

City Council Staff Report

April 15, 2015

Applicant: Mapleton City
Prepared by: Cory Branch
Public Hearing: No

REQUEST

Consideration to enter into an Interlocal Cooperation Agreement with Utah County contracting together in order to obtain mass notification interactive communication services through Everbridge, Inc.

BACKGROUND AND PROJECT DESCRIPTION

1. Currently Mapleton City utilizes Everbridge, Inc. as their communication phone service to the community. This current Agreement is through an Interlocal Agreement with Springville City.
2. To get the best overall package from Everbridge, Inc., Utah County, Mapleton City, and approximately 23 other local municipalities would like to enter into a contract with the County to help serve mass notification needs for each of their communities. (see Attached Proposed Interlocal Agreement)
3. The Everbridge service is designed to reach out to an entire community by phone, email, texting, facebook, twitter and other communication mediums as it relates to emergencies, past-due reminders, city-wide sponsored events, etc. The cost for our current service is \$2,394.00 per year. The new cost will be \$2,080.80 per year.
4. The ultimate goals for Mapleton City Staff is to have a service that reaches out to all of our population during an emergency, increases participation in city-wide sponsored events, improves community satisfaction, improves productivity, saves time verifying and locating issues, and provides a better public perception.
5. This Agreement has been reviewed and approved by our City Attorney.

STAFF RECOMMENDATION

Staff recommends approval of the proposed Interlocal Agreement

ATTACHMENTS:

1. Interlocal Cooperation Agreement
2. Everbridge Contract

MASS NOTIFICATION INTERLOCAL COOPERATION AGREEMENT

THIS MASS NOTIFICATION INTERLOCAL COOPERATION AGREEMENT (hereinafter "Agreement"), is executed in duplicate this ____ day of _____, 2015, by and among **UTAH COUNTY**, a political subdivision of the State of Utah (hereinafter referred to as "County"), and **ALPINE CITY, AMERICAN FORK CITY, CEDAR FORT TOWN, CITY OF CEDAR HILLS, EAGLE MOUNTAIN CITY, ELK RIDGE CITY, FAIRFIELD TOWN, GENOLA CITY, GOSHEN CITY, HIGHLAND CITY, LEHI CITY, LINDON CITY, MAPLETON CITY, the CITY OF OREM, PAYSON CITY, PLEASANT GROVE CITY, PROVO CITY, SALEM CITY, SANTAQUIN CITY, SARATOGA SPRINGS CITY, SPANISH FORK CITY, SPRINGVILLE CITY, VINEYARD CITY, and WOODLAND HILLS CITY**, all municipal corporations and political subdivisions of the State of Utah, (the combined group of cities to be hereinafter collectively referred to as the "Cities" or "City" when used in the singular).

RECITALS

WHEREAS, mass notification services provide an important means to notify the citizens residing in the boundaries of Utah County of disasters, emergencies and other important matters, thereby promoting the health, safety and welfare of the citizens residing in Utah County; and

WHEREAS, the parties to this Agreement will benefit by reduced fees for mass notification services to the citizens of their respective jurisdictions by entering into this Agreement while maintaining autonomy of notifications in their respective jurisdictions; and

WHEREAS, the parties to this Agreement desire to benefit from the mass notification services provided in accordance with the Agreement and the cost savings associated therewith; and

WHEREAS, County intends to enter into an agreement more particularly described below for countywide mass notification services to promote the health safety and welfare of citizens residing in Utah County; and

WHEREAS, the parties to this Agreement desire to enter into this Agreement to provide for the funding and use of the mass notification system; and

WHEREAS, the parties desire to set forth the terms of their agreement and the parties' respective rights and obligations in this Agreement; and

WHEREAS, the parties and each of the Cities have approved this Agreement by resolutions adopted by their respective governing bodies;

NOW THEREFORE, in consideration of the covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Agreement with Everbridge.** The County shall use its best efforts to negotiate and enter into an agreement with Everbridge, (the “Mass Notification Agreement”), in the form attached hereto as Exhibit A, allowing the parties to utilize the mass notification services provided by Everbridge. All parties shall have an opportunity to review and comment on the Mass Notification Agreement before it is finalized. This Agreement is subject to and contingent upon the County entering into the Mass Notification Agreement in substantially the same form as Exhibit A and sufficient cities entering into this Agreement so that the cities entering into this Agreement will pay at least 95% of the Everbridge quote price of \$115,000. In the event that the County does not enter into such an agreement, or as previously stated sufficient cities do not enter into this Agreement, this Agreement shall be null and void.

All Cities who are contracting with Everbridge prior to entering into this Agreement have the option to remain a separate organization as currently established and may continue to contact Everbridge directly with support needs for their organization.

