



**Health & Human Services
Agency
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

KUYLER CROCKER
District One
PETE VANDER POEL
District Two
AMY SHUKLIAN
District Three
EDDIE VALERO
District Four
DENNIS TOWNSEND
District Five

AGENDA DATE: June 25, 2019

Public Hearing Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Published Notice Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Advertised Published Notice	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Meet & Confer Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Personnel Resolution attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>

CONTACT PERSON: Andrew Lockman PHONE: 624-8000

SUBJECT: Approve an agreement with Everbridge Inc. for Mass Notification Services

REQUEST(S):
That the Board of Supervisors:

1. Approve an agreement with Everbridge Inc. to provide emergency mass notification services for a period of July 1, 2019 through June 30, 2020, in the amount not to exceed \$93,000; and
2. Authorize the Chairman of the Board to sign three (3) copies of the agreement.

SUMMARY:
The Tulare County Office of Emergency Services (OES) administers Tulare County's public alert and warning system, AlertTC. AlertTC integrates traditional notification system capabilities such as voice, text message, fax, and email delivery of emergency messages with the federal Integrated Public Alert and Warning System (IPAWS) to add capabilities for Wireless Emergency Alerts (WEA) and the Emergency Alert System (EAS). AlertTC is used for both internal and public alerting purposes, from mobilizing specialty resources such as swift water or tactical teams to delivering evacuation and shelter-in-place instructions to residents during floods, wildfires, hazardous materials releases, and law enforcement situations.

AlertTC presently has active users across multiple Tulare County departments (including Fire, GSA, HHSA, RMA, and Sheriff), each of the eight incorporated cities, and the Tule River Tribe, and indirectly supports the time-critical communications of other local entities such as special districts through the Office of

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Emergency Services. AlertTC is integrated into numerous stakeholder business processes, and has been used over 400 times in each of the past three fiscal years.

AlertTC is currently powered by Everbridge Inc., widely recognized as a market leader in mass notification platforms. Staff reviewed several competing products and proposals in 2019, in accordance with Federal procurement standards, and found Everbridge's product continues to best serve the needs of Tulare County and its partners. Staff was able to negotiate a cost savings sufficient to offset the addition of a new module, Incident Communications, which allows for the creation of robust pre-planned scenarios, which will be utilized to standardize, streamline, and accelerate the issuance of wildfire evacuation warnings by authorized users.

The agreement contains provisions allowing the County to terminate for convenience or due to loss of funding (with 30 days' notice); for either party to immediately terminate for cause for several reasons; for either party to terminate for cause due to material breach, if not remedied within 10 days; and for the County to terminate for cause if breach due to material misrepresentation or other misconduct is not remedied within 10 days.

The Fiscal Year 2019/2020 agreement does once again contain modifications to the County boilerplate, many of which were contained in last year's agreement. The following terms deviate substantively from the standard County boilerplate:

1. The total annual contract amount is being paid at the start of the license/service.
2. The parties negotiated changes to several of the provisions in the "General Agreement Terms and Conditions", which were incorporated a new document attached to this main agreement, and include the following material changes:
 - a. Due to nature of the services provided (Software as a Service, i.e., off the shelf-software accessed online) and the timing of payment, the parties modified the language in the paragraph, "Payment does not imply acceptance of work" to address potential issues that could arise with non-performance after payment has been made.
 - b. Services are being paid in advance. If payments to contractor are later disallowed by the State of Federal government, contractor will refund disallowed amount, but is allowed to terminate this Agreement without any further refund. In such an event, County does not have the right to offset the disallowed amounts from future payments. Also, contractor is not required to refund County for unused amounts in the event the agreement is terminated for convenience.
 - c. Parties removed the provision that failure to provide evidence of renewal of insurance would constitute a material breach, but left in the expectation that failure to maintain or renew coverage would constitute

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a material breach.

