

AlertSCC Participant Agreement

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AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND PARTICIPANTS FOR USE OF AlertSCC, Santa Clara County Regional Mass Notification System

This Participant Agreement is entered into between the County of Santa Clara, a political subdivision of the State of California (“County”) and (“Participant”) to provide Participant with access to AlertSCC, Santa Clara County Regional Mass Notification System, including all related services, training, updates and maintenance. This Participant Agreement is intended to establish governance and terms for access and use of AlertSCC, Santa Clara County Regional Mass Notification System.

1. RECITALS

WHEREAS, County is sponsoring a countywide Regional Mass Notification System (“AlertSCC”) for the primary intent of providing timely communication to the public and its employees; and

WHEREAS, the County controls use and access to AlertSCC, and is making AlertSCC available to cities and agencies within the County of Santa Clara pursuant to these agreed upon terms and conditions; and

WHEREAS, the County entered into a contract with Blackboard Connect Inc. (“BCI Agreement”), attached hereto as Exhibit A, for the provision of AlertSCC on or about September 23, 2008 to disseminate information to County’s citizens and businesses through computer, phone and handheld devices; and

WHEREAS, Blackboard Connect Inc. (“BCI”) agrees to provide to Participant the services agreed to by BCI and County as contained in the BCI Agreement in exchange for Participant agreeing to abide by the terms and conditions set forth in this Participant Agreement, the BCI Agreement, and the exhibits to said agreements; and

WHEREAS, Participant agrees to uphold the terms and conditions of the Participant Agreement, the BCI Agreement, the exhibits to said agreements, and to use AlertSCC in compliance with all usage agreements identified and incorporated herein as Exhibit A (BCI Agreement) and Exhibit B (AlertSCC, Santa Clara County Regional Mass Notification System Policy and Procedure Manual), and this Participant Agreement, in order to receive the benefits under the Participant Agreement.

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

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2. EXHIBITS

Exhibit A = BCI Agreement

Exhibit B = AlertSCC, Santa Clara County Regional Mass Notification System Policy and Procedure Manual

Exhibit C = Geoprise Address Data Portal User Manual

3. TERM OF AGREEMENT

3.1 This Participant Agreement shall be effective as of the date of the last signature on this Participant Agreement.

3.2 This Participant Agreement shall expire upon the earlier of (a) expiration of the BCI Agreement, or (b) termination pursuant to Section 4.

4. TERMINATION

Either party to this Participant Agreement may in its sole discretion terminate this Participant Agreement in whole but not in part by providing thirty (30) days written notice to the other party.

5. MODIFICATION

This Participant Agreement shall not be altered, changed, modified, or amended without the prior, express written consent of both parties to this Participant Agreement. No amendment shall be effective or binding unless approved by the County Director of Emergency Preparedness, or authorized designee.

6. SCOPE AND USE

6.1 Use of AlertSCC and its data, including but not limited to contact information, is governed by the terms, conditions and restrictions set forth in the terms provided in this Participant Agreement, Exhibits A and B to this Participant Agreement, and the then current BCI Acceptable Use Policy and Privacy Policy. Participant agrees to the terms and conditions contained therein. In consideration for Participant's acceptance of said terms and conditions, County agrees to provide Participant with access to AlertSCC at no charge during the term of this Participant Agreement.

6.2 County retains the right to modify or update Exhibits A and B as needed, in whole or in part, during the term of this Participant Agreement. Participant hereby consents to said modifications or updates. County will

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distribute to Participant any and all revised exhibits within ten (10) business days of the revision date. Upon transmission by County to Participant, the revised exhibits shall thereby be incorporated into this Participant Agreement. The revised exhibits shall not constitute a modification for purposes of Section 5 to this Participant Agreement.

6.3 Participant, including each of its agents, officers, employees, and representatives who are given access to AlertSCC, agrees to abide by the individual terms of each agreement and the additional conditions incorporated herein. Breach of use shall result in immediate individual user or Participant access account termination.

6.4 The scope of services under this Participant Agreement is limited to using AlertSCC to provide notification to Participant inter-departmental resources and/or the public as described in the "AlertSCC, Santa Clara County Regional Mass Notification System Policy and Procedure Manual" attached hereto as Exhibit B.

6.5 Participant has received, read and understood the terms and conditions found in "AlertSCC, Santa Clara County Regional Mass Notification System Policy and Procedure Manual" attached hereto as Exhibit B. Participant hereby accepts said terms and conditions.

