



Tiburon, Inc., a TriTech Software Systems Company

Customer No. 10094
Invoice No. PA0001429
Date: 2/1/2017
Sales Order No: S119817
Terms: NET30

Remit To:
Tiburon, Inc.
9477 Waples St.
Suite 100
San Diego, CA 92121
(858) 799-7000 Ext. 0000

To: Fort Bend, County of
Sheriff's Office
1410 Ransom Rd
RICHMOND, TX 77469

S119817 Year 2 02/1/17 - 01/31/18

S119817FORTTX

Contract No. S119817 Purchase No.
S119814-16 Fort Bend, TX System Upgrade (PSaaS)

Annual Subscription Fee - Year 2 (02/01/17 - 01/31/18)

PLEASE NOTE NEW "REMIT TO" ADDRESS ABOVE

TAX: \$0.00

TOTAL DUE THIS INVOICE: \$320,761.00

Thank You

This Invoice Payable in U.S. Dollars

STATE OF TEXAS §
COUNTY OF FORT BEND §

AGREEMENT FOR TIBURON SOFTWARE UPGRADE AND LICENSE SUBSCRIPTION

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Tiburon, Inc. (hereinafter "Tiburon"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County desires that Tiburon provide upgrade services related to software provided by Tiburon (hereinafter "Services"); and

WHEREAS, County has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262 of the Texas Local Government Code; and

WHEREAS, Tiburon represents that it is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

1. **Scope of Services.** Tiburon shall render Services to County as defined in the Scope of Services (attached hereto as Exhibit A).
2. **Personnel**
 - A. Tiburon represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Tiburon shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.
 - B. All employees of Tiburon shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Tiburon who, violates the law or acts with willful misconduct, shall, upon request of County, immediately be removed from association with the project.
3. **Term.**
 - A. The term of this Agreement shall commence on the effective date as described below and terminate in accordance with the Scope of Services.
 - B. User subscriptions shall commence upon completion of Task 10 as described in Exhibit A and continue for a period of five (5) years ("Initial Term"), unless terminated earlier in accordance with this Agreement.
 - B. Upon completion of the Initial Term, the User subscriptions shall automatically renew for one (1) year periods ("Renewal Term") at the annual subscription price set forth above plus a not to exceed five percent (5%) annual uplift, unless either party gives the other notice of non-renewal at least thirty (30) days prior to the end of the Initial Term or any Renewal Term.

4. **Compensation and Payment**

- A. The fee for services provided by Tiburon under the Scope of Services is \$564,684.00. Payment shall be made according to the following payment milestone schedule (as detailed in the Scope of Services):
 - (i) 25% - Upon contract signing
 - (ii) 20% - Upon completion of Task 5 of the Scope of Services
 - (iii) 20% - Upon completion of Task 6 of the Scope of Services
 - (iv) 10% - Upon completion of Task 7 of the Scope of Services
 - (v) 10% - Upon completion of Task 9 of the Scope of Services
 - (vi) 15% - Upon completion of Task 10 of the Scope of Services
- B. Upon completion of Task 10 of the Scope of Services, County shall pay an annual subscription fee of \$320,761.00 during the Initial Term, which includes the additional \$7,934 annual subscription license fee to use the CIT Data Module as set forth in EP-3468. The payment shall be due on the date that subscription services are made available for live productive use. An annual payment of \$320,761.00 shall be due on the anniversary date for a period of five (5) years.
- C. All performance of the Scope of Services by Tiburon including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.
- D. County will pay Tiburon based on the following procedures: Upon completion of the Tasks identified in 4A and 4B, Tiburon shall submit to County two (2) original copies of invoices showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within thirty (30) calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. For payments identified in Section 4.A above, County reserves the right to withhold payment pending verification of work performed.

5. **Limit of Appropriation.**

- A. Tiburon clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of TWO MILLION ONE HUNDRED SIXTY-EIGHT THOUSAND FOUR HUNDRED EIGHTY-NINE dollars and 00/100 (\$2,168,489.00), specifically allocated to fully discharge any and all liabilities County may incur.
- B. Tiburon does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Tiburon may become entitled to and the total maximum sum that County may become liable to pay to Tiburon shall not under any conditions, circumstances, or interpretations thereof exceed TWO MILLION ONE HUNDRED SIXTY-EIGHT THOUSAND FOUR HUNDRED EIGHTY-NINE dollars and 00/100 (\$2,168,489.00),

6. **Modifications and Waivers.**

- A. The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
- B. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.
- C. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

7. **Termination.**

- A. Termination for Convenience. County may terminate this Agreement at any time upon sixty (60) days written notice.
- B. Termination for Default. County may terminate the whole or any part of this Agreement for cause in the following circumstances:
 - (i) If Tiburon fails to perform services specified in the Scope of Services;
 - (ii) If Tiburon materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement, and in any of these circumstances does not cure such breach or failure within a period of thirty (30) business days, or such other time as the parties mutually agree to, after receipt of written notice from County specifying such breach or failure along with the reference to the section number of this Agreement such breach relates to.

If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7A above.

C. Effect of Termination by County.

- (i) Termination Prior to Commencement of Initial Term - If County terminates this Agreement prior to the completion of the implementation of the upgrade by Tiburon for any reason other than default or material breach by Tiburon, County shall pay 100% of all payment due prior to the start of the Initial Term.
- (ii) Termination During Initial Term - If County terminates this agreement at any time during the Initial Term for any reason other than default or material breach by Tiburon, County shall pay 100% of the remaining fees owed during the Initial Term.
- (iii) Termination During Renewal Term - If County terminates this Agreement during the Renewal Term, no prorated fees shall be returned to County, and Tiburon shall be under no further obligation to provide services after the termination date.

D. Effect of Termination by Tiburon.

- (i) Termination Prior to Commencement of Initial Term - If Tiburon terminates this Agreement prior to the completion of the implementation of the upgrade by Tiburon for any reason other than default or material breach by County, County shall not be responsible for any fees due prior to the start of the Initial Term.
- (ii) Termination During Initial Term - If Tiburon terminates this agreement at any time during the Initial Term for any reason other than default or material breach by County, County shall not be responsible for any remaining fees owed during the Initial Term.
- (iii) Termination During Renewal Term - If Tiburon terminates this Agreement for any reason other than default or material breach by County during the Renewal Term, prorated fees shall be returned to County, and Tiburon shall be under no further obligation to provide services after the termination date.

8. **Ownership and Reuse of Documents.** All documents, data, reports, research, graphic presentation materials, etc., that may be developed by Tiburon as a part of its work under this Agreement, shall remain the property of Tiburon, however, Tiburon hereby grants County a perpetual nonexclusive right to use such documents for their own internal business purposes. Tiburon shall promptly furnish all such data and material to County on request.

