

REPORT TO CITY COUNCIL

DATE: OCTOBER 7, 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 September 10, 2008, City Council meeting, staff presented the 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. The City Council was advised that the City utilizes an older and antiquated system, American Emergency Network (AEN), for emergency notifications, and the system was once shared with the cities of Calabasas, Hidden Hills, Malibu, Westlake Village, the Las Virgines Municipal Water District, and the Las Virgines Unified School District and was limited to one form of communication (telephone).

At the meeting, the Council was also informed that the cities of Calabasas, Hidden Hills, Malibu, and Westlake Village had secured separate services with “Connect-CTY” (the system provided by Blackboard Connect, Inc.), and with departure of the other cities from the AEN system, the City will realize an increased cost for the current antiquated system.

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, Personal Digital Assistant, 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, assistance with outreach to promote the new notification service, message delivery tracking, and comprehensive reporting at no additional costs. The service can deliver notification of up to three (3) telephone numbers and two (2) email addresses per contact (residential household).

Staff is proposing a five (5) year agreement term, as it guarantees the service fee (\$2.00/household) is locked-in 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 was able to negotiate a limited “like-size cities” (defined as 15,000 households or less) favorite nation clause whereby, should another city in California secure mass notification services with Blackboard Connect, Inc., at a service fee lower than the current rate, the City will automatically receive 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's Department concur that this is a valuable and essential tool for public safety.

Staff and the City Attorney have concluded discussions regarding the agreement language with representatives from Blackboard Connect, Inc., and the agreement is attached. It should be noted that this system is intended to be an "additional tool" for the City and public safety agencies to utilize and "not to be substituted" with the standard first response notifications provided by public safety agencies during natural disasters and/or emergencies (i.e., neighborhood evacuation notifications by public safety patrol units, etc.).

The agreement was prepared by the City Attorney and has been approved to form.

RECOMMENDATION

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

Attachment: Agreement for Vendor Services – Blackboard Connect, Inc.

AGREEMENT FOR VENDOR SERVICES
WITH THE CITY OF AGOURA HILLS

NAME OF CONTRACTOR: Blackboard Connect, Inc.

RESPONSIBLE PRINCIPAL OF CONTRACTOR: Phillip Huff,
Controller

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: October 1, 2008

TERMINATION DATE: September 30, 2013

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

ADDITIONAL SERVICES <i>(Describe Services, Amount, and Approval):</i> _____ _____ _____ _____
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Date: _____ Amount: \$ _____ Authorized By: _____
(Not to Exceed 10% of Contract Price) City Manager

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

THIS AGREEMENT is made and effective as of October 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 October 1, 2008, and shall remain and continue in effect until tasks described herein are completed, but in no event later than September 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 service fees in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A. Any terms in Exhibit A other than the payment rates and schedule of payment are null and void. This amount shall not exceed \$16,884 in year one, and \$15,384 in subsequent years ("Contract Price") for the initial Term of the Agreement unless additional payment is approved as provided in this Agreement. If, during the Term, Vendor reduces the Service Fee for the Connect-CTY Service ("CTY Service") to less than two dollars (\$2) per Recipient per year for any City in California with a household count of fifteen thousand or less, then Vendor will apply the benefits of such reduced pricing to the City of Agoura Hills immediately and without further action of the parties

The City Manager may approve additional work up to ten percent (10%) of the amount of the Contract Price). Any additional work in excess of this amount shall be approved by the City Council.

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.

C. Vendor will submit invoices annually, as applicable, for actual services performed. Year one invoice shall be submitted upon activation of the system. Invoices shall be submitted between the first and fifteenth business day of each month, for services concluded 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, on September 30, 2009 and each one year anniversary thereafter during the Term, by giving Vendor at least thirty (30) days prior written notice to terminate.

B. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Vendor any unpaid Service Fees for the then-current year on a *pro rata* basis. Upon termination of the Agreement pursuant to this Section, the Vendor will submit an invoice to the City pursuant to Section 4 and shall be entitled to prompt return of all of Vendor's equipment furnished to City.

C. In the event of termination or expiration of this Agreement, the City will: (i) immediately discontinue access to and/or use of the Service under this Agreement; (ii) pay to Vendor all amounts due and payable under this Agreement; and (iii) return all documentation and related training materials to Vendor. Any termination of this Agreement will not affect any rights or liabilities of either party that accrued prior to such termination. Sections 4 to 22 will survive the expiration or termination for any reason of this Agreement.