- d. Contractor's indemnification and defense of County is more limited than the current approved boilerplate for several reasons. It specifically exempts any claims made by third parties related to their failure to receive a notification from the service. Also, the indemnification is otherwise limited to instances when the contractor causes third-party injuries during on-site work performed or services provided on County premises, and indemnification and defense of privacy/security related breaches and intellectual property claims based in the United States. The intellectual property provisions outline the County's exclusive remedies for such claims.
- e. The amount of written notice required to terminate the Agreement for cause has been set with respect to material breach, material misrepresentation, and other misconduct as 10 days (instead of 5 for material breach, and previously unspecified for other misconduct or misrepresentation).
- f. Everbridge is allowed to suspend services to address emergency network repairs or threats or breaches of security, or any legal or regulatory prohibition related to provision of services.
- g. Although the parties agree to mediate most claims, the parties agree that disputes regarding breach of confidentiality or intellectual property disputes are exempt from the mediation requirement.
- h. Everbridge requested additional confidentiality provisions to protect their intellectual property, which have been incorporated into County's Confidentiality provisions. County also incorporated additional security provisions for County data. In the event of a Public Records Act or similar request, Everbridge has 10 calendar days (as opposed to 5) to seek a protective order regarding potential disclosure of any confidential information.
- i. Everbridge requested inclusion of a reservation of rights paragraph describing the limitations of its license to County and its intellectual property rights. Everbridge also requested County incorporate Everbridge's current Acceptable Use Policy into the General Terms and Conditions as an attachment.
- j. The Parties negotiated removal of the paragraph related to Property Taxes, as Everbridge will not be possessing or using any County-owned real property.
- k. Everbridge requested the ability to assign the agreement to an entity through a merger or acquisition, but agreed that the entity must meet all state and federal requirements. County maintains right to terminate following notice of the assignment.
- l. Because of the nature of the services (license for software as a

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service), County removed references to Works for Hire and Work Product.

- m. Everbridge requested a limitation of liability provision that would (1) eliminate liability for either party to the other for loss of use, interruption of business, lost profits, costs or substitute service, or for any other indirect, special, incidental, punitive, or consequential damages (subject to the limitations described below); and (2) limit Everbridge's aggregate liability under the contract to the total amount paid within the last 12 months (except for claims related to privacy/security breaches and intellectual property). Neither of these limitations should be interpreted to modify any of contractor's insurance obligations. Also, Everbridge may be liable to County for certain indirect damages pursuant to final adjudication or a final settlement agreed to by Everbridge, and in accordance with its indemnity obligations. This section also clarifies that the limitations of liability in Exhibit F apply.
- n. Revised the order of precedence paragraph to clarify which exhibits and provisions take precedence.

3. Everbridge's License (Exhibit F):

- a. Disclaims most warranties related to the service (express, implied, statutory), including the warranties of merchantability or fitness for a particular purpose.
- b. Includes representations and warranties by County that it will have a privacy policy and follow applicable privacy laws, and that communications should only be sent by authorized Users.
- c. Limits Everbridge's liability for personal injury caused by failure of their service to deliver a message.
- d. Limits Everbridge's liability for County's improper use of the Service.

FISCAL IMPACT/FINANCING:

The budgeted costs associated with this agreement were included in the OES 6082 budget, line 7043, professional services, for \$93,000. The funding is derived from the State Homeland Security Grant. There is no additional net County cost to the General Fund.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

The County's five-year strategic plan includes the Safety and Security initiative, with a goal of providing coordinated emergency preparedness, response, recovery and mitigation capabilities for both natural and man-made disasters. AlertTC provides local agencies with the ability to rapidly communicate with the public to provide critical information during times of emergency or disaster.

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ADMINISTRATIVE SIGN-OFF:



Timothy W. Lutz
Agency Director

cc: County Administrative Office

Attachment(s) Agreement

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF APPROVE AN)
AGREEMENT WITH EVERBRIDGE INC.) Resolution No. _____
FOR MASS NOTIFICATION SERVICES) Agreement No. _____
)

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD June 18, 2018, BY
THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JASON T. BRITT
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

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