



REPORT TO CITY COUNCIL

DATE: JUNE 25, 2008

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER 

BY: LOUIS CELAYA, ASSISTANT TO THE CITY MANAGER 

SUBJECT: APPROVAL OF AGREEMENT WITH BLACKBOARD CONNECT, INC.,
TO PROVIDE MASS NOTIFICATION SERVICES

At the FY 2008-09 Budget Workshop, the City Council was presented a proposal to consider securing a mass notification service for the purpose of providing information to residents during the event of natural disasters or citywide emergencies. Mass notification systems provide cities and counties the ability to contact residents quickly in a short span of time through various communication methods. This technology proved to be a valuable public safety tool during the wildfires in San Diego County as a means for evacuation notifications.

The City currently utilizes an older and antiquated system, American Emergency Network (AEN), for emergency notifications. This was a shared system with the cities of Calabasas, Malibu, Westlake Village, Hidden Hills, and the Las Virgines Municipal Water District and Las Virgines Unified School District and was limited to one form of communication (telephone). The group shared the total cost for AEN system, and individual cost was based on population, in addition to the per-call fees when the system was used. With the advancement of technology and importance of the ability to notify residents quicker and through various communication methods during emergencies, this past year the cities of Calabasas, Malibu, Westlake Village, and Hidden Hills secured separate services with "Connect-CTY" (the system being provided by Blackboard Connect, Inc.). With the departure of the other cities from the AEN system, the City will realize an increased cost for the current antiquated system. There is also a growing trend with municipalities to secure independent services from companies specializing in mass notification technology that can provide many forms of communication methods versus one form, as well as having a system to meet their individual city needs.

The Connect-CTY service is an integrated communications suite, fully hosted SaaS (Software as a Service) application requiring no maintenance or upgrades by the City. The service provides the City the ability to deliver a message to multiple communication devices, including cell phone, email, PDAs, pager and landline telephones. The Connect-CTY service provides unlimited use for a fixed annual fee, 24/7/365 customer care support, initial on-site and on-going refresher training sessions, message delivery tracking, and comprehensive reporting at no additional costs. The service can deliver notification of up to three (3) telephone numbers and two email addresses per contact (residential household). Also, as part of the service, Connect-

CTY will also provide assistance with outreach to advise residents of the new service, assist in establishing website link for residents to update contact information, provide additional contact numbers, and select desired methods of delivery.

Staff is proposing a five (5) year agreement term, as it guarantees the service fee (\$2.00/household) is locked for five years. Within the agreement, there is an annual opt-out clause that affords the City the ability to terminate the agreement should it find that service use is no longer needed. Additionally, staff has been able to negotiate a limited "like-size cities" favorite nation clause, whereby should another city in California ("like-size cities" defined as 15,000 households or less) secures mass notification services with Blackboard Connect, Inc., at a service fee lower than the current rate, the City will automatically received that rate.

The cost for the service is as follows:

Service Fee	5 Year Term
Estimated Number of Residences	7,692
Message Fee per Address (residences)	\$2.00
One Time Set Up Fee (Orientation, Training, etc)	\$1,500
Total Annual Service Cost	Year One \$16,884 Year Two \$15,384 Year Three \$15,384 Year Four \$15,384 Year Five \$15,384

The first year cost has been allocated in the FY 2008-2009 Budget, and will be subsequently budgeted each fiscal year thereafter for the duration of the agreement. Staff met with the Law Enforcement Committee during the FY 2008-2009 Budget Workshop period and received its full support for the service. Additionally, representatives from the Los Angeles County Sheriff Department concur that this is a valuable and essential tool for public safety.

The proposed agreement has been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends the City Council approve a contract with Blackboard Connect, Inc., for mass notification services on an annual basis for the time period starting July 1, 2008 and terminating June 30, 2013, with a not-to-exceed amount of \$16,884 for year one, and \$15,384 for subsequent years.

Attachment: Agreement with Exhibits A-B

AGREEMENT FOR VENDOR SERVICES
WITH THE CITY OF AGOURA HILLS

NAME OF CONTRACTOR: Blackboard Connect, Inc.

