

**AMENDMENT #6 TO AGREEMENT
BETWEEN THE COUNTY OF SAN MATEO AND
SOCRATA, INC.**

THIS AMENDMENT TO THE AGREEMENT, entered into this ____ day of _____, 20____, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and Socrata, Inc., a wholly owned subsidiary of Tyler Technologies, Inc., hereinafter called "Contractor";

W I T N E S S E T H:

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, the parties entered into an Agreement for cloud services, an open data portal and GovStat on February 8, 2013 for an amount of \$52,372; and

WHEREAS, on June 18, 2013, an amendment was executed to increase the contract amount by \$359,856.00, and to extend the term through June 30, 2015; and

WHEREAS, on June 16, 2015, an amendment was executed to increase the contract amount by \$413,119.92, and to extend the term through June 30, 2017; and

WHEREAS, on June 17, 2016, an amendment was executed to add consulting services for the redesigning of the County's Measure A Dashboard, and to increase the contract amount by \$1,600.00, for a new not to exceed amount of \$826,947.92; and

WHEREAS, on July 20, 2016, an amendment was executed to add the procurement of software subscription licensing and support for the Contractor's Perspectives software, an online-software based tool, and to increase the contract amount by \$22,000.00, for a new not to exceed amount of \$849,147.92; and

WHEREAS, on June 27, 2017, an amendment was executed to increase the contract amount by \$444,583.92, for a new not to exceed amount of \$1,293,731.84, and to extend the term through June 30, 2019; and

WHEREAS, the parties now wish to amend the Agreement for the continuation of Software as a Service for an Open Data application, to increase the contract amount by \$420,000, for a new not to exceed amount of \$1,713,731.84, and to extend the term through June 30, 2021.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. **The Agreement is amended by inserting this new section, “Definitions”, before Section 1, “Services to be performed by Contractor” as follows:**

Definitions.

- **“Client Data”** means data, datasets, files, information, content and links uploaded or provided by County through the use of the SaaS Services
- **“Confidential Information”** means nonpublic information that a reasonable person would believe to be confidential and includes, without limitation, personal identifying information (e.g., Social Security numbers) and trade secrets, each as defined by applicable state law.
- **“Documentation”** means any online or written documentation and specifications related to the use of the SaaS Services that Contractor provides, including instructions, user guides, manuals, and other training or self-help documentation.
- **“External API Calls”** means any request made by a user that is not logged in against a SaaS Service.
- **“Force Majeure”** means an event beyond the reasonable control of County or Contractor, including, without limitation, governmental action, war, riot or civil commotion, fire, natural disaster, or any other cause that could not with reasonable diligence be foreseen or prevented by County or Contractor.
- **“Monthly Active Users”** means a user that is logged in and accesses the SaaS Services more than ten times per month. The number of Monthly Active Users that are authorized to use the SaaS Services for the Agreement are identified in Exhibit A.
- **“SaaS Fees”** means the fees for the SaaS Services identified in Exhibit A. SaaS Fees may be listed or referred to as Recurring Fees in Exhibit A.
- **“SaaS Services”** means Contractor’s off the shelf, cloud-based software service and related services, including maintenance and support services, as specified under this Agreement. SaaS Services do not include support of an operating system or hardware, support outside of our normal business hours, or training, consulting, or other professional services.
- **“Support Policy”** means the Client Support Policy applicable to you for the SaaS Services pursuant to this Agreement. A copy of our current Client Support Policy is attached as Exhibit B.

2. **Section 2 of the Agreement is amended to read as follows:**

Contract Term: The term of this Agreement shall be from February 8, 2013 to June 30, 2021, unless terminated pursuant to Section 10 of this Amendment.

3. **Section 3 of the Agreement is replaced as follows:**

3. Payments: In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and any Exhibit(s) or attachment(s) attached hereto, County shall make payment to Contractor in the manner specified herein and in Exhibit "A". In the event that the County makes any advance payments, Contractor agrees to refund any amounts

in excess of the amount owed by the County at the time of contract termination. The County reserves the right to withhold payment if the County reasonably determines that the quantity or quality of the work performed is unacceptable and Contractor is unable to cure the deficiency within 10 business days of being notified of said deficiency by the County. In no event shall total payment for services under this Agreement exceed One Million Seven Hundred Thirteen Thousand Seven Hundred Thirty-One Dollars and Eighty-Four Cents (\$1,713,731.84).

