

JUL 23 1997

TIBURON, INC.

AGREEMENT FOR EXTENDED SERVICE

This Agreement entered into this 9th day of June, 1997 by and between Monterey County hereinafter called "CLIENT" and Tiburon, Inc., having its office at 475 Sansome Street, Suite 810, San Francisco, CA 94111, hereinafter called "TIBURON."

Witnesseth

WHEREAS, CLIENT has determined that it requires the categories of application software maintenance on the software systems which have been provided to CLIENT by TIBURON under a separate agreement and which are identified in Exhibit A attached hereto and which are referred to hereinafter collectively as the "Program," and

WHEREAS, CLIENT therefore requires the provision of professional and technical services and materials as specified in this Agreement, and

WHEREAS, TIBURON is qualified to provide the services and materials required by CLIENT as specified in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, CLIENT and TIBURON agree as follows:

1. Period of Performance

The term under which TIBURON shall be obligated to perform under this Agreement shall be for the time period specified in Exhibit A and shall continue for this time period or until this Agreement has otherwise been terminated as provided for herein.

2. Statement of Work

With respect to the Program, TIBURON shall perform the following maintenance services:

- a) TIBURON shall retain a copy of the Program source code.
- b) If during the term of this Agreement, (1) CLIENT discovers defects in the Program such that the Program will not perform in accordance with the specifications as previously accepted by CLIENT; (2) CLIENT notifies TIBURON of such defects in writing; and (3) such defects are reproducible, then TIBURON shall provide timely corrections of such defects.

- c) If problems arise concerning the Program, TIBURON shall provide telephone assistance and support via remote dial-in.

If remote support is available, but an on-site visit is required to correct the defect, TIBURON will travel to the site at no additional charge if the problem lies solely with TIBURON application software. If CLIENT is unable to provide remote dial-in and an on-site visit is necessary to correct the problem, Tiburon will bill for travel and per diem costs.

If the problem is CLIENT generated, CLIENT is responsible for all fees and expenses and will be billed at TIBURON's current service rate in addition to all travel costs.

- d) TIBURON shall provide CLIENT with a minimum of quarterly status reports to include a summary of site activity and client requests.
- e) TIBURON shall provide a toll-free telephone service for routine operational and technical assistance.
- f) Technical and operational service shall be available during TIBURON's normal support hours of 6:00 a.m. to 5:30 p.m. Pacific Time (excluding weekends and TIBURON holidays) and at additional times according to the terms defined in the Schedule of Services and Charges which is attached as Exhibit B and incorporated herein by reference.

TIBURON shall provide software upgrades and enhancements as per the schedule and charges stated in Exhibit B. Any installation and special tailoring required shall be charged at the Technical Service Rate as identified in Exhibit B. All such software provided by TIBURON shall be covered by the terms of this Agreement.

If CLIENT has source code on site, and corrections for reported problems or defects are due substantially to CLIENT's errors or CLIENT's changes to the system environment, or relate to CLIENT-modified portions of the Program or to portions of the Program affected by CLIENT-provided software, or if diagnosis of problems reported erroneously shall be performed by TIBURON, CLIENT will be charged at the Technical Service Rate, plus applicable travel and per diem expenses.

3. Client Responsibilities

CLIENT agrees to provide those services and facilities defined below which are necessary for the provision of services by TIBURON under this Agreement. CLIENT and TIBURON agree that the scope and schedule of services to be provided by TIBURON under this Agreement depend upon the timely fulfillment of CLIENT responsibilities.

