

**PLACER COUNTY  
OFFICE OF EMERGENCY SERVICES**

**M E M O R A N D U M**

**To:** Honorable Board of Supervisors

**From:** Thomas Miller, County Executive Officer  
by: Rui Cunha, Emergency Services Program Manager

**Date:** June 10, 2008

**Subject:** Approve a three year Emergency Notification System Subscription Agreement with Wide Area Rapid Notification<sup>®</sup> LLC (W.A.R.N.), authorize the Purchasing Manager to sign the Agreement, and approve and authorize the Sheriff to sign a cost-sharing agreement between the County and each participating agency.

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**ACTION REQUESTED**

That your Board:

- Approve a three-year subscription agreement for software application and related services on behalf of the County, the cities and Placer County Office of Education (PCOE) with Wide Area Rapid Notification<sup>®</sup> LLC (W.A.R.N.) in the total amount of \$208,500, and
- Authorize the Procurement Manager to sign two copies of the agreement, and
- Approve and authorize the Sheriff to sign a cost-sharing agreement between the County and each participating agency.

**BACKGROUND**

Placer County has used *Teleminder*<sup>™</sup> as its emergency notification system (ENS) since 2002. The County's two stand-alone work stations are operated and maintained by Sheriff's Dispatch Centers in Auburn and Burton Creek. As configured in Placer County, *Teleminder*<sup>™</sup> has the ability to make 2040 30-second messages/per hour using 17 leased telephone circuits. Areas to be called are identified geographically or by individualized lists. However, the system has been surpassed technologically and the original vendor no longer supports it. Consequently, the Office of Emergency Services and the Sheriff's Department jointly convened a group in December, 2007 comprising public safety officials representing all of the cities and (at its request) PCOE, to find a new ENS that meets the County's and each participating agency's individual needs.

ENS has continued to evolve, and most systems, including W.A.R.N., are now Internet based and call center supported, and offer simplicity, speed of delivery and tiered levels of support. Assuming Internet connectivity, multiple agencies and multiple users can access the system for either emergency or informational messaging. The ENS working group evaluated fourteen different state-of-the-art systems for ease of use, accessibility, speed of message delivery, ancillary capabilities, call center support, cost, etc. The result of this effort was the selection of W.A.R.N.

The three year subscription costs of W.A.R.N. are front loaded, and in a move signifying the importance attached to this public safety capability, the Approval Authority for the Placer County Homeland Security Grant Program agreed to reallocate a portion of the County's 2007 grant funds to cover the first year cost of \$136,900. The \$35,800/year cost for years two and three of the Agreement will be jointly funded by city participants on a per capita basis, and by PCOE on a fixed basis. Costs are allocated as indicated below:

<b>City/Agency</b>	<b>Population</b>	<b>Percentage</b>	<b>Minutes</b>	<b>Payment (est.)*</b>
PCOE			60,000	\$3,580
Auburn	13,112	4.0	21,600	\$1,289
Lincoln	37,410	11.5	62,100	\$3,705
Rocklin	51,951	16.0	86,400	\$5,155
Roseville	106,266	32.8	177,120	\$10,569
Unincorp County <sup>‡</sup>	115,756	35.7	192,780	\$11,502
<b>TOTAL</b>	<b>324,495</b>	<b>100</b>	<b>600,000</b>	<b>\$35,800</b>

\* Final payment is dependent on actual minutes used

‡ Includes Colfax and Loomis as Sheriff's Office provides public safety

Based on the capabilities included in our Agreement, W.A.R.N. represents a tremendous increase in emergency notification efficacy: It can make 30,000 30-second calls within one hour subject to local phone company capabilities; it has a Bulletin Board capability that can provide Public Service announcements such as weather warnings, media updates, Neighborhood Watch alerts, etc.; it provides redundancy as it can be accessed and operated by multiple jurisdictions simultaneously from disparate locations; it can call an unlimited number of wired or cellular phones; it provides detailed reports; and perhaps most importantly, it provides the flexibility and ease of use not available with *Teleminder*™.

**FISCAL IMPACT**

This project impacts the General Fund. As stated, Fiscal Year (FY) 2008-09 costs of \$136,900 are completely supported by 2007 Homeland Security Grant Program funds. However, FY 2009-10 and FY 2010-11 costs for the County will increase by \$1,517 annually. Current annual Teleminder system cost is \$9,985 and Placer County's share of the W.A.R.N. costs will be \$11,502.

