

RESOLUTION NO. 1604

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON AUTHORIZING EXECUTION OF AN AGREEMENT WITH CITY OF PUYALLUP FOR SOFTWARE, LICENSING, AND MAINTENANCE OF JAIL SYSTEMS SOFTWARE

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

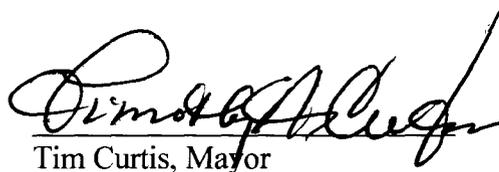
WHEREAS, the City of Puyallup also has need of such software; and

WHEREAS, the City of Fife is entering into agreements with Tiburon, Inc. and Intellitech Corporation for the purchase of said software, licenses to install and use, maintenance and support of said software for itself that would include a copy of the software, license to install, site license to use, maintenance and support of said software for Puyallup as well; and

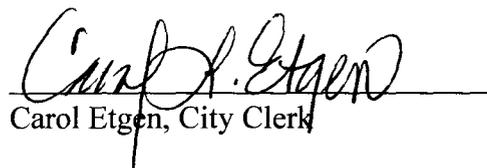
WHEREAS, the purpose of this Participation Agreement is to provide the terms and conditions pursuant to which the City of Fife will provide software, licenses to install and use, maintenance and support of said software via the agreements with Tiburon, Inc. and Intellitech Corporation and the City of Puyallup will provide funding for its share; now therefore

BE IT RESOLVED that the Council hereby authorizes the City Manager to execute the Interlocal Agreement between the City of Fife and the City of Puyallup 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 Etgen, City Clerk



**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF FIFE AND THE CITY OF PUYALLUP
REGARDING JAIL SERVICES SOFTWARE**

1. Date and Parties.

This agreement, for reference purposes only, is dated the _____ day of June, 2014, and is entered into between the City of Fife (hereinafter "Fife") and the City of Puyallup (hereinafter "Puyallup") under authority of the Interlocal Cooperation Act (Chapter 39.34 RCW) and the laws governing non-charter code cities.

2. Recitals.

2.1 Pursuant to RCW 35A.11.040, and Chapter 39.34 RCW, Fife and Puyallup have the legal authority to cooperate with each other on a basis of mutual advantage and thereby provide services and facilities in a manner that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities.

2.2 Puyallup has evaluated and determined it is in Puyallup's best interest to negotiate an interlocal agreement ("ILA") with Fife for sharing cost for Intellitech IMACS Jail Systems software, licenses, upgrades and maintenance of said software obtained by Fife from Intellitech and Turburon.

Now, therefore it is hereby agreed by and between the parties hereto as follows:

3. Jail Services Software.

3.1 Fife agrees to provide to Puyallup the Intellitech IMACS Jail Services Software, a license to install said software, and a site license to use said software, pursuant to the terms of the Agreements entered into between Fife and Tiburon, and Fife and Intellitech, as more fully set forth in Exhibits A and B, attached hereto, and by reference incorporated herein.

4. Fees. To compensate Fife for the software license to install from Tiburon, Inc., Puyallup will pay Fife a flat one-time fee of \$109,200, half of the cost of the software license to install, due to Fife upon the effective date of City of Fife Professional Services Agreement with Tiburon, Inc. Additionally, Puyallup will pay Fife an annual fee of \$4,800 for five years, for a total of \$24,000, for the software, site license to use said software, five years' worth of upgrades, and maintenance of said software by Intellitech. The first annual payment is due to Fife upon completion of software training by Intellitech personnel of Puyallup personnel, and then every year thereafter upon that date, for a total of five payments.

5. Ownership of Information. All data and other records, including data and records of either city entered into any database, files, and data stores of the Fife or the Puyallup

or supplied to Intellitech by either city are and shall remain the sole property of the city which entered or provided it.

6. Agreement Term. This Agreement shall be effective upon execution by both parties ("Effective Date").

7. Contract Administration. The parties do not by this Agreement create any separate legal or administrative entity. The City Manager of Fife, or his designee shall be responsible for working with the City Manager of Puyallup, or his/her designee to administer the terms of this Agreement. The parties do not intend to jointly own any real or personal property as part of this undertaking. The parties will cooperatively work together to further the intent and purpose of this Agreement.

8. Indemnification.

8.1 Puyallup agrees to indemnify and hold Fife, its elected officials, officers, employees, agents and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation their respective agents, licensees, or representatives arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of Fife, its elected officials, officers, employees, agents, and volunteers or by Fife's breach of this Agreement.

8.2 Fife agrees to indemnify and hold Puyallup, its elected officials, officers, employees, agents and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation their respective agents, licensees, or representatives arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of Puyallup, its elected officials, officers, employees, agents, and volunteers or by Puyallup's breach of this Agreement.