RESPONSIBLE PRINCIPAL OF CONSULTANT: Bruce Worman, Senior Vice
President

CONTRACTOR'S ADDRESS: 15301 Ventura Blvd
Building B, Ste. 300
Sherman Oaks, CA 91403

CITY'S ADDRESS: City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301
Attention: Louis Celaya

COMMENCEMENT DATE: July 1, 2008

TERMINATION DATE: June 30, 2013

CONSIDERATION: NTE: Year One - \$16,884
Year Two - \$15,384 (\$16,922)
Year Three - \$15,384 (\$16,922)
Year Four - \$15,384 (\$16,922)
Year Five - \$15,384 (\$16,922)

**AGREEMENT FOR VENDOR SERVICES BETWEEN THE
CITY OF AGOURA HILLS AND BLACKBOARD
CONNECT, INC.**

THIS AGREEMENT is made and effective as of July 1, 2008, between the City of Agoura Hills, a municipal corporation ("City") and Blackboard Connect, Inc. ("Vendor"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**. This Agreement shall commence on July 1, 2008, and shall remain and continue in effect until tasks described herein are completed, but in no event later than June 30, 2013, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**. Vendor shall perform the services and tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Vendor shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. **PERFORMANCE**. Vendor shall at all time faithfully, competently and to the best of his or her ability, experience, and talent, perform all tasks described herein. Vendor shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Vendor hereunder in meeting its obligations under this Agreement.

4. **PAYMENT**

A. The City agrees to pay Vendor monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, Payment Rates and Schedule, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. Any terms in Exhibit B other than the payment rates and schedule of payment are null and void. This amount shall not exceed \$16,884 in year one and \$15,884 in subsequent years ("Contract Price") for the initial Term of the Agreement unless additional payment is approved as provided in this Agreement.

B. Vendor shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Vendor shall be compensated for any additional services in the amounts and in the manner as agreed to by the City Council and Vendor at the time City's written authorization is given to Vendor for the performance of said services.

The City Manager may approve additional work up to ten percent (10%) of the amount of the Contract Price but in no event shall the total compensation exceed sixteen thousand nine hundred twenty two dollars (\$16,922.00). Any additional work in excess of this amount shall be approved by the City Council.

C. Vendor will submit invoices monthly for actual services performed. Invoices shall be submitted between the first and fifteenth business day of each month, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each

invoice as to all non-disputed fees. If the City disputes any of Vendor's fees it shall give written notice to Vendor within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

5. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

A. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Vendor at least ten (10) days prior written notice. Upon receipt of said notice, the Vendor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

B. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Vendor the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Vendor will submit an invoice to the City pursuant to Section 4.

6. DEFAULT OF VENDOR

A. The Vendor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Vendor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Vendor for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Vendor. If such failure by the Vendor to make progress in the performance of work hereunder arises out of causes beyond the Vendor's control, and without fault or negligence of the Vendor, it shall not be considered a default.

B. If the City Manager or his or her delegate determines that the Vendor is in default in the performance of any of the terms or conditions of this Agreement, it shall serve the Vendor with written notice of the default. The Vendor shall have (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Vendor fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

7. OWNERSHIP OF DOCUMENTS

A. Vendor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Vendor shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Vendor shall provide free access to the representatives of City or its designees at reasonable times to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts there from as necessary, and shall allow inspection of all work, data, documents, proceedings and activities

related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused or otherwise disposed of by the City without the permission of the Vendor. With respect to computer files containing data generated for the work, Vendor shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

8. INDEMNIFICATION. The Vendor agrees to defend, indemnify, protect and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, including attorney fees and expert witness fees, or liability of any kind or nature which the City, its officers, agents and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Vendor's negligent or wrongful acts or omissions arising out of or in any way related to the performance or non-performance of this Agreement, excepting only liability arising out of the negligence of the City.

9. INSURANCE REQUIREMENTS. Vendor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Vendor, its agents, representatives, or employees.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88.

2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92 covering Automobile Liability, code 1 (any auto). If the Vendor owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.

3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Vendor has no employees while performing under this Agreement, worker's compensation insurance is not required, but Vendor shall execute a declaration that it has no employees.

B. Minimum Limits of Insurance. Vendor shall maintain limits no less than:

1) General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2) Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.

