

BILL NO. S-13-10-20

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving the purchase of the CUSTOMER INFORMATION SYSTEM – INFINITY SOFTWARE LICENSE AGREEMENT between N. HARRIS COMPUTER CORPORATION and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

**NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL
OF THE CITY OF FORT WAYNE, INDIANA:**

SECTION 1. That the purchase of the CUSTOMER INFORMATION SYSTEM – INFINITY SOFTWARE LICENSE AGREEMENT by and between N. HARRIS COMPUTER CORPORATION and the City of Fort Wayne, Indiana, is hereby ratified, and affirmed and approved in all respects, respectfully for:

purchase of the Software License Agreement to utilize the Software for the Customer Information System - Infinity:

involving a total cost of FOUR HUNDRED EIGHTY-FIVE THOUSAND AND 00/100 DOLLARS. A copy of said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

SOFTWARE LICENSE AGREEMENT

THIS AGREEMENT made as of the 16th day of October, 2013.

BETWEEN:

N. HARRIS COMPUTER CORPORATION
("Harris")

- and -

**CITY OF FORT WAYNE, INDIANA BY AND THROUGH
ITS BOARD OF PUBLIC WORKS**
("Organization")

RECITALS

1. Harris owns the Software (as defined below);
2. The Organization wishes to acquire a license to utilize the Software
3. Harris wishes to grant the Organization a license to utilize the Software.
4. The Organization and Harris agree to enter into three (3) separate agreements each dealing with a separate aspect of the Software: a Software License Agreement, a Support and Maintenance Agreement and a Software Implementation Services Agreement.

NOW THEREFORE, in consideration of the mutual covenants set out in this License Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

ARTICLE I. INTERPRETATION

Section 1.01 Definitions

Throughout this License Agreement, except as otherwise expressly provided, the following words and expressions shall have the following meanings:

- (a) **"Agreement"** and similar expressions mean this Software License Agreement, including all of its Schedules and all instruments supplementing, amending or confirming this Agreement. All references to "Articles" or "Sections" mean and refer to the specified

Article or Section of this Agreement except where a different agreement is explicitly identified.

- (b) **"Completion of Services"** shall have the definition ascribed to it in the Software Implementation Services Agreement.
- (c) **"Concurrent User License"** means a license that restricts the total number of Users who can access the Software at any one time to the number detailed in Schedule "A".
- (d) **"Confidential Information"** means, with respect to a party to this License Agreement, all information or material which: is (A) marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking, (B) known by the parties to be considered confidential or proprietary, such as the Software, or (C) which should be known or understood to be confidential or proprietary by an individual exercising reasonable commercial judgment in the circumstances. Confidential Information does not include information to the extent that such information: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party hereunder; (ii) was previously known to the receiving party as evidenced by its written records; (iii) is rightly received by the receiving party from a third party who is not under an obligation of confidentiality; or (iv) is independently developed by the receiving party without reference to or use of the other party's Confidential Information.
- (e) **"Designated Computer System"** shall mean the Organization's platform and operating system environment which is operating the Software.
- (f) **"Documentation"** means user guides, operating manuals, educational materials, product descriptions and specifications, technical manuals, supporting materials, and other information regardless of the media on which it is provided.
- (g) **"License"** means the license granted to the Organization pursuant to Section 2.01 hereof and includes both a Concurrent User License and a Site License.
- (h) **"License Agreement"** means this Software License Agreement.
- (i) **"Release"** means an Update and an Upgrade.
- (j) **"Required Programs"** have the meaning set out in Section 3.03.
- (k) **"Site License"** means a license that restricts the Software such that it can reside in one production environment and unlimited non production environments.
- (l) **"Software"** means the software products that are listed in Schedule "A" and to which the License applies.
- (m) **"Update"** means a minor modification or enhancement to the Software related to a bug fix, minor additional functionality or legislative changes.

- (n) **"Upgrade"** means a major overhaul of the Software which is a complete new version of the Software.
- (o) **"User"** means any employee of Organization or any of Organization's agents who are authorized by Harris pursuant to the terms of this License Agreement to have access to the Software.

Section 1.02 Currency

Unless otherwise specified, all references to amounts of money in this License Agreement and the related Schedules refer to U.S. currency.

