and discharge such taxes or assessments, before they become delinquent. All taxes and assessments of whatever nature which may be levied or assessed against the premises, unless and to the extent only that such taxes or assessments shall be contested in good faith by appropriate proceedings and OCEMS shall have set aside on its books adequate reserves with respect to such taxes. and

C. OCEMS shall maintain its existence as a Michigan nonprofit corporation in good standing with the State of Michigan. OCEMS shall comply with all governmental laws, regulations, and orders applicable to it, the failure to comply with which would have a materially adverse effect on the financial condition, business, or operations of OCEMS or would affect the validity or enforceability of this Agreement.

D. OCEMS shall maintain its tax-exempt status under federal income tax laws and regulations, and none of its revenues, income or profits, either realized or unrealized, and none of its other assets or property will be distributed to any of its employees, or inure to the benefit of any private person, association or corporation, other than for the lawful corporate purpose of OCEMS.

E. Subject to Paragraph XVI B. of this Agreement, OCEMS shall not create or permit to exist any lien, mortgage, pledge, or other encumbrance on the premises.

F. Permit anyone other than the OCEMS personnel or Ambulance Board members to use the premises, in whole or in part, except as set forth in this Agreement

XVI ENVIRONMENTAL MATTERS.

A. OCEMS will not permit any of the premises to be contaminated or the source of contamination of any other property, by any substance that is now or hereafter regulated by or subject to any applicable federal, state, or local law, ordinance, rule, regulation or order that regulates or is intended to protect public health or the environment or that establishes liability for the investigation, removal, or clean up of, or damage caused by, any environmental contamination, including, without limitation, any law, ordinance, rule, regulation, or order that regulates or prescribes requirements for air quality, water quality, or the disposition, transportation, or management of waste materials or toxic substances (the foregoing are collectively referred to herein as "environmental laws").

B. At its sole cost and expense, OCEMS shall:

(i) Pay when due the cost of compliance with all relevant environmental laws, and

(ii) Keep the premises free of any lien imposed pursuant to any environmental laws, and

(iii) Furnish the County with any reports on environmental assessments/audits of the premises.

C. OCEMS shall indemnify and hold the County and the Commissioners, and its agents, officers, and employees, harmless from and against all costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, claims and demands of every kind or nature, including actual attorney's fees, that shall be asserted against or incurred by any of the foregoing by reason of:

(i) Any representation or warranty by OCEMS in this section being inaccurate in any material respect,

(ii) Any failure of OCEMS to perform any of its obligations under this section, or

(iii) Any past, present, or future condition or use of any part of the premises (whether known or unknown), other than an "excluded condition or use", including without limitation, liabilities arising under any environmental law.

(iv) An "excluded condition or use," of the premises is one that

(1) Does not exist or occur, to any extent, at any time before OCEMS has permanently given up possession and control of the premises, and

(2) Was not caused, or permitted to exist, in whole or in part, by any act or omission of OCEMS.

(v) Indemnification of the County under this section shall not limit any other right or remedy that is available to the County. The indemnification under this section shall survive the termination of this Agreement.

D. Bio-hazards.

(i) OCEMS agrees to comply with all rules, regulation, statutes, directives, of NIOSH, OSHA, MIOSHA or other agency State or Federal concerning the protection from, collection of, and disposal of all Bio-hazard material. Including but not limited to the requirements of 29 CFR, Part 1910 and its subparts.

(ii) Bio-hazard material is defined as human blood, urine, fecal or other human body fluids which may cause exposure to HIV, Hepatitis A, B, or C, or other blood born pathogens.

(iii) Such compliance may require the purchase of special protective equipment or materials, as suggested, recommended or required by the above agencies.

XVII EVENTS AND REMEDIES OF DEFAULT.

A. Each of the following shall constitute an event of default:

(i) OCEMS fails to submit and operate within the budget required by Section III.

