

**MADISON COUNTY FISCAL COURT
MADISON COUNTY, KY
RESOLUTION 20-132**

**A RESOLUTION APPROVING THE CONTINUATION OF THE CONTRACT WITH
EVERBRIDGE FOR MASS NOTIFICATION**

WHEREAS, the CSEP Program requires alert and notification to ensure public safety; and

WHEREAS, the Madison County Fiscal Court has a contract with Everbridge expiring December 19, 2020 that has an optional additional 3 years; and

WHEREAS, there is no increase in cost; and

WHEREAS, the Madison County Fiscal Court wishes to continue the contract for the mass notification system, Everbridge, in the amount of \$29,500.00 annually, which is attached hereto this Resolution; and

NOW, THEREFORE, BE IT RESOLVED THAT THE FISCAL COURT DOES HEREBY APPROVE TO ENTER INTO THE CONTRACT AND AUTHORIZES THE JUDGE EXECUTIVE TO EXECUTE SAME ON BEHALF OF THE COUNTY TO GO INTO EFFECT RETROACTIVELY OCTOBER 1, 2020.

Motion made by Roger Barger, seconded by Tom Botkin.

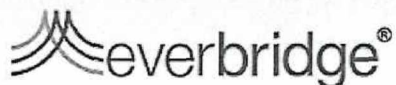
Vote:	Yes	No
Judge Reagan Taylor	<u>X</u>	
Magistrate Larry Combs		
Magistrate John Tudor	<u>X</u>	
Magistrate Roger Barger	<u>X</u>	
Magistrate Tom Botkin	<u>X</u>	

Signed:

Reagan Taylor
Madison County Judge Executive

Attested:

Kenny Barger
Madison County Clerk



155 North Lake Avenue, Suite 900
Pasadena, CA 91101 USA

tel: +1-818-230-9700
fax: +1-818-230-9505

www.everbridge.com

Quotation

Prepared for:

Dustin Heiser
Madison County, KY - EMA/CSEPP
560 S. Keeneland Drive
Richmond KY 40475
United States
Ph: (859) 624-4787
Fax:
Email: dustin.heiser@madisoncountky.us

Quote #: Q-58079
Date: 12/8/2020
Expires On: 12/11/2020
Confidential

Salesperson: Lily Harrington
Phone: (781) 819-5166
Email: lily.harrington@everbridge.com

Contract Summary Information:

Contract Period:	12 Months
Contract Start Date:	10/1/2020
Contract End Date:	9/30/2021
Contract Option Years (in months)	24 Months

QTY	Product Code	Description	GSA Classification	Price
103,600	101-11-11-0254-000	Mass Notification Base - Tier 3	GSA Product	USD 29,400.00
103,600	101-01-11-0206-000	Incident Management - Incident Communications - Tier 3	GSA Product	USD 100.00
1	SETUPFEES	Calculated Set Up Fee	GSA Product	USD 0.00

Pricing Summary:

Year One Fees:	USD 29,500.00
One-time Implementation and Setup Fees:	USD 0.00
Professional Services:	USD 0.00
Total Year One Fees Due:	USD 29,500.00

Option Years:

Contract Option Years (in months)	24 Months
Ongoing Annual Fees :	USD 29,500.00

Terms & Conditions

1. Additional rates apply for all international calls.
2. Quote subject to terms & conditions of GSA Contract No. GS-35F-0692P and the GSA Approved End User License Agreement ("EULA"), the latter of which is attached hereto and incorporated by reference.
3. Subject to sales taxes where applicable.
4. The supplemental notes below, if any, supplied in this Quote are for informational purposes and not intended to be legally binding or override GSA Contract No. GS-35F-0692P, or the EULA.

Authorized by Everbridge:

Signature:

Date:

Name (Print):

Title:

To accept this quote, sign, date and return:

Signature:

Date: 12/15/2020

_____

Name (Print):

Reagan Taylor

Title:

Judge Executive

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THANK YOU FOR YOUR BUSINESS!



