



MEMORANDUM

June 1, 2012

TO: Board of Mayor & Aldermen

FROM: Eric Stuckey, City Administrator *ES*
Fred Banner, MIT Director

SUBJECT: Everbridge SmartGIS Alert System

Purpose

The purpose of this memorandum is to request approval of an agreement with Everbridge, Inc. for a citizen alert dial out system that can be used by all City Departments. Primary control of this system for citizen alerts will be by our Public Safety Departments.

Background

The City's current system for citizen notification (GeoComm ENS Software Dialer) prohibits use by multiple departments. There is a limitation on our ability to send a message to all Franklin residents as a per call charge is added after a specified number of calls are made. As a result of these limitations, the City researched other systems and options for providing this service.

Following an analysis of five systems, City staff identified the Everbridge system as the best, most effective match for the City of Franklin's needs. Everbridge allows unlimited group alerting and use by multiple departments. For example, each departmental shift can be in one group and within that group sub groups are permitted. This system was reviewed by the Leadership Team, several department users, and the Municipal Information Technology (MIT) department. The system fits our current operating environment (SQL). No additional hardware purchases will be necessary. Everbridge was determined to be the most cost effective system and provided the most desired features to the City.

Financial Impact

Currently, the City pays \$8,103.22 per year for maintenance of the GeoComm ENS software. Based on Board direction, the existing system and associated costs would be removed. The cost of the Everbridge system is \$15,400 which includes unlimited user access, training and setup assistance. The annual recurring fee is \$15,400 renewable at this rate for four years. Everbridge is listed with GSA (GS-35F-0692P). Since this is a system that can be used by all departments, the initial charge will be to MIT (Computer Software – 83550) The City contract number is 2012-0058. The costs of the Everbridge system will be absorbed within the City's existing budget.

Options

Continue to use the current system or explore other options further.

Recommendation

Approval of the proposed agreement with Everbridge, Inc. is recommended.

Standard Procurement Terms and Conditions City of Franklin, Tennessee

1. Assignment/Subcontracting. Neither party may assign any rights or obligations under these Standard Procurement Terms and Conditions or any Statement of Work without the prior written consent of the other party, except Vendor may assign the same to a successor to its business. These Standard Procurement Terms and Conditions will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Vendor may subcontract any portion of the work only with the prior consent of the City, but such subcontracting will not relieve Vendor of its duties under these Standard Procurement Terms and Conditions.
2. Time of the Essence. The parties agree that TIME IS OF THE ESSENCE with respect to the vendor's performance of all provisions of this procurement.
3. Taxes. As a tax-exempt entity, the City shall not be responsible for sales or use taxes incurred for products or services. Upon request, the City shall supply Vendor with a copy of its Sales and Use Tax Exemption Certificate. Vendor shall bear the burden of providing its suppliers with a copy of the City's tax exemption certificate and shall assume all liability for such taxes, if any, that should be incurred.
4. Notices. Any notice provided pursuant to these Standard Procurement Terms and Conditions, if specified to be in writing, will be in writing and will be deemed given: (a) if by hand delivery, then upon receipt thereof; (b) if mailed, then three (3) City business days after deposit in the mail where sender is located, postage prepaid, certified mail return receipt requested; (c) if by next day delivery service, then upon such delivery; or (d) if by facsimile transmission or electronic mail, then upon confirmation of receipt. All notices will be addressed to the parties at the addresses set forth below (or set forth in such other document which these Standard Procurement Terms and Conditions may accompany, or such other address as either party may in the future specify in writing to the other):

In the case of the City:

City of Franklin
Attn: Purchasing Manager
109 Third Ave. South
P.O. Box 305
Franklin, TN 37065-0305
FAX: 615/550-0079
E-mail: purchasing@franklintn.gov

In the case of Vendor:

Everbridge Inc.
Attn: Marie-Louise LEGLISE
505 N. Brand Blvd., Suite 700

Glendale, CA 91203
FAX: 818-484-2299
E-mail: marie.leglise@everbridge.com

Standard Procurement Terms and Conditions

City of Franklin, Tennessee

5. Confidentiality and Proprietary rights. Vendor waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page (or section as the case may be) as confidential or proprietary. Proprietary rights do not extend to the data created by the City's users of the System; all rights to that data (including derivative or hidden data such as metadata other than aggregated system performance data that does not identify users or the City) shall vest solely in City at the moment of creation and City shall retain exclusive rights, title, and ownership of all data and images created therefrom at the moment of creation and utilization, through and including image creation. City may be required to disclose documents under state or federal law. City shall notify Vendor if a request for documents has been made and shall give Vendor a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. In exchange, Vendor agrees to indemnify, defend, and hold harmless City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law if Vendor refuses to permit such disclosure,, or (ii) the City's release of documents as a result of City's reliance upon Vendor 's representation that materials supplied by Vendor (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Vendor and Vendor assumes control over that claim.