**Attachments:**

- W.A.R.N. Agreement
- Agreement between County, Cities and PCOE

## W.A.R.N. Subscription Agreement

1. **IDENTIFICATION** - This Agreement dated \_\_\_\_\_, 2008, between W.A.R.N., LLC (WARN), a duly formed, registered and validly existing Limited Liability Company in the State of Tennessee, and Placer County, California, 175 Fulweiler Avenue, Auburn, CA 95603, provides for software application and related services as described in Exhibit A

2. **TERM OF AGREEMENT** - The term of service for this Agreement is three years, which will extend from the date of the Agreement above, for 36 consecutive months. This Agreement may be renewed at the end of the 36 month period by agreement of both parties. Any and all future renewals of this Agreement will make reference to and will not increase above the annual maintenance ("Follow on Years") listed in Exhibit A and the per-use pricing identified in Exhibit B in the Agreement

3. **SUBSCRIPTION/TRAINING/SUPPORT** - This Subscription Agreement provides to the Customer the following, based on the payment of the itemized and applicable Fee Schedule contained Exhibit A

**A. Subscription Grant** - During the term of this Agreement and subject to the terms and conditions of this Agreement, WARN grants Customer a non-exclusive, non-transferable, non-sub licensable, limited subscription to access and use the WARN Products listed in Exhibit A to be used by the City of Auburn, City of Rocklin, City of Roseville, City of Lincoln, County of Placer and Placer County Office of Education (PCOE).

Customer acknowledges that WARN and their affiliates, partners, third-party vendors or service providers ("Service Providers") retain all right, title and interest in and to the original, and any copies, of WARN Products. Without limiting the generality of the foregoing, Customer agrees not to itself and shall not allow any third party to (i) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code or underlying ideas, algorithms, file formats or programming or interoperability interfaces of the WARN Products or any portion thereof, (ii) sublicense, assign, transfer, rent or sell use of WARN Products, (iii) remove any product identification, copyright or other notices, or (iv) except as specified in the applicable user documentation, modify or incorporate the WARN Products into or with other software.

Breach of such proprietary interests shall be construed as a breach of this Agreement and as a threat against such interests, and WARN or its Service Providers may take such action as either deems necessary to protect their interests or the interest of their Service Providers including, but not limited to, termination of this Agreement. Customer further warrants that it shall not disclose or dispense any proprietary information or knowledge of any of the products or services or systems of WARN or its Service Providers

If WARN or its Service Providers are required to bring legal proceedings against Customer to protect their respective interests as described herein and should WARN or its Service Providers prevail in such proceedings, then, in addition to all other remedies, they shall be entitled to reimbursement for their reasonable attorney's fees and all costs associated with such proceedings. The Customer's obligations of this Section 3 A shall survive the execution of this Agreement, the delivery of any documents, all transactions contemplated by this Agreement, and the termination of Agreement

Customer shall only have remote access to the Service and shall not at any time have physical access to any facility providing such Service, nor shall Customer attempt to download or gain physical access to the software underlying the Service except for any downloads that WARN may instruct Customer to make.

**B. SERVICE TRAINING** - Customer is required to have all users of the WARN Products complete, at a minimum, one training session on use of the WARN Products at the Customer's offices, or designated site. Trainees are considered Authorized Users upon completion of this training. New users added to Customer's professional staff after initial Training Session(s) are required to be certified in the system and must be added to the authorized Service Support list to receive Service Support. The initial Training, and all subsequent days of Training, is based on the Fee Schedule contained in Exhibit A

**C. SERVICE SUPPORT** - Customer will designate, in writing, ten to twelve people who will be Customer's primary support contacts for Service Support (the "Support Contacts"). Customer agrees that Service Support inquiries from Customer's individual users will be directed to a Support Contact and Customer's communications with WARN for Service Support will be through the Support Contacts. After Service Training, WARN shall provide Customer support by phone or email to Customer's Support Contacts. Service Support is available 24 hours per day, seven days per week via a toll free support line. On-site support is available on a scheduled basis within 48 hours at customer request during normal business hours (8 am to 5 pm weekdays EST) excluding all recognized federal or state holidays and shall be offered to Customer at a rate of \$150 per hour plus travel expenses. Customer and its authorized users shall only contact WARN for customer support and shall not attempt to contact WARN's Service Providers unless specifically authorized by WARN

**D. PRODUCT GUARANTEE AND UPDATES** - WARN will correct any problems that cause the Service to not function correctly during the life of the Agreement, for no charge. WARN will not be responsible for Service Support if the product has been materially modified or altered in any way by the Customer. Customer will receive any Service enhancements and/or updated documentation as it is made available to active registered users.

4. **PREREQUISITE ENVIRONMENT** - Customer must maintain the minimum hardware, software and Internet access specified by WARN necessary for Customer to utilize the Services. Such specifications may be changed from time to time by WARN. As of the Effective Date, the Prerequisite Environment is:

(i) For running the Service

Minimum: P2-300 with 128MB Ram, Windows 98 or 2000

Recommended: P3-500 with 256MB ram, Windows 2000 Professional

(ii) For accessing Services over the Internet

Required: Internet Explorer 5.0 or above (with all Microsoft updates and Service Packs installed) with JavaScript and cookie support enabled, Firefox or Safari

Required: Internet connection with 56k connection at the very minimum

Access thru default http Port 80.

Recommended 384k DSL, T1, or higher speed connection

### 5. APPLICABLE FEES

See Exhibit A for Fees.

