

**MEMORANDUM OF AGREEMENT
BETWEEN THE COUNTY OF SAN DIEGO AND CITY OF SAN DIEGO REGARDING THE
PULSEPOINT SMARTPHONE APPLICATION EXPENSES**

This Memorandum of Agreement (“MOA”) is entered by and between the County of San Diego (“County”) and the City of San Diego, (“City”), both of San Diego County, State of California, individually referred to herein as “Party” and collectively as “Parties”.

RECITALS

WHEREAS, PulsePoint (“PulsePoint”) is a smartphone application that allows users trained in cardiopulmonary resuscitation (“CPR”) to quickly respond to 911 calls indicating sudden cardiac arrest, enabling off-duty paramedics and residents to provide life-saving CPR in the minutes before first responders arrive. In addition, the smartphone application notifies users of publicly accessible automated external defibrillators (“AEDs”) in the vicinity;

WHEREAS, on December 3, 2013, the County Board of Supervisors directed the Chief Administrative Officer to launch PulsePoint on a regional basis;

WHEREAS, on May 31, 2014, County entered into a one-year contract with PulsePoint’s exclusive distributor to connect fire dispatch agencies in the San Diego region to PulsePoint;

WHEREAS, on July 28, 2014, the Parties, together with other regional fire and emergency medical partners, jointly launched PulsePoint free of charge to members of the public in the County;

WHEREAS, on July 1, 2019, County issued a new one-year agreement (“Contract”) with four option years through June 30, 2024 to continue the annual license renewal for Pulsepoint; and

WHEREAS, this MOA shall renew the Parties’ payment responsibilities to ensure PulsePoint remains free and available to members of the public in the County.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises set forth below, the Parties agree as follows:

AGREEMENT

1. TERM

This MOA shall have the same term as the Contract, effective on July 1, 2019 for a term of one fiscal year. The term shall automatically extend for up to four additional years, to the extent the County and PulsePoint exercise the option years under the Contract. City’s payment obligations pursuant to Paragraph 2 may extend beyond the term (*e.g.*, the term may end June 30, 2020, but payment shall be due on July 31, 2020).

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2. AMOUNT PAYABLE AND REIMBURSEMENT PROCEDURES

City agrees to reimburse County for its portion of the Contract. PulsePoint charges annual license fees based on the size of local agencies' dispatch centers and population serviced. The annual license fee for City's dispatch center is \$28,000. City agrees to reimburse and pay County a maximum of \$28,000 per year. County will invoice City by June 30 of every year, beginning in 2019, and City will have 30 days to make payment to the County.

County agrees to fulfill the terms and conditions of the Contract, including payment. County agrees to continue working with regional partners to identify external funding mechanisms to offset financial costs. If new money is realized from a non-government entity, the County will decrease the absolute cost for the City while still invoicing for the proportionate cost.

3. TERMINATION

Either Party may terminate this MOA at any time for cause or convenience by giving the other Party written notice specifying the termination date, which shall be no less than sixty (60) days from the date of notice.

4. NOTICES

Any notices to be given pursuant to this MOA by one Party to the other, shall be in writing and shall be deemed to have been fully given when personally delivered to the party addressed, or if not personally delivered, when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, or by Federal Express.

5. DEFENSE AND INDEMNITY

5.1 Claims Arising From Sole Acts or Omissions of County

County hereby agrees to defend and indemnify City, its agents, officers and employees (referred to in this paragraph only as "City"), from any claim, action or proceeding against City, arising solely out of the acts or omissions of County in the performance of this MOA. At its sole discretion, City may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve County of any obligation imposed by this MOA. City shall notify County promptly of any claim, action or proceeding and cooperate fully in the defense.

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5.2 Claims Arising From Sole Acts or Omissions of City of San Diego

City hereby agrees to defend and indemnify County, its agents, officers and employees (referred to in this paragraph only as "County") from any claim, action or proceeding against County, arising solely out of the acts or omissions of City in the performance of this MOA. At its sole discretion, County may participate at its own expense in the defense of any such claim, action or proceeding, but such participation shall not relieve City of any obligation imposed by this MOA. County shall notify City promptly of any claim, action or proceeding and cooperate fully in the defense.

5.3 Claims Arising From Concurrent Acts or Omissions

County hereby agrees to defend itself, and City hereby agrees to defend itself, from any claim, action or proceeding arising out of the concurrent acts or omissions of the Parties. In such cases, the Parties agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in paragraph 5.5 below.

5.4 Joint Defense

Notwithstanding paragraph 5.3 above, in cases where County and City agree in writing to a joint defense, the Parties may appoint joint defense counsel to defend the claim, action or proceeding arising out of the concurrent acts or omissions of the Parties. Joint defense counsel shall be selected by mutual agreement of the Parties. The Parties agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in paragraph 5.5 below. The Parties further agree that neither party may bind the other to a settlement agreement without the written consent of both Parties.

5.5 Reimbursement and/or Reallocation

Where a trial verdict or arbitration award allocates or determines the comparative fault of the Parties, County and City may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments, and awards, consistent with such comparative fault.

6. GOVENING LAW AND JURISDICTION

This MOA shall be governed, interpreted, construed, and enforced in accordance with the laws of the State of California, Venue for any disputes shall be brought only in the state or federal courts located in San Diego County, California.

7. ENTIRE AGREEMENT

This MOA, its attachments, and all other documents referred to herein, constitute the entire agreement between the Parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties, and statements, oral or written, are superseded.

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8. MODIFICATION WAIVER

No modification, waiver, amendment, or discharge of this MOA shall be valid unless the same is in writing and signed by both Parties.

9. COUNTERPARTS

This MOA may be executed in any number of separate counterparts, each of which shall be deemed an original but all of which when taken together shall constitute one and the same instrument.

10. PARAGRAPHS THAT SURVIVE TERMINATION

If this Amended Agreement is terminated for any reason pursuant to Paragraph 3, the following Paragraphs shall survive and remain in effect: 2, 5, and 6.

IN WITNESS WHEREOF, this Agreement is made and entered into by the Parties.

COUNTY OF SAN DIEGO


HERMAN REDDICK,
Director, Fire Authority

10/14/2020
Date



ANDREW POTTER
Clerk of the Board of Supervisors

10/21/2020
Date


SUEDY ALFARO
Senior Deputy County Counsel

10/14/2020
Date


CITY OF SAN DIEGO


CHRISTIANA GAUGER, Interim
Director Purchasing and Contracting

10/9/2020
Date


LAURA DePOISTER,
Deputy City Attorney

10/14/20
Date

Approved and/or authorized by the
Board of Supervisors of the County of San Diego.
Meeting Date: 10/19/18 Minute Order No. 7
By:  Date: 10/21/2020
Deputy Clerk of the Board Supervisors