

**Item #8:**

**Resolution Authorizing Blackboard Connect-CTY Communications**

**VILLAGE OF LONG GROVE  
RESOLUTION NO. 2011-R-\_\_  
RESOLUTION AUTHORIZING CONTINUED AGREEMENT FOR  
EMERGENCY COMMUNICATIONS NETWORK SERVICES WITH CONNECT-CTY**

**WHEREAS**, the Village determined that it desires to implement an emergency communications network, aka reverse 91, ("**Emergency Communications Network**"); and

**WHEREAS**, the Village has received three proposals in response to a Request For Proposal's (**RFP's**) that were sent to six emergency communications network companies; and

**WHEREAS**, based upon a through review of the proposals, the capabilities and pricing proposed by Connect-CTY was selected and approved as the preferred Emergency Communications Network system on June 10, 2008 with the approval of Resolution 2008-R-17; and

**WHEREAS**, the Village Manager recommends that the Village approve a proposal from Connect-CTY for the Emergency Communications Network in an annual total expenditure amount of \$5,224.00, which is attached to this Resolution as Exhibit A; and

**WHEREAS**, the President and Board of Trustees, being fully advised in the premises, have determined that it is in the best interests of the Village and its residents to continue services with Connect-CTY;

**NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LONG GROVE, LAKE COUNTY, ILLINOIS, AS FOLLOWS:**

**Section 1: Recitals.** The foregoing recitals are hereby incorporated herein as findings of the Village Board of Trustees.

**Section 2: Approval.** The President and Board of Trustees hereby approves the Recommended Proposal at a total expenditure of \$5,224.00 and authorizes the Village Manager to execute a contract therefor; provided that the Village first receives an executed contract in a form acceptable to the Village Manager in consultation with the Village Attorney.

**Section 3: Effective Date.** This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law. Passed by the Board of Trustees of the Village of Long Grove, Illinois, on August, 19, 2011.

AYES: ( ) Trustees XXXX, XXXX, XXXX

NAYS: ( ) XXX

ABSENT: ( )

APPROVED AND SIGNED by the Village President of the Village of Long Grove, Illinois, on August 19, 2011.

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Maria Rodriguez, Village President

ATTEST:

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Karen Schultheis, Village Clerk

EXHIBIT A

Connect-CTY Emergency Communications Proposal



## SERVICES AGREEMENT

This **Connect-CTY Services Agreement** ("**CTY Agreement**") dated June 16, 2008 ("**Effective Date**"), is entered into by and between the Village of Long Grove, Illinois (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**<sup>®</sup> 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, at <http://www.longgrove.net/> ("**Client Site**"), with a hyperlink to BCI's CTY Web Portal site (the, "**Link**") at <https://portal.blackboardconnectcty.com/6138252> (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 June 23, 2008 ("**CTY Service Start Date**"), and will continue until June 22, 2011 (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 June 23, 2009, 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 terminate the Agreement and receive a prorated refund 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 Fee.** In consideration for the use of the CTY Service during the Term, the Client will pay BCI an annual Service Fee of \$5,224.00 per year. The Service Fee will be invoiced on execution and thereafter on an annual basis. All payments due hereunder are on net 30 terms.
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](http://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. 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 thirty (30) days of the Effective Date.

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

<b>VILLAGE OF LONG GROVE</b>	<b>BLACKBOARD CONNECT INC.</b>
Authorized Signatory:  Print Name & Title: <u>David Lothspeich</u> <u>Village Manager</u>	Authorized Signatory: _____ Name & Title: _____
Execution Date: <u>6/17/08</u> Address: Village of Long Grove 3110 Old McHenry Rd., Long Grove, IL 60047	Address: Blackboard Connect Inc. 15301 Ventura Blvd., Building B, Suite 300 Sherman Oaks, CA 91403
Contact for Notices: David Lothspeich, Village Manager Tel: (847) 634-9440	Notices: Phillip Huff, Controller Email: <u>phillip.huff@blackboardconnect.com</u> Tel: (818) 808-1722; Fax: (818) 450-0425
Email: <u>DLothspeich@longgrove.net</u> Fax: <u>815-234-2408</u>	

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