Section 1.03 Schedules

The Schedules described below and appended to this License Agreement shall be deemed to be integral parts of this License Agreement.

- Schedule "A" - Description of Software
- Schedule "B" - License Fees & Payment Schedule

In the event of any conflict or inconsistency between the terms and conditions in the main body of this License Agreement and the terms and conditions in any Schedule, the terms and conditions of the main body of this License Agreement shall control.

ARTICLE II. SOFTWARE LICENSES

Section 2.01 Grant of Licenses

- (a) Subject to the terms and conditions of this License Agreement, Harris hereby grants to the Organization a personal, non-exclusive, non-transferable and limited right and license to use the Software in object code format on the Designated Computer System (the "License") in consideration for the payment of the License fees. All Releases installed by Organization are subject to this License.
- (b) Any Software furnished by Harris in machine-readable form may be copied in whole or in part by Organization for use on the Designated Computer System, access to which by Users can be from any computer terminal, whether internal to or external to Organization's facility incorporating the Designated Computer System. To the extent that any temporary files associated with the Software are created during such use on terminals those temporary files are permitted under this License but only for such time that the temporary files are actually required. Organization agrees that the original copy of all Software furnished by Harris and all copies thereof made by Organization are and at all times remain the sole property of Harris.
- (c) Any License granted under this License Agreement permits the Organization to: (i) use the Software for its municipal and corporate purposes including, but not limited to,

performing testing, disaster recovery, disaster testing, training, archival and backup as the Organization deems necessary, and (ii) use, copy and modify the Documentation for the purpose of creating and using training materials relating to the Software, which training materials may include flow diagrams, system operation schematics, and/or screen prints from operation of the Software. Access to and use of the Software by independent contractors of the Organization shall be considered authorized use under this Section so long as any such independent contractors are bound by obligations of confidentiality and have been approved by Harris in advance of the independent contractors' access to the Software. The Organization shall be responsible for (i) all of the actions of and (ii) any misuse of the Software by any independent contractor.

- (d) The Organization may duplicate Documentation, at no additional charge, for the Organization's permitted uses so long as all required proprietary markings are retained on all duplicated copies.
- (e) The Software is licensed to the Organization on multiple levels. The Software is licensed on a "Concurrent User License" and "Site License" basis as set forth in Schedule "A".
 - i) A Concurrent User License permits the Organization to use the Software on the Designated Computer System (including all environments such as training, disaster recovery, etc.) provided that the number of Users who may be simultaneously using the Software is limited to the number of Concurrent Users specified for such Software on Schedule "A". A User is further defined as anyone authorized by the Organization who is logged onto the Software, regardless of the type of interface (i.e. graphical user interface or browser user interface).
 - ii) A Site License permits the Organization to use the Software on the Designated Computer System in one (1) production environment and unlimited non production environments for the purposes of disaster recovery, disaster testing, training, archival and backup. Organization requires a separate Site License for each production environment into which the Software or any portion thereof is read in machine-readable form.

The Organization may purchase additional Software Licenses at the time such Licenses become necessary at Harris's then current prices and terms.

- (f) As between Harris and Organization, Harris reserves all rights, title and interest in and to the Software not expressly granted herein and the License specifically excludes all such reserved rights, title and interest.

Section 2.02 Term of License

The License commences on the date of this License Agreement. The License is perpetual and of indefinite duration and shall continue to be in force unless terminated pursuant to the terms hereof.

Section 2.03 Restrictions on Use

- (a) Without limiting the generality of the License granted in Section 2.01 and the other restrictions listed therein, Organization shall not, and will not allow, direct or authorize (directly or indirectly) any other party to: (i) use the Software for any purpose other than in connection with Organization's primary business or operations; (ii) disassemble, de-compile, reverse engineer, defeat license encryption mechanisms, or translate any part of the Software, or otherwise attempt to reconstruct or discover the source code of the Software except and only to the extent that applicable law expressly permits, despite this limitation; (iii) modify or create derivate works of the Software; (iv) rent, lease, lend, or use the Software for timesharing or bureau use or to publish or host the Software for others to use; or (v) take any actions that would cause the Software to become subject to any open source or quasi-open source license agreement. Organization shall be wholly liable to Harris for any misuse of the Software and these restrictions are absolute except as and only to the extent that this License Agreement may expressly permit Organization to do otherwise.
- (b) The Software and related materials supplied by Harris are protected by copyright and trademark laws. The Software is licensed and may not be resold by Organization. Any rights not expressly granted herein are reserved. Organization may not obscure, remove or otherwise alter any copyright, trademark or other proprietary notices from the Software and related materials supplied by Harris.