3) Worker's Compensation as required by the State of California; Employer's Liability: One million dollars (\$1,000,000) per accident for bodily injury or disease.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City Manager. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Vendor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1) The City, its officers, officials, employees and volunteers are to be covered as insured's as respects: liability arising out of activities performed by or on behalf of the Vendor; products and completed operations of the Vendor; premises owned, occupied or used by the Vendor; or automobiles owned, leased, hired or borrowed by the Vendor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

2) For any claims related to this project, the Vendor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City, its officers, officials, employees or volunteers shall be excess of the Vendor's insurance and shall not contribute with it.

3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

4) The Vendor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City. Self insurance shall not be considered to comply with these insurance requirements.

F. Verification of Coverage. Vendor shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the City. All endorsements are to be received and approved by the City

before work commences. As an alternative to the City's forms, the Vendor's insurer may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

10. INDEPENDENT VENDOR

A. Vendor is and shall at all times remain as to the City a wholly independent Vendor. The personnel performing the services under this Agreement on behalf of Vendor shall at all times be under Vendor's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Vendor or any of Vendor's officers, employees, or agents except as set forth in this Agreement. Vendor shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. Vendor shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

B. No employee benefits shall be available to Vendor in connection with the performance of this Agreement. Except for the fees paid to Vendor as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Vendor for performing services hereunder for City. City shall not be liable for compensation or indemnification to Vendor for injury or sickness arising out of performing services hereunder.

11. LEGAL RESPONSIBILITIES. The Vendor shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Vendor shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Vendor to comply with this section.

12. RELEASE OF INFORMATION

A. All information gained by Vendor in performance of this Agreement shall be considered confidential and shall not be released by Vendor without City's prior written authorization. Vendor, its officers, employees, agents or subVendors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Vendor gives City notice of such court order or subpoena.

B. Vendor shall promptly notify City should Vendor, its officers, employees, agents or subVendors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Vendor and/or be present at any deposition, hearing or similar proceeding. Vendor agrees to cooperate fully with City and to provide City with the opportunity

to review any response to discovery requests provided by Vendor. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

13. NOTICES. Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (I) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City: City of Agoura Hills
30001 Ladyface Court
Agoura Hills, California 91301
Attention: City Manager

To Vendor: Blackboard Connect, Inc.
15301 Ventura Blvd, Ste. 300
Sherman Oaks, CA 91403
Attention: Phillip Huff – Controller
Tel: (818) 808-1716
Fax: (818) 450-0425

14. ASSIGNMENT. The Vendor shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Upon termination of this Agreement, Vendor's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Vendor.

15. LICENSES. At all times during the term of this Agreement, Vendor shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

16. GOVERNING LAW. The City and Vendor understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Agoura Hills. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

17. PROHIBITED INTEREST. No officer, or employee of the City of Agoura Hills shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Vendor, or Vendor's sub-Vendors for this project, during his/her tenure or for one year thereafter. The Vendor hereby warrants and represents to the City that no officer or employee of the City of Agoura Hills has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Vendor or Vendor's sub-Vendors on this project. Vendor further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

18. ENTIRE AGREEMENT. This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

19. AUTHORITY TO EXECUTE THIS AGREEMENT. The person or persons executing this Agreement on behalf of Vendor warrants and represents that he or she has the authority to execute this Agreement on behalf of the Vendor and has the authority to bind Vendor to the performance of its obligations hereunder.

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

CITY OF AGOURA HILLS

John M. Edelston,
Mayor

ATTEST:

Kimberly M. Rodrigues, CMC
City Clerk

APPROVED AS TO FORM:

Craig A. Steele,
City Attorney

VENDOR

Blackboard Connect, Inc.
15301 Ventura Blvd,
Building B, Ste. 300
Sherman Oaks, CA 91403
Bruce Worman
(818) 808-1716
(818) 450-0425

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

[Signatures of Two Corporate Officers Required]

EXHIBIT A

TASKS TO BE PERFORMED

The specific elements (scope of work) of this service include:



SERVICES AGREEMENT

This **Connect-CTY Services Agreement** ("**CTY Agreement**") dated June 18, 2008 ("**Effective Date**"), is entered into by and between the City of Agoura Hills, California (the, "**Client**") and Blackboard Connect Inc. (formerly known as The NTI Group, Inc.), a Delaware corporation and wholly-owned subsidiary of Blackboard Inc. ("**BCI**" or "**Company**").

WHEREAS, the Client wishes to subscribe to the **Connect-CTY**[®] service (the, "**CTY Service**") provided by BCI, in order to send messages to households, businesses, and certain other related individuals within the Client's jurisdiction (each, a "**Recipient**").

