

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS EXTENDING THE SOLE SOURCE DESIGNATION OF TIBURON, INC. FOR FIVE YEARS FROM JULY 1, 2014 TO JUNE 30, 2019, APPROVING AN AMENDMENT NO. 3 WITH TIBURON, INC., AND AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXTEND THE AGREEMENT ON AN ANNUAL BASIS FOR UP TO FOUR (4) ADDITIONAL YEARS WITH UP TO ANNUAL INCREASE OF 5%, SUBJECT TO APPROPRIATION OF THE CITY COUNCIL AND WITHOUT FURTHER CITY COUNCIL APPROVAL**

**WHEREAS**, in December 1996, the City of Milpitas (“City”) entered into an agreement with Tiburon, Inc. (“Tiburon”) to provide a Police Records Management System for the City’s Police Department; and

**WHEREAS**, on March 28, 2000, the City and Tiburon entered into a further agreement for maintenance and software support for the Police Records Management System (“Agreement”); and

**WHEREAS**, Tiburon is the developer of the software for the Police Records Management System and there is no other source for support and maintenance of this software; and

**WHEREAS**, on January 4, 2011, pursuant to Milpitas Municipal Code Section I-2-3.09, the City Council approved Tiburon as the sole source provider of maintenance and software support for the Police Records Management System; and

**WHEREAS**, after conducting a good faith review of the available sources, the City’s Purchasing Agent has determined and found that Tiburon is still the only source for the maintenance and software support service of the of the Police Records Management System in Santa Clara County; and

**WHEREAS**, Purchasing Agent recommends the City Council extend the Sole Source designation for another five years from July 1, 2014 to June 30, 2019, approve Amendment No. 3 to the Agreement for maintenance and software support services in the annual amount of Fifty Five Thousand Four Hundred Sixty-Nine Dollars (\$55,469.00), and authorize the City Manager or designee to execute annual increases in compensation up to five percent (5%) subject to appropriation of the City Council and without further City Council approval.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. Tiburon, Inc., is approved as the sole source provider of maintenance and software support for the Police Records Management System for a five-year term from July 1, 2014 to June 30, 2019 pursuant to Milpitas Municipal Code Section I-2-3.09.
3. The City Council hereby approves Amendment No. 3 to the Agreement with Tiburon, Inc. for maintenance and software support services in the annual amount of Fifty Five Thousand Four Hundred Sixty-Nine Dollars (\$55,469.00). A copy of Amendment No. 3 is attached to this Resolution as **Exhibit A**.

4. The City Manager or designee is authorized to extend the Agreement on an annual basis for up to four (4) years with annual increases in compensation of up to five percent (5%), subject to appropriation of the City Council and without further City Council approval.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**AMENDMENT NO. 3 TO THE AGREEMENT  
WITH TIBURON INC. FOR  
MAINTENANCE AND SOFTWARE SUPPORT SERVICES**



This Amendment is entered into this 17th day of June, 2014, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and **Tiburon, Inc.**, a Virginia Corporation registered in the State of California (hereafter referred to as "VENDOR").

**RECITALS**

WHEREAS, the CITY and VENDOR entered into an agreement for maintenance and software support for the Police Records Management System approved by the City Council on March 28, 2000 ("Agreement"); and

WHEREAS, the parties entered into Amendment No. 1 to extend the term of the Agreement from July 1, 2011 to June 30, 2012 for the annual amount not-to-exceed of Forty-Seven Thousand Nine Hundred and Sixteen dollars (\$47,916.00); and

WHEREAS, the parties entered into Amendment No. 2 to extend the term of the Agreement from July 1, 2013 to June 30, 2014 for the annual amount not-to-exceed of Fifty-Two Thousand Eight Hundred and Twenty-Eight dollars (\$52,828.00); and

WHEREAS, the parties desire to amend the Agreement to extend the term of service from July 1, 2014 to June 30, 2015 in the amount not to exceed Fifty-Five Thousand Four Hundred Sixty-Nine dollars (\$55,496) and authorize the City Manager or designee to extend the Agreement on annual basis with annual increases in compensation of up to five percent (5%), subject to appropriation of City Council and without further City Council approval.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to amend the Agreement as follows:

1. Exhibits A and B dated July 1, 2013 attached to Amendment No. 2 are hereby deleted effective on June 30, 2014, inclusive.
2. Revised Exhibits A and B dated July 1, 2014 attached hereto are incorporated by reference and made a part of the Agreement and shall become effective July 1 2014.
3. Section 1 entitled "Period of Performance" of the Agreement is hereby amended and replaced in its entirety with the following:

**"1. PERIOD OF PERFORMANCE**

Notwithstanding any other provision in the Agreement, as amended, or any exhibits attached to the Agreement, as amended, the term of this Agreement shall be for a period of one (1) year from July 1, 2014 to June 30, 2015. This Agreement may renew for additional one (1) year periods unless either party provides the other party thirty (30) days prior written notice of their intent not to terminate the Agreement. Each year, at least sixty (60) days prior to the renewal date, Vendor shall provide City with a revised Exhibit A which will specify the following period of performance and the annual maintenance fees associated with such renewal period, which such fees shall not increase by more than five percent (5%) per year. If the City elects to extend the Agreement, the City shall provide written notice to Vendor prior to the expiration in the form attached hereto as Exhibit C."