- a) CLIENT shall assign a coordinator to ensure that CLIENT's duties set forth in this Agreement are met, to coordinate appropriate schedules in connection with TIBURON's services hereunder, and to provide other coordination activities which are necessary for TIBURON to perform its services hereunder. CLIENT shall maintain performance logs documenting trouble calls and availability of on-line systems according to procedures provided by TIBURON.
- b) CLIENT shall assign individuals who are familiar with the Program and able to provide on-site technical assistance as required by TIBURON to assist TIBURON in performing its services hereunder. CLIENT personnel will screen operational assistance calls and handle operational problems where appropriate.
- c) If CLIENT has source code on site, any changes or modifications to TIBURON's application software or to the application software operating environment by CLIENT without TIBURON's written authorization is an unauthorized change and is in violation of the Software License Agreement. In the event CLIENT is deemed to be in violation of the terms and conditions of this Agreement, Tiburon reserves the right to terminate this Agreement and pursue any and all legal remedies. CLIENT may be subject to penalties, fines and associated legal fees if found to be in violation of the Software License Agreement.
- d) CLIENT shall ensure that appropriate maintenance activities are carried out on a regularly scheduled basis in accordance with site documentation. This includes but is not limited to backing up the data base and journal logs, purging out of date records and running reports and performing diagnostics as requested by TIBURON.
- e) CLIENT shall provide dial-in access to CLIENT's computer, making it accessible by TIBURON for remote service. CLIENT is responsible for the provision of all local equipment (dial-up modems, telephone termination, communications port, etc.) required to support access by TIBURON. If CLIENT has source code on site, CLIENT shall also compile programs and run appropriate tests following each remote access as requested by TIBURON. In the event that CLIENT does not comply with these provisions, Technical Service charges as specified in Exhibit B shall apply.
- f) CLIENT shall meet with TIBURON as may be reasonably required to discuss operational issues and the status of the Program and provide timely responses to issues related to maintenance and Program performance raised in writing by TIBURON.
- g) CLIENT shall update and maintain the input data as may be required for

satisfactory Program operation, and be responsible for the accuracy of CLIENT-provided data.

- h) If the CLIENT has the source code, CLIENT shall provide TIBURON with a complete copy of the production source code in a format compatible with TIBURON's support environment so that TIBURON has ready access to the code for maintenance work. Complete replacement copies shall be made available on a timely basis upon request by TIBURON.

If the CLIENT has the source code, CLIENT shall be responsible for storing a complete copy of the production source code off site as an emergency back up.

4. Payment

CLIENT shall make payments to TIBURON based on invoices submitted. Schedules and amounts of invoices shall be determined in accordance with Exhibit B.

5. Independent Contractor

Each party hereto, in performance of this Agreement, will be acting in its own capacity. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. TIBURON will be responsible for payment of payroll taxes, unemployment insurance, and similar obligations with respect to its own employees, and no deductions shall be made from payments due under this Agreement for that or any other related reason.

6. License

With respect to each change, correction, or enhancement to Program furnished to CLIENT under this Agreement, TIBURON grants to CLIENT a perpetual, non-exclusive, non-assignable, non-transferable license to use such change, correction, or enhancement solely as part of the Program.

7. Client Modifications

If CLIENT has source code on site, CLIENT modifications are prohibited unless prior review and approval by TIBURON has been granted for the specific changes and the person or entity making such changes.

At no additional cost to the CLIENT, TIBURON shall provide updates to the TIBURON External Interface Software and/or documentation, including all existing screen formats currently supported by TIBURON, for all legal requirements or modifications mandated by NCIC, or the CLIENT's respective State, when such requirements or modifications require a programming/source code change to the Licensed Software. Changes mandated

or offered by CLIENT's respective City and/or County are not covered. Changes to State and/or NCIC protocols are considered outside the scope of this Agreement.

8. Confidential Information

TIBURON shall regard all CLIENT files and data as CLIENT's confidential information. TIBURON shall not release said data to outside parties without written consent of CLIENT. To the extent allowed by law, CLIENT shall regard all software and documentation provided by TIBURON as confidential information. CLIENT shall not release or provide access to said software and documentation to outside parties without written consent of TIBURON.

9. Termination

This Agreement may be terminated by either party by giving at least a ninety (90) day advance written notice to the other party.

Upon termination of this Agreement for any reason, the provisions relating to Confidential Information and License shall survive.

10. Insurance

TIBURON shall, at its own expense, at all times while TIBURON is performing services at CLIENT's facilities, maintain in force:

- a) a comprehensive general liability insurance policy including coverage for contractual liability for obligations assumed under the contract documents, blanket contractual liability, products and completed operations and owner's and contractor's protective insurance; and
- b) comprehensive automobile liability insurance policy including owned and non-owned automobiles.

