Report From
OFFICE OF THE CITY ADMINISTRATIVE OFFICER
Analysis of Proposed Contract
($25,000 or Greater and Longer than Three Months)

To: The Mayor The Council	Date: 06-07-18	C.D. No. --	CAO File No.: 0150-11136-0000

Contracting Department/Bureau: The Fire Department	Contact: Muriel Gee (213) 978-3461

Reference: Transmittal from the Board of Fire Commissioners dated May 1, 2018; referred for report May 1, 2018

Purpose of Contract: For a Software-As-A-Service (SAAS) application that alerts subscribers of sudden cardiac arrest incidents, and other emergencies, within user proximity.

Type of Contract: ( ) New contract (X) Amendment, Contract No. C-125630	Contract Term Dates: January 1, 2015 through December 31, 2019, with two one-year options to renew

Contract/Amendment Amount: $84,000

Proposed amount $ 84,000 + Prior award(s) $ 25,000 = Total $ 109,000

Source of funds: Targeted-Destination Ambulance Services Revenue Trust Fund (Fund 44R)

Name of Contractor: PulsePoint Foundation, c/o Richard Price

Address: P.O. Box 12594, Pleasanton, California 94588

	Yes	No	N/A	Contractor has complied with:	Yes	No	N/A
1. Council has approved the purpose	X			8. Business Inclusion Program			X
2. Appropriated funds are available	X			9. Equal Benefits Ordinance	X		
3. Charter Section 1022 findings completed			X	10. First Source Hiring Ordinance	X		
4. Proposals have been requested			X	11. Contractor Responsibility Ordinance			X
5. Risk Management review completed	X			12. Slavery Disclosure Ordinance	X		
6. Standard Provisions for City Contracts included	X			13. Bidder Certification CEC Form 50	X		
7. Workforce that resides in the City: %				14. Prohibited Contributors (Bidders) CEC Form 55	X		
* Applicable to contracts of $1,000,000 or more				15. CA Iran Contracting Act of 2010*			X

RECOMMENDATIONS

That the Council, subject to the approval of the Mayor, authorize the Fire Chief, or his designee to:

1. Execute a Second Amendment between the Los Angeles Fire Department and PulsePoint Foundation (C-125630) for a Software-As-A-Service (SAAS) application that alerts subscribers of sudden cardiac arrest incidents and other emergency events, through December 31, 2019, with an option to extend for an additional two, one-year terms, subject to the review and approval of the City Attorney as to form; and,

2. Authorize the Fire Chief to exercise each of the two, one-year options to extend the Agreement, subject to the approval of the Board of Fire Commissioners.

MFC	Analyst	04180140	City Administrative Officer

CAO 661 Rev. 04/2018

SUMMARY

The Los Angeles Fire Department (Department) is requesting authority to execute a Second Amendment (Agreement) to Contract No. 125630 with PulsePoint Foundation, Inc. (Contractor) for a Software-As-A-Service (SAAS) application that alerts subscribers of sudden cardiac arrest incidents and other emergencies that occur within a close proximity of the subscriber. The proposed Agreement will extend the term of the Contract from May 12, 2016 through December 31, 2019 for an amount of $84,000. The Department also requests authorization for the Fire Chief to exercise the option to enter into two additional one-year Amendments, contingent upon approval of the Board of Fire Commissioners. Each one-year Amendment will increase the maximum compensation of the Agreement by $28,000.

On May 13, 2015, the Department entered into a one-year agreement with the Contractor for the purchase of the SAAS application. On August 18, 2015, the City entered into a First Amendment with the Contractor to incorporate a ratification clause and amend the effective date of the Agreement to January 1, 2015.