9. **Inspection of Books and Records.** Tiburon will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Tiburon for the purpose of verifying the

amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of two (2) years.

10. **Insurance.**

A. Prior to commencement of the Services, Tiburon shall furnish County with properly executed certificates of insurance which shall evidence all insurance required. Tiburon shall provide certified copies of insurance endorsements if requested by County, for purposes of this provision Tiburon may provide the County with blanket endorsements evidencing coverage. Tiburon shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies, and/or endorsements for any such insurance expiring prior to completion of Services. Tiburon shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

- (i) Workers' Compensation Insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
- (ii) Commercial General Liability Insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
- (iii) Business Automobile Liability Insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.
- (iv) Professional Liability Insurance with limits not less than \$1,000,000.

B. County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of Tiburon shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

C. If required coverage is written on a claims-made basis, Tiburon warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning from the time that work under the Agreement is completed.

11. **TIBURON SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF TIBURON, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF TIBURON OR ANY OF TIBURON'S AGENTS, SERVANTS OR EMPLOYEES.**

12. **Confidential and Proprietary Information.**

A. Tiburon acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Tiburon or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Tiburon shall be treated with respect to confidentiality in

the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that:

- (i) is or becomes (other than by disclosure by Tiburon) publicly known or is contained in a publicly available document;
- (ii) is rightfully in Tiburon's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or
- (iii) is independently developed by employees or agents of Tiburon who can be shown to have had no access to the Confidential Information.

- B. Tiburon agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Tiburon uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Tiburon shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Tiburon shall advise County immediately in the event Tiburon learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Tiburon will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Tiburon against any such person. Tiburon agrees that, except as directed by County, Tiburon will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Tiburon will promptly turn over to County all documents, papers, and other matter in Tiburon's possession which embody Confidential Information.
- C. Tiburon acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Tiburon acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.
- D. Tiburon in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
- E. Tiburon expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

13. Independent Contractor.

- A. In the performance of work or services hereunder, Tiburon shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Tiburon or, where permitted, of its subcontractor.
- B. Tiburon and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

14. Notices.

- A. Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).
- B. Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County Sheriff's Office
 Attn: Captain Robin Frazier
 1410 Williams Way
 Richmond, Texas 77469

With a copy to: Fort Bend County
 Attn: County Judge
 401 Jackson Street
 Richmond, Texas 77469

Tiburon: Tiburon, Inc.
 Attn: Contracts
 3000 Executive Parkway, Suite 500
 San Ramon, California 94583

- C. Notice is effective only if the party giving or making the Notice has complied with subsections 14A and 14B and if the addressee has received the Notice. Notice is deemed received as follows:
 - (i) If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.
 - (ii) If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

- 15. **Compliance with Laws.** Tiburon shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Tiburon shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

16. Performance Warranty

- A. Tiburon warrants to County that Tiburon has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Tiburon will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.
- B. If during the Initial Term, or any Renewal Term, an error with the Tiburon applications occurs, Tiburon agrees to provide the support and maintenance services, as modified by this Agreement, as set forth in the Reference Agreement to the attached Exhibit A.
- C. **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, TIBURON MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

17. **Assignment and Delegation**

- A. Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. Except however, Tiburon may assign this Agreement to a successor of all or substantially all of Tiburon's business without prior written consent. All other assignments of rights are prohibited under this subsection. In the event that Tiburon assigns this Agreement to a successor of all or substantially all of Tiburon's business, Tiburon will provide notice to County of the assignment within thirty (30) days of the assignment.
- B. Neither party may delegate any performance under this Agreement, unless agreed to by the parties.
- C. Any purported assignment of rights or delegation of performance in violation of this Section is void.

18. **Applicable Law.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

19. **Successors and Assigns.** County and Tiburon bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

20. **Third Party Beneficiaries.** This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

21. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

22. **Publicity.** Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Tiburon release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

23. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

24. **Conflict.** In the event there is a conflict between this Agreement and the attached Exhibit A, this Agreement controls.

25. **Limitation of Liability.** EXCEPT FOR INSTANCES OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY COUNTY HEREUNDER DURING THE TWELVE MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LIABILITY FOR THE COUNTY SHALL BE GOVERNED BY THE PROVISIONS SET FORTH IN THE TEXAS TORT CLAIMS ACT. TIBURON'S LIABILITY FOR GROSS NEGLIGENCE OR WILFULL MISCONDUCT, AS EXCLUDED ABOVE, SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID UNDER TIBURON'S INSURANCE POLICY FOR SUCH CLAIMS.
26. **County Responsibilities.** County is responsible for all activities that occur in user accounts and for users' compliance with this Agreement. County shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all County data; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the service, and notify Tiburon promptly of any such unauthorized access or use; (iii) comply with all applicable local, state, and federal laws in using the service, and (iv) perform all County responsibilities as set forth in this Agreement.
27. **Use Guidelines.** County shall use the service solely for its internal business purposes as contemplated by this Agreement and shall not intentionally: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the service available to any third party, other than to County employees or as otherwise contemplated by this Agreement; (ii) send or store malicious code; (iii) interfere with or disrupt the integrity or performance of the service or the data contained therein; or (iv) attempt to gain unauthorized access to the service or its related systems or networks.
28. **License to Use Service.** During the Initial Term and any subsequent Renewal Term County shall have a limited non-exclusive license to use the service on as many workstations as specified in this Agreement for County's own internal business purposes in accordance with Tiburon's licensing terms, which are attached hereto and incorporated herein as part of Exhibit A. Unless expressly authorized by Tiburon in writing, County shall not reproduce, distribute, decompile, reverse engineer, or otherwise misappropriate the service for any reason.

****SIGNATURES FOLLOW ON NEXT PAGE****

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the 2 day of December, 2014.

FORT BEND COUNTY

Robert E. Hebert
Robert E. Hebert, County Judge

12-2-2014
Date

ATTEST:

Dianne Wilson
Dianne Wilson, County Clerk

TIBURON, INC.

Scott Carroll
Authorized Agent- Signature

Scott Carroll
Authorized Agent- Printed Name

Contracts Manager
Title

11/19/2014
Date

[SEAL]



APPROVED:

Robin Frazier
Captain Robin Frazier,
Fort Bend County Sheriff's Office

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$2,168,489.00 to accomplish and pay the obligation of Fort Bend County under this contract.

