

RECORDS MANAGEMENT SYSTEM IMPLEMENTATION

AGREEMENT

**BETWEEN THE COUNTY OF SAN MATEO
AND TIBURON, INC.**

San Mateo/Tiburon Agreement

October 31, 2002



Primary Agreement



Exhibit A - Statement
of Work



Exhibit B -
Deliverables



Exhibit C - Initial
Project Schedule



Exhibit D - Payment
Schedule



Exhibit E - QueTel
License and Warranty



Exhibit F - Tiburon/
QueTel Agreement



Exhibit G - Tiburon
Software License Agr



Exhibit H - Master
Support Agreement.c



Exhibit I -
CIBRSDataSpecs.doc

Key Contract Representatives:

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THE COUNTY OF SAN MATEO
RECORDS MANAGEMENT SYSTEM IMPLEMENTATION AGREEMENT

This agreement ("Agreement") is made this _____ day of _____, 2002 (the "Effective Date") between the County of San Mateo, a political subdivision of the State of California (hereinafter referred to as the "County"), and Tiburon, Inc., a Virginia Corporation (hereinafter referred to as the "Contractor"), both of which may be sometimes referred to herein as the "parties", subject to the following statements of fact:

- A. The County issued a written Request for Proposals for an Integrated Public Safety System, dated December 15, 2000, seeking certain computer system hardware, software and related services to support the County's law enforcement records management operations.
- B. In response to the County's Request for Proposal, the Contractor submitted a written proposal dated January 22, 2001.
- C. Following a proposal evaluation process and negotiations, the County has agreed to acquire, and the Contractor has agreed to provide the County with, an Integrated Records Management System (the "System") to support the County Sheriff's Department in accordance with the terms and provisions of this Agreement.
- D. Pursuant to Government Code Section 31000, the County may contract with independent contractors for the furnishing of special services to or for the County or any Department thereof.
- E. It is expressly understood that this Agreement is by and between two (2) independent parties and that no agency, employee, partnership, joint venture or other relationship is established by this Agreement. The intent by both the County and the Contractor is to create an independent contractor relationship. The Contractor expressly acknowledges and accepts its tax status and the tax consequences of an independent contractor. Further, as an independent contractor, the Contractor expressly acknowledges and accepts that it has no rights, benefits, privileges and/or claims in any form whatsoever under, from, through and/or pursuant to the San Mateo County Civil Services Rules.

NOW, therefore, it is hereby agreed by the parties as follows:

**PART I
AGREEMENT FOR ACQUISITION**

1.1 **Agreement.** The Contractor hereby agrees to provide all hardware, software and related services and materials to implement the System as set forth in the Statement of Work attached hereto as Exhibit A and incorporated herein by this reference (the "Statement of Work") and the Project Deliverables attached hereto as Exhibit B and incorporated herein by this reference (the "Project Deliverables"), all upon the terms, conditions and provisions of this Agreement. The County hereby agrees to purchase the hardware, software and related services and materials identified in the Statement of Work and the Project Deliverables, all upon the terms, conditions and provisions of this Agreement.

1.2 **System Price.** The County shall pay to the Contractor the total amount of one million five hundred fifty eight thousand and three hundred eight six dollars and no cents, (\$1,558,386) (the "Contract Price") in consideration for the services set forth in the Statement of Work and the hardware, software and other materials specified in the Project Deliverables, which amount is payable in accordance with Part IV of this Agreement. The total amount above shall be the maximum price to be paid to Tiburon by the County, except as that price may be changed in accordance with the Changes Orders and Modifications clauses hereof (5.2 and 7.13.1 respectively).

1.3 **Form of Agreement.** Incorporated in this Agreement by reference are:

- Exhibit A - Statement of Work (with testing exhibits)
 - A(1): Performance Test Criteria
 - A(2): Reliability Test Criteria
 - A(3): Interface Control Document
- Exhibit B - Project Deliverables
- Exhibit C - Initial Project Schedule
- Exhibit D - Milestone Payment Schedule
- Exhibit E - QueTel License and Warranty
- Exhibit F - Tiburon Agreement with QueTel
- Exhibit G - Software License Agreement
- Exhibit H - Master Support Agreement
- Exhibit I - California NIBRS Specifications

In the event of any conflict or inconsistency among documents related to this Agreement, said conflict or inconsistency shall be resolved by giving precedence to this Agreement.

1.4 **Time for Performance Under Agreement.** This Agreement shall take effect on the Effective Date after it has been fully executed by duly authorized representatives of both parties. The schedule for the implementation of the System shall

initially be governed by the project schedule attached hereto as Exhibit C and incorporated herein by this reference (the "Initial Project Schedule"). The Initial Project Schedule shall be replaced by a definitive project schedule to be delivered hereunder in accordance with the Statement of Work (the "Project Schedule"). When delivered, the Project Schedule shall be deemed to be incorporated herein by this reference and shall become part of this Agreement. Unless earlier terminated as provided for in Section 7.3 hereof, this Agreement will remain in effect from the Effective Date until all tasks set forth in the Statement of Work have been fully completed, all materials set forth in the Project Deliverables have been delivered and all amounts payable hereunder have been paid in full. All work tasks described in the Statement of Work (Exhibit A) shall be completed not later than the last date/event presented on the Project Schedule (Exhibit C).