6.6 AlertSCC has a built in geo-referencing capability. However, the County is providing the County Regional Geographical Information System (GIS) Basemap to support this capability instead to provide more current and accurate data for all joining entities to use in this service. In order to ensure the most accurate data is available to the region, City GIS data that is more current than the County GIS Basemap should be made available to the County so that the updates can be applied and used in AlertSCC. Please call our receptionist at (408) 918-7127 and ask for our GIS Manager to setup the data sharing process.

6.7 The County has implemented a web-based application referred to as an "Address Data Portal." This tool provides a secure means to access address information, and provide automated updates to the County. This provides a quicker means to update and maintain the County Regional GIS Basemap. A GIS background is not required to be trained on this product. This product was implemented through a grant and has been paid for so there is no cost to use or be trained on this product, nor any additional costs for software or hardware on the user's workstation. For information regarding this product please call our receptionist at (408) 918-7127 and ask for our GIS Manager. It is highly recommended that joining parties use this product to assist the County in keeping address information current and accurate for the Regional Notification services.

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7. OWNERSHIP

Participant acknowledges and agrees that it has no ownership rights in AlertSCC, data, phone numbers, email addresses, passwords, user IDs and other access information to AlertSCC, training and user guides, materials identified as confidential, the member pages of BCI's website and all other materials pertaining to the use of AlertSCC. Participant accepts the terms of ownership contained in the BCI Agreement.

8. WARRANTY, TRAINING, SUPPORT AND MAINTENANCE

Participant accepts the terms of warranty, training, support and maintenance contained in the BCI Agreement.

9. CONFIDENTIALITY

Participant shall maintain the confidentiality of the information specified in Section 7 of this Participant Agreement, the e911 data, and the subscription data 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, Participant may disclose confidential information to the extent required by law.

If Participant receives a California Public Records Act ("CPRA") request for information specified in Section 7 of this Participant Agreement, the e911 data, or the subscription data, Participant shall notify County in writing within twenty four (24) hours of receipt of said request so that County can respond to the request in a timely fashion. These requests should go to the County Director of Emergency Preparedness, If Participant provides timely notice to the County, the County shall defend Participant against any claim, action or litigation that may result from denial of a CPRA request.

10. INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the Parties pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the County and _____ agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof

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shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other parties under this Agreement.

11. ASSIGNMENT

Neither party may assign this Participant Agreement without the other party's prior written consent. Any assignment made in conflict with this provision shall be void.

12. WAIVER

County's failure to require strict performance of any provision of this Participant Agreement shall not waive or diminish County's right thereafter to demand strict compliance with that or any other provision. No waiver by County of any of its rights under this Participant Agreement shall be effective unless expressed in writing and signed by the County. A waiver by County of any of its rights shall not be effective to waive any other rights.

13. NOTICES

13.1 All deliveries, notices, requests, demands or other communications provided for or required by this Participant Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested; when sent by overnight carrier; or upon telephone confirmation to sender of receipt of a facsimile communication which is followed by a mailed hard copy from sender. Notices shall be addressed to:

COUNTY: Office of Emergency Services
Director of Emergency Preparedness
55 W. Younger Avenue, 4th Floor
San Jose, CA 95110

PARTICIPANT:

13.2 Each party may designate a different person and address by sending written notice to the other party, to be effective no later than ten (10) days after the date of the notice.

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14. TITLES AND HEADINGS

The titles and headings of paragraphs, sections, subsections and exhibits are for convenience only and are not intended to affect the proper construction of this Participant Agreement.

15. SEVERABILITY

The provisions of this Participant Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Participant Agreement is determined to be invalid by a court or County or commission having jurisdiction over the subject matter thereof, such invalidity shall not affect other provisions of this Participant Agreement, which can be given effect without the invalid provision.

16. FORCE MAJEURE

Neither party shall be liable for failure of performance, nor incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Participant Agreement if such delay or failure is caused by events, occurrences, or causes beyond the reasonable control and without negligence of the parties. Such events, occurrences, or causes will include, but not limited to, labor strikes, lockouts, riots, acts of war, acts of God, fire and explosion.

17. ENTIRE AGREEMENT

This Participant Agreement and attached exhibits incorporate all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this Participant Agreement. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Participant Agreement.

18. SURVIVAL

All sections, paragraphs, subparagraphs and exhibits shall survive termination or expiration of this Participant Agreement.

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