Liability coverage shall be equal to or greater than the limits for claims made under the California Tort Claims Act with minimum coverage of \$500,000 per occurrence (combined single limit for bodily injury and property damage claims) or \$500,000 per occurrence for bodily injury and \$100,000 per occurrence for property damage. Liability coverage shall be provided on an "occurrence" basis. "Claims made" coverage will not be acceptable.

Certificates of insurance acceptable to CLIENT shall be filed with CLIENT prior to the commencement of any services at CLIENT facilities by TIBURON. Each certificate shall provide that coverage under the policy cannot be canceled and restrictive modifications cannot be made until at least 30 days prior written notice has been given to CLIENT. A certificate which states merely that the issuing company "will endeavor to mail" written notice is unacceptable.

11. Amendments

This Agreement may be amended upon mutual written agreement by CLIENT and TIBURON to include, but not be limited to, additional services and support and equipment and software replacements and upgrades.

12. Applicable Law

This Agreement shall be construed in accordance with and governed by the laws of the State in which the CLIENT'S organization is primarily located.

13. Limitation of Liability and Remedies

a) Limited Warranty

While this Agreement is in effect, TIBURON warrants that all computer programs developed or provided under this Agreement will conform to such applicable specifications as may be developed under this Agreement.

The above warranty is in lieu of all other warranties, express or implied, including any warranty of merchant ability or fitness for a particular purpose.

b) Limitation of Damages and Remedy

TIBURON's liability hereunder for damages shall not exceed the annual maintenance charge paid to TIBURON for the period in which the cause of action occurred. In no event shall TIBURON be responsible for any indirect, consequential, incidental, or tort damages.

14. Entire Agreement

This Agreement sets forth the entire understanding between the parties as to the subject matter hereof and merges all prior discussions between them, and neither party shall be bound by any prior representations, conditions, understandings, or warranties except for original system warranties or those expressly provided herein, or in any surviving terms of prior written agreements between the parties hereto, or in any written agreements signed by representatives of the parties on or subsequent to the date of this Agreement. No provision appearing on any form originated by CLIENT shall have any force or effect unless such provision is expressly accepted in writing and signed by a representative of TIBURON.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the dates set forth below.

CLIENT

David P. Smith
Signature of Authorized Representative

DAVID P. SMITH
Name (type or print)

TECHNICAL SERVICES MANAGER
Title

7-16-97
Date

TIBURON:

Darcy Hislop
Signature of Authorized Representative

Darcy Hislop
Name (type or print)

Vice President, Client Services
Title

June 9, 1997
Date

EXHIBIT A

SOFTWARE SUPPORT AND MAINTENANCE FEE

CLIENT NAME: Monterey County

CONTACT: Chuck Marriott

Support and Maintenance provided to the CLIENT listed above shall be pursuant to the terms and conditions of the TIBURON Agreement for Extended Service dated June 9, 1997.

This Exhibit A shall become part of said Agreement upon signature and shall be effective from July 1, 1997 to June 30, 1998 and applies only to the application software and software modules listed below and will be billed in advance annually, unless otherwise set forth in Exhibit B. Upon future renewals, there will be an additional charge to those CLIENTs requiring semi-annual or quarterly invoices.

<u>Software Model</u>	<u>Months</u>	<u>CPU Make</u>	<u>Model</u>	<u>Serial #</u>	<u>User License</u>	<u>Total Fees</u>
Computer Aided Dispatch (CAD)	12					\$44,835
					Total:	\$44,835

IN WITNESS WHEREOF the parties have executed this Agreement by their duly authorized representatives.

Client
By: David P Smith
(Authorized Signature)

Name: DAVID P SMITH

Title: TECHNICAL SERVICES MANAGER

Date: 7-17-97

Tiburón, Inc.
By: Darcy Hislop
(Authorized Signature)

Name: Darcy Hislop

Title: Vice President, Client Services

Date: June 9, 1997

EXHIBIT B
SCHEDULE OF SERVICES AND CHARGES

Basic Services

\$ 44,835 per year

TIBURON will provide basic services as defined in the Statement of Work contained in the Section 2 of the Extended Service Agreement for the software systems as defined in Exhibit A.

Support for Computer Aided Dispatch, Message Switch and Jail Management Systems is 24 hours per day, 7 days per week. Support for other products is from 6:00 a.m. to 5:30 p.m. Pacific Time, excluding weekends and normal TIBURON holidays, unless the "24/7" Service Option is selected. In all cases, call-out charges will apply as described below.