8.3 In the event of a claim, loss, or liability based upon the alleged concurrent or joint negligence of the parties, the parties shall bear their respective liability, including cost, in accordance with their respective liability established in accordance with the laws of the State of Washington.

8.4 FOR PURPOSES OF INDEMNIFICATION ONLY, THE PARTIES, BY MUTUAL NEGOTIATION, HEREBY WAIVE, AS RESPECTS THE OTHER PARTY ONLY, ANY IMMUNITY THAT WOULD OTHERWISE BE AVAILABLE AGAINST SUCH CLAIMS UNDER THE INDUSTRIAL INSURANCE PROVISIONS OF TITLE 51 RCW.

8.5 The provisions of this section shall survive the expiration or termination of this Agreement with respect to acts and omissions occurring during the term hereof.

9. Assignment. Neither party may assign this Agreement or any interest, obligation or duty therein without the express written consent of the other party.

10. Venue and Attorneys' Fees. This Agreement shall be governed in all respects by the laws of the State of Washington. The Venue for any dispute related to this Agreement shall be with the Pierce County Superior Court, Tacoma, Washington. 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.

11. Insurance. Both Fife and Puyallup shall maintain membership in WCIA's liability and risk pool or have equivalent limits of liability from another insurance program or liability pool.

12. Notice. Any notice or information required or permitted to be given to the parties under this Agreement may be sent to the following addresses unless otherwise specified:

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

City of Puyallup
Attn: William McDonald

13. Modification. This Agreement constitutes the complete and final agreement of the parties, and replaces and supersedes all oral and/or written proposals and agreements heretofore made by the parties on the subject matter. No provision of this Agreement may be amended or added to except by agreement, in writing, signed by both parties.

14. Signature Authority

14.1 The Fife City Manager was authorized to execute this agreement by Resolution No. ____ adopted by a majority of the entire City Council on the ____ day of _____, 2014, at a regularly scheduled Council meeting. Fife shall record its agreement with Pierce County and/or post it on the Fife City website prior to its entry into force.

14.2 The Puyallup City Manager was authorized to execute this agreement by Resolution No. ____ adopted by a majority of the entire City Council on the ____ day of _____, 2014, at a regularly scheduled Council meeting. Puyallup shall then recorded its agreement with Pierce County and/or post it on the Puyallup City website prior to its entry into force.

15. No Third-Party Beneficiaries. This Agreement is executed for the sole and exclusive benefit of the signatory parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any right, remedy or other entitlement upon any person other than the parties hereto, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party, nor shall any provision herein give any third party any right of action against any party hereto.

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.

CITY OF FIFE

CITY OF PUYALLUP

By: _____
David K. Zabell
City Manager

By: _____
William McDonald
City Manager

ATTEST:

ATTEST:

Carol Etgen
City Clerk

Brenda Arline
City Clerk

Approved as to form:

Approved as to form:

Loren D. Combs
City Attorney

Kevin Yamamoto
City Attorney

Exhibit A

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

Exhibit B

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 Intellitech Corporation ("Consultant").

2. General Purpose and Intent.

Consultant will provide the Intellitech IMACS Jail Systems software, use license for City, site license for City of Puyallup ("Puyallup"), system upgrades, and system maintenance to support both City and Puyallup for the annual payment of Nine Thousand Six Hundred Dollars (\$9,600) for five (5) years, for a total of Forty-Eight Thousand Dollars (\$48,000), without the payment of any additional amounts. The software license will be provided to City and Puyallup by Tiburon, Inc. (Cross-Referencing document "City of Fife Professional Services Agreement with Tiburon, Inc.") Consultant will also design and install special software enhancements to the provided software (known as IMACS), if requested by the City or Puyallup, and any such requests will be included as amendments to the Agreement.

3. Services by Consultant.

A. Consultant shall perform the services described in the Scope of Work attached hereto as Exhibit "A" (the "Scope of Work"). Where references to services, support, and maintenance to be provided only reference "City" or "City of Fife" within Exhibit "A", they are to be presumed to be owed and provided to the Puyallup as well. The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the City.

B. The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to the Agreement.

4. Schedule of Work.

A. Consultant shall begin performance of the services described in the Scope of Work as soon as the effective date of this Agreement, in accordance with Exhibit "B". If delays beyond Consultant's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.

B. Consultant is authorized to proceed with the services described in the Scope of Work upon receipt of a written Notice to Proceed.