The Contractor's SAAS application is an innovative location-aware mobile application that alerts subscribed community members to enable them to provide potentially life-saving assistance to victims of Sudden Cardiac Arrest (SCA). The subscriber can then choose to respond to the SCA incident to render cardiopulmonary resuscitation (CPR) and other appropriate assistance prior to the arrival of the Department's Emergency Medical Services (EMS) personnel. Subscribers to the application may also receive notifications of other City emergencies. The Department dispatches its EMS resources to SCA incident locations concurrently with the Contractor's notification of such an incident, and follows standard operational procedures. The Department reports that approximately 66,000 City users have subscribed to the application.

Prior to requesting the execution of this Second Amendment, the Department worked with the Office of the City Attorney to ensure that the SAAS application does not divulge privacy information covered under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

In accordance with the provisions of City Charter Section 371 (e) (10), this Agreement is exempt from the competitive bidding process as the use of competitive bidding would be undesirable due to the proprietary and unique nature of the SAAS technology application.

FISCAL IMPACT STATEMENT

There is no additional impact to the General Fund associated with the recommendations in this report. Total funding in the amount of $109,000 will be provided through the Targeted-Destination Ambulance Services Revenue Trust Fund (Fund 44R). This action is in compliance with the City's Financial Policies in that total contract expenses are fully funded within budgeted funds.

RHL:MFC:04180140

Attachment

LOS ANGELES FIRE COMMISSION

ERIC GARCETTI
Mayor

May 1, 2018

Honorable Members of the City Council
City of Los Angeles
City Hall, Room 395
Attn: City Clerk

Honorable Eric Garcetti
Mayor, City of Los Angeles
Room 303, City Hall
Attn: Mandy Morales, Legislative Coordinator

[BFC 18-041] – SECOND AMENDED AGREEMENT WITH PULSEPOINT FOUNDATION (C-125630)

At its meeting of May 1, 2018, the Board of Fire Commissioners approved the report and its recommendations. The report is hereby transmitted concurrently to the Mayor and City Council for consideration and approval.

Should you need additional information, please contact the Board of Fire Commissioners' office at 213-978-3838.

Sincerely,

Isela Iñiguez
Acting Commission Executive Assistant

Attachment

cc: Board of Fire Commissioners (without attachments)
    Fire Chief Ralph M. Terrazas (without attachments)

LOS ANGELES FIRE DEPARTMENT

RALPH M. TERRAZAS
FIRE CHIEF

APPROVED: 5|1|18
BOARD OF FIRE COMMISSIONERS
BY:
COMMISSION EXECUTIVE ASSISTANT

April 5, 2018

BOARD OF FIRE COMMISSIONERS
FILE NO. 18-041

TO: Board of Fire Commissioners

FROM: Ralph M. Terrazas, Fire Chief

SUBJECT: SECOND AMENDED AGREEMENT WITH PULSEPOINT FOUNDATION (C-125630)

FINAL ACTION:	✓ Approved	_____ Approved w/Corrections	_____ Withdrawn
	_____ Denied	_____ Received & Filed	_____ Other

SUMMARY

On May 13, 2015, the Los Angeles Fire Department (LAFD) entered into an Agreement with PulsePoint Foundation (C-125630) for the contractor's Software-as-a-Service (SAAS) application. The software enables the public to be notified and provided a map view location indicator of LAFD fire emergencies, and emergency medical service (EMS) incidents involving persons suffering sudden cardiac arrest (SCA) distress in their proximity. SCA is a leading cause of death in the United States and accounts for an estimated 325,000 deaths each year. Members of the public subscribing to the PulsePoint application receive SCA alerts of the location of the incident. The subscriber can choose to respond to the SCA incident to render cardiopulmonary resuscitation (CPR) and other appropriate assistance prior to arrival of LAFD EMS personnel. To date, approximately 66,000 city users have subscribed to the application.

The proposed Agreement covers performance of services from January 1, 2016 through December 31, 2018, with two, one year extensions by mutual agreement of the parties. The annual licensing fee is $28,000. Total compensation is not to exceed $84,000 through December 31, 2018. If the two, one year extensions are exercised, the contract amount will increase by $56,000 for a total compensation not to exceed $140,000.

