

1 **BILL NO. S-19-01-14**

2 **ORDINANCE NO. S-_____**

3 **AN ORDINANCE** approving the yearly maintenance for Spillman
4 Flex Public Safety software at a total cost of \$286,744 from and
5 through Spillman Technologies, Inc. by the City of Fort Wayne,
6 Indiana,

7 **WHEREAS**, public safety software is integral to the operation of
8 police, fire, and 911 services:

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

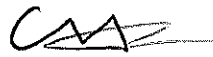
11 **SECTION 1.** That the yearly maintenance of Spillman Flex Public Safety software
12 from Spillman Technologies, Inc. for a total of cost to the City of \$286,744 is hereby approved in all
13 respects. That said yearly maintenance will be used to ensure the proper operation of the City's
14 police, fire and 911 systems.

15 **SECTION 2.** That the City is authorized and directed to take all action necessary for
16 the purchase of this system by and through Spillman Technologies, Inc.

17 **SECTION 3.** That this Ordinance shall be in full force and effect from and after
18 its passage and any and all necessary approval by the Mayor.

19 _____
20 Council Member

21 **APPROVED AS TO FORM AND LEGALITY**

22 
23 _____
24 Carol T. Helton, City Attorney

COUNCIL DIGEST SHEET

Enclosed with this introduction form is a tab sheet and related material from the vendor(s) who submitted bid(s). Purchasing Department is providing this information to Council as an overview of this award.

RFPs & BIDS

Bid/RFP #	N/A
Awarded To	Spillman Technologies
Amount	\$286,744
Conflict of interest on file?	☒ Yes ☐ No
Number of Registrants	N/A
Number of Bidders	N/A
Required Attachments	

EXTENSIONS

Date Last Bid Out	N/A
# Extensions Granted To Date	N/A

SPECIAL PROCUREMENT

Contract #/ID (State, Federal, Piggyback-Authority)	N/A
Sole Source/ Compatibility Justification	Sole Source Software Maintenance

BID CRITERIA *(Take Buy Indiana requirements into consideration.)*

Most Responsible, Responsive Lowest	☐ Yes ☐ No <i>If no, explain below</i>
If not lowest, explain	N/A

COUNCIL DIGEST SHEET

COST COMPARISON

<i>Increase/decrease amount from prior years For annual purchase (if available).</i>	The total cost increased from \$269,970 to \$286,744.
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DESCRIPTION OF PROJECT / NEED

<i>Identify need for project & describe project; attach supporting documents as necessary.</i>	The City needs yearly maintenance on Spillman software to obtain support, help staff deal with software issues, and periodically obtain new versions of the software.

REQUEST FOR PRIOR APPROVAL

<i>Provide justification if prior approval is being requested.</i>	N/A

FUNDING SOURCE

<i>Account Information.</i>	General Fund - IT Other Services – Maintenance Agreement Software
	Fund Org Object = 0010-00022603-5367

Fort Wayne City Council
c/o City Clerk' Office
200 East Berry Street
Fort Wayne, IN 46802

James Haley
CIO
City of Fort Wayne
(260) 427-1461

Subject: Yearly Maintenance for Spillman Mobile software

Members of City Council:

This ordinance is to authorize the purchase of yearly maintenance for Spillman Flex Public Safety software from Spillman Technologies, Inc. for the operation of the City's police, fire and 911 departments. This year's maintenance cost is \$286,744.

This payment is made annually and represents approximately one half of the Spillman maintenance cost. Allen County pays the other half of the maintenance.

In exchange for maintenance fees, the software vendors provide support for problems with the software and periodically provide new versions of the software.

Our decision to pay maintenance rests on four tests:

- Do we have a continuing internal commitment to use this software?
- Is the software vendor continuing to improve the product?
- Is the vendor useful in solving problems with the software?
- If the software fails, what's the worst case scenario?

The City and County both have substantial investments in the use of Spillman software. Spillman provides regular updates to the software and supports our day to day operation of the software.

This software is critical to daily work of police, fire, and 911 dispatchers. Based on these factors, I strongly recommend continued funding of Spillman maintenance.

If you have any questions, please call me at 427-1461.