In the event WARN authorizes Customer to extend the subscription for use by other organizations within customer's jurisdiction, Customer's Broadcast Account will be charged for all broadcast made by such other organization unless such other organizations establishes their own Broadcast Account.

6. **Minimal Customer Broadcast Account and Balance.** Customer is required to maintain a Broadcast Account which shall be debited by WARN for actual Broadcast Services as they are performed in accordance with the fee schedule in Exhibit A. Customer's initial Broadcast Account is based on Customer's estimated usage. Future Broadcast Accounts are then calculated and will be adjusted based on usage trends, which are tracked real-time in the accounting logs of the application. The Broadcast Account shall be maintained as further described herein. Customer acknowledges in the event this Agreement is terminated, Customer will not be entitled to reimbursement of any amount held in Broadcast Account at the time of termination unless the termination is a result of a default by WARN. Customer further acknowledges and agrees that neither WARN nor any third-party vendor is required to segregate or escrow any amount of the Broadcast Account or any other amounts tendered pursuant to this agreement. Customer is required to replenish with WARN within 30 days of being notified by WARN that Customer's Broadcast Account is at or below \$ 12,500, sufficient funds to replenish the deposit to the new balance deemed appropriate by the Customer using the rates in Exhibit B. Notwithstanding anything that appears to the contrary herein, in the event the recurring fees for the services in a given month totally deplete Customer's Broadcast Account balance, then WARN shall immediately notify Customer that the Customer's account has been depleted and Customer will have twenty-four (24) hours to restore the Broadcast Account. If Customer does not restore the Broadcast Account as described herein, WARN will not be required to provide further broadcast services for Customer until such Broadcast Account has been restored

7. **PAYMENT** - Customer's Services and associated cost covered by this agreement are as follows

The total fee for selected services is \$ 208,500.00 and includes the Initial Broadcast Account

Customer agrees to

( ) execute a Lease Agreement with Central Leasing of Birmingham, AL to cover the above fees

( ) pay the total of \$ \_\_\_\_\_ or

( X ) pay \$ 136,900.00 for year one and \$ 35,800 for each of year two and year three.

The payment for the chosen option will be made prior to customer training and if option three is chosen the payment for year two and three is due on the anniversary date of the first year payment date

The Broadcast Account replenishment is not included and will be paid per the terms in Section 6 above.

8. **TAXES** - Customer agrees to pay all current and future sales, use, ad valorem transfer value-added (VAT) and other taxes and duties which are levied or imposed because of the transactions contemplated by this Agreement, excluding, however, taxes on or measured by WARN's net income (collectively, "Taxes"). Customer agrees to promptly reimburse WARN for any Taxes paid by it on Customer's behalf. To the extent Customer is exempt from any such Taxes this provision shall not apply

Customer Initials \_\_\_\_\_

WARN Initials \_\_\_\_\_

**W.A.R.N., LLC - W.A.R.N. Subscription Agreement**

Form 12003-13.B.1

**9. PROFESSIONAL RESPONSE** - WARN agrees to acknowledge and respond to oral or written requests from the Customer to provide assistance in identifying and detecting problems, errors, or malfunctions arising in connection with the Customer's Use of WARN's service or systems. To assist WARN in implementing this agreement, the Customer shall confirm in writing an oral request for specific assistance within 48 hours after oral request is made. The Customer shall furnish to WARN adequate supporting documentation and any details available to substantiate and assist WARN in the identification and detection of problems, errors, and malfunctions, arising from the Customer's use of the System(s) or Product(s).

**10. CUSTOMER'S OBLIGATION** - As part of the Service, WARN is providing access to the WARN System to broadcast messages to multiple destinations. While WARN is providing access to the WARN System to broadcast messages, it is Customer's responsibility to specify the content and destination for the messages to be delivered through the Services. Therefore, upon signing the Service Agreement, Customer shall be responsible for

- (a) delivering on an ongoing and as needed basis to WARN and/or its Service Providers the necessary Content needed to populate the Customer's account, and
- (b) loading and populating such Customer Content into those portions of the Database of the Service allocated to Customer. (WARN will upload the initial Customer data); and
- (c) providing the destination, message content, and message delivery timing

For the avoidance of doubt, Customer must export its Data Lists from its servers to the Database. Unless expressly set forth in this Subscription Agreement, Customer shall be solely responsible for creating, providing and implementing the Data Lists.

Customer is responsible for establishing and maintaining the Prerequisite Environment, its own internal network security, access levels for Authorized Users and an internet connection for communicating with WARN's and/or their service provider's web servers. Customer must respect rules and regulations of telemarketing and email marketing. Customer must supply a name and a legitimate, valid, active, and in-good-standing email address for the "From" field in email messages. When and if applicable, Customer shall provide a means of "unsubscribe" email addresses, "removing" telephone and fax numbers to individuals/businesses requesting same, and shall regularly monitor its email & phone account for, and promptly comply with, such requests and update their Data List on a timely schedule. WARN ACKNOWLEDGES THAT TO THE EXTENT WARN'S AUTHORIZED USERS ARE GOVERNMENTAL ENTITIES OR PRIVATE ENTITIES UTILIZING THE SERVICES FOR NOTIFICATIONS TO ITS EMPLOYEES, THE PROVISIONS REGARDING THIS PARAGRAPH ARE NOT APPLICABLE, UNLESS REQUIRED BY ANY APPLICABLE LAW, RULE OR REGULATION.

