

**THIRD AMENDMENT TO THE AGREEMENT
FOR THE PURCHASE OF ON-LINE BID NOTIFICATION AND
VENDOR MANAGEMENT SYSTEM
BETWEEN THE CITY OF SAN JOSÉ AND
PERISCOPE HOLDINGS, INC. (FORMERLY RFP DEPOT LLC DBA BIDSINC)**

This Third Amendment to the Agreement for the Purchase of On-Line Bid Notification and Vendor Management System between the City of San José, a municipal corporation (hereinafter “City”), and Periscope Holdings, Inc. (“Contractor”), formerly RFP Depot LLC dba BidSync, a Delaware corporation (hereinafter “Contractor”), 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, on June 18, 2007, City and Contractor entered into an agreement entitled “Agreement for the Purchase of On-Line Bid Notification and Vendor Management System” (“Agreement”); and

WHEREAS, on July 1, 2012, City and Contractor entered into the First Amendment to the Agreement to increase the number of option periods from three to four; and

WHEREAS, on July 1, 2013, City and Contractor entered into the Second Amendment to the Agreement to increase the number of option periods from four to nine and revise the compensation rates for Additional Services; and

WHEREAS, City and Contractor now wish to further amend the amended Agreement to increase the number of option periods from nine to ten to extend the Agreement through June 30, 2019 and to remove the contingency for Additional Services for the initial term of the Agreement;

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

1. Section 2.2, entitled “Option to Extend,” is hereby amended in its entirety to read as set forth below:

The City reserves the right to extend the term of this Agreement for ten (10) additional one-year periods (“Option Periods”). City shall provide Contractor written notice in the form of Exhibit E of its intention to extend the Agreement prior to the end of the then current term.

2. Section 7, entitled “Contract Price,” is hereby amended in its entirety to read as set forth below:

The Total Contract Price in U.S. dollars shall not exceed Ninety Thousand Dollars (\$90,000) (“Maximum Compensation”) for the initial term of the Agreement. The terms, rates, and schedule of payment are set forth in the attached Second Revised Exhibit B, entitled “Compensation.” Contractor will submit to City invoices that include a breakdown of services provided for the corresponding milestone in accordance to the attached Second Revised Exhibit B, entitled “Compensation.” City will make payment to Contractor within thirty (30) days after the date of each invoice. City will make payments when due in the form of a check, cashier’s check, or wire transfer drawn on a U.S. financial institution.

3. Revised Exhibit B, entitled "Compensation," (included in Second Amendment) is hereby deleted and replaced in its entirety with the Second Revised Exhibit B, which is attached hereto and incorporated herein.

All terms and conditions of the original Agreement, the First Amendment, the Second Amendment, and options to extend the Agreement not expressly modified by this Third Amendment shall remain unchanged and in full force and effect.

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

City of San José
a municipal corporation

Periscope Holdings, Inc.
a Delaware Corporation

By: _____

By: _____

Jennifer Cheng

David English

Deputy Director of Finance

Chief Financial Officer

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Rosa Tsongtaarii
Senior Deputy City Attorney

Chris Kennedy

Chief Operating Officer

Date: _____

SECOND REVISED EXHIBIT B COMPENSATION

1 Compensation

- 1.1 The maximum amount payable for all products and services provided under this Agreement shall not exceed Ninety Thousand Dollars (\$90,000) for the initial term. Any additional services requested by the City that would exceed the preceding maximum amount will be addressed in accordance with the Change Order Procedures. No additional services will be performed unless both Parties execute a Change Order outlining the services requested and the compensation agreed for such services.
- 1.2 Payment for any part or parts of the System provided hereunder, or inspection or testing thereof by City, shall not constitute acceptance or relieve Contractor of its obligations under this Agreement. City may inspect the components of the System when delivered and reject upon notification to Contractor any or all of the System which does not conform to the Specifications or other requirements of this Agreement. Components of the System which are rejected shall be promptly corrected, repaired, or replaced by Contractor. If City receives components of the System with defects or nonconformities not reasonably apparent on inspection, then City reserves the right to require prompt correction, repair, or replacement by Contractor in accordance with Contractor's warranty obligations.

