

1 [Contract Amendment - Tiburon, Inc. - Computer Aided Dispatch System Software
2 Maintenance - Not to Exceed \$7,153,056]

3 **Resolution approving an amendment to the Agreement between the City and County of**
4 **San Francisco and Tiburon Inc., for computer aided dispatch system software**
5 **maintenance to increase the amount by \$1,905,904 for a total amount not to exceed**
6 **\$7,153,056 and extending the term by five years for a total contract term of June 29,**
7 **2012, through November 30, 2024.**

8
9 WHEREAS, On Jun 29, 2012, the City and County of San Francisco, acting through its
10 Office of Contract Administration, entered into an agreement with Tiburon, Inc., for the joint
11 implementation of a Computer Aided Dispatch System ("CAD") and Fire Station Alerting
12 System ("FAS") to provide 9-1-1 dispatching services for the City; and

13 WHEREAS, The Agreement was awarded to Contractor based on a sole source
14 procurement request which was approved on March 13, 2012; and

15 WHEREAS, The Tiburon Agreement is on file with the Clerk of the Board of
16 Supervisors in File No. 190981, which is hereby declared to be a part of this Resolution as if
17 set forth fully herein; and

18 WHEREAS, By the First Amendment the Department of Emergency Management and
19 Tiburon, Inc. have agreed to extend the term to November 30, 2024, and increase the
20 maximum expenditure by \$1,905,904 to \$7,153,056, for continued software support and
21 maintenance services; and

22 WHEREAS, A sole source procurement request was approved for the First
23 Amendment on August 16, 2019; and
24
25

1 WHEREAS, Charter, Section 9.118, "Contract and Lease Limitations", Subsection (a)
2 requires Board of Supervisors' approval of any contract which, when entered into, extends
3 over ten (10) years; and

4 WHEREAS, The First Amendment is on file with the Clerk of the Board of Supervisors
5 in File No: 190981, which is hereby declared to be a part of this resolution as if set forth fully
6 herein; now, therefore be it

7 RESOLVED, That the Board of Supervisors hereby approves the First Amendment of
8 the Computer Aided Dispatch System Agreement by and between Tiburon Inc., and the City
9 and County of San Francisco, acting by and through its Department of Emergency
10 Management; and, be it

11 FURTHER RESOLVED, That within thirty (30) days of the amendment being fully
12 executed by all parties, The Department of Emergency Management shall provide the final
13 amendment to the Clerk of the Board for inclusion into the official file.

<p>Item 3 File 19-0981</p>	<p>Department: Department of Emergency Management (DEM)</p>
<p>EXECUTIVE SUMMARY</p>	
<p>Legislative Objectives</p>	
<ul style="list-style-type: none"> • The proposed resolution would approve the First Amendment to the contract between the Department of Emergency Management (DEM) and Tiburon, Inc., extending the term by five years for a total contract term from June 29, 2012 through November 30, 2024, and increasing the not-to-exceed amount of the contract by \$1,905,904, for a total not to exceed \$7,153,056. 	
<p>Key Points</p>	
<ul style="list-style-type: none"> • In June 2012, DEM, acting through the Office of Contract Administration (OCA), entered into a 9-1-1 dispatching services agreement with Tiburon, Inc. for a term of approximately seven years and five months and an amount not to exceed \$5,247,152. The contract did not require Board of Supervisors approval because it did not exceed 10 years or \$10,000,000. The contract includes two components, the Computer Aided Dispatch System (CAD), and the Fire Station Alerting System (FAS). • The contract with Tiburon expires on November 30, 2019. DEM and Tiburon have agreed to extend the contract for an additional five years, through November 30, 2024. A sole source procurement request was approved because the Tiburon system is already in use and it cannot be maintained by other vendors. 	
<p>Fiscal Impact</p>	
<ul style="list-style-type: none"> • The proposed resolution would increase the not-to-exceed amount of the contract by \$1,905,904. This amount would be used for system maintenance over the five-year extension of the contract term. • DEM has expended \$4,526,678 of the initial \$5,247,152 not-to-exceed amount. The remaining contract capacity is \$720,474, which is available for software enhancements and/or additional services, if needed. 	
<p>Recommendation</p>	
<ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

Administrative Code Section 21:30(d) allows sole source contracts for software and maintenance of equipment if the contractor has proprietary rights to the software and equipment.

BACKGROUND

In June 2012, the Department of Emergency Management (DEM), acting through the Office of Contract Administration (OCA), entered into a 9-1-1 dispatching services agreement with Tiburon, Inc. for a term of approximately seven years and five months and an amount not to exceed \$5,247,152. The original contract did not require Board of Supervisors approval because it did not exceed 10 years or \$10,000,000.

The contract includes two components, the Computer Aided Dispatch System (CAD), and the Fire Station Alerting System (FAS). According to Mr. Mitch Sutton, DEM Chief Information Officer, the contract was awarded through a sole source procurement at the recommendation of the Committee on Information Technology (COIT) because Tiburon had already been the vendor for the previous system and therefore could upgrade, rather than replace, the CAD and FAS systems to enhance their functionality. According to Mr. Sutton, DEM had estimated a total cost of approximately \$3,250,000 to upgrade the existing Tiburon CAD system versus approximately \$15,000,000 for a new CAD system procured through an RFP process, due to additional software, services, consulting, project management, and hardware costs.

The original contract expires on November 30, 2019. DEM and Tiburon have agreed to extend the contract for an additional five years, through November 30, 2024. According to Ms. Rachel Emanuel, DEM Project Management Office Lead, a sole source procurement request was approved by the Office of Contract Administration for this proposed contract amendment because the Tiburon system is already in use and it cannot be maintained by other vendors.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the First Amendment to the contract between DEM and Tiburon, extending the contract by five years, for a total term of approximately 12 years and five months, from June 29, 2012 through November 30, 2024, and increasing the not-to-exceed amount by \$1,905,904, for a total not to exceed \$7,153,056. The additional contract amount would only fund continued annual maintenance for the CAD system¹ on the contract.

¹ Maintenance includes software upgrades to maintain and to upgrade system performance, 24/7 support for DEM to report and correct system malfunctions, hotline support to assist CAD system users with operation of CAD software.

The overall scope of the contract would not change; however, the proposed First Amendment adds requirements for Tiburon to secure the City's confidential data.

FISCAL IMPACT

The contract budget of \$5,247,152 included funds for (a) CAD system and fire station implementation; (b) optional enhancements for Police Department licenses, iPad licenses, DataWarehouse, and other options; (c) ongoing maintenance; and (d) additional enhancements at the City's request, as shown in Table 1 below.

Table 1: Original Contract Budget

CAD System and Fire Station Implementation	\$2,168,270
Optional Enhancements ^a	<u>839,233</u>
Subtotal Implementation and Interfaces	3,007,503
Maintenance	<u>1,539,649</u>
Subtotal Implementation, Interface, and Maintenance	4,547,152
Additional Enhancements	<u>700,000</u>
Total Contract Budget	\$5,247,152

Source: Tiburon Contract

^a Optional enhancements included 350 Police Department licenses, 300 iPad licenses, data warehouse and records capacity, and other support.

^b Additional enhancements could be added at the City's request through an authorized change order.

The increase of \$1,905,904 under the proposed First Amendment would pay for maintenance services over the extended five-year contract term, as shown in Table 2 below. In the first year of the extension, the annual maintenance cost would increase by 10 percent. In subsequent years, the annual cost would increase by three percent. The annual payments are shown in Table 2 below.

Table 2: Annual Tiburon Maintenance Costs

Year	Amount
Year 1 (November 2014 –October 2015) ²	\$290,000
Year 2 (November 2015 –October 2016)	298,700
Year 3 (November 2016 –October 2017)	307,661
Year 4 (November 2017 –October 2018)	316,891
Year 5 (November 2018 –October 2019)	326,398
<i>Initial Term Subtotal</i>	<i>\$1,539,650</i>
Year 6 (November 2019 –October 2020)	\$359,118
Year 7 (November 2020 –October 2021)	369,723
Year 8 (November 2021 –October 2022)	380,815
Year 9 (November 2022 –October 2023)	392,241
Year 10 (November 2023 –October 2024)	404,007
<i>Extension Subtotal (File 19-0981)</i>	<i>\$1,905,904</i>
Total	\$3,445,553

According to Mr. Sutton, DEM has spent \$4,526,678 of the initial \$5,247,152 not-to-exceed amount. The remaining contract capacity is \$720,474, which would be available for software enhancements and/or additional services, subject to Board of Supervisors appropriation approval.

RECOMMENDATION

Approve the proposed resolution.

² According to Mr. Sutton, the initial two years and four months of the contract were needed to build the Tiburon system. The maintenance cycle, which ends October 31, is one month off from the contract cycle, which ends November 30. According to Mr. Sutton, DEM wanted to keep the First Amendment simple by extending the term five years, so the contract will terminate November 30, 2024, while the maintenance cycle ends October 31, 2024.

**City and County of San Francisco
Office of Contract Administration
Purchasing Division**

First Amendment

THIS FIRST AMENDMENT (“First Amendment”) to the Agreement entered into by and between Tiburon, Inc. (“Contractor”), and the City and County of San Francisco (“City”), acting by and through its Director of the Office of Contract Administration, dated June 29, 2012 (“Agreement”), is effective as of August 30, 2019. Except as modified herein, all other terms and conditions of the Agreement shall remain in full force and effect. In the event of a conflict between the terms of this First Amendment and the Agreement, the terms of this First Amendment shall control. For convenience, Contract and City are sometimes collectively referred to as “Parties”.

Recitals

WHEREAS, City and Contractor have entered into the Agreement for the joint implementation of a Computer Aided Dispatch System (“CAD”) and Fire Station Alerting System (“FAS”) for the City; and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the maintenance and support services period, increase the contract amount, revise Exhibit D, revise Exhibit H, update standard contractual clauses; and

WHEREAS, the Agreement was awarded to Contractor based on a sole source procurement request which was approved on March 13, 2012 and this modification is consistent therewith; and

WHEREAS, a sole source procurement request was approved for this Amendment on August 16, 2019; and

WHEREAS, the City’s Board of Supervisors approved this Amendment by [insert resolution number] on [insert date of or Board action];

NOW, THEREFORE, Contractor and the City agree as follows:

Article 1 Definitions

The following definitions shall apply to this Amendment:

1.1 **Other Terms.** Terms used and not defined in this First Amendment shall have the meanings assigned to such terms in the Agreement.

Article 2 Modifications to the Agreement.

The Agreement is hereby modified as follows:

2.1 **Definitions.** *The following is hereby added to the Agreement as a Definition in Section 1:*

“**Confidential Information**” means confidential City information including, but not limited to, personally-identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).”

2.2 **Management of Private, Proprietary or Confidential Information and City Data.** *The following hereby deletes and replaces in their entirety Sections 28 and 29 of the Agreement:*

“28. **Management of Private, Proprietary or Confidential Information and City Data.**

a. **Protection of Private Information.** If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

b. **Confidential Information.** In the performance of Services, Contractor may have access to City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

c. **Access to City Data.** City shall at all times have access to and control of all data given to Contractor by City in the performance of this Agreement (“City Data” or “Data”), and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

d. **Use of City Data and Confidential Information.** Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data or Confidential Information solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data or Confidential Information by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

e. **Disposition of Confidential Information.** Upon termination of Agreement or request of City, Contractor shall within forty-eight (48) hours return all Confidential Information which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall within ten (10) business days purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge.

f. **Notification of Legal Requests.** Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

29. **Reserved."**

2.3 **Assignment.** *The following hereby deletes and replaces Section 35 of the Agreement in its entirety:*

“35. **Assignment.** The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an “Assignment”) unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City’s approval of any such Assignment is subject to the Contractor demonstrating to City’s reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor’s obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.”

2.4 **Withholding.** *The following is hereby added to Section 6.c of the Agreement:*

“5. **Withholding.** Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.”