Everbridge, Inc.
GSA Approved End User License Agreement

This End User License Agreement ("**Agreement**") is entered into by and between Everbridge, Inc. ("**Everbridge**") and an Ordering Activity, an entity entitled to order under GSA Schedule contracts as defined in GSA Order ADM 4800.2H, as may be revised from time to time ("**Customer**"), effective on the date of signature by an authorized signatory on the Quote or other ordering document ("**Effective Date**"). Everbridge and Customer are each hereinafter sometimes referred to as a "**Party**" and collectively, the "**Parties**."

1. SERVICE.

1.1 Orders. Everbridge shall provide Customer access to its proprietary interactive communication solutions (the "**Solutions**") 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. Collectively, the Solutions and professional services are referred to as the "**Services**". Everbridge shall provide Customer with login and password information for each User (as defined below) and will configure the Solution to contact the maximum number of Contacts (as defined below) or Users, as applicable depending on the Solutions ordered. Unless otherwise provided in the applicable Quote or documentation, Services are purchased as annual subscriptions.

1.2 Users; Contacts. "**Users**" are individuals who are authorized by Client from time to time to use the Solutions for the purposes of sending notifications, configuring templates, reporting or managing data, serving as system administrators, or performing similar functions, and who have been supplied user identifications and passwords by Client. Users may include employees and contractors of Customer or an Included Department. "**Included Department**" means any enterprise department, office, agency, or other entity that receives a majority of its funding from the same general or enterprise fund, as applicable, as the Customer. "**Contacts**" are individuals who Customer contacts through the Solutions and/or who provides their personal contact information to Everbridge, including through an opt-in portal. If applicable to the particular Solution, the number of Users and/or Contacts that may be authorized by Customer is set forth on the Quote.

2. PAYMENT TERMS. Customer shall pay the fees set forth in the Quote ("**Pricing**"). All pricing must be consistent with the Schedule Price List. If Customer exceeds the usage levels specified in the Quote, then Everbridge may invoice Customer for any overages at rates consistent with the Schedule Price list. Professional Services must be used within 12 months from date of purchase.

3. RESPONSIBILITIES.

3.1 Users. Customer 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. Customer shall be responsible for: (i) ensuring that Users maintain the confidentiality of all User login and password information; (ii) ensuring that Users use the Services 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 any User; and (iv) all

communications by Users using the Solutions. Customer 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 transmitted to Everbridge in connection with the use of the Solutions, including data submitted by Contacts. Customer Data provided by Customer shall be true, accurate, current and complete, and shall be in a form and format specified by Everbridge. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. Customer represents that it has 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 Solutions. Customer shall maintain a copy of all Customer Contact data that it provides to Everbridge. Customer acknowledges that the Solutions are a passive conduit for the transmission of Customer Data and 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 for any losses, damages, claims, suits or other actions arising out of or in connection with any Customer Data sent, accessed, posted or otherwise transmitted via the Solutions.

4. TERM. This Agreement will commence on the Effective Date and will continue in full force and effect until all executed Quotes have terminated.

5. TERMINATION; SUSPENSION.

5.1 Termination by Either Party. [Intentionally Deleted]

5.2 Termination by Everbridge. [Intentionally Deleted]

5.3 Suspension. Everbridge may suspend, with or without notice, the Solution or any portion for (i) emergency network repairs, threats to, or actual breach of network security; or (ii) any legal, regulatory, or governmental prohibition affecting the Solution. In the event of a suspension, Everbridge shall use its best efforts to notify Customer through its Customer Portal and/or via email prior to such suspension and shall reactivate any affected portion of the Solution as soon as possible.

6. PROPRIETARY RIGHTS.

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

6.2 Restrictions. Customer shall use the Solutions solely for its internal business purposes and shall not make the Solutions available to, or use the Solutions for the benefit of, any third party except as expressly contemplated by this Agreement.

Customer shall not: (i) copy, modify, reverse engineer, decompile, 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 Solutions (the “**Software**”) or create derivative works based on the Software, the Solutions 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 Solutions; (v) create internet “links” to or from the Solutions, or “frame” or “mirror” any content forming part of the Solutions, other than on Customer’s own intranets for its own internal business purposes; (vi) 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 Solutions; (vii) use the Solutions in violation of any applicable law or regulation; or (viii) access the Solutions for purposes of monitoring Solutions 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 no license or other rights in or to the Solutions, the Software or any other proprietary technology, material or information made available to Customer through the Solutions 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 Solutions, 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 and Contacts, and (ii) all transactional, performance, derivative data and metadata generated in connection with the Solutions.