NOW THEREFORE, for good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **CTY Service.** The CTY Service will include the following features:
 - a. **Unlimited Messaging; Remote Launching Capability.** Unlimited any-time messages throughout the Term, enabling the Client to communicate with residents and businesses within its jurisdiction, and access and use of the CTY Service from anywhere in the U.S. via an internet connection and/or a phone.
 - b. **Database.** BCI will provide the Client with one (1) phone number per physical address to the extent that such numbers are available ("**BCI Data**"). The Client may provide up to two (2) phone numbers and two (2) email addresses per Recipient (the "**Client Data**"), provided, that, for business Recipients, the secondary phone numbers must not tie up more than one phone line of a multi-line business. The Client Data, the BCI Data, and the data input by individuals via the CTY Web Portal, may hereinafter be collectively referred to as the "**Recipient Data**".
 - c. **Training, Customer Support, Maintenance.** Training to educate all Users on how to send messages, receive reports, and other aspects of the operation of the CTY Service. BCI will also provide the Client with unlimited maintenance and support (client care and technical support), on a twenty-four (24) hour, seven (7) days a week basis, throughout the life time of the CTY Agreement. The Client will designate qualified personnel to act as liaisons between the Client and BCI respecting technical, administrative and content matters, and providing accurate and current contact information.
 - d. **Geographic Information System (GIS) Mapping.** A geo-based mapping system that allows a Client-user to create specific call lists for certain areas of the Client's jurisdiction using criteria such as radius, street, zip code.
 - e. **CTY Web Portal.** A Web interface that enables residents and businesses to update or add to their contact (telephone and email address) information electronically at no charge ("**CTY Web Portal**"). BCI grants to Client a limited non-exclusive, worldwide, royalty-free license to place one of the digital images of the BCI **Connect-CTY** Sign-up Logo (attached hereto as Schedule "A") (the "**Image**"), on an appropriate page of the Client's Internet site, located at <http://www.ci.agoura-hills.ca.us> ("**Client Site**"), with a hyperlink to BCI's CTY Web Portal site (the, "**Link**") located at <https://portal.nconnectcty.com/1318545> (the "**CTY Web Portal**"). The Client agrees not to use any other trademark or service mark in connection with the Image without the prior written approval of BCI. The sole purpose of the Link is to provide intended Recipients with quick access to the CTY Web Portal by transferring the user out of the Client Site to the CTY Web Portal, where Intended Recipients can insert and/or update their contact information ("**Recipient Data**"). The Link may not be used in any manner to provide a user with access to the CTY Web Portal via any framing, layering or other techniques now known or hereafter developed that permit display of the CTY Web Portal with any materials posted by Client or any party other than BCI. Client may not allow the Image to be linked to any other web site. The Client may not use the Image in any manner not permitted hereunder, modify the Image, or copy, or create a derivative work from, the "look and feel" of the Image. BCI will have the right to review all uses of the Image for quality control purposes and proper compliance with guidelines, as they may be modified from time to time. The Image and the goodwill associated therewith are valuable properties belonging to BCI and all rights thereto are and shall remain the sole and exclusive property of BCI. BCI reserves the right to modify permission to use the Image and/or the Link at any time.
2. **Term; Termination.** This CTY Agreement will commence on the date which is the later of, the date of full execution or July 1, 2008 ("**CTY Service Start Date**") and will continue for five (5) years (the, "**Term**"). Notwithstanding the foregoing, if Client inputs any information or other data into BCI's systems prior to the CTY Service Start Date in order to prepare for the commencement of the CTY Service and/or sends any messages prior to the CTY Service Start Date, the Client expressly accepts that the terms and conditions of this CTY Agreement will also apply during that earlier period.
 - a. **Termination for Convenience.** The Client can terminate the CTY Agreement for convenience on the one year anniversary of the CTY Service Start Date, and each one year anniversary thereafter during the Term, by giving BCI at least thirty (30) days prior written notice to terminate.
 - b. **Termination with Cause.** Either party may terminate this Agreement in the event of a material breach by the other party, which breach remains uncured for thirty (30) days following written notice to the breaching party. In the event of a termination by Client for an uncured material breach, the Client may either: (i) extend the time for BCI to correct such breach, if correction is commercially reasonable; or (ii) terminate the Agreement, in which case, in addition to any other right or remedy the Client may have, BCI shall refund to the Client the prorated sum of monies paid but not utilized hereunder. This Agreement can be terminated immediately by BCI for non-payment.
 - c. **Effect of Termination.** Any termination of this CTY Agreement will not affect any rights or liabilities of either party that accrued prior to such termination. Provisions of this CTY Agreement which, either expressly or by their nature contemplate

continued performance or application following the Term, will survive the expiration or termination for any reason of this CTY Agreement.