PART II
ACQUISITION OF INTEGRATED PUBLIC SAFETY SYSTEM

- 2.1 **Order and Delivery.** All hardware and software specified in the Project Deliverables shall be delivered by the Contractor in time to comply with the requirements of the Project Schedule. The risk of loss to the hardware specified in the Project Deliverables shall remain with the Contractor until delivered to the County at the County's installation site.
- 2.2 **Equipment Condition and Availability.** Equipment specified as provided by the Contractor must be furnished as new, still in production and in a condition which enables manufacturer warranties to be valid.
- 2.3 **Acceptance.** The County's acceptance of each component of the System shall be as set forth in the Statement of Work.
- 2.4 **Proprietary Rights in Hardware and Manufacturer's Software.**
- 2.4.1 **Definitions.** For purposes of this Agreement, the following capitalized terms shall be defined as set forth herein:
- (a) **"As-Built Specifications"** shall mean, with respect to any of the Tiburon Applications, the specifications for such Tiburon Application delivered to the County upon the County's acceptance of such Tiburon Application in accordance with the Statement of Work.
 - (b) **"Derivative Works"** shall mean, with respect to any Tiburon Application, any translation, abridgement, revision, modification, or other form in which such Tiburon Application may be recast, transformed, modified, adapted or approved after the County's acceptance of the Tiburon Application in accordance with the Statement of Work.
 - (c) **"Documentation"** shall mean, with respect to any Tiburon Application, those printed instructions, manuals, and diagrams pertaining to and furnished with such Tiburon Application.
 - (d) **"Enhancement"** shall mean, with respect to any Tiburon Application, a computer program modification or addition, other than a Maintenance Modification, that alters the functionality of, or adds new functions to, such Tiburon Application and that is integrated with such Tiburon Application

after the County's acceptance of the Tiburon Application in accordance with the Statement of Work, or that is related to such Tiburon Application but offered separately by the Contractor after the County's acceptance of the Tiburon Application in accordance with the Statement of Work.

- (e) **"Error"** shall mean, with respect to any Tiburon Application, a defect in the Tiburon Application that prevents such Tiburon Application from functioning in substantial conformity with the As-Built Specifications pertaining thereto.
- (f) **"Maintenance Modifications"** shall mean, with respect to any Tiburon Application, a computer software change to correct an Error in, and integrated into, such Tiburon Application, but that does not alter the functionality of such Tiburon Application and that is provided to the County after the County's acceptance of such Tiburon Application in accordance with the Statement of Work.
- (g) **"Object Code"** shall mean computer programs assembled or compiled from Source Code 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.
- (h) **"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.
- (i) **"Tiburon Application"** shall mean Tiburon's Records Management System (RMS) and Automated Reporting System (ARS) and all modules corresponding thereto developed by the Contractor and delivered to the County under this Agreement and in accordance with the As-Built Specifications relating thereto, including all Maintenance Modifications thereto, all Derivative Works thereof, and all related Documentation.
- (j) **"Tiburon Confidential Information"** is defined

in Section 2.5.2 hereof.

2.4.2 **Ownership of Software.** The County acknowledges that at all times the Contractor shall retain title to, ownership of and all applicable patents, copyrights and trade secrets in any Tiburon Applications (including all Derivative Works, Maintenance Modifications, Enhancements and Documentation with respect thereto) and any Tiburon Confidential Information (including all proprietary information pertaining to the design, engineering and use thereof). Upon the County's acceptance of any Tiburon Application in accordance with the Statement of Work and the County's payment of all amounts due hereunder with respect thereto, the Contractor will grant to the County a limited right to use the Tiburon Application, in Object Code only, pursuant to, and subject to the terms of, the Contractor's then standard software license agreement (the "Software License Agreement"). The County shall have no right to use any Tiburon Application until such Tiburon Application has been accepted in accordance with the Statement of Work, all amounts due hereunder with respect to such Tiburon Application have been paid in full and the Contractor and the County have duly executed the Software License Agreement.

2.4.3 **Third-Party Software.** The Contractor may provide to the County certain third-party software applications in the quantities requested by the County pursuant to this Agreement (the "Third-Party Software"). The right to use any such Third-Party Software may be granted to the County under the Software License Agreement or pursuant to a separate software license agreement with the developer of such Third-Party Software. The Contractor represents and warrants that, prior to the installation of any Third-Party Software on the System, copies of any license agreement relating to such Third-Party Software will be provided to the County for review. The County shall have no right to use such Third-Party Software until the County has executed the Software License Agreement (or an amendment thereto) or executed (or otherwise accepted the terms of) a separate software license agreement with the developer of such Third-Party Software, as applicable, and until the County has paid for all license or sublicense fees in connection therewith. The Contractor will integrate such Third-Party Software into the System and such Third-Party Software will constitute a deliverable for purposes of this Agreement. If for any reason

it is determined that insufficient licenses or sublicenses for such Third-Party Software have been purchased, or that for any reason more licenses or sublicenses are required for System operation, the County shall be responsible for any additional costs associated with obtaining such additional licenses and the costs and fees associated with integration of such additional Third-Party Software into the System. The County shall have no right to the Source Code with respect to any Third-Party Software.

2.5 Confidential Information.

2.5.1 **County Confidential Information.** All County Confidential Information (as defined below) shall be held in strict confidence by the Contractor, and the Contractor shall not, without the County's prior written consent, (a) disclose such information to any person or entity other than to the Contractor's employees or consultants legally bound to abide by the terms hereof and having a need to know such information in connection with the Contractor's performance of its obligations hereunder, or (b) use such information other than in connection with the performance of its obligations hereunder. The term "County Confidential Information" shall include all County data and other written information of a confidential nature clearly labeled by the County as being confidential. The Contractor understands and agrees that the unauthorized use or disclosure of County Confidential Information may irreparably damage the County. In the event of the Contractor's breach or threatened breach of any of the provisions in this Section 2.5.1, the County shall be entitled to an injunction obtained from any court having appropriate jurisdiction restraining the Contractor from any unauthorized use or disclosure of any County Confidential Information.

