

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

**THIS MEMORANDUM OF AGREEMENT** (“MOA”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2019, by and between the County of CLATSOP (hereinafter referred to as “County”), acting by and through its Emergency Management Division (EMD), and the City of Gearhart (hereinafter referred to as “City”). The County EMD and the City of Gearhart may be referred to collectively as “Parties” or in the singular as “Party”, as the context requires.

**RECITALS**

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

**WHEREAS**, in 2012-2013 Clatsop County EMD identified the lack of a unified emergency mass notification system within the County of Clatsop as a gap in its emergency preparedness capabilities; and

**WHEREAS**, Clatsop County EMD contracts with Everbridge Emergency Notification System services to serve as an integral component of the Clatsop County Unified Mass Notification System (MNS). The purchase of the Everbridge Emergency Notification System is intended to strengthen the capabilities of the County by maintaining an effective, interoperable means of rapidly disseminating critical emergency information to those who live, work or visit anywhere in Clatsop County. Everbridge is an information delivery system intended to provide sufficient early warning in the event of an emergency and for the delivery of actionable information intended to enhance public safety. The services provided by Everbridge are intended to augment existing notification systems; and

**WHEREAS**, the Everbridge system operates through an internet portal supported and provided by the vendor. Everbridge maintains two Network Operations Centers (NOC’s) located within the continental United States with built-in redundancy and geographic diversification. Additionally, Everbridge provides 24-hour technical support, seven days-a-week; and

**WHEREAS**, the Everbridge system allows for high-speed delivery of alerts and notifications using multiple messaging formats 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; and

**WHEREAS**, it is intended that the Clatsop County Unified Mass Notification System named “Clatsop Alerts” be a shared resource benefitting all participating cities within the geographic boundaries of Clatsop 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 Clatsop County MNS system.

**2. DESCRIPTION OF RESPONSIBILITIES**

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

**3. TERMS OF AGREEMENT, TERMINATION AND OTHER AGREEMENTS**

This MOA shall be effective when it is signed by both Parties. This MOA will remain in force and effect until June 30, 2021 or such time as 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 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 Clatsop 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 EMD: County Emergency Manager  
Clatsop County Emergency Management Division  
800 Exchange Street, Suite 408  
Gearhart, OR 97103

Notice to the City: City Administrator  
City of Gearhart  
PO Box 2510  
Gearhart, OR 97138

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 costs for the purchase of Everbridge Mass Notification service and support is fully funded by the County and made available to participating local cities within Clatsop County at no cost.

**6. ADMINISTRATION**

For purposes of ongoing administration, a Clatsop County MNS Advisory Committee shall be maintained and led by the Clatsop County MNS System Administrator. The City shall designate a public safety 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.

**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 Clatsop 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 Clatsop, 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**

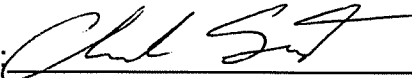
The persons executing this MOA have the capacity and are authorized to execute this MOA as the representatives of their respective Party, and to bind their respective Party to the terms of this MOA.

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

**COUNTY OF CLATSOP**

**CITY OF GEARHART**

By: \_\_\_\_\_  
Monica Steele, Interim County Manager

By:   
Name Chad Sweet

Approved As To Form:

\_\_\_\_\_  
By: Heather Reynolds, County Counsel