Section 2.04 Ownership of Software and Confidential Information

- (a) The Organization acknowledges that the Software contains proprietary information and Confidential Information of Harris which shall, at all times, remain the property of Harris and, in addition to its obligations outlined in Section 2.03, the Organization agrees to treat such Confidential Information in accordance with Subsections (b) and (c) herein.
- (b) The Organization will take the same care to safeguard the Software as it takes to safeguard its own Confidential Information of a like nature and such care shall not be any less than would be taken by a reasonable person to safeguard its own confidential information.
- (c) In order to assist Harris with the protection of its proprietary information and Confidential Information and to enable Harris to ensure that the Organization is complying with its obligations, Organization shall permit Harris to visit during normal business hours any premises at which the Software is used or installed and shall provide Harris with access to its Software. Harris shall provide Organization with reasonable notice of any such audit.

Section 2.05 Ownership and Disposition of Documents

- (a) All materials and documents which were developed or prepared by Harris for general use and which are not the copyright of any other party or publicly available, including educational materials, the Software and any other computer applications, shall continue to be the property of Harris.

- (b) Only where the Organization requests custom materials or documents, then upon the agreement of the parties in writing as evidenced by a duly executed statement of work, the Organization shall be the exclusive owner of all such custom, materials and documents which are developed or prepared by Harris specifically for the Organization, except to the extent to which such materials or documents may contain pre-existing Harris materials, in which case the statement of work will describe the license for such pre-existing Harris materials.

ARTICLE III. REPRESENTATIONS AND WARRANTIES

Section 3.01 Warranty of Performance

Harris warrants to the Organization that:

- (a) the Software will substantially perform as described in the Documentation if the Software is used in accordance with the Documentation, the terms of this License Agreement and where the Organization has the Required Programs and the hardware meets the requirements of Section 3.03 (b). In the event that the Software does not perform as described herein, the Organization shall provide a commercially reasonable opportunity for Harris to correct any deficiencies prior to Organization taking legal action.
- (b) it has the full right, authority and power to enter into this License Agreement and to grant to the Organization the Licenses and rights conveyed by this License Agreement; and
- (c) the Software is an original work of authorship; and
- (d) Organization's use of the Software will not infringe the intellectual property rights of any other party related to the trademark or copyrights of such other party, provided, however, that Organization's use of the Software substantially complies with the terms of this Agreement

Section 3.02 No Other Warranties

The express warranties contained in this Article III are in lieu of all other representations, warranties and conditions, express or implied, whether arising by statute or otherwise in law or from a course of dealing, or usage of trade, except all warranties related to the merchantability and fitness for a particular purpose of the Software as detailed in the Documentation. Harris reserves the right to correct any defects about which it is made aware and to produce Releases at a time of Harris's own choosing and at Harris's discretion. Without limiting the generality of the foregoing, Harris does not represent or warrant and the Organization acknowledges that there are no further representations or warranties:

- (a) that the functions contained in the Software will operate in the combinations which may be selected for use by the Organization or will meet the Organization's requirements and satisfy its intended results;

- (b) that the operation of the Software will be error free.

Section 3.03 Required Programs

- (a) The Organization acknowledges that the use of the Software requires that the Organization obtain and install additional required software programs (the "**Required Programs**"), as detailed in the attached Schedule "A". The Organization agrees that the acquisition of the Required Programs shall be at its sole cost and that the cost thereof is not included in the fees herein, including for any future updates about which Organization is provided with commercially reasonable advance notice.
- (b) Organization's hardware must also be of sufficient quality, condition and repair, and the Organization agrees to maintain its hardware in the appropriate quality, condition and repair at its sole cost and expense, in order to facilitate the achievement of the proper installation and implementation of the Software in accordance the Software Implementation Services Agreement. If Harris determines that Organization's hardware is not of sufficient quality, condition and repair, Harris shall notify Organization in writing of the Hardware deficiencies.