2. **Funding and Apportionment of Mass Notification Expenses.**

2.1 Each party shall pay County a percentage of the cost of the Mass Notification Agreement based on the percentage of the number of households in their jurisdictions divided by the total number of households in the jurisdictions of all parties to this Agreement times the Mass Notification Agreement price. The number of households in a respective jurisdiction is determined as follows: Population divided by 2.4, multiplied by 1.1, equals total households including businesses. The population used in the formula will be determined by the most recent United States Census figures. All parties shall promptly pay County in advance for the next succeeding year for their respective shares of the cost of the mass notification services. The percentage of the expenses due from each party will be recalculated in the event updated US Census figures are released during the term of this agreement and will be effective for the next payment period.

2.2 Some parties to this Agreement have currently existing mass notification agreements. In the first year of services under the Mass Notification Agreement, parties with other existing agreements will pay County their prorata share of the Mass Notification Price based on the number of days remaining in the first year of the Mass Notification Agreement divided by 365.

3. **Payment.**

3.1 The County shall at the end of County’s fiscal year, or more often as appropriate, send an invoice to each of the Cities at the end of each calendar

year or the relevant time period for the amount of each City's payment to County for their respective share of the cost of the mass notification system. The County shall include a detail calculating each party's cost for the system. All costs will be allocated using the percentages determined by the preceding section. Each party shall pay the County not less than thirty (30) days prior to commencement of the next contract year or within 30 days of receipt of an invoice from the County, whichever is later.

4. **Coordination.**

4.1 The parties shall meet at least annually to coordinate use of the mass notification services and to discuss issues regarding the services.

5. **Indemnification, Insurance, and Mass Notification Agreement Compliance.**

5.1 The parties shall maintain such liability insurance as they deem prudent and appropriate. The parties anticipate that the protections of the Utah Governmental Immunity Act, 63G-7-101 *et. seq.* will apply to any claims which may be made against any or all of the parties arising out of the use of the Mass Notification System. However, notwithstanding these protections, and without in any way waiving the defenses afforded by the Utah Governmental Immunity Act, 63G-7-101 *et. seq.*, each party to this Agreement agrees to indemnify and hold harmless each and every other party from all claims for personal injuries or damage to property to the extent that such injuries or damages directly or indirectly arise out of that party's own acts or omissions. Nothing in this Agreement shall be construed as releasing, indemnifying or holding harmless any party to this agreement from liability for that party's own acts or omissions. The indemnification obligations hereunder, or as provided in any section of this Agreement, shall not be considered a waiver of the protections and immunities afforded by the Utah Governmental Immunity Act (Utah Code Section 63G-7-101, *et. seq.*) The obligation of the parties to indemnify under this section, or as provided in any section of this Agreement, is limited to the limits of liability specified in the Governmental Immunity Act (Utah Code Section 63G-7-604), or as amended by statute or the state risk manager as provided by statute.

5.2 All parties to this Agreement shall comply with all terms and conditions of the Mass Notification Agreement. In the event any party to this Agreement breaches any term or condition of the Mass Notification Agreement, and fails to timely cure any such breach, the breaching party shall indemnify and hold harmless all non breaching parties for all claims, injuries or damages resulting from the breaching party's acts or omissions, including but not limited to court costs and attorney's fees incurred as a result of the breaching party's acts or omissions. The indemnification obligations hereunder, or as provided in any section of this Agreement, shall not be considered a waiver of the protections and immunities afforded by the Utah Governmental Immunity Act

(Utah Code Section 63G-7-101, *et. seq.*) The obligation of the parties to indemnify under this section, or as provided in any section of this Agreement, is limited to the limits of liability specified in the Governmental Immunity Act (Utah Code Section 63G-7-604), or as amended by statute or the state risk manager as provided by statute.

6. **Duration.** This Agreement shall be effective immediately upon the signature hereof by all parties to this Agreement and shall remain in full force and effect for a period of five (5) years and during any subsequent renewal of the Mass Notification Agreement which contains the same terms and conditions as the original agreement, or until (i) the County notifies the Cities that the County shall not enter into the Mass Notification Agreement, (ii) such time as the Mass Notification Agreement is terminated, or (iii) if the parties to this Agreement fall below the number of cities required for the cities to pay at least 95% of the Everbridge quote price of \$115,000, whichever is sooner.

7. **Interlocal Co-operation Act.** The following terms are included in the Agreement to comply with the requirements of the Interlocal Co-operation Act:

7.1 **Resolution.** This Agreement shall be authorized by resolution of the legislative bodies of the signatories hereto as required by Section 11-13-202.5 of the Interlocal Act.

7.2 **Purpose.** This Interlocal Cooperation Agreement has been established and entered into by the parties to provide mass notification services within Utah County.

7.3 **No Separate Entity, Administration.** The parties to this Agreement do not contemplate nor intend to establish a separate legal entity under the terms of this Agreement. The parties hereto agree that, pursuant to Section 11-13-207, Utah Code Annotated, 1953 as amended, COUNTY shall act as the administrator responsible for the administration of this Interlocal Cooperation Agreement. The parties further agree that this Interlocal Cooperation Agreement does not anticipate nor provide for any organizational changes in the parties. The administrator agrees to keep all books and records in such form and manner as the Utah County Clerk/Auditor shall specify and further agrees that said books shall be open for examination by the signatories hereto at all reasonable times. The parties agree that they will not acquire, hold nor dispose of any real property pursuant to this Agreement. The parties further agree that they will not acquire, hold, or dispose of any personal property pursuant to this Agreement.