Robert Edward Sturdivant
Robert Edward Sturdivant, County Auditor

EXHIBIT A – SCOPE OF SERVICES



November 19, 2014

Robin Frazier, Captain
Ft. Bend County Sheriff's Office
1410 Williams Way
Richmond, Texas 77469

Subject: Enhancement Proposal (EP)-3715: System Upgrade (PSaaS)

Reference: Agreement for Extended Service between Fort Bend County, TX and Tiburon, Inc., effective date June 22, 2000

Dear Captain Frazier:

Tiburon, Inc. is pleased to present the Ft. Bend County Sheriff's Office (hereinafter, "Client") with this Enhancement Proposal (EP) for Tiburon to provide Client with an upgrade to the following Tiburon Applications: Total Command CAD V2.9, MobileCOM V5.3, RMS and CMS V7.10 (hereinafter, referred to as the "Proposal"). All of Client's existing licenses will be converted to the subscription licenses identified herein.

Scope Description and Responsibilities

The attached Exhibit 1, Statement of Work ("SOW") describes the project tasks, responsibilities of each party and defined completion criteria.

Subscription Licenses

All of Client's existing licenses are hereby migrated to a subscription license subject to the terms and conditions set forth in the Subscription License Agreement, which is attached hereto and incorporated herein as Exhibit 2. The Subscription License Agreement hereby replaces in its entirety the Software License Agreement currently in place between the parties. Client shall only have rights to use of Software if current on fees and during Term of Agreement as set forth in Term of User Subscription below.

Subscription Price Description

- 1) The fee for the services to be provided hereunder is \$564,684, payable in accordance with the payment milestone schedule set forth herein. Upon completion of Task 10, Client shall pay an annual subscription fee of \$320,761 thereafter for the Initial Term, which includes the additional \$7,934 annual subscription license fee to use the CIT Data Module as set forth in EP-3468. The initial annual fees shall be due on the date the subscription services are made available for live productive use and then annually on the anniversary thereafter. A late penalty of three percent (3%) per month can be added to each invoice that is past due. Such fees specifically exclude all taxes. Except as otherwise specified herein, fees are based on services purchased and not actual usage, and the number of subscriptions purchased cannot be decreased during the relevant subscription term.
- 2) Client agrees to keep their annual support agreement in good standing by paying all annual maintenance fees when due until such time as the subscription services are made available for live

productive use, at which point in time the Tiburon Annual Maintenance Fee will no longer be due and payable as it will be replaced with the annual subscription fee set forth above, and any already paid prorated portion will be credited to the first annual subscription payment due.

3) Payment Milestone Schedule:

- 25% - Upon contract signing
- 20% - Upon completion of Task 5 of the SOW
- 20% - Upon completion of Task 6 of the SOW
- 10% - Upon completion of Task 7 of the SOW
- 10% - Upon completion of Task 9 of the SOW
- 15% - Upon completion of Task 10 of the SOW

4) This Proposal does not include:

- Warranty
- Documentation, except as noted in the SOW
- GIS services
- Changes to functionality of existing interfaces
- Changes to functionality of existing CAD application features
- Monthly status reports

5) Any taxes levied by a government agency. Taxes, if applicable are the sole responsibility of the Client.

Effective Date and Terms of Use

6) **Term of User Subscriptions.** User subscriptions shall commence upon completion of Task 10 of the attached Statement of Work and continue for a period of five (5) years ("Initial Term"), unless terminated earlier in accordance with this Proposal. Upon completion of the Initial Term, the User subscriptions shall automatically renew for one (1) year periods ("**Renewal Term**") at the annual subscription price set forth above, unless either party gives the other notice of non-renewal at least one hundred twenty (120) days prior to the end of the Initial Term or any Renewal Term. The term set forth in the Reference Agreement is hereby replaced with this term set forth herein.

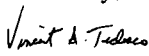
7) **Termination.** Either party may terminate this Proposal for convenience at any time for any reason upon at least one hundred twenty (120) days advanced written notice to the other party. If Client terminates this Proposal prior to completion of the implementation of the upgrade, Client shall pay one hundred percent of all payment due prior to the start of the Initial Term. If Client terminates this Proposal at any time during the Initial Term, Client shall pay one hundred percent (100%) of the remaining fees owed for the Initial Term. If Client terminates this Proposal during the Renewal Term, no prorated fees shall be returned to Client and Tiburon shall be under no further obligation to provide services. If Tiburon terminates for convenience, Client shall be under no further obligation to pay for continued subscription fees after the effective date of termination as specified in Tiburon's notice to Client. The termination fees set forth above are not intended as a penalty, but rather a charge to compensate Tiburon for Client's failure to satisfy the commitment set forth in this Proposal on which Client's pricing is based upon.

8) **Upgrades:** Eighteen (18) months following completion of Task 10 of the attached Statement of Work, Client is eligible for no cost upgrade(s) to the then current Tiburon Application version available for general use.

- 9) **Customization:** Client understands and acknowledges that this EP delivers a new application platform with functionality, features, and workflows which are entirely separate and distinct from Client's existing Tiburon installed applications. Client further understands no carry-forward of Client's existing Tiburon software customization or modification is included in this EP and features and functionality provided in the product will not be customized, modified, altered, added or changed by Tiburon at the Client's request, unless included in the attached Exhibit 1, SOW or otherwise agreed to in writing by Tiburon. Accordingly, Client accepts the Tiburon Applications and will not require or receive functionality or feature gaps based on comparison to Client's existing Tiburon installed applications; Client's internal workflows are subject to change to adapt to the Tiburon Applications.
- 10) The work described herein will be scheduled to commence at a mutually agreeable date after Client's acceptance of this Proposal.
- 11) Tiburon shall: (i) in addition to its confidentiality obligations, not use, modify or disclose to anyone other than Client Client's data; (ii) maintain the security and integrity of the Service and the Client Data; and (iii) provide support to Client in accordance with the Reference Agreement.
- 12) Client is responsible for all activities that occur in user accounts and for users' compliance with this Proposal. Client shall (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, loss of and appropriateness of all Client Data; (ii) comply with all applicable local, state, and federal laws in using the Tiburon Applications, and (iii) perform all Client responsibilities as set forth in this Proposal.
- 13) Client shall use the Tiburon Applications solely for its internal business purposes as contemplated by this Proposal and shall not license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party, other than to users or as otherwise contemplated by this Proposal.
- 14) Client's acceptance of this Proposal in the signature block provided below, authorizes Tiburon to proceed with the work described herein and confirms funding will be obligated. Any requisite contractual documents required by Client's purchasing procedures are the responsibility of the Client.
- 15) The terms and conditions of the above referenced Agreement, Subscription License Agreement, and this Proposal prevail regardless of any conflicting or additional terms and conditions on any Purchase Order or other correspondence. Any contingencies or additional terms obtained on any Purchase Order are not binding upon Tiburon. All Purchase Orders are subject to approval and acceptance by Tiburon.
- 16) This fixed price Proposal is valid through December 31, 2014.