Section 3.04 Exclusions to Warranty

Harris shall not be liable for any breach of the foregoing warranties which results from causes beyond the reasonable control of Harris, including

- (a) where the installation, integration, modification or enhancement of the Software has not been carried out by Harris or its authorized agent, or where Organization has taken any action which is expressly prohibited by the Documentation or this License Agreement;
- (b) any use or combination of the Software with any software, equipment or services not supplied by or on behalf of Harris;
- (c) user error, or other use of the Software in a manner or in an operating environment for which it was not intended or other than as permitted in the relevant scope of work or in this License Agreement;
- (d) Organization's failure to install a new Update which has been released to remedy an error or bug, and which Harris has stated to Organization is a required Update necessary for security purposes or for legislative compliance purposes or other reasons as Harris may determine is important in its sole discretion; or
- (e) natural disasters, power surges, lightning strikes, and the like.

**ARTICLE IV.
FEES AND PAYMENTS**

Section 4.01 Fees and Payments

- (a) The Organization agrees to pay Harris total license fees detailed in Schedule "B", which is not inclusive of any applicable taxes. The Organization shall be responsible for the payment of any applicable duties and sales/consumption taxes. The fee structure and payment schedule is outlined in the attached Schedule "B". The License is subject to the full payment of the license fees.
- (b) Except for any aspect of the license fee which is payable on the date that this License Agreement is executed, in which case the payment is due on the date of execution, during the term of this License Agreement Organization shall have thirty (30) days after the date outlined in the payment schedule in Schedule "B" to pay Harris the applicable license fee.

**ARTICLE V.
REMEDIES, LIABILITY AND INDEMNITY**

Section 5.01 Remedies and Liability

- (a) Termination of this License Agreement shall not affect any right of action of either party arising from anything which was done or not done, as the case may be, prior to the termination taking effect.
- (b) The Organization and Harris recognize that circumstances may arise entitling the Organization to damages for breach or other fault on the part of Harris arising from this License Agreement. The parties agree that in all such circumstances the Organization's remedies and Harris's liabilities will be limited as set forth below and that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this License Agreement.
 - (i) EXCEPT FOR DAMAGES ARISING OUT OF (a) HARRIS'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, (b) HARRIS'S INTENTIONAL MISREPRESENTATION, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (c) HARRIS'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 5.03, BOTH PARTIES AGREE THAT HARRIS'S LIABILITY (UNDER BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), IF ANY, FOR ANY DIRECT DAMAGES RELATING TO OR ARISING UNDER THIS LICENSE AGREEMENT SHALL NOT EXCEED IN THE AGGREGATE THE LICENSE FEES PAID TO HARRIS BY THE ORGANIZATION IN CONNECTION WITH THIS LICENSE AGREEMENT.
 - (ii) IN ADDITION TO THE FOREGOING, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR OTHER DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST

REVENUE OR LOSS OF PROFITS, EVEN IF SUCH OTHER PARTY HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

- (iii) EXCEPT FOR DAMAGES ARISING OUT OF (a) ORGANIZATION'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, OR (b) ORGANIZATION'S INTENTIONAL MISREPRESENTATION, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, BOTH PARTIES AGREE THAT, ORGANIZATION'S LIABILITY (UNDER BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), IF ANY, FOR ANY DIRECT DAMAGES RELATING TO OR ARISING UNDER THIS LICENSE AGREEMENT SHALL NOT EXCEED IN THE AGGREGATE THE LICENSE FEES OWED TO HARRIS BUT UNPAID PRIOR TO THE TERMINATION OF THIS LICENSE AGREEMENT.
- (iv) CLAUSES (i) AND (ii) SHALL APPLY IN RESPECT OF ANY CLAIM, DEMAND OR ACTION BY A PARTY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM, DEMAND OR ACTION, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT OR TORT.

Section 5.02 Intent

The parties hereby confirm that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and exclusive remedy provisions expressed throughout this License Agreement shall apply even in the event of default, negligence (in whole or in part), strict liability or breach of contract of the person released or whose liability is waived, disclaimed, limited, apportioned or fixed by such remedy provision, and shall extend to such person's affiliates and to its shareholders, directors, officers, employees and affiliates.