7.4 **Financing.** There shall not be a separate budget to carry out the terms of this Agreement, but each party shall fund and pay for its respective responsibilities pursuant to this Agreement. Except as otherwise specifically provided herein, each party shall be responsible for its own costs of any action done pursuant to this Agreement, and for any financing of such costs.

7.5 **Filing.** A duly executed original counterpart of this Agreement shall be filed with the keeper of records of each party, pursuant to Section 11-13-209 of the Interlocal Act.

7.6 **Legal Review.** This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each party, pursuant to Section 11-13-202.5 of the Interlocal Act.

7.7 **Termination.** Upon the termination of the Mass Notification Agreement, the parties will each pay County their pro rata share for the cost of any services due under the Mass Notification Agreement.

7.8 **Equipment.** The parties will provide and maintain such equipment as they determine necessary for their own use of the mass notification services. Any equipment provided by a party shall remain the property of the party providing the equipment. No real or personal property shall be acquired jointly by the parties as a result of this Agreement. To the extent that a party acquires, holds, or disposes of any real or personal property for use in the joint or cooperative undertaking contemplated by this Agreement, such Party shall do so in the same manner that it deals with other property of such Party

8. **Interpretation of Agreement.** Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include the other gender. The paragraph and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

9. **Amendments.** This Agreement may be amended, changed, modified or altered only by an instrument in writing which shall be (a) approved by Resolution of the governing or legislative body of each of the Parties, (b) executed by a duly authorized official of each of the Parties, (c) submitted to an attorney for each party that is authorized to represent said party for review as to proper form and compliance with applicable law, pursuant to Section 11-13-202.5 of the Interlocal Act, and (d) filed in the official records of each party.

10. **No Presumption.** Should any provision of this Agreement require judicial interpretation, the Court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party, by reason of the rule of construction that a document is to be construed more strictly against the person who himself or through his agents prepared the same, it being acknowledged that all parties have participated in the preparation hereof.

11. **Notices.** All notices, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been properly given if delivered by hand or by certified mail, return receipt requested, postage paid, to the parties at their addresses first above written, or at such other addresses as may be designated by notice given hereunder.

12. **Assignment.** The parties to this Agreement shall not assign this Agreement, or any part hereof, without the prior written consent of all other parties to this Agreement. No assignment shall relieve the original parties from any liability hereunder.

13. **Utah Law.** This Agreement shall be interpreted pursuant to the laws of the State of Utah.

14. **Time of Essence.** Time shall be of the essence of this Agreement.

15. **Lawful Agreement.** The parties represent that each of them has lawfully entered into this Agreement, having complied with all relevant statutes, ordinances, resolutions, by-laws, and other legal requirements applicable to their operation.

16. **Breach.** In the event that any party breaches this Agreement, a non-breaching party may serve the breaching party with a notice to cure the breach by certified mail, return receipt requested or personal delivery to the breaching party. The breaching party shall cure the breach within thirty days of receiving notice to cure, or if the breach is not capable of curing within thirty days, commence corrective action within thirty days and diligently pursue correction of the breach until the breach is cured. Failure to cure or diligently pursue corrective action constitutes a breach.

17. **Incorporation of Recitals.** The Recitals to this Agreement are hereby incorporated into the Covenants section of this Agreement as if fully set forth herein.

18. **Binding Agreement.** This Agreement shall be binding upon the heirs, successors, administrators, and assigns of each of the parties hereto.

19. **Mass Notification Agreement.** The parties to this Agreement shall comply with and not violate, breach or cause the violation or breach of any term, condition or provision of the Mass Notification Agreement.

20. **Conflict.** This Agreement is subject to the terms, provisions and conditions of the Mass Notification Agreement and all applicable state and federal laws, rules, and regulations. In the event of any conflict between any term of this Agreement and the Mass Notification Agreement, the Mass Notification Agreement shall govern. The parties to this Agreement shall comply with all applicable state and federal laws, rules, and regulations.

21. **Entire Agreement.** This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind proceeding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

22. **Force of Nature.** The parties to this Agreement shall not hold any other parties liable for damages or otherwise responsible in any way if any party is prevented from the performance of this Agreement by reason of acts of God, riot, strike, fire, weather, illness, war, lock-up, energy shortages, or illegality.

23. **Severability.** If any term or provision of this Agreement or the application thereof shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and shall be enforced to the extent permitted by law. To the extent permitted by applicable law, the parties hereby waive any provision of law which would render any of the terms of this Agreement unenforceable.

24. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which together shall be considered as one agreement.

25. **Third Party Beneficiaries.** This Agreement governs the rights and liabilities of the signatories to this Agreement only. No third party beneficiaries are created, or intended to be created by this Agreement.

