

**FIRST AMENDMENT TO THE AGREEMENT FOR
THE PURCHASE OF PROJECT DEVELOPMENT AND HOSTING
SERVICES FOR A CONTENT MANAGEMENT SYSTEM FOR THE
CITY OF SAN JOSÉ'S INTERNET, INTRANET, AND EXTRANET SITES
BETWEEN THE CITY OF SAN JOSE
AND
CIVICPLUS, LLC (FORMERLY ICON ENTERPRISES, INC.)**

This First Amendment to the Agreement for the Purchase of Project Development and Hosting Services for a Content Management System for the City of San José's Internet, Intranet, and Extranet Sites between the City of San José (hereinafter "City"), a California municipal corporation, and CivicPlus LLC (formerly Icon Enterprises, Inc.) (hereinafter "Contractor"), a Kansas limited liability company, is entered into on the date of execution by City ("Effective Date"). Each of City and Contractor are sometimes referred to as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, effective February 2, 2012, City and Contractor entered into an agreement entitled "Agreement for the Purchase of Project Development and Hosting Services for a Content Management System for the City of San José's Internet, Intranet, and Extranet Sites between the City of San José and Icon Enterprises, Inc. DBA CivicPlus" ("Agreement"); and

WHEREAS, City and Contractor now desire to amend the Agreement to add Exhibit H – Google Analytics Terms of Use, pertaining to ongoing website statistics services.

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

SECTION 1. Section 1 of the Agreement entitled "Agreement Documents" is hereby amended to read as set forth below:

1 Agreement Documents

The documents forming the entire Agreement between City and Contractor shall consist of this Agreement including:

- EXHIBIT A - Scope of Services
- EXHIBIT A-1 - Price List
- EXHIBIT A-2 - Performance Schedule
- EXHIBIT B - Compensation
- EXHIBIT C - Insurance Requirements
- EXHIBIT D - Change Order Form
- EXHIBIT E - Maintenance Renewal Addendum
- EXHIBIT F - Privacy and Disclosure Policy

EXHIBIT G - Contractor's Proposal Response to RFP 10-11-19, dated July 15, 2011
EXHIBIT H - Google Analytics Terms of Use

In the event any discrepancies or inconsistencies between the provisions of this Agreement and any of the above-referenced documents arise, the provisions of this Agreement will prevail. Contractor's Proposal (EXHIBITS G, the "Proposal") shall supplement the Scope of Services (Exhibit A) and be subject to the terms and conditions of the Agreement. In the event of any discrepancies or inconsistencies between the provisions of the Scope of Services (Exhibit A) or the Proposal, the Scope of Services (Exhibit A) will prevail.

This Agreement and the Exhibits A, B, C, D, E, F, G and H (collectively, the "Exhibits") contain all of the agreements, representations and understandings of the Parties hereto, and supersede and replace any previous understandings, commitments, or agreements, whether oral or written. Any other terms or conditions included in any shrink-wrap or boot-screen license agreements, quotes, invoices, acknowledgments, bills of lading, or other forms utilized or exchanged by the Parties shall not be incorporated in this Agreement or be binding upon the Parties unless the Parties expressly agree in writing or unless otherwise provided for in this Agreement.

SECTION 2. Section 27 of the Agreement entitled "Miscellaneous" is hereby amended to add Subsections 26.5 and 26.6 entitled "Counterparts" and "Use of Electronic Signatures" respectively as set forth below:

26.6 Counterparts

This Agreement may be executed in any number of counterparts and by each Party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

26.7 Use of Electronic Signatures

Unless otherwise prohibited by law or City policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the City.

SECTION 3. Section 15 of the Agreement entitled "Compliance with Laws," is hereby amended to read as set forth below:

15 Compliance with Laws

Each party shall comply with all applicable laws, ordinances, codes, regulations and policies (collectively, "laws") of the federal, state and local governments, including without limitation, any and all laws specified elsewhere in this Agreement.

SECTION 4. All terms and conditions of the Agreement not specifically modified by this First Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year set forth beneath the respective name below.

City of San José ("City")
a municipal corporation

CivicPlus, LLC (formerly Icon Enterprises, Inc.)
("Contractor")
a Kansas limited liability company


Email: vickie.davis@sanjoseca.gov


Email: vikander@civicplus.com

By _____
Vickie J. Davis
IT & Strategic Procurement Manager

By _____
Amy Vikander
Senior Vice President of Customer Success

06/23/2022 GMT-07:00
Date: _____

06/22/2022 GMT-05:00
Date: _____

APPROVED AS TO FORM:


Email: diana.yuan@sanjoseca.gov

Diana Yuan
Deputy City Attorney

EXHIBIT F
GOOGLE ANALYTICS TERMS OF USE

The City of San José (“City”) understands that by using Google Analytics for website statistics as set forth in the Section 5.6 of Exhibit A, Scope of Services, to the Agreement, City agrees to the following terms:

- 1.1 City shall not use Google Analytics to solicit or attempt to obtain, for analytics purposes, any personally identifiable information, personal health information, or payment card information from any data subjects or users of the City’s website.
- 1.2 City is responsible for keeping Contractor informed of its designated users. City shall promptly inform Contractor upon the separation or removal of any designated user in order for Contractor to terminate the designated user’s access to the Google Analytics services.
- 1.3 City acknowledges that Contractor is not responsible for damages or losses resulting from the sole negligence or willful misconduct of the City or its officers, employees or agents.
- 1.4 Neither Party will use or disclose the other Party's confidential information without the other's prior written consent except for the purpose of performing its obligations under the Agreement or if required by law, regulation or court order; in which case, the Party being compelled to disclose confidential information will give the other Party as much notice as is reasonably practicable prior to disclosing the confidential information. Confidential information shall not include information subject to disclosure under the California Public Records Act (Cal. Govt. Code Section 62500 et seq.)
- 1.5 Google may identify certain features as "Alpha," "Beta," "Experiment," (either within the Service or elsewhere by Google) or as otherwise unsupported or confidential (collectively, "Beta Features"). City may use these Beta Features at its own risk and shall not disclose confidential information related to the Beta Features pursuant to Section 1.4 above.
- 1.6 Google and its wholly owned subsidiaries may retain and use, subject to the terms of its privacy policy, the aggregate data information collected in City use of the Service. Contractor will ensure that Google will not share City Customer Data or any Third Party's Customer Data with any third Parties unless Google (i) has City consent for any Customer Data or any Third Party's consent for the Third Party's Customer Data; (ii) concludes that it is required by law or has a good faith belief that access, preservation or disclosure of Customer Data is reasonably necessary to protect the rights, property or safety of Google, its users or the public; or (iii) provides Customer Data in certain limited circumstances to third Parties to carry out tasks on Google's behalf (e.g., billing or data storage) with strict restrictions that prevent the data from being used or shared except as directed by Google. When this is done, it is subject to agreements that oblige those Parties to process Customer Data only on Google's instructions and in compliance with this Agreement and appropriate confidentiality and security measures.
- 1.7 City will not and will not assist or permit any third Party to, pass information to Google that Google could use or recognize as personally identifiable information. City will have and abide by an appropriate Privacy Policy and will comply with all applicable laws, policies, and regulations relating to the collection of information from Users. City’s Privacy Policy must provide notice of City use of cookies, identifiers for mobile devices (e.g., Android Advertising Identifier or Advertising Identifier for iOS) or similar technology used to collect data. City must disclose the use of Google Analytics, and how it collects and processes data. City will use commercially reasonable efforts to ensure that a User is provided with clear and comprehensive information about, and consents to, the storing and accessing of cookies or other information on

the User's device where such activity occurs in connection with the Service and where providing such information and obtaining such consent is required by law.

- 1.8 City must not circumvent any privacy features (e.g., an opt-out) that are part of the Service.
- 1.9 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, GOOGLE MAKES NO OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT.
- 1.10 TO THE EXTENT PERMITTED BY APPLICABLE LAW, GOOGLE WILL NOT BE LIABLE FOR YOUR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF GOOGLE OR ITS SUBSIDIARIES AND AFFILIATES HAVE BEEN ADVISED OF, KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY. GOOGLE'S (AND ITS WHOLLY OWNED SUBSIDIARIES') TOTAL CUMULATIVE LIABILITY TO YOU OR ANY OTHER PARTY FOR ANY LOSS OR DAMAGES RESULTING FROM CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL NOT EXCEED \$500 (USD).
- 1.11 The Service, which includes the Software and all Intellectual Property Rights therein are, and will remain, the property of Google (and its wholly owned subsidiaries). All rights in and to the Software not expressly granted to City in this Agreement are reserved and retained by Google and its licensors without restriction, including, Google's (and its wholly owned subsidiaries') right to sole ownership of the Software and Documentation. Without limiting the generality of the foregoing, City agrees not to (and not to allow any third Party to): (a) sublicense, distribute, or use the Service or Software outside of the scope of the license granted in this Agreement; (b) copy, modify, adapt, translate, prepare derivative works from, reverse engineer, disassemble, or decompile the Software or otherwise attempt to discover any source code or trade secrets related to the Service; (c) rent, lease, sell, assign or otherwise transfer rights in or to the Software, Documentation or the Service; (d) use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the Service or the Software; (e) use the trademarks, trade names, service marks, logos, domain names and other distinctive brand features or any copyright or other proprietary rights associated with the Service for any purpose without the express written consent of Google; (f) register, attempt to register, or assist anyone else to register any trademark, trade name, service marks, logos, domain names and other distinctive brand features, copyright or other proprietary rights associated with Google (or its wholly owned subsidiaries) other than in the name of Google (or its wholly owned subsidiaries, as the case may be); (g) remove, obscure, or alter any notice of copyright, trademark, or other proprietary right appearing in or on any item included with the Service or Software; or (h) seek, in a proceeding filed during the term of this Agreement or for one year after such term, an injunction of any portion of the Service based on patent infringement.
- 1.12 In the event City does not agree or ceases agreement with the terms included in this Exhibit H, City must inform Contractor and Contractor reserves the right to disable its use of the website statistics services. In such an instance all other aspects of Exhibit A – Scope of Services, unrelated to website services shall otherwise continue.