7. CONFIDENTIAL INFORMATION.

7.1 Definition; Protection. As used herein, “**Confidential Information**” means all information of a Party (“**Disclosing Party**”) disclosed to the other Party (“**Receiving Party**”), whether orally, electronically, 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 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. The Receiving Party shall not disclose any Confidential Information of the Disclosing Party except: (i) to the personnel of the Receiving Party or its parent, subsidiary or

affiliate organizations having a need to know; or (ii) to the personnel of the Receiving Party’s consultants and service providers having a need to know, and only then if such consultants and service providers are bound by confidentiality and non-disclosure commitments substantially similar to those contained herein. 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.

8. WARRANTIES; DISCLAIMER.

8.1 Everbridge Warranty. Everbridge shall use commercially reasonable efforts to provide the Services herein contemplated. To the extent professional services are provided, Everbridge shall perform them in a professional manner consistent with industry standards.

8.2 Disclaimer. NEITHER EVERBRIDGE NOR ITS LICENSORS WARRANT THAT THE SOLUTION 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 SOLUTION 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. THIS AGREEMENT DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(O). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.

8.3 Customer Representations and Warranties. Customer represents and warrants that during use of the Solutions, Customer 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 acknowledges and agrees that Everbridge is not a First Responder, and that the Solutions does not serve as a substitute for Customer’s 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 Solutions. Customer represents and warrants that all notifications sent through the Solutions shall be sent by authorized Users, and that the collection, storage and processing of Customer Data, and the use of the Solutions, as provided in this Agreement, will at all times comply with (x) 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. [Intentionally Deleted]

9.2 By Everbridge. Everbridge shall indemnify and hold Customer harmless from and against any Claim against Customer, but only to the extent it is based on a Claim that the Solution directly infringes an issued patent or other IP Right in a

country in which the Solution is provided to Customer. 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 the right to continue using the Solution; (ii) replace same with a non-infringing service; (iii) modify such Solution so that it becomes non-infringing; or (iv) refund any fees paid to Everbridge and terminate this Agreement without further liability. Everbridge shall have no liability for any Claim arising out of (w) Customer Data or other Customer supplied content, (x) use of the Solution in combination with other products, equipment, software or data not supplied by Everbridge, (y) any use, reproduction, or distribution of any release of the Solution other than the most current release made available to Customer, or (z) any modification of the Solution by any person other than Everbridge.

9.3 Indemnification Process. Customer shall (a) promptly give notice of the Claim to Everbridge once the Claim is known; (b) cooperate with Everbridge's efforts to defend and settle the Claim; and (c) provide Everbridge with all available information and reasonable assistance in connection with the defense of the Claim.

10. LIMITATION OF LIABILITY. Except for breaches of Section 6, neither Party shall have any liability to the other Party for any loss of use, interruption of business, lost profits, costs of substitute services, or for 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, in no event shall Everbridge's aggregate liability, regardless of whether any action or claim is based on warranty, contract, tort, indemnification 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. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Agreement under any federal fraud statute. Furthermore, this clause shall not impair nor prejudice the U.S. Government's right to express remedies provided in the schedule contract (i.e. Price Reductions, Patent Indemnification, Liability for Injury or Damage, Price Adjustment, Failure to Provide Accurate Information).

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, hire 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. See GSA Schedule 70 contract and individual ordering document.

11.3 Waiver; Severability. The failure of either Party 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 Customer, and any such attempted assignment shall be void and of no effect without the advance written consent of Everbridge, which shall not be unreasonably withheld.

11.5 Governing Law. This Agreement shall be governed and construed in accordance with the federal laws of the United States of America.

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. [Intentionally Deleted]

11.9 Marketing. Everbridge shall obtain Customer's express written consent in order to reference Customer's name and logo as an Everbridge customer in Everbridge publications, its website, and other marketing materials.

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 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 Equal Employment Opportunity. Everbridge, Inc. is a government contractor and is subject to the requirements of Executive Order 11246, the Rehabilitation Assistance Act and VEVRAA. Pursuant to these requirements, the Equal Opportunity Clauses found at 41 Code of Federal Regulations sections 60-1.4(a) (1-7), sections 60-250.4(a-m), sections 60-300.5 (1-11) and sections 60-741.5 (a) (1-6) are incorporated herein by reference as though set forth at length, and made an express part of this Agreement.