**11. PASSWORD SECURITY** - WARN will generate accounts and passwords to Authorized Users. Customer acknowledges that Customer is fully responsible for all liability incurred by their use, and for any liability incurred through use of such passwords by anyone who obtains such passwords until Customer notifies WARN of unauthorized use. WARN may temporarily disable access to the Service if Customer reports unauthorized use of the Service, if passwords are revealed to unauthorized users, or Customer fails to safeguard its account and passwords.

**12. ASSIGNMENT** - Except as expressly provided herein, neither this Agreement, the limited subscription granted herein, nor any of WARN's Products or Services nor any rights granted by this Agreement to the Customer shall be assigned, transferred or otherwise disposed of by the Customer, in whole or in part, without the prior written consent of WARN. WARN may assign this agreement or all or part of its obligations herein.

**13. TELECOMMUNICATIONS CARRIER AGREEMENTS** - Since the service provided depends on the service agreements with national and international telecommunications carriers, this Agreement is subject to those service agreements.

**14. LIMITATION OF LIABILITY AND LIMITED WARRANTIES** - NEITHER WARN OR ITS SERVICE PROVIDERS SHALL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES HEREUNDER (INCLUDING ANY SERVICE IMPLEMENTATION DELAYS/FAILURES), UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EVEN IF THE PARTY HAS BEEN ADVISED OF OR KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH POTENTIAL DAMAGES.

Each Party acknowledges and accepts the reasonableness of the foregoing disclaimer and limitations of liability. No cause of action under any theory which accrued more than one (1) year prior to the institution of a legal proceeding alleging such cause of action may be asserted by either Party against the other. For purposes of this Section, all references to WARN and Customer include their respective Affiliates, End Users, agents, officers, directors, shareholders, employees, and Service Providers.

Because of the difficulty in ascertaining damages or even the true cause of such damages, it is agreed that WARN's and/or its service provider's liability to the Customer for any losses or damages, whether direct or indirect arising out of this Agreement, shall in no case exceed the first year subscription fees or in the case of multi-year agreements, an amount equal to the Total Fees divided by the term of service as described in Section 7 above.

**15. NO OTHER WARRANTY** - EXCEPT FOR THE EXPRESS WARRANTIES AND UNDERTAKINGS SET FORTH HEREIN, CUSTOMER'S USE OF THE SERVICES AND TECHNOLOGY IS AT ITS OWN RISK. WARN, ON BEHALF OF ITSELF OR THEIR SERVICE PROVIDERS AND SUBCONTRACTORS, IF ANY, DOES NOT MAKE AND HEREBY DISCLAIMS ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. NEITHER WARN NOR ITS SERVICE PROVIDERS WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE.

The Customer fully understands and thereby acknowledges that the performance of the WARN product(s) and its delivery attributes, in whole or in part, are solely based on the total performance of telephone providers and telephony devices, circuits, switches and networks which are owned or operated by third parties; connections, hubs, interchanges and routers which have their own performance variables; and all of which may, at any time, be unavailable or overburdened by national or local or rural phone system network traffic. Further, the Customer acknowledges and understands that any single device, pager, beeper, cellular, wired, networked or otherwise, may fail at the end user level, may be unplugged or low on battery or in an area of signal interference, or subject to other obstruction, or lack of service. Therefore the Customer consents that the system will deliver as many contacts as rapidly as these known impediments will allow. This section shall supersede any paragraph or any section of this Agreement that may be deemed inconsistent with it.

**16. TERMINATION** - Either party may terminate this agreement if the other party materially breaches this agreement and fails to cure such breach within 15 days after receipt of written notice from the non-defaulting party specifying the nature of the breach. Any nonpayment of any amount due herein shall constitute a material breach. WARN shall have the right to immediately suspend the services as defined herein if deemed reasonably necessary to prevent any harm to WARN, and/or its Service Providers. Upon any such termination all monetary amounts due through the termination date shall immediately be due and payable and the limited subscription to customer shall be deemed terminated.

**17. CONTENT** - Customer hereby grants to WARN a non-exclusive, worldwide subscription, to use, reproduce, create derivative works from, display, store and broadcast Customer Content as reasonably necessary to populate the Database, operate the Service, build Service pages for access and in relation to use by Authorized Users, and to make backup copies thereof in accordance with this Agreement.

**18. OWNERSHIP** - Except for the rights expressly granted herein, this Agreement does not transfer to Customer any WARN Technology or the technology of its Service Providers, and all right, title and interest in and to WARN Technology will remain solely with WARN and its Service Providers. Except for the rights expressly granted herein, this Agreement does not transfer from Customer to WARN any Customer Content, and all right, title and interest in and to Customer Content will remain solely with Customer. There are no (and each party expressly disclaims granting any) implied subscriptions.

