

RESOLUTION NO. 1602

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON AUTHORIZING EXECUTION OF AN AGREEMENT WITH TIBURON, INC. FOR SOFTWARE LICENSE OF JAIL SYSTEMS SOFTWARE

WHEREAS, the City of Fife is in the process of updating its current jail systems software; and

WHEREAS, Tiburon, Inc. has the installation rights to software that would be highly useful for the City to use; and

WHEREAS, terms have been reached with Tiburon, Inc. that will allow the City of Fife to obtain a software license for installation, as well as one for the City of Puyallup; now therefore

BE IT RESOLVED that the Council hereby authorizes the City Manager to execute the Professional Services Agreement between the City of Fife and Tiburon, Inc. Regarding Jail Services Software substantially in the form attached hereto as Exhibit A.

ADOPTED by the City Council at an open public meeting held on the 24th day of June, 2014.


Tim Curtis, Mayor

Attest:


Carol Eigen, City Clerk

CITY OF FIFE PROFESSIONAL SERVICES AGREEMENT

1. Parties and Date. THIS Agreement ("Agreement") is made effective as of the ____ day of June, 2014, by and between CITY OF FIFE, WASHINGTON ("City") and Tiburon, Inc., ("Tiburon") ("Consultant").

2. General Purpose and Intent.

Consultant wants to sell to City two perpetual non-exclusive software licenses to install the Intellitech IMACS Jail System software and allow the City to sell one of those perpetual non-exclusive software licenses to install to the City of Puyallup ("Puyallup"), for a one-time flat fee of Two Hundred Eighteen Thousand, Four Hundred Dollars (\$218,400) from City to Consultant, without the payment of any additional amounts to Consultant.

3. Services by Consultant.

Consultant shall provide City with two perpetual non-exclusive software licenses to install the Intellitech IMACS Jail System software and allow the City to sell one of those perpetual non-exclusive software licenses to install to the Puyallup.

4. Schedule of Work.

Consultant shall provide both licenses to the City upon the effective date of this Agreement. If delays beyond Consultant's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.

5. Compensation.

X LUMP SUM. Compensation for the services described in the Scope of Work shall be a Lump Sum payment of \$218,400 to Consultant from the City. The City of Puyallup will reimburse Fife for one-half (\$109,200) of the cost. (Cross-Referencing document: "Interlocal Agreement Between City of Fife and City of Puyallup Regarding Jail Services Software"). Payment is due to Consultant upon completion of Consultant providing both licenses to the City upon the effective date of this Agreement.

TIME AND MATERIALS NOT TO EXCEED. Compensation for the services described in the Scope of Work shall not exceed \$_____ without written authorization and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit "C."

TIME AND MATERIALS. Compensation for the services described in the Scope of Work shall be on a time and material basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "C."

OTHER. _____

6. Coordination of Contract Documents. This Agreement consists of this professional services agreement form and any future amendments. If there is any inconsistency between this professional

services agreement form and any future amendments, the professional services agreement form shall take precedence unless explicitly waived by the amendment.

7. Payment.

A. Consultant shall provide an invoice in the format acceptable to the City for the sale of the licenses.

B. Payment is due to Consultant upon completion of Consultant providing both licenses to the City upon the effective date of this Agreement.

C. Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after payment is made unless a longer period is required by a third-party agreement. Copies shall be made available on request.

D. If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify to comply with the Agreement. City may withhold payment for such work until the services meets the requirements of the Agreement.

8. Term and Termination of Agreement

A. This Agreement may be terminated by the City at any time upon the default of the Consultant or upon public convenience, in which event all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City, and Consultant shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. Consultant shall not be entitled to any reallocation of cost, profit or overhead. Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. If the Agreement is terminated for default, the Consultant shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Consultant. The Consultant shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.

B. The City may suspend this Agreement, at its sole discretion, upon one week's advance notice to Consultant. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the Consultant's reasonable expenses, and shall be subject to verification. The Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

9. Standard of Care. Consultant represents and warrants that it has the requisite licenses and authority necessary to provide the services under this agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant under this agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

10. Indemnification/Hold Harmless. Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

11. Assigning or Subcontracting. Consultant shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld at the City's sole discretion.

12. Independent Contractor. Consultant is and shall be at all times during the term of this Agreement an independent contractor.

13. Notice

A. Any notice or communication required by this Agreement must be in writing, and may be given either personally, electronically with evidence of receipt, by express delivery service, or by registered or certified mail, return receipt requested. If given personally, by express delivery service, or by registered or certified mail, such notice or communication shall be deemed to have been given and received upon actual receipt. If delivery is made electronically, either by e-mail or facsimile transmission, a notice shall be deemed to have been given when delivered to the person to whom it is addressed, and there is electronic confirmation that it was received. Such notices or communications shall be given to the Parties at their addresses set forth below:

David K. Zabell
City Manager
5411 23rd Street East
Fife, WA 98424

Phone: (253) 922-2489
Fax: (253) 922-5355
Email: dzabell@cityoffife.org

Vincent Tedesco
SVP, Operations
Tiburon, Inc.
3000 Executive Parkway, Suite 500
San Ramon, CA 94583
Phone: (925) 621-2700
Fax: (925) 621-2799
Email: _____

B. Either party may change its contact information by sending its new contact information to the other party in the same manner as is provided for sending the other party notice under the provisions of paragraph 13.A.

14. **Disputes.** Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in Pierce County Superior Court.

15. **Attorneys' Fees.** In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorneys' fees from the other party.

16. **Severability.** Should any clause, phrase, sentence or paragraph of this Agreement or its application be declared invalid or void by a court of competent jurisdiction, the remaining provisions of this Agreement or its applications of those provisions not so declared shall remain in full force and effect.

17. **Extent of Agreement/Modification.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

CITY OF FIFE, WASHINGTON

CONSULTANT

By: _____
David Zabell
City Manager

TIBURON, INC.

Date: _____

By: _____
Vincent Tedesco, SVP Operations

Attest:

Date: _____

By: _____
Carol Etgen
City Clerk

Approved as to form:

By: _____
Gregory F. Amann
Assistant City Attorney