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.

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 will provide the City with the right to audit Vendor's books and records as such books and records pertain to the provision of the Vendor's service to the City pursuant to this Agreement. The City will give reasonable notice of its intent to audit, and will attempt to schedule such audit so as to not unnecessarily interfere with the operations of Vendor. Such access shall be granted only during normal business hours and no more frequently than four times in each calendar year. All information received during the audit shall be held in confidence by the City and the City will be solely responsible for the costs of any audit.

Such records, together with supporting documents, shall be maintained for the minimum period required by law after receipt of final payment. The City acknowledges and agrees that the Connect-CTY Service and all documents, user guides, training guides, and other materials pertaining to the provision of the Vendor's service (collectively, the "Vendor Materials"), are not purchased or developed with City funds. Accordingly, nothing in this Agreement grants or transfers to the City any ownership rights in the foregoing materials. The City is expressly prohibited from reproducing, modifying, duplicating, copying, making derivative works, publicly displaying, or otherwise exploiting, in whole or in part, the Vendor Materials, without the express written permission of the Vendor's Legal Department.

8. INDEMNIFICATION.

A. The Vendor and its successors and assigns, shall indemnify, defend and hold harmless the City, its officers, agents and employees from any claim, liability, loss, injury or damage resulting from litigation by a third party against the City arising out of, or in connection with breach of this Agreement by the Vendor and/or its agents, employees or sub-contractors, subject to and excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the City. If judgment is entered against the Vendor and the City by a court of competent jurisdiction because of the concurrent negligence of the City, City and Vendor agree that liability will be apportioned as determined by the court.

B. The City and its successors and assigns, shall indemnify, defend and hold harmless the Vendor, its officers, agents and employees from any claim, liability, loss, injury or damage resulting from litigation by a third party against the Vendor arising out of, or in connection with breach of this Agreement by the City and/or its agents, employees or sub-contractors, subject to and excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the Vendor. If judgment is entered against the Vendor and the City by a court of competent jurisdiction because of the concurrent negligence of the Vendor, City and Vendor agree that liability will be apportioned as determined by the court.

C. A party seeking indemnification hereunder (an "Indemnified Party") shall give the party from whom indemnification is sought (the, "Indemnifying Party"): (i) reasonably prompt notice of the relevant claim; provided, however, that failure to provide such notice shall not relieve the Indemnifying Party from its liability or obligation hereunder except to the extent of any material prejudice directly resulting from such failure; (ii) reasonable cooperation in the defense of such claim; and (iii) the right to control the defense and settlement of any such claim;

provided, however, that the Indemnifying party shall not, without the prior written approval of the Indemnified Party, settle or dispose of any claims in a manner that affects the Indemnified Party's rights or interest. The Indemnified Party shall have the right to participate in the defense at its own expense.

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 added as an additional insured with respect to: 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 unreasonable 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 and the City shall keep themselves 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 and the City shall at all times observe and comply with all such ordinances, laws and regulations.

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 or , employees, 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 or employees, 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.

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 9140
Attention: Phillip Huff – Controller
Tel: (818) 808-1716
Fax: (818) 450-0425

14. ASSIGNMENT. Neither party may assign this Agreement without the other party's prior written consent. Notwithstanding the foregoing, either party may assign this Agreement without the other party's prior written consent to any entity that acquires all or substantially all of the business or assets of such party, whether by merger, reorganization, acquisition, sale or otherwise; provided, however, that in the event of such an assignment, the assigning party will provide notice of such assignment to the non-assigning party and the non-assigning party shall have the right to terminate this Agreement within thirty (30) days of the date of such notice of assignment, such termination to be effective upon thirty (30) days notice to the assigning party. Any assignment made in conflict with this provision shall be void subject to the foregoing, and this Agreement shall benefit and bind the permitted successors and assigns of the parties.

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.

20. **REPRESENTATIONS AND OBLIGATIONS**.

A. **Compliance**. The City represents that the Connect-CTY Service (the, “CTY Service”) will be used in compliance with federal, state, and privacy laws and this Agreement.