Section 5.03 Intellectual Property Indemnity

- (a) In the event there is a third party claim against Organization alleging that Organization's use of the Software in accordance with this License Agreement constitutes an infringement of a Canadian or United States' patent, copyright, trade-mark or trade secret or other intellectual property that is valid and enforceable in Organization's jurisdiction, Harris shall, at its expense, defend and indemnify Organization and pay any final judgment (including all damages awarded against Organization) against Organization or settlement agreed to by Harris on Organization's behalf. This indemnity is only effective where (i) Organization has not made any admissions or begun settlement negotiations either prior to or after providing notice to Harris of the applicable claim except with Harris's prior written consent, (ii) Harris has sole control of the defense of any claim or proceeding and all negotiations for its compromise or settlement; (iii) Organization assists and provides information to Harris throughout the action or proceeding, and (iv) Organization has not modified the Software in any manner disallowed by the terms of this

Agreement except with the prior written consent of Harris. Any breach by Organization of its covenants under this Section 5.03 shall nullify this indemnity but not the sole right of Harris to have full and complete authority of the defense to defend such claim or proceeding and of all negotiations related therewith and the settlement thereof. In the event that the Organization's use of the Software is finally held to be infringing or Harris deems that it may be held to be infringing, Organization agrees that the only remedy available to it is that Harris shall be, at Harris's election, for Harris to: (1) procure for the Organization the right to continue use of the Software; or (2) modify or replace the Software so that it becomes non-infringing, provided that such replacement software meets the needs of the Organization, and that Harris reimburses the Organization for pro rata amount of fees paid to Harris for any unused term for this License Agreement based on a five year amortization period for having the benefit of using the Software, such that after five years Harris is not obliged to provide any reimbursement.

- (b) The foregoing states Harris's entire liability, and the Organization's exclusive remedy, with respect to any claims of infringement of any copyright, patent, trade-mark, trade secret or other property interest rights relating to the Software, or any part thereof or use thereof.
- (c) Organization may, at Organization's sole cost and expense—which is outside the scope of this indemnity—retain counsel of its own choosing who shall be permitted to attend all settlement conferences and hearings or other court appearances (except where the court has specifically made an order against such attendance) related to the proceeding

Section 5.04 Remedies

Where remedies are expressly afforded by this License Agreement, such remedies are intended by the parties to be the sole and exclusive remedies of the Organization for liabilities of Harris arising out of or in connection with this License Agreement, notwithstanding any remedy otherwise available at law or in equity.

ARTICLE VI. GENERAL

Section 6.01 Confidentiality

- (a) Duty Owed to the Organization -- Harris acknowledges that it may receive Confidential Information about the Organization from the Organization or otherwise in connection with this License Agreement. Harris agrees:

7.2

Confidentiality

- (a) Duty Owed to the Organization -- Harris acknowledges that it may receive Confidential Information of the Organization from the Organization or otherwise in connection with this Agreement or the performance of the Services. Harris agrees:
- (i) to maintain this information in confidence;
 - (ii) not to use this information other than in the course of this Agreement;
 - (iii) not to disclose or release such information except on a need-to-know only basis;
 - (iv) not to disclose or release such information to any third person without the prior written consent of the Organization, except for authorized employees or agents of Harris; and
 - (v) to take all appropriate action, whether by instruction, agreement or otherwise, to ensure that third persons with access to the information under the direction or control or in any contractual privity with Harris, do not disclose or use, directly or indirectly, for any purpose other than for performing the Services during or after the term of this Agreement, any material or information, including the information, without first obtaining the written consent of the Organization.

7.3

Termination

- (a) Except for those terms that explicitly survive the expiration or termination of this Agreement, this Agreement shall expire upon the Completion of Services. The parties may at any time revive this Agreement so that it may be used in relation to a new Scope of Work.
- (b) If Harris should neglect to perform the Services properly or otherwise fail to comply with the requirements of this Agreement, the Organization must notify Harris in writing of such default (a "Default Notice"). Upon receipt of a Default Notice, Harris must either correct the default at no additional cost to the Organization, or issue a written notice of its own disputing the alleged default, in either case within thirty (30) days immediately following receipt of a Default Notice. If Harris fails to correct the default, or issue a notice disputing the alleged default, in either case within ninety (90) days following receipt of the Default Notice, the Organization may terminate the whole of this Agreement or the part of this Agreement relating to the provision of Services and in such case will be responsible for payment to Harris of only that part of the fee earned by Harris for those Services adequately and acceptably performed up to the time of communication of such notice of termination to Harris.

form, within the possession or control of the Organization have either been returned to Harris or deleted.