**19. LATE PAYMENTS** - Any payment, or portion thereof, not received within thirty (30) day of the due date may, in WARN's sole discretion, accrue interest at a rate of one and one-half percent (1.5%) per month, or the highest rate allowed by applicable law, whichever is lower.

**20. COMPLIANCE WITH LAWS AND TERMS OF SERVICE** - Customer agrees that it will use the Service(s) only for lawful purposes and in accordance with this Agreement. Customer will comply at all times with all applicable laws, rules and regulations, and this Agreement. Customer acknowledges that WARN exercises no control whatsoever over the content of the information passing through WARN's or its Service Providers URL and that it is the sole responsibility of Customer to ensure that the information it and its Authorized Users transmit and receive complies with all applicable laws, rules and regulations and the Terms of Service.

**21. PREREQUISITE ENVIRONMENT, ACCESS AND SECURITY** - Customer acknowledges that in order to properly utilize the Services it must possess and maintain at least the Prerequisite Environment.

**22. NETWORK ABUSE** - Customer will ensure that Customer and its Authorized Users do not abuse WARN's and its Service Providers network in any manner, including, but not limited to, the transmission of Spam to e-mail addresses. Customer understands that WARN and/or its Service Providers deploy an abuse interface to track and control reported violations of network abuse, including Spam. WARN will notify Customer of any reported abuse or violation by an Authorized User. Customer understands and agrees that WARN may terminate the abusing Authorized User's access. CUSTOMER UNDERSTANDS AND AGREES THAT IN THE EVENT THAT WARN OR

Customer Initials \_\_\_\_\_

WARN Initials \_\_\_\_\_

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Form 12003-13.0.1

ITS NETWORK SERVICE PROVIDERS DETERMINE THAT CUSTOMER AND/OR ITS AUTHORIZED USERS ARE REPEATEDLY AND/OR MATERIALLY ABUSING WARN'S AND ITS SERVICE PROVIDERS NETWORK. WARN IS ENTITLED TO TERMINATE, WITHOUT COST OR LIABILITY CUSTOMER'S AND ALL OF ITS AUTHORIZED USERS ACCESS TO THE SERVICE IMMEDIATELY UPON NOTIFICATION, UNTIL SUCH TIME THAT WARN, IN ITS SOLE JUDGMENT, DETERMINES THAT FURTHER ABUSE IS NO LONGER A THREAT TO WARN'S AND ITS SERVICE PROVIDERS NETWORK SERVICES. Customer expressly agrees that WARN shall not be liable to Customer or any third party for any action WARN takes to remove or restrict access to obscene, indecent or offensive content passing through Customer's URL, nor for any action taken to restrict access to material made available in violation of any law, regulation or rights of a third party, including but not limited to, rights under the copyright law and prohibitions on libel, slander and invasion of privacy.

**23. WAIVER** - The terms, representations and warranties of this Agreement may only be waived by a written instrument executed by the Party waiving compliance. Except as otherwise provided for herein, neither Party's failure, at any time, to enforce any right or remedy available to it under this Agreement shall be construed as a continuing waiver of such right or a waiver of any other provision hereunder.

**24. NOTICES** - Except as otherwise provided herein, all required notices shall be in writing, transmitted to the Parties' addresses specified in the signature page or such other addresses as may be specified by written notice, and will be considered given either (i) twenty-four hours after being delivered by facsimile or e-mail, so long as duplicate notification is sent via regular U.S. Mail or overnight delivery, (ii) when delivered in person to the recipient named on the signature page, (iii) when sent by either registered or certified U.S. Mail, return receipt requested, postage prepaid on the date of delivery indicated by the U.S. Postal Service, or (iv) when delivered by an overnight courier service on the date indicated by the courier service.

**25. FORCE MAJEURE/SYSTEM MAINTENANCE** - Neither Party shall be liable to the other for any delay or failure in performance of any part of this Agreement if such delay or failure is caused by a Force Majeure Event. The Party claiming relief under this Section shall notify the other in writing of the existence of the Force Majeure Event and shall be excused on a day-by-day basis to the extent of such prevention, restriction or interference until the cessation of such Force Majeure Event. WARN will use all commercially reasonable efforts during the Term of this Agreement to minimize any Service interruptions that might occur as a result of planned system maintenance.

**26. SEVERABILITY** - If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

**27. GOVERNING LAW/VENUE** - The Agreement shall be governed by and in accordance with the laws of the State of California. In relation to any legal action or proceedings wherein a party challenges the enforceability of the arbitration provisions of this agreement, or wherein there has been a judicial determination against the enforceability of said arbitration provision, or to the extent the Parties agree that arbitration is not appropriate with regard to the claims, each of the parties irrevocably submits to the jurisdiction of the California courts and waives any objection to Proceedings in such courts on the grounds of venue or on the grounds that the Proceedings have been brought in an inconvenient forum.