2.5 **Consideration of Salary History.** *The following is hereby added as Section 64 of the Agreement:*

“64. **Consideration of Salary History.** Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is

required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.”

2.6 **Limitations on Contributions.** *The following hereby replaces Section 38 in its entirety:*

“38. **Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor’s board of directors; Contractor’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.”

2.7 **Term of the Agreement.** *Section 3 Term of the Agreement currently reads as follows:*

“3. **Term of the Agreement.** Subject to Section 2, the term of this Agreement shall be from June 29, 2012 to November 30, 2019, unless earlier terminated as provided herein.”

Such section is hereby amended in its entirety to read as follows:

“3. **Term of the Agreement.** Subject to Section 2, the term of this Agreement shall be from June 29, 2012 to November 30, 2024, unless earlier terminated as provided herein.”

2.8 **Payments.** *Section 6a – Payments of the Agreement currently reads as follows:*

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“6. Payments.

a. Fixed Price. In consideration for the services rendered under this Agreement, the City shall pay Tiburon in accordance with Exhibits D and E. In no event shall the contract value exceed \$5,247,152, termed "Total Contract Value". The Total Contract Value includes all Options, Enhancements and maintenance and support charges for the duration of the contract.

No charges shall be incurred under this Agreement nor shall any payments become due to Tiburon until reports, services, and products, required under this Agreement are received from Tiburon and approved by the DEM as being in accordance with this Agreement.

In no event shall the City be liable for interest or late charges for any late payments.

The City's Project Manager may authorize Change Orders which, in an aggregate amount, do not increase the Total Contract Value.

The City shall make all payments within thirty (30) days upon receipt of invoice. Payments shall be made to Tiburon at the address identified in such invoice.”

Such section is hereby amended in its entirety to read as follows:

“6. Payments.

a. Fixed Price. In consideration for the services rendered under this Agreement, the City shall pay Tiburon in accordance with Exhibits D and E. In no event shall the contract value exceed \$7,153,056, termed "Total Contract Value". The Total Contract Value includes all Options, Enhancements and maintenance and support charges for the duration of the contract.

No charges shall be incurred under this Agreement nor shall any payments become due to Tiburon until reports, services, and products, required under this Agreement are received from Tiburon and approved by the DEM as being in accordance with this Agreement.

In no event shall the City be liable for interest or late charges for any late payments.

The City's Project Manager may authorize Change Orders which, in an aggregate amount, do not increase the Total Contract Value.

The City shall make all payments within thirty (30) days upon receipt of invoice. Payments shall be made to Tiburon at the address identified in such invoice.”

2.9

follows:

Insurance. *Section 23 Insurance of the Agreement currently reads as*

“23. Insurance

a. Without in any way limiting Tiburon’s liability pursuant to the “Indemnification” section of this Agreement, Tiburon must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

1. Workers’ Compensation, in statutory amounts, with Employers’ Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

2. Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit, \$2,000,000 aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3. Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

4. Professional liability insurance, applicable to Contractor’s profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1. Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers’ Compensation, Tiburon hereby agrees to waive subrogation, which any insurer of Tiburon may acquire from Tiburon by virtue of the payment of any loss. Tiburon agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Tiburon, its employees, agents and subcontractors.

d. All policies shall provide thirty days’ advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the “Notices to the Parties” section.

e. Should any of the required insurance be provided under a claims-made form, Tiburon shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance

is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

h. Before commencing any operations under this Agreement, Tiburon shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Tiburon hereunder.”

Such section is hereby amended in its entirety to read as follows:

“23. Insurance

a. Required Coverages. Without in any way limiting Contractor’s liability pursuant to the “Indemnification” section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

1. Workers’ Compensation, in statutory amounts, with Employers’ Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

2. Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence “Combined Single Limit”, \$2,000,000 aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3. Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, “Combined Single Limit” for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

4. Professional Liability Insurance, applicable to Contractor’s profession, with limits not less than \$1,000,000 for each claim with respect to negligent acts, errors or omissions in connection with the Services to be provided under the Agreement.

5. Technology Errors and Omissions Liability coverage, with limits of \$10,000,000 for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

(i) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(ii) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City’s or third person’s computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

6. Contractor shall maintain in force during the full life of the agreement Cyber and Privacy Insurance with limits of not less than \$10,000,000 per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential

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information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

c. Contractor's Commercial General Liability and Commercial Automobile Liability Insurance policies shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

d. Contractor shall provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 33, entitled "Notices to the Parties."

e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

h. Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

i. The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

j. If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds."

2.10 **Principal Place of Business.** Contractor's principal place of business as stated in the first paragraph of the Agreement is hereby changed to: 1000 Business Center Drive, Lake Mary, FL 32746

2.11 **Notice to Parties.** *Section 33 Notice to Parties of the Agreement currently reads as follows:*

"33. **Notice to the Parties.** Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, and e-mail, and shall be addressed as follows:

To City: Department of Emergency Management
IT Manager
1011 Turk St
San Francisco, CA 94102

To Tiburon: Tiburon, Inc.
VP of Contracts and Procurement
6200 Stoneridge Mall Road
Suite 400
Pleasanton, CA 94588

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a Receipt notice. Any notice of default must be sent by registered mail, or overnight courier services such as Federal Express."

Such section is hereby amended in its entirety to read as follows:

"33. **Notice to the Parties.** Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, and e-mail, and shall be addressed as follows:

To City: Department of Emergency Management
IT Manager

1011 Turk St
San Francisco, CA 94102

To Tiburon: Tiburon, Inc.
Contracts
1000 Business Center Drive
Lake Mary, FL 32746

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a Receipt notice. Any notice of default must be sent by registered mail, or overnight courier services such as Federal Express.”

2.12 **Exhibit D Project Pricing and Exhibit H Maintenance Agreement.**
Exhibits D and H are hereby deleted and replaced in their entirety by Exhibit D-1 and Exhibit H-1, attached to this First Amendment and fully incorporated within the Agreement.

Article 3 Effective Date

Each of the modifications set forth in Section 2 shall be effective on and after August 30, 2019

Article 4 Legal Effect

Except as expressly modified by this First Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

Recommended by:

CONTRACTOR

Tiburon Inc.

Mary Ellen Carroll
Executive Director
Emergency Management

Steve Seoane
EVP & GM, Public Safety & Justice
1000 Business Center Drive
Lake Mary, FL, 32746

Approved as to Form:

City Vendor number: 67815

Dennis J. Herrera
City Attorney

By: _____
Jana Clark
Deputy City Attorney

Approved:

Alaric Degrafinried
Director of the Office of Contract
Administration, and Purchaser

By: _____

Attached Exhibits: D-1 Project Pricing, H-1 Maintenance Agreement

Exhibit D-1 - Project Pricing

Project Pricing Detail

PHASE 1 - Fire Station Alerting	Baseline	Optional
Motorola Fire Station Alerting		
Hardware	\$ 441,359	
Implementation Services	\$ 210,335	
Motorola FSO Fire Station Site Survey		\$ 25,633
Motorola FSO Install Scope Reduction		\$ (47,013)
Tiburon Project Management	\$ 144,092	
Fire Station Site Survey		\$ 5,127
Install Scope Reduction		\$ (9,403)
Taxes (9.5%):	\$ 41,929	
Subtotal (PH 1):	\$ 837,715	\$ (25,656)

PHASE 2 - CommandCAD	Baseline	Optional
Total Command License:	\$ 592,943	
Custom Interfaces:	\$ 253,682	
Custom Development:	\$ -	\$ 300,732
Additional Services:	\$ 208,854	
SubTotal (PH 2):	\$ 1,055,479	\$ 300,732

Grand total : \$ 1,893,194

Project includes the TotalCommand software (including base interface) as well as services per the SOW including installation, configuration, base testing, training program, cutover guidance and support and project management. For reference, Tiburon's hourly rate for additional work is \$190 / hour, plus a 5% per year increase.

Custom Interfaces/Development Breakdown:

	Baseline	Optional
Custom interfaces		
LOE 1562: ICD 08 State Interface (Level II)	\$ 31,008	
LOE 1555: ICD 14 HRMS Interface to Peoplesoft	\$ 53,261	
LOE 1524: ICD 15 MARVLIS	\$ 26,630	
LOE 1674: ICD 16 Fire Station Alerting	\$ 12,139	
LOE 1554: ICD 18 3rd party sign-on	\$ 64,068	
LOE 1763: ICD 20 Fire Alarm System	\$ 47,424	
LOE 1826: ICD 21 Level II MDT (RNC)	\$ 19,152	
LOE 1826: ICD 21 Level II MDT (MAGUS \$57,000 total) Showing delta only		\$ 37,848
Custom development		
LOE 1521: CAD Encryption	Included	

Exhibit D-1 - Project Pricing

LOE 1567: StratusCAD to Fire RMS Transfer		\$	5,928
LOE 1678: No Contact		\$	16,644
LOE 2271: Fire Station printout customization		\$	44,460
LOE 1745: Fire Station Alert window		\$	80,712
LOE 1827: AVL quality Indicator		\$	35,568
LOE 1827: AVL quality indicator add'l functionality (showing delta only)		\$	44,004
LOE 1998: Parking and Traffic Redirect		\$	35,568
Additional Services			
LVS Implementation Services	\$	21,637	
SSG Hardware Installation Services	\$	32,491	
Additional Testing Not Included in Base Offering:	\$	142,226	
Third Party (related to LVS):	\$	12,500	
Subtotal:	\$	462,536	\$ 300,732

Optional Enhancement Proposals (funded seperately):

	Baseline	Optional
Police Department MobileCOM (add 350 licenses incl. implementation)		\$ 489,490
iPAD (300 licenses incl. server license and implementation):		\$ 183,625
FireRECORDS		\$ 100,750
DataWarehouse Implementation		\$ 37,368
ProQA Paramount Support		\$ 28,000

Total additional Enhancement Proposals: \$ 839,233

Exhibit D-1 - Project Pricing

Maintenance (funded separately):

	Baseline	Optional
Command CAD		
Year 1		\$ 290,000
Year 2		\$ 298,700
Year 3		\$ 307,661
Year 4		\$ 316,891
Year 5		\$ 326,398
Year 6 - 11/1/19 - 10/31/20		\$ 359,118
Year 7 - 11/1/20 - 10/31/21		\$ 369,723
Year 8 - 11/1/21 - 10/31/22		\$ 380,815
Year 9 - 11/1/22 - 10/31/23		\$ 392,241
Year 10 - 11/1/23 - 10/31/24		\$ 404,007
Total Maintenance:		\$ 3,445,553

Note: Maintenance costs for years 6 - 10 include the base CAD software plus all enhancements that have been implemented into the live CAD system in San Francisco as of 6/1/2019.