6. Derivative Works. To the extent that the Agreement contains Vendor's reservation of rights, such definitions and limitations are superseded by the following: "Derivative Work" means a program that is based on or derived from one or more existing programs or components. If the original software is modified to create a new program, a derived work is created. If the original software was designed to accept plug-ins or drivers using a defined mechanism, such a driver or plug-in does not form a derived work. Linking to a library in the way it was designed to be interfaced with, does *not* constitute deriving a work. "Derivative work" is *not* the data that the Licensee inputs, manipulates, modifies or otherwise improves, nor the images resulting therefrom.

7. Arbitration/Mediation. No arbitration shall be required as a condition precedent to filing any legal claim arising out of or relating to the Contract. No arbitration or mediation shall be binding.

8. Waiver. Neither party's failure or delay to exercise any of its rights or powers under these Standard Procurement Terms and Conditions will constitute or be deemed a waiver or forfeiture of those rights or powers. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (a) a future or continuing waiver of that same right or power, or (b) the waiver of any other right or power.

9. Warranties/Limitation of Liability/Waiver. The City does not waive any rights it may have to all remedies provided by law.

10. Severability. If any term or provision of these Standard Procurement Terms and Conditions is held to be illegal or unenforceable, the validity or enforceability of the remainder of these Standard Procurement Terms and Conditions will not be affected.

Standard Procurement Terms and Conditions City of Franklin, Tennessee

11. Precedence. In the event of conflict between the provisions of these Standard Procurement Terms and Conditions and any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany, the provisions of these Standard Procurement Terms and Conditions will to the extent of such conflict take precedence unless such document expressly states that it is amending these Standard Procurement Terms and Conditions.

12. Indemnification. Intentionally deleted.

13. Additions/Modifications. If seeking any addition or modification to the Contract, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of the Contract, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings.

14. Applicable Law; Choice of Forum/Venue. These Standard Procurement Terms and Conditions are made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to any state's choice-of-law rules. The choice of forum and venue shall be exclusively in the Courts of Williamson County, TN.

15. Termination. Unless the City has indicated otherwise for a specific procurement solicitation, either party may terminate these Standard Procurement Terms and Conditions, with or without cause, upon thirty (30) calendar days' notice to the other. Upon termination of services, whether connected or unconnected to goods and equipment, such services shall be rendered until the conclusion of the 30th calendar day as stated in the notice or until a contractual benchmark has been achieved, or as the parties may otherwise agree. The City shall not be entitled to a refund of any portion of the annual fee in the event of termination for any reason.

Standard Procurement Terms and Conditions

City of Franklin, Tennessee

16. Breach. Upon deliberate breach of these Standard Procurement Terms and Conditions, or of any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany, by either party, the non-breaching party shall be entitled to terminate these Standard Procurement Terms and Conditions without notice, with all of the remedies it would have in the event of termination under section 10 (“Severability”) above, and may also have such other remedies as it may be entitled to in law or in equity.

17. Default. If Vendor fails to perform or comply with any provision of these Standard Procurement Terms and Conditions, or of any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany, then the City (i) may cancel the purchase award and/or the accompanying contract or agreement or purchase order, in whole or in part, without penalty or protest by Vendor; (ii) may consider such failure to perform or comply as a breach of contract; (iii) reserves the right to purchase its requirements from the vendor that submitted the next lowest and best responsive and responsible bid, or the vendor that submitted the next best proposal, if that vendor will still honor that bid or proposal, or to seek new bids or proposals, or to pursue one or more other options available to the City in compliance with its then current purchasing policy;

18. Entire Agreement. These Standard Procurement Terms and Conditions, including any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany, constitutes the entire agreement between the parties and supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of these Standard Procurement Terms and Conditions. The terms and conditions of these Standard Procurement Terms and Conditions may not be changed except by an amendment expressly referencing these Standard Procurement Terms and Conditions by section number and signed by an authorized representative of each party.

19. Survival. These Standard Procurement Terms and Conditions shall survive the completion of or any termination of any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany.

**Everbridge, Inc.
Service Agreement**

COF Contract #2012-0058

This Service Agreement ("Agreement") is entered into by and between Everbridge Inc. ("Everbridge"), and City of Franklin, Tennessee ("Customer"), on _____, 20__ (the "Effective Date"). Everbridge and Customer are each hereinafter sometimes referred to as a "Party" and collectively, the "Parties."

