89PT3M01

1

guts
Government Utilities Technology Service

PVDNET LICENSE, IMPLEMENTATION AND MAINTENANCE AGREEMENT

THIS SOFTWARE LICENSE, IMPLEMENTATION AND MAINTENANCE AGREEMENT is made this 16th day of Nov., 2006 by and between Government Utilities Technology Service, Inc. an Indiana company, with a principal place of business in Boone County Indiana ("Licensor") and Wayne County Commissioners, a lawfully existing governmental entity, and its affiliated entities, offices and divisions (hereinafter collectively referred to as "Customer"), with offices located at Wayne County Administration Building, 401 East Main Street, Richmond, Indiana 47374.

Background

Licensor and it's affiliates has developed and owns certain proprietary software products specifically for state, municipal and county governments, including, without limitation, the PVD system and property management software for county and state governments. Customer desires to obtain a limited, personal, non-exclusive, non-transferable, non-assignable license to use such software and Licensor desires to license such software to Customer on the terms and conditions set forth herein.

IN CONSIDERATION of the foregoing and the mutual covenants set forth herein, and intending to be legally bound, the parties agree as follows:

1. Definitions

The following words shall have the following meanings when used in this Agreement:

1.1. "Affiliate(s)" shall mean those agencies or divisions which are initially listed on Appendix A, attached hereto, which may be amended from time to time with the prior written consent of an authorized executive officer of Licensor.

1.2. "Bypass" or "Work Around" shall mean a procedure by which a user can avoid a reported problem by changes to the procedures followed or data supplied by the user when using the Software or a temporary Fix supplied by Licensor.

1.3. "Critical Error(s) or Bug(s)" shall mean a malfunction or failure of the Software which impacts Customer's ability to provide service and which cannot be temporarily eliminated through the use of a "Bypass" or "Work Around."

1.4. "Enhancement(s)" shall mean any improvement to or change in the Software that alters the original functional characteristics provided to Customer which is incorporated within a Generic Release.

1.5. "Error(s) or Bug(s)" shall mean a malfunction or failure of the Software to work in concert with the Customer's hardware to conform to the Response Time as warranted, conform to the user documentation and operating manuals furnished by Licensor and the specifications governing said Software at the time the order was sent to Licensor, which failure impacts operational performance, functional performance or licensability. Error is also a malfunction; a situation in which a computer cannot follow its instructions, or in which recorded data cannot be retrieved correctly. In computing, error does not necessarily denote a mistake made by a human being.

1.6. "Fix(es)" shall mean corrections or Bypasses of Errors in order for the Software to continue performing functionally in the manner for which it was acquired.

1.7. "Generic Releases" shall mean all Software which includes any enhancement or group of enhancements purchased by Customer.

1.8. "License(s)" shall mean any personal, non-exclusive, non-transferable, non-assignable license or licenses for Customer's internal use only granted by Licensor to Customer to use the Software or Software Products under this Agreement.

1.9. "Object Code" shall mean the binary machine readable version of the Software.

1.10 "Response Time" shall mean the elapsed time between the point Customer transmits data to the computer and the time user receives the response from the computer.

1.11. "Site" shall mean a Customer's computer facility located in one specific geographic location.

1.12. "Software" shall mean the object code version of all programs, data, routines, etc., known as PVDNet with Customer's specified enhancements as identified in Appendix B, and future Generic Releases.

1.13. "Software Acceptance Plan" shall mean that plan set forth in Appendix C, attached hereto, as may be amended from time to time.

1.14. "Software Maintenance" shall mean the work done by Licensor to correct Errors and to provide Fixes, Upgrades and Enhancements to the Software.

1.15. "Software Products" shall mean all physical components, other than Software, which are offered by Licensor, including but not limited to, documentation, magnetic media, job aids, templates and other similar devices.

1.16. "Source Code" shall mean those statements in a computer language, which when processed by a compiler, assembler or interpreter become executable by a computer.

1.17. "Support Services" shall mean the work done by Licensor in support of its Software and Software Products, including but not limited to, Generic Release installation services, training, consultant support, telephone support, and such other services as may be defined in an accepted order.

1.18. "Upgrades" shall mean any and all improvements in the Software that relate to performance or the correction of Errors, but do not alter the original functional characteristics of the Software.