Upon review and acceptance of this Proposal, please have a duly authorized person sign below and return the signed copy of the Proposal to Chip Hughes via e-mail at chip.hughes@tiburoninc.com. If you have any questions or require further information, at your convenience please contact Chip at (252) 633.5857

Sincerely,


Vincent Tedesco
Chief Operating Officer

SIGNATURE PAGE TO FOLLOW

Fort Bend County Sheriff
EP-3715: CAD/RMS/CMS Upgrade (PSaaS)
Page 4 of 21
By this signature, Client accepts this Proposal:

Signature

Date

Printed Name / Title

Attachments:
Exhibit 1 - Statement of Work
Exhibit 2 – Software License Agreement

Exhibit 1

Statement of Work

1.1 INTRODUCTION/ASSUMPTIONS:

There are situations where the release or version upgrade requires additional license fees, non-Tiburon product upgrades, or additional equipment, which are not included in this proposal. Site Wellness check, add-on Training, geofile consulting, and technical on-site Support Services are available for an additional fee as a separate enhancement during the duration of this upgrade. All activity will be conducted during Tiburon normal business hours.

Be aware that other 3rd party products in use may require upgrades as well. They are outside the scope of this enhancement proposal. Please carefully review all hardware/software ancillary to your Tiburon-provided systems for items that may require upgrading for specific operations.

No changes to the State Interface will be done during this implementation.

Services included or excluded in the upgrade, and items of note are listed below –

Included Services

- > The upgrade takes place on new Hyper V configuration (Tiburon BETA)
- > The new software will be staged on the client's TEST environment for client testing
- > Tiburon to provide baseline documentation, including Changes by Release document.
- > Tiburon will provide remote web training classes as listed
- > For LawRECORDS and JailRECORDS, Crystal Reports reporting are supported, however, client is responsible for any required changes due to database schema changes
- > CommandCAD reporting utilizes SQL SRSS.
- > Initial and Final conversions are included as detailed in Task 4.

Excluded Services

- > No Business Practice Review (BPR)
- > No formal MS project schedules
- > No monthly status reports
- > No Operating System or SQL Server upgrade
- > No on-site training *
- > No geofile consulting *
- > No changes to interfaces
- > No enhancements
- > No additional agency setup (systems will be delivered as multi service/multi-agency capable)
- > No multi-agency UCR or IBRS setup
- > No changes from UCR to/from IBRS
- > No on-site technical personnel when moving the release to the PRODUCTION environment *
- > Any data change requirements for the map are the responsibility of the client

* Add-on Training, Geofile, and On-site Support Services available for an additional fee as a separate enhancement during the duration of this upgrade)

Definition: Tiburon Service Request

| | | |
|------------|---------------|--|
| Priority 1 | Critical | The entire system (i.e.: CAD, Records) or a major component (i.e.: State interface, paging) is unavailable. Client cannot use system to continue operations. Impacts all or most users, halts or severely impacts critical operations, or database integrity is compromised. NOTE: For priority 1 issues, clients must contact Tiburon by telephone. With the exception of CAD, Message Switch, and Jail Records support which is "24x7", Clients must have purchased the "24x7" support option to submit P1 issues outside of business hours (8 am – 5 pm) in the Client's time zone. |
| Priority 2 | High | A major component or function does not work properly. Impacts an individual or small group. Normal operations impaired, but can continue. |
| Priority 3 | Normal | Impacts an individual or small group. Service can be delayed until a mutually established time. A workaround may exist, but is inefficient. |
| Priority 4 | Informational | Issue is informational or educational in nature. Enhancement requests and Steering Committee issues should be reported as Priority 4 TSRs. |

Scope Description for Version Upgrade:

The following list details the scope of the upgrade implementation by Tiburon. Tasks may not follow the order as outlined and may include some overlap of tasks. Task completion will be acknowledged by the Clients signature on the Task Completion Letter.

1.2 TASK 1: PROJECT INITIATION MEETING

An upgrade initiation meeting will be scheduled on a mutually agreed-to date and conducted by Tiburon remotely. The objectives of this event include:

- Client and Tiburon personnel introductions, roles, responsibilities and expectations;
- Establish a clear chain of communication and authority;
- Review Upgrade scope and objectives;
- Discuss potential schedules;
- Review new required LawRECORDS or JailRECORDS tailoring;
- Tiburon will provide baseline documentation for each product;
- Tiburon will audit Tiburon licensing

Completion Criteria:

This task will be deemed complete upon completion of the initiation meeting.

1.3 TASK 2: SYSTEM REVIEW WEBINAR

Tiburon will provide the following web-based reviews (not to exceed 8 hours per product) to discuss changes in version functionality, and to collect tailoring, runtime settings, or metric settings for new functionality items:

| Product | Duration |
|-------------|----------|
| CommandCAD | 8 hours |
| LawRECORDS | 8 hours |
| JailRECORDS | 8 hours |

Note: Depending on versions this webinar will be between 4 and 8 hours, and may be done in two sessions.

Completion Criteria:

This task will be deemed complete upon completion of the webinar.

1.4 TASK 3: FINALIZE HYPER V (BETA) HARDWARE REQUIREMENTS

Tiburon and the Client will validate the system hardware site topology, configuration and equipment list. The Client will utilize the list to procure the system hardware and third-party software components according to the contract. All such items shall be procured in a timely manner to support the project schedule.

Tiburon Responsibilities:

- a. Review of the site topology and provide recommendations to client on hardware changes needed to support the upgrade.
- b. Deliver a final list of all hardware, third-party software, and third-party services required for this project that will be provided by the Client.

Client Responsibilities:

- a. Upon request, provide information on existing hardware/system software components and terminal networks, as well as projected utilization statistics and other information as may be reasonably required to validate final hardware requirements.
- b. Ensure that all equipment can be physically installed in equipment room(s).
- c. Review site topology review and assure hardware deliverable (staged and ready for Tiburon), two weeks prior to agreed date for Tiburon Application installation
- d. Review and approve the final hardware configuration document within ten (10) business days.
- e. Procure and install hardware as identified in this task.

Completion Criteria:

This task is complete when the Client has approved the final hardware equipment list and configuration document. Task completion will be confirmed by the Client's signature on the task completion letter provided by Tiburon. Procurement of the hardware/software is not required for task completion.