B. **Privacy; Security**. The City agrees to comply with the then current Acceptable Use Policy and Privacy Policy (**collectively, the “Policies”**) (which can be found at the Vendor’s Website located at www.blackboardconnect.com (“**Vendor Website**”), as amended from time to time. Vendor 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 Agreement and the terms of the Policies, the terms of the Agreement will prevail. The passwords and user names (**collectively, “Account Information”**), provided by Vendor to the City to log-in to use the CTY Service, are deemed *Confidential Information*. The City is responsible for knowing who has access to its applications and servers, City-side security with respect to Account Information, for activities that occur under its account, and for obtaining necessary consents from intended Recipients. The City 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 City agrees to immediately notify the Vendor 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. The Vendor is responsible for implementing adequate security precautions for matters under its direct control.

C. **Transmission of Messages; Data**. The City 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 City. The City 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 City will only use the data provided by the Vendor (“Vendor Data”) to contact individuals pursuant to the use of the CTY Service and is prohibited from downloading or making copies of Vendor 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**. Vendor will maintain the confidentiality of the City Data unless disclosure is mandated by law. The City will maintain the confidentiality of Vendor Data, the CTY Service, Account Information, training and user guides, materials identified as confidential, and the member pages of the Vendor 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 City 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 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).

21. WARRANTY. Vendor 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 EXHIBIT A. The City 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 City 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. Vendor will use commercially reasonable efforts to assure that the CTY Service remains available for access by City on a 24/7/365 basis, excluding maintenance and events outside the reasonable control of Vendor. In the event that the CTY Service fails to comply with the above warranty, the City shall promptly inform Vendor of such fact, and Vendor, 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 City (“Cure Period”). In the event that such repair or replacement cannot be done within the Cure Period, then the City may invoke the remedy specified in Section 6. Vendor 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 City or a third party, or a breach by the City of its obligations under this Agreement. Nor will Vendor 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 Vendor’s reasonable control, whether or not foreseeable or identified, including without limitation, the loss of, or improper access to City 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 City’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 Vendor, 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. Vendor does not warrant that the operation will be uninterrupted and Vendor hereby disclaims all liability on account hereof.

22. LIMITATION OF LIABILITY. If the City suffers damages arising from or relating to the CTY Service and a court of competent jurisdiction determines that Vendor’s conduct was a proximate cause of such damages, then Vendor’s aggregate liability to the City

will be as follows: (a) For intentional misconduct on the part of the Vendor, the Vendor's liability will not be limited. (b) For all other misconduct, Vendor's aggregate liability will be limited to the lesser of (i) actual direct damages or (ii) the total fees paid by the City to Vendor under this Agreement. The existence of multiple claims will not enlarge the limits. Nothing contained in the foregoing limits or excludes the liability of Vendor to the City for death or personal injury caused by the negligence of Vendor or any other liability which cannot be excluded by law. In no event will Vendor, 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 City or any third party arising out of this Agreement or the transactions contemplated hereby, even if Vendor has been advised of the possibilities of such damages or should have foreseen such damages.

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
Gigi Goodling
(818) 808-1725
(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:

Connect-CTY[®]
Unlimited Use Service Proposal
City of Agoura Hills

The **Connect-CTY** service allows local governments to reach thousands in minutes without having to invest in or maintain hardware, software, or additional phone lines via the following provisions:

- An integrated communications suite, including Community Outreach, Emergency Communication, and Interactive Survey
- 2 Million 60 second calls per hour
- Voice and text/SMS delivery to multiple communication devices
- Geo-Calling feature lets you target recipients using a map
- 24/7/365 proactive City Care support
- Unlimited use for a fixed, annual fee
- Initial set-up, on-site training and refresher training sessions
- Delivery to up to 3 (three) phones and 2 (two) email addresses per contact
- Superior call routing, throttling, and load balancing expertise
- Fully hosted and managed ASP --- no maintenance required
- Message delivery tracking with comprehensive reporting
- Import Staff Data .)
- Implementation of service and orientation of all designated system users.
- Begin sending Outreach, Emergency and Interactive Survey communications.

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 City 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.** Vendor will provide the City with one (1) phone number per physical address to the extent that such numbers are available (“**Vendor Data**”). The City may provide up to two (2) phone numbers and two (2) email addresses per Recipient (**the “City 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 City Data, the Vendor Data, and the data

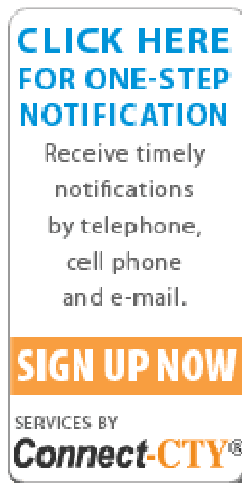
input by individuals via the CTY Web Portal, may hereinafter be collectively referred to as the "**Recipient Data**".