James Haley
CIO
City of Fort Wayne

5-19-0/-14

COMPUTER SOFTWARE SUPPORT AGREEMENT

This Support Agreement ("this Agreement") is made and entered into this 24th day of April, 1996 by and between:

SPILLMAN DATA SYSTEMS, INC.
810 SOUTH 100 WEST
LOGAN, UTAH 84321
(801) 753-1610

AND

Allen Co. Computer System Project Building Corp.
One Main Street CICO Bld Room B16 Attn: Rick Krebs
Fort Wayne, Indiana 46802
(219) 428-7567

AND

Fort Wayne Board of Public Works
One East Main Street Room 902
Fort Wayne, Indiana 46802
(219) 427-1109

WITNESSETH:

WHEREAS, Spillman and Customer entered into that certain Computer Software License Agreement dated _____, 19__ (the "License Agreement") under which Customer obtained a non-exclusive, nontransferable license to use certain computer software in object and source code form and related user documentation (the "Licensed Program") on certain terms and conditions;

WHEREAS, Spillman desires to offer Customer certain services with respect to the Licensed Program on the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the premises hereof, and the mutual obligations herein, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1

DEFINITIONS

For the purpose of this Agreement, the following definitions shall apply to the respective capitalized terms:

- 1.1 "Software Order." A Spillman order form identifying software modules purchased by Customer from Spillman which has been signed and accepted by Customer and has been accepted by Spillman.

- 1.2 "Licensed Program." The computer software known as SPILLMAN Public Safety Software which was developed by Spillman and for which Customer is paying a maintenance fee to Spillman as identified in a Software Order, including any extracts from such software, derivative works of such software, or collective works constituting such software (such as subsequent Releases) to the extent offered to Customer under this Agreement or License Agreement. This excludes computer software not developed by Spillman which might be used in conjunction with the SPILLMAN Public Safety Software, such as word processors, spreadsheet, terminal emulators, etc.
- 1.3 "Agreement Term." An initial period of one (1) year. Thereafter, the Agreement Term shall automatically renew for successive periods of one year each unless and until terminated pursuant to Section 9 hereof. In no event, however, shall the Agreement Term extend beyond the prescribed term of the License Agreement.
- 1.4 "Error." Any failure of the Licensed Program to conform in all material respects to the functional specifications for the Licensed Program published from time to time by Spillman. However, any nonconformity resulting from Customer's misuse or improper use of the Licensed Program or combining or merging the Licensed Program with any hardware or software not supplied by Spillman, or not authorized to be so combined or merged by Spillman, shall not be considered an Error. Nor shall Licensed Program or data file damage resulting from unauthorized software alteration (including problems, errors, or malfunctions caused or created by the operator), customizing of programs, accident, neglect, power surge or failure, lightening, operating environment not in conformance with the manufacturer's specifications (for electric power, air quality, humidity or temperature), operating system errors, or hardware malfunction be considered an Error.
- 1.5 "Error Correction." Either a software modification or addition that, when made or added to the Licensed Program, establishes material conformity of the Licensed Program to the functional specifications, or a procedure or routine that, when observed in the regular operation of the Licensed Program, eliminates the practical adverse effect on Customer of such nonconformity. Not covered under Error Correction is the responsibility for data file damage due to hardware or software malfunction (subject to Section 3.3).
- 1.6 "Enhancement." Any modification or addition that, when made or added to the Licensed Program, materially changes its utility, efficiency, functional capability, or application, but that does not constitute solely an Error Correction. Enhancements may be designated by Spillman as minor or major, depending on Spillman's assessment of their value and of the function added to the preexisting Licensed Program.
- 1.7 Standard Coverage and Response Time (See Section 6.7):
- 1.7.1 "Coverage Hours." Monday through Friday 8:00 A.M. to 5:00 P.M. Mountain Time Excluding Holidays.
- 1.7.2 "Response Time." Within Six (6) hours from the time Spillman verifies that an Error is present, Spillman will initiate work toward development of an error correction.
- 1.8 Extended Coverage (See Section 6.7):
- 1.8.1 "Coverage Hours." Seven days a week, 24 hours a day.
- 1.8.2 "Response Time." Within Six (6) hours from the time Spillman verifies that an Error is present, Spillman will initiate work toward development of an error correction.
- 1.9 "Releases." New versions of the Licensed Program, which new versions may include both error Corrections and Enhancements.
- 1.10 "System Administrator." An agent designated by and representing Customer with sufficient training and/or experience with a Software Product to communicate effectively with the Spillman Support personnel.
- 1.11 "Customer and/or ." Customer and/or shall be defined as either/or the City of Fort Wayne and The County of Allen.