THE PARTIES AGREE TO THE FOLLOWING TERMS AND CONDITIONS GOVERNING THE USE OF EVERBRIDGE'S SERVICE:

1. **DEFINITIONS.** As used herein, the following terms shall have the meanings ascribed to them as set forth below:

"Everbridge Technology" includes, without limitation, the Software, all proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs, and other tangible or intangible technical material or information) made available to Customer through the Service or otherwise in connection with this Agreement. "Applicable Law" means any domestic or foreign law (statutory, common, or otherwise), order, writ, injunction, decree, award, stipulation, ordinance or administrative doctrine, ordinance, equitable principle, code, rule, regulation, executive order, request, or other similar authority enacted, adopted, promulgated, or applied by any Governmental Body, each as amended including, without limitation, the Telephone Consumer Privacy Act (TCPA, 47 USC Section 227) and implementing Federal Communications Rules (47 CFR 64.1200), the CAN-SPAM Act (15 USC Section 7701 et seq.) and the FCC's implementing rules (47 CFR Section 64.3100, with respect to communications to wireless devices) (47 CFR 64.3100), and the Federal Trade Commission's implementing rules (16 CFR Section 316.3, with respect to communications to computers). "AUP" means the Acceptable Use Policy of Everbridge, available at <http://www.everbridge.com/aup>, as may be amended from time to time. "Customer Data" means the names and contact paths for Members, and any and all electronic data provided by Customer to Everbridge in connection with the use of the Service. "Governmental Body" means any legislature, agency, bureau, branch, department, division, commission, court, tribunal, magistrate, justice, multi-national organization, quasi-governmental body, or other similar recognized organization or body of any federal, state, county, municipal, local, or foreign government or other similar recognized organization or body exercising similar powers or authority. "Intellectual Property Rights" means patented or unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.

"Member" or "Members" shall mean Customer's employees, agents, representatives, clients, customers, subscribers, members and/or other persons or entities whom Customer may wish to contact using the Service, *provided, however*, that each Member Record, if more than one for any Member, shall be deemed to represent a separate Member for all purposes hereunder. "Member Record" includes, without limitation, the Customer Data for a Member. "Quote" means the description of Services purchased by Customer, subject to the terms and conditions hereof, which is attached hereto as Exhibit A and incorporated herein by this reference. "Software" means the computer source code and object code, including, without limitation, the software, provided or used by Everbridge in connection with the Service provided hereunder. "Users" means Members, Customer's employees, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by Customer (or by Everbridge at Customer's request).

2. **SERVICE.** Subject to the provisions of this Agreement, Everbridge shall provide Customer access to the service utilizing the Software, applications and services that comprise the Everbridge Mass Notification System ("System"), an automated system for delivery of messages to multiple Members via multiple communication paths, and for processing responses thereto, as set forth in the Quote (the "Service"). Unless explicitly stated otherwise, any new features that augment or enhance the current Service, including any new Service, will be subject to the provisions of this Agreement. Everbridge shall make the Service available to Customer pursuant to the terms and conditions set forth in this Agreement. Customer agrees that its purchase of the Service is not contingent upon the delivery of any future functionality or features, nor is it dependent upon any oral or written public comments made by Everbridge with respect to future functionality or features.

3. **USE OF THE SERVICE.**

3.1 **Everbridge Responsibilities.** Everbridge shall: (i) in addition to its confidentiality obligations pursuant to Section 10, not use, edit or disclose to any party other than Customer, the Customer Data, unless otherwise required by a Governmental Body; (ii) use commercially reasonable efforts to provide the Service herein contemplated; (iii) use commercially reasonable efforts to provide support for the Service, except for: any unavailability caused by circumstances beyond Everbridge's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems, and network intrusions or denial of service attacks, in each case, which are not within Everbridge's possession or reasonable control. The Everbridge System

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delivers messages for supported contact paths to the public / private networks and carriers, but cannot guarantee delivery of the messages to the recipients. Final delivery of messages to recipients is dependent on and is the responsibility of the designated public / private networks or carriers.