RECOMMENDATIONS
That the Board:

1. Approve and authorize the Fire Chief to execute the Second Amended Agreement between the City and PulsePoint Foundation (C-125630) to provide Software-as-a-Service for the period of January 1, 2016 through December 31, 2018 with two, one year options to extend the Agreement.

2. Transmit the Second Amended Agreement (C-125630) to the Mayor in accordance with Executive Directive 3, and to City Council for approval.

3. Request the City Council, subject to approval of the Mayor:

(a) Approve the Agreement with PulsePoint Foundation (C-125630) for the period of January 1, 2016 through December 31, 2018 with two, one year options to extend the Agreement.

(b) Authorize the Fire Chief to exercise each of the two, one year options to extend the Agreement, subject to approval of the Board of Fire Commissioners.

FISCAL IMPACT
There is no impact to the General Fund. The contract will be paid by the Targeted Destination Ambulance Services Revenue Trust Fund.

Board report prepared by June Gibson, Fire Administrator, Administrative Services Bureau.

Attachment

AGREEMENT NO. C-125630

SECOND AMENDED AGREEMENT

between

THE CITY OF LOS ANGELES

and

PULSEPOINT FOUNDATION

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AGREEMENT NO. C-125630
SECOND AMENDED AGREEMENT BETWEEN
THE CITY OF LOS ANGELES
AND
PULSEPOINT FOUNDATION

This Agreement (hereinafter referred to as "Agreement") is made and entered into by and between the City of Los Angeles, a municipal corporation (hereinafter referred to as the "City"), acting by and through the Los Angeles Fire Department (hereinafter referred to as the "LAFD"), and PulsePoint Foundation (hereinafter referred to as "Contractor") with reference to the following:

WHEREAS, the LAFD is responsible for providing Emergency Response Services specifically Fire Suppression and Emergency Medical Services ("Fire and EMS"), to the public; and

WHEREAS, LAFD employs various methods to ensure and provide daily, prompt Fire Protection and EMS services, including awareness, to the public; and

WHEREAS, Contractor offers a Software-As-A-Service ("SAAS") application that enables the public to be notified of EMS incidents involving persons suffering sudden cardiac arrest ("SCA") distress in their proximity upon notification from the LAFD; and

WHEREAS, Contractor's SAAS application enables the public to be notified of LAFD fire emergencies for inclusion in its embedded map view location indicator for LAFD emergencies; and

WHEREAS, Contractor's SAAS application also allows application users to be notified of EMS incidents involving persons suffering sudden cardiac arrest ("SCA") distress within a specified proximity of the location of the SCA incident upon notification from the LAFD; and

WHEREAS, SCA is a leading cause of death in the United States and accounts for an estimated 325,000 deaths each year; and

WHEREAS, the members of the public who receive SCA alerts will be informed of the SCA incidents, and, in certain cases, can choose to respond to the SCA incidents, specifically SCA incidents to render cardiopulmonary resuscitation ("CPR") and other appropriate assistance prior to the arrival of the LAFD's EMS personnel; and

WHEREAS, the Contractor's SAAS application will also provide application users with directions to the nearest Automatic External Defibrillator ("AED"); and

WHEREAS, the American Heart Association estimates that effective bystander CPR can significantly improve a person's chance of survival after receiving immediate care and attention; and

WHEREAS, LAFD will dispatch EMS resources to the SCA location simultaneously with Contractor's notification of such a SCA incident and continue with its normal EMS operations; and

WHEREAS, LAFD will continue with its normal operations and dispatch its resources to all incidents simultaneously with Contractor's notification application; and

WHEREAS, on May 13, 2015, the LAFD entered into Agreement C-125630 with Contractor for a term of one (1) year with two (2) one-year renewals; and

WHEREAS, on August 18, 2015 the City, in a First Amendment, incorporated a ratification clause to Agreement C-125630 and amended the effective date of the Agreement to begin on January 1, 2015; and

WHEREAS, the City and Contractor desire to enter into this new Agreement for a period beginning as of January 1, 2016 for a period of three years, with two (2) one year renewals, and for a maximum compensation amount not to exceed $140,000.