In the event of any litigation between the parties, the prevailing party shall be entitled to recovery of its costs and reasonable attorney's fees.

**28. INTENTIONALLY LEFT BLANK**

**29. HEADINGS** - The headings or titles of the Paragraphs in this Agreement are for convenience only, are not a part of this Agreement, and shall not be used as an aid in the construction of any provision hereof.

**30. AMOUNTS** - All amounts referred to herein or otherwise payable pursuant to any term of this Agreement shall be paid or rendered in United States of America Dollars.

**31. COUNTERPARTS** - This Agreement may be executed in one or more counterparts, and each shall constitute a single document.

**32. NO THIRD PARTY BENEFICIARIES** - WARN and Customer agree that, except as otherwise expressly provided in this Agreement, there shall be no third party beneficiaries to this Agreement.

**33. FINAL AGREEMENT** - This Agreement supersedes all Agreements and understandings between WARN and the Customer and shall not be changed orally. No change or attempted waiver of any provision shall be binding unless expressed in writing and signed by the party against whom the same is sought to be enforced. Customer acknowledges that it may be required to become a party to third party provider separate subscriptions or agreements, in conjunction with the services to be provided.

**AGREEMENT ACCEPTANCE AND PAYMENT INFORMATION** - Subscription Agreements may be signed and faxed to 615-451-4413. Payment for all services tendered under this Agreement, are due and made payable to:

W.A.R.N., LLC  
1538 North Wrights Lane  
Gallatin, Tennessee 37066  
Telephone - 615-451-4446  
Facsimile - 615-451-4413

**SIGNATURE**

The parties, each acting with due authority, have executed this Agreement by setting forth their respective signatures.

Authorized for The Customer

James Boggan

Print Name

Purchasing Manager

Title

Signature

Date

Authorized by W.A.R.N., LLC

Donald B. Griffs

Print Name

President

Title

Signature

Date

Customer Initials \_\_\_\_\_

WARN Initials \_\_\_\_\_

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**EXHIBIT A**  
**Fee Schedule**

**W.A.R.N. GEOPOWERED**

- Web-enabled GIS
- Opens existing County GIS to unlimited authorized users
- Open source shape file import
- Integration of GIS and powerful public notification platform

**W.A.R.N. BROADCAST**

- Extreme high volume public notification platform
- Entirely web-hosted
- Recorded Voice or text-to-speech options
- 99.99% availability standard
- Live voice and/or answering machine recognition and appropriate delivery

**W.A.R.N. COMMAND**

- Powerful mobilization platform for Placer 1<sup>st</sup> Responders
- Contact telephone, pager, PDA, Blackberry, TREQ, text message to cell, Email and fax
- Unlimited number of groups
- Cascading notifications
- Tiered notification methodology
- Response options
- Follow up questions and ETA
- Call bridge 99 people to conference line
- Unlimited devices per recipient
- Additional initiators (beyond those included) \$600 per year based on client's needs

<b>GeoPowered</b>	<b>\$25,000</b>
<b>Broadcast</b>	<b>\$13,500</b>
<b>Command</b>	<b>\$16,800</b>
<b>Setup</b>	<b>\$ 5,000</b>
<b>Training (Note 1)</b>	<b>\$ 3,000</b>
<b>Broadcast Account (Note 2)</b>	<b>\$75,000</b>
<hr/>	
<b>Total Year One</b>	<b>\$138,300</b>
<b>Discount for Lincoln participation</b>	<b>\$ 1,400</b>
<b>Year one net</b>	<b>\$136,900</b>
<hr/>	
<b>GeoPowered</b>	<b>\$12,500</b>
<b>Broadcast</b>	<b>\$ 8,500</b>
<b>Command</b>	<b>\$11,800</b>
<hr/>	
<b>Total Follow on Years</b>	<b>\$35,800</b>

\*Subscription also includes:

- 6 dedicated Toll Free Incoming lines (i.e. 800, 866, 877, etc.)
- Multiple administrative and initiators accounts in Broadcast
- 6 initiator/ single division account on Command (More available(\$600 per year))
- No Charge: Email, Text, Text to Pager, Text To Mobile Phone / Blackberry / PDA, Other Text Delivery
- unlimited recipient accounts
- unlimited devices per user
- 500 free 30-second phone calls for testing per year
- All standard upgrades to System
- No Charge: GIS upload of new layers within GIS capabilities Note 3
- 24/7 support
- Free annual online training refresher course
- Use of Voice XML text-to-speech gateway - Toll Free Voice Recording System
- One (1) Gigabyte of storage
- Additional Features including:
  - Real-time Reporting / Event Tracking
  - Scheduled or on-the-fly notifications
  - SSL Encryption, administration and multi-level and end-user access authorization

Note 1: Initial training includes a 1 day onsite class for up to 16 trainees and associated travel. Additional training classes will be provided for Customer's benefit if needed at WARN's then current training fees.

Note 2: The initial Broadcast Account as described in Section 6 contains the equivalent of 1,200,000 30-second calls and will be debited at the rates shown in Exhibit B including fees shown for phone calls, SMS messages and faxes.