"24/7" Service Option

Included

Products not normally covered by 24-hour support may optionally be supported with 24-hour coverage (including TIBURON holidays). Applicable call-out charges continue to apply. If this option is not in force, technical support requests outside of covered hours are charged at technical service rates as defined below.

Software Upgrade Option

Not applicable

New software releases are provided for CLIENT's version of the RISC CAD or the SS/2000 and Relational Data System programs. Installation support may be selected at normal technical service rates as listed below.

Prepaid Technical Support Resource Pool

Not applicable

A dollar amount is allocated to a Technical Support Resource Pool. The charges for Technical Support will always be calculated at the TIBURON facility rate and will be subtracted from this dollar amount as incurred. Any unused portion of this account is carried over to the next contract year.

Gold Card Service Option

Not applicable

A total support program is tailored for CLIENT and includes a schedule of on-site visits by TIBURON personnel for data base management, working with end users to identify and resolve problems and to apply agreed upon software changes, installation of new software products obtained through this Agreement, and a comprehensive training program. (If selected by CLIENT the terms of this option are defined in the Gold Card Service Schedule will be attached as Exhibit C and incorporated herein by reference.)

Operations Review

included

Tiburon personnel will visit the client site periodically and meet with management, operations and other user personnel to conduct an operations review of the systems and an analysis of the CLIENT's automation requirements. A report will be produced to include observations and recommendations as regards the use of the system. Working with the CLIENT, this review will be further documented in the form of a multi-year automation plan for the CLIENT. There will be no charge for this service if total annual maintenance exceeds \$20,000.

Tiburon User Group Membership

included

Two voting memberships in the Tiburon User Group are included in Basic Services. Up to three additional voting memberships may be purchased for \$175 each.

Technical Service Rates

Technical Services Rates shall be deducted from the Prepaid Technical Support Resource Pool, or if that option is not available, they shall be invoiced to CLIENT as incurred.

1. Technical Service Rates

Technical support shall be charged at the following rates:

At TIBURON Facilities: \$ 115 per staff hour

At CLIENT Site: \$ 125 per staff hour

A minimum of four (4) hours per occurrence will be charged for work conducted at TIBURON facilities and a minimum of eight (8) hours at CLIENT site for Technical Services not covered under Basic Services or "24/7" Service Option as described previously.

2. Materials, Travel and Per Diem Expenses

When applicable, all special materials, plus travel and per diem expenses shall be charged to CLIENT at cost.

3. Call-Out Charges

For systems not covered under 24/7 support, after normal business hours, call-outs will be billed at \$250 per call. After the first hour, the rate is \$200 per hour with a two-hour minimum. If CLIENT'S systems are covered under the 24/7 support, the off-hour call-out fee is only \$50.

4. Remote Access

All charges in this Agreement are predicated on CLIENT providing the required hardware, software, and operating environment for dial-in service. If CLIENT does not provide this support for dial-in service, the following additional charge will apply:

\$500 per month per system supported

In addition, travel and per diem expenses for on-site support required due to lack of remote access will be charged as defined in Item 1, page 3, Exhibit B.

Payment Provisions

Payments due under this Agreement shall be made based on invoices submitted in advance on an annual basis for Basic Services and Options or as incurred for miscellaneous expenses.

Charges provided for in this section may be altered by TIBURON annually on the anniversary date of the Agreement by giving a 90-day advance written notice of such changes.

The amount of any tax, license, or permit fees, but not including taxes on income, that may be imposed or levied upon this Agreement, the transaction, or the materials or services delivered hereto, shall be added to each invoice and paid by CLIENT in addition to the amounts shown above.

CLIENT shall pay each invoice within 45 days of receipt thereof.

IN WITNESS WHEREOF the parties have executed this Agreement by their duly authorized representatives.

Client

Tiburón, Inc.

David P. Smith
Authorized signature

Darcy Hislop
Authorized signature

DAVID P. SMITH
Name

Darcy Hislop
Name

TECHNICAL SERVICES MANAGER
Title

Vice President, Client Services
Title

7-17-97
Date

June 9, 1997
Date