2.5.2 **Tiburon Confidential Information.** All Tiburon Confidential Information (as defined below) shall be held in strict confidence by the County, and the County shall not, without the Contractor's prior written consent, (a) disclose such information to any person or entity other than to the County's employees or consultants legally bound to abide by the terms hereof and having a need to know such information in connection with the County's performance of its obligations hereunder, or (b) use such information other than in connection with the performance of its obligations hereunder. The term "Tiburon

Confidential Information" shall include the Tiburon Applications and all other software applications developed by the Contractor, whether or not licensed to the County, as well as any written information disclosed by the Contractor to the County under this Agreement, including, but not limited to, any trade secrets, confidential knowledge, data, information relating to the Contractor's products, processes, designs, formulas, methods, developmental or experimental work, improvements, discoveries, plans for research, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, suppliers and customers, information obtained through contact with the Contractor's customers, proprietary information of the Contractor's customers, and information regarding the skills and compensation of the Contractor's employees or other consultants. The County understands and agrees that the Tiburon Confidential Information constitutes a valuable business asset of the Contractor, the unauthorized use or disclosure of which may irreparably damage the Contractor. In the event of the County's breach or threatened breach of any of the provisions in this Section 2.5.2, the Contractor shall be entitled to an injunction obtained from any court having appropriate jurisdiction restraining the County from any unauthorized use or disclosure of any Tiburon Confidential Information.

2.5.3

Exclusions. Notwithstanding Section 2.5.1 or Section 2.5.2 hereof, neither County Confidential Information nor Tiburon Confidential Information shall include information which the recipient can demonstrate by competent written proof (a) is now, or hereafter becomes, through no act or failure to act on the part of the recipient, generally known or available or otherwise part of the public domain; (b) is rightfully known by the recipient without restriction on use prior to its first receipt of such information from the disclosing party as evidenced by its records; (c) is hereafter furnished to the recipient by a third party authorized to furnish the information to the recipient, as a matter of right and without restriction on disclosure; or (d) is the subject of a written permission by the disclosing party to disclose.

2.5.4

Exceptions. Notwithstanding Section 2.5.1 or Section 2.5.2 hereof, disclosure of County Confidential Information or Tiburon Confidential Information shall not be precluded if:

- (a) such disclosure is in response to a valid order of a court or other governmental body of the United States or any political subdivision thereof; provided, however, that the recipient of such confidential information shall first have given notice to the other party and shall have made a reasonable effort to obtain a protective order requiring that the information to be disclosed be used only for the purposes for which the order was issued;
- (b) such disclosure is necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary for such purpose;
- (c) the recipient of such confidential information received the prior written consent to such disclosure from the disclosing party, but only to the extent permitted in such consent; or
- (d) such disclosure is in response to a request for information under the Federal Freedom of Information Act or the California Public Records Act (Gov't. Code Sec. 6250 et seq.), but only to the extent that such disclosure is required under such acts.

2.5.5 **Survival.** The obligations hereunder with respect to each item of County Confidential Information and Tiburon Confidential Information shall survive the termination of this Agreement.

**PART III
WARRANTIES**

- 3.1 **Contractor Commitments, Warranties and Representations.** The Contractor warrants that each Tiburon Application shall, for a period of one year following acceptance of such Tiburon Application in accordance with the Statement of Work, conform to the As-Built Specifications with respect to such Tiburon Application and will be free from all Errors. Upon acceptance of each Tiburon Application (on an application-by-application basis) in accordance with the Statement of Work, the County and the Contractor shall negotiate a mutually agreeable support agreement (the "Support Agreement"), or an amendment thereto, pursuant to which the Contractor will provide warranty support and, upon expiration of the warranty period and advance payment of the applicable annual support fee, extended support for such Tiburon Application. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR AGAINST INFRINGEMENT.
- 3.2 **Warranty for Third Party Products.** The Contractor makes no warranty with respect to any software or hardware components specified in the Project Deliverables other than the Tiburon Applications ("Third-Party Products"). Warranty coverage for Third-Party Products shall be passed through to the County and provided in accordance with the original manufacturers' warranty provisions. To the extent it has been authorized to do so, the Contractor shall take all reasonable steps to assist the County in coordinating technical support under any warranty arrangement with respect to any Third-Party Products. For any Third-Party Product which is no longer available due to model changes or other reasons beyond the control of the Contractor, the Contractor shall provide equipment from the same or other County-approved manufacturer, upon the same terms and conditions, including price, as set forth herein, and said equipment shall be of same or better quality, performance and capacity as the equipment originally specified in the Project Deliverables.
- 3.3 **Documentation.** The Contractor shall provide current and accurate Documentation with respect to each Tiburon Application, including, without limitation, a "user manual" for each Tiburon Application and sufficient copies thereof, as prescribed in the Statement of Work. It is the intent of the parties that the user manual be written in a manner so that County personnel may utilize the manual as a reliable resource for understanding the System's operations and for trouble shooting while working on the System.

PART IV
IMPLEMENTATION, PAYMENT SCHEDULE AND RELATED SERVICES

4.1 **Implementation Schedule.** Implementation of the work and the delivery and installation of hardware and software shall be completed in accordance with the Project Schedule.

4.2 **Delivery and Installation.** The Contractor shall assume responsibility for delivery, unpacking, uncrating and installing all hardware and software specified in the Project Deliverables at the Contractor development and testing center and at the County sites. Following installation of the hardware, the Contractor shall test all hardware in accordance with the manufacturer's standard installation diagnostic procedures, if any. The Contractor shall install and configure all hardware and software in accordance with the procedures set forth in the Statement of Work.

4.3 **Payment Terms.**

4.3.1 **Installments.** The County shall make payments to the Contractor (the "Milestone Payments") in accordance with the Milestone Payment Schedule attached hereto as Exhibit D and incorporated herein by this reference (the "Milestone Payment Schedule"). The Contractor shall prepare and submit invoices for payment by the County under this Agreement. Invoices for payments hereunder shall be submitted to the following address:

San Mateo County Sheriff's Office
Attention: Ginger Balkus
400 County Center
Redwood City, CA 94063

All payments shall be made within thirty (30) days from the date of the applicable undisputed invoice by check made payable to "Tiburon, Inc." and delivered to 39350 Civic Center Drive, Suite 100, Fremont, California 94538, or by such other means as may be mutually acceptable to the parties.