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 in the Customer's Quote.

If Client Is Ordering Nixle® Branded Products or Community Engagement:

1. Client grants to Everbridge a non-exclusive, royalty free, worldwide and perpetual right and license (including sublicense) to (a) use, copy, display, disseminate, publish, translate, reformat and create derivative works from communications Client sends through the Solutions for public facing communications to citizens, other public groups and public facing websites, including social media (e.g., Google®, Facebook®) (collectively, "**Public Communications**"), (b) use and display Client's trademarks, service marks and logos, solely as part of the Public Communications to Contacts who have opted in to receive those Communications, and on other websites where Everbridge displays your Public Communications, as applicable, and (c) place a widget on Client's website in order to drive Contact opt-in registrations.

If Client Is Ordering Everbridge Branded Products:

1. **Data Feeds.** Notwithstanding anything to the contrary in this Agreement, to the extent that Customer has purchased or accesses Data Feeds, 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, such feeds are provided solely on an "AS IS" and "AS AVAILABLE" basis and Everbridge disclaims any and all liability of any kind or nature resulting from any inaccuracies or failures with respect to such Data Feeds. "**Data Feed**" means data content licensed or provided by third parties to Everbridge and supplied to Customer in connection with the Solution (e.g., real time weather system information and warnings, 911 data, third party maps, and situational intelligence).
2. **Incident Management/IT Alerting.** For Customers purchasing the Incident Management or IT Alerting Solution, unless designated as unlimited: (a) Customers may only designate the number of Users 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; (d) IT Alerting Users shall have the ability to build, launch or manage incidents as well as participate in an on-call schedule to receive IT outage notifications, and (e) Customer shall be provided the number of incident templates purchased pursuant to the Quote. "**Incident Administrator**" means an individual who is authorized by Client as an organizational administrator for the Incident Management or IT Alerting Solution. "**Incident Operator**" means an individual who is authorized by Client as an operator of the Incident Management or IT Alerting Solution.

EXHIBIT B
IPAWS- CMAS/WEA Addendum

This addendum is incorporated by reference into the Agreement as applicable based on the purchase of IPAWS-CMAS/WEA services on the Quote.

1. IPAWS Authorization: Client represents and warrants to Everbridge that any employee, agents, or representatives of Client who access IPAWS-OPEN using Client's credentials provided by FEMA (each, an "IPAWS User"), are authorized by FEMA to use IPAWS-OPEN, have completed all required training, and Client has executed an IPAWS Memorandum of Agreement ("MOA") with FEMA. Client shall contact Everbridge immediately upon any change in Client or any IPAWS User's right to access IPAWS-OPEN. Client shall only access IPAWS-OPEN using its designated credentials and FEMA issued digital certificate ("Digital Certificate"). Client acknowledges and agrees that Everbridge shall not have access to its credentials and that Client assumes full responsibility for maintaining the confidentiality of any credentials issued to it.
1. Credentials: Client shall load and maintain within its Everbridge account Organization, its Digital Certificate, COG ID, and Common Name. Client authorizes and requests Everbridge to use the foregoing stored information to connect Client to IPAWS-OPEN.
2. Messaging: Client acknowledges and agrees that: (i) upon submission of messages to IPAWS-OPEN, Everbridge shall have no further liability for the distribution of such message, and that the distribution through IPAWS-OPEN, including, but not limited to, delivery through the Emergency Alert System or the Commercial Mobile Alert System, is in no way guaranteed or controlled by Everbridge; (ii) Everbridge shall not be liable as a result of any failure to receive messages distributed through IPAWS-OPEN; (iii) IPAWS may include additional features not supported through the Everbridge system, and Everbridge shall not be required to provide such additional features to Client; and (iv) Client shall be solely responsible and liable for the content of any and all messages sent through IPAWS-OPEN utilizing its access codes.
3. Term: Client acknowledges and agrees that access to IPAWS-OPEN shall be available once Client has provided Everbridge with the Digital Certificate and any other reasonably requested information to verify access to the system. Upon termination of the Agreement access to IPAWS-OPEN shall immediately terminate.