Section 2

ELIGIBILITY FOR SUPPORT

To be eligible for support for a Software Product, Customer must meet the following requirements. Acceptance of this Agreement by Spillman is conditioned upon confirmation by Spillman that a Software Product is eligible for support. Customer agrees that the obligation of Spillman to continue to provide Services with respect to a Software Product shall terminate if, at any time during the term of this Agreement, these requirements are not met. Nothing in this Agreement shall be construed to obligate Spillman to make available to Customer support for a Software Product for so long as Customer shall not have a valid Software Agreement for such Software Product.

To be eligible for Software Support for a Software Product, Customer must meet all of the following requirements:

- A. Customer has a valid Computer Software License Agreement for the Software Product.
- B. Customer has a System Administrator.
- ~~C. The hardware configuration on which the Software Product is to be used is supported by Spillman.~~
- D. Customer must be in compliance with the schedule of payments.

Spillman may require Customer to appoint a new System Administrator if Spillman determines that the System Administrator does not have the training or experience necessary to communicate effectively with the Spillman support personnel.

Section 3

SCOPE OF SERVICES

- 3.1 During the Agreement Term, Spillman shall render the following services in support of the Licensed Program, during Coverage Hours, subject to the compensation fixed for each type of service in Spillman's current rate schedule:
- a. Spillman shall maintain a program control center capable of receiving by telephone any operator reports of system irregularities.
 - b. Spillman shall maintain a telephone hot line that allows Customer to report system problems and seek assistance in use of the Licensed Program.
 - c. Spillman shall maintain a trained staff capable of rendering the services set forth in this Agreement.
 - d. Spillman shall be responsible for using all reasonable diligence in correcting verifiable and reproducible Errors when reported to Spillman in accordance with Spillman's standard reporting procedures. Spillman shall, after verifying that such an Error is present, initiate work, within Response Time, in a diligent manner toward development of an Error Correction. Following completion of the Error Correction, Spillman shall provide the Error Correction through a "temporary fix" consisting of sufficient programming and operating instructions to implement the Error Correction, and Spillman shall include the Error Correction in all subsequent Releases of the Licensed Program. Spillman shall not be responsible for correcting errors in any version of the Licensed Program other than the most recent Releases for a reasonable period sufficient to allow Customer to implement the newest Release, not to exceed 180 days.