4.3.2 **Equipment Staging.** Certain materials to be delivered by the Contractor under this Agreement shall be received by the Contractor and will remain in the Contractor's possession at its development facility for programming and system integration work by the Contractor prior to delivery to the County. Payment for such materials shall be due and payable by the County upon their receipt by the Contractor at the Contractor's development facility, subject to the following:

- (a) The amount to be paid by the County for such deliverable goods shall be based on the price specified in the Project Deliverables.
- (b) The Contractor will notify the County in writing of the Contractor's receipt of such deliverable goods at a Contractor development facility. Within five (5) business days of such notice of delivery, the County shall verify the delivery of goods by either (i) acceptance of the Contractor's certification of goods received and receipt of a copy of the packing list(s), or (ii) a physical on-site inspection at the County's expense. The County's failure to verify the goods within such 5-day period shall waive the County's right to object to or reject such goods.

4.3.3 **Taxes.** The prices set forth herein include California sales tax but do not include any other federal, state or local excise, sales, or lease taxes now in force or which may be enacted in the future, all such amounts being the sole and independent responsibility of the County for direct payment to such taxing authority. The prices are inclusive of any gross income or similar taxes and any amount of withholding taxes, Social Security, insurance, and unemployment insurance with respect to the Contractor's employees.

4.3.4 **Consequences of Late Payments.** Failure to pay any amount owing hereunder when such amount is due shall constitute a material default under this Agreement and could result in the termination of this Agreement.

4.4 **Non-Exclusiveness of Remedies.** Any right or remedy of either party provided for in this Agreement, including, but not limited to any guaranty or warranty or any remedy for non-performance, shall be in addition to and not a limitation of any right or remedy otherwise available by law, equity, or statute.

PART V
INSTALLATION DEPENDENCIES AND DELAYS

- 5.1 **County Responsibilities.** The County agrees to provide those services and facilities necessary for the implementation of the System which are set forth as the County's obligations or responsibilities in the Statement of Work (the "County Responsibilities"). The County acknowledges that the dates set forth in the Project Schedule for completion of the services to be provided by the Contractor under this Agreement depend, in part, upon the timely fulfillment of the County Responsibilities. The Contractor shall not be responsible for any delays in the Project Schedule directly and primarily caused by the County's failure to perform the County Responsibilities. The County's failure to perform the County Responsibilities in accordance with the Project Schedule and Statement of Work shall constitute a material default under the Agreement. In accordance with the Statement of Work, the County shall respond within ten (10) business days to any written request submitted by the Contractor for information, clarification or approval of any designs, specifications, documents, or proposed change orders or amendments. The County's failure to respond within this 10-day response period shall constitute a material default under this Agreement.
- 5.2 **Change Orders.** The scope and schedule of services and materials provided under this Agreement may be changed from time to time only by a written change order (a ~~Change Order~~ ~~Change Order~~) mutually agreed upon and signed by duly authorized representatives of each of the parties. When a change causes a modification to the Contract Price or the amount of time needed to complete such change, the Milestone Payment Schedule and Project Schedule shall be amended, as necessary. Design, development and implementation work on change order items will be performed at reasonable billing rates to be mutually agreed upon by the parties. The Contractor shall negotiate in good faith and in a timely manner as to the price of the change orders. If the parties reach an agreement, the Agreement shall be amended as necessary to reflect the change order.
- 5.3 **Contractor Caused Delays:** Time is of the essence in the performance of this Agreement; therefore, Contractor shall adhere to the completion dates in the Project Schedule. The parties agree that if, due to no fault of County, certain milestones are not completed in accordance with the Project Schedule, actual damages sustained by the County because of such delay(s) will be uncertain and difficult to determine, and that the reasonable foreseeable damage incurred by County is hereby stipulated to be \$1,000 per calendar day, up to a maximum not-to-exceed amount of \$30,000. Such damages will be applied only in the event completion of the RMS production cutover in accordance with the completion

criteria set forth in the Statement of Work is not achieved in accordance with the Project Schedule. If such event is in jeopardy of not being achieved in accordance with the Project Schedule, Contractor shall inform the County in writing of the potential delay no less than thirty (30) days prior to the scheduled event. Contractor's written notification of the potential delay shall include a proposed recovery plan for the County's consideration and approval. The County's approval of such recovery plan shall not be unreasonably withheld. If the County approves the Contractor's recovery plan, subsequent damages relating to the delay shall only apply to the newly adjusted Project Schedule.

PART VI
ADDITIONAL TERMS AND CONDITIONS OF THE WORK

- 6.1 **Storage of Materials; Cleaning Up.** It shall be the Contractor's responsibility to clean any areas impacted by the performance of its duties under this Agreement. The County will not be responsible for loss of, or damage to, materials, tools, appliances or work arising from acts of theft, vandalism malicious mischief or other causes at such off-premise locations. The Contractor shall remove all debris arising from the performance of its services hereunder on a daily basis and upon completion of such services.
- 6.2 **Extra Work.** No claims for extra work will be allowed unless the same shall have been previously agreed to by the County in a written Change Order pursuant to Section 5.2 hereof.
- 6.3 **Status Reports.** The Contractor shall submit, in a format mutually agreeable to both parties, written monthly reports on the status of the work so that the County is kept fully informed of its progress. The County shall designate in writing, from time to time, its project director or other representative to whom required reports shall be directed. The reports shall be submitted to the County so that they are received by the County no later than the 10th day of each calendar month.