Additional enhancements*: \$ 700,000

**City has contracting authority to execute additional enhancements and/or out of scope services related to the System, for the duration of the Agreement and Maintenance Agreement. The City is not obligated to pay for these services unless explicitly authorized by a Change Order or Enhancement Proposal.*

Grand total for Tiburon contract: \$ 7,153,056

EXHIBIT H-1:
MAINTENANCE AND SUPPORT SERVICE PROVISIONS

H.1. Definitions. Capitalized terms used herein shall have the definitions set forth in the Agreement, unless otherwise defined herein:

ENHANCEMENT	A modification or addition which adds new features or functionality to the System.
FIX	Repair or replacement of source, object, or executable code in the Software to remedy an Error.
MAINTENANCE AND SUPPORT SERVICES	The Maintenance and Support Services required under this Agreement. Maintenance and Support Services include: correcting an Error; providing telephone and/or online support concerning the installation and use of the Software; training in the installation and use of the Software; consulting and application development services provided under an Enhancement or Out of Scope Services; detection, warning and correction of viruses; and disabled/disabling code.
MAINTENANCE RELEASE	A subsequent version of the Software that includes Error Corrections and/or Updates.
PATCH, ERROR CORRECTION	Either (a) a temporary repair or replacement or other modification or addition that, when made or added to the Software, corrects an Error, or (b) a procedure or routine that, when observed in the regular operation of the Software, eliminates the practical adverse effect of an Error on the City. Temporary repairs may be made permanent and released in Subsequent Releases of the Software.
RELEASE	A revision of the Software made subsequent to its initial delivery which adds new functions to the Software, substantially changes its existing functions, substantially improves the overall performance of the Software, or which accumulates previous Updates. A Release will have updated Documentation and a new Release number.
SUBSEQUENT RELEASE	A release of the Software for use in a particular operating environment which supersedes the Software. A Subsequent Release is offered and expressly designated by Tiburon as a replacement to a specified Software product. A Subsequent Release implemented by the City will be supported by Tiburon in accordance with the terms of this Exhibit. Multiple Subsequent Releases may be supported by Tiburon at any given time.
UPDATE	Revisions of the Software released by Tiburon which enable the Software to perform as described in the Documentation for the current Release.
UPGRADE	Either an enhancement to the Software code to add new features or functions to the system or software programming revisions

containing corrections to Errors that have been reported by users or discovered by the Tiburon.

H.2. Term

The Parties' rights and duties under the terms of this Exhibit shall begin immediately upon Final System Acceptance of the System and continue for a period of one (1) year thereafter, at which time, upon the payment of the maintenance renewal fees as outlined in Exhibit D-1, the Agreement shall automatically renew for additional one (1) year periods, and shall continue as such until October 31, 2024.

H.3. Maintenance and Support.

a. Maintenance and Support Services. The provisions of this Exhibit shall only apply to the Software and System included in Phase 2. After Acceptance of the Software and System, subject to the terms, conditions, and charges set forth in the Agreement and this Exhibit, Tiburon will provide the City with maintenance and support services for the Software as follows: (i) Tiburon will provide such assistance as necessary to correct Errors and to cause the Software to perform in accordance with the specifications as set forth in Exhibit B of the Agreement and the Detailed Design Documents, as well as whatever improvements, enhancements, extensions, and other changes to the Software that Tiburon may develop; and (ii) Tiburon will update the Software, as required, to cause it to operate under new versions or releases of the operating system specified in the Authorization Document so long as such updates are made generally available to Tiburon's other Licensees.

b. Error Reporting. Tiburon will provide the City with telephone support 24 hours a day, 7 days a week. The City's Project Manager, or designee, shall report any Error experienced by the City related to the Software or the System, including hardware problems, along with the priority level of the Error, to Tiburon at the contact number provided by Tiburon. Each such Error report will be accompanied or followed by sufficient information to enable Tiburon to reproduce and verify the Error. Tiburon will acknowledge each such reported Error via telephone or electronic mail to the Technical Contact, and subject to the requirements of Section H.4, will use commercially reasonable efforts to reproduce and verify reported Errors and provide Error corrections therefore.

c. Hotline Support. In addition to the telephone support required under subsection (b), Tiburon shall provide remote access hotline support to the City to help the City answer routine questions with respect to the use of the Software. This hotline support shall be made available by phone between the hours of 8 a.m. and 6 p.m. Pacific time Monday through Friday, except legal holidays. Hotline support shall be available by electronic bulletin board, electronic mail or other service 24-hours a day, seven-days a week.

d. Enhancements. The City may request Tiburon to furnish, install and implement enhancements to the System, which shall be documented by Tiburon in the form of Enhancement Proposals. Tiburon shall provide a Statement of Work for the enhancement and install and implement such enhancements on a fixed-quote basis with payment milestones. Tiburon shall not provide any enhancement under this Agreement unless: (1) the City provides written authorization of the enhancement proposal; (2) the enhancement proposal is subject to the terms of this Exhibit H; (3) the enhancement proposal includes objective, measurable criteria regarding final acceptance of the enhancement; (4) the enhancement proposal provides that upon final acceptance of the enhancement, this Exhibit H shall cover the enhancement(s) as Licensed

Software subject to the City's payment of any necessary additional support fees relating to the enhancement; and, (5) the enhancement proposal provides that, upon final acceptance of such enhancement, the Parties shall deem Exhibit G of the Agreement, the Software Licensing Provisions, to be amended to grant to the City the appropriate rights to use the enhancement, subject to payment in full of all amounts due under the enhancement proposal.

The City may request enhancements to or additional technical support on the current system, to support a transition to a new CAD System. This will be billed on a Time and Materials basis, or (if a new feature is requested) through the Enhancement Proposal process.

e. Out of Scope On-Site Support and Technical Support.

i. For an additional cost, the City may, from time to time, request emergency on-site support from Tiburon, beyond the support otherwise required under this Exhibit. Tiburon agrees to use commercially reasonable efforts to provide such emergency on-site support to the City, subject to the availability of appropriate Tiburon personnel.

ii. From time to time, the City may request Tiburon to provide under this Agreement certain out of scope services, defined as any service not covered under the "Support Services" definition from the Agreement. Any out of scope services shall be provided, at Tiburon's option, on a fixed-quote basis with payment milestones or on a time and material basis at the rate specified in Exhibit D, plus air related travel, per diem and other expenses invoiced as incurred.

iii. Tiburon's rates for services performed under this subsection (e) shall be those set forth in Exhibit D to the agreement.

f. Subsequent Releases. Tiburon will provide, and the City will be licensed for, Subsequent Releases of the Tiburon-developed Software in accordance with the maintenance costs identified in Exhibit D. Although City will not be responsible for additional licensing fees, except for added Software, modules and functionality not included as part of the base Tiburon Software, City shall be responsible for the payment of all services necessary to implement such Subsequent Releases to the Tiburon developed Software.

H.4. Priority Levels and Protocols.

a. Tiburon will furnish Error correction in accordance with the Priority Categories listed below, based on the City's determination of the priority level of the Error.

<u>Priority Level</u>	<u>Category</u>	<u>Definition</u>
Priority 1	Critical	The entire System (e.g., CAD) or a major component (e.g., State interfaces, paging) or critical function (e.g., call creation, dispatch) is unavailable or severely degraded. City cannot use System to continue intended operations. Error impacts all or most users, halts or severely impacts critical operations, or database integrity is compromised.
Priority 2	High	A major component or function does not work properly. Error impacts a small group of users. Normal operations are impaired, but can continue.

Priority 3	Normal	Error impacts an individual user or a small group of users. Service can safely be delayed until a mutually-established time. A Workaround may be available, but is inefficient.
Priority 4	Informational	Issue is informational or educational in nature. Requests for Enhancements and similar requests should be reported as Priority 4.

b. Tiburon will furnish Error correction in accordance with the following protocols, based on the Priority level identified by the City in the Error report:

i. **Priority 1 Protocol.** Within one hour of receiving the Error report, Tiburon shall assign a product technical specialist(s) to diagnose and correct the Error. Thereafter, Tiburon shall: provide ongoing communication about the status of the correction; immediately provide a Fix, a Patch or a Workaround; and exercise all commercially reasonable efforts to include a Fix or Patch for the Error in the next Subsequent Release. Tiburon shall escalate resolution of the problem to personnel with successively higher levels of technical expertise until the Error is corrected. Tiburon shall make Priority 1 support services available 24 hours a day, 7 days a week, and 365 days a year.

ii. **Priority 2 Protocol.** Within four hours of receiving the Error report, Tiburon shall: assign a product technical specialist(s) to diagnose the Error and to commence correction of the Error; immediately provide a Workaround; provide escalation procedures as reasonably determined by Tiburon's staff; and exercise all commercially reasonable efforts to include a Fix or Patch for the Error in the next Software maintenance release, or within ninety (90) days as a software or approved procedural correction. Tiburon shall make Priority 2 support services available 24 hours a day, 7 days a week, and 365 days a year.

iii. **Priority 3 Protocol.** By the next business day following its receipt of the Error report, Tiburon shall: assign a product technical specialist(s) to diagnose and correct the Error; provide a Workaround; provide escalation procedures as reasonably determined by Tiburon's staff; and exercise all commercially reasonable efforts to include a Fix or patch for the Error in the next Software Maintenance Release.

iv. **Priority 4 Protocol.** Tiburon may include a Fix or Patch in the next Software major release.

H.5. Maintenance Limitations.

Tiburon is not obligated to provide Maintenance and Support Services in the following situations:

a. The Software has been changed, modified, or damaged (excluding modifications made by Tiburon);

b. The Maintenance and Support Services are necessary due to: (i) failure of computer hardware, equipment, or software not supplied by Tiburon as part of the Agreement, including, but not limited to, failure caused by or attributable to the City's failure to obtain, pay for or maintain in effect during the term of any maintenance period(s) necessary technical support contracts for third-party software not supplied by Tiburon that impacts or interfaces to the System; (ii) the negligence of the City or any third party; (iii) a cause or causes beyond the reasonable control of Tiburon; or (iv) attempted maintenance by unauthorized persons;

- c. The Maintenance and Support Services are necessary due to the City's use or improper use of the Software, or merging or combining the Software with any hardware or software not authorized by Tiburon to be so merged or combined;
- d. The City has not installed and implemented an Error Correction, Update and/or Maintenance Release provided by Tiburon;
- e. The City has not paid the maintenance fees, or any related fees or amounts, when due; or,
- f. Tiburon is unable to install corrections due to the current hardware configurations in use by the City.

H.6. City Responsibilities

a. **Cooperation.** The City will fully cooperate and assist Tiburon in the provision of maintenance and support Services. The City will allow Tiburon to implement all Error Corrections, Updates, and/or Maintenance Releases furnished by Tiburon, and approved by the City, unless such change would require the City to purchase additional or replacement Equipment. All Documentation, Licensed Software, Error Corrections, Updates, and Maintenance Releases provided by Tiburon are subject to the terms and conditions of this Exhibit H and Exhibit G, the Software Licensing Provisions, and the City agrees to comply with those terms and conditions.

b. **Technical Service Request.** The City shall provide all information requested by Tiburon necessary to complete its technical service request form for each request for technical services, Enhancements, and out of scope services.

c. **Remote Access.** City shall install and monitor during the term of this Agreement a dedicated high-speed data connection and any other networking equipment as identified in Appendix B-1 to the SOW of the Agreement, in order to provide remote access to the System. Tiburon shall not be responsible for any costs relating to the procurement, installation, maintenance and use of such equipment and all associated service charges. Tiburon shall use the data connection solely in connection with the provision of its services hereunder. The City may be required to run tests deemed necessary by Tiburon following each remote access as requested by Tiburon.

d. **Physical Access.** The City shall provide Tiburon with physical access to the System at any time during normal business hours, subject to the City's operational and security requirements. After normal business hours, the City shall ensure that the City Technical Support Coordinator can be reached by phone or pager to (a) provide physical access to the System within two (2) hours of Tiburon's request for such access, and (b) remain on-site until Tiburon determines that there is no longer a need for physical access.

e. **Maintenance and Back-Ups.** The City shall ensure that maintenance and back-up activities relating to the Tiburon Software and the System, including without limitation backing up databases and journal logs, purging out of date records, subject to the City's retention requirements, and running reports and performing diagnostics, are regularly and continuously carried out in accordance with the schedule and methodology specified in Appendix H-2, "Back Up Schedule and Procedures."

f. **Data Input.** The City shall enter, update and maintain the input data as required for satisfactory operation of the Tiburon Software, and be responsible for the accuracy of all City-provided data.

g. **System Security.** The City shall ensure that the security of the System conforms in all respects to the federal, state, and/or local mandated law enforcement telecommunications requirements.