3.2 **Customer Responsibilities.**

(a) Customer is responsible for all activities that occur under Customer's account. Customer shall: (i) provide Everbridge with the Customer Data for Members that Customer and Customer's authorized users want to communicate with using the Service; (ii) provide Everbridge with this Customer Data in a form and format specified by Everbridge, if so required; (iii) have sole and exclusive responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (iv) maintain a copy of all Customer Data it provides to Everbridge; (v) designate certain Users to access and use the Service on Customer's behalf; (vi) ensure that Users shall at all times use the Service in accordance and in compliance with this Agreement, and the AUP, as each may be updated periodically by Everbridge; (vii) prevent unauthorized access to, or use of, the Service, and notify Everbridge promptly of any such unauthorized use and, notwithstanding anything to the contrary in this Agreement, Everbridge shall have no liability for any losses, damages, claims, suits or other actions arising out of or in connection with such unauthorized or improper use of the Service by Customer, Users or Members; and (viii) comply with all Applicable Laws; (ix) cause such number of its employees, as determined by Customer, to undergo initial setup and training, as set forth in the Quote; (x) not cause any disturbances, outages or take any other actions that may adversely affect the Service; and (xi) be responsible for, and/or its Users shall be responsible for, payment of any service fees, text messaging fees, and any other third party fees or expenses, associated or incurred in connection with, the access or use of the Service by Customer and/or its Users. Customer acknowledges that it is solely responsible for the content of any information that it makes available through the Service and that Everbridge will not, except as otherwise expressly herein set forth, monitor Customer or Customer's use of the Service to examine the content passing through it. Notwithstanding anything to the contrary in this Agreement, in no event shall Everbridge be liable to Customer, a Member or any other third party for any failure on the part of Customer to fulfill its responsibilities pursuant to this Section 3.2 and Everbridge expressly disclaims any liability arising therefrom.

(b) Customer agrees to: (i) provide true, accurate, current, up-to-date and complete Customer Data and information about itself; and (ii) maintain and promptly update the Customer Data to keep it true, accurate, current and complete, the failure of which shall not impose or create any liability or obligation on the part of Everbridge. If Customer authorizes Everbridge to do so, Customer's Members will be allowed access to their personal Customer Data to make modifications or changes thereto. If Customer or any Member provides any information that is untrue, inaccurate, not current or incomplete, Customer understands, acknowledges and agrees that any notifications sent utilizing the Service may not reach the intended Member.

(c) Customer may designate up to the number of Users permitted under its account, which corresponds to the level of Service purchased by Customer as set forth in the Quote. Customer shall be responsible for the confidentiality and use of its Users' identifications and passwords. Customer shall be responsible for all electronic communications (including maintenance of Customer Data) and the sending of messages to Members ("Electronic Communications") entered through or under a User's identification and/or password(s). Everbridge will act as though any Electronic Communications sent by Customer shall comply with Applicable Law, and shall have been sent by an authorized User, and shall be permitted to rely thereon for all purposes. Customer agrees to immediately notify Everbridge if it becomes aware of any loss or theft of a User's identification and/or password(s) or any unauthorized use of the Service and/or identification and/or password(s) used in connection therewith.

4. **Use Guidelines.** Customer shall use the Service solely for its internal business purposes as contemplated by this Agreement and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party, other than as contemplated by this Agreement; or (ii) use the Service in violation of the AUP or Applicable Law.

5. **TERM.** This Agreement will commence on the Effective Date and will continue in force for one (1) year (the "Initial Term"). Subject to the provisions of this Section 5, unless terminated, Customer may renew this Agreement annually by giving written notice not less than 30 days prior to the expiration of the then current Term, for up to four (4) additional successive one- ; a total of five (5) years (each option year is a "Renewal Term" and, together with the Initial Term, collectively hereinafter referred to as the "Term"). Any termination pursuant to this Section 5 shall be effective at the end of the Initial Term for the first year or the then current Renewal Term for any subsequent years.

6. **TERMINATION; SUSPENSION.**

6.1 **Termination by Either Party.** During the Initial Term and any Renewal Term, either Party may terminate this Agreement for cause, 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 the non-breaching Party's election to terminate this Agreement.

6.2 **Termination, Suspension by Everbridge.** In the event Customer fails to pay any fees or charges within thirty (30) days of the due date, Everbridge may terminate this Agreement and/or the Service, at Everbridge's sole discretion. Termination for non-payment shall not relieve Customer of its responsibilities under this Agreement including, but not limited to, its obligation to pay the fees accruing under or with respect to this Agreement for periods prior to or following such termination. In furtherance of, and not in limitation of the foregoing, Everbridge may, at its option, suspend the Service or terminate this Agreement, effective upon notice, should Customer's or a User's use of the Service (i) violate the provisions of Section 3.2 hereof, or (ii) in the event Customer fails to pay any fees or charges when due. In the event of a suspension of the Service, Customer's account shall not be reactivated until such time as Customer shall be in compliance with the AUP, Section 3.2 and/or shall have paid all past due amounts, as the case may be.