- (b) If this License Agreement is terminated following the Completion of Services, then the Organization may retain the copy of the Software in its possession as of the Completion of Services. Notwithstanding the foregoing, the Organization will remain subject to the obligations imposed upon it pursuant to this License Agreement with respect to the Software, including, but not limited to, such obligations relating to ownership of the Software and confidentiality and all of the restrictions on the Organization as set out in Article II.
- (c) Despite Subsection (d) below, all warranties related to the Software automatically terminate upon the termination of this License Agreement.
- (d) The following sections and articles shall survive the termination of this License Agreement: Section 3.02, Section 3.04, Section 5.01, Section 5.02, Section 5.04, Article IV and Article VI.

Section 6.04 Mediation

Except where this License Agreement explicitly states that this Section does not apply, the parties agree to submit any claim, controversy or dispute arising out of or relating to this License Agreement or the relationship created by this License Agreement to non-binding mediation before bringing a claim, controversy or dispute in a court or before any other tribunal. The mediation is to be conducted by either an individual mediator or a mediator appointed by mediation services mutually agreeable to the parties. The mediation shall take place at a time and location which is also mutually agreeable; provided; however, in no event shall the mediation occur later than ninety (90) days after either party notifies the other of its desire to have a dispute be placed before a mediator. Such mediator shall be knowledgeable in software system agreements. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorneys fees incurred by either party), is to be shared by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the date either party provides the other notice of mediation, then either party may bring and initiate a legal proceeding to resolve the claim, controversy or dispute unless the time period is extended by a written agreement of the parties. Nothing in this Section shall inhibit a party's right to seek injunctive relief at any time.

Section 6.05 Addresses for Notice

Any notice required or permitted to be given to any party to this License Agreement shall be given in writing and shall be mailed by prepaid registered post set out below. Any such notice shall be conclusively deemed to have been given and received on the third business day following the date of mailing, and addressed, in the case of Harris, to:

N. HARRIS COMPUTER CORPORATION
1 Antares Drive, Suite 400

Ottawa, Ontario K2E 8C4
Attention: CEO
Telephone: 613-226-5511, extension 2149

and in the case of the Organization, to:

CITY OF FORT WAYNE

Citizens Square, 200 East Berry Street, Suite 270
Fort Wayne, IN 46802

Attention: Kumar Menon, Director of City Utilities
Telephone: 260-427-6050

Each party may change its particulars respecting notice, by issuing notice to the other party in the manner described in this Section 6.05.

Section 6.06 Assignment

Neither party may assign any of its rights or duties under this License Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld, except that either party may assign to a successor entity in the event of its dissolution, acquisition, sale of substantially all of its assets, merger or other change in legal status. The License Agreement shall inure to the benefit of and be binding upon the parties to this License Agreement and their respective successors and permitted assigns

Section 6.07 Reorganizations

The Organization acknowledges that the License fee set out in this License Agreement has been established on the basis of the structure of the Organization as of the Effective Date. To the extent that the Organization amalgamates, consolidates or undergoes any similar form of corporate reorganization or transition (a "Reorganization"), and the resulting entity (whether or not the Organization is the resulting or continuing entity) requires additional Licenses to support the system, Harris shall be entitled to receive, and the Organization shall pay, an additional License fee based on the then prevailing License fee in effect. The provisions of this Section 6.07 shall apply to any subsequent Reorganizations occurring following the first Reorganization. The provisions of this Section 6.07 shall not apply where the Organization undergoes a Reorganization involving only other organizations that have already purchased a License from Harris only to the extent that the License is for the same Software. For purposes of this License Agreement, any corporate changes undergone by the Organization will be characterized as either an assignment, in which case Section 6.06 will apply, or a Reorganization, in which case Section 6.07 will apply, but it is not intended that Section 6.06 and Section 6.07 will apply to any single sequence of events, if such application would result in a duplication of the fees provided for in those provisions.

