

**AMENDMENT 1 TO AGREEMENT  
BETWEEN THE COUNTY OF SAN MATEO AND  
SOCRATA, INC.**

THIS AMENDMENT 1 TO THE AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and SOCRATA, 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; and

WHEREAS, the parties wish to amend the Agreement to extend the contract term date to June 30, 2015 and add \$359,856 for a new total amount of \$412,228.

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

**1. 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, 2015 unless terminated earlier by the County.

**2. Section 3 of the Agreement is amended to read as follows:**

**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 ten (10) business days of being notified in writing of said deficiency by the County. In no event shall total payment for services under this Agreement exceed FOUR HUNDRED TWELVE THOUSAND TWO HUNDRED TWENTY EIGHT DOLLARS (\$412,228).

### **3. Sections 19 – 21 of the Agreement are replaced with the following:**

#### **19. Limited License; Changes**

**(a) License to County** County is hereby granted a limited, nonexclusive, non-sublicensable, non-transferable license to access and use the Site, the online Socrata software applications made available by Contractor, if any, for use by County with the Site ("Site Applications") and the Services, including the right to load, store and display County Content on the Site. The license is subject to the terms and does not include the right to: (i) operate or use the Site or the Site Applications on behalf of other entities or persons (e.g., operate as a service bureau) other than as may be approved by Contractor; (ii) modify or otherwise make any derivative uses of the Site or the Site Applications, or any portion thereof; or (iii) use of the Site, the Site Applications or the Services other than for their intended purposes. County will use the Site, Site Applications and the Services in conformance with applicable laws, rules and regulations including, without limitation, all applicable privacy laws. Any use of the Site, the Site Applications or the Services other than as specifically authorized herein, without the prior written permission of Contractor, is strictly prohibited and may result in Contractor terminating the license.

**(b) Changes to Service** Contractor regularly upgrades and updates the Services and Site Applications. This means that the Services and Site Applications are continually evolving. Some of these changes will occur automatically, while others may require County to schedule and implement the changes. The changes may also mean that County needs to upgrade its equipment in order to make efficient use of the Services. Contractor will provide County with advance notification in this case.

**(c) County Passwords** County agrees to (i) maintain the security of County's password or key provided by Contractor to access and load County Content on the Site; and (ii) accept all risks of unauthorized access to the County Content or other information County provides to Contractor. County is responsible for all activity that occurs under County's account, and County should not share County's password with any third party.

**(d) Private County Content Access** County, using Contractor's User Interface (UI) will control access of Users to Private County Content. The Services will restrict permissions to such Private County Content accordingly. Contractor is not responsible for verifying the identities of anyone using log-in credentials to access the Private County Content, and shall have no liability for any unauthorized access.

#### **20. County Content**

**(a) County Content:** County is solely responsible for all County Content and the use of the interactive areas of the Site by County. County agrees not to post, upload to, transmit, distribute, store, create or otherwise publish through the Site (including in its datasets) any of the following:

- i. County Content that is unlawful, libelous, defamatory, obscene, pornographic, indecent, lewd, suggestive, harassing, threatening, invasive of privacy or publicity rights, abusive, inflammatory, fraudulent or violates the rights of any party, or that would otherwise create liability or violate any local, state, national or international law, including, without limitation, the regulations of the U.S. Securities and Exchange Commission or any rules of a securities exchange such as the New York Stock Exchange or the NASDAQ;
- ii. County Content that may infringe any patent, trademark, trade secret, copyright, or other intellectual or proprietary right of any party. By posting any County Content, County represents and warrants that County has the lawful right to distribute and reproduce such County Content;
- iii. County Content that impersonates any person or entity or otherwise misrepresents County's affiliation with a person or entity;
- iv. County Content that is subject to any export control laws or regulations;
- v. Unsolicited promotions, political campaigning, advertising or solicitations;
- vi. Private information of any third party, including, without limitation, addresses, phone numbers, email addresses, Social Security numbers and credit card numbers;
- vii. Viruses, corrupted data or other harmful, disruptive, or destructive files; or
- viii. County Content that, in the sole judgment of Contractor, is objectionable or which may expose Contractor or the Users to any harm or liability of any type.

**(b) No Liability for Content:** Contractor takes no responsibility and assumes no liability for any County Content or User Content posted, stored or uploaded on the Site or Services by County or any third party, or for any loss or damage thereto, nor is Contractor liable for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity that County and its end users may encounter. County's reliance on any content that it obtains through use of the Site, the Site Applications and the Services is at County's own risk.

**(c) Removal of Content: Violations:** Although Contractor has no obligation to screen, edit or monitor any of the County Content or other non-Contractor provided content posted on the Site or to the Services, Contractor reserves the right, and has absolute discretion, to remove, screen or edit any content posted or stored on the site or uploaded to the Services at any time and for any reason without notice or to require County to do the same, and County is solely responsible for creating backup copies of and replacing any County Content posted or stored on the site at County's sole cost and expense. Any use of the Site, the Site Applications or the Services in violation of the foregoing violates this Agreement and may result in, termination or suspension of County's right to use the Site, the Site Applications and the Services.