7. **PRICING.** As consideration for the Service, and subject to the other terms of this Agreement, Customer shall pay the fees set forth in the Quote ("Pricing") upon presentation of an itemized invoice. If Customer exceeds the minutes usage and/or Member count as specified in the Quote, then, Everbridge reserves the right to annually review the minutes and Member usage and invoice Customer as necessary at the current rates and Customer shall pay within 30 days of invoice. Fees for professional services, if applicable, shall be set forth in a SOW. Notwithstanding anything to the contrary in Section 5 or elsewhere in this Agreement, the Pricing shall remain constant for the first Renewal Term following the Initial Term, and for the next four successive one year Renewal Terms thereafter.

8. PAYMENT TERMS; TAXES.

8.1 **Payment.** Unless otherwise set forth in Exhibit A, Everbridge shall invoice Customer in advance for the Initial Term and annually in advance for any Renewal Term. All payments, including, without limitation, fees for professional services, shall be made within thirty (30) days from the date of invoice.

8.2 **Taxes.** Unless otherwise provided for in Exhibit A, or in a SOW, as the case may be, Everbridge's Pricing and fees for professional services do not include any local, state, federal or foreign taxes, levies or duties of any nature ("Taxes"). Customer is responsible for paying all Taxes, excluding only taxes based on Everbridge's income. If Everbridge has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Everbridge with a valid tax exemption certificate authorized by the appropriate taxing authority.

9. PROPRIETARY RIGHTS.

9.1 **Grant of License.** Everbridge hereby grants to Customer, during the Term, a non-exclusive, non-transferable right to use the Service, solely for Customer's own internal business purposes, subject to the terms and conditions of this Agreement. Upon suspension of the Service as herein contemplated, or upon termination of this Agreement for any reason, all licensed rights granted to Customer pursuant to this Agreement shall terminate immediately, and Customer shall promptly discontinue all further use of the Service.

9.2 **Restrictions.** Customer will not: (i) copy, modify, port, adapt, translate, localize, reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code of the Software, the Service or any portion thereof for any purposes, including, without limitation, to (x) build a competitive product or service; (y) build a product using similar ideas, features, functions or graphics of the Service; or (z) copy any ideas, features, functions or graphics of the Service; (ii) create derivative works based on the Software, the Service or any portion thereof or merge any of the foregoing with any third party software or services; (iii) remove, obscure or alter any proprietary notices or labels on the Software, or any portion of the Service; (iv) transfer, lease, assign, sublicense, pledge, rent, share, distribute or allow any lien or encumbrance to be placed on the Service or Software or any portions thereof; (v) disclose the results of any performance, functional or other evaluation or benchmarking of the Software or Service; provided, however, Customer may distribute the reports and other data generated by the Service (excluding any Everbridge intellectual property or confidential information included therein); (vi) use the Software, the Service or any portion thereof to provide services to any third party or for the benefit of any third party, including, without limitation, any entity or individual that markets, distributes or provides notification software or services; (vii) create Internet "links" to or from the Service, or "frame" or "mirror" any content forming part of the Service, other than on Customer's own intranets or otherwise for its own internal business purposes; (viii) use, post, transmit or introduce any device, software or routine

which interferes or attempts to interfere with the operation of the Service or the Software; or (ix) permit access to the Software, the Service or any portion thereof by any third party other than Customer's Users who (a) are bound by the terms of a written agreement with Customer which will protect Everbridge and its Intellectual Property Rights in a manner no less protective as the terms hereof and (b) use the Software and the Service solely for the benefit of Customer (each a "Permitted Contractor"). Customer shall be liable to Everbridge for any breach of the terms of this Agreement by any of its Permitted Contractors to the same extent that Customer would be liable hereunder had it committed the same breach.

9.3 **Reservation of Rights.** Other than as expressly set forth in this Agreement, no license or other rights in or to the Everbridge Technology or Intellectual Property Rights therein are granted to Customer, and all such licenses and rights are hereby expressly reserved. In furtherance of, and not in limitation of the foregoing, Everbridge owns all rights, title and interest, including any and all related Intellectual Property Rights, in and to Everbridge Technology and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or a User, relating to the Service. Customer acknowledges and agrees that Everbridge will retain all right, title and interest to bench marking data, abstracted derivative data, transactional, performance data and metadata (but not to Customer Data) related to use of the Service or the Software and the Service which Everbridge may aggregate, benchmark and collect in such a way as to not allow identification of Customer or a User (including Software use optimization and product marketing), provided that such use does not reveal the identity of Customer or Users or specific Software use characteristics that may be identified to Customer (collectively, the "Transactional Data"). This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Service, Everbridge Technology or Intellectual Property Rights owned by Everbridge, provided, however, that as between Everbridge and Customer, all Customer Data that is not Transactional Data shall be owned exclusively by Customer.