SIGNED and ENTERED INTO this _____ day of _____, 2015.

UTAH COUNTY

By: _____
Larry Ellertson
Chairman, Board of Utah County
Commissioners

ATTEST:

By: _____
Bryan Thompson
Utah County Clerk Auditor

Reviewed as to proper form and
compliance with applicable law:
Jeffrey R. Buhman, Utah County Attorney

By: _____
Deputy

SIGNED and ENTERED INTO this _____ day of _____, 2015.

MAPLETON CITY

By: _____
Mayor

ATTEST AND COUNTERSIGN:

City Recorder

Reviewed as to proper form and
Compliance with applicable law:

City Attorney



Everbridge, Inc.
Core Platform Service Agreement

This Core Platform Service Agreement ("Agreement") is entered into by and between Everbridge, Inc. ("Everbridge"), and Utah County ("Customer"), effective on the date that sufficient cities located in Utah County, Utah enter into an agreement with Utah County ("Participating Cities") to receive mass notifications under this Agreement with sufficient Contacts requiring the Participating Cities to pay at least 95% of the total price listed on the quote of Customer's signature below ("Effective Date"). Everbridge and Customer are each hereinafter sometimes referred to as a "Party" and collectively, the "Parties".

1. SERVICE. Everbridge shall provide Customer and Participating Cities access to its proprietary interactive communication service(s) (the "Service(s)") subject to the terms and conditions set forth in this Agreement and the description of services and pricing provided in the applicable quote (the "Quote"). If applicable, Everbridge shall provide the training and professional services set forth in the Quote. Everbridge shall provide Customer and Participating Cities with login and password information for each User (as defined below) and will configure the Service to contact the maximum number of persons or communication devices (each a "Contact") set forth on the Quote.

All Cities who are contracting with Everbridge prior to entering into this Agreement have the option to remain a separate organization as currently established and may continue to contact Everbridge directly with support needs for their organization.

2. PAYMENT TERMS. Customer shall pay the fees set forth in the Quote ("Pricing"). If Customer exceeds the usage levels specified in the Quote, then Everbridge may invoice Customer for any overages at then current rates. Everbridge shall invoice Customer annually in advance. All payments shall be made within thirty (30) days from date of invoice, after which interest shall accrue at a rate of one and one-half percent (1.5%) per month or the highest rate allowed by applicable law, whichever is lower. Such interest shall be in addition to any other rights and remedies of Everbridge.

Notwithstanding the foregoing, to avoid double payment for services the contract price will be reduced during the first year of this Agreement for Participating Cities currently contracting with Everbridge for mass notification services. Charges for Participating Cities already contracting with Everbridge for mass notification services will commence under this Agreement upon the termination of their existing agreements with Everbridge.

3. CUSTOMER RESPONSIBILITIES.

3.1 Users. If Customer has purchased Mass Notification, Customer and Participating Cities shall in their discretion authorize certain of their employees and contractors to access that Service. If Customer and Participating Cities have purchased Incident Management, Customer and Participating Cities shall authorize only those employees or contractors who are Incident Operators (as defined on Exhibit A) or Incident Administrators (as defined on Exhibit A) to access that Service. Collectively, Customer's and Participating Cities employees and contractors who are authorized to access any Service as provided above are referred to as "User(s)". Each User must be bound in writing to confidentiality obligations sufficient to permit Customer and

Participating Cities to fully perform their obligations under this Agreement. Customer and Participating Cities shall undergo the initial setup and training as set forth in the Implementation - Standard inclusion sheet provided with the Quote. The Implementation sheet provides a detailed list of the services included as part of the implementation purchased and the corresponding timelines. If Customer and Participating Cities fails to complete the Implementation process within the sixty (60) day timeframe, Customer and Participating Cities must purchase any additional implementation services. To the extent arising out of the acts or omissions of Customer and/or Participating Cities, Customer and Participating Cities shall be responsible for: (i) ensuring that their respective Users maintain the confidentiality of all User login and password information; (ii) ensuring that their respective Users use the Service in accordance with all applicable laws and regulations, including those relating to use of personal information; (iii) any breach of the terms of this Agreement by their respective Users; and (iv) all communications by their respective Users using the Service. Customer and Participating Cities shall promptly notify Everbridge if it becomes aware of any User action or omission that would constitute a breach or violation of this Agreement.

3.2 Customer Data. "Customer Data" is all electronic data Customer and Participating Cities transmits to Everbridge in connection with the use of the Service. Customer and Participating Cities shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all their respective Customer Data. By purchasing the Service, Customer and Participating Cities represents that they have the right to authorize and hereby does authorize Everbridge and its "Service Providers" to collect, store and process Customer Data subject to the terms of this Agreement. "Service Providers" shall mean communications carriers, data centers, collocation and hosting services providers, and content and data management providers that Everbridge uses in providing the Service. Customer and Participating Cities shall maintain a copy of their respective all Customer and Participating Cities Contact data that they provides to Everbridge. Customer and Participating Cities acknowledges that the Service is a passive conduit for the transmission of Customer Data and any data submitted by Contacts, and to the extent arising out of the acts or omissions of Customer and/or Participating Cities. Everbridge shall have no liability for any errors or omissions or for any defamatory, libelous, offensive or otherwise objectionable or unlawful content in any Customer Data or data submitted by Contacts, or for any losses, damages, claims, suits or other actions arising out of or in connection with any data sent, accessed, posted or otherwise transmitted via the Service by Customer and Participating Cities or Contacts. Everbridge shall use commercially reasonable efforts to maintain Customer Data confidential.