h. **System Change, Alteration, or Modification.** The City shall ensure that, with respect to the Software, such Software is installed only on the authorized server and only at the authorized site. The City shall ensure that each authorized site conforms in all respects to the Site Specifications set forth on Appendix B-1 to the SOW of the Agreement. Subject to the provisions of this Exhibit and Exhibit G, the City shall ensure that no change, alteration or modification is made to the system configuration without the express prior written consent of Tiburon; provided, however, that said consent is not intended to constitute in any manner Tiburon's approval, certification, endorsement, or warranty of the system configuration or performance.

i. **Database Change.** City shall maintain a system to ensure that only authorized personnel have the ability to make structural changes to the City's database and that a list of all such authorized personnel (and any updates thereto) be promptly delivered to the Tiburon Support Center. Each notice for a change to a City database shall be in writing from the City's Authorized City Representative, and shall contain all details of the requested change. Tiburon shall not assist City personnel other than those on the most current authorization list.

j. **Authorized City Representative.** The City shall designate, in a written notice a single individual to act as the City's authorized representative for purposes of coordinating maintenance and support services provided under this Exhibit H (the "City Representative"). Such individual (a) must be authorized to act on the City's behalf with respect to all matters relating to this Exhibit H, subject to the terms and conditions of this Exhibit; (b) shall ensure the City's compliance with its responsibilities under this Agreement; and (c) shall coordinate appropriate schedules in connection with Tiburon's services under this Agreement. The City may change the individual designated hereunder by providing Tiburon advance written notice designating the new individual authorized to act as the City Representative.

k. **Technical Support Coordinators.** The City shall designate, in a written notice one or more individuals to act as the City's technical support coordinator (a "Technical Support Coordinator"). The City shall ensure that each Technical Support Coordinator designated hereunder shall have received the appropriate training and shall otherwise be familiar with the Tiburon Software and the System. The City shall ensure that, at all times, a Technical Support Coordinator is available (a) to screen operational assistance calls and handle operational problems, where appropriate; (b) to provide access to the System; (c) to provide on-site technical assistance as required by Tiburon to aid Tiburon in performing its services hereunder; and (d) to review all monthly Status Reports delivered hereunder. The City may change any individual designated hereunder by providing Tiburon with advance written notice designating the new individual authorized to act as a Technical Support Coordinator.

l. **Error Reproduction.** Upon detection of any Error in any of the Tiburon Software, the City shall provide Tiburon a listing of command input, resulting output and any other data, including databases and back-up systems, that Tiburon may reasonably request in order to reproduce operating conditions similar to those present when the Error occurred.

H.7. Source Code.

So long as the City is a current, paid to date, maintenance customer of Tiburon, Tiburon agrees to deposit a copy of the Tiburon Software source code installed at City and related documentation into an escrow account with Iron Mountain, naming City as beneficiary of such

account, at no additional cost to the City. After the maintenance period(s), Tiburon will maintain the escrow account for a period of three (3) years, provided the City pays for all costs and fees associated therewith and both Parties understand and agree that Tiburon will be under no obligation to update the source code contained in the escrow account during such time. The source code may only be released to the City in accordance with the release conditions set forth in the escrow agreement. If the City should obtain the source code and the Documentation pursuant to this Section, the only use made of the source code and the Documentation will be for the proper maintenance of the Software in connection with the City's use of the Software as provided for, and limited by, the provisions of this Agreement. The City further agrees to not provide the source code to any third party organization.

H.8. Primary Agreement.

a. This Exhibit H incorporates the provisions of the Primary Agreement, except that the provisions of this Exhibit shall supersede any conflicting provisions of the Primary Agreement.

b. Tiburon's obligations under the incorporated provisions of the Primary Agreement as they relate to its implementation, including Sections 3 (Term of the Agreement), 4 (Effective Date of the Agreement), 5 (Services Tiburon Agrees to Perform), 7 (Project Administration), 8 (Documentation Delivery and Training), 12 (System Acceptance and Acceptance Test Plan), 13(b) (Term and Termination/Termination for Convenience), 53 (Time of the Essence), and 63 (Order of Precedence), will cease for purposes of this Exhibit H upon Final System Acceptance, except for: (1) obligations relating to conduct that occurred during the term of the Primary Agreement and prior to Final System Acceptance, and (2) obligations relating to the provision of maintenance and support services as set forth in or pursuant to this Exhibit H.

Appendix H-1
Software covered in this Exhibit

- 0) CommandCAD
- 1) MobileCOM

This Appendix will be updated prior to Final System Acceptance to reflect all of the Software implemented during Phase 2, which will be maintained as part of the Agreement.

Appendix H-2

Back-Up Schedule (Attached)

City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685

AGREEMENT
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND
Tiburon Incorporated

This agreement (the "Agreement") is made this 29th day of June, 2012, in the City and County of San Francisco, State of California, by and between: Tiburon, Inc. a Virginia corporation, with its principal place of business at 6200 Stoneridge Mall Road, Suite 400, Pleasanton, California 94588, hereinafter referred to as "Tiburon," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "the City," acting by and through its Director of the Office of Contract Administration, hereinafter referred to as "Purchasing."

Recitals

WHEREAS, The Department of Emergency Management, or DEM, wishes to upgrade its existing computer aided dispatch system by obtaining a Computer Aided Dispatch (CAD) and Fire Station Alerting System (FAS), have the developed System maintained, and have Tiburon provide implementation and training services; and

WHEREAS, Tiburon represents and warrants that it is qualified to provide the services required to deliver the System to the City as set forth under this Agreement; and

WHEREAS, Approval for said Agreement was obtained from Civil Service Commission by Resolution No. 4102-11/12, dated April 2, 2012;

Now, THEREFORE, the parties agree as follows:

- 1. Definitions.** Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

ACCEPTANCE Written notice from the City's Project Manager to Tiburon that a portion, or the entirety, of the System, meets the Contract Requirements in accordance with the Detailed Design Documents and the Acceptance Test Plan defined and agreed to by DEM in the Acceptance Test Plan documents, and where appropriate shall function as certification for payment.

ACCEPTANCE TEST PLAN The document(s), delivered as a component of the Statement of Work documents that describes the Acceptance Test(s) which define Acceptance.

ACCEPTANCE TEST	The procedures and performance standards required for Acceptance by the City of the Software and the System as defined herein. These procedures and performance standards are set forth for each phase of System delivery in the Acceptance Test Plans.
AGREEMENT	This document and any attached appendices and exhibits, including any future written and executed amendments.
AUTHORIZATION DOCUMENT	This Agreement, an Approved Change Order, or a Purchase Order of the City properly executed by DEM and Purchasing, and certified by the Controller for the specific funding of this Agreement or any modification thereof, and shall serve as the notice to proceed for each specific Phase specified in the Authorization Document.
CHANGE ORDER	A written instrument signed by the City's Project Manager that modifies this Agreement as provided in Section 7(h) through an adjustment to one or more of the following: (i) the project price, (ii) Exhibits A and B – Statement of Work, and attached appendices, (iii) Exhibit C – Project Schedule, or (iv) Exhibit F – Required Documentation.
CITY'S PROJECT MANAGER	The individual specified by the City pursuant to Section 7(b) hereof, as the Project Manager authorized to administer this Agreement on the City's behalf.
COMMERCIAL OFF THE SHELF SOFTWARE (COTS)	Computer software, hardware, technology, or computer products, which are ready-made and available for sale, lease, or license to the general public.
TIBURON'S PROJECT MANAGER	The individual specified by Tiburon pursuant to Section 7(b) hereof, as the Project Manager authorized to administer this Agreement on Tiburon's behalf.
CRITICAL MILESTONES	The project milestones specified as such in Exhibits C and E. Successful completion of the task(s) represented by each Critical Milestone shall trigger a corresponding payment by the City to Tiburon under Exhibit E.
DELIVERABLES	Those items described and itemized in Exhibits A, B and D which Tiburon commits to provide to the City on the dates specified in Exhibit C.
DETAILED DESIGN DOCUMENTS	The deliverable documents, in whole or parts, provided by Tiburon to document the features and functionality of the System, application tailoring, the cutover plan and other pertinent specifications. The Detailed Design Documents shall be reviewed and approved by DEM.
DOCUMENTATION	Technical publications relating to use of the System including approved Change Orders such as reference, installation, administrative, maintenance, and programmer manuals, including instructions, rules, guidelines, manuals, and/or procedures associated with the Software that Tiburon, or its subcontractors providing Software and services hereunder, generally makes available to its licensees of such Software. Documentation to be provided by Tiburon to the City, is described and itemized in Exhibit F.
EQUIPMENT	The computer hardware and associated peripheral devices on which the Software will operate and with which the Software must be compatible, that is either to be purchased by Tiburon for the City, or may be purchased by the City as provided in the Appendix A-2 and B-2 to this Agreement. No equipment is being provided by Tiburon to the City as part of Phase 2.

**ERRORS, DEFECTS,
MALFUNCTIONS**

A deviation between the function of the Software and the Software's Documentation furnished by Tiburon, or a failure of the Software which degrades the use of the Software. An Error is a reproducible defect or combination of defects in the Software that results in a failure of the Software to function substantially in accordance with the Specifications when the Software is used in accordance with Tiburon's instructions (including, without limitation, the applicable Documentation). A reproducible defect is a defect that Tiburon can reproduce using the most recent version of the Software, as delivered by Tiburon to City, in accordance with the terms of the Agreement and the terms set forth herein.

**FINAL ACCEPTANCE
CERTIFICATE**

The Certificate provided by the City upon Acceptance of all phases to document the implementation of the Systems under this Contract. The Final Acceptance Certificate must include all of the following certifications by the City's Project Manager: (i) all applicable Acceptance Tests have been completed; (ii) all training as specified in Exhibits A and B has been completed; (iii) all other Deliverables due prior to Final Acceptance by the City have been delivered and accepted.

**FINAL ACCEPTANCE
DATE**

The date set forth on the Final Acceptance Certificate.

FORCE MAJEURE

An event beyond the reasonable control of either party, such as acts of God, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine, war, riot, delays in transportation, care shortages, and inability due to causes beyond Tiburon's reasonable control to obtain necessary labor, materials or manufacturing facilities.

HARDWARE

The hardware purchased by the City from Tiburon, including its subcontractors, for use in connection with the Software and/or Solution. No Hardware is being provided as part of Phase 2 of the Project.

**INTERFACE
SPECIFICATION**

The document that identifies interfaces between the configured System and other existing or planned information or communications systems. Tiburon shall have primary responsibility for preparing and controlling all of the Interface Specifications which it creates.

ICD

The Interface Control Document which defines the primary information necessary to interconnect disparate and separate systems with the System.

LICENSE

The document describing the terms and conditions under which the right to use the software is conferred by the licensor to the City. The licenses to be provided by Tiburon are set forth in Exhibit G

**LICENSED
SOFTWARE
(SOFTWARE)**

The proprietary computer software programs furnished by Tiburon and its subcontractors, under this Agreement, all related materials, Documentation, corrections, patches, or updates thereto, and other written information received by the City from Tiburon, whether in machine-readable or printed form. The complete list of software to be provided by Tiburon will be included in Exhibit H – Maintenance Agreement. All Licensed Software shall be the latest released version available to Tiburon's customers at the time of the installation so long as such latest version is compatible with City's Hardware.