- e. Spillman may, from time to time, issue new Releases of the Licensed Program to its customers generally, containing Error Corrections, minor Enhancements, and, in certain instances if Spillman so elects, major Enhancements. Spillman shall provide Customer with one copy of each new Release, without additional charge. Spillman shall provide reasonable assistance to help Customer install and operate each new Release, provided that such assistance, if required to be provided at Customer's facility, shall be subject to supplemental charges set forth in Spillman's current rate schedule.
- f. Subject to space availability and training fees, Customer may enroll its employees in Spillman's training classes, held at Spillman's facility in Logan, Utah, for regular or advanced training.
- g. Spillman will provide up to five (5) days of training, seminars, classes, enhancements discussions, module review, testing, or whatever support is mutually agreed upon at SDS's Logan, Utah facilities for up to five (5) of customer software support or software administrative personnel. Customer will be responsible for all travel and per diem expenses. Customer and SDS will mutually agree upon the agenda and schedule.
- h. Spillman shall consider and evaluate the development of Enhancements for the specific use of Customer and shall respond to Customer's requests for additional services pertaining to the Licensed Program (including, without limitation, data conversion and report-formatting assistance), provided that such assistance, if agreed to be provided, may be subject to supplemental charges mutually agreed to by Spillman and Customer.
- i. Spillman software support, although primarily intended for Spillman application software, also extends limited support for all operating systems where Spillman has an agreement with the supplier. Spillman will make a good faith effort to find solutions to all operating system problems. However, Customer must be aware of the following facts for limited operating system support:
 - 1. In some cases, Customer is in a much better position to deal with operating system issues because they are on-site and because of technical expertise customer may have. In these cases, Spillman recommends that customer work directly with the hardware vendor on these matters. Spillman will still be available to provide assistance whenever needed.
 - 2. Spillman is forced to work with the company that supplied the operating system. If that company fails to provide quality support, Spillman will not be able to provide quality support to our customers. Also, if the company charges Spillman for their support, customer will be billed for these charges.
 - 3. Some operating system problems can only be solved on-site. If and when this situation occurs, Spillman personnel will travel to Customer's site with Customer's approval. Customer will be billed according to the Spillman fee schedule for travel expenses and comprehensive per diem.
 - 4. In the event that a bug is identified in the operating system, Spillman will immediately report the problem directly to the provider. However, we will be required to accept their schedule for fixing the problem.
 - 5. If enhancement requests are made to Spillman for changes to the operating system, Spillman will pass them along to the provider. Spillman can make no commitments as to when, or if, the enhancements will be included in future releases.
 - 6. Spillman will provide assistance with operating system upgrades but Customer is responsible for obtaining the upgrade from the vendor and paying any required fee.
 - 7. Most operating system upgrades require on-site assistance. The fee for on-site assistance is not included with Spillman software support.

8. Spillman must approve all operating system upgrades in advance to verify that the upgrade is necessary and compatible with the Spillman software.
- j. Spillman agrees to provide customer with limited support for the Spillman Software on a second Dec Alpha computer with the Spillman Public Safety Software modules installed on it at no additional cost. It is customer's intent to minimize the production system down time associated with new release (Beta) installations, and testing by utilizing the second DEC Alpha computer for the initial installation and testing of these new releases. Spillman and Customer will also utilize the second DEC Alpha computer for the installation and testing of new DEC Unix operating system releases. Full support including problem diagnosis, problem resolution, and new reports, etc., with the archived test data on the second computer is not covered under the limited support defined in this paragraph and is subject to Spillman hourly charges.
- k. Spillman will provide conference training for one of Customer's System Administrators at the annual User Conference for five years. Food, hotel and travel expenses will be provided by Customer.

3.2 The following items are specifically not covered by this agreement:

- a. Any hardware failure including, but not limited to, failure caused by wiring, multiplexers, modems, phone lines, power, or connectors. Also, any hardware limitations due to insufficient memory, disk storage or processing power.
- b. Any problems caused by hardware failure.
- c. Any problem caused by an operator.
- d. Configuring, maintaining, and upgrading the operating system including, but not limited to, backups and restores, fixes, and patches.
- e. Any problems caused by incorrectly installed, configured, or maintained operating system, or versions of the operating system not supported by Spillman.
- f. Problems with, or caused by any third party software or hardware not supported by Spillman, including but not limited to Imaging, fingerprinting (i.e. DBI, Identix), SNA, X-Stations, word processors (i.e. Word Perfect, Lyrinx, Crystal Writer), terminal emulators, etc.
- g. Any network failures or problems including, but not limited to cabling, communication lines, routers, connectors, and network software.
- h. Printers connected off the back of terminals/personal computer (pass through printing) or network printers not supported by Spillman.

- 3.3 Spillman and Customer understand that Spillman will make every effort to insure that new modules, new releases, bug fixes, and or software patches have been researched and tested to prevent the introduction of new bugs and or problems into the software that may or may not cause operating system data file damage and or application data file damage. It is also, understood that due to the complexity of the Spillman software that on rare occasions bugs and problems will occur. In the event a bug or problem related to the Spillman software would occur and operating system or application data files would be damaged, Spillman will provide necessary remote assistance to Customer's personnel in the reconstruction process which will be completely dependent on the Customer's back-up tapes. In an effort to minimize the risk further, Spillman will notify Customer prior to any new module, bug fix, new release, or software patch installation, and request that Customer perform a fresh, complete backup.