4. Section 7 of the Agreement is replaced as follows:

7. Hold Harmless

7.1 General Indemnification:

- a. It is agreed that Contractor shall defend, hold harmless, and indemnify County and its officers, employees, agents, and servants from any and all claims, suits, or actions of every name, kind, and description brought by a third party which arise out of the terms and conditions of this Agreement and which result from the acts or omissions of Contractor and/or its officers, employees, agents, and servants.
- b. Contractor shall defend, hold harmless, and indemnify County from and against any and all claims for wages, salaries, benefits, taxes, and all other withholdings and charges payable to, or in respect to, Contractor's representatives for services provided under this Agreement.
- c. It is agreed that County shall defend, save harmless, and indemnify Contractor and its officers, employees, agents, and servants from any and all claims, suits, or actions of every name, kind, and description brought by a third party which arise out of the terms and conditions of this Agreement and which result from the acts or omissions of County and/or its officers and employees.
- d. The duty of each party to defend, hold harmless, and indemnify the other as set forth herein shall include the duty to defend as set forth in Section 2778 of the California Civil Code.
- e. In the event of concurrent negligence (or intentional/reckless acts) of County and/or its officers and employees, on the one hand, and Contractor and/or its officers, employees, agents, and servants, on the other hand, then the liability for any and all claims for injuries or damage to persons and/or property which arise out of terms and conditions of this Agreement shall be apportioned according to the California theory of comparative fault.

7.2 Intellectual Property Infringement Indemnification:

- a. Contractor will defend County against any third-party claim(s) that the SaaS Services or Documentation infringes that third party's patent, copyright, or trademark, or misappropriates its trade secrets, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). County must notify Contractor promptly in writing of the claim and give Contractor sole control over its defense or settlement. County agrees to provide Contractor with reasonable assistance, cooperation, and information in defending the claim at Contractor's expense.

- b. Contractor's obligations under this Section 7.2 will not apply to the extent the claim or adverse final judgment is based on County's use of the SaaS Services in contradiction of this Agreement, including with non-licensed third parties, or County's willful infringement.
- c. If Contractor receives information concerning an infringement or misappropriation claim related to the SaaS Services, Contractor may, at Contractor's expense and without obligation to do so, either: (a) procure for County the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a functional equivalent, in which case County will stop running the allegedly infringing Services immediately. Alternatively, Contractor may decide to litigate the claim to judgment, in which case County may continue to use the SaaS Services consistent with the terms of this Agreement.
- d. If an infringement or misappropriation claim is fully litigated and County's use of the SaaS Services is enjoined by a court of competent jurisdiction, in addition to paying any adverse final judgment (or settlement to which Contractor consents), Contractor will, at Contractor's option, either: (a) procure the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a functional equivalent. This section provides County's exclusive remedy for third party copyright, patent, or trademark infringement and trade secret misappropriation claims.

5. Section 8 of the Agreement is replaced as follows:

8. Confidentiality: Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to Confidential Information and that disclosure of such information could violate rights to private individuals and entities, including the parties. Confidential Information is nonpublic information that a reasonable person would believe to be confidential and includes, without limitation, personal identifying information (e.g., Social Security numbers) and trade secrets, each as defined by applicable state law ("Confidential Information"). Each party agrees that it will not disclose any Confidential Information of the other party and further agrees to take all reasonable and appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein will survive the termination or cancellation of this Agreement. This obligation of confidentiality will not apply to information that:

- a. is in the public domain, either at the time of disclosure or afterwards, except by breach of this Agreement by a party or its employees or agents;
- b. a party can establish by reasonable proof was in that party's possession at the time of initial disclosure;
- c. a party receives from a third party who has a right to disclose it to the receiving party; or
- d. is the subject of a legitimate disclosure request under the open records laws or similar applicable public disclosure laws, including the California Public Records Act (California Government Code section 6250 set seq.); provided, however, that in the event County receives an open records or other similar applicable request, County will give Contractor prompt notice and otherwise perform the functions required by applicable law.
- e. is subject to disclosure pursuant to subpoena or court order.