3. **CTY Service Fees.** In consideration for the use of the CTY Service during the Term, the Client will pay BCI a one-time Support Fee of one thousand five hundred dollars (\$1,500) and an annual Service Fee of fifteen thousand three hundred and eight-four dollars (\$15,384) per year. If during the Term, BCI reduces the Service Fee for the CTY Service to less than two dollars (\$2) per Recipient per year for any client in California with a household count of fifteen thousand or less, then BCI will apply the benefits of such reduced pricing to the City of Agoura Hills. The Support Fee and Service Fee will be invoiced upon execution of this Agreement, and thereafter, the Service Fee will be invoiced on an annual basis. All payments due hereunder are on net 30 terms. BCI will be responsible for notification to the Client regarding the existence of reduced service fees for the CTY Service.
4. **Representations and Obligations.**
 - a. **Compliance.** The Client represents that the CTY Service will be used in compliance with federal, state, and privacy laws and this CTY Agreement.
 - b. **Privacy; Security.** The Client agrees to comply with the then current Acceptable Use Policy and Privacy Policy (collectively, the "**Policies**") (which can be found at the BCI Website located at www.blackboardconnect.com ("**BCI Website**"), as amended from time to time. BCI does not rent, trade, or sell data to third parties, and will only disclose information as necessary to comply with applicable laws and government orders or to operate or maintain the CTY Service. In the event of an express conflict between the terms of the CTY Agreement and the terms of the Policies, the terms of the CTY Agreement will prevail. The passwords and user names (collectively, "**Account Information**"), provided by BCI are deemed *Confidential Information*. The Client is responsible for knowing who has access to its applications and servers, Client-side security with respect to Account Information, for activities that occur under its account, and for obtaining necessary consents from intended Recipients. The Client will give staff with access to the CTY Service ("**Users**"), appropriate notice of the terms and conditions for access and use consistent with the terms herein. The Client agrees to immediately notify BCI of unauthorized use or loss of Account Information or other security breach pertaining to the CTY Service, and ensure that Users exit from their accounts at the end of each session. BCI is responsible for implementing adequate security precautions for matters under its direct control.
 - c. **Transmission of Messages; Data.** The Client will be responsible for the content of messages sent by Users and agrees not to send communications to a Recipient who "opts-out", i.e., who has indicated that he/she does not wish to receive a communication from the Client. The Client agrees to have in place primary safety and emergency response procedures in the event of an emergency (including without limitation, notifying 911 or equivalent, fire police, emergency medical, and public health, altogether, "**First Responder Services**"). The Client will only use the BCI Data to contact individuals pursuant to the use of the CTY Service and is prohibited from downloading or making copies of BCI Data. Any search and on-screen display functionality is restricted to resolving incidents or assisting an individual or business entity inquiring about the use of its information pursuant to the CTY Service.
 - d. **Confidentiality.** BCI will maintain the confidentiality of the Client Data unless disclosure is mandated by law. The Client will maintain the confidentiality of BCI Data, the CTY Service, Account Information, training and user guides, materials identified as confidential, and the member pages of the BCI Website (collectively, "**Confidential Information**") with the same degree of care that it uses to protect its own confidential information, but in no event less than a reasonable degree of care, provided, however, that, the Client may disclose Confidential Information to the extent required by law or in response to a written Public Records Act request. In the event that disclosure is mandated, each party will make best efforts to provide notice to the other party prior to such disclosure together with a list and copies of all documents subject to the disclosure. Either party may seek injunctive relief to prevent disclosure or seek a protective order. Upon the termination of this CTY Agreement or the expiration of the Term, whichever is earlier, each party will return to the other the latter party's Confidential Information (without retaining copies, in any medium).
5. **Warranty.**
 - a. BCI represents and warrants that the CTY Service will perform in a commercially reasonable and professional manner and will conform substantially to the description of the service as described in Section 1. The Client accepts that the CTY Service is not intended to be used for communicating with, or replace notification to, or interoperate directly with First Responder Services, which should have already been notified and deployed. Moreover, the Client accepts that the CTY Service is not designed for use in any situation where failure of the CTY Service could lead to death, personal injury, or damage to property. BCI will use commercially reasonable efforts to assure that the CTY Service remains available for access by Client on a 24/7/365 basis, excluding maintenance and events outside the reasonable control of BCI. In the event that the CTY Service fails to comply with the above warranty, the Client shall promptly inform BCI of such fact, and BCI, upon receipt of such notice and at its expense, will use commercially reasonable efforts to correct any verifiable errors (by repair, replacement or re-performance) so that the CTY Service complies with such warranty as soon as possible, but not more than thirty (30) days after written notice from the Client ("**Cure Period**"). In the event that such repair or replacement cannot be done within the Cure Period, then the Client may invoke the remedy specified in Section 2. BCI will have no obligation with respect to the foregoing limited warranty to the extent the error or noncompliance was caused, in whole or in part, by the negligence or improper use of the CTY Service by the Client or a third party, or a breach by the Client of its obligations under this Agreement. Nor will BCI be responsible for delays, errors, failures to perform, interruptions or disruptions in the services contemplated under this Agreement caused by or resulting from any act, omission or condition beyond BCI's reasonable control, whether or not foreseeable or identified, including without limitation, the loss of, or improper access to Client Data, unauthorized access or interception of such data, transmission errors or corruption or security of information carried over telecommunication lines, failure of digital transmission links, hostile network attacks or network congestion, or acts of God, strikes, lockouts, riots, acts of war, governmental regulations, shortage of equipment,