Section 6.08 Entire Agreement

This License Agreement shall constitute the entire agreement between the parties hereto with respect to the matters covered herein with respect to the License of the Software. No

other agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of Harris by any of its employees or agents, or contained in any sales materials or brochures, shall be deemed to bind the parties hereto with respect to the subject matter hereof. However, the parties agree that two other agreements are being entered into concurrently with this License Agreement. These two other agreements are the Support and Maintenance Agreement and the Software Implementation Services Agreement, each of which are separate agreements and are binding in their own right and upon their own terms.

Section 6.09 Section Headings

Section and other headings in this License Agreement are for reference purposes only, and are in no way intended to describe, interpret, define or limit the scope or extent of any provision hereof.

Section 6.10 Governing Law

This License Agreement shall be governed by the laws of the state of Indiana, and both parties agree to be subject to the jurisdiction and venue of the state and federal courts of Allen county, Indiana in the event of any dispute between the parties hereto.

Section 6.11 Trial by Jury

Organization and Harris hereby waive, to the fullest extent permitted by applicable law, the right to trial by jury in any action, proceeding or counterclaim filed by any party, whether in contract, tort or otherwise, relating directly or indirectly to this License Agreement or any acts or omissions of Harris in connection therewith or contemplated thereby.

Section 6.12 Invalidity

The invalidity or unenforceability of any provision or covenant contained in this License Agreement shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid provision or covenant shall be deemed to be severable.

Section 6.13 Waiver

A term or condition of this License Agreement may be waived or modified only by written consent of both parties. Forbearance or indulgence by either party in any regard shall not constitute a waiver of the term or condition to be performed, and either party may evoke any remedy available under the License Agreement or by law despite such forbearance or notice.

Section 6.14 Counterparts

This License Agreement may be executed in counterparts (whether by facsimile signature, in an email PDF or otherwise), each of which when so executed shall constitute an original and all of which together shall constitute one and the same instrument.

Section 6.15 Further Assurances

The parties shall do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated hereby, and each party shall provide such further documents or instruments required by any other party as may be reasonably necessary or desirable to effect the purposes of this License Agreement and carry out its provisions.

Section 6.16 Allocation of Risk

Organization acknowledges that the limited warranties, disclaimers and limitations of liability contained in this License Agreement set forth an allocation of risk reflected in the fees and payments due hereunder.

IN WITNESS WHEREOF the parties hereto have duly executed this License Agreement to be effective as of the date first written above.

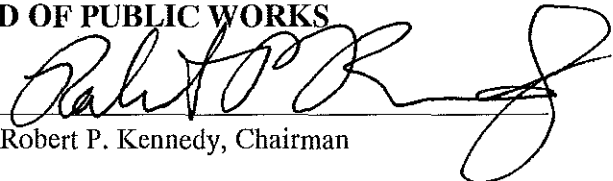
N. HARRIS COMPUTER CORPORATION

Per: 

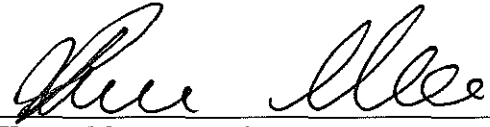
Name: Rob DiMurro

Title General Manager, Harris Utilities

**CITY OF FORT WAYNE,
BOARD OF PUBLIC WORKS**

By: 

Robert P. Kennedy, Chairman

By: 

Kumar Menon, Member

By: 

Mike Avila, Member

By: 

Victoria Edwards, Clerk

Schedule "A"
Description of Software

Software	License Type	Quantity
CIS Infinity	Concurrent User License	60
Infinity.Link	Site License	1

Required Programs for CIS Infinity Version 3

Application Server Operating System:

Windows Server 2008 or Higher with Microsoft Internet Information Service (IIS 7.5)

Database Server:

- a) Windows Server 2008/2012 running Microsoft SQL Server 2008 or Higher or;
- b) Windows Server 2008/2012 or Higher running Oracle 9 or Higher or;
- c) Unix/Linux/AIX (any version) running Oracle 9 or Higher

Network: Widely accepted network infrastructure utilizing TCP/IP as its primary communication protocol.