Note 3: No charge. Customer may provide E911 phone data and GIS data to WARN on a monthly basis for WARN to geocode and within three days of receipt. WARN will forward geocoding error logs to customer. If Customer approves of geocoding error logs, Customer will approve WARN to upload and publish geocoded data to our production site within three days of approval. If Customer does not approve of error logs, Customer will skip that month's upload and correct data in preparation for the next month's processing.

**EXHIBIT B**  
**Transaction Fees**

- Domestic Telephonic (outbound/inbound including toll free lines) will be billed at the rate of \$ 0.125 per minute. International telephonic notifications rates are available on request.
- Call Bridging and/or call forwarding is billed per minute, per line based on the connected destinations at the rate above.
- The Expedited Delivery option (WARNCommand Permission Controlled Feature), if selected by the Initiator when creating notifications, allocates at 4 times the capacity (up to the purchased port capacity) then allocated for a standard notification and will be billed at 40% more per minute than the Standard Telephony Transaction rates.
- All Telephonic Transactions will be billed in 30-second increments and rounded up to the next 30-second interval.
- Text Pages sent using the Teletocator Alphanumeric Protocol (TAP) are sent via the telephony network and will be billed at the applicable telephony rate for the country to which the page is being sent.
- All other notifications are billed according to the Non-Telephony Transaction Rate Table below

Non-Telephony Transaction Rate Table			
Service	US	Canada	Other
Facsimile per page	\$0.20	\$0.30	\$1.10
Short Message Service (SMS) per message	\$0.10	\$0.30	\$0.30
Email	No Charge	No Charge	No Charge
Text Pager	No Charge	No Charge	No Charge

- SMS charges are per SMS message, lengthy notifications that are broken into multiple SMS messages will incur multiple charges, one charge for each message, responses via SMS will also incur charges, one charge for each response.
- International toll-free numbers are charged at 3X the standard rate.
- Note that Non-Telephony (Including TAP pagers) Notifications are only available with WARN Command, WARN CommandEnterprise, WARN CommandGov and WARN Alert

**AGREEMENT  
FOR  
EMERGENCY NOTIFICATION SYSTEM SERVICES**

**BY AND BETWEEN THE CITY OF AUBURN, THE CITY OF LINCOLN, THE CITY OF  
ROCKLIN, THE CITY OF ROSEVILLE, THE PLACER COUNTY OFFICE OF EDUCATION  
AND  
THE COUNTY OF PLACER**

This Agreement is made and entered into as of July 1, 2008 by and between the Placer County Office of Education and the cities listed above, hereinafter referred to collectively as "SIGNATORIES," and Placer County hereinafter referred to as "COUNTY."

**WHEREAS**, SIGNATORIES desire to participate in Emergency Notification System services procured by COUNTY and;

**WHEREAS**, COUNTY is willing to acquire such services for SIGNATORIES.

**NOW, THEREFORE** for and in consideration of the mutual promises and agreements herein contained, IT IS AGREED by and between the parties hereto as follows:

**1.0 SCOPE**

COUNTY agrees to:

- A. Acquire and maintain a fixed cost, three year term Emergency Notification System contract with Wide Area Rapid Notification (W.A.R.N.), LLC with first year expenses funded by Placer County's Homeland Security Grant Program. The initial purchase will be \$136,900 which includes 600,000 Broadcast Account minutes. Total annual cost in years two and three is \$35,800 each year plus any additional Broadcast Account minutes. Total cost detail is as indicated in attached W.A.R.N. subscription agreement.
- B. Establish a W.A.R.N. Users group to monitor usage, track Broadcast Account calling minutes and associated costs, make recommendations on system enhancements, address best practices, provide input on use issues and concerns to the vendor, enable mutual aid arrangements for system use, establish database naming conventions for common lists, set cross jurisdictional access permissions as required.

SIGNATORY agrees to:

- A. Abide by the conditions as set in the COUNTY Subscription Agreement with W.A.R.N. (Attached).
- B. Appoint an Emergency Notification System Administrator to manage all aspects of user training, jurisdiction specific database maintenance, formulating use policies and procedures, and system implementation. SIGNATORIES will have full access to W.A.R.N. support in order to manage the system.

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**Emergency Notification System Agreement**

- C. Participate in a "Users Group" to be established by COUNTY to monitor usage, track collective bank of calling minutes and associated costs, make recommendations on system enhancements, address best practices, provide input on use issues and concerns to the vendor, enable mutual aid arrangements for system use, establish database naming conventions for common lists, set cross jurisdictional access permissions as required.
- D. Maintain a minimum balance of Broadcast Account minutes equal to 17% of the initial allocated Broadcast Account allocation indicated in the table at Paragraph 4.0 below.
- E. Pay annual invoices in accordance with cost apportionment as indicated in Paragraph 4.0 below.

**2.0 AMENDMENT OF SCOPE**

The scope of work described in this Agreement may be amended only upon execution of written concurrence from both COUNTY and all SIGNATORIES.

