

**MEMORANDUM OF AGREEMENT
BETWEEN THE COUNTY OF ALAMEDA AND THE CITY OF OAKLAND
REGARDING PARTICIPATION IN
THE ALAMEDA COUNTY UNIFIED MASS NOTIFICATION SYSTEM**

THIS MEMORANDUM OF AGREEMENT (“MOA”) is made and entered into this 1ST day of May, 2022, by and between the County of Alameda (hereinafter referred to as “County”), acting by and through its Office of Emergency Services (OES), and the City of Oakland (hereinafter referred to as “City”). The County OES and the City of Oakland may be referred to collectively as “Parties” or in the singular as “Party”, as the context requires.

RECITALS

The County OES and the City have entered into this Memorandum of Agreement with reference to the following facts and circumstances:

WHEREAS, in 2015 the County, through its OES, was awarded grant funding from the Bay Area Urban Area Security Initiative (BAUASI) to fund the implementation of a county-wide unified mass notification system (MNS). The County ultimately selected Everbridge as the software as a service (SaaS) provider for the Alameda County MNS, known locally as AC Alert; and

WHEREAS, the AC Alert program is a shared resource which the County has made available to all fourteen cities in Alameda County, and each year since the original grant award the County’s application for continued grant funding for sustainment of the AC Alert program has been approved by the BAUASI; and

WHEREAS, the Everbridge system allows for high-speed delivery of alerts and notifications using multiple messaging modalities including: voice messages to landline, mobile and VoIP phones; TTY/TDD messages to enabled hardline phones; text messages to email accounts and/or via SMS to enabled mobile devices; as well as app based notifications to those with the Everbridge app installed on their mobile device; additionally, the system allows users to access the FEMA Wireless Emergency Alert (WEA) system to broadcast emergency notifications to cellular phones in any area of the County; and

WHEREAS, the current contract with Everbridge has been structured as a usage-based agreement in which the County is allocated a limited number of messaging credits annually. Under this messaging credit system all email and mobile app notifications remain unlimited; however, voice calls, SMS texts, fax and TTY/TDD notifications all consume messaging credits. Exceeding the annual allotment of messaging credits will result in additional charges based on the number of excess credits used.

WHEREAS, it is intended that the Alameda County Unified Mass Notification System be a shared resource benefitting all participating cities within the geographic boundaries of Alameda County. It is anticipated that each of the cities will enter into a similar MOA.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby agree as follows:

1. PURPOSE

The purpose of this MOA is to establish mutually agreeable guidelines for allowing the City access to and use of the Alameda County MNS system, AC Alert.

2. DESCRIPTION OF RESPONSIBILITIES

Access to and use of the Alameda County MNS will be governed by the Alameda County Unified Mass Notification System Policy (hereinafter referred to as “Policy”). Parties agree to comply with all terms of use as stipulated in the Alameda County MNS Policy. The Policy is attached hereto as Exhibit A.

3. TERM OF MOA; TERMINATION; OTHER MOU’S/AGREEMENTS/CONTRACTS

This MOA shall be effective when it is signed by both Parties. This MOA will remain in force and effect until May 31, 2027 or until such time as: BAUASI funding for the MNS project is reduced or discontinued; Everbridge is no longer used as the emergency notification system for the County and a replacement approved by Parties is not found; either party provides sixty (60) day written notification that it desires to terminate the MOA and withdraw from participation in the MNS; or either party violates the terms of the MOA including, but not limited to, the Use Policy attached hereto as Exhibit A, and/or any subsequent versions of this Policy.

The term and scope of this MOA is not dependent upon the execution or existence of any other agreement between Alameda County and the City, or the terms of any such agreement, or the termination of any such agreement.

This MOA may be modified at any time with the written consent of both Parties. All modifications shall be in writing and signed by both parties.

4. NOTICE

Any communication required during the term of this MOA, including, without limitation, notice of termination, shall be deemed given when placed in the United States Mail, postage prepaid, and addressed as follows:

Notice to OES: Emergency Services Manger
 Alameda County Office of Emergency Services
 4985 Broder Blvd.
 Dublin, CA 94568

Notice to City: Jessica J. Feil
 Emergency Services Manager
 1605 Martin Luther King Jr Way
 Oakland, CA 94612

Any Party who desires to change its address for notice may do so by giving notice as described above.

5. PAYMENT FOR SERVICES

To date, the base costs for the purchase of Everbridge mass notification service and support has been funded through BAUASI grant funds, which have been applied for and approved each year since the inception of the program. The base cost for the Alameda County Unified Mass Notification System project is currently funded through May 31, 2022. Each year the County shall continue to pursue additional BAUASI funding for sustainment of the project.