4. TERM. This Agreement will commence on the Effective Date and will continue in full force and effect until all executed Quotes have terminated, unless otherwise terminated in accordance with the termination rights set forth in this Agreement. Any renewal of this Agreement for the option years set forth in the applicable Quote shall be on the same terms and conditions contained in that Quote.

5. TERMINATION; SUSPENSION.

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5.1 Termination by Either Party. Either Party may terminate this Agreement upon the other Party's material breach of this Agreement, provided that (i) the non-breaching Party sends written notice to the breaching Party describing the breach in reasonable detail; (ii) the breaching Party does not cure the breach within thirty (30) days following its receipt of such notice (the "Notice Period"); and (iii) following the expiration of the Notice Period, the non-breaching Party sends a second written notice to the breaching Party indicating its election to terminate this Agreement.

5.2 Termination by Everbridge. If Customer fails to pay any amounts due within thirty (30) days of their due date, Everbridge may terminate this Agreement or suspend the Service in Everbridge's sole discretion pursuant to the notice provisions above. Termination for non-payment shall not relieve Customer of its outstanding obligations (including payment) under this Agreement. If Everbridge suspends the Service, Customer's account shall not be reactivated until Customer is in compliance with this Agreement and has paid all past due amounts ~~plus a reconnection fee of \$1,000.~~

5.3 Suspension. Everbridge may suspend, with or without notice, the Service or any portion for (i) emergency network repairs, threats to, or actual breach of network security; (ii) any violation by Customer of Section 3.2 or 6.2; or (iii) any legal, regulatory, or governmental prohibition affecting the Service. In the event of a suspension under (i) or (iii), Everbridge shall use its best efforts to notify Customer and reactivate any affected portion of the Service as soon as possible.

5.4 Termination by Customer. ~~In the event that the number of Participating Cities fall below the number of Contacts required such that the Participating Cities pay at least 95% of the total price listed on the quote, Customer may terminate this Agreement on 30 days notice to Everbridge.~~

~~Notwithstanding anything contained herein to the contrary, only a breaching Customer's and/or a breaching Participating City's use of the Services shall be terminated or suspended for their own breach of the terms and conditions of this Agreement, unless the requirements of the preceding paragraph are satisfied.~~

6. PROPRIETARY RIGHTS.

6.1 Grant of License. Everbridge hereby grants to Customer, and Participating Cities, during the term of this Agreement, a non-exclusive, non-transferable, non-sublicensable right to use the Service subject to the terms and conditions of this Agreement. Upon suspension of the Service or termination of this Agreement for any reason, the foregoing license shall terminate automatically and Customer and Participating Cities shall discontinue all further use of the Service.

6.2 Restrictions. Customer and Participating Cities shall use the Service solely for its internal business purposes and shall not make the Service available to, or use the Service for the benefit of, any third party except as expressly contemplated by this Agreement. Customer and Participating Cities shall not: (i) copy, modify, reverse engineer, de-compile, disassemble or otherwise attempt to discover or replicate the computer source code and object code provided or used by Everbridge in connection with delivery of the Service (the "Software") or create derivative works based on the Software, the Service or any portion thereof; (ii) merge any of the

foregoing with any third party software or services; (iii) use any Everbridge Confidential Information to create a product that competes with the Software; (iv) remove, obscure or alter any proprietary notices or labels on the Software or any portion of the Service; (v) create internet "links" to or from the Service, or "frame" or "mirror" any content forming part of the Service, other than on Customer's and Participating Cities' own intranets for its own internal business purposes; (vi) knowingly use, post, transmit or introduce any device, software or routine (including viruses, worms or other harmful code) which interferes or attempts to interfere with the operation of the Service; (vii) use the Service in violation of any applicable law or regulation; or (viii) access the Service for purposes of monitoring Service availability, performance or functionality, or for any other benchmarking or competitive purposes.

6.3 Reservation of Rights. Other than as expressly set forth in this Agreement, Everbridge grants to Customer and Participating Cities no license or other rights in or to the Service, the Software or any other proprietary technology, material or information made available to Customer and Participating Cities through the Service or otherwise in connection with this Agreement (collectively, the "Everbridge Technology"), and all such rights are hereby expressly reserved. Everbridge (or its licensors where applicable) owns all rights, title and interest in and to the Service, the Software and any Everbridge Technology, and all patent, copyright, trade secret and other intellectual property rights ("IP Rights") therein, as well as (i) all feedback and other information (except for the Customer Data) provided to Everbridge by Users, Customer, Participating Cities and Contacts, and (ii) all transactional, performance, derivative data and metadata generated in connection with the Services.

