

**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:*

Tiburon, Inc.

P-650 (4-19)

“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

Tiburon, Inc.

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