**3.0 DATE OF COMPLETION**

This Agreement shall remain in effect through June 30, 2011.

**4.0 AMOUNT OF PAYMENT**

At the start of the second and third year of this agreement, each SIGNATORY shall pay COUNTY the sum shown in the table below as full payment for all services set forth herein. COUNTY will notice SIGNATORIES of any proposed increase or changes in annual payment amount to be imposed in the following three year period by providing written notice and justification of the proposed increases/changes by no later than March 30, 2011. Population, percentage, initial Broadcast Account minutes and payment amount for years two and three are as shown below:

<b>City</b>	<b>Population</b>	<b>Percentage</b>	<b>Minutes</b>	<b>Payment (est.)*</b>
<b>PCOE</b>			<b>60,000</b>	<b>\$3,580</b>
<b>Auburn</b>	<b>13,112</b>	<b>4.0</b>	<b>21,600</b>	<b>\$1,289</b>
<b>Lincoln</b>	<b>37,410</b>	<b>11.5</b>	<b>62,100</b>	<b>\$3,705</b>
<b>Rocklin</b>	<b>51,951</b>	<b>16.0</b>	<b>86,400</b>	<b>\$5,155</b>
<b>Roseville</b>	<b>106,266</b>	<b>32.8</b>	<b>177,120</b>	<b>\$10,569</b>
<b>Placer County</b>	<b>115,756</b>	<b>35.7</b>	<b>192,780</b>	<b>\$11,502</b>
<b>TOTAL</b>	<b>324,495</b>	<b>100</b>	<b>600,000</b>	<b>\$35,800</b>

\*Annual payment does not include the cost of additional Broadcast Account minutes at \$.125 per minute. SIGNATORIES may be required to purchase additional Broadcast Account minutes in order to maintain a minimum balance as described under SCOPE above.

***Emergency Notification System Agreement***

**5.0 PAYMENT SCHEDULE**

Annual payment shall be made to COUNTY by July 30, 2009 and July 30, 2010 for services to be provided during fiscal years 2009/10 and 2010/11 respectively. COUNTY will invoice each SIGNATORY for the annual payment no later than July 1, 2009 and July 1, 2010.

**6.0 RECORDS**

COUNTY shall maintain detailed records of this Agreement, and SIGNATORIES shall have the right to inspect such records after providing at least 48-hours written notice to COUNTY.

**7.0 NON-ASSIGNABILITY**

This Agreement and the rights and duties herein shall not be assigned by SIGNATORIES in whole or in part without written notification to COUNTY.

**8.0 CANCELLATION**

SIGNATORIES may opt out of participation in the system during the three year period only in the case of a contract obligation default by vendor.

**9.0 INSURANCE**

It is agreed that SIGNATORIES and COUNTY shall each maintain at all times during the performance of this Agreement insurance coverage in the amounts of not less than One Million Dollars (\$1,000,000) to cover all of its operations, including general liability and automobile liability, and provide workers' compensation insurance or self insurance in the statutory amount (or in the amount of \$1,000,000.) The parties hereby waive, and will cause their respective insurers to waive, their respective rights of recovery against one another for workers' compensation claims. Each party shall file with the other a letter from the party's Risk Manager showing either insurance coverage as specified or reserves in not less than One Million Dollars (\$1,000,000).

**10.0 INDEMNITY**

COUNTY shall indemnify and hold SIGNATORIES harmless from and defend SIGNATORIES against any and all claims of liability for any injury, death, or damage when such injury, death or damage is caused in part or in whole by the act, neglect, fault or omission by COUNTY, its agents, contractors, employees or invitees including all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon.

SIGNATORIES shall indemnify and hold COUNTY harmless from and defend COUNTY against any and all claims of liability for any injury, death, or damage when such injury, death or damage is caused in part or in whole by the act, neglect, fault or omission by any of the SIGNATORIES, their agents, contractors, employees or invitees including all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon.

**Emergency Notification System Agreement**

**11.0 CONTRACTOR NOT AGENT**

Except as COUNTY may specify in writing, SIGNATORIES shall have no authority, express or implied, to act on behalf of COUNTY in any capacity whatsoever as an agent. SIGNATORIES shall have no authority, express or implied pursuant to this Agreement to Bind COUNTY to any obligation whatsoever.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the day, month and year first above written.

**CITY OF AUBURN** \_\_\_\_\_ **Date** \_\_\_\_\_

**CITY OF LINCOLN** \_\_\_\_\_ **Date** \_\_\_\_\_

**CITY OF ROCKLIN** \_\_\_\_\_ **Date** \_\_\_\_\_

**CITY OF ROSEVILLE** \_\_\_\_\_ **Date** \_\_\_\_\_

**PLACER COUNTY  
OFFICE OF EDUCATION** \_\_\_\_\_ **Date** \_\_\_\_\_

**COUNTY OF PLACER** \_\_\_\_\_ **Date** \_\_\_\_\_

Approved as to form:

\_\_\_\_\_ County Counsel

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