7. CONFIDENTIAL INFORMATION.

7.1 Definition; Protection. As used herein, "Confidential Information" means all information of a Party and Participating Cities ("Disclosing Party") disclosed to the other Party and Participating Cities ("Receiving Party"), whether orally, in writing, or by inspection of tangible objects (including, without limitation, documents or prototypes), that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes without limitation, any personally identifiable Customer Data, all Everbridge Technology, and either Party's and Participating Cities' business and marketing plans, technology and technical information, product designs, reports and business processes. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose other than performance or enforcement of this Agreement without the Disclosing Party's prior written consent, unless (but only to the extent) otherwise required by a governmental authority. Each Party agrees to protect the Confidential Information of the other Party with the same level of care that it uses to protect its own confidential information, but in no event less than a reasonable level of care. Without limiting the foregoing, this Agreement and all terms hereof shall

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be Everbridge's Confidential Information unless otherwise provided by law, including applicable freedom of information laws.

8. WARRANTIES; DISCLAIMER.

8.1 Everbridge Warranty. Everbridge shall use commercially reasonable efforts to provide the Services herein contemplated, including maintaining the confidentiality of Customer Data. To the extent professional services are provided, Everbridge shall perform them in a professional manner consistent with industry standards. THE FOREGOING REPRESENT THE ONLY WARRANTIES MADE BY EVERBRIDGE HEREUNDER AND EVERBRIDGE EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

8.2 Disclaimer. THE SERVICE IS PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS. NEITHER EVERBRIDGE NOR ITS LICENSORS WARRANT THAT THE SERVICE WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL EVERBRIDGE HAVE ANY LIABILITY TO CUSTOMER, USERS, CONTACTS OR ANY THIRD PARTY FOR PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE ARISING FROM FAILURE OF THE SERVICE TO DELIVER AN ELECTRONIC COMMUNICATION, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, EVEN IF EVERBRIDGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, EXCEPT OF THE EXTENT CAUSED OR ARISING OUT OF THE ACTS OR OMISSIONS OF EVERBRIDGE.

8.3 Customer and Participating Cities Representations and Warranties. Customer and Participating Cities represents and warrants that during their respective use of the Service, Customer and Participating Cities shall (i) clearly and conspicuously notify Contacts of the way in which their personal information shall be used, and (ii) have primary safety and emergency response procedures including, without limitation, notifying 911 or equivalent fire, police, emergency medical and public health officials (collectively, "**First Responders**"). Customer and Participating Cities acknowledges and agrees that Everbridge is not a First Responder, and that the Service does not serve as a substitute for Customer's and Participating Cities own emergency response plan, which in the event of an actual or potential imminent threat to person or property, shall include contacting a First Responder prior to using the Service. Customer and Participating Cities represents and warrants that their respective all notifications through the Service shall be sent by authorized Users, and that their respective collection, storage and processing of Customer Data, and the use of the Service, as provided in this Agreement, will at all times comply with (x) their respective Customer's own policies regarding privacy and protection of personal information; and (y) all applicable laws and regulations, including those related to processing, storage, use, disclosure, security, protection and handling of Customer Data.

9. INDEMNIFICATION.

9.1 By Customer. Customer and Participating Cities, to the extent arising out of their own acts, errors or omissions, shall indemnify and hold Everbridge harmless against any loss or damage (including reasonable attorneys' fees) incurred in

connection with any claim, suit or proceeding ("**Claim**") arising out of their respective any data sent, accessed, posted or otherwise transmitted via the Service by Customer, Participating Cities or Contacts or their respective any breach by Customer of Sections 3, 6 or 8.3.

9.2 By Everbridge. Everbridge, to the extent arising out of their own acts, errors or omissions, shall indemnify and hold Customer and Participating Cities harmless from and against any Claim against Customer and Participating Cities, including but only to the extent it is based on a Claims that the Service directly infringes an issued patent or other IP Right in a country in which the Service is actually provided to Customer and Participating Cities. In the event Everbridge believes any Everbridge Technology is, or is likely to be the subject of an infringement claim, Everbridge shall have the option, at its own expense, to: (i) to procure for Customer and Participating Cities the right to continue using the Service; (ii) replace same with a non-infringing service; (iii) modify such Service so that it becomes non-infringing; or (iv) refund any fees paid to Everbridge and terminate this Agreement without further liability. Except to the extent arising out of their own acts, errors or omissions, Everbridge shall have no liability for any Claim arising out of (w) Customer Data or other Customer or Participating Cities supplied content, (x) use of the Service or Software in combination with other products, equipment, software or data not supplied by Everbridge, (y) any use, reproduction, or distribution of any release of the Service or Software other than the most current release made available to Customer, or (z) any modification of the Service or Software by any person other than Everbridge.