materials or supplies, fire, power failure, earthquakes, severe weather, floods or other natural disaster or the Client's, a User's or any third party's applications, hardware, software or communications equipment or facilities. The above warranty is in lieu of all other warranties by BCI, express or implied, including but not limited to the warranties of merchantability or fitness for a particular purpose, or any warranties arising from a course of dealing, course of performance, usage of the trade or trade practice. BCI does not warrant that the operation will be uninterrupted and BCI hereby disclaims all liability on account hereof.

6. **Limitation of Liability.** If the Client suffers damages arising from or relating to the CTY Service and a court of competent jurisdiction determines that BCI's conduct was a proximate cause of such damages, then BCI's aggregate liability to the Client will be as follows: (a) For intentional misconduct on the part of BCI, BCI's liability will not be limited. (b) For all other misconduct, BCI's aggregate liability will be limited to the lesser of (i) actual direct damages or (ii) the total fees paid by the Client to BCI under this CTY Agreement. The existence of multiple claims will not enlarge the limits. Nothing contained in the foregoing limits or excludes the liability of BCI for liability which cannot be excluded by law. In no event will BCI, its officers, or employees, be liable for any indirect, punitive, reliance, special, consequential, or other damages of any kind or nature whatsoever, suffered by the Client or any third party arising out of this CTY Agreement or the transactions contemplated hereby, even if BCI has been advised of the possibilities of such damages or should have foreseen such damages.
7. **Miscellaneous.** (a) Ownership. Client acknowledges and agrees that the Confidential Information and all other materials pertaining to the use of the CTY Service are not purchased or developed with Client funds. Accordingly, nothing in this CTY Agreement grants or transfers to the Client any ownership rights in the foregoing materials. Client is expressly prohibited from reproducing, modifying, duplicating, copying, making derivative works, publicly displaying, or otherwise exploiting, in whole or in part, the member pages of the Confidential Information, without the express written permission of BCI's Legal Department. (b) Governing Law; Attorney Fees. This CTY Agreement will be governed and interpreted in accordance with the governing law of the Client's State. In addition to any other relief awarded, the prevailing party in any action arising out of this CTY Agreement shall be entitled to its reasonable attorneys' fees and costs. (c) Waiver; Severability. Failure by either party to enforce any provision of this CTY Agreement will not be deemed a waiver of future enforcement. In the event that any provision of this CTY Agreement is invalid under applicable law, the remainder of this CTY Agreement will continue in full force and effect. In such a case and subject to the last sentence of the preamble, the parties will replace the invalid provision with one that, as much as possible, reflects the original intentions of the parties and is valid under applicable law. (d) Relationship of Parties. BCI is providing a service to Client as an independent contractor. (e) No Third Party Beneficiaries. No provisions of this CTY Agreement are intended or shall be construed to confer upon or give to any person or entity other than BCI or Client, any rights, remedies or other benefits under or by reason of this CTY Agreement. (f) Notices. All notices under this CTY Agreement shall be in writing and shall be delivered by personal delivery, nationally recognized overnight courier (e.g., FedEx), confirmed