Section 4

OBLIGATION OF CUSTOMER

- 4.1 Customer shall provide access to its facilities in connection with the performance of Spillman of its obligations hereunder. No charge shall be made for such access. It is agreed that prior notification will be given when access is required.
- 4.2 Customer must provide Spillman with information sufficient for Spillman to duplicate the circumstances under which a Problem in a Software Product became apparent.
- 4.3 Customer must maintain a modem and data set connected to the direct dial network near any CPU used with a Software Product being maintained by Spillman hereunder and provide access to a voice grade local telephone.
- 4.4 A representative of Customer must be present when any on-site support is provided. Customer agrees that if such representative is not present when the Spillman representative arrives on-site, no work will be performed and Customer will be charged for such Spillman representative.
- ~~4.5 All communications by Customer to Spillman must be in the English language.~~
- 4.6 Customer is responsible for providing one or more qualified System Administrators as described in Section 5. At least one of these System Administrators must be available at all times.
- 4.7 Customer will provide Spillman Data Systems with a Dec Alpha computer to be used for Allen County/Fort Wayne support purposes. Customer will retain ownership of the computer and maintain a maintenance support contract on same. This specific clause (4.7) may be renegotiated on an annual basis within ninety (90) days of this contracts automatic renewal date.

Section 5

SYSTEM ADMINISTRATOR REQUIREMENTS

- 5.1 Each System Administrator must be certified by Spillman by completing the following:
 - a. Unix fundamentals training. Either the Spillman Unix course, 24 hours, or an equivalent Unix course.
 - b. Basic system administration training. Spillman course, 8 hours.
 - c. System inquiry training. Spillman course, 4 hours.
 - d. System data entry & modification training. Spillman course, 4 hours.
 - e. System administration workshop. Spillman course, 4 hours.
 - f. Pass the Practical examinations and the Spillman system administration certification examination.
- 5.2 Each System Administrator must be identified in an Appendix A properly signed by both Customer and Spillman.
- 5.3 Each System Administrator must be qualified to address, without the aid of Spillman, all problems relating to any hardware, software or operating system not directly associated with Spillman's software.
- 5.4 Calls received by anyone not identified in Appendix A are not covered by this agreement and are therefore subject to hourly fees, and are not subject to minimum Response Time.

5.5 The training requirements may be met in two ways:

- a. The courses are offered twice each year at the offices of Spillman Data Systems in Logan, Utah. There is no charge for users attending this training, but they must travel to Logan and pay their own living expenses. Course dates may be obtained from the Training Department at Spillman Data Systems. The class schedule is:

<u>Monday</u>	
8 AM - 5 PM	Unix Fundamentals
<u>Tuesday</u>	
8 AM - 5 PM	Unix Fundamentals, continued
<u>Wednesday</u>	
8 AM - 5 PM	Unix Fundamentals, continued
<u>Thursday</u>	
8 AM - 12 AM	System Introduction - Inquiry and Reports
1 - 3 PM	
3 - 5 PM	System Administration: Introduction to Security
<u>Friday</u>	
8 AM - 12 AM	System Introduction - Data Entry, Modification
1 - 3 PM	
3 - 5 PM	System Administration: Security, continued
<u>Saturday</u>	
8 AM - 12 AM	System Administration

- b. Any of the above courses may also be provided at the agency. A classroom with sufficient terminals must be provided. The agency must pay for the training at the reduced rate, travel, and living expenses. These costs will be provided on request.
- c. Formal classroom training would not be required if test (practical and written) are passed beforehand.

Section 6

FEES AND CHARGES

- 6.1 Customer shall pay Spillman its fees and charges based on the Software Order. The Software Order is attached to and a part of this Agreement. Additional Software Orders may be signed with Spillman from time to time and will become a part of this agreement. Spillman reserves the right to change its Maintenance Fees a maximum of one time per Agreement Term, and a maximum of 4% (four percent). Fee increases will be effective on the start date of the next full agreement term (full agreement term being January 1 through December 31) provided that no such change will be effective until at least 90 days after Spillman has given customer written notice of such change. Customer will have the option of terminating this agreement during that 90 day fee increase notification period. Fee changes will result from changes in (1) Software Prices, (2) Increases in the number of modules, (3) Changes in the computer hardware or (4) Selection by Customer of different Coverage hours.
- 6.2 Spillman shall send an invoice and claim form to the Customer at the beginning of each contract year for all fees. Charges accrued and all reimbursable expenses incurred shall be invoiced at the beginning of the next calendar month, and furnished to client along with a properly completed claim form. Customer shall pay the uncontested invoiced amounts of the claim with-in 60 days of receipt of such claims. However, all payments are subject to the terms of Paragraph 6.6 herein. Any