**PART VII
GENERAL TERMS AND CONDITIONS OF THIS AGREEMENT**

- 7.1 **Verification of Background.** The Contractor agrees that any employee, agent, subcontractor or consultant having access to any installation site or to any records or information relating, pertaining to or included in the System shall be required to provide their name, date of birth and driver's license number and, at County's expense, shall submit to fingerprinting and a "California Identification Search" in order to verify the person's status and fitness to perform under this Agreement. The County's Sheriff will have sole discretion on whether to approve or disapprove any Contractor employee.
- 7.2 **Assignment.** Except as expressly provided for herein, neither party shall have the right to assign all or any portion of its rights and licenses granted or delegate any obligations assumed under this Agreement, and any attempted assignment or delegation shall be null and void.
- 7.2.1 **Subcontracting.** Notwithstanding the provisions of Section 7.2, the Contractor shall have the right to delegate matters to such subcontractors as are approved in writing by the County's Sheriff or his designee. Such approval shall not be unreasonably withheld. By this provision, Contractor is authorized to engage the services of QueTel. All other subcontracting shall be subject to the written approval requirements outlined in this section 7.2.1.
- 7.2.2 **Permitted Assignment.** Notwithstanding the provisions of Section 7.2, the Contractor may, without the prior written consent of any party, assign this Agreement to a successor purchasing all or substantially all of the Contractor's business or assets through asset sale, merger or other transaction.
- 7.3 **Termination.** This Agreement will terminate or may be terminated as provided in this Section 7.3.
- 7.3.1 **Termination for Default.** Either party may terminate this Agreement upon a default of the other party. A party is in default if the party fails to comply substantially with any material term, condition or provision of this Agreement. In the event of default, the non-defaulting party shall notify the defaulting party in accordance with Section 7.11 hereof of the specific act or omission that constitutes the default, with sufficient detail to provide the defaulting party a reasonable opportunity to cure such default. The defaulting party shall have twenty (20)

business days from the date of receipt of such notification to cure such default. In the event of default, and during the above-specified cure period, performance under this Agreement shall continue as though the default had never occurred. In the event the default is not cured within the above specified cure period, then the non-defaulting party may, at its sole option, terminate this Agreement for default. Such termination shall be accomplished by written notice of termination delivered in accordance with Section 7.11 hereof and shall be effective at the close of business on the date such notice is received or the close of business on the termination date specified in such notice, whichever occurs later.

7.3.2 **Termination for Convenience.** The County may terminate this Agreement in whole or in part whenever for any reason the County shall determine that such termination is in the best interest of the County. In the event that the County elects to terminate the Agreement pursuant to this provision, it shall so notify the Contractor in accordance with Section 7.11 hereof and the termination shall be effective as of the close of business on the date such notice is received or the close of business on the termination date specified in such notice, whichever occurs later.

7.3.3 **Termination for Bankruptcy or Insolvency.** In the event that the Contractor shall cease conducting business in the normal course due to insolvency, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets or avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of the rights of creditors, the County may, at its option, terminate this Agreement. In the event the County elects to terminate this Agreement under this provision, it shall do so by sending notice of termination to the Contractor in accordance with Section 7.11 hereof and the termination shall be effective as of the close of business on the date such notice is received or the close of business on the termination date specified in such notice, whichever occurs later.

7.3.4 **Procedure on Termination.** Upon termination of this Agreement, the Contractor shall:

- (a) Stop work under the Agreement on the date and to the extent specified in the notice of termination;
- (b) Place no further orders or subcontract for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Agreement as is not terminated;
- (c) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination,
- (d) With the approval of the County, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable under this Agreement in whole or in part; and
- (e) Take such action as may be necessary, or as the County may direct, for the protection and preservation of any and all property or information related to the Agreement which is in the possession of the Contractor and in which the County has an interest.

7.3.5 **Consequences of Termination.** Upon termination of this Agreement:

- (a) Except as provided in Section 7.3.4 hereof, the Contractor shall be under no further obligation to provide services hereunder;
- (b) The Contractor shall return to the County all County Confidential Information in the Contractor's possession and shall certify in a written document signed by an officer of the Contractor that all such information has been returned;
- (c) The County shall return to the Contractor all Tiburon Confidential Information in the County's possession (including, without limitation, all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment or other documents or property relating to such Tiburon Confidential Information and all

copies of any of the foregoing (in whatever medium recorded)) and all Third Party Products in its possession not yet accepted and not yet paid for in full together with all copies of documentation and other material related thereto, and shall certify in a written document signed by an authorized officer of the County that all such information and material has been returned;

- (d) The County shall cause payments to be made to the Contractor within thirty (30) days of receipt of invoice for all outstanding invoices submitted to the County prior to the effective date of the termination and for all work performed prior to the effective date of the termination, as well as for other costs incurred prior to, or as a result of, the termination (including without limitation all cancellation, restocking or residual fees resulting from the cancellation or return of Third Party Products ordered from or shipped by the vendor thereof prior to the effective date of the termination) based upon the percentage of work completed at the time of termination and based upon the prices, amounts and rates set forth in the Project Deliverables and the Milestone Payment Schedule; provided, however, that in no event shall the amount of money paid under this provision exceed the Contract Price; and
- (e) All provisions of this Agreement that by their nature would reasonably be expected to continue after the termination of this Agreement shall survive the termination of this Agreement.

7.4 Laws to be Observed. All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable federal, state, county, and municipal laws, including, but not limited to, the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs and activities receiving any federal or county financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations.

7.5 Governing Laws. The validity, interpretation, performance, and enforcement of this Agreement shall be governed by the

laws of the State of California. All legal proceedings brought in connection with this Agreement may only be brought in a state or federal court located in San Mateo County, California. Each party hereby agrees to submit to the personal jurisdiction of those courts for any lawsuits filed there against such party arising under or in connection with this Agreement.