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. Vendor will also provide the City with unlimited maintenance and support (City 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 City will designate qualified personnel to act as liaisons between the City and Vendor 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 City-user to create specific call lists for certain areas of the City'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**"). Vendor grants to City a limited non-exclusive, worldwide, royalty-free license to place one of the digital images of the Vendor *Connect-CTY* Sign-up Logo (attached hereto as Schedule "A") (the "**Image**"), on an appropriate page of the City's Internet site, located at <http://www.ci.agoura-hills.ca.us> ("**City Site**"), with a hyperlink to Vendor's CTY Web Portal site (the, "**Link**") located at <https://portal.nticonnectcty.com/1318545> (the "**CTY Web Portal**"). The City agrees not to use any other trademark or service mark in connection with the Image without the prior written approval of Vendor. 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 City 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 City or any party other than Vendor. City may not allow the Image to be linked to any other web site. The City 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. Vendor 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 Vendor and all rights thereto are and shall remain the sole and exclusive property of Vendor. Vendor reserves the right to modify permission to use the Image and/or the Link at any time.

IMAGE. City may choose one of the three Images below



Summary of Connect-CTY[®] Service Benefits

Prepared for City of Agoura Hills

About Our Company:

Blackboard Connect, Inc. is pleased to present our *Connect-CTY*[™] service to the City of Agoura Hills. The *Connect-CTY* service is a fully-hosted Software as a Service (SaaS) specifically designed by Blackboard Connect, Inc. for the municipality market as a Mass Notification System. *Connect-CTY* is one in a series of several successful Mass Notification Systems created by Blackboard Connect, Inc.

For more than 6 years, Blackboard Connect, Inc. has demonstrated superior experience operating as an SaaS, sending time-sensitive mass notifications through our web-based, fully hosted system. Our main business activity is to enable leadership of governmental entities to send time-sensitive voice and text notifications to their populace quickly and efficiently.

Blackboard Connect Inc.'s *Connect-CTY* service offering includes a Mass Notification System specifically designed to meet the needs of municipalities, with unlimited calling available for Emergency Communications, Community Outreach Notifications (e.g. water main repairs, street closures, etc), and Survey calls.

BLACKBOARD CONNECT, INC. delivers these core competencies and more as described below:

1. Superior System Capabilities:

- **Full-Service Solution:** Other providers may provide an “emergency only” service. The difficulty with such services is that they often fail in crisis because they are only used in crisis, rather than used on a day-in and day-out basis. By contrast, the *Connect-CTY* service--by offering non-emergency community outreach calling and survey calling through the same ASP solution--provides frequent use so using the system is second nature.

- **Experience with Targeted Messaging:** BLACKBOARD CONNECT, INC. has years of successful time-sensitive call delivery on behalf of 21,000 Cities in targeted geographic regions.
- **Speed of Delivery:** BLACKBOARD CONNECT, INC. has SLAs with redundant telecommunications providers which allow us to *initiate over 3,000,000 60-second voice calls per hour*. Further, the *Connect-CTY* service utilizes reliable and proven *delivery* methods, including superior call routing, throttling, and load balancing via proprietary algorithms.
- **Secured System Capacity:** BLACKBOARD CONNECT, INC. has pre-purchased capacity to send over 17 billion voice messages per year. We currently use less than 2% of our contracted capacity daily. We have an open architecture which allows us to increase additional capacity as our City base grows.
- **System Reliability and Redundancy:** BLACKBOARD CONNECT, INC. has a redundant, zero single point-of-failure system. We utilize multiple delivery methods (e.g., Time Division Multiplexing (TDM), Voice over Internet Protocol (VoIP), SMS, and e-mail), multiple telecommunications partners, and draw from multiple data centers that span all three national power interconnects. Our full-service business continuity partner is SunGard Availability Services.