Contingent upon BAUASI continuing to fully fund the base cost of the Everbridge mass notification contract, the County will continue to make the AC Alert system available for use by all participating cities. However, unlike previous contracts that allowed unlimited messages using any/all delivery modalities, the current contract provides the County with a finite number of message-credits. Message credits are calculated based on the specific delivery method used. Some modalities consume more message credits than others. Email and mobile app-based notifications consume no message credits. Based on these contractual changes, the AC Alert Use Policy, attached hereto as Exhibit A, now restricts the delivery methods allowable when sending non-emergency public notifications. Only those messaging modalities that consume no message credits, e-mail and the mobile app, may be used to disseminate non-emergency notifications to the public. The AC Alert use policy imposes no restrictions on the allowable messaging modalities used for emergency notifications, however it does limit the scope of some emergency messages to target only those recipients within a reasonable geographic area of impact. This policy change is intended to reduce alerting fatigue and limit confusion of community members unaffected by the emergency, and to reduce the likelihood of exceeding the annual allotment of message credits, thereby controlling overall system costs.

In the event that the City sends any public notifications outside of the parameters specifically allowed by the Use Policy, regardless of whether done intentionally or erroneously, the City assumes liability for the associated cost if the notifications causes the County to exceed its messaging credit limit for the contract period. Costs will be billed based on the contract cost of the associated messaging credits used by these notifications, currently \$250 per 500,000 messaging credits. Messaging credits are charged per notification contact at the rate listed below.

Message Modality	Email	Push Notification	Pager	Voice	SMS Text	Conference Voice	TTY	FAX
Unit of Measure	per email sent	per mobile app notification	per pager message sent	per minute of the voice call	per SMS message	per minute of the voice call	per TTY message	per page sent
REGION 1: NORTH AMERICA	free	free	free	10	5	10	100	100
REGION 2: EUROPE	free	free	free	40	30	40	100	100
REGION 3: SOUTH AMERICA	free	free	free	190	40	190	100	100
REGION 4: AFRICA	free	free	free	400	50	400	100	100
REGION 5: ASIA	free	free	free	70	30	70	100	100
REGION 6: OCEANIA	free	free	free	100	40	100	100	100
REGION 7: MIDDLE EAST	free	free	free	170	30	170	100	100

6. ADMINISTRATION

For purposes of ongoing administration, an Alameda County MNS Advisory Committee shall be maintained and led by the Alameda County MNS System Administrator(s). The City shall designate a representative to the Advisory Committee as a standing member with authority to represent the City on matters related to use of the MNS. The Advisory Committee shall meet on a semi-annual basis, or more often as needed, to coordinate ongoing administration, training, public outreach, modification to policies and guidelines, or other issues related to MNS. Recommendations for substantive changes to the Use Policy shall be submitted to the Operational Area Council for approval.

7. PERSONNEL MATTERS

In the performance of any of the services under this MOA, each of the Party's employees shall act as independent contractors or operators (whichever is applicable to the government agency) in relation to the other Party and its employees. Each Party shall assume responsibility for all personnel costs for its respective employees.

8. NO JOINT VENTURE

This MOA shall not create between the Parties a joint venture, partnership, or any other relationship of association. Except as the Parties may specify in writing, neither Party shall have authority, express or implied, to act on behalf of the other Party in any capacity whatsoever as an agent. Neither Party shall have any authority, express or implied, pursuant to this MOU, to bind the other Party to any obligation whatsoever.

9. INDEMNITY

The County of Alameda shall assume the responsibility and liability for, and the County shall indemnify, defend, and hold harmless, the City, its agents, officers and employees from and against any and all liabilities, obligations, losses, damages, penalties, fines, claims, actions, suits, costs and expenses and disbursements (including legal fees and expenses) of any kind and nature imposed in, asserted against, incurred or suffered by the City or its agents, officers or employees by reason of damage, loss or injury (including death) of any kind or nature whatsoever to persons or property caused by or in any way relating to or arising out of any negligent act or action, or any neglect, omission or failure to act when under a duty to act on the part of the County or any of its agents, officers or employees in its or their performance of services hereunder.

The City shall assume the responsibility and liability for, and the City shall indemnify, defend, and hold harmless the County, its agents, officers and employees from and against any and all liabilities, obligations, losses, damages, penalties, fines, claims, actions, suits, costs and expenses and disbursements (including legal fees and expenses) of any kind and nature imposed in, asserted against, incurred or suffered by the County or its agents, officers or employees by reason of damage, loss or injury (including death) of any kind or nature whatsoever to persons or property caused by or in any way relating to or arising out of any negligent act or action, or any neglect, omission or failure to act when under a duty to act on the part of the City or any of its agents, officers or employees in its or their performance of services hereunder.