5. Compensation.

X YEARLY PAYMENT. Compensation for the services described in the Scope of Work shall be a yearly payment of \$9,600 per year for five years to Consultant, for a total to Consultant of \$48,000. The first annual payment is due to Consultant upon completion of software training by Consultant personnel of City personnel, and then every year thereafter upon that date. The total cost of \$48,000 will be paid to Consultant by the City of Fife over five (5) years, and the City of Puyallup

will reimburse Fife for one-half (\$24,000) of the cost. (Cross-Referencing document: "Interlocal Agreement Between City of Fife and City of Puyallup Regarding Jail Services Software")

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. If the City or Puyallup requests Consultant to design and install special software enhancements to IMACS, the price will be ten percent (10%) less than Consultant's then prevailing prices for such work. All such work and prices for it must be agreed to in writing and incorporated into the Agreement as amendments.

6. Coordination of Contract Documents. This Agreement consists of this professional services agreement form and Exhibit "A" through Exhibit "B" and any future amendments. If there is any inconsistency between this professional services agreement form and any of the Exhibits, the professional services agreement form shall take precedence. 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 annual invoices in the format acceptable to the City for work performed to the date of invoice. Consultant shall maintain time and expense records for reimbursable expenses and any work that is billed hourly under this Agreement and provide them to the City upon request.

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

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

8. Discrimination and Compliance with Laws.

A. Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

B. Consultant shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

C. Consultant shall obtain a City of Fife business license pursuant to the provisions of Chapter 5.01 FMC prior to receipt of written Notice to Proceed.

D. Violation of this Paragraph 8 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by City, in whole or in part, and may result in ineligibility for further work for City.

9. 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.

10. Standard of Care. Consultant represents and warrants that it has the requisite training, skill and experience 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.

11. Ownership of Work Product.

A. All data materials, reports, memoranda, and other documents developed under this Agreement whether finished or not shall become the property of City, shall be forwarded to City at its request and may be used by City as it sees fit. Upon termination of this agreement pursuant to paragraph 9 above, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City. City agrees that if it uses products prepared by Consultant for purposes other than those intended in this Agreement, it does so at its sole risk and it agrees to indemnify and hold Consultant harmless therefore.

B. All data and other records, including data and records of the clients entered into any database, files, and data stores of the City or Puyallup or supplied to Consultant by either City are and shall remain the sole property of the city which entered or provided it. Consultant shall not, without the relevant city's written consent, copy or use such records except to carry out contracted work, and will not transfer such records to any other party not involved in the performance of this Contract. (Cross-Referencing documents: "Interlocal Agreement Between City of Fife and City of Puyallup Regarding Jail Services Software" and "City of Fife Professional Services Agreement with Tiburon Corporation")

C. Consultant agrees to keep all information it is exposed to in the course of performance of this Agreement confidential, and to comply with all federal and state laws relating to the confidentiality of such information.

12. Representation and Warranties. Consultant represents and warrants that, except for special software enhancements required for the City and Puyallup's use, IMACS is fully developed, free of errors, and performing to design specifications in similar installations. Consultant further represents and warrants that upon installation and with Consultant's support, IMACS will operate free of material errors.

13. Availability of Source Code. In the event of the liquidation due to bankruptcy or otherwise of Consultant (except by reason of a merger or consolidation and the continuation of its business), the City and Puyallup shall be entitled to receive and retain a copy of the IMACS source code, and to use or modify same by itself or in collaboration with other licensed users, but in either event solely in connection with the use of IMACS as licensed herein. The City or Puyallup shall not sell, copy, assign or transfer in any manner the source code to any other entity without the written consent of Consultant and/or its President. In order to assure the availability of the source code in the event of the foregoing contingencies, Consultant shall deposit and maintain a copy of the source code in Escrow with its attorneys, Manchester, Bennet, Ulman and Powers Ohio, naming the City and Puyallup as beneficiaries of the Escrow agreement, and provide the City and Puyallup with copies of the Escrow agreement:

Escrow Agent:

Manchester Bennett Ulman and Powers
Atrium Level Two
The Commerce Building
Youngstown, OH 44503
Telephone: 330.743.1171
FAX: 330.743.1190
Attorney: Gina Richardson
E-mail: grichardson@mbpu.com

14. 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.

15. Insurance. The Consultant shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees. Consultant's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions

The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any

Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

F. Notice of Cancellation

The Consultant shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

G. Failure to Maintain Insurance

Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

16. 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.

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

18. 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

John Jacobs
CEO

5411 23rd Street East
Fife, WA 98424

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

Intellitech Corporation
8544 Hickory Hill
Poland, OH 44514
Phone: (330) 707-1090
Tax: (330) 707-1099
Email: john.jacobs@intellitechcorp.com

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 16.A.

19. 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.

20. 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.

21. 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.

22. 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

John J. Jacobs
CEO, Intellitech Corporation

Date: _____

Date: _____

Attest:

By: _____
Carol Etgen
City Clerk

Approved as to form:

By: _____
Gregory F. Amann
Assistant City Attorney