2 Project Performance

- 2.1 Compensation and payments shall be made to Contractor by City based on net thirty (30) days payment terms, following acceptance of designated milestones as shown below in Table B1- Payment Schedule. All invoicing shall include only deliverables accepted and approved by City. City shall have no obligation to pay unless Contractor has successfully completed and City has approved the milestone for which payment is due.
- 2.2 Work shall commence immediately upon execution of the Agreement.
- 2.3 All timeline dates are understood to be close of business, 5:00pm Pacific Time.
- 2.4 If timeline dates fall on a weekend or City holiday, the date is understood to be the next business day.

3 Renewal Period Compensation

Pursuant to Section 2.2 of the Agreement, the City reserves the right to extend the term of this Agreement for ten (10) additional one-year terms ("Option Periods") at the same annual fixed rate for Ongoing Services. Option ten (10) shall be paid quarterly in advance (\$10,000/quarter payable at the beginning of each quarter) upon receipt of quarterly invoices and subject to the net thirty (30) days payment terms. In the event the City terminates for convenience before the end of a prepaid quarter, the City shall not be entitled to a refund of any prepaid quarterly fees.

4 Additional Services

In the event the City requires additional services, Contractor shall provide a written quotation, at no cost to the City, of the type of additional service requested and the time required to complete the same. Upon receiving the City's written approval to proceed with the additional service, Contractor shall perform the additional service at a time mutually agreed upon by Contractor and according to the hourly rates specified below:

Additional Services	Rate
Project Manager	\$150/hour
Programmer	\$175/hour
Junior Programmer	\$150/hour
Web Developer	\$125/hour
System Administrator	\$125/hour
Database Administrator	\$150/hour
On-Site Training (1 trainer per day)	\$2,500/day + travel expenses
Consulting/Assessment Services	\$165/hour

Table B1: Payment Schedule

Item Description	Milestone/Deliverables	Estimated Completion	Compensation
Initial 2-Year Term	Implementation/Configuration (Exhibit A, Section 1)	7/30/07	\$25,000
	<ul style="list-style-type: none"> • Training (Exhibit A, Section 1.14) • Go-Live (Exhibit A, Section 7) • Ongoing Support & Maintenance (Exhibit A, Section 3) 	8/30/07	\$25,000
	Annual Web Hosting, Support, & Maintenance (Exhibit A, Section 3)	7/1/08 – 6/30/09	\$40,000
TOTAL NOT TO EXCEED FOR INITIAL 2-YEAR TERM			\$90,000
Option 1	Annual Web Hosting, Support, & Maintenance (Exhibit A, Section 3)	7/1/09 – 6/30/10	\$40,000
Option 2	Annual Web Hosting, Support, & Maintenance (Exhibit A, Section 3)	7/1/10 – 6/30/11	\$40,000
Option 3	Annual Web Hosting, Support, & Maintenance (Exhibit A, Section 3)	7/1/11 – 6/30/12	\$40,000
Option 4 (Amendment #1)	Annual Web Hosting, Support, & Maintenance (Exhibit A, Section 3)	7/1/12 – 6/30/13	\$40,000
Option 5 (Amendment #2)	Annual Web Hosting, Support, & Maintenance (Exhibit A, Section 3)	7/1/13 – 6/30/14	\$40,000
Option 6 (Amendment #2)	Annual Web Hosting, Support, & Maintenance (Exhibit A, Section 3)	7/1/14 – 6/30/15	\$40,000
Option 7 (Amendment #2)	Annual Web Hosting, Support, & Maintenance (Exhibit A, Section 3)	7/1/15 – 6/30/16	\$40,000
Option 8 (Amendment #2)	Annual Web Hosting, Support, & Maintenance (Exhibit A, Section 3)	7/1/16 – 6/30/17	\$40,000
Option 9 (Amendment #2)	Annual Web Hosting, Support, & Maintenance (Exhibit A, Section 3)	7/1/17 – 6/30/18	\$40,000
Option 10 (Amendment #3)	Annual Web Hosting, Support, & Maintenance (Exhibit A, Section 3)	7/1/18 – 6/30/19	\$40,000
TOTAL NOT TO EXCEED FOR OPTION TERMS			\$400,000

All amounts stated above are in United States Currency.

In the event the City amends the Agreement to extend Annual Web Hosting services after Option 3, the annual amount shall be fixed at \$40,000 per year through Option 10 ending on June 30, 2019.