10. LIMITATION OF LIABILITY. Neither Party shall have any liability to the other Party for any loss of use, interruption of business, costs of substitute services, or any other indirect, special, incidental, punitive, or consequential damages, however caused, under any theory of liability, and whether or not the Party has been advised of the possibility of such damage. Notwithstanding anything in this Agreement to the contrary, except for its indemnification obligations or a breach of confidentiality, in no event shall Everbridge's aggregate liability to Customer, regardless of whether any action or claim is based on warranty, contract, tort, or otherwise, exceed amounts actually paid by Customer to Everbridge hereunder during the 12-month period prior to the event giving rise to such liability. Customer understands and agrees that these liability limits reflect the allocation of risk between the Parties and are essential elements of the basis of the bargain, the absence of which would require substantially different economic terms.

11. MISCELLANEOUS.

11.1 Non-Solicitation. As additional protection for Everbridge's proprietary information, for so long as this Agreement remains in effect, and for one year thereafter, Customer agrees that it shall not, directly or indirectly, solicit, or attempt to solicit any employees of Everbridge; provided, that a general solicitation to the public for employment is not prohibited under this section.

11.2 Force Majeure; Limitations. The Parties and Participating Cities Everbridge shall not be responsible for performance under this Agreement to the extent precluded by circumstances beyond their Everbridge's reasonable control, including without limitation acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, labor problems, computer, telecommunications, Internet service

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provider or hosting facility failures, or delays involving hardware, software or power systems, and network intrusions or denial of service attacks. The Service delivers information for supported Contact paths to public and private networks and carriers, but cannot guarantee delivery of the information to the recipients. Final delivery of information to recipients is dependent on and is the responsibility of the designated public and private networks or carriers. Customer acknowledges and agrees that territories outside the U.S. and Canada may have territorial restrictions resulting from applicable law, telecommunications or internet infrastructure limitations, telecommunications or internet service provider policies, or communication device customizations that may inhibit or prevent the delivery of certain SMS, text or other notifications, or restrict the ability to place or receive certain calls such as outbound toll free calls. The Parties and Participating CitiesEverbridge shall have no liability to the extent such restrictions impede the Service.

11.3 Waiver; Severability. The failure of either Party and Participating Cities hereto to enforce at any time any of the provisions or terms of this Agreement shall in no way be considered to be a waiver of such provisions. If any provision of this Agreement is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall, to the extent required, be deemed deleted and the remaining provisions shall continue in full force and effect.

11.4 Assignment. Neither this Agreement nor any rights granted hereunder may be sold, leased, assigned (including an assignment by operation of law), or otherwise transferred, in whole or in part, by either PartyCustomer, and any such attempted assignment shall be void and of no effect without the advance written consent of the otherEverbridge, which shall not be unreasonably withheld.

11.5 Governing Law; Attorney's Fees. This Agreement shall be governed and construed in accordance with the laws of the State of Utah, without regard to its conflicts of laws rules. Venue for any dispute arising out of this agreement shall be in the Courts of the State of Utah. The prevailing party in any action arising out of this Agreement shall be entitled to its reasonable attorneys' fees and costs.

11.6 Notices. Either party may give notice at any time by any of the following: letter delivered by (i) nationally recognized overnight delivery service; (ii) first class postage prepaid mail; or (iii) certified or registered mail, (certified and first class mail deemed given following 2 business days after mailing) to the other party at the address set forth below. Either Party may change its address by giving notice as

provided herein. Invoices shall be sent to the Customer's contact and address following Customer's signature below.

11.7 ~~No-Third-Party-Beneficiaries.—There are no third-party-beneficiaries-to-this-Agreement.~~

11.8 Entire Agreement. This Agreement, including its Exhibits and any Quote, constitutes the entire agreement between the Parties and Participating Cities and supersedes all other agreements and understandings between the Parties, oral or written, with respect to the subject matter hereof, including any confidentiality agreements. This Agreement shall not be modified or amended except by a writing signed by both Parties. ANY NEW TERMS OR CHANGES INTRODUCED IN A PURCHASE ORDER OR OTHER DOCUMENT ARE VOID AND OF NO FORCE OR EFFECT. EVERBRIDGE'S ACKNOWLEDGEMENT OF RECEIPT OF SUCH DOCUMENT OR ACCEPTANCE OF PAYMENT SHALL NOT CONSTITUTE AGREEMENT TO ANY TERMS OTHER THAN THOSE SET FORTH IN THIS AGREEMENT.

11.9 Marketing. [Intentionally deleted]

11.10 Survival. Sections 2, 3.2, 5.2, 6, 7, 9-11 and the applicable provisions of Exhibit A shall survive the expiration or earlier termination of this Agreement.

11.11 Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall constitute one original document. A facsimile transmission or copy of the original shall be as effective and enforceable as the original.