Workstation Operating System: Windows XP or Higher (Vista, Windows 7, Windows 8)

Recommended Workstation Software:

- a) Microsoft Office (Word/Excel) 2007 or Higher (2010/2013)
- b) NET 4.0 Framework Installed

Optional Workstation Software:

ESRI MapObjects run time – used for GIS shape file integration (if applicable)

For Dynamics GP Integration

- a) Dynamics GP 10/2010 and eConnect 10/2010 (API)
- b) .NET Framework 3.5 or higher on the workstation running the Dynamics interface/eConnect

A comprehensive list of all optional workstation software cannot be provided; it is possible other workstation software may be required for specific client interfaces.

* All software must be running the latest recommended patches from the respective provider of such software.

User Permissions

Each user of CIS Infinity will require the following rights on the CIS Infinity folder on the network (for example:

\\cisappserver\CISInfinity - for Production

\\Cisappserver\CISTest - for Test

- Read
- Write
- Modify

Each user will require the following rights to the defined local CIS folder of the local workstation they are working from:

- Read
- Write
- Modify

Required Programs for Infinity.Link

Application Server Operating System:

- a) Windows Server 2008 or Higher with Microsoft Internet Information Service (IIS 7.5)
- b) .NET 4.x Framework Installed

Network: Widely accepted network infrastructure utilizing the TCP/IP as its primary communication protocol.

Supported browsers:

- a) Latest versions of common browsers - Microsoft Internet Explorer 7.0, Mozilla Firefox, Google Chrome, Apple Safari
- b) Any of the above browsers that are available on popular smartphones and tablets

* All software must be running the latest recommended patches from the respective provider of such software.

Internet payment processing and payment clearing is provided, at no extra license fee, for Infinity.Link and applicable CIS Infinity functionality via the Harris Payment Gateway. Any interface to another payment processing vendor is an additional fee of a minimum \$30,000. This fee could be higher if development is required. An annual maintenance fee of 20% of this additional fee is required.

Required Programs for Infinity.Mobile

Application Server Operating System:

- a) Windows Server 2008 or Higher with Microsoft Internet Information Service (IIS 7.5)
- b) .NET 4.x Framework Installed

Network: Widely accepted network infrastructure utilizing the TCP/IP as its primary communication protocol.

Supported browsers:

- a) Latest versions of common browsers - Microsoft Internet Explorer 7.0, Mozilla Firefox, Apple Safari
- b) Any of the above browsers that are available on tablets

Schedule "B"
License Fees and Payment Schedule

License Fees

	Description	Quantity	Cost
License Fees	CIS Infinity – Concurrent User License	60	\$445,000
	Infinity.Link – Site License	1	\$40,000
	Total License Fees		\$485,000

Payment Schedule

Reference	Milestone	Invoice Amount	Estimated Month of Completion
LP1	50% upon Contract Signing	\$242,500	Nov-13
LP2	50% upon Installation of CIS Infinity	\$242,500	Dec-13
	TOTAL	\$485,000	

Interoffice Memo

Date: **October 17, 2013**

To: **Common Council Members**

From: **Len Poehler**, Deputy Director Business Services, Fort Wayne City Utilities

RE: **Customer Information System – Software License Agreement**

Companion Agreements:

Customer Information System - Software Implementation Services Agreement
Customer Information System – Support and Maintenance Agreement

City Utilities prepares bills and processes payments for nearly 100,000 customers each month in various combinations of water, sewer, storm and trash services. The hardware and customer information software (CIS) used to process those activities are over 20 years old, obsolete and in poor repair.

The Utilities has selected a replacement system called CIS – Infinity using the competitive sealed proposal procurement methodology. Of the seven proposals, that were received, three were selected for 3-day demonstrations. Of the two finalists, Advanced Utility Systems outscored the other vendor.

The License Agreement with N. Harris Computer Corporation D/B/A Advanced Utility Systems (AUS) allows us to use AUS's proprietary software (CIS – Infinity). CIS – Infinity will be tailored to Fort Wayne's specifications. The implementation of CIS-Infinity will span approximately 15 months. Beyond replacing obsolete software and hardware, CIS – Infinity offers significant processing and customer satisfying upgrades such as real-time processing, enhanced web based customer self-service and workflow automation. Benefits from the new system are expected in reduced phone calls, wait times, and transaction times, as well as better communication and increased use of internet transactions (e-bill, e-pay and web based self-service).

The License Agreement, excluding implementation services and maintenance, is \$485,000.

CC: BOW
Kumar Menon
Diane Brown