10. CONFIDENTIAL INFORMATION.

10.1 **Definition; Protection.** As used herein, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, 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, including the terms and conditions of this Agreement (including pricing and other terms reflected herein and in all Order Forms hereunder), the Customer Data, the Service, the Everbridge Technology and Intellectual Property Rights therein, business and marketing plans, technology and technical information, product designs, reports and business processes. Confidential Information (except for Customer Data) 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 outside the scope of this Agreement, except with the Disclosing Party's prior written permission. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 10, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate. In furtherance of, and not in limitation of anything set forth in this Section 10 or elsewhere in this Agreement, the terms and conditions of this Agreement shall be Confidential Information of Everbridge.

10.2 **Definition; Protection.** As used herein, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, 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, including the terms and conditions of this Agreement (including pricing and other terms reflected herein and in all Order Forms hereunder), the Customer Data, the Service, the Everbridge Technology and Intellectual Property Rights therein, business and marketing plans, technology and technical information, product designs, reports and business processes. Confidential Information (except for Customer Data) 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 outside the scope of this Agreement, except with the Disclosing

Party's prior written permission. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 10, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate. In furtherance of, and not in limitation of anything set forth in this Section 10 or elsewhere in this Agreement, the terms and conditions of this Agreement shall be Confidential Information of Everbridge.

10.3 Notwithstanding any provision of this Agreement to the contrary, Customer shall not be in violation of its confidentiality obligations hereunder to the extent it is required by law or court order to produce or release copies of this Agreement to the public under the Tennessee Public Records Act or any other applicable open meeting law, statute or regulation.

11. WARRANTIES & DISCLAIMERS.

11.1 **Warranties.** Customer represents and warrants that it has the legal power to enter into this Agreement and shall perform the responsibilities required by it pursuant to Section 3.2. By purchasing the Service, Customer authorizes Everbridge to collect, store and process Customer Data subject to the terms of this Agreement. Customer shall ensure that, during use of the Service, Customer shall have a privacy policy that clearly and conspicuously notifies the Members of the way in which Customer Data shall be used. Customer represents and warrants that the collection, storage and processing of such Customer Data, and the use of the Service, as provided in this Agreement, will at all times comply with (i) its own policies regarding privacy and protection of user information; and (ii) all Applicable Laws, including those related to processing, storage, use, reuse, disclosure, security, protection and handling of Customer Data.

11.2 **Disclaimer.** Except as expressly provided herein, Everbridge makes no warranty of any kind, whether express, implied, statutory, or otherwise. Everbridge hereby specifically disclaims all implied warranties, including any warranty of merchantability or fitness for a particular purpose, to the maximum extent permitted by Applicable Law.

12. **PROFESSIONAL SERVICES.** Everbridge may provide professional services to Customer from time to time. Such professional services shall, unless otherwise expressly therein set forth, be provided in accordance with, and subject to, the provisions hereof and any additional terms related thereto which are set forth in a Statement of Work ("SOW").

13. INDEMNIFICATION.

13.1 **By Customer.** To the extent permitted by Tennessee law, Customer shall defend, indemnify and hold Everbridge harmless against any loss or damage (including reasonable attorneys' fees) incurred in connection with any claims, suits or proceedings ("Claims") arising as a result of a breach of this Agreement.

13.2 **By Everbridge.** Everbridge shall defend, 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 Service directly infringes an issued patent or other intellectual property right of a country in which the Service is actually provided to Customer. If the Service is held to infringe and the use enjoined, Everbridge shall have the option, at its own expense, to procure for Customer the right to continue using the Service; or replace same with a non-infringing service; or modify such Service so that it becomes non-infringing. Everbridge shall have no liability for any infringement of patents, copyrights, or other intellectual property rights resulting from Customer content, use of the Service other than as specified in relevant Everbridge documentation, or use of the Service with products or services not supplied by Everbridge. Everbridge's indemnification obligations hereunder shall not apply to the extent that any warranty claim or demand for indemnification arises as a result of or is caused by (i) any unauthorized use, reproduction, or distribution of the Service or Software; (ii) any use of the Service or Software in combination with other products, equipment, software, or data not supplied by Everbridge; (iii) any use, reproduction, or distribution of any release of the Service or Software other than the most current release made available to Customer, or (iv) any modification of the Service or Software by any person other than Everbridge.