PHASE	The specific portion of the project for which a separate Authorization Document is required. This project has two (2) Phases: Phase 1 is the Fire Station Alerting system and Phase 2 is the CAD system. Additional Phases may be added in the form of enhancements upon the express written agreement of the parties.
PRODUCTION	The use of the System in a normal, daily, and primary operational mode with live data, and end-user interaction supporting DEM and associated organizations.
PROJECT SCHEDULE	The schedule of task activities, responsibilities, and time periods to include all required parties to support completion of all phases of Work and to include the Critical Milestones associated with such completion, as specified in Exhibit C and agreed to by the City's and Tiburon's Project Managers.
SOURCE CODE	The human-readable compilable form of the Licensed Software.
SPECIFICATIONS	The functional and operational characteristics of the Licensed Software as described in Exhibits A, B and F, or Tiburon's current published product descriptions and technical manuals.
STATEMENT OF WORK (SOW)	The Work Tiburon is to perform to provide an operational System and all related Services as more fully described in Exhibits A and B hereto.
SYSTEM	The Licensed Software and associated interfaces furnished by Tiburon for the City and the Equipment on which such software operates. The System shall include the entirety of the CAD and FSA as provided hereunder.
SYSTEM CUTOVER (CUTOVER)	The point at which the City approves Tiburon's initiation of the System, or a phase of the project, to a Production Status and the City may terminate use of the current public safety dispatch and fire station alerting systems.
SYSTEM DESIGN REVIEW	The process by which the City reviews and approves the Detailed Design documents covering the System.
WORK	The implementation, assembly, installation, optimization, and integration as required by this Agreement, whether completed or partially completed, including all labor, materials, and services provided, or to be provided by Tiburon to fulfill Tiburon's obligations hereunder. The Work, therefore, constitutes all of the requirements for providing the System to the City.
WORKAROUND	A change in the procedures followed or end user operation of the software to avoid an Error, Defect or Malfunction without impairing functionality or degrading the use of the Software.

2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of the City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind, to the City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. The City has no obligation to make appropriations for this Agreement in lieu of

appropriations for new or other agreements. The City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Tiburon's assumption of risk of possible non-appropriation is part of the consideration of this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3. Term of the Agreement. Subject to Section 2, the term of this Agreement shall be from June 29, 2012 to November 30, 2019, unless earlier terminated as provided herein.

4. Effective Date of the Agreement. This Agreement shall become effective on the last date of which the parties have duly signed this Agreement.

5. Services Tiburon Agrees to Perform.

a. Scope of Work. Tiburon agrees to provide the items and perform those services defined in the Statement of Works (SOW) attached as Exhibits A and B and incorporated by reference as though fully set forth herein. The Project shall be acquired and delivered in two phases. Phase 1 includes all equipment, software and services for the Fire Station Alerting System, defined in Exhibit A and the attached appendices. Phase 2 includes the software and services for the Computer Aided Dispatch System, defined in Exhibit B, and the attached appendices. Each Phase will require a System Design Review, Detailed Design Documents, and Acceptance Test Plans. Tiburon must be given a notice to proceed, or Authorization Document as required, to begin Phase 1 and Phase 2, and any other mutually agreed to Phases of the project and will be given a Final Acceptance Certificate upon Final System Acceptance. Any delay in providing Tiburon with the notice to proceed, or Authorization Document, may delay the Project Schedule.

b. Options. The City has the right to elect to execute optional services, which are itemized as Level of Effort (LOE) items in Exhibit D. The City will notify Tiburon, in the form of a Change Order, if it elects to execute a LOE, and Tiburon must provide the option to the City, and update the Detailed Design Documents, Project Schedule, Acceptance Test Plans and Documentation appropriately. Exhibit D and E will be updated to reflect the change in amount paid to Tiburon, but at no time will total contract amount exceed the amount specified in Section 6. Unless expressly stated in the Change Order, LOEs must be implemented before Final Acceptance of the Systems, provided the Change Order for such LOEs is executed prior to completion of Task 14 "Functional Acceptance Testing" of Exhibit B. Except for the performance of a fire station site survey, which must be selected by the City prior to the completion of Task 2 - "Contract Design Review", there are no LOE items in Exhibit D related to Phase 1.

c. Enhancements. The City has the right to request services to furnish, install and implement enhancements to the System, which shall be documented by Tiburon in the form of Enhancement Proposals. The installation and implementation of such enhancements shall be provided, on a fixed-quote basis with payment milestones. No enhancement shall be provided under this Agreement unless: (1) the City provides written authorization including the enhancement terms relating to the enhancement; (2) the enhancement terms are subject to the terms of this Agreement; (3) the enhancement terms include objective, measurable criteria regarding final acceptance of the enhancement; (4) the enhancement terms provide that upon final acceptance of the enhancement, the Agreement shall include the enhancement as Licensed Software subject to the City's payment of any necessary additional support fees relating to the enhancement; and, (5) the enhancement terms provide that, upon final acceptance of such enhancement, the Software License Agreement shall be deemed amended to grant to the City the

appropriate rights to use the enhancement, subject to payment in full of all amounts due under the enhancement terms.

6. Payments.

a. Fixed Price. In consideration for the services rendered under this Agreement, the City shall pay Tiburon in accordance with Exhibits D and E. In no event shall the contract value exceed \$5,247,152, termed "Total Contract Value". The Total Contract Value includes all Options, Enhancements and maintenance and support charges for the duration of the contract.

No charges shall be incurred under this Agreement nor shall any payments become due to Tiburon until reports, services, and products, required under this Agreement are received from Tiburon and approved by the DEM as being in accordance with this Agreement.

In no event shall the City be liable for interest or late charges for any late payments.

The City's Project Manager may authorize Change Orders which, in an aggregate amount, do not increase the Total Contract Value.

The City shall make all payments within thirty (30) days upon receipt of invoice. Payments shall be made to Tiburon at the address identified in such invoice.

b. Maintenance Support Charges. Maintenance charges are set forth in Exhibit D. Maintenance Payments will be made to Tiburon as long as the total amount paid to Tiburon does not exceed the Total Contract Value.

c. Taxes. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Tiburon. Tiburon recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles Tiburon to possession, occupancy, or use of the City's property for private gain. If such a possessory interest is created, then the following shall apply:

1. Tiburon, on behalf of itself and any permitted successors and assigns, recognizes and understands that Tiburon and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

2. Tiburon, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Tiburon accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code Section 480.5, as amended from time to time, and any successor provision.

3. Tiburon, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (See, e.g., Rev. & Tax. Code Section 64, as amended from time to time) Tiburon accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization, or other public agency as required by law.

4. Tiburon further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

7. Project Administration

a. Project Schedule. The Project Schedule is set forth in Exhibit C which may be amended by written mutual agreement between the City and Tiburon.

1. Time of the Essence. The parties agree that time is of the essence, and that the System will be developed and implemented in accordance with the Project Schedule.

2. Critical Milestones. The Parties acknowledges and understands that the Project Schedule contains certain time-sensitive milestones (Critical Milestones) that must be attained by certain dates in order for the project to fully succeed. Milestones that are Critical Milestones are so indicated in the Project Schedule. All Critical Milestones have an associated payment milestone, which is itemized in Exhibit E.

b. Project Managers. Tiburon and the City shall each designate a Project Manager, who shall be accessible by telephone throughout the duration of the Agreement and shall be available from 9 a.m. to 5 p.m. PST Monday through Friday, excluding weekends and holidays. These hours may be adjusted by mutual agreement of the City and Tiburon.

The City's Project Manager will be authorized to make binding decisions for the City regarding this Agreement and will: (1) review all specifications, technical materials and other documents submitted by Tiburon, request necessary corrections, and approve such documents; (2) provide requested City information and data and assume responsibility on the adequacy of the same; (3) advise Tiburon of City's requirements; and (4) upon request provide access to City's staff, facility and hardware. City's Project Manager shall have the right to manage and direct any aspect of the project as may be necessary, in his or her opinion, to safeguard the interest of the City. City's Project Manager shall communicate all of his or her concerns to Tiburon's Project Manager. In the event Tiburon believes that any direction being given by City's Project Manager shall impair the performance of the project or any phase thereof, Tiburon shall immediately inform City's Project Manager of its concern. Except as specifically provided under this Agreement, City's Project Manager's management of the project shall not relieve Tiburon of any obligations or liabilities set forth in this Agreement and the Appendices or Exhibits thereto.

Throughout the term of this Agreement, whenever the Project Managers are not on site, he or she must be available by telephonic or electronic means. Whenever the Project Managers will be unavoidably absent or otherwise unavailable by telephone for more than twenty-four consecutive business hours, then a substitute Project Manager must be designated to respond to contact from the City or Tiburon, unless otherwise previously mutually agreed to by the Project Managers.

Tiburon's Project Manager: Sky Fulton

Work Tel: 503-784-4224

City's Project Manager: Michelle Geddes

Work Tel: 415-518-8126

c. Changing Project Managers. The City and Tiburon shall use their best efforts to maintain the same Project Manager until Final Acceptance of the System. However, if a party needs to replace its Project Manager, the party shall provide the other party written notice thereof at least ten (10) days prior to the date the Project Manager shall be replaced, if reasonably possible. Such notice shall provide the Project Manager's Name, email address, and work telephone number. Notwithstanding the foregoing, the parties have the right to appoint temporary Project Managers in connection with short term unavailability, sick leave or reasonable vacations. Parties shall notify each other of any such temporary appointments. If the parties are unable to resolve any issues the City may have with Tiburon's Project Manager after going through the Dispute Resolution Process, as set forth in Section 49 "Dispute

Resolution”, the City may request Tiburon to replace its Project Manager, by giving Tiburon notification thereof and the City’s objective reasons therefore, and Tiburon will not unreasonably deny the City’s request.

d. Qualified Personnel/Staffing. Work under this Agreement shall be performed only by competent personnel appropriately trained in technical skills to perform their duties under the supervision of and/or in the employment of, Tiburon. The personnel of each party, when on the premises of the other, shall comply with the security and other personnel regulations of the party on whose premises such individual is located.

e. Meetings. From the commencement date of the project until the Final Acceptance of the System, the Project Managers shall meet a minimum of once each week either in person or via phone as designated by the parties to discuss the progress of the project. Until the Final Acceptance of the System, the Project Managers shall report, as required, to apprise City and Tiburon executives of the project status, the progress against plan, critical issues and resolution plans, plus any operational problems or defects that the City or Tiburon have encountered. Either party shall have the right to call a meeting at any time by providing the other forty-eight (48) hours written notice thereof. Such notice shall provide the time, place or call-in information for conference calls, and the purpose of the meeting, along with an agenda referencing with specificity the topics to be covered. Whether by phone or face to face, Tiburon and the City’s project team must be available to meet as often as is reasonably necessary to facilitate timely implementation of the System.

f. Reports. Tiburon’s Project Manager shall provide a top level weekly progress report to the City’s Project Manager, which summarizes overall project status, lists meetings that are planned, problems encountered and issues to be resolved. In addition, Tiburon shall provide project reports as described in Exhibits A and B.

g. Right to Stop Work. The City’s Project Manager shall have the right to stop any work on the project: (i) if the City notifies Tiburon of a defect in the Work or Equipment and after such notice, Tiburon fails to promptly commence correction of any identified defects in the Work or Equipment, (ii) if Tiburon fails to carry out work relating to any portion of the System in accordance with this Agreement, or (iii) in the event of Force Majeure. All stop work orders from the City shall be in writing and signed by City’s Project Manager. The City shall specifically state the cause for the order to stop work. Upon receiving a stop work order, Tiburon shall immediately cease working on that portion of the Work specified in the order until the cause for such order has been eliminated. The City’s right to stop any work on the System shall not give rise to a duty on the part of the City to exercise this right for the benefit of Tiburon or any other person or entity. In the event City’s Project Manager orders work to be stopped without proper justification, the City shall reimburse Tiburon for the actual and direct costs incurred by Tiburon due to the delay. Furthermore, the parties agree any work stoppage may delay the Project and therefore Tiburon will be entitled to a time extension equal to the number of day’s delay the City has caused due to the work stoppage. In no event will a stop work order extend beyond 30 days, unless mutually agreed to in writing by both parties.

h. Change Orders. The City may at any time, by written order and without notice to Tiburon’s sureties, submit a Change Order to Tiburon. Within ten (10) working days of receiving a proposed Change Order, Tiburon shall submit to the City a written cost estimate which shall include any adjustments to the project price, the Project Schedule, the Statement of Work, the Acceptance Test Plan or any other applicable obligations of Tiburon and/or City. Tiburon may also propose a Change Order involving additions, deletions, or revisions to the Work. Tiburon’s proposed Change Order shall be in the form of a Level Of Effort (LOE) or Enhancement Proposal (EP) which shall explain, in writing, Tiburon’s basis for requesting the Change Order and the impact of the proposed Change Order on the Project Schedule, the cost of Work, the contract documents and Deliverables, as may be relevant.