- 7.6 **Permits and Licenses.** Except with respect to permits, licenses, fees and notices imposed or required by the County's site preparation to be completed by the County as required by this Agreement, and except with respect to those which are referenced in the Statement of Work as the responsibility of the County, the Contractor shall procure all permits and licenses, pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the services to be performed by the Contractor hereunder.
- 7.7 **Force Majeure.** Neither party shall be responsible for delays caused by acts of God or of the public enemy, fire, floods, tidal waves, earthquakes, epidemics, strikes, labor disputes, shortage of materials and freight embargoes, power failures or spikes, provided that the party desiring to invoke this clause shall notify the other party in writing of the cause or causes of the delay within ten (10) business days of the beginning of such cause or causes and shall exercise due diligence in attempting to avoid any delays and/or the impacts of any delays. A delay caused by a shortage of materials shall not be excused unless the party seeking to invoke this clause furnishes documentary proof that it has diligently made every effort to obtain such materials from all known sources.
- 7.8 **No Third Party Beneficiaries.** This Agreement is not intended to create any right in or for the public, or any member of the public, any subcontractor, supplier or any other third party, or to authorize anyone not a party to this Agreement to maintain a suit to enforce or take advantage of its terms. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 7.9 **Nondiscrimination Standards** No person shall be excluded from participation in, denied benefits of, or be subject to discrimination under this Agreement on the basis of their race, color, religion, national origin, age, sex, sexual orientation, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status. Contractor shall ensure full compliance with federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and Subcontractors under this Agreement.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and

subject the Contractor to penalties, to be determined by the County Manager, including but not limited to: i) termination of this Agreement; ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years; iii) liquidated damages of \$2,500 per violation; iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this paragraph, the County Manager shall have the authority to: i) examine Contractor's employment records with respect to compliance with this paragraph; ii) set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Contractor shall provide County with a copy of its response to the Complaint when filed.

With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits Contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse

- 7.10 **Conflict of Interest.** The Contractor hereby certifies that no officer, agent or employee of the County who may have a pecuniary interest in this Agreement has participated in the procurement of this Agreement on the part of the County, that this Agreement was procured in good faith without fraud, collusion or connection of any kind with any other vendor for the same call for proposals and the Contractor has competed solely in its own behalf without obligation to any undisclosed person or firm.
- 7.11 **Notices.** All notices, requests, demands, or other communications required or permitted to be given hereunder must be in writing and must be addressed to the parties at their respective addresses set forth below and shall be deemed to have been duly given when (a) delivered in person; (b) sent by facsimile transmission indicating receipt at the facsimile number where sent; (c) one (1) business day after being deposited with a reputable overnight air courier service; or (d) three (3) business days after being

deposited with the United States Postal Service, for delivery by certified or registered mail, postage pre-paid and return receipt requested. All notices and other communications regarding default or termination of this Agreement shall be delivered by hand or sent by certified mail, postage pre-paid and return receipt requested. Either party may from time to time change the notice address set forth below by delivering notice to the other party in accordance with this section setting forth the new address and the date on which it will become effective.

If to the County:

San Mateo County Sheriff's Office
Don Horsley, Sheriff
400 County Center
Redwood City, CA 94063
Phone: (650) 363-4056
Fax: (650) 599-1023

If to the Contractor:

Tiburon, Inc.
39350 Civic Center Drive, Suite 100
Fremont, CA 94538
Attention: Contracts Administrator
Phone: (510) 792-2108
Fax: (510) 742-1057

- 7.12 **Insurance.** The Contractor shall not commence work under this Agreement until all insurance required under this section has been obtained and such insurance has been approved by the County.

The Contractor shall furnish the County with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These Certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of non-renewal, cancellation, or modification of the policy.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or cancelled, the County of San Mateo at its option, any, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

- 7.12.1 **Workers' Compensation and Employer Liability Insurance.** The Contractor shall have in effect,

during the entire life of this Agreement, Workers' Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor makes the following certification, required by Section 1861 of the California Labor Code:

Tiburon is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code, and Tiburon will comply with such provisions before commencing the performance of this work of the Agreement.

7.12.2

Liability Insurance. The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all operations under this Agreement, whether such operations be by himself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below. Such insurance shall include:

- (1) Comprehensive General Liability: Tiburon's coverage is \$1,000,000 each occurrence, \$2,000,000 General Aggregate
- (2) Motor Vehicle Liability Insurance: Tiburon's coverage is \$1,000,000
- (3) Professional Liability: Tiburon's coverage is \$2,000,000.
- (4) Excess Liability: Tiburon's coverage under an Umbrella Form is \$10,000,000 Each Occurrence, \$10,000,000 Aggregate.

If this Agreement remains in effect more than one (1) year from the date of its original execution, County may, at its sole discretion, require an increase in the amount of liability insurance to the level then customary in similar County Agreements by giving sixty (60) days notice to Contractor; provided, however, that County may not exercise this right unreasonably and provided further that Tiburon reserves the right to invoice the County for any increases in premiums incurred

by Tiburon as a result of any increased coverage requested by the County pursuant to this provision.

The County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, with respect to any vicarious liability imposed on them on account of the negligence of the Contractor which policies shall contain a provision or endorsement that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the limits stated above, such other insurance shall be excess insurance only.

7.13 **Miscellaneous Provisions.**

- 7.13.1 **Modifications.** This Agreement may be modified only by mutual written agreement by both parties.
- 7.13.2 **Waiver.** In order to be effective, any waiver of any right, benefit or power hereunder must be in writing and 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 Agreement. 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 Agreement.

- 7.13.3 **Headings.** The headings of parts, sections and subsections used in this Agreement are included solely for convenience of reference and shall not control the meaning or interpretation of any of the provisions of the Agreement.
- 7.13.4 **Number and Gender; Dates.** Whenever applicable within this Agreement, the singular shall include the plural and the plural shall include the singular and a pronoun of one gender shall refer to any appropriate gender. All references to days in this Agreement shall mean calendar days unless otherwise specifically stated.
- 7.13.5 **Severability.** If any provision of this Agreement 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 Agreement, 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 Agreement shall remain in full force and effect.
- 7.13.6 **Counterparts.** This Agreement may be executed simultaneously or concurrently in one or more counterparts, each of which shall be deemed a duplicate original but all of which together shall constitute one and the same Agreement.
- 7.13.7 **Entire Agreement.** The making, execution and delivery of this Agreement has been induced by no representations, statements, warranties or other agreements except as expressed by the written terms of this Agreement. The parties acknowledges that no employee, agent or representative of the Contractor has the authority to bind the Contractor to any representation not expressly contained in a written agreement signed by an duly authorized representative of the Contractor. This Agreement embodies the entire understanding of the parties and supersedes all prior or contemporaneous proposals, purchase orders, understandings, representations, conditions, warranties, covenants and other telecommunications between the parties, whether oral or written, relating to the subject of the Agreement unless expressly set forth or referred to in the Agreement. The parties agree that this Agreement may not in any way be contradicted by a prior or existing course of dealing between them or by any usage of trade or custom.