1.5 TASK 4: HYPER V INSTALLATION

Client, with Tiburon's consultation, will procure and install the approved Hyper V configuration

Tiburon Responsibilities:

- a. Verify Dell hardware (Servers, SAN, Storage Fabric, networking equipment, etc).
- b. Assist Client in verifying Dell Hyper V setup
 1. Host servers set up
 2. Storage set up and allocation
 3. Networking (virtual and physical switches)
 4. Disaster recovery (Hosts failure testing)

The following will occur in the Test Environment

1. Provide a resource matrix for each VM that will be P to V
2. Verify Host resource availability in case of a single host failure.
3. Work with Fort Bend to create LUNs allocations for each VM.
4. P to V all VMs in the TEST environment
5. Power down all physical servers in the TEST environment
6. Turn up and Test all VMs in Test environment.
7. Provide a setup guide for Hyper-V.

Client Responsibilities:

- a. Installation of all required hardware.
- b. Installation of Hyper V on Server 2012 R2
- c. Configuration of Hyper V
- d. Installation of Hyper V management software.
- e. LUNs creation on SAN
- f. Network configuration for SAN and Host access
- g. P to V Test VMs
- h. Hyper V cluster administration and monitoring

Completion Criteria:

This task is complete when the Tiburon CAD Test environment has been virtualized.

1.6 TASK 5: SYSTEM INSTALLATION

Tiburon, with the Client's assistance, will remotely perform the following System Installation tasks on the Client's existing legacy hardware:

CommandCAD –

- Install current version of CommandCAD and File Maintenance

- Client must provide a TEST Server and a TEST Database
- Update TEST installation with the agreed upon Metric and current .ini settings
 - Tiburon will set server .ini file changes
 - Workstation level .ini file changes will be provided to Client for distribution
- All active TSRs for Clients current live system (Priorities 2 – 4) will be placed on hold
- At this time and until cutover of the new system, only P-1 TSRs that can be fixed with a patch will be fixed on the live system.
- Tiburon will update CSC/HEAT records with new system and server information
- Update the map to the most current map build release
- Update MobileCOM to v5.3 (only if already licensed)

NOTE – the following system layouts are no longer supported by the CommandCAD system. Client must address any issues related with this restriction prior to the beginning of this Task –

- DataWarehouse and CommandCAD databases on the same SQL instance
- Live database and backup database stored on the same physical drive (for non-SAN configurations) or the same logical drive (for SAN configurations)

LawRECORDS –

- LawRECORDS installed (Client TEST System must be available for the System Installation which includes a TEST Server and a TEST Database).
- Install LawRECORDS software into the Client's TEST System with their tailoring. Server file changes will be made by Tiburon, workstation installations are to be completed by Client.
- All TSRs for P2, P3 and P4 on client's current live system will be put on hold.
- At this time and until cutover of the new system, only P-1 TSRs that can be fixed with a patch will be fixed on the live system.

JailRECORDS –

- JailRECORDS installed (Client TEST System must be available for the System Installation which includes a TEST Server and a TEST Database).
- Install JailRECORDS software into the Client's TEST System with their tailoring. Server file changes will be made by Tiburon, workstation installations are to be completed by Client.
- All TSRs for P2, P3 and P4 on client's current live system will be put on hold.
- At this time and until cutover of the new system, only P-1 TSRs that can be fixed with a patch will be fixed on the live system.

Completion Criteria:

This task will be complete upon placement of the CAD and File Maintenance builds on Client's TEST System.

1.7 TASK 6: DATABASE

Tiburon, with the Client's assistance, will remotely perform the following Database tasks on the Client's hardware:

CommandCAD Database

- Tiburon will run scripts against the TEST CAD database to upgrade the database structure to support v2.9
- The same script will be run against the LIVE CAD database as part of the LIVE cutover preparation

CommandCAD File Maintenance

- A new File Maintenance build will be installed in the TEST System
- As part of the preparation for LIVE cutover, File Maintenance will be installed in the LIVE System

DataWarehouse

- Tiburon will run scripts to convert the DataWarehouse database to support v2.9 database structures

LawRECORDS Database

- Tiburon will run a script (or scripts, depending on starting version) against the TEST LawRECORDS database.
- The same script will be run against the LIVE LawRECORDS database as part of the LIVE cutover preparation.

JailRECORDS Database

- Tiburon will run a script (or scripts, depending on starting version) against the TEST JailRECORDS database.
- The same script will be run against the LIVE JailRECORDS database as part of the LIVE cutover preparation.

Completion Criteria:

This task will be complete upon Tiburon running the script(s) against the TEST CAD databases as well as installing File Maintenance in the TEST System.

1.8 TASK 7: TRAINING

Tiburon shall provide the following training sessions onsite. Client may have up to ten (10) students attend each session, which will be delivered in a single eight (8) hour session between Mondays – Friday (08:00AM – 05:00 PM Client's local time).

System File and Administrative training will train Client staff on the entry of agency-specific data, with an emphasis on changes between versions. End User training will train client on use of the Tiburon application, with an emphasis on changes between versions. It is expected that students attending are skilled in use of the current system. MobileCOM Administration training is done in conjunction (during the same trip) as MobileCOM Train the Trainer.

Client will insure a training room, with one workstation per client, plus one workstation and projector for instructor loaded with the appropriate Tiburon application, is available, and that each attending student has a copy of the associated training manual.

| Administration/Support Training Sessions | Session Duration (Hours) | Maximum Participants | Number of Sessions |
|---|---------------------------------|-----------------------------|---------------------------|
| CommandCAD System Administration 16 | 8 | 6 | 1 |
| CommandCAD File and Table Maintenance | 32 | 6 | 1 |
| MobileCOM Administration | 8 | 6 | 1 |
| ReformatDESIGNER | 16 | 6 | 1 |
| Browser Set Up Training | 8 | 6 | 1 |
| LawRECORDS Administration (Webinar) | 8 | 8 | 1 |
| LawRECORDS Code Tables | 24 | 8 | 1 |
| JailRECORDS Administration (Webinar) | 8 | 8 | 1 |
| JailRECORDS Code Tables | 16 | 8 | 1 |
| Data Warehouse Reporting (SSRS) | 24 | 6 | 1 |
| Tiburon Application Training Sessions | Session Duration (Hours) | Maximum Participants | Number of Sessions |
| CommandCAD Train The Trainer | 40 | 10 | 1 |
| MobileCOM Train The Trainer (in conjunction with MobileCOM Administration Training) | 4 | 10 | 1 |
| CommandCAD Supervisor Training | 4 | 6 | 1 |
| LawRECORDS Train The Trainer | 40 | 10 | 1 |
| JailRECORDS Train the Trainer | 40 | 10 | 1 |
| Property Evidence Bar Code | 8 | 10 | 1 |
| TIPS | 8 | 10 | 1 |

Completion Criteria:

This task will be complete upon completion of each listed training session.