(ii) Any representation or warranty made by OCEMS in this Agreement, or which is contained in any certificate or other document delivered at any time pursuant to this Agreement proves to have been false, incorrect or incomplete in any material respect when made or deemed to be made.

(iii) OCEMS fails to observe or perform any covenant or Agreement contained in this Agreement or in any certificate or other document delivered pursuant to this Agreement (other than those covered by clause (i) above) for thirty (30) days after written notice, as set forth herein, thereof shall have been given to OCEMS by the County.

(iv) OCEMS files a petition in bankruptcy, insolvency, dissolution or for reorganization or arrangement under the laws of the United States or of any state, or voluntarily takes advantage of any such law, or act, or is dissolved, (voluntarily or involuntarily) or makes an assignment for the benefit of creditors.

(v) If involuntary proceedings under any bankruptcy law or insolvency act or for the dissolution of a corporation are instituted against OCEMS, or if a receiver or trustee is appointed for all or substantially all of the property of OCEMS, and such proceedings are not dismissed or such receivership or trusteeship vacated within ninety days after such institution or appointment.

(vi) OCEMS ceases to operate or indicates its intention to do so.

B. Remedies in Event of Default.

If any event of default as defined in this Agreement shall occur and be continuing:

(i) The County shall have the right, but not the obligation, to take any of the following action:

(a) The County may terminate this Agreement.

(b) The County, through its Commissioners, officers, agents or employees, shall, at all times, have the right to enter the premises for inspection as set forth above, and to prevent waste, damage or destruction.

(ii) The rights provided for in this Section are cumulative and are not exclusive of any other right, privilege, or remedy provided by law or in equity.

XVIII WAIVERS

A. Failure or Delay to Exercise.

No failure or delay on the part of the County or OCEMS in exercising any right, power, or remedy contained in this Agreement shall operate as a waiver of any right, duty, requirement, or obligation provided by this Agreement.

B. Partial Exercise

No single or partial exercise by the County or OCEMS of any right or remedy shall preclude other or future exercise thereof or the exercise of any other right or remedy.

XIX ASSIGNMENT.

OCEMS and the County agree not to sell, assign, mortgage, pledge or in any way transfer this Agreement.

XX NOTICE.

All notices, requests, and other communications to any party to this Agreement shall be in writing and shall be given to each party at its address set forth below or such other address as such party may hereafter specify, in writing:

If to OCEMS: Otsego County Emergency Medical Services
100 McLouth Rd. P.O. Box 642
Gaylord, MI 49735 Gaylord, MI 49734
Attn: EMS Chief

If to the County: County of Otsego
225 West Main Street
Gaylord, MI 49735
Attn: Otsego County Coordinator

XXI SEVERABILITY.

If any one or more of the provisions contained in this Agreement or any document, instrument or Agreement required pursuant to this Agreement should be declared invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired. The document shall be read as if the provision or provisions are null, void, non-existent, and severed from the this Agreement.

XXII GOVERNING LAW.

This Agreement, and the rights and obligations of the parties under this Agreement, shall be governed by, construed, and interpreted in accordance with the laws of the State of Michigan.

XXIII CAPTIONS.

The captions contained in this Agreement are for convenience, for reference only and shall not limit or define the provisions of this Agreement, or affect the interpretation or construction thereof.

XXIV OTHER AGREEMENTS.

This Agreement, once properly executed, supersedes, replaces and abrogates all prior agreements between the parties, including but not limited to, the agreement executed between the parties on the 20th day of October, 1993, regarding the this same subject matter.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the day and year first above written.

OTSEGO COUNTY EMS

By: John M. Hyde
JOHN M. HYDE

Its: President

By: Mary M. Sanders
MARY M. SANDERS

Its: Secretary

COUNTY OF OTSEGO

By: F. Meissinger
FRED MEISSINGER

Chairman, County Board of Commissioners

By: Evelyn M. Pratt
EVELYN PRATT

County Clerk

PREPARED BY:

Steven C. Byram
BYRAM HARRELSON HASS, PLC
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517-732-7544