11.12 Export Compliant. Neither Party nor Participating Cities shall export, directly or indirectly, any technical data acquired from the other pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

11.13 Governmental Immunity. Notwithstanding anything to the contrary in this Agreement, Customer's and Participating Cities duties, responsibilities, liabilities and indemnification obligations under this Agreement are subject to and governed by the Governmental Immunity Act of Utah, 63G-7-101, *et seq.*, including but not limited to, the limits of liability contained therein, nor shall either Party or Participating Cities be liable to the other Party for the other party's acts, errors or omissions.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date set forth below.

EVERBRIDGE, INC.

By: _____
Print Name: _____
Title: _____
Date: _____

Address:
500 N. Brand Blvd., Suite 1000
Glendale, California 91203
For legal notice:
Attention: Legal Department

CUSTOMER: Utah County

By: _____

Print Name: Gary Anderson

Title: Chairman, Utah County Commission

Date: _____

Customer's address for legal notices:

Utah County Attorney

Civil Division, 100 East Center

Provo, Utah 84606

Customer's address for billing:

Utah County Sheriff

3075 North Main

Spanish Fork, Utah 84660

Attn: Emergency Services

Email for billing: _____

Telephone number: _____

EXHIBIT A

Additional Business Terms

The following additional business terms are incorporated by reference into the Agreement as applicable based on the particular products and services described on the Quote.

“Data Feed” means data content licensed or provided by third parties to Everbridge and supplied to Customer through the Service (e.g., real time weather system information and warnings and third party maps).

“Electronic Communications” means electronic communications (including inputting or updating Customer Data in the System) and the sending of messages or notifications to and from Contacts via the Service.

“Incident Administrator” means an individual who is authorized by Customer as an organizational administrator for the Incident Management Service.

“Incident Operator” means an individual who is authorized by Customer as an operator of the Incident Management Service.

“Messaging Minute” means the unit of usage expended in sending notifications.

“Non-Priority Notifications” means Electronic Communications sent by Customer through the Service to multiple Contacts via one or multiple communications paths which are not characterized as Priority Notifications, and any Contact responses to such communications or to any Priority Notifications.

“Priority Notifications” means Electronic Communications sent by Customer through the Service to multiple Contacts via one or multiple communication paths to advise Contacts of an immediate or expected emergency or life-threatening condition or circumstance, but excluding any Contact responses thereto.

1. **Messaging Minutes.** For Customers purchasing the Mass Notification Service, unless Customer has purchased “Unlimited Use” minutes, Customers must purchase Messaging Minutes to send Non-Priority Notifications. No Messaging Minutes shall be required to send United States domestic Priority Notifications, push notifications or email messages. Unused Messaging Minutes expire at the end of the period under the applicable Quote, and are not refundable. If Customer has “Unlimited Use” as identified on the applicable Quote, such unlimited use does not include instabridge minutes, or international usage, which must be purchased separately.
2. **Usage.** Messaging Minutes shall be calculated as follows:
 - For text messages, one Message Minute for each 146 characters or portion thereof.
 - For voice messages, one Message Minute per minute or portion of a minute of the voice message.
 - For instabridge minutes, one Message Minute per minute or portion of a minute of the voice call or message.
 - Additional charges may apply for international notifications.
3. **Auditing.** For Customers purchasing the Mass Notification Service, Everbridge may, from time to time, monitor or audit message content to verify the characterization of messages as Priority Notifications. If Customer has not characterized a message appropriately, then Everbridge may recharacterize the message in its sole reasonable judgment, and apply Messaging Minutes for such message in accordance with the foregoing Usage allocations. Customer’s intentional mischaracterization of Priority Notifications, or mischaracterization of more than three Priority Notifications in a twelve-month period, shall constitute a material default under this Agreement.
4. **Data Feeds; Other Data.** Notwithstanding anything to the contrary in this Agreement, to the extent that Customer has purchased or accesses Data Feeds, such feeds are provided solely on an “AS IS” and “AS AVAILABLE” basis and the sole and exclusive remedy for any failure, defect, or inability to access such Data Feed shall be to terminate the Data Feed with no further payments due. No refunds shall be granted with respect to such Data Feed. In addition, to the extent Customer has purchased a feature that allows Customer to monitor, and utilize information and data from other sources not supplied by Everbridge directly (e.g., Twitter or other customers through the Everbridge Network) (collectively **“Other Data”**), Everbridge disclaims any and all liability of any kind or nature resulting from any inaccuracies or failures with respect to all Other Data.
5. **Incident Management.** For Customers purchasing the Incident Management Service: (a) Customers may only designate the number of Incident Operators and Incident Administrators set forth on the Quote, and such individuals shall only have the access rights pursuant to such designation and role; (b) Incident Administrators shall have the ability to build incident templates, report on incidents, and launch incident notifications; (c) Incident Operators shall only have the ability to launch or manage incidents; and (d) Customer shall be provided the number of incident templates purchased pursuant to the Quote. If Customer exceeds the number of Incident Operators, Incident Administrators or incident templates purchased, Customer shall be charged the applicable fees then in effect for additional Incident Operators, Incident Administrators or incident templates, as applicable.