1.9 TASK 8: SYSTEM INTERFACES AND TIBURON APPLICATIONS INTEGRATION

The following non-custom interfaces will be integrated within the upgraded system if currently present in LIVE system. The current baseline interface will be installed, replacing any prior site interface work done on-site (*list included interfaces here*).

CommandCAD (8 Client licenses) –

Applications/Products:

- *911 Parser*
- *TDD/TTY*
- *MobileCOM (site license)*
- *Message Switch*
- *Datawarehouse (CARS Reporting no longer supported)*
- *SIP*
- *Web Browser (CAD)*
- *Time Synchronization*
- *MobileMap (site license)*
- *911 Mapping (12 licenses)*

Interfaces:

- *AVL (120 licenses)*
- *ALI/E911(Plant Vesta)*
- *State/NCIC – Texas – DMPP2020 protocol*
- *Fire Alerting*
- *Push to Talk*
- *RMS Transfer/Incident Transfer (LawRecords)*
- *ProQA*
- *Paging (Alpha/Numeric – Multi provider ~10 providers)*
- *Phase I and Phase II Wireless*
- *Fire Station Printing*

LawRECORDS (50 Client licenses) –

Applications/Products:

- *FieldREPORTING (70 licenses)*
- *Web Browser (RMS)*
- *TIPS*
- *Barcoding*
- *PocketProp*

Interfaces:

- *Tiburon CommandCAD to LawRECORDS*
- *FieldREPORTING to LawRECORDS*
- *Livescan*
- *Fingerprinting (Printrak)*

JailRECORDS (50 Client licenses) –

Applications/Products:

- *TIPS*

Interfaces:

- *Tiburon JailRECORDS to/from LawRECORDS*
- *Livescan*
- *Fingerprinting*
- *Mugshot*
- *VINE*

The following custom interface services are included, with current functionality only –

- *Scantron Commissary IF*

In many cases, interfaces are only available in the Client's LIVE environment. During implementation, testing may require that individual interfaces be taken off-line to the LIVE environment in order to verify functionality in the TEST environment. Testing of interfaces will occur during Tiburon's normal business hours. For interfaces that the Client identifies as only being available for testing in the LIVE environment, any related testing and completion of implementation will not occur until cutover. Tiburon will work closely with the client in scheduling these interruptions from live operations.

Client shall provide test line to State Message Switch (NCIC/NLETS) prior to installation/upgrade of the system.

Completion Criteria:

This task will be complete upon installation of the interfaces specified above into either Client's TEST or LIVE environment, as appropriate. Testing of interfaces that must be installed in Client's LIVE environment will not preclude or delay task completion as such testing will be performed as part of the System Cutover task.

1.10 TASK 9: FUNCTIONAL TESTING

Upon Tiburon notification of the system being ready for testing, Client shall perform Functional Testing of the system. Client shall document any problems found in a Tiburon Service Request (TSR). Testing shall include database elements (CAD Histories, premise data, etc). Testing shall include testing of data conversions.

Additionally, Client shall test all Data Warehouse reports or Crystal Reports and make adjustments to reports as necessary to support any new database structures. CARS Reporting is not supported in v2.9+, and is replaced by SSRS. Client shall complete testing within three (3) weeks. Client shall test and close or reissue under the new version all legacy TSRs.

Priority 1 level defects found during the Functional Testing will be corrected by Tiburon prior to moving the software to the LIVE environment. All other defects found will be corrected in a future maintenance build to be delivered post-cutover.

Client shall notify Tiburon in writing that all testing was completed successfully. If unable to complete testing within the three-week timeframe, all project activity will cease. Upon notification that testing has been completed, Tiburon will provide an update to the schedule, with new cutover dates.

Completion Criteria:

This task will be deemed complete upon Client's notification to Tiburon that the testing has been completed successfully.

1.11 TASK 10: SYSTEM CUTOVER

After Client Functional Testing has been completed, Tiburon will notify the Client in writing, when the Tiburon systems shall be ready for LIVE status and TCS/Heat has been updated and verified by Tiburon

Fort Bend County Sheriff

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Project Manager. Tiburon will assist the client in placing the system in operational status. Cutover shall occur during Tiburon's normal business hours.

A COLD start of the CommandCAD system is required.

- Tiburon will have project management and training staff on-site to assist with the cutover for two business days. No technical staff will be onsite, technical support will be remote
- Following the two business day of support, Tiburon will provide remote support through the Tiburon Client Support Center, (877-445-2110) or email support@tiburoninc.com.
- Upon System Cutover, all legacy TSRs will be closed

Completion Criteria:

This work will be considered complete upon Tiburon's written notification to the Client that the product is ready for cutover to production operations, and Client's written acceptance of Tiburon's notification to Client that the product is ready for cutover to production operations.

Exhibit 2

SOFTWARE LICENSE TERMS AND CONDITIONS

The Software License Terms and Conditions outlined herein applies to all services ordered or purchased by Ft. Bend County Sheriff's Office ("Customer" or "Licensee") from Tiburon, Inc. ("Tiburon" or "Service Provider") and which are detailed in the Statement of Work, Exhibit A to the Master System and Services Agreement ("Master Agreement") between Tiburon and Customer.

1. Definitions

The following definitions apply to the terms used within this License:

1.1. "Authorized Server" shall mean, with respect to any Licensed Application, the server identified in the Statement of Work as corresponding to such Licensed Application, or if not identified, the actual server in which the Licensed Applications are installed on.

1.2. "Authorized Site" shall mean, with respect to any Authorized Server, the address and room number identified as corresponding in the Statement of Work to such Authorized Server, or if not identified, the actual site in which the Authorized Server resides.

1.3. "Derivative Works" shall mean, with respect to any Licensed Application, any translation, abridgement, revision, modification, or other form in which such Licensed Application may be recast, transformed, modified, adapted or approved for such Licensed.

1.4. "Documentation" shall mean any written, electronic, or recorded work that describes the use, functions, features, or purpose of the System, or any component or subsystem thereof, and that is published or provided to the Licensee by Tiburon, Tiburon's subcontractors or the original manufacturers or developers of third party products provided to the Licensee by Tiburon, including, without limitation, all end user manuals, training manuals, guides, program listings, data models, flow charts, logic diagrams, and other materials related to or for use with the System.

1.5. "Enhancement" shall mean, with respect to any Licensed Application, a computer program modification or addition, other than a Maintenance Modification, that alters the functionality of, or adds new functions to, such Licensed Application and that is integrated with such Licensed Application, or that is related to a given Licensed Application but offered separately by Tiburon.

