

**CITY OF RICHMOND
CONTRACT AMENDMENT**

Department: Police	Project Manager: Eric Tam
Project Manager E-mail: etam@richmondpd.net	Project Manager Phone No: (510) 621-1819
P.R. No:	Vendor No: 12642
P.O./Contract No: 3863	
Description of Services: Critical computer aided dispatch (CAD) and record management system (RMS) software and data storage.	
Amendment No. <u>1</u> modifies the: (2nd or subsequent amendments attach Amendment History page)	
<input checked="" type="checkbox"/> Term, Payment Limit and Service Plan	<input type="checkbox"/> Payment Limit and Service Plan
<input type="checkbox"/> Term and Service Plan	<input type="checkbox"/> Service Plan

The parties to this Contract Amendment do mutually agree and promise as follows:

1. Parties. The parties to this Contract Amendment are the City of Richmond, California, a municipal corporation (City), and the following named Contractor:

Mark43, Inc.

Company Name:

Street Address: 28 E. 28th Street, 12th Floor

City, State, Zip Code: New York, NY 10016

Contact Person: David Jochin

Telephone: (212) 651-9154

Email: dave@mark43.com

Business License No: 40054845 / Expiration Date: May 31, 2022

A California corporation, limited liability corporation general partnership, limited partnership, individual, non-profit corporation, individual dba as [specify:] _____
 other [specify:] _____

2. Purpose. This Contract Amendment is being entered into to amend the Contract between City and Contractor which was approved by the City Council of the City of Richmond or executed by the City Manager on May 16, 2017, which **original** term commenced on May 1, 2017 and terminates June 30, 2022 with an **original** contract payment limit of \$1,500,000.00. Said contract shall hereinafter be referred to as the "Original Contract" and is incorporated herein by reference.

3. Original Contract Provisions. The parties hereto agree to continue to abide by those terms and conditions of the Original Contract, and any amendments thereto, which are unaffected by this Contract Amendment.

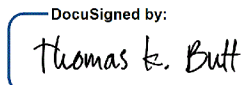
4. Amendment Provisions. This Contract Amendment is subject to the Amendment Provisions attached hereto, which are incorporated herein by reference, and which control over any conflicting provisions of the Original Contract, or any amendment thereto.

5. City of Richmond Business License Active Status Maintained. Pursuant to Municipal Code Section 7.04.030, the Contractor must maintain its City of Richmond business license for this Contract Amendment to be deemed to be in effect.


6. Insurance Coverage Updated and Maintained. Pursuant to the Original Contract, the Contractor shall provide the City with updated insurance certificates, and the Contractor shall maintain insurance coverage, for this Contract Amendment to be deemed to be in effect.

7. Signatures. These signatures attest the parties' agreement hereto:

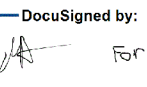
CITY OF RICHMOND, CALIFORNIA
a municipal corporation

DocuSigned by:

By _____
64A4FFAB53BE4C0
Title: Mayor

I hereby certify that the Original Contract and this Amendment have been approved by the City Council or executed by the City Manager.

DocuSigned by:

By _____
C6643BFF4A43406...
City Clerk

Approved as to form:

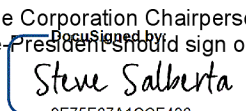
DocuSigned by:

By _____
07098C1E4C50485...
City Attorney

List of Attachments:

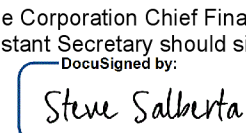
- 1. Amendment Provisions
- 2. Updated Insurance Certificates

Contract Amendment/EJ/TE 09-26-07

CONTRACTOR:
Mark43, Inc.

(*The Corporation Chairperson of the Board, President or Vice-President should sign on the line below.)
DocuSigned by:

By _____
9E75E67A1CCE496...

Title: CFO

(*The Corporation Chief Financial Officer, Secretary or Assistant Secretary should sign on the line below.)
DocuSigned by:

By _____
9E75E67A1CCE496...

Title: CFO

(NOTE: Pursuant to California Corporations Code Section 313, if Contractor is a corporation or nonprofit organization, this Contract (1) should be signed by the Chairperson of the Board, President or Vice-President and the Chief Financial Officer, Secretary or Assistant Secretary; (2) should have both signatures conform to designated representative groups pursuant to Corporations Code Section 313.

Contract Amendment between the City of Richmond and Mark43, Inc.

Amendment No.

1

P.O./Contract No.

3863

AMENDMENT PROVISIONS (TERM, PAYMENT LIMIT AND SERVICE PLAN)

1. Paragraph 2 (Term) of the Original Contract is hereby amended to extend the Contract term. Paragraph 2 of the Original Contract is amended to read as follows:

"2. Term. The effective date of this Contract is

May 1, 2017

(Insert original contract commencement date)

and it terminates

June 30, 2027

(Insert new contract termination date)

unless sooner terminated as provided herein."

2. Paragraph 3 (Payment Limit) of the Original Contract is hereby amended to increase the payment limit by \$ **927,000.00** . Paragraph 3 of the Original Contract is amended to read as follows:

"3. Payment Limit. City's total payments to Contractor under this Contract shall not exceed \$ **2,427,000.00** including expenses."