## **21. Ownership; Licenses from County**

**(a) County Content:** County owns all County Content, including any intellectual property rights therein, but excluding the Suggestions described in Section 22 "Suggestions".

**(b) Contractor Ownership:** Contractor solely owns the intellectual property in the Site, the Site Applications, and User Content. Unless explicitly stated herein, nothing in this Agreement will be construed as conferring any license to County of any other intellectual property rights of Contractor or its third party licensors or suppliers, whether by estoppel, implication, or otherwise.

**(c) Licenses from County:**

(i) During the term of this Agreement, County grants Contractor and its affiliates a nonexclusive, royalty-free, irrevocable and fully sublicensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, analyze, perform and display County Content (excluding Private County Content) on or in connection with the Site, for the provision of Services or to provide services to Users.

(ii) During the term of this Agreement, County grants Contractor and its affiliates a nonexclusive, royalty-free, irrevocable and fully sublicensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, analyze, perform and display Private County Content solely in connection with Contractor's provision of Services to County.

**(d) County Marks:** County grants Contractor and its affiliates and sublicensees the right to display and use County's name, trademark and/or logos provided by County (the "County Marks") in connection with the County Content and the Site. All goodwill associated with Contractor's use of the County Marks will inure to the benefit of County.

**22. Suggestions** County acknowledges and agrees that any materials County submits regarding the Site, the Site Applications or the Services, including but not limited to questions, comments, suggestions, ideas, plans, notes, drawings, original or creative materials or other information ("Suggestions"), are non-confidential and will become the sole property of Contractor. Contractor will own all Suggestions, including all intellectual property rights therein, and will be entitled to the unrestricted use and dissemination of Suggestions for any purpose, commercial or otherwise, without acknowledgement or compensation to County.

**23. Infringement** In accordance with the Digital Millennium Copyright Act (DMCA) and other applicable law, Contractor has adopted a policy of terminating, in appropriate circumstances and at Contractor's sole discretion, Users and Customers who are deemed to be repeat infringers. Contractor may also at its sole discretion, limit access to the Services and

Site and/or terminate the accounts if Contractor receives complaints that the County Content infringes any intellectual property rights of others, whether or not there is any repeat infringement.

**24. Support** Contractor will provide support to County in accordance with Contractor's general support services described at <http://support.socrata.com/home>.

**25. Publicity** Contractor may use the County Marks on Contractor's website, on publicly available customer lists, and in media releases to identify County as a customer of Contractor. Subject to pre-publication review, County may agree to participate with Contractor in the development and publication of a press release announcing the launch of the Services, a case study and reasonable requests for participation in live events highlighting County's use of the Services.

**26. Representations and Warranties** County represents and warrants that (a) County owns and controls all of the rights to the County Content or County otherwise has the right to post such County Content to the Site; (b) the County Content is accurate and not misleading; and (c) the use and posting of the County Content does not violate this Agreement and will not violate any rights of or cause injury to any person or entity. County acknowledges and agrees that Contractor may collect and analyze the data and data structures County or any User posts on the Site, whether private or public, and County's other activities on the Site in order to tailor the Services on Contractor's website to individual user needs and interests and make the Services the best possible user experience.

**27. Warranty Disclaimer** The Site, Site Applications and the Services are provided on an "as is" basis without warranties of any kind, either express or implied. Contractor disclaims all other warranties, express or implied, including, without limitation, implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement as to the information, content and materials in the site. While Contractor will attempt to make County's access and use of the Site, Site Applications and services safe, Contractor cannot and does not represent or warrant that the Site, Site Applications or Services are free of viruses or other harmful components that are outside Contractor's reasonable control.

**3. Original Exhibit A, Section II is amended to read as follows:**

Amount and Method of Payment:	
ORIGINAL CONTRACT AMOUNT:	\$52,372
RENEWAL* FOR TWO YEARS (\$179,928 X 2 YEARS)	\$359,856
<b>TOTAL</b>	<b>\$412,228</b>

**\*Renewal includes:**

➤ **Socrata Open Data Platform Basic Plan**  
**Usage Limits:**

- **250 Public datasets**
- **2 templates and 20 Public DataSlate pages**
- **100 Enhanced API's created by API Foundry**
- **3 Site Administrators**
- **Unlimited public data visualizations and views**
- **Unlimited publishers, users and consumers**

➤ **Checkbook Explorer**

➤ **Socrata GovStat Extended**

**Usage Limits:**

- **5 Dashboards**
- **100 Goals**
- **500 DataSets**

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

In no event shall total payment for services under this Agreement exceed FOUR HUNDRED TWELVE THOUSAND TWO HUNDRED TWENTY EIGHT DOLLARS (\$412,228).



4. All other terms and conditions of the agreement dated February 8, 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:

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

**SOCRATA, INC.**

  
\_\_\_\_\_  
Contractor's Signature

Date: May 29, 2013