1.6. "Error" shall mean, with respect to any Licensed Application, a defect in the Source Code for such Licensed Application that prevents such Licensed Application from functioning as designed.

1.7. "License" shall mean Licensee's rights to use the Licensed Application(s) in accordance with the terms and conditions set forth herein, which consist of Tiburon's standard licensing terms and shall supersede and apply regardless of any additional, conflicting or contradicting terms and conditions contained in Licensee's purchase order.

1.8. "Licensed Application" shall mean each of the Tiburon developed software applications set forth on the Statement of Work and furnished to the Licensee, together with all Derivative Works, all Maintenance Modifications and all Documentation with respect thereto; provided, however, that Licensed Applications shall consist

1.9. "Licensee" shall mean the Customer identified on the Statement of Work.

1.10. "Maintenance Modifications" shall mean, with respect to any Licensed Application, a computer software change to correct an Error in, and integrated into, such Licensed Application, but that does not alter the functionality of such Licensed Application and that is provided to the Licensee by Tiburon after acceptance of the Licensed Application.

1.11. "Object Code" shall mean computer programs assembled or compiled in magnetic or electronic binary form on software media, which are readable and usable by machines, but not generally readable by humans without reverse-assembly, reverse-compiling, or reverse-engineering.

1.12. "Source Code" shall mean computer programs written in higher-level programming languages, sometimes accompanied by English language comments. Source Code is intelligible to trained programmers and may be translated to Object Code for operation on computer equipment through the process of compiling.

1.13. "Statement of Work" shall mean the document provided to Licensee by Tiburon which details the pricing for the Licensed Applications and related services, if any, to be provided and which Licensee purchases from. The Statement of Work is attached to the Master Agreement as Exhibit A.

1.14. "Sublicensed Applications" shall mean the software application specified on the Statement of Work developed by any source external to Tiburon, such as a subcontractor, distributor, re-seller, personal computer software supplier or system software supplier, and furnished to the Licensee by Tiburon for integration into the System. In addition to the terms and conditions contained herein, Licensee's right to use the Sublicensed Applications is strictly contingent upon Licensee's compliance with the manufacturer's terms and conditions. Solely in regards to Sublicensed Applications, in the event of any conflict or discrepancy between this License and the manufacturer's terms and conditions, the manufacturer's terms and conditions shall control.

1.15. "System" shall mean the Licensee's computer automated system consisting of the Licensed Applications combined with any of the Authorized Servers, the operating systems installed on each of the Authorized Servers, any database or other third party software products installed on any of the Authorized Servers, any PC or other workstation equipment having access to any of the Licensed Applications, any communications interfaces installed on any of the Authorized Servers, any network communications equipment and any other third party software, wiring, cabling and connections and other hardware relating to any such Authorized Servers, workstation or network communications equipment located at any of the Authorized Sites.

2. Licenses and Restrictions

2.1. Grant of Licenses. Subject to the conditions set forth in Section 2.2 hereof and unless otherwise set forth in the Statement of Work, Tiburon hereby grants to the Licensee, pursuant to the terms and conditions hereof, a limited, nonexclusive, nontransferable license:

- (a) to use each Licensed Application, in Object Code only, on the Authorized Server with respect thereto and at the Authorized Sites with respect thereto in the quantities licensed;
- (b) to conduct internal training and testing on each Licensed Application;
- (c) to perform disaster recovery, backup, archive and restoration testing, and implementation with respect to each Licensed Application;

(d) to make no more than two (2) archival copies of any Licensed Application, provided that each copy of any Licensed Application shall include Tiburon's copyright and other proprietary notices;

(e) to perform all of the above with regards to any Sublicensed Application, in accordance with and subject to the terms and conditions of the manufacturer's license agreement for such Sublicensed Application.

2.2. Conditions to Grant of Licenses. No grant of any license or right pursuant to Section 2.1 hereof with respect to any Licensed Application or any Sublicensed Application shall be effective, and the Licensee shall have no license or right to use such Licensed Application or such Sublicensed Application, until such Licensed Application or such Sublicensed Application has been accepted by the Licensee and all license fees, sublicense fees or royalties with respect to such Licensed Application or such Sublicensed Application have been paid in full in accordance with the payment terms set forth in the applicable implementation agreement.

2.3. Restrictions on Use

(a) The Licensee agrees to use the Licensed Applications and the Sublicensed Applications only for the Licensee's own use. The Licensee shall not allow use of any Licensed Application or any Sublicensed Application by any parent, subsidiaries, affiliated entities, or other third parties, or allow any Licensed Application or any Sublicensed Application to be used on other than on the Authorized Server at the Authorized Site with respect thereto.

(b) Except as otherwise specifically set forth in Section 2.1 hereof, the Licensee shall have no right to copy any Licensed Application or any Sublicensed Application. Any copy of any Licensed Application (whether or not such copy is permitted) shall be the exclusive property of Tiburon. Any copy of any Sublicensed Application (whether or not such copy is permitted) shall be the exclusive property of the developer of such Sublicensed Application. The Licensee shall not distribute or allow distribution of any Licensed Application or any Sublicensed Application or any Documentation or other materials relating thereto without Tiburon's prior written consent.

(c) The Licensee's license and right to use the Licensed Applications and the Sublicensed Applications is limited to a license and right to use only the Object Code relating thereto. The Licensee shall have no license or right with respect to the Source Code for any Licensed Application or any Sublicensed Application.

(d) The Licensee shall not, and shall not permit any other party to, make any alteration, modification or enhancement to any Licensed Application or any Sublicensed Application unless, and only to the extent, specifically authorized by Tiburon. The Licensee shall not, and shall not permit any other party to, disassemble, de-compile or reverse-engineer any Licensed Application or any Sublicensed Application.

(e) The Licensee shall not use any Licensed Application or any Sublicensed Application, and shall not permit any third party to use any Licensed Application or any Sublicensed Application, for processing data of any entity other than the Licensee.

3. Ownership. Except for the rights expressly granted therein pursuant to Section 2 hereof, Tiburon shall at all times retain all right, title and interest in and to each Licensed Application and all copies thereof (whether or not permitted), including all Derivative Works, Maintenance Modifications, Enhancements and Documentation with respect thereto (whether or not developed by Tiburon) and the respective owners of the Sublicensed Applications shall retain all right, title and interest in and to each Sublicensed Application and all Derivative Works thereof. By this License, the Licensee hereby assigns to Tiburon any and all rights it may have or later acquire to any and all Derivative

4. Term and Termination

4.1. Effective Date. This License shall take effect immediately after (i) the Master Agreement has been fully executed by duly authorized representatives of both parties, and, where relevant, (ii) Tiburon receives written notification from the Licensee that any certification or approval of this License required by statute, ordinance, or established policy of the Licensee has been obtained.