All Change Orders must be approved, in a signed writing, by the Project Managers for both parties. Tiburon shall not proceed with any work contemplated in any Change Order until it receives the executed Change Order from the City's Project Manager. Tiburon shall commence the work contemplated by the Change Order upon receiving written notice from City's Project Manager. If Tiburon and the City disagree on the effect that a Change Order will have on the project price, the Project Schedule or the Acceptance Test Plan, then the parties agree to attempt to resolve such dispute in good faith through the use of the Dispute Resolution Process forth in Section 49.

The City shall have authority to order minor changes in the Work that neither involves an adjustment in the total contract sum nor an extensions of the time for completion of the Work. The City's Project Manager may waive a variation in the Work if, in his or her opinion, such variation does not materially change the Work or the System's performance. Such changes shall be effected by written order, approved and signed by both parties, and shall be binding on the City and Tiburon. Tiburon shall carry out such written orders promptly. Such written orders may be in the form of a response to a request for information (RFI), a no cost change order, or in any other written form determined by the City.

Based on the level of change, the appropriate authorization/approval signatures will be collected.

1. For changes to documentation, process, requirements, or other deliverables where:
 - There is NO impact to the Total Contract Value; and
 - There ARE NO changes required to the Statement of Work or other Exhibits to this Agreement.

Then, the City's Project Manager shall have approval authority. Where such changes described above require notification to other DEM or associated stakeholder organizations, the City's Project Manager will be responsible for notifying, and gaining concurrence from these entities for the change(s).

2. For changes to documentation, process, requirements, or other deliverables where:
 - Except as otherwise provided in Section 7, there are NO changes that affect the contract amount; and
 - There ARE changes required to any or all of: (i) Exhibits A and B – Statement of Work, and attached Appendices; (ii) Exhibit C – Project Schedule; or (iii) Exhibit F – Required Documentation, but there ARE NO changes to any other contract documents,

Then, the City Project Manager shall have approval authority, subject to the limitations of Section 7.

3. For changes to documentation, process, requirements, or other deliverables where:
 - There is a change of the contract amount to a total amount in excess of the Total Contract Value; and/or
 - There is any modification of the Deliverables or the functionalities set forth in the Statement of Work without a corresponding adjustment of the contract amount; and/or,
 - There ARE changes required to any or all of: (i) Exhibits A and B – Statement of Work, and attached Appendices; (ii) Exhibit C – Project Schedule; or (iii) Exhibit F – Required Documentation, and there ARE changes to other contract documents,

Then, the Change Order must be approved by the same individuals (or their designee), for City and Tiburon whose approvals are required for this Agreement.

i. Site Access. Tiburon shall limit personnel assigned to this Project and their physical access to any City site, to those individuals who have received a background security clearance by the City. Tiburon will, at City's request, promptly provide City with personal information of all personnel assigned to the Project. Tiburon shall have site access for those times and dates agreed to by City. Any hours beyond normal business hours must be requested in writing specifying dates, hours and personnel by name. Tiburon will provide City with ten working days advance notice of Tiburon's intent to assign any new personnel to the Project, so that City will have sufficient time to conduct a background security check. Any delays in completing the background checks may cause delays to the project if such personnel are not allowed to work on the City's system until the background check is complete. The City will provide facilities or equipment for Tiburon's use during the term of the Agreement and the conditions upon which access will be granted.

8. Documentation Delivery and Training.

a. Documentation Delivery. Tiburon will deliver five (5) copies of the completed Documentation for the Software in accordance with Exhibit F and the SOW. The City may withhold its issuance of the notice of final Acceptance until the City receives the completed Documentation.

b. City Training. Tiburon will provide training in accordance with the SOW.

9. Software Licenses. The software license provisions of this Agreement are set forth in Exhibit G.

10. Warranties; Maintenance and Support Services.

a. Phase 1 Warranty. Warranties provided as part of Phase 1 for the hardware and software that comprise the Fire Station Alerting System are set forth below:

Warranty General Statement. Tiburon and its subcontractor agree to perform the services under this Agreement in a professional, workmanlike, and commercially reasonable manner, which is similar to the services provided to its other customers. Tiburon and its subcontractor agree to maintain an adequate staff of persons who are knowledgeable with the services and materials to be delivered hereunder as necessary to timely and adequately perform its obligations herein. Tiburon and its subcontractor warrant that the staff are capable of performing the services required pursuant to this Agreement (the "Services"), and that all Services will be fully and timely performed in a professional, workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of this Agreement, and all applicable federal, state, and local laws, rules, and regulations

Tiburon and its subcontractor represent that the System to be provided by Subcontractor under this Agreement will perform in accordance with the Specifications in all material respects at the time of System Acceptance. Subcontractor is not responsible for System performance deficiencies that are caused by ancillary equipment not furnished by Subcontractor which is attached to or used in connection with the System or for reasons or parties beyond Subcontractor's control.

Software Warranty. Tiburon and its subcontractor warrant the Subcontractor Software in accordance with the terms of Exhibit G-2.

Equipment Warranty. During the Warranty Period, Tiburon and its subcontractor warrant that the Equipment under normal use and service will be free from material defects in materials and

workmanship. "Warranty Period" as used herein means one (1) year from the date of System Acceptance for Phase 1.

Exclusions To Equipment And Software Warranties. These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Tiburon or its Subcontractor; (ii) Tiburon's or City's failure to comply with all applicable industry and OSHA standards; (iii) Equipment that has had the serial number removed or made illegible; (iv) consumables; (v) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (vii) normal or customary wear and tear.

Warranty Claims. To assert a warranty claim, City must notify Tiburon or its Subcontractor in writing of the claim before one (1) month after the expiration of the Warranty Period. Upon receipt of this notice, Tiburon or its Subcontractor will investigate the warranty claim. If this investigation confirms a valid warranty claim, Tiburon or its Subcontractor will (at its option and at no additional charge) repair the defective Equipment or Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or Software. That action will be the full extent of Tiburon or its Subcontractor's liability for the warranty claim. A repaired or replaced product is warranted for the balance of the original applicable warranty period. All replaced products or parts will become the property of Tiburon or its Subcontractor.

Original End User Is Covered. These express limited warranties are extended by Tiburon's Subcontractor to City as the original user purchasing the System for commercial, industrial, or governmental use only, and are not assignable or transferable.

DISCLAIMER OF OTHER WARRANTIES. THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. TIBURON AND ITS SUBCONTRACTORS DISCLAIM ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

b. Phase 2 Warranty. Tiburon warrants that when the Software for Phase 2 specified in the Detailed Design Documents and all updates and improvements to the Software are delivered to the City, they will perform in accordance with Tiburon's published specifications for the Software. Tiburon further warrants that when fully implemented, the Software shall perform in accordance with the Detailed Design Documents applicable thereto on the Acceptance Date.

EXCEPT AS PROVIDED ABOVE, THE SOFTWARE IS LICENSED OR SUBLICENSSED "AS IS". THIS AGREEMENT DOES NOT CREATE ANY OTHER EXPRESS OR IMPLIED WARRANTIES FOR THE SOFTWARE, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Tiburon's sole obligation to City and City's exclusive remedy under this warranty is to remedy any material Software defect covered by this warranty, subject to the provisions of Sections H.4 and H.5 of Exhibit H, and for the prices set in Exhibit D. These efforts will involve either replacing the media or attempting to correct significant, demonstrable program or documentation errors.

c. Maintenance Support Services. Maintenance and support services shall be provided as set forth in Exhibit H.

11. Existing Systems.

a. **Due Care.** Tiburon shall take all advisable precautions to protect all existing equipment, facilities, and structures in any area in which Contactor is assembling or installing any portion of the project. During Phase 1, Tiburon, or its subcontractors, shall take particular care to configure and install mounting hardware so as not to cause damage to existing structures. Tiburon shall be responsible for correcting any damage they may cause to any equipment, facility, and structure to the condition prior to the time of damage.

b. **Interruption of Service.** Tiburon shall ensure that no unscheduled interruption of service of the existing external systems will occur during the course of installation, testing, maintenance or servicing of the project. If service or any part of service must be interrupted to install any part of the project, Tiburon shall schedule with City's Project Manager times when service may be interrupted. City's and Tiburon's Project Managers must supervise all service interruptions. With any interruption of service, Tiburon and appropriate staff of the City will work together to fully restore the system and ensure that the system is not degraded by the interruption.

c. **City Data.** All City data is controlled and owned by the City, Tiburon shall not be responsible for the content, completeness or accuracy of any City data. It is City's responsibility to regularly back-up the City data.

12. System Acceptance and Acceptance Test Plan

a. **Acceptance Test Plan.** The City and Tiburon have developed an Acceptance Test Plan that is set forth in Appendices A-4 and B-4. As described in the Statement of Work, the parties shall collaboratively develop and agree on the test scripts that will be incorporated into the final Acceptance Test Plan. The Acceptance Test Plan and the test scripts will establish the performance standards and criteria by which the System will be accepted by the City.

b. **Acceptance of System and Each Ancillary Component.** Upon completion of all tasks identified in the SOW, the City and Tiburon shall verify that all requirements in the Acceptance Test Plan have been completed. The City will not be deemed to have accepted any Licensed Software or the System, or any ancillary component, until Tiburon receives the Final Acceptance Certificate from the City. City will issue a Final Acceptance Certificate evidencing Tiburon's achievement of System Acceptance upon Acceptance of all phases and Tiburon's furnishing all Deliverables required under the Contract.

c. **Tiburon's Assistance in Acceptance Tests.** Tiburon must furnish all materials and technical assistance necessary to conduct the Acceptance Tests.

d. **Failure to Pass Acceptance Tests.** In the event that City determines that the System fails to meet the standards set forth in the Acceptance Test Plan, City shall promptly report to Tiburon each deficiency that fails to meet the standards set forth in the Acceptance Test Plan. Tiburon will correct the reproducible aspects of each deficiency that fails to meet the standards set forth in the Acceptance Test Plan in accordance with the process set forth in the Acceptance Test Plan. Deficiencies that do not re-occur or cannot be repeated by Tiburon, or by the City in Tiburon's presence, shall not be considered a failure.

13. Term and Termination/Termination for Convenience

a. **Termination for Cause.** Provided the parties have underwent the Dispute Resolution process set forth in Section 49, hereof, in the event Tiburon fails to perform any of its obligations under this Agreement, this Agreement may be terminated and all of Tiburon's rights hereunder ended.

Termination will be effective after ten (10) days written notice to Tiburon. No new work will be undertaken after the date of receipt of any notice of termination, Tiburon will be paid for those services performed under this Agreement, up to the date of termination.

b. Termination for Convenience. City may terminate this Agreement for City's convenience and without cause at any time by giving Tiburon thirty (30) days written notice of such termination. In the event of such termination, Tiburon will be paid for those services performed, equipment ordered, and costs incurred for which notification, in writing, has been provided to City prior to contractual commitment, pursuant to this Agreement, up to the date of termination. In no event will City be liable for costs incurred by Tiburon after receipt of a notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, or any other cost which is not reasonable or authorized under this Section. This Section shall not prevent Tiburon from recovering costs necessarily incurred in discontinuing further work under the contract after receipt of the termination notice.

c. Termination for Failure to Appropriate Funds. The City shall promptly notify Tiburon in writing if the City fails to appropriate sufficient funds for any remaining Phase of the Agreement for which payment would otherwise become due during the fiscal year. Either party may thereafter terminate the Agreement by written notice to the other party, and the termination shall be effective ten (10) days after delivery of the notice. Tiburon shall thereafter be entitled to payment for its unrecovered costs as provided in subsection (b) above.

d. Obligations upon Termination. Upon termination of this Agreement for any reason, Tiburon will submit an invoice to the City for an amount which represents the value of its work or services actually performed prior to the effective date of termination for which Tiburon has not previously been compensated at Tiburon's hourly rate set forth in Exhibit D. Upon approval and payment of this invoice by the City, the City shall be under no further obligation to Tiburon monetarily or otherwise.

14. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Tiburon to perform services or to provide materials, equipment, and supplies that would result in Tiburon performing services or providing materials, equipment, and supplies that are beyond the scope of the services, materials, equipment, and supplies agreed upon in the contract unless the agreement is amended in writing and approved as required by law to authorize additional services, materials, equipment, or supplies. The City is not required to reimburse Tiburon for services, materials, equipment, or supplies that are provided by Tiburon which are beyond the scope of the services, materials, equipment, and supplies agreed upon in the contract and which were not approved by a written amendment to the agreement having been lawfully executed by the City. The City and its employees and officers are not authorized to offer or promise to Tiburon additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Tiburon's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller of the City and County of San Francisco. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

15. Invoice Format. Invoices furnished by Tiburon under this Agreement must be in a form acceptable to the Controller, and must include a unique identifying number. All amounts paid by City to Tiburon shall be subject to audit by the City. Payment shall be made by the City to Tiburon at the address specified in the Section entitled "Notices to the Parties."

16. Audit and Inspection of Records. Tiburon agrees to maintain and make available to City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Tiburon will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, non-confidential records or personnel and other data related to this Agreement, which specifically excludes (a) Tiburon's corporate financial statements and personnel information other than names and titles of individuals working on the Project, and (b) trade secret information of Tiburon or any subcontractor, such as product cost information. Tiburon shall maintain such data and records in an accessible location and condition for a period of not less than five (5) years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

17. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, Tiburon, a subcontractor, or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at

<http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>.

Tiburon, a subcontractor, or consultant will be deemed to have submitted a false claim to the City if Tiburon, a subcontractor, or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

18. Intentionally left blank by the Parties ("Liquidated Damages").

19. Default; Remedies.

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

1. Tiburon fails or refuses to perform or observe any term, covenant, or condition contained in any of the following Sections of this Agreement:

28. Proprietary or Confidential Information

29. Protection of Private Information

2. Tiburon fails or refuses to perform or observe any other term, covenant, or condition contained in this Agreement, and such default is not remedied or a plan put in place within 20 business days by the parties to remedy such default through the Dispute Resolution Process, as set forth in

Section 49 "Dispute Resolution." If the parties agree to extend the Dispute Resolution period beyond 20 business days, the cure period under this subsection will be extended for the same period of time.

3. Tiburon (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief, reorganization, arrangement, or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency, or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee, or other officer with similar powers of Tiburon or of any substantial part of Tiburon's property or (e) takes action for the purpose of any of the foregoing.

4. A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Tiburon or with respect to any substantial part of Tiburon's property, (b) constituting an order for relief or approving a petition for relief, reorganization, arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency, or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up, or liquidation of Tiburon.

b. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules, and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

20. Intentionally left blank by the Parties ("Responsibility for Equipment").

21. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Tiburon, shall in no way lessen the liability of Tiburon to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment, or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Tiburon without delay.

22. Independent Contractor; Payment of Taxes and Other Expenses.

a. **Independent Contractor.** Tiburon or any agent or employee of Tiburon shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Tiburon or any agent or employee of Tiburon shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Tiburon or any agent or employee of Tiburon is liable for the acts and omissions of itself, its employees, and its agents. Tiburon shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Tiburon's performing services and work, or any agent or employee of Tiburon providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Tiburon or any agent or employee of Tiburon. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Tiburon's work only, and

not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Tiburon performs work under this Agreement.

b. Payment of Taxes and Other Expenses. Should any taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Tiburon is an employee due to the services provided pursuant to this Agreement, Tiburon shall indemnify the City for any employment tax due as a result of this provision. A determination of employment status pursuant to this paragraph shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Tiburon shall not be considered an employee of City.

23. Insurance

a. Without in any way limiting Tiburon's liability pursuant to the "Indemnification" section of this Agreement, Tiburon must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

1. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

2. Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit, \$2,000,000 aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3. Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

4. Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1. Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Tiburon hereby agrees to waive subrogation, which any insurer of Tiburon may acquire from Tiburon by virtue of the payment of any loss. Tiburon agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Tiburon, its employees, agents and subcontractors.

d. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

e. Should any of the required insurance be provided under a claims-made form, Tiburon shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

h. Before commencing any operations under this Agreement, Tiburon shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Tiburon hereunder.

24. Indemnification and General Liability. Tiburon shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Tiburon or loss of or damage to property, arising directly from Tiburon's willful misconduct or negligent performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement and except where such loss, damage, injury, liability or claim is the result of the negligence or willful misconduct of City and in not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Tiburon, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs. In addition to Tiburon's obligation to indemnify City, Tiburon specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Tiburon by City and continues at all times thereafter.

25. Infringement Indemnification. If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the Licensed Software infringes a patent, copyright, or any right of a third party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (Infringement), Tiburon will hold City harmless and defend such action at its own expense. Tiburon will pay the costs and damages awarded in any such action or the cost of settling such action, provided that Tiburon shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the Licensed Software constitutes Infringement, Tiburon will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Tiburon shall have sole control of the resolution of any such claim and all negotiations for its settlement.

In the event a final injunction is obtained against City's use of the Licensed Software by reason of Infringement, or in Tiburon's opinion City's use of the Licensed Software is likely to become the subject of Infringement, Tiburon may at its option and expense: (a) procure for City the right to continue to use

the Licensed Software as contemplated hereunder, (b) replace the Licensed Software with a non-infringing, functionally equivalent substitute Licensed Software, or (c) suitably modify the Licensed Software to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Licensed Software. If none of these options is reasonably available to Tiburon, then the applicable Authorization Document or relevant part of such Authorization Document may be terminated at the option of either party hereto and Tiburon shall refund to City all amounts paid under this Agreement for the license of such infringing Licensed Software. Any unauthorized modification or attempted modification of the Licensed Software by City or any failure by City to implement any improvements or updates to the Licensed Software, as supplied by Tiburon, shall void this indemnity unless City has obtained prior written authorization from Tiburon permitting such modification, attempted modification or failure to implement. Tiburon shall have no liability for any claim of Infringement based on City's use or combination of the Licensed Software with products, equipment or data of the type for which the Licensed Software was neither designed nor intended to be used nor provided by Tiburon.

26. Liability. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 6 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT. TIBURON'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE CONTRACT VALUE FOR THE IMPLEMENTATION SERVICES OF PHASE 1 AND PHASE 2, COMBINED. IN THE EVENT TIBURON'S LIABILITY ARISES DURING THE MAINTENANCE AND SUPPORT PERIOD, TIBURON'S LIABILITY IS LIMITED TO THE MAINTENANCE FEE PAID DURING THE 12-MONTH SUPPORT PERIOD IN WHICH THE LIABILITY AROSE.

27. Nondisclosure. City agrees that it shall treat the Licensed Software and Documentation with the same degree of care as it treats like information of its own, which it does not wish to disclose to the public, from the date the Licensed Software is accepted by the City.

28. Proprietary or Confidential Information of City. Tiburon understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Tiburon may have access to private or confidential information, which may be owned or controlled by City, and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Tiburon agrees that all information disclosed by City to Tiburon shall be held in confidence and used only in the performance of the Agreement. Tiburon shall exercise the same standard of care to protect such information as a reasonably prudent Tiburon would use to protect its own proprietary data. These obligations of confidentiality shall survive the termination of the Agreement.

29. Protection of Private Information. Tiburon has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Tiburon agrees that any failure of Contactor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the

Contract, bring a false claim action against Tiburon pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar Tiburon.

30. Ownership of Results. Any interest of Tiburon or its subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, surveys, recommendations, computation sheets, computer files and media or other documents prepared by Tiburon or its subcontractors in connection with services to be performed under this Agreement, shall remain vested with Tiburon and such subcontractors. However, the City may use such results for their own internal business purposes.

31. Works for Hire. If, in connection with services performed under this Agreement, Tiburon or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall not be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of Tiburon.

32. Rights and Duties upon Termination or Expiration. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

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| 6(c). Taxes | 28. Proprietary or Confidential Information of City |
| 16. Audit and Inspection of Records | 29. Protection of Private Information |
| 17. Submitting False Claims; Monetary Penalties | 30. Ownership of Results |
| 20. Responsibility for Equipment | 31. Works for Hire |
| 21. Payment Does Not Imply Acceptance of Work | 48. Modification of Agreement |
| 22. Independent Contractor; Payment of Taxes and Other Expenses | 50. Agreement Made in California; Venue |
| 23. Insurance | 51. Construction |
| 24. Indemnification and General Liability | 52. Entire Agreement |
| 25. Infringement Indemnification | 58. Severability |
| 26. Liability of City | |
| 27. Nondisclosure | |

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 3, this Agreement shall terminate and be of no further force or effect. This subsection shall survive termination of this Agreement.

33. Notice to the Parties. Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, and e-mail, and shall be addressed as follows:

To City: Department of Emergency Management
IT Manager
1011 Turk St

San Francisco, CA 94102

To Tiburon: Tiburon, Inc.
VP of Contracts and Procurement
6200 Stoneridge Mall Road
Suite 400
Pleasanton, CA 94588

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a Receipt notice. Any notice of default must be sent by registered mail, or overnight courier services such as Federal Express.

34. Subcontracting. Tiburon is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

35. Assignment. The services to be performed by Tiburon are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Tiburon unless first approved by City by written instrument executed and approved in the same manner as this Agreement, except Tiburon may assign this Agreement to a successor of all or substantially all of Tiburon's business without prior approval.

36. Compliance with American with Disabilities Act. Tiburon acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through Tiburon, must be accessible to the disabled public. Tiburon shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Tiburon agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Tiburon, its employees, agents or assigns will constitute a material breach of this Agreement.

37. Sunshine Ordinance. In accordance with San Francisco Administrative Code Section 67.24(e), contracts, Tiburon's bids, responses to requests for proposals and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

38. Limitations on Contributions. Through execution of this Agreement, Tiburon acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by

such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tiburon acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tiburon further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Tiburon's board of directors; Tiburon's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tiburon; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Tiburon. Additionally, Tiburon acknowledges that Tiburon must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Tiburon further agrees to provide to City the names of each person, entity or committee described above.

39. Conflict of Interest. Through its execution of this Agreement, Tiburon acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

40. Non-Waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

41. Earned Income Credit (EIC) Forms. Administrative Code Section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. Tiburon shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Tiburon has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Tiburon; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Tiburon of the terms of this Agreement. If, within thirty days after Tiburon receives written notice of such a breach, Tiburon fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Tiburon fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Tiburon shall require the Subcontractor to comply, as to the Subcontractor's Eligible Employees, with each of the terms of this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 120 of the San Francisco Administrative Code.

42. Local Business Enterprise Utilization; Liquidated Damages.

a. **The LBE Ordinance.** Tiburon, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Tiburon's obligations or liabilities, or materially diminish Tiburon's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this Section. Tiburon's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Tiburon's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Tiburon shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. **Compliance and Enforcement.** If Tiburon willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Tiburon shall be liable for liquidated damages in an amount equal to Tiburon's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Tiburon authorized in the LBE Ordinance, including declaring Tiburon to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of Tiburon's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. By entering into this Agreement, Tiburon acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Tiburon further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Tiburon on any contract with City. Tiburon agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

43. **Nondiscrimination; Penalties**

a. **Tiburon Shall Not Discriminate.** In the performance of this Agreement, Tiburon agrees not to discriminate against any employee, City and County employee working with such Tiburon or subcontractor, applicant for employment with Tiburon or a subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. **Subcontracts.** Tiburon shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Tiburon's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. **Nondiscrimination in Benefits.** Tiburon does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property

owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract. As a condition to this Agreement, Tiburon shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Tiburon shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tiburon understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Tiburon and/or deducted from any payments due Tiburon.