The provisions contained herein include any violation of applicable law, ordinance, regulation, or rule, including where the claim, loss, damage, charge or expense was caused by deliberate, willful, or criminal acts of the County or the City, or any of their agents, officers, or employees in its or their performance hereunder.

It is the intent of the Parties that, where negligence is determined to have been contributory, principles of comparative fault will be followed, and each Party shall bear the proportionate costs of any loss, damage, expense and liability attributable to the Party's negligence.

The Parties shall establish procedures to notify the other Party where appropriate of any claims, administrative actions or legal actions with respect to any of the matters described in this indemnity provision. The Parties shall cooperate in the defense of such actions brought by others with respect to the matters covered in this indemnity provision. Nothing set forth in this MOA shall establish a standard of care for, or create any legal rights in, any person not a party to this MOA.

The indemnity provisions of this MOA shall survive the termination of this MOA such that any incident and/or cause of action that arises during the term of this MOA shall be covered by the indemnity provisions in this Section 9 when a legal action is brought forward within the applicable statute of limitation.

10. NON-WAIVER

Waiver of any breach of, or default under, this MOA shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this MOA.

11. ENTIRE AGREEMENT; MODIFICATION

This MOA contains all of the terms and conditions as agreed upon by the Parties and supersedes any and all oral or written communications by and between the Parties.

No waiver, alteration, modification, or termination of this MOA shall be valid unless made in writing and signed by the Parties. In the event of a conflict between this MOA and any other agreement or understanding executed by the Parties subsequent to the commencement of this MOA, the terms of this MOA shall prevail and be controlling unless such other agreement expressly provides to the contrary.

12. ASSIGNMENT PROHIBITED

No Party may assign any right or obligation pursuant to this MOA. Any attempt or purported assignment of any right or obligation pursuant to this MOA shall be void and of no effect.

13. SEVERABILITY

If any term, covenant, or condition of this MOA is held to by a court of competent jurisdiction to be invalid, the remainder of this MOA shall remain in full force and effect.

14. GOVERNING LAW AND VENUE

The interpretation and enforcement of this MOA shall be governed by the laws of the State of California, the state in which the MOA is signed. Any disputes as to the interpretation and/or application of this MOA shall be heard in the Superior Court, County of Alameda, California.

15. COUNTERPARTS

This MOA may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

16. CAPTIONS

The headings or captions contained in this MOA are for identification purposes only and shall have no effect upon the construction or interpretation of this MOA.

17. AMBIGUITIES

The Parties have each carefully reviewed this MOA and have agreed to each term of this MOU. No ambiguity shall be presumed to be construed against either Party.

18. INTERPRETATION OF MOA

By entering into this MOA, the Parties do not intend to violate or cause a violation of the terms of collective bargaining or other labor MOUs to which either may be a party, nor the policies, rules or regulations governing the employees of either Party. If any provision of this MOA is inconsistent with such collective bargaining or other labor MOUs, or with such policies, rules, or regulations, then the applicable provisions of such collective bargaining or other labor MOUs, and such policies, rules, or regulations shall take precedence for purposes of the construction and interpretation of this MOA.

19. INTEGRATION

This MOA embodies the entire agreement of the Parties in relation to the scope of matters covered by this MOA, and no other agreement or understanding verbal or otherwise, exists between the Parties.

20. INSURANCE

The Parties agree to procure and maintain such policies of general liability and other insurance as shall be necessary to insure against any claim or claims for damages arising in connection with the performance of their respective duties under this MOA. Certificates evidencing said insurance policies shall be exchanged by the Parties as soon as practical or upon request of either party during this contract.

21. AUTHORITY

The persons executing this MOA have the capacity and are authorized to execute this MOA as the representatives of their respective Party, and to bind their respective Party to the terms of this MOA.

IN WITNESS WHEREOF, the Parties hereto by their duly authorized representatives have executed and delivered this Agreement as of the effective date.

COUNTY OF ALAMEDA

CITY OF OAKLAND

By: _____
Gregory J. Ahern
Alameda County Sheriff/OES Director

By: _____
Edward D. Reiskin
City Administrator

Approved As To Form:
Donna R. Ziegler, County Counsel

Approved As To Form:

By: _____
Clay Christianson
Deputy County Counsel

By: _____
Amadis Sotelo
City Attorney