NOW THEREFORE, in consideration of the above premises and of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. PARTIES TO THE AGREEMENT, REPRESENTATIVES AND NOTICE

1.1. Parties

The Parties to this Agreement are:

City – The City of Los Angeles, a municipal corporation, acting by and through its Fire Department, having its principal office at 200 North Main Street, 18th Floor, Los Angeles, California 90012.

Contractor – PulsePoint Foundation, having its principal office at PO Box 12594, Pleasanton, California 94588.

1.2. Representatives

The representatives of the parties who are authorized to administer this Agreement and to whom formal notices, demands and communications will be given are as follows:

1.2.1. The City's Representatives will be as follows, unless otherwise stated in this Agreement:

Ralph M. Terrazas, Fire Chief
Los Angeles Fire Department
200 North Main Street, Room 1800
Los Angeles, California 90012

1.2.2. The Contractor's representative will be as follows, unless otherwise stated in this Agreement:

Richard Price
PulsePoint Foundation
PO Box 12594
Pleasanton, California 94588

1.3. Notices

Formal notices, demands and communications to be given hereunder by either party shall be made in writing and shall be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and will be deemed communicated as of the date of receipt.

If the name of the person designated to receive the notices, demands or communications or the address of such person is changed, written notice will be given in accordance with this Article, within five (5) working days of said change.

2. TERM OF AGREEMENT

Upon signatures by all parties and attestation by the City Clerk, this Agreement will be effective from January 1, 2016 through December 31, 2018, unless earlier terminated or extended by the parties in writing. This Agreement may be extended for an additional two (2), one (1) year terms by mutual written agreement of the Parties, and approval by the Board of Fire Commissioners.

To the extent that Contractor may have begun performance of the services before the date of execution of this Agreement, as early as January 1, 2016, at the City's request and due to immediate needs, the City hereby ratifies and accepts those services performed in accordance with this Agreement and authorizes payment as provided by the terms of this Agreement.

3. SCOPE OF SERVICES

The Scope of Services is defined in the Contractor's SAAS License Agreement attached hereto as Attachment B of this Agreement. However, both Parties agree that Emergency 9-1-1 calls received by the LAFD communications center will be identified and coded by the type of incident. Contractor will send only SCA notification alerts and LAFD fire emergencies via its embedded map view location indicator to its app users. LAFD notifications to Contractor will be done at the same time LAFD's EMS resources

are dispatched to the SCA/EMS location. Upon receipt of an SCA incident location, Contractor agrees to transmit alerts to its app users via location services embedded in the app user's smartphone or mobile device. Once alerted, Contractor agrees to identify three locations: a) the app user's present location; b) the victim's reported location, but only public locations, no private locations shall not be disclosed; and c) the nearest AED location, if known. Contractor further agrees to disable the audio feature of it app for all LAFD alerts.

4. PROTECTED HEALTH INFORMATION (PHI) AND THE PULSEPOINT ALERT

Contractor agrees that any and all alerts will used primarily for notifying Contractor's SAAS app users of the public location of an individual suffering a SCA as identified in Article 3 – Scope of Services above. The LAFD may use the Contractor's SAAS to notify app users of other non-PHI related incidents. The data disclosed to Contractor will not contain a victim's identifying information or other publicly protected personal health information and Contractor will neither ask nor receive any protected personal health information protected by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Contractor agrees and warrants that, to the extent that the data disclosed to Contractor does not contain a victim's identifying information or other publicly protected personal health information, PHI is not implicated for purposes of HIPAA and that the HIPAA law is not triggered.