4.2. Term. This License shall continue in effect until terminated as set forth under Section 4.3 hereof.

4.3. Termination. Tiburon may terminate this License immediately if the Licensee breaches any provision of this License, or upon conclusion of the applicable subscription term set forth in the Master Agreement.

4.4. Effect of Termination. Upon termination of this License, all licenses granted to the Licensee hereunder shall be revoked. Upon termination of this License, (a) the Licensee shall return to Tiburon, within ten (10) business days of such termination, all Tiburon Confidential Information and all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment other documents or property relating thereto and all copies of any of the foregoing (in whatever medium recorded); (b) the Licensee shall discontinue all use of the Licensed Applications and the Sublicensed Applications; and (c) the Licensee shall certify in a written document signed by an authorized representative that the material specified in the preceding clause (a) has been returned to Tiburon, that all copies of the Licensed Applications and the Sublicensed Applications have been permanently deleted or destroyed, and that all use of the Licensed Applications and the Sublicensed Applications has been discontinued. The expiration or termination of this License will not relieve the Licensee of its obligations under Section 6 hereof regarding Tiburon Confidential Information.

5. Limited Warranties and Liability

5.1. Warranty. THE LICENSED APPLICATIONS ARE LICENSED "AS IS". NO EXPRESS OR IMPLIED WARRANTIES FOR THE LICENSED APPLICATIONS, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE CREATED BY THIS LICENSE.

5.2. Limitation of Liability. NEITHER TIBURON NOR ANY PERSON ASSOCIATED WITH TIBURON SHALL BE LIABLE TO ANY PARTY FOR ANY DIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR BREACH OR FAILURE TO PERFORM UNDER THIS LICENSE, EVEN IF TIBURON HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED BENEFITS OR PROFITS RESULTING FROM THE OPERATION OR FAILURE TO OPERATE OF THE LICENSED PROGRAMS. THIS CLAUSE SHALL SURVIVE THE FAILURE OF ANY EXCLUSIVE REMEDY FOR BREACH OF WARRANTY OR ANY OTHER PROVISION OF THIS LICENSE.

6. Confidential Information

6.1. Tiburon Confidential Information. The Licensee agrees to maintain the confidentiality of any Tiburon Confidential Information (as defined below) and to treat such information with the same degree of care and security as it treats its own most confidential information. The Licensee shall not, without Tiburon's prior written consent, disclose such information to any person or entity other than to the Licensee's employees or consultants legally bound to abide by the terms hereof and having a need to know such information, or sell, license, publish, display, distribute or otherwise use such information except as authorized by this License. The term "Tiburon Confidential Information" shall include all Licensed Applications and any other Tiburon software applications (whether or not licensed to the Licensee), all Sublicensed Applications, and all Derivative Works, Enhancements, Maintenance

Modifications and Documentation with respect thereto as well as any written information of a confidential nature clearly labeled by Tiburon as being confidential or otherwise indicated by Tiburon in writing as being confidential. The Licensee understands and agrees that Tiburon Confidential Information constitutes a valuable business asset of Tiburon, the unauthorized use or disclosure of which may irreparably damage Tiburon. In the event of the Licensee's breach or threatened breach of any of the provisions in this License, Tiburon shall be entitled to an injunction obtained from any court having appropriate jurisdiction restraining the Licensee from any unauthorized use or disclosure of any Tiburon Confidential Information.

6.2. Exclusions. Notwithstanding Section 6.1 hereof, Tiburon Confidential Information shall not include information which the Licensee can demonstrate by competent written proof (a) is now, or hereafter becomes, through no act or failure to act on the part of the Licensee, generally known or available or otherwise part of the public domain; (b) is rightfully known by the Licensee without restriction on use prior to its first receipt of such information from Tiburon as evidenced by its records; (c) is hereafter furnished to the Licensee by a third party authorized to furnish the information to the Licensee, as a matter of right and without restriction on disclosure; or (d) is the subject of a written permission by Tiburon to disclose.

6.3. Exceptions. Notwithstanding Section 6.1 hereof, disclosure of Tiburon Confidential Information shall not be precluded if:

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(b) such disclosure is necessary to establish rights or enforce obligations under this License, but only to the extent that any such disclosure is necessary for such purpose; or

(c) Licensee received the prior written consent to such disclosure from Tiburon, but only to the extent permitted in such consent.

6.4. Survival. Unless mutually agreed otherwise in writing, the obligations hereunder with respect to each item of Tiburon Confidential Information shall survive the termination or expiration of this License.

7. Miscellaneous

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7.7. Venue. The state and/or federal courts located in the County and State of where Licensee resides shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this License. Each party hereby consents to the exclusive jurisdiction of such courts. Notwithstanding the above, in the event Licensee resides in a jurisdiction outside of the United States, the state and/or federal courts located in Contra Costa County, California shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this License. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this License.

7.8. Waiver. In order to be effective, any waiver of any right, benefit or power hereunder must be in writing and must be signed by an authorized representative of the party against whom enforcement of such waiver would be sought, it being intended that the conduct or failure to act of either party shall imply no waiver. Neither party shall by mere lapse of time without giving notice or taking other action hereunder be deemed to have waived any breach by the other party of any of the provisions of this License. No waiver of any right, benefit or power hereunder on a specific occasion shall be applicable to any facts or circumstances other than the facts and circumstances specifically addressed by such waiver or to any future events, even if such future events involve facts and circumstances substantially similar to those specifically addressed by such waiver. No waiver of any right, benefit or power hereunder shall constitute, or be deemed to constitute, a waiver of any other right, benefit or power hereunder. Unless otherwise specifically set forth herein, neither party shall be required to give notice to the other party, or to any other third party, to enforce strict adherence to all terms of this License.

7.9. Severability. If any provision of this License shall for any reason be held to be invalid, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this License, such provision shall be construed so as to make it enforceable to the greatest extent permitted, such provision shall remain in effect to the greatest extent permitted and the remaining provisions of this License shall remain in full force and effect.

7.10. Survival of Provisions. All provisions of this License that by their nature would reasonably be expected to continue after the termination of this License, including but not limited to Section 6.1, will survive the termination of this License.

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Tiburon, Inc.
Attn: Contracts Manager
3000 Executive Parkway, Suite 500
San Ramon, CA 94583
Phone: 925-621-2700
Fax: 925-621-2799

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