2. Unlimited Access and Support:

- **Unlimited Use:** We provide unlimited use for all users for both emergency and non-emergency calling. Additionally, there are no overage fees, per-call fees, software licenses, surcharges, per-use customer service fees, hidden fees, or other limitations on use of the system.
- **City Care:** The service includes unlimited 24-hour support backed by a proactive City Care team who will assist the City to implement the system, train users, drive appropriate usage of the system, and establish and monitor success metrics to ensure measurable results are delivered and documented.
- **All Inclusive Pricing.** BLACKBOARD CONNECT, INC. offers a simple pricing plan: one annual fee based upon a per address rate for unlimited use and a one-time support fee for unlimited support. These include per call charges, long distance charges, training,

refresher training, training materials, and travel expenses for trainers, data upload, data management, maintenance, licensing, data uploading and updating, managing the web portal for community members to add phone numbers and 24X7X365 support. BLACKBOARD CONNECT, INC. provides not just a product, but a truly hosted service partnership for our Cities.

3. **System Security:**

- **Transmission Security:** BLACKBOARD CONNECT, INC. utilizes secure transmission for all data transfer to and from the City's' sites.
- **LDAP Security Provision:** The *Connect-CTY* service is capable of integrating directly with the LDAP system to provide end user authentication as requested.
- **Call Authorization:** Using the Call Authorization feature, users can require authorized individuals to approve any message before it is sent.
- **Hierarchical Controls** – The City is able to segment which users have access to communicate with which recipients based upon City defined and controlled roles and rights per user type. For instance, some users may be granted access to place a community-wide call to all constituents while others may only have access to contact their departmental staff.

4. **Rapid and Automated Data Upload & Updates:**

- **Data Import:** BLACKBOARD CONNECT, INC. provides data upload (i.e. “bulk loading”) and management of all City provided data, including set-up of a fully automated upload of staff contact data from the City HR database system or other City system. BLACKBOARD CONNECT, INC. also provides ad hoc imports and full data transmission security.
- **Data Provision from Directory Services:** As a key differentiator, BLACKBOARD CONNECT, INC. provides telephone data at no additional cost to the City. BLACKBOARD CONNECT, INC. provides our Cities with the most current phone number data for residences and businesses aggregated from over 210 providers, and cleansed to provide one unique phone number per residence and business. Rather than obtain data from the white pages and yellow pages which may not be as comprehensive,

we obtain our data from directory services (4-1-1). BLACKBOARD CONNECT, INC. also exceeds the norm by providing, at a minimum, monthly updates of this data, and applies latitude and longitude coordinates to all contact data loaded into the system and provides monthly updates, at no additional cost to the City.

5. Ease of Use and Access Features:

- **Remote Access:** The *Connect-CTY* service provides a streamlined solution for priority situations that allows users to record and send messages from a remote location using just a touch-tone phone.
- **Bilingual Community Web Portal:** BLACKBOARD CONNECT, INC. provides an institution-specific Web page to gather community e-mail addresses, cell phone numbers, unlisted phone numbers and language preference.
- **Ease of Grouping for Targeted Messaging** - The service enables users to quickly and easily pre-define groups for staff, volunteers, intra-department teams, languages, and specialty groups (e.g., day care centers, senior care facilities). The user has the ability to store recipients by an unlimited number of groups.

6. Features for Ease of Use & Maximum Outreach:

- **Multiple Delivery Methods and Devices:** The service delivers via multiple methods, including e-mail and SMS, and allows for delivery to multiple device types—including cell phone, PDA, pager, and TTY/TDD devices, as well as the traditional land phone—for rapid and inclusive access.
- **Interactive Survey:** The interactive survey feature allows users to create a message in the form of a customized survey to send to contacts. The recipients hear a message that contains a question that they are asked to respond to via their telephone keypad. The results are tabulated by the *Connect-CTY* service and then provided to users via the website and e-mail reports.
- **Message Scripting and Storage:** The *Connect-CTY* service comes with a library of sample scripts and provides the option for the authorized user to record and send a message immediately or pre-record and store messages in their message library for use at a later time or date.

- **Geo-Calling:** Users can target specific areas on a map using our Geo-Calling feature. The *Connect-CTY* service is capable of creating specific call lists for a certain area of the City using criteria such as radius, zip code, and arbitrary shapes using GIS mapping. Users can also create a polygon area by clicking as many points on a map as are needed to indicate the desired calling area. The user may even draw a shape of a donut to remove a segment of the database (e.g., the “hole” of the donut is excluded from the call). This feature provides flexibility in mapping selections to optimally geo-target the audience to receive specific messages.

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).