14. **LIMITATION OF LIABILITY.** In no event shall either Party have any liability to the other Party for any loss of use, interruption of business, or any lost profits, loss of use, costs of procurement of substitute goods or services, or for any indirect, special, incidental, punitive, or consequential damages however caused and, whether in contract, tort or under any other theory of liability, 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 either Party's aggregate liability, however arising out of or related to this Agreement, whether in contract, tort or under any other theory of liability, exceed the dollar limits on individual and aggregate claims from one incident for personal injuries and property damage under the Tennessee Governmental Tort Liability Act.

EBSAOPT031411

15. MISCELLANEOUS.

15.1 **Non-Solicitation and Non-Interference.** 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. In the event that Customer hires any such employee (whether as an employee or consultant or otherwise engages the services of such employee), Customer shall pay to Everbridge an amount equal to 100% of the total first-year compensation which Customer pays such individual as a fee, salary, or other compensation.

15.2 **Waiver; Severability.** The failure of either Party hereto to enforce at any time any of the provisions or terms of this Agreement, or any rights in respect thereof, or the exercise of or failure to exercise by either Party any rights or any of its elections herein provided, shall in no way be considered to be a waiver of such provisions, terms, rights or elections or in any way to affect the validity of this Agreement. If any of the provisions of this Agreement, or portion thereof, are held invalid or unenforceable, such invalidity or unenforceability shall not affect the remainder of this Agreement. In such event, the Parties shall negotiate, in good faith, a substitute, enforceable provision which most nearly affects their original intent in entering into this Agreement, failing which the Parties agree that the governmental body, arbitrator, or mediator making such determination shall have the power to modify the provision in a manner consistent with its objectives such that it is enforceable, and/or to delete specific words or phrases, and in its reduced form, such provision shall then be enforceable and shall be enforced.

15.3 **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, such consent not to be unreasonably withheld.

15.4 **Governing Law; Attorney's Fees.** This Agreement shall be governed exclusively by the internal laws of the State of Tennessee, without regard to its conflicts of laws rules. The state and federal courts located in Williamson County, Tennessee shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each Party hereby consents to the exclusive jurisdiction of such courts. Each Party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement. If either Party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees and costs.

15.5 **Notices.** All notices, consents and approvals under this Agreement must be delivered in writing (i) by courier, or (ii) by certified or registered mail, (postage prepaid and return receipt requested), to the other Party at the address set forth below, and will be effective upon receipt or three business days after being deposited in the mail as required above, whichever occurs sooner. Either Party may change its address by giving notice of the new address to the other Party. Notwithstanding the foregoing, any reports or other deliverables herein set forth or in a Transaction Document may, to the extent practicable, be delivered by Everbridge to Customer by electronic transmission (email) or by facsimile, in addition to the any other means herein provided for. Annual invoices shall be sent to the following Customer's contact and address:

City of Franklin Accounts Payable
P.O. Box 295, Franklin, TN 37065-0295

15.6 **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

15.7 **Entire Agreement.** This Agreement, including the attached Standard Procurement Terms and Conditions of Customer, the Exhibits, agreements and documents referenced herein and therein, and the AUP, (the "Transaction Documents") constitute the entire agreement between the Parties and supersedes any and all other agreements and understandings between Everbridge and Customer, whether oral or written, with respect to the subject matter hereof. This Agreement and, except as otherwise herein provided for, the Transaction Documents, shall not be modified or amended in any manner except by a writing signed by authorized representatives of both Parties. Nothing contained in a Transaction Document shall, except as otherwise herein provided for, modify any of the express terms or conditions set forth in this Agreement, and if any provision in a Transaction Document conflicts with a provision of this Agreement, such conflict shall be resolved in favor of this Agreement, unless the provision of such Transaction Document expressly provides otherwise.

15.8 **Marketing.** Customer agrees to be referenced as an Everbridge customer in a press release within thirty (30) days of the Effective Date. Expenses related to the creation and distribution of this press release will be borne by Everbridge.

15.9 **Survival.** Sections 1, 3, 4, 5, 6, and Sections 8 through 15 shall survive the expiration or earlier termination of this Agreement.

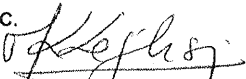
15.10 **Counterparts.** This Agreement and any Transaction Document may be executed in one or more counterparts, all of which together shall

constitute one original document. In lieu of the original, a facsimile transmission or copy of the original shall be as effective and enforceable as the original.

15.11 **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.

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

EVERBRIDGE, INC.