facsimile transmission or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, upon receipt if delivered by overnight courier, upon acknowledgment of confirmed receipt of electronic transmission, or three (3) days after deposit in the mail. Notices shall be sent to the Contacts for Notices at the address set forth at the end of this CTY Agreement or such other address as either party may specify in writing. (g) Counterparts. The CTY Agreement may be executed in counterparts. A signature on a copy of this CTY Agreement received by either party by facsimile is binding upon the other party as an original. Both parties agree that a photocopy of such facsimile may also be treated by the parties as a duplicate original. (h) Mutual Indemnification. To the extent authorized by Illinois law and subject to Section 6, each party will defend, indemnify and hold harmless the other party and the other party's successors and assigns, officers, directors, employees, and agents, from and against liability, judgment, loss, damages, fines and expenses (including legal fees and costs), which any or all of them may later suffer themselves or pay out to another, because of any claim, action, or right of action of a third party or governmental authority, at law or in equity, or otherwise, based on or in any way arising out of, and which are proximately caused in whole or in part, by a direct breach of warranty or representation by the indemnifying party. *The Client's indemnification obligation shall not serve as a waiver of its sovereign immunity.* (i) Entire Agreement. This CTY Agreement and all Exhibits and Schedules attached hereto, completely and exclusively state the agreement of the parties regarding its subject matter. It supersedes, and its terms govern, all prior or contemporaneous proposals, agreements or other communications between the parties, oral or written, regarding its subject matter, and may be amended or supplemented only by a subsequently dated writing that refers explicitly to this CTY Agreement and that is signed by authorized representatives of both parties. This CTY Agreement will be null and void if not executed within sixty (60) days of the Effective Date.

IN WITNESS WHEREOF, the parties have executed this CTY Agreement as of the Execution Date.

CITY OF AGOURA HILLS	BLACKBOARD CONNECT INC.
Authorized Signatory: _____	Authorized Signatory: _____
Print Name & Title: _____	Name & Title: _____
Execution Date: _____	Address: Blackboard Connect Inc.
Address: City of Agoura Hills	15301 Ventura Blvd., Building B, Suite 300
30001 Ladyface Court, Agoura Hills, CA 91301	Sherman Oaks, CA 91403
Contact for Notices: Greg Ramirez, City Manager	Notices: Phillip Huff, Controller
Tel: (818) 597-7304; Fax: _____	Email: phillip.huff@blackboardconnect.com
Email: Greg@ci.agoura-hills.ca.us	Tel: (818) 808-1722; Fax: (818) 450-0425

Fax a signed copy of the contract to (818) 450-0425; Attn: Susan Kim, Administrator, Contracts
Tel: 818-808-1725; Email: susan.kim@blackboardconnect.com

SCHEDULE "A" - IMAGE

Client may choose one of the three Images below

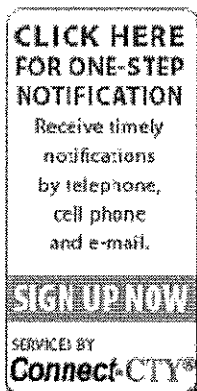


EXHIBIT B

PAYMENT RATES AND SCHEDULE

<i>Service Fee</i>	<i>5 Year Term*</i>
Estimated Number of Residence and Business Addresses: Households – Businesses –	7,692
Message Fee Per Address	\$2.00
**Set up Fee (Orientation and Implementation)	1,500
Total Annual Cost of Service	Year One \$16,884 Year Two \$15,384 Year Three \$15,384 Year Four \$15,384 Year Five \$15,384

Notes:

* NTI provides a 5 year contract with an annual opt out at the locked cost of \$2.00 per address.

****Support Fee:** a one-time fee for the term of the agreement which includes initial set-up, training, and ongoing support (refresher training, online training, and 24/7 customer service support).