uncontested amount not paid within sixty (60) days will bear interest at 18% or the highest rate allowed by law, whichever is less.

- 6.3 Customer shall be responsible for procuring, installing, and maintaining all equipment, telephone lines, modems, communications interfaces, and other hardware necessary to operate the Licensed Software and to obtain from Spillman the services called for by this Agreement.
- 6.4 Customer agrees to pay additional charges according to the Spillman Fee Schedule for all work performed outside of Coverage Hours if work is approved by Customer's system administrator. These charges are applicable for any work performed after hours, even if it was reported and/or initiated during Coverage Hours, if approved by Customer's System Administrator to be conducted outside of coverage hours.
- 6.5 On-site assistance will be performed as requested by Customer. However, it will be billed according to the Spillman Fee Schedule for travel expenses and comprehensive per diem.
- 6.6 Customer Insufficient Funding. Customer believes that sufficient funds can be obtained to pay all amounts due SDS throughout the term of this agreement and hereby covenants and agrees that it will do all things lawfully within its power to obtain, maintain, and properly request and pursue funds from which payments hereunder may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using its best efforts to have such portion of the budget approved and exhausting all available administrative reviews and appeals in the event such portion of the budget is not approved. It is Customer's intent to make all payments due hereunder for the entire term of this Agreement if funds are legally available therefore, Customer represents and warrants to SDS that the services to be performed by SDS hereunder are essential to its proper, efficient and economic operation. In the event insufficient funds are appropriated and budgeted or are otherwise legally not available by any means whatsoever in any fiscal period for which payments due under this Agreement the Customer will immediately notify SDS of such occurrence and SDS may either: (i) reduce its level of services to the amount so budgeted, in which case the parties shall renegotiate the terms of this agreement as it is affected by the Customer reduced funding; or (ii) notify Customer that this Agreement will expire effective on the last day of the fiscal period for which appropriations were received. If no funds are appropriated or budgeted or otherwise legally available then Customer will immediately notify SDS of such occurrence, and this agreement will be deemed expired effective on the last day of the fiscal period for which appropriations were received.
- 6.7 Maintenance will be standard coverage (see section 1.7) at 17% per year. An additional \$10,000 project management fee will be paid in the first year of paid maintenance. It is agreed that the first six months of production use of the system, customer elects 24 hour Extended Coverage (see section 1.8). The additional fee for the 24 hour coverage will be \$1523.00 per month. The following payment schedule shall apply:

<u>DATE</u>	<u>EVENT</u>	<u>AMOUNT DUE</u>
12-28-94	Computer Software License Agreement signed	
05-01-95	SCO Unix version of Spillman Software installed, 15 month "free" maintenance period starts.	
10-01-95*	Tentative production date	\$ 1523.00
11-01-95*	2nd month of 24 hr coverage	\$ 1523.00
12-01-95*	3rd month of 24 hr coverage	\$ 1523.00
01-01-96*	4th month of 24 hr coverage	\$ 1523.00
02-01-96*	5th month of 24 hr coverage	\$ 1523.00
03-01-96*	6th month of 24 hr coverage	\$ 1528.00
04-01-96*		\$ 0.00
05-01-96*		\$ 0.00
06-01-96*		\$ 0.00
07-01-96*		\$ 0.00

08-01-96	2nd Year Maintenance at 17% starts due for maintenance coverage for the remainder of 1996.	\$ 25,905.17
08-01-96	\$10,000 project management fee due	\$ 10,000.00
01-01-97*	Full year maintenance payments start	\$ 62,172.00

*If the production date is delayed, all dates will shift for the same time as the delay.