"The City of Richmond shall not pay for services that exceed the Contract Payment Limit without the prior written approval of the City Manager if the total Contract amount does not exceed \$10,000 or without the prior approval of the City Council if the total Contract amount is over \$10,000."

3. The Service Plan (Exhibit A) of the Original Contract is hereby amended to include the following tasks and/or services:

Please refer to Attachment 1 titled "Amendment no. 1 to the City of Richmond standard contract by and between the City of Richmond and Mark43, Inc."

Attachment 1**AMENDMENT NO. 1 TO THE CITY OF RICHMOND STANDARD CONTRACT
BY AND BETWEEN THE CITY OF RICHMOND AND MARK43, INC.**

This AMENDMENT NO. 1 (the “**Amendment**”) to the City of Richmond Standard Contract by and between the City of Richmond, a municipal corporation and Mark43, Inc. dated as of May 17, 2017 (the “**Agreement**”) is dated as of _____, 2022. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

Recitals

- A. WHEREAS, the Parties wish to amend the payment schedule set forth in the Agreement;
- B. WHEREAS, the Parties wish to include additional provisions addressing server hardware; and
- C. WHEREAS, the Parties wish to provide additional clarifying changes.

Agreement

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The term of the Agreement as set forth in Section 2 is hereby extended to terminate on June 30, 2027.
2. The payment limit as set forth in Section 3 is hereby deleted in its entirety.
3. Page 1 of Exhibit A Service Plan shall be amended as follows:
 - a. Delete the phrase “Contractor shall maintain and provide support for Mercury CAD, Cobalt RMS Software Product, and will store the data within current DOJ and CJIS guidelines.”
 - b. Add the phrase: “Contractor shall maintain and provide support for the RMS and CAD applications and shall store City of Richmond data in a data center designed to comply with FBI CJIS standards. Contractor shall also adhere to current FBI CJIS and California DOJ standards for data security.”
4. Add a New Exhibit A-1, the form of which is enclosed on Schedule 1 of this Amendment.
5. Paragraph 1 of Exhibit E (Special Conditions) is amended and restated as follows:

“Paragraph 5 is hereby deleted in its entirety and replaced with the following language:

During the Regular Usage Period (after the launch of RMS and/or CAD, as applicable), the City will pay Mark43 the subscription fees set forth in the table below. The annual subscription fees for the period from July 1 of a given year through June 30 of the following year shall be due in advance annually on July 1, within 45 days of receipt of an invoice, as further specified in the table below.

	Year One	Year Two	Year Three	Year Four	Year Five	Year Six	Year Seven	Year Eight	Year Nine	Year Ten
	Due 7/1/17	Due 7/1/18	Due 7/1/19	Due 7/1/20	Due 7/1/21	Due 7/1/22	Due 7/1/23	Due 7/1/24	Due 7/1/25	Due 7/1/26
CAD	\$0.00	\$0.00	\$154,686.69	\$185,062.23	\$185,000.00	\$180,000.00	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00
RMS	\$84,703.00	\$141,688.31	\$144,813.31	\$185,062.23	\$185,000.00	\$180,000.00	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00
Total	\$84,703.00	\$141,688.31	\$299,500.00	\$370,124.46	\$370,000.00	\$360,000.00	\$200,000.00	\$200,000.00	\$200,000.00	\$200,000.00

*Strikethrough denotes payment made as of the date of this Amendment.

Contractor will notify the City of any changes to the fees for any renewal term at least forty-five (45) days prior to the start of the renewal term.

During any period in which the City subscribes to both Mark43 RMS and Mark43 CAD applications, the following shall apply: A) in the event Mark43 builds and makes available to the general market a Digital Evidence Management System, Mark43 shall make such Digital Evidence Management System available to the City at no additional charge; B) Mark43 shall make its RMS Mobile Application available to the City at no additional charge; and C) in the event Mark43 develops any new enhancements or feature releases for its RMS and CAD applications (not including or relating to any mobile versions thereof), Mark43 shall make such enhancements and feature releases available to the City at no additional charge.”

6. A new Section 41 is hereby added to Exhibit D, General Conditions, as follows:

“CLETS Access.