44. Requiring Minimum Compensation for Covered Employees

a. Tiburon agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided (excluding liquidated damages), and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at

www.sfgov.org/olse/mco.

A partial listing of some of Tiburon's obligations under the MCO is set forth in this Section. Tiburon is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Tiburon to pay Tiburon's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Tiburon is obligated to keep informed of the then-current requirements. Any subcontract entered into by Tiburon shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Tiburon's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against such subcontractor directly.

c. Tiburon shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Tiburon shall maintain employee and payroll records as required by the MCO. If Tiburon fails to do so, it shall be presumed that Tiburon paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Tiburon's job sites and conduct interviews with employees and conduct audits of Tiburon

f. Tiburon's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement.

g. Tiburon understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (excluding liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Tiburon fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Tiburon fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Tiburon represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Tiburon is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Tiburon later enters into an agreement or agreements that cause Tiburon to exceed that amount in a fiscal year, Tiburon shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tiburon and this department to exceed \$25,000 in the fiscal year.

45. Requiring Health Benefits for Covered Employees. Tiburon agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Tiburon shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Tiburon chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if Tiburon is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Tiburon's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Tiburon if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Tiburon fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Tiburon fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6), excluding liquidated damages. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Tiburon shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tiburon shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Tiburon shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Tiburon based on the Subcontractor's failure to comply, provided that City has first provided Tiburon with notice and an opportunity to obtain a cure of the violation.

e. Tiburon shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Tiburon's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Tiburon represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Tiburon shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Tiburon shall keep itself informed of the current requirements of the HCAO.

i. Tiburon shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Tiburon shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Tiburon shall allow City to inspect Tiburon's job sites and have access to Tiburon's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Tiburon to ascertain its compliance with HCAO. Tiburon agrees to cooperate with City when it conducts such audits.

m. If Tiburon is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Tiburon later enters into an agreement or agreements that cause Tiburon's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tiburon and the City to be equal to or greater than \$75,000 in the fiscal year.

46. First Source Hiring Program

a. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Tiburon shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. **First Source Hiring Agreement.** As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, Tiburon shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Tiburon shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

1. Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

2. Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

3. Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

4. Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be non-duplicative, and facilitate a coordinated flow of information and referrals.

5. Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

6. Set the term of the requirements.
7. Set appropriate enforcement and sanctioning standards consistent with this Chapter.
8. Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.
9. Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.
 - c. **Hiring Decisions.** Tiburon shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.
 - d. **Exceptions.** Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.
 - e. **Subcontracts.** Any subcontract entered into by Tiburon shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

47. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Tiburon may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Tiburon agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Tiburon violates the provisions of this Section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Tiburon from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Tiburon's use of profit as a violation of this Section.

48. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Tiburon shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

49. Dispute Resolution. City and Tiburon agree to exercise their best efforts, and to negotiate in good faith, to amicably resolve any disputes that may arise concerning the performance by either party of their obligations under this Agreement. If City's and Tiburon's Project Managers fail to resolve disputes through such negotiations, then the Parties will submit the dispute to their respective management, as set forth below, who shall have authority to settle the controversy and who are at a higher level of management than the Project Managers. If the Parties fail to resolve the matter at the manager level, then the Parties will submit the dispute to their next levels of management as set forth below. Either City or Tiburon may give the other party written notice of any dispute not resolved by good faith negotiations between the Parties' respective Project Managers.

Within 10 business days after delivery of the notice, the receiving Party shall submit to the other a written response. The notice and response shall include a statement of that Party's position and a summary of

arguments supporting that position. During this time, the Parties shall work in good faith to meet as needed, whether by telephone or in-person, in order to resolve the dispute. In the event the Parties at the dispute level 1 are unable to resolve the dispute within such time, the matter shall be referred in writing by the initiating Party to the management level of the receiving party, as identified in dispute level 2 below. The individuals identified as the point of contact for dispute level 2 shall have five (5) business days to work in good faith with one another to resolve such dispute. In the event the Parties are unable to resolve the dispute within such time, the matter shall be referred in writing by the initiating Party to the executive level of the receiving Party, as identified in dispute level 3 below. The individuals identified as the point of contact for dispute level 3 shall have five (5) business days to work in good faith with one another to resolve such dispute. All reasonable requests for information made by one Party to the other will be honored. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

If the executives cannot resolve the dispute to the satisfaction of both Parties, then City and Tiburon may attempt to mutually agree on the conditions under which such unresolved disputes can be referred to mediation or non-binding arbitration. If the Parties do not mutually agree to mediation or non-binding arbitration, or mutually select a mediator or arbitrator for the dispute, or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The level of dispute escalation will be as follows:

DISPUTE LEVEL	CITY	TIBURON
1	IT Manager	Director of Operations
2	Deputy Director	Sr. VP of Operations
3	Executive Director	CEO or CFO, or their designee

50. Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

51. Construction. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

52. Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision.

53. Time of the Essence. Time is of the essence with respect to the performance of each and all of the material obligations, covenants, and conditions and of this Agreement.

54. Compliance with Laws. Tiburon shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws.

55. MacBride Principles – Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations abide by the MacBride Principles. By signing below, the person executing this Agreement on behalf of Tiburon acknowledges and agrees that he or she has read and understood this Section.

56. Tropical Hardwood and Virgin Redwood Ban. Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges Tiburon not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood products, virgin redwood or virgin redwood wood products.

57. Resource Conservation. Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Tiburon to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

58. Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

59. Force Majeure. Tiburon shall not be liable for failure to perform hereunder or maintain Software when such failures are due to causes beyond its reasonable control, such as acts of God, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine, war, riot, delays in transportation, care shortages, and inability due to causes beyond its reasonable control to obtain necessary labor, materials or manufacturing facilities, and in such event Tiburon shall perform as soon as such cause is removed.

60. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Tiburon shall remove all graffiti from any real property owned or leased by Tiburon in the City and County of San Francisco within forty eight (48) hours of the earlier of Tiburon's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This Section is not intended to require Tiburon to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other

improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Tiburon to comply with this Section of this Agreement shall constitute a material breach of this Agreement.

61. Food Service Waste Reduction Requirements. Tiburon agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Tiburon agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Tiburon agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tiburon's failure to comply with this provision.

62. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

63. Order of Precedence. In case of discrepancy or ambiguity in the terms or conditions of this Agreement, the following order of precedence shall prevail:

1. This Agreement
2. The Scope of Work (SOW)
3. The Detailed Design Document

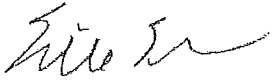
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

TIBURON

Recommended by:

Tiburon, Inc.



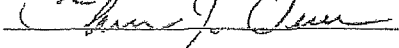
Fov Anne Kronenberg
Executive Director
Department of Emergency Management

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

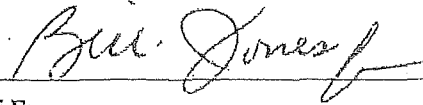
Approved as to Form:

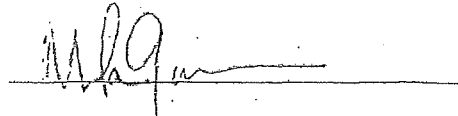
Dennis J. Herrera
City Attorney

I have read and understood paragraph 55, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

By: 
Deputy City Attorney

Approved:


Jaci Fong
Director of the Office of Contract Administration, and
Purchaser



City vendor number: _____

ATTACHMENTS:

Exhibit A - Fire Station Alerting Statement of Work (Phase 1)

Appendix A-1 System Description

Appendix A-2 Minimum Hardware Requirements

Appendix A-3 Interface Control Documents

Appendix A-4 Acceptance Testing

Exhibit B - Command CAD Statement of Work (Phase 2)

Appendix B-1 - System Description and Network Diagram

Appendix B-2 Minimum Hardware Requirements

Appendix B-3 Interface Control Documents (ICD 1-21)

Appendix B-4 Acceptance Testing and Functional Spreadsheets

Exhibit C - Master Project Schedule

Exhibit D - Project Pricing

Exhibit E - Payment Schedule

Exhibit F - Required System Documentation

Exhibit G - Software License Agreement

Exhibit H - Maintenance Agreement

OFFICE OF THE MAYOR
SAN FRANCISCO



RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

LONDON N. BREED
MAYOR

2019 SEP 24 PM 3:36

BY

[Handwritten signature]

[Handwritten signature]

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Sophia Kittler
RE: Contract Amendment - Tiburon, Inc. – Computer Aided Dispatch System
Software Maintenance – extending Term to November 30, 2024.
DATE: Tuesday, September 23, 2019

Resolution approving an amendment to the Agreement between the City and County of San Francisco and Tiburon Inc., to increase the amount by \$1,905,904 for a total not to exceed amount of \$7,153,056 and extend the term by five years for a total contract term of June 29, 2012 through November 30, 2024.

Should you have any questions, please contact Sophia Kittler at 415-554-6153.

1 DR. CARLTON B. GOODLETT PLACE, ROOM 200
SAN FRANCISCO, CALIFORNIA 94102-4681
TELEPHONE: (415) 554-6141



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102
 Phone: 415.252.3100 . Fax: 415.252.3112
ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #:
190981

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4
 (S.F. Campaign and Governmental Conduct Code § 1.126(f)4)
 A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION	
TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD	
OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisor's	Members

3. FILER'S CONTACT	
NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
Office of the Clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT	
NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Victor Wai Ho Lim	415-558-2712
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
DEM Department of Emergency Management	Victor.Lim@sfgov.org

5. CONTRACTOR	
NAME OF CONTRACTOR Tiburon, Inc	TELEPHONE NUMBER 800-727-8088
STREET ADDRESS (including City, State and Zip Code) 6200 Stoneridge Mall Rd, Ste 400, Pleasanton, CA 94588	EMAIL

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 190981
DESCRIPTION OF AMOUNT OF CONTRACT \$7,153,056		
NATURE OF THE CONTRACT (Please describe) For the joint implementation of a Computer Aided Dispatch System and Fire Station Alerting System to provide 9-1-1 dispatching services for San Francisco.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Angove	Simon	CEO
2	Atre	Jatin	Other Principal officer
3	Davidson	Jeff	COO
4	Pulling	John	Other Principal officer
5	Seoane	Steve	Other Principal officer
6	Owens	Doug	CFO
7	TriTech Software Corp.		Shareholder
8	TriTech Software Systems		Shareholder
9	Palmero Finance Corp.		Shareholder
10	BCPE Burgundy Holdings, Inc.		Shareholder
11	BCPE Burgundy Topco, Inc		Shareholder
12	Centralsquare Technologies, LLC		Shareholder
13	SuperMoose Holdco, LLC		Shareholder
14	VEPF SuperMoose Holdings, LLC		Shareholder
15	Bain Capital Fund XII, L.P.,		Shareholder
16	Loring	Ian	Board of Directors
17	Abrahamson	Darren	Board of Directors
18	Scherer	Jeff	Board of Directors
19	Fusco	Mark	Board of Directors

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
20	Sheth	Brian N.	Board of Directors
21	Teillon	Marc V.	Board of Directors
22	Alonso	Adrian R.	Board of Directors
23	Hung	Betty	Board of Directors
24	Angove	Simon	Board of Directors
25	Evans	Bill	Board of Directors
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39			
40			
41			
42			
43			
44			
45			
46			
47			
48			
49			
50			

Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK BOS Clerk of the Board	DATE SIGNED
--	-------------