Section 7

PROPRIETARY RIGHTS

- 7.1 To the extent that Spillman may provide Customer with any Error Corrections or Enhancements or any other software, including any new software programs or components, or any compilations or derivative works prepared by Spillman (collectively, "Vendor Programs"), Customer may (1) install one set (on both DEC machines) of the Vendor Programs (including Spillman source code) in the most current form provided by Spillman, in Customer's own facility; (2) use such Vendor Programs in connection with the Licensed Programs, and in a manner consistent with the requirements of the License Agreement, for purposes of serving Customer's internal business needs; and (3) make one copy of the Vendor Programs in machine-readable form for nonproductive backup purposes only. Customer may not use, copy, or modify the Vendor Programs, or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by Spillman. Upon termination of such License Agreement, Customer shall return or destroy the Vendor Programs, and returning the Vendor Programs in the manner required by the License Agreement shall be sufficient for such purposes. This paragraph will remain in effect until such time that both parties renegotiate this paragraph and or contract.
- 7.2 The Vendor Programs are and shall remain the sole property of Spillman, regardless of whether Customer, its employees, or contractors may have contributed to the conception of such work, joined in the effort of its development, or paid Spillman for the use of the work product. Customer shall from time to time take any further action and execute any further instrument, including documents of assignment or acknowledgment, that Spillman may reasonably request in order to establish and perfect its exclusive ownership rights in such works. Customer shall not assert any right, title, or interest in such works, except for the non-exclusive right of use granted to Customer at the time of its delivery or on-site development.

Section 8

DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY

- 8.1 Spillman disclaims all other warranties, either expressed or implied and representations with respect to the licensed program, including its condition, its conformity to any representation or description, the existence of any latent or patent defects, and its merchantability or fitness for a particular use except as provided in this and all associated contracts.
- 8.2 In no event shall Spillman's cumulative liability for any claim, excluding that for personal injury or property damage by Spillman Personnel, arising in connection with this Agreement exceed the total fees and charges paid to Spillman by Customer within the last 24 months and any reasonable expenses customer may have incurred while attempting to utilize the software of SDS's direction. In no event shall Spillman be liable for any indirect, consequential, special, exemplary, or incidental damages of whatever kind and however caused, even if Spillman knew or should have known of the possibility of such damages.
- 8.3 No action, whether based on contract, strict liability, or tort, including any action based on negligence, arising out of the performance of services under this Agreement, may be brought by either party more than one (3) years after such cause of action accrued, except that an action for nonpayment may be brought within two (2) years of the date of the last payment.

Section 9

TERMINATION

9.1 This Agreement may be terminated as follows:

- a. This Agreement shall immediately terminate upon the termination of the License Agreement;
- b. This Agreement may be terminated by either party upon the expiration of the then-current term of this Agreement, provided that at least 90 days' prior written notice is given to the other party, although customer retains the right to utilize the licensed programs (source code); or
- c. This Agreement may be terminated by either party upon 30 days' prior written notice if the other party has materially breached the provisions of this Agreement and has not cured such breach within such notice period.

9.2 Following termination of this Agreement, Spillman shall immediately invoice Customer for all accrued fees and charges and all reimbursable expenses, and Customer shall pay the uncontested invoiced amount(s) within sixty (60) days of receipt of such invoice and completed claim form. Customer may continue to use any work supplied to Customer by Spillman for the remaining term of the License Agreement. Any uncontested amount not paid within sixty (60) days will bear interest at the highest rate allowed by law.

Section 10

MISCELLANEOUS

- 10.1 Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. The parties further agree that this is the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and that is supersedes and merges all prior proposals, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof. This Agreement may not be modified except by a written instrument duly executed by the parties hereto.
- 10.2 In the event that any provision of this Agreement is held invalid, illegal, or unenforceable, the remaining provisions shall be enforced to the maximum extent permitted by applicable law.
- 10.3 Neither party may assign its rights or duties under this Agreement without the prior written consent of the other party, except to the successor of all or substantially all of its business and properties.
- 10.4 The waiver by either party of any term or condition of this Agreement shall not be deemed to constitute a continuing waiver thereof not of any further or additional right that such party may hold under this Agreement.
- 10.5 This contract is made under the laws of the State of Indiana, and shall be administered in accordance with Indiana law.