1.19 "Bug(s)" – an error in the computer program. Bugs fall into four main classes; (1) *syntax errors*, where the rules of the programming language were not followed; (2) *semantic errors*, where the programmer misunderstood the meaning of something in the programming language; (3) *logic errors*, where the programmer specified some detail of the computation incorrectly and (4) *infrastructure errors*, where the program falls victim to something wrong with the operating system or programming tool.

2. Orders

Customer may place orders for Software, Software Products and Support Services, subject to the terms of this Agreement by execution and submission to Licensor of an order substantially in the form of Appendix C, attached hereto, which may be amended from time to time. Orders shall be deemed accepted by Licensor unless written notice to the contrary is received within two (2) weeks from Licensor's receipt of the order. All orders shall be deemed to incorporate the terms and conditions of this Agreement and any amendments hereto. This Agreement shall have control over typed, stamped, or preprinted portions of Licensor's and Customers orders or acknowledgments or other communications unless mutually agreed upon by authorized representatives of the parties in writing. Such mutually agreed upon writings shall have control over this Agreement for that specific order only.

3. License

3.1. Licensor grants Customer and Customer accepts a limited, personal, non-exclusive, non-transferable, non-assignable Object Code license to use the Software and Software Products for Customer's internal use only and to the extent ordered by Customer, subject to the provisions of this Agreement as well as the payment of all applicable license fees for the term of such license. Licensor agrees to provide Customer with associated Software Products, Software Maintenance and Support Services subject to the provisions of this Agreement.

3.2. All Software and Software Products used in, for or in connection with the software, parts, subsystems or derivatives thereof (the "System"), in whatever form, including, without limitation, source code, object code, microcode and mask works, including any computer programs and any documentation relating to or describing such Software or Software Products, such as, but not limited to logic manuals and flow charts provided by Licensor, including instructions for use of the Software or Software Products and formulation of theory upon which the Software or Software Products based, are furnished to Customer only under a personal, non-exclusive, non-transferable non-assignable object code license solely for Customer's own internal use.

3.3. Except as provided in this Agreement, no license under any patents, copyrights, trademarks, trade secrets or any other intellectual property rights, express or implied, are granted by Licensor to Customer under this Agreement.

4. Term of Agreement

The term of this Agreement shall commence upon the execution of this Agreement, and shall continue for one (1) year and, so long as Customer maintains a Software Maintenance Agreement with Licensor, for additional terms of one (1) year thereafter until terminated by either party upon at least thirty (30) days prior written notice to the other, or upon the breach of this Agreement by either party. If Customer fails to maintain a Software Maintenance Agreement with Licensor then this Agreement shall terminate automatically.

5. Term of Licenses

The term of each individual License granted under this Agreement begins on the date of installation of the Software as set forth in Section 17, hereof, and shall terminate on the date set forth on the software license and maintenance order which requested such license, unless earlier terminated as provided in this Agreement.

6. Termination of Agreement and/or License

6.1. Licensor shall have the right to terminate this Agreement and, at its option, take possession of the Software and Software Products, if: (a) in Licensor's reasonable judgment, Customer's financial condition does not justify the terms of payment specified above, unless Customer immediately pays for all Software and Software Products which have been delivered, and pays in advance for the balance of Software and Software Products remaining to be delivered during the term of this Agreement; (b) Customer makes an assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of all or any part of Customer's property or business; (c) Customer is adjudicated bankrupt; or (d) Customer neglects or fails to perform or observe any of its obligations hereunder and such condition is not remedied within thirty (30) days after written notice to Customer.

6.2. In the event either party shall be in breach or default of any of the terms, conditions, or covenants of this Agreement or any orders, and such breach or default shall continue for a period of thirty (30) days after the giving of written notice to the party in default, then in addition to all other rights and remedies of law or equity or otherwise, the injured party shall have the right to cancel this Agreement or any such orders placed by Customer without any charge, obligation, or liability whatsoever, except as to the payment for Software, Software Products, Software Maintenance, and/or Services already received and accepted by Customer.

Licensor SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES ARISING FROM A BREACH OF THIS AGREEMENT OR OF ANY ORDER HEREUNDER.

6.3. Upon termination, cancellation or expiration of this Agreement, Customer shall, without request by Licensor, immediately return all papers, materials and property