By: 
Print Name: Marie-Louise Lalise
Title: Vice President of Finance
Date: May 21, 2012

Address:
505 N. Brand Blvd., Suite 700
Glendale, CA 91203

CITY OF FRANKLIN, TENNESSEE

By: _____
Print Name: Dr. Ken Moore
Title: Mayor
Date: _____

Address: 109 3rd Ave. South
Franklin, TN 37064

Attest:

By: _____
Print Name: Eric S. Stuckey
Title: City Administrator
Date: _____

Approved as to Form by:

Kristen L. Corn, Staff Attorney

Exhibit A
Quote



505 N Brand Blvd, Ste 700
Glendale CA 91203 USA

T 800.368.4311
F 818.484.1299

www.everbridge.com

QUOTATION

Quote Number: 00003363

1 of 3

Exhibit A

Prepared for: Tom Voss
City of Franklin, TN
, TN
(615) 477-0969
tom.voss@franklin.tn.gov

Quotation Date: May 24, 2012
Quote Expiration Date: June 20, 2012
Rep: Lesley Turner
(818) 230-9539
lesley.turner@everbridgemail.com

Contract Summary Information

Contract Period: Contract Period: 1 Year
Contract Optional Years: 4 Years

Setup & Implementation

<u>Product</u>	<u>Fee Type</u>	<u>Qty</u>	<u>List Price</u>	<u>Total Price</u>
Everbridge SmartGIS for Citizen Alerts Set Up Fee - Unlimited - (up to 28,000 Households) 1) Dedicated Implementation Specialist / Project Manager 2) Everbridge SmartGIS administrative setup and configuration 3) Identification and set-up of Organizational Defaults 4) Prototype and demonstration of expected usage and configuration 5) Access to Client Success Self Service Portal including Best Practices Library 6) Initial upload and Geo Coding of a single data source or optional White Page Data if needed 7) Set up and Configuration of 1 Layer -- Onsite Training is an Optional Fee --	One-Time	1	\$7,995.00	\$0.00
Aware Set Up Fee (up to 2,000 Members) 1) Dedicated Implementation Specialist / Project Manager 2) Everbridge Aware administrative setup and configuration 3) Identification and set-up of Organizational Defaults 4) Access to Client Success Self Service Portal including Best Practices Library 5) Assistance with Data Management / Upload 6) One custom training session (online) -- Onsite Training is an Optional Fee	One-Time	1	\$5,399.00	\$0.00



505 N Brand Blvd, Ste 700 t 888.868.4811 www.everbridge.com
 Glendale CA 91203 USA f 818.484.0290

QUOTATION

Quote Number: 00003363

Confidential

2 of 3

Exhibit A

Annual Subscription

<u>Product</u>	<u>Fee Type</u>	<u>Qty</u>	<u>List Price</u>	<u>Total Price</u>
Everbridge SmartGIS for Citizen Alerts Annual Fee (up to 28,000 Households) Plan Inclusions: 1) All Contact Types (phone, email, SMS, fax, IM, pager and other types as supported) 2) Up to 35 Contact Paths Per User 3) Ongoing web training sessions 4) Polling Notifications with Call Transfer and Data Collection 5) Saved shape library 6) Real Time Confirmation of Human Receipt 7) Custom Caller-ID / Sender Email (Variable Per Broadcast) 8) Text to Speech Conversion 9) Stop Broadcast 10) Real Time Message Status Dashboard 11) 100% Custom Ad-Hoc Reporting 12) 24/7 Live Operator / Customer Service 13) 5 Live Operator Access Included With Plan	Recurring	1	\$16,520.00	\$15,400.00
Aware Annual Fee (up to 2,000 Members) Plan Inclusions: 1) Unlimited Administrators / Group Leaders System Access 2) Unlimited Groups and Sub-Groups 3) All Contact Types (phone, email, SMS, fax, IM, pager and other types as supported) 4) Up to 35 Contact Paths Per User 5) Real Time Confirmation of Human Receipt 6) Polling Notifications 7) Conference Call Notifications 8) Quota Notification 9) Scenario Manager - Pre-plan Multiple Messages in One Scenario 10) Custom Caller-ID / Sender Email (Variable Per Organization) 11) Text to Speech Conversion 12) Message escalation - 3 levels 13) Stop Broadcast 14) Real Time Message Status Dashboard 15) 100% Custom Ad-Hoc Reporting 16) 24/7 Live Operator / Customer Service 17) 5 Live Operator Access Included With Plan	Recurring	1	\$7,995.00	\$0.00

Additional Service Options

<u>Product</u>	<u>Fee Type</u>	<u>Qty</u>	<u>List Price</u>	<u>Total Price</u>
Everbridge Mobile Aware	Recurring	1	\$0.00	\$0.00
Aware QuickLaunch Annual Fee L02 (up to 2000 Members)	Recurring	1	\$1,995.00	\$0.00