[Customer:] Accepted and Approved by Spillman:

Signed: _____

Printed: _____

Title: _____

Date: _____, 19____

Signed: Duane Barker

Printed: Duane Barker

Title: Vice President - Finance

Date: 2/1, 1998

APPENDIX A

SYSTEM ADMINISTRATORS

Allen County Department of Public Purchase

Customer Name

94-3011

Agreement No.

3/30/95

Date

SYSTEM ADMINISTRATORS

1. Name: Donald V. McEvoy, Jr.

Title: Public Safety User Liaison

Office Phone Number: 219-427-1450

Beeper Number: 800-941-0298

Home Phone Number: 219-489-9607

Mailing Address: Systems & Computer Technology 1 E Main St. CICO Bldg Room B16 Fort Wayne, IN 46845

2. Name: Hank Dill

Title: Jail Commander, Allen County Sheriff Department

Office Phone Number: 219-449-7107

Beeper Number: _____

Home Phone Number: _____

Mailing Address: _____

3. Name: Steven L. Smith

Title: Director Ft. Wayne 911 Operations

Office Phone Number: 219-427-1210

Beeper Number: 3002 (Internal city pager)

Home Phone Number: _____

Mailing Address: 1 E Main St CICO Bldg Rm B24 Fort Wayne, IN 46802

Accepted and Approved By:

[Customer:]

Signed: _____

Printed: _____

[Spillman:]

Signed: Duane Barker

Printed: Duane Barker



810 South 100 West
Logan, Utah 84321
(801)753-1610

SUPPORT ORDER

*Customer: Allen County Computer System Project Building Corp. and
Fort Wayne Board of Public Works
One East Main Street, Room 216
Fort Wayne, IN 46802
Contact: Bruce R. Little
(219) 428-7567*

Law Enforcement Software Modules:

Hub
Records Management
CAD Geobase/Response Plans
Premises Information
Traffic Information
Fleet Maintenance
Personnel Management
Jail Management
Commissary Management
Inventory Management
E-911 Interface
External Communications
IBR
Fire Records
License/Permits
Equipment
NIFRS
Barcode Inmate Tracking
Laptop Interface
Civil Process

Software Maintenance Total \$ 62,172.00 (See Section 6.7 for billing dates and other amounts)

This Software Order was filled by Spillman Data Systems, Inc. This is used only as an attachment to the Computer Software Support Agreement.

Approved By:

Name/Title

Date

BOARD OF PUBLIC WORKS

Linda Buskirk
Linda Buskirk, Chairman

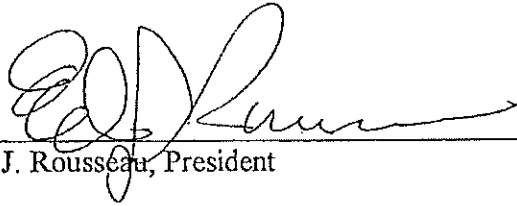
C. James Owen
C. James Owen, Member

ATTEST Patricia J. Crick
Patricia J. Crick, Clerk

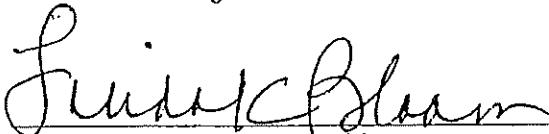
Terrance P. McCaffrey
Terrance P. McCaffrey, Member

Paul Helmke
Paul Helmke, Mayor

BOARD OF COMMISSIONERS OF THE COUNTY OF ALLEN



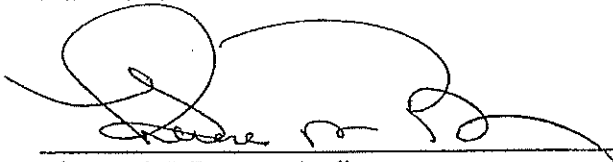
Edwin J. Rousseau, President



Linda K. Bloom, Vice President

Jack C. McComb, Secretary

ATTEST:



Therese M. Brown, Auditor