7.13.8 **Indemnification and Hold Harmless.** The Contractor agrees to indemnify, hold harmless and defend the County from any and all suits, claims, losses, actions, liability or financial loss that is or may be brought against the County, and/or its officers, employees, agents, subcontractors or consultants as the result of the wrongful or negligent action of the Contractor or its officers, employees, agents, subcontractors or consultants in connection with the performance of the Contractor's services under this Agreement. County shall give Contractor notice and exclusive control over the litigation and resolution of all such claims.

NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL THE CONTRACTOR BE LIABLE FOR LOSS OR DAMAGES RELATED TO THE OPERATION, DELAY OR FAILURE OF SOFTWARE OR EQUIPMENT PROVIDED BY THE CONTRACTOR OR FOR THE ACCURACY OR COMPLETENESS OF DATA. WITH RESPECT TO SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES THAT TIBURON MAY BE LIABLE FOR, SUCH LIABILITY IS LIMITED TO THE COVERAGE PROVIDED UNDER THE INSURANCE POLICIES MAINTAINED PURSUANT TO SECTION 7.2.2 OF THIS AGREEMENT.

7.13.9 **Contractor's Power and Authority.** The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the County hereunder harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty.

7.13.10 **Staff Approval.**

- (a) Within ten (10) days of execution of this Agreement, the Contractor shall designate in writing a single individual to act as the project manager (the "Contractor Project Manager"). The Contractor Project Manager shall be knowledgeable regarding the nature, implementation and use of the System, and shall have sufficient prior working experience with the implementation and use of the System, including its hardware and software components, so that the Contractor Project Manager can serve as a resource and guide to the County in the implementation and use of the System. The Contractor Project Manager shall ensure the Contractor's compliance with, and shall coordinate appropriate schedules in connection with, the Contractor's obligations hereunder. The Contractor shall use its best efforts to maintain the same Contractor Project Manager for the duration of this Agreement. However, the

Contractor may change the individual designated hereunder by providing the County with fifteen (15) days advance written notice designating the new individual authorized to act as the Contractor Project Manager. Notwithstanding the foregoing, the Contractor has the right to appoint a temporary Contractor Project Manager in connection with short-term unavailability, sick leave or reasonable vacations provided that it notifies the County in writing of any such temporary appointments.

- (b) Within ten (10) days of the execution of this Agreement, the County shall designate in writing a single individual to act as the County's project manager (the "County Project Manager"). The County Project Manager shall ensure the County's compliance with, and shall coordinate appropriate schedules in connection with, the County's obligations hereunder. The County shall use its best efforts to maintain the same County Project Manager for the duration of this Agreement. However, the County may change the individual designated hereunder by providing the Contractor with advance written notice designating the new individual authorized to act as the County Project Manager. Notwithstanding the foregoing, the County has the right to appoint a temporary County Project Manager in connection with short-term unavailability, sick leave or reasonable vacations provided that it notifies the Contractor in writing of any such temporary appointments.
- (c) The Contractor Project Manager and the County Project Manager shall be accessible by telephone or by electronic pager throughout the duration of this Agreement. Prior to cutover of the System, both the Contractor Project Manager and the County Project Manager shall be available eight (8) hours per day five (5) days per week, excluding holidays and weekends. From time to time it may be necessary to adjust those hours to support specific project goals and objectives. Such adjustments shall be made as agreed to by both parties. During any Reliability Testing period described in the Statement of Work with respect to any Tiburon Application, the Contractor Project Manager must be available on a twenty four (24) hour basis, seven (7) days per week.
- (d) If Client should desire that Tiburon replace its Project Manager or any other personnel assigned to assist the project, such request shall be made in writing, include the Client's basis for the request, and delivered in accordance with Section

7.11 hereof. Tiburon's compliance with such requests shall not be unreasonably withheld.

7.13.11 **Century Date Processing.** The Contractor hereby represents and warrants that each Tiburon Application is Year 2000 Compliant. For purposes of this warranty, Year 2000 Compliant means that the Tiburon Applications are designed to be used prior to, during, and after the calendar year 2000 A.D., and that the Tiburon Applications: (1) will not provide invalid or incorrect results or abnormally end or fail to function as a result of any date data; (2) will correctly differentiate between years, in different centuries, that end in the same two digits, and will accurately process date/time data (including, but not limited to, calculating, comparing, sorting, and sequencing) from, into, and between the 20th, 21st and 22nd centuries, including leap year calculations; and (3) will provide that all date-related user and data interface functions, including input and output functions, and data fields include an indication of the century. The foregoing representations and warranties are subject to the limitation that any computer system (whether hardware, software, or firmware) which is used by the County in combination with the Tiburon Applications is capable of accurately providing exchanging Year 2000 Compliant data with the Tiburon Applications.

7.13.12 **Patents and Royalties.** The Contract Price specified herein is deemed to include all royalties or license fees arising from the use of any design, device or materials or other component specified in the Project Deliverables that are covered by patent, trademark or copyright, and the Contractor expressly warrants that by executing this Agreement, the County is entitled to use each such component without infringing upon any patent, trademark or copyright. The Contractor represents that it has secured all necessary licenses, sublicenses, consents or approvals to use all components of the System specified in the Project Deliverables, including, without limitation, all software, and to license, sublicense or resell such components under the Contractor's name. The Contractor covenants to defend, indemnify and hold harmless the County from any loss, claim or liability in any way related to a claim that the County is violating laws or any contractual provisions relating to trade names, licenses, franchises, patents or other means of protecting interests in any components of the System specified in the Project Deliverables. In case

any such components is held to be infringing and its use is enjoined, the Contractor, at its option and expense, shall: (a) secure for the County the right to continue using such component by suspension of any injunction or by procuring any necessary license or sublicense for the County; or (b) modify such component so that it becomes non-infringing; or (c) remove such component and refund all sums paid therefore without prejudice to any other rights of the County. These covenants shall survive the termination of this Agreement and are in addition to any other rights or remedies of the County specified in this Agreement or otherwise provided by law.