- a. Each party shall promptly notify the other party of any security breach that compromises the City’s systems and/or data. Both parties agree to cooperate in any investigation of such a security breach.
- b. Criminal Justice Information (“CJI”), whether in electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access and ensure compliance with the most recent version of the FBI’s CJIS Security Policy. At a minimum, Contractor and its contractors must encrypt and/or password protect electronic files containing CJI, whether saved to laptop computers, computerized devices or removable storage devices.
 - i. Pursuant to the policies outlined in the CLETS Policies, Practices and Procedures (PPP) and the FBI’s CJIS Security Policy, it is agreed the CLETS subscribing agency will maintain responsibility for security control as it relates to the CLETS access. Security control is defined as the ability of the CLETS subscribing agency to set, maintain and enforce:
 1. standards for the selection, supervision and termination of personnel. This does not grant hiring/firing authority to the CLETS subscribing agency of Contractor personnel or its contractors, only the authority to grant the CLETS systems access to personnel who meet these standards and deny it to those who do not; and
 2. policies governing the operation of computers, access devices, circuits, hubs, boundary protection devices and other components that make up and support a telecommunications network and related CA DOJ criminal justice databases used to process, store or transmit criminal justice information, guaranteeing the priority, integrity and availability of service needed by the criminal justice community.
- c. When CJI, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed or reconstructed.
- d. Contractor shall promptly notify City of any unauthorized access or unauthorized disclosure or use by a third party of the CJI collected or obtained by the Contractor under this Contract (each, a “Contractor Security Breach”). Contractor shall provide such notice following discovery and without unreasonable delay. Contractor agrees to reimburse the City for reasonable out-of-pocket expenses incurred by the City to (i) investigate the Contractor Security Breach and, where applicable (ii) notify individuals who may be impacted by the Contractor Security Breach. For the avoidance of doubt, a Contractor Security Breach does not include any breach caused by the acts, errors or omissions of the City or its personnel (including, without limitation, weak or compromised passwords, phishing of user passwords, lost or stolen City or officer-owned hardware, etc.)”

7. All terms and conditions of the Agreement not specifically amended herein shall remain unchanged and in full force and effect.
8. This Amendment shall be binding on each Party's successors and assigns.
9. This Amendment may be executed in multiple counterparts, including electronic copies, each of which shall be deemed an original, but all of which shall constitute the same agreement.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized representatives as of the day and year first above written.

CITY OF RICHMOND

MARK43, INC.

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Schedule 1 to Amendment No. 1

Exhibit A-1

Equipment

1. As set forth in the Service Plan, Contractor shall provide two (2) servers to the City for purposes of interface integration (“Equipment”). The Equipment shall consist of the servers identified below, together with any replacements, parts, additions, accessories and substitutions therefore and any operating system pre-loaded thereon.

1.	Model No. Proliant DL20 Gen9
2.	Manufacturer: HPE
3.	Number of Servers: 2

2. Contractor shall ship the Equipment to the City’s Police Department Dispatch Center located at 1701 Regatta Blvd., Richmond, CA 94804 on a mutually convenient date. City shall not move the Equipment to another location.

3. City shall install the Equipment to its power and network. Contractor can provide remote support (by phone or email) to assist with installation.

4. The City may use the Equipment during the Term of the Agreement, as the same may be renewed or extended. At the conclusion of the Term, the City shall ship Equipment back to the Contractor.

5. City shall operate the Equipment (i) using reasonable care; (ii) only for the purpose of interface integration in connection with the services provided by Contractor pursuant to this Agreement, and (iii) in accordance with instructions provided by the Equipment manufacturer and Contractor. City shall ensure access to the Equipment by Contractor upon request for purposes of maintenance, replacement, updates and upgrades. In no event shall the City delay installation or use of manufacturer required or recommended updates, upgrades, patches or fixes. City will not have logical access to the server.

6. Contractor shall provide reasonable telephone and/or email based technical support and troubleshooting for the Equipment from 9am-5pm EST (Monday-Friday) during the Term of the Agreement. If Contractor is unable to resolve reported and verifiable non-conformities from the manufacturer’s warranty within a commercially reasonable period of time after receipt of a support request, then Contractor shall replace the Equipment. Replacement Equipment may be new or refurbished, provided that it provides substantially similar capacity and functionality as the originally provided Equipment. City shall pay shipping charges associated with return and replacement of the Equipment. To the extent a reported and verifiable problem arises due to the City’s failure to meet its obligations pursuant to the Agreement including paragraph 5 of this Exhibit A-1, then Contractor reserves the right to charge the City the reasonable costs and expenses associated with correcting the problem and/or replacing the Equipment. If Contractor has determined that a component of the Equipment is degraded and/or failed, Contractor may elect to send a replacement component and City will provide labor to physically replace.

7. Upon the expiration or earlier termination of the Agreement, Contractor shall remove the Equipment from the City’s premises at its expense. City shall cooperate with Contractor in the removal of the Equipment, including providing the necessary access to the Equipment. The Equipment must be in good functioning order, reasonable wear and tear excepted. City agrees to pay for any damage to the Equipment occurring during the applicable Lease Term. City shall remove any

City-owned or licensed enterprise software from the Equipment prior to Contractor's removal of the Equipment.

8. CONTRACTOR MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE EQUIPMENT. CONTRACTOR SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CITY WARRANTS THAT IT IS NOT AND WILL NOT USE THE EQUIPMENT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES. THE REMEDIES PROVIDED HEREIN ARE CITY'S SOLE AND EXCLUSIVE REMEDIES.

9. In the event of a conflict between the provisions of this Exhibit A-1, and the Agreement, the provisions of this Exhibit A-1 shall control.

10. City may not assign or dispose of any of its rights or obligations under this Exhibit A-1 without the prior, written consent of Contractor (such consent not to be unreasonably withheld).