5. COMPENSATION AND METHOD OF PAYMENT

The charge for which the Contractor SAAS License Agreement is extended to the LAFD is included as Attachment C to this Agreement. The amount of this agreement shall not exceed $140,000 over the term of this Agreement unless this is amended in writing and agreed to by the parties. Payment shall be made on an annual basis as indicated in Attachment C.

Contractor further agrees to not charge the LAFD a cost higher than any other public entity paying a lower rate for the same level of services, including discounts.

6. MUNICIPAL LOBBYING ORDINANCE

Contractors are required to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if contractors qualify as a lobbying entity under Los Angeles Municipal Code §48.02. CEC Form 50 is attached hereto as Attachment D. Agreements submitted without a completed CEC Form 50, by contractors that qualify as a lobbying entity under Los Angeles Municipal Code §48.02 shall be deemed nonresponsive.

All contractors must complete the Bidder Contributions form (CEC 50). Contractors who fail to comply with City Law may be subject to penalties, termination of contract and debarment.

7. CITY STANDARD PROVISIONS

By entering into this agreement with the LAFD, the Contractor agrees to abide by the City's Standard Provisions for City Contracts (10/17)[v.2.], attached hereto and incorporated herein as Attachment A.

8. ORDER OF PRECEDENCE

The order of precedence for this agreement is this Agreement, the City's Standard Provisions for City Contracts, and the Contractor's SAAS License Agreement. Where there is a conflict between the General Provisions in Contractor's SAAS License Agreement and the City's Standard Provisions for City Contracts, the City's Provisions shall prevail.

9. ENTIRE AGREEMENT

This Agreement and the attached SAAS License Agreement constitute the complete Agreement between the parties. No verbal agreement(s) or conversation(s) with any officer or employee of either party will affect or modify the terms and conditions of this Agreement.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and agree by their respective duly authorized representatives that the Agreement is effective as of January 1, 2016.

Dated: _____   For: THE CITY OF LOS ANGELES

By: _____
RALPH M. TERRAZAS
Fire Chief
Los Angeles Fire Department

Dated: _____   For: PULSEPOINT FOUNDATION

By: _____
RICHARD PRICE
President

Approved as to Form: ATTEST:
MICHAEL N. FEUER, City Attorney   HOLLY L. WOLCOTT, City Clerk

By: _____   By: _____
Valerie L. Flores   Deputy City Clerk
Senior Assistant City Attorney

Dated: _____   Dated: _____

City Business Tax Registration Number: _____

Internal Revenue Service Tax Identification Number: _____

Agreement Number: __C-125630-2__

M:\GENERAL COUNSEL DIVISION\JUDITH THOMPSON\2017-2018 HIPAA MATTERS\HIPAA2017-002\2ND AMENDED AGREEMENT PULSEPOINT 3-1-2018.DOCX

ATTACHMENT A

STANDARD PROVISION FOR CITY CONTRACTS (Rev. 10/17)[v.2]

ATTACHMENT B

PULSEPOINT SOFTWARE AS A SERVICE LICENSE AGREEMENT

ATTACHMENT B – PULSEPOINT SOFTWARE AS A SERVICE LICENSE AGREEMENT

This PulsePoint Software As A Service (SAAS) Agreement ("Agreement"), is entered into by and between PulsePoint Foundation ("PulsePoint" or "Licensor"), a non-profit organization with an address of PO Box 12594, Pleasanton, CA 94588-2594, and the Agency as identified in the Agency Registration submitted by you ("Licensee"). This Agreement sets forth the terms and conditions under which Licensor will license to Licensee the use of Licensor's PulsePoint software as provided by Licensor via the Internet or cloud. In consideration of the mutual promises and upon the terms and conditions below, the parties agree as follows:

1. Software As A Service; License Grant; Restrictions.

    1.1. License Grant. Subject to the terms and conditions of this Agreement, Licensor grants to Licensee a personal, nontransferable, nonsublicensable, nonexclusive limited license to remotely access and use, through authorized users, the PulsePoint software including updates, bug fixes, or other minor enhancements or improvements that are made generally available by Licensor to its licensees, at Licensor's discretion (hereafter the "Services"); such access and use is solely for the purposes of integrating the Services with Licensee's existing computer aided emergency dispatch system. Subject to the terms and conditions of this Agreement, Licensor also grants to Licensee a personal, nontransferable, nonsublicensable, nonexclusive limited license to use of the certain software, namely, the PulsePoint Application Programming Interface (API) (hereafter the "API Software") solely for use by Licensee in integrating or implementing the Services with Licensee's existing computer aided emergency dispatch system. Licensee agrees that as a condition to the license grants herein, it will use the Services and API Software for Licensees' own use, in accordance with any documentation provided by Licensor, if any. Licensor retains the sole and exclusive right to control and direct the manner or means by which Services are performed, and may employ or subcontract others with respect to such services. Nothing herein obligates Licensor to provide consulting services to integrate the Service or API Software with Licensee's computer aided dispatch system. Licensee is responsible for any and all fees and costs associated with such integration.

    1.2. Additional Restrictions. Licensee further agrees, and represents and warrants, that as a condition to the license grants herein that it shall not directly or indirectly: i) distribute, rent, sell, lease, license, assign or otherwise transfer all or any part of the Services or API Software (including any associated documentation) and Licensee's rights to use such Services and API Software ii) reverse engineer, decompile, disassemble, or attempt to discover source code or underlying ideas or algorithms of the Services or API Software, iii) modify or create derivative works based on the Services or API Software, and iv) permit access to, or use of, the Services of API Software by persons other than those employees or agents of Licensor who are reasonably necessary to effectuate the purposes of this Agreement.

    1.3. Fee. Licensor may charge an annual fee ("Fee") for the license granted in this Agreement. Any such Fee shall be set forth in an Exhibit to this Agreement. Licensee agrees to pay this Fee to Attachment B — PulsePoint Software As A Service License Agreement Licensor upon entering into this Agreement and upon any renewal (see Section 6). The Fee is subject to change upon any renewal term.

2. Ownership

ATTACHMENT B – PULSEPOINT SOFTWARE AS A SERVICE LICENSE AGREEMENT

Licensor acknowledges that all data and information it receives from Licensee is the sole property of the Licensee, and may not be used for any purpose, or with any outside parties, outside of this Agreement without the expressed written permission of the Licensee. Licensee acknowledges that except for the limited access rights expressly granted herein, all ownership, rights, title and interest in the Services and API Software, and any other Licensor materials furnished or made available hereunder, and all modifications, enhancements and improvements thereof, including all rights under copyright and patent and other intellectual property rights, belong to and are retained solely by Licensor, or Licensor's licensors and providers, if any. There are no implied rights. Licensee understand and agrees that as to any data received by Licensor from Licensee through the Services such as incident data, Licensee may use this data in connection with other applications and services that may be provided by Licensor under this Agreement.

3. Licensee's Duties and Responsibilities.

   3.1. Data and Information. Licensee shall provide Licensor with all necessary and reasonable cooperation to enable Licensor to perform its obligations under this Agreement, and shall make available in a timely manner at no charge to Licensor all technical data, programs, files, documentation, sample output, or other information and resources reasonably required by Licensor for the provision of the Services to Licensee. Licensee will be responsible for, and assumes the risk of any problems resulting from, the content, accuracy, completeness and consistency of all such data, materials and information supplied by Licensee.

   3.2. Compliance With Laws; Security. The Parties agree, and represent and warrant, that as a condition to the license grants herein, that they shall: i) comply with all applicable laws, including, but not limited to HIPAA and other privacy or data security laws in connection with the use of the Services and API Software hereunder, ii) employ reasonable measures to maintain the privacy of individuals; and iii) employ reasonable measures to maintain the security and confidentiality of all data, the Services, and API Software, and shall immediately notify the other Party of any actual or suspected information security breaches, of which it becomes aware.