7.13.13 Resolution of Disputes.

(a) The parties to this Agreement shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Agreement in accordance with the provisions set forth in this Section 7.13.13(a).

(i) If either party (the "Disputing Party") disputes any provision of this Agreement, or the interpretation thereof, or any conduct by the other party under this Agreement, that party shall bring the matter to the attention of the other party at the earliest possible time in order to resolve such dispute.

(ii) If such dispute is not resolved by the employees responsible for the subject matter of the dispute within ten (10) business days, the Disputing Party shall deliver to the first level of representatives below a written statement (a "Dispute Notice") describing the dispute in detail, including any time commitment and any fees or other costs involved.

(iii) Receipt by the first level of representatives of a Dispute Notice shall commence a time period within which the respective representatives must exercise their best effort to resolve the dispute. If the respective representatives cannot resolve the dispute within the given time period, the dispute shall be escalated to the next higher level of representatives in the sequence as set forth below.

(iv) If the parties are unable to resolve the dispute in accordance with the escalation procedures set forth below, the parties may assert their rights under this Agreement.

<u>Escalation Timetable (Business Days)</u>	<u>Tiburon Representative</u>	<u>Client Representative</u>
0 to 5 th	Project Manager	Project Manager
6 th to 10 th	Operations Manager	[Client Designated]
11 th to 15 th	Executive Officer	[Client Designated]

(b) Notwithstanding the fact that the parties may be attempting to resolve a dispute in accordance with the informal dispute resolution procedures set forth in Section 7.13.13(a) hereof, the parties agree to continue without delay all their respective responsibilities under this Agreement that are not affected by the dispute.

(c) Notwithstanding the foregoing, either party may, before or during the exercise of the informal dispute resolution procedures set forth in Section 7.13.13(a) hereof, apply to a court having jurisdiction for a temporary restraining order or preliminary injunction where such relief is necessary to protect its interests pending completion of such informal dispute resolution procedures.

7.13.14 **News Releases.** News releases and all other related information pertaining to this Agreement shall not be made available to anyone by the Contractor without the prior written approval of the County.

7.13.15 **Immigration Laws.** The Contractor shall take all steps necessary to ensure that all its employees and any subcontractors are authorized to work in the United States as required by the Immigration Reform and Control Act of 1986.

7.13.16 **Time is of The Essence.** Time is of the essence for the parties' performance of this Agreement.

7.13.17 **Equipment Compatibility.** The Tiburon Applications will not fail to perform in accordance with the performance standards set forth in the Statement of Work as a result of the equipment specified in the Project Deliverables and provided by the Contractor under this Agreement. The Contractor shall not be responsible for the performance of the Tiburon Applications in combination with any other products, elements, or components not supplied by the Contractor except to the extent that the Contractor has provided the interface between such equipment and non-Tiburon products,

elements or components pursuant to this Agreement. THE COUNTY SHALL BE RESPONSIBLE FOR ANY EQUIPMENT NOT PROVIDED DIRECTLY BY THE CONTRACTOR UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE CONDITION, OPERATION, AND PERFORMANCE IN THE SYSTEM OF SUCH EQUIPMENT, AND FOR THE INSTALLATION OF SUCH EQUIPMENT AND ASSOCIATED SOFTWARE, INTEGRATION INTO ANY APPLICABLE COMMUNICATIONS NETWORK, COMPATIBILITY WITH THE CONTRACTOR'S SOFTWARE, PERFORMANCE AND DATA CAPACITIES, CONTRACTOR PERSONNEL COSTS AND RELATED EXPENSES DUE TO TIME LOST DUE TO PROBLEMS WITH CLIENT-PROVIDED SOFTWARE OR EQUIPMENT, AND ANY IMPACT ON CONTRACTOR SOFTWARE OR EQUIPMENT WHICH IMPACTS OVERALL SYSTEM OPERATION OR PERFORMANCE. THE CONTRACTOR WILL UNDERTAKE THE AFOREMENTIONED RESPONSIBILITIES FOR COUNTY-PROVIDED EQUIPMENT ONLY UPON THE PAYMENT OF ADDITIONAL INTEGRATION FEES EXPRESSLY AND SPECIFICALLY DESIGNATED FOR SUCH PURPOSE IN THIS AGREEMENT OR BY A CHANGE ORDER HERETO.

7.13.18 **Records Retention.** Upon reasonable advance written notice to the Contractor and subject to the confidentiality provision contained in Section 2.5 hereof, the Contractor agrees to provide to the County, to any federal or state department having monitoring or reviewing authority, to County's authorized representatives and/or their appropriate audit agencies reasonable access to and the right to examine and audit records and documents necessary to determine compliance with relevant federal, state, and local statutes, rules, and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed; provided, however, that this right shall not be exercised unreasonably and shall be conducted during the Contractor's normal business hours and in such a manner as to minimize disruption of the Contractor's day to day operations. Contractor shall maintain and preserve all financial records relating to this Agreement for a period of three (3) years from the termination date of this Agreement, or until audit findings are resolved, whichever is greater.

7.13.19 **Future Purchase.** Should the County elect to purchase additional Tiburon products in the future, the County will be entitled to a minimum discount of 25% of all related license fees, with pricing to be based on then-current average Tiburon product costs.

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto hereby set their hands as provided below:

TIBURON, INC.

By: _____
Name:
Title:

COUNTY OF SAN MATEO
*A Political Sub-division of the
State of California*

By: _____
Jerry Hill, President
Board of Supervisors, County of San Mateo

Date: _____

ATTEST:

Clerk of the Board of Supervisors, County of San Mateo

Date: _____