4. The Agreement is amended to to add a new Section 16 entitled "Non-Appropriation" to read as follows:

“16. NON-APPROPRIATION

In the event the City Council does not appropriate funds to pay for support services for a public safety software system, such as the Tiburon system currently in use by City, City may terminate this Agreement upon written notice to Tiburon.”

- 5. All other provisions of the amended Agreement not amended by this Amendment No 3 shall remain in full force and effect.

This Amendment is executed as of the date first written above.

APPROVED BY:

CITY OF MILPITAS

TIBURON, INC.

\_\_\_\_\_  
Thomas C. Williams, City Manager

\_\_\_\_\_  
Name of Authorized Representative

\_\_\_\_\_  
Title of Authorized representative

Approved As To Form:

Approved As To Content:

\_\_\_\_\_  
Mike J. Ogaz, City Attorney

\_\_\_\_\_  
Mike Luu, Information Systems Operations  
Manager

## **EXHIBIT A**

## **EXHIBIT B**

**EXHIBIT C**

**NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT**

<b>AGREEMENT TITLE and DATE:</b>	
<b>CONTRACTOR Name and Address:</b>	
<b>DATE OF OPTION:</b>	

*(date the notice is sent must be consistent with the time for exercise set forth in Agreement)*

Pursuant to Section \_\_\_ of Amendment No. \_\_\_ for the Agreement referenced above, the City of Milpitas hereby exercises its option to extend the term under the following provisions:

<b>OPTION NO.</b>	
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**NEW OPTION TERM**

Begin date:	
End date:	

**✗ CHANGES IN RATE OF COMPENSATION (not applicable)**

<b>Percentage change in CPI upon which adjustment is based:</b>	
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Pursuant to Section \_\_\_ of the Agreement the Rates of Compensation are hereby adjusted as follows:  
*(use attachment if necessary)*

<b>MAXIMUM COMPENSATION for New Option Term:</b>	
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For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of Milpitas hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

CITY OF Milpitas a municipal corporation  By _____ Name: Title:
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**EXHIBIT B**  
**TO THE AGREEMENT FOR EXTENDED SERVICE**  
**SCHEDULE OF SERVICES AND CHARGES**

Support and Maintenance provided to the CLIENT listed in Exhibit A shall be pursuant to the terms and conditions of the Agreement for Extended Service dated March 28, 2000 (the "Agreement").

Upon CLIENT's payment of the amount set forth on Exhibit A to the Agreement, this Exhibit B shall be attached to, and become part of the Agreement. Any changes to the services options selected in this Exhibit B shall be reflected in a new Exhibit B which, upon payment of any additional amounts due, shall be attached to, and become part of, the Agreement.

**BASIC SERVICES**

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

Support for Computer Aided Dispatch, Message Switch and Corrections Management Systems is 24 hours per day, 7 days per week. Support for other products is from 8:00 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.

The following is paraphrased from the recently adopted Bylaws.

Voting membership in the Tiburon User Group, as set forth herein, is included in the Basic Service. The quantity of voting members is based on the number of Tiburon products installed, with the appropriate software licenses, at the CLIENT. For purposes of establishing voting memberships, a product is defined as SS/2000 – Computer Aided Dispatch, Police Records Management, Fire Records Management, Correction Management System, and Mobile Data System. The Tiburon User Group Conference is held annually at a location to be determined.

**"24/7" SERVICE OPTION**

\$7,000 per year/per system

\_\_\_\_\_  
(initial)

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.

**NEW PRODUCTS**

Additional Tiburon software systems, subsystems and Tiburon provided third-party products, such as hardware, and networking software may be acquired under this Agreement. Tiburon installation, special tailoring, license fees and third-party peripherals required shall be charged at the then current Technical Services Rate or as quoted by Tiburon or the third party.

## TECHNICAL SERVICE RATES

### 1. Technical Service Rates

Technical Services Rates shall be invoiced to CLIENT as incurred at the rates then in effect.

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

Systems not covered under 24/7 support, call-outs will be billed at \$250 per call. After the first hour, the rate is \$250 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 \$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 Exhibit B, page 2, item 1.