6. Section 9 of the Agreement is replaced as follows:

9. Binding Effect; No Assignment: This Agreement shall be binding on, and shall be for the benefit of, either County's or Contractor's successor(s) or permitted assign(s). Neither party may assign this Agreement without the prior written consent of the other party; provided, however, County's consent is not required for an assignment by Contractor as a result of a corporate reorganization, merger, acquisition, or purchase of substantially all of Contractor's assets.

7. Section 10 of the Agreement is replaced as follows:

10. Termination of Agreement: This Agreement may be terminated as set forth below. In the event of termination, County will pay Contractor for all undisputed fees and expenses related to the SaaS Services, products, and/or other services County have received, or Contractor has incurred or delivered, prior to the effective date of termination. Disputed fees and expenses in all terminations other than County's termination for cause must have been submitted as invoice disputes in accordance with Section 30.

10.1 Failure to Pay SaaS Fees: County acknowledges that continued access to the SaaS Services is contingent upon County's timely payment of SaaS Fees. If County fails to timely pay the SaaS Fees, Contractor may discontinue County's access to the SaaS Services. Contractor may also terminate this Agreement if County does not cure such failure to pay within forty-five (45) days of receiving written notice of our intent to terminate.

10.2 For Cause: If County believes Contractor has materially breached this Agreement, County will invoke the Dispute Resolution clause set forth in Section 30. County may terminate this Agreement for cause in the event Contractor does not cure, or create a mutually agreeable action plan to address, a material breach of this Agreement within the thirty (30) day window set forth in Section 30.

10.3 Force Majeure: Either party has the right to terminate this Agreement if a Force Majeure event suspends performance of the SaaS Services for a period of forty-five (45) days or more. Except for County's payment obligations, neither party will be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure; provided, however, that within ten (10) business days of the Force Majeure event, the party whose performance is delayed provides the other party with written notice explaining the cause and extent thereof, as well as a request for a reasonable time extension equal to the estimated duration of the Force Majeure event.

10.4 Lack of Appropriations: If County should not appropriate or otherwise make available funds sufficient to utilize the SaaS Services, County may unilaterally terminate this Agreement upon thirty (30) days' written notice to Contractor. County will not be entitled to a refund or offset of previously paid, but unused SaaS Fees. County agrees not to use termination for lack of appropriations as a substitute for termination for convenience.

8. Section 15 of the Agreement is replaced as follows:

15. Retention of Records: Except for County data, which is the sole responsibility of County to back up, Contractor shall maintain all records related to this Agreement for no less than three years after the County makes final payment or after termination of this contract. All records shall be subject to the examination and/or audit by agents of the County or as otherwise required by applicable law. The County may audit Contractor's books and records relating directly to the contract once per year on one-week advance written notice, and at Contractor's expense.

9. Section 17 of the Agreement is replaced as follows:

17. Merger Clause: This Agreement, including Exhibit "A" attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the County Purchasing Agent. In the event that any term, condition, provision, requirement or specification set for in the body of the Agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this Amendment shall prevail. In the event of any inconsistency between the Agreement and this Amendment, this Amendment shall control.

10. The following clauses are added to the Agreement:

28. LIMITATION OF LIABILITY: EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, CONTRACTOR'S LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO COUNTY'S ACTUAL DIRECT DAMAGES, NOT TO EXCEED THE THEN-CURRENT ANNUAL SAAS FEES PAYABLE BY COUNTY. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE PRICES SET FORTH IN THIS AGREEMENT ARE SET IN RELIANCE UPON THIS LIMITATION OF LIABILITY AND TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, THE EXCLUSION OF CERTAIN DAMAGES, AND EACH SHALL APPLY REGARDLESS OF THE FAILURE OF AN ESSENTIAL PURPOSE OF ANY REMEDY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS THAT ARE SUBJECT TO SECTIONS 7.1 AND 7.2.

29. EXCLUSION OF CERTAIN DAMAGES: TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

30. Dispute Resolution: County agrees to provide Contractor with written notice within thirty (30) days of becoming aware of a dispute. County agrees to cooperate with Contractor in

trying to reasonably resolve all disputes, including, if requested by either party, appointing a senior representative to meet and engage in good faith negotiations with Contractor's appointed senior representative. Senior representatives will convene within thirty (30) days of the written dispute notice, unless otherwise agreed. All meetings and discussions between senior representatives will be deemed confidential settlement discussions not subject to disclosure under Federal Rule of Evidence 408 or any similar applicable state rule. If parties fail to resolve the dispute, then the parties shall participate in non-binding mediation in an effort to resolve the dispute. If the dispute remains unresolved after mediation, then either of the parties may assert their respective rights and remedies in the California Superior Court for the County of San Mateo or the United States District Court for the Northern District of California. Nothing in this section shall prevent County or Contractor from seeking necessary injunctive relief during the dispute resolution procedures.

31. Data Security Measures: In order to protect County's Confidential Information, Contractor will: implement and maintain all reasonable security measures appropriate to the nature of the Confidential Information including without limitation, technical, physical, administrative and organizational controls, and will maintain the confidentiality, security and integrity of such Confidential Information; (ii) implement and maintain industry standard systems and procedures for detecting, mitigating, and responding to attacks, intrusions, or other systems failures and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures; (iii) designate an employee or employees to coordinate implementation and maintenance of its Security Measures (as defined below); and (iv) identify reasonably foreseeable internal and external risks to the security, availability, confidentiality, and integrity of Confidential Information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks (collectively, Security Measures).

32. Notice of Data Breach: If Contractor knows that Confidential Information has been accessed, disclosed, or acquired without proper authorization and contrary to the terms of this agreement, Contractor will alert County of any such data breach in accordance with applicable law, and take such actions as may be necessary to preserve forensic evidence and return the SaaS Services to standard operability. If so required, Contractor will provide notice in accordance with applicable State data breach notification laws.

33. County Data Backup: County is providing Contractor a copy of County Data. County acknowledges and understands that Contractor and the SaaS Services are not the system of record of County Data. Any laws and regulations governing County for retention of County Data remains County's responsibility. COUNTY IS SOLELY RESPONSIBLE FOR BACKING UP COUNTY DATA unless otherwise specially agreed in writing between Socrata and County.

34. County Assistance: County acknowledges that the implementation of the SaaS Services is a cooperative process requiring the time and resources of County's personnel. County agrees to use all reasonable efforts to cooperate with and assist Contractor as may be reasonably required to meet the agreed upon project deadlines and other milestones for implementation. This cooperation includes at least working with us to schedule the implementation-related services outlined in this Amendment. Contractor will not be liable for failure to meet any deadlines and

milestones when such failure is due to Force Majeure or to the failure by County's personnel to provide such cooperation and assistance (either through action or omission).

35. Service Level Agreement (SLA) & Warranty

35.1 Service Warranty: Contractor warrants to County that the functionality or features of the SaaS Services will substantially perform as communicated to County in writing, or their functional equivalent, but Socrata has the right to update functionality. The support policies may change but will not materially degrade during the term. Contractor may deprecate features upon at least 30 days' notice to County, but Contractor will use commercially reasonable efforts to support the previous features for at least 6 months following the deprecation notice. The deprecation notice will be posted at <https://support.socrata.com>.

35.2 Uptime Service Level: Contractor will use commercially reasonable efforts maintain the online availability of the SaaS Service for a minimum of availability in any given month as provided in the chart below (excluding maintenance scheduled downtime, outages beyond our reasonable control, and outages that result from any issues caused by County, County's technology or County's suppliers or contractors, Service is not in the production environment, County are in breach of this Agreement, or County have not pre-paid for SaaS Fees for the Software as a Service in the month in which the failure occurred).

Availability SLA	Credit
99.9%	3% of monthly fee for each full hour of an outage that adversely impacted County's access or use of the SaaS Services (beyond the warranty).

Maximum amount of the credit is 100% of the prorated SaaS Service Fees for such month, or \$1,800.00, whichever is less, and the minimum credit cannot be less than \$100.00.

35.3 Limited Remedy: County's exclusive remedy and our sole obligation for our failure to meet the warranty under Section 36.2 is the provision by us of the credit for the applicable month, as provided in the chart above (if this Agreement is not renewed then a refund in the amount of the credit owed); provided that County notifies Contractor of such breach of the warranty within thirty (30) days of the end of that month.

36. Return of County Data: Upon request, Contractor will make the SaaS Services available to County to export County Data for a period of sixty (60) days following the termination of this Agreement. After such sixty (60) day period has expired, Contractor has no obligation to maintain County Data and may destroy the County Data.

37. Except as expressly provided in this Amendment, all of the terms and provisions of the Agreement will remain in full force and effect.

38. Contract Documents: This Agreement includes the following exhibits:

Exhibit A I	Description of Services to be Performed by the
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Exhibit A II
Exhibit B

Contractor
Amount and Method of Payment
Socrata Support Policy

11. Original Exhibit A, Section II, Amount and Method of Payment is replaced with Revised Exhibit A, Section II, (rev. 4/19).

Amount and Method of Payment:

ORIGINAL CONTRACT AMOUNT	\$52,372.00
RENEWAL FOR 2013-2015 (\$179,928 X 2 YEARS)	\$359,856.00
*RENEWAL FOR 2015-2017 (\$206,559.96 X 2 YEARS)	\$413,119.92
MEASURE A DASHBOARD REDESIGN (36 HOURS AT \$200 PER HR)	\$1,600.00
PERSEPECTIVES LICENCES AND SUPPORT PACKAGE	\$22,200.00
*RENEWAL FOR 2017-2019 (\$222,291.96 X 2 YEARS)	\$444,583.92
**RENEWAL FOR 2019-2021 (\$210,000 X 2 YEARS)	\$420,000.00
TOTAL	\$1,713,731.84

* The renewal information below only applies to Contractor's Open Data Platform software coverage for the period July 1, 2015 through June 30, 2019. Renewal includes:

> Socrata Open Data Platform

Usage Limits:

- 350 Datasets
- 2 templates and 20 public Dataslate pages
- Unlimited Views and Visualizations
- Unlimited Users
- Unlimited Open Data APIs
- Native support for geospatial data
- Statewide Usage Analytics

> Socrata Open Performance Platform

Usage Limits:

- 5 Dashboards
- 100 Goals
- 500 Datasets
- Unlimited Views and Visualizations
- Unlimited Users

> Socrata Open Expenditures App

> Socrata Open Data Support

** The renewal information below only applies to Contractor's Open Data Platform software coverage for the period July 1, 2019 through June 30, 2021. Renewal includes:

Socrata Connected Government Cloud – Program Edition

The full Socrata product suite. Limits: Unlimited Monthly Active Users. 500k External API calls. 2TB of data storage. Includes Support and Education. Excludes Set-Up.

- Daas Platform
- Operational Intelligence
- Performance Optimization
- Financial Insights Cloud
- Citizen Engagement
- 1 X-Connect Application

Contractor will provide County support for the SaaS Service at the Silver Support Level under the terms of Contractor's Support Policy, which is provided in Exhibit B; Contractor will report scheduled maintenance windows, outages or other events affecting County on Contractor's support site.

Contractor will invoice the County on a monthly basis, for the actual hours worked during the previous period. The County will submit payment within thirty (30) days of receipt of invoice conditioned upon the approval of work performed during the billing cycle.

Each invoice will include the following:

- Agreement Number
- Purchase Order Number
- The net amount for which payment is due

12. All other terms and conditions of the agreement dated February 8, 2013, as amended between the County and Contractor shall remain in full force and effect.

THIS CONTRACT IS NOT VALID UNTIL SIGNED BY ALL PARTIES. NO WORK WILL COMMENCE UNTIL THIS DOCUMENT HAS BEEN SIGNED BY THE COUNTY PURCHASING AGENT OR AUTHORIZED DESIGNEE.

For Contractor:

Hannah May
Contractor Signature

05/21/2019
Date

Hannah May
Senior Corporate Attorney
Contractor Name (please print)



For County:

Purchasing Agent Signature
(Department Head or
Authorized Designee)
County of San Mateo

Date

Purchasing Agent Name (please print)
(Department Head or **Authorized** Designee)
County of San Mateo

Purchasing Agent or **Authorized** Designee
Job Title (please print)
County of San Mateo