

**AMENDMENT NO. 1 TO AGREEMENT  
BETWEEN THE COUNTY OF SAN MATEO AND  
ACQUIA, INC.**

THIS AMENDMENT TO THE AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and ACQUIA, 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 Acquia Enterprise Subscription services for hosting of the County's Drupal website on June 18, 2013; and

WHEREAS, the parties wish to amend the Agreement for continued web-hosting and Drupal content management system support services for the County's Drupal-based Internet presence, increasing the Agreement amount by \$234,294 for a new not to exceed amount of \$539,591, and extending the term through June 29, 2019.

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

1. Section 3. Payments of the Agreement is amended to read as follows:

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibits A, B, and C, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit D. In no event, shall the County's total fiscal obligation under this Agreement exceed FIVE HUNDRED THIRTY NINE THOUSAND FIVE HUNDRED NINETY ONE DOLLARS (\$539,591.00).

If any payment is late and is not subject to a good faith dispute as described below, then upon 60 days written notice, Contractor may suspend County's access to the Services until such time payment is made. All fees exclude any taxes and duties, including sales, use or other transaction tax, associated with the Services, which will be County's responsibility to pay. If County is legally entitled to an exemption from any sales, use or similar transaction tax, County Is responsible for providing Contractor with legally-sufficient tax exemption certificates for each taxing jurisdiction. If any deduction or withholding is required by law, County will notify Contractor and will pay any additional amounts necessary to ensure that the net amount that Contractor receives, after any

deduction and withholding, equals the amount Contractor would have received if no deduction or withholding had been required. Additionally, County will provide Contractor with documentation showing that the withheld and/or deducted amounts have been paid to the relevant taxing authority.

County shall reimburse Contractor for reasonable out-of-pocket expenses incurred by Contractor and its personnel in connection with its performance of Services as provided for in the attached Statements of Work. Any such expenses shall be preapproved by County in writing. Contractor will provide County with reasonably detailed invoices for such expenses on a monthly basis and County agrees to pay the total amount shown as due on each invoice within 30 days after receipt thereof. Any such expenses are subject to the not to exceed amount listed above.

If County disputes any charge or amount on any invoice and such dispute cannot be resolved promptly through good faith discussions between the parties, County shall pay the amounts due under this Agreement less the disputed amount, and the parties shall diligently proceed to resolve such disputed amount. An amount will be considered disputed in good faith if (i) County delivers a written statement to Contractor on or before the due date of the payment describing in detail the basis of the dispute and the amount being withheld by County, (ii) such written statement represents that the amount in dispute has been determined after due investigation of the facts and that such disputed amount has been determined in good faith, and (iii) all other amounts due from County that are not in dispute have been, or will be, paid as and when required under this Agreement.

2. Section 4. Term and Termination of the Agreement is amended to read as follows:

Subject to material compliance with all terms and conditions, the term of this Agreement shall be from June 30, 2013, through June 29, 2019, as further outlined in this Section.

This Agreement may be terminated by County, the Information Services Department's Chief Information Officer/Director, or his/her designee, by giving written notice to Contractor that the funds have not been appropriated or are no longer available and County has exhausted all funds available for the payments due under this Agreement. County shall provide Contractor at least thirty (30) days notice of any such loss of funding and County shall pay to Contractor all fees that accrued prior to the termination date. In such event, Acquia shall not longer provide services to County under this Agreement, and County shall cease using the Services once the termination date has passed.

Either party may terminate this Agreement, an Exhibit (i) in the event of a material breach of this Agreement or an applicable Exhibit by the other party that is not cured within thirty (30) days of written notice thereof from the other party, or (ii) immediately upon written notice if the other party ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding, that is not

dismissed within sixty (60) days of filing. Termination of an Exhibit shall not be deemed a termination of this Agreement. Termination of this Agreement shall, however, terminate all outstanding Exhibits. All rights and obligations of the parties which by their nature are reasonably intended to survive such termination or expiration will survive termination or expiration of this Agreement and each Order or SOW.

Upon any termination of this Agreement or any Exhibit by County for Acquia's material breach, upon written request from County, Acquia shall refund to County any unused prepaid fees covering the remainder of the term of the related subscription(s) after the effective date of termination. Upon any termination or expiration of this Agreement or any applicable Exhibit, Acquia shall no longer provide the applicable Services to County and County shall cease using the Services.

Upon any termination of this Agreement or any Exhibit by Acquia due to County's uncured breach, in addition to any other remedies Acquia may have for such breach at law or in equity, County shall pay Acquia for all fees that accrued prior to the termination date and all service fees that would have continued to accrue through the end of the then current Service Year of the Exhibit had it not been terminated due to County's breach. In no event shall any termination relieve County of the obligation to pay any fees payable to Acquia for the period prior to the effective date of termination. Upon any termination or expiration of this Agreement or any applicable Exhibit, Acquia shall no longer provide the applicable Services to County and County shall cease using the Services.

Except as expressly provided herein, termination of this Agreement by either party for breach will be a nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such party. Upon termination of this Agreement, upon written request of the disclosing party, the receiving party shall promptly return or destroy all confidential Information of the disclosing party in its possession.

**3. The following is added to Exhibit A of the Agreement:**

The Enterprise Services Subscription package includes services listed by this Exhibit based on the following rates for the period June 30, 2016 through June 29, 2019:

<b>Description</b>	<b>Cost</b>
Web Hosting Services and Support	\$78,098.00 per year
<b>Total for 3-year Term</b>	<b>\$234,294.00</b>

Web hosting services and support shall be invoiced to the County on an annual basis.

**4. All other terms and conditions of the agreement dated June 18, 2013, between the County and Contractor shall remain in full force and effect.**

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives,  
have affixed their hands.

COUNTY OF SAN MATEO

By: \_\_\_\_\_  
President, Board of Supervisors, San Mateo County

Date: \_\_\_\_\_

ATTEST:

Joseph Bulens  
By: \_\_\_\_\_  
Clerk of Said Board

ACQUIA, INC.

DocuSigned by:  
*Joseph Bulens*  
49ADFF7BE81D4D4...  
\_\_\_\_\_  
Contractor's Signature

May 27, 2016 | 5:37 AM PT  
Date: \_\_\_\_\_