   3.3. Licensor certifies that all taxes are included in the annual maintenance fee(s).

   3.4. Government Use. If Licensee is a unit or agency of the government, or licensing use of the Services or API Software through or in connection with government funds, the Services and API Software are provided subject to Licensor's standard terms and conditions which are set forth Attachment B — PulsePoint Software As A Service License Agreement in this Agreement. The Parties agree that the Licensee's standard terms and provisions attached as Attachment "A" to the Agreement, shall govern.

   3.5. Indemnification.

      3.5.1. The Licensee represents that it is a governmental entity that, by law, is not permitted to indemnify the Licensor.

3.5.2. Except for the active negligence or willful misconduct of the CITY, or any of its Boards, Officers, Agents, Employees, Assigns or Successors in Interest, Licensor undertakes and agrees to defend, indemnify and hold harmless the CITY and any of its Boards, Officers, Agents, Employees, Assigns or Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Licensor's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by Licensor or its subcontractors of any tier. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City. The provisions of this clause shall survive expiration or termination of this Agreement.

4. Confidential Information.

   4.1. The Parties agree to keep confidential and not disclose or use except in performance of its obligations under this Agreement, confidential or proprietary information related to the other Party's technology or business, including, but not limited to: information relating to products or technology of the Disclosing Party or the properties, composition, structure, use or processing thereof, computer programs, code, algorithms, schematics, data, know-how, processes, ideas, inventions, and other technical, business, financial, and product development plans, forecasts, strategies and information (all of the foregoing, "Confidential Information").

   4.2. The Parties agree that the Licensee, as a governmental body in the State of California, under the terms of the California Public Records Act (CPRA), may be required to release of information deemed Confidential. Each party shall use reasonable precautions to protect the other's Confidential Information.

   4.3. Confidential Information shall not include information that (a) is in or enters the public domain including in reasonably available public or government databases through no improper action or inaction by the Receiving Party; (b) was rightfully in the Receiving Party's possession or Attachment B — PulsePoint Software As A Service License Agreement known by its prior to receipt from the Disclosing Party; (c) was rightfully disclosed to the Receiving Party by another person without restriction; or (d) was independently developed by the Receiving Party by persons without access to such information and without use of any Confidential Information of the Disclosing Party. Each party may disclose Confidential Information that is required to be disclosed by a court or other adjudicative body provided that reasonable measures are taken to minimize disclosure and guard against further disclosure, and also provided that the party gives the other party prior written notice of the proposed disclosure to allow the other party to seek protection for the Confidential Information.

5. Warranty Disclaimer; Limitation of Liability.

ATTACHMENT B – PULSEPOINT SOFTWARE AS A SERVICE LICENSE AGREEMENT

Licensor will use reasonable commercial efforts to provide the services in a professional and workmanlike manner. Licensor makes, and licensee receives, no warranties of any kind, express, implied or statutory, arising in any way out of, related to, or under this agreement or the provision of materials or services thereunder, and licensor specifically disclaims any implied warranty of merchantability or fitness for a particular purpose.

6. Term and Termination

This Agreement will take effect on the Effective Date and will remain in effect, unless earlier terminated in accordance herein, for one year. At the end of each one-year term, this Agreement may be renewed, through written amendment, for additional one (1) year terms unless either party provides written notice of termination to the other at least thirty (30) days before the end of the then current term. Notwithstanding the foregoing, Licensor may immediately terminate this Agreement if Licensor determines that Licensee has failed to materially comply with any of the terms and conditions of this Agreement, or may terminate for convenience with ninety (90) days written notice. This Agreement may be terminated by either party if the other party commits a material breach of this Agreement, which breach, if capable of being cured, is not cured within thirty (30) days of written notice of termination. Termination by any means will not affect the provisions of this Agreement relating to the payment of amounts due, or the provisions of Sections 1.2, 2, 3.5, 4, 5, 6, and 8 of this Agreement, all of which will survive termination of this Agreement, regardless of the reason for termination. Upon termination, all of Licensee's licenses and rights to the Services and API Software that shall terminate, and Licensee shall immediately cease use of the Services and API Software, and return to Licensor, Licensor's proprietary and confidential information, and documentation regarding use of the Services or API Software, if any, along with a signed, written statement certifying that Licensee has returned to Licensor, and is no longer in possession of the foregoing items. Upon termination and written request from Licensee, Licensor will return to Licensee any proprietary data or information of Licensee.

7. Reference; Sponsorship.

Licensee grants to Licensor a limited right to use Licensee's name and image as a customer or user of the Services on its website, iTunes AppStore page and similar webpages, and other marketing materials, and describe the project and the Services provided by Licensor to Licensee. Nothing herein constitutes an endorsement of Licensor by Licensee. Licensee further and agrees that Licensor may enter into Attachment B — PulsePoint Software As A Service License Agreement agreements under which third parties may sponsor the launch or ongoing implementation of the Services, and Licensee consents to such sponsorship. Licensee reserves the right to have its name, image, and other identifying marks removed at any time during the term of this Agreement and beyond. Licensor agrees to immediately remove all references to Licensee's organization, if so requested.

8. General Provisions.

8.1. Except where noted in this Agreement, the Parties agree that the City's Standard Provisions for Contracts (Attachment B) shall prevail.

8.2. This Agreement is not assignable or transferable by Licensee, and any such attempted assignment or transfer shall be void and without effect. Each party will be and act as an independent contractor and not as an agent or partner of, or joint venture with, the other party for any purpose related to this Agreement or the transactions contemplated by this Agreement, and neither party by virtue of this Agreement will have any right, power or authority to act or create any obligation, expressed or implied, on behalf of the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of California, and applicable federal law, without regard to the conflicts of law provisions thereof and without regard to the United Nations Convention on the International Sales of Goods. Each party hereby irrevocably submits to the jurisdiction and venue of any state or federal court in or for the County of Los Angeles, California, in any action or proceeding brought to enforce or otherwise arising out of or related to this Agreement and irrevocably waives to the fullest extent permitted by law any objection which such party may now or hereafter have to the resting of such jurisdiction and venue in such forum, and any claim that such forum is an inconvenient forum. The waiver by either party of a breach of this Agreement or any right hereunder shall not constitute a waiver of any subsequent breach of this Agreement; nor shall any delay by either party to exercise any right under this Agreement operate as a waiver of any such right. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement constitutes the entire agreement between the parties hereto related to the subject matter hereof, and any and all written or oral agreements are expressly cancelled. Any modifications of this Agreement must be in writing and signed by both parties hereto. Pre-printed purchase order terms and any other additional terms, and any terms in conflict with this Agreement, shall be void and of no effect. Neither Party will be responsible for failure of performance, due to causes beyond its reasonable control, including, without limitation: acts of God or nature; labor disputes; sovereign acts of any federal, state or foreign governments; network and/or computer failure or shortage of supplied materials; provided that, the affected Party makes a reasonable attempt to remove the impact of the force majeure occurrence as soon as reasonably possible. Either Party shall have the right to terminate this Agreement if a force majeure occurrence continues to impact performance of the other for more than thirty (30) consecutive days.

ATTACHMENT C

PULSEPOINT LICENSING FEE SCHEDULE

Term	Costs	Comments
January 1, 2016 to December 31, 2016	$28,000.00	
January 1, 2017 to December 31, 2017	$28,000.00	
January 1, 2018 to December 31, 2018	$28,000.00	
January 1, 2019 to December 31, 2019	$28,000.00	
January 1, 2020 to December 31, 2020	$28,000.00	
Total Allowable Costs Up To:	**$140,000**	

ATTACHMENT D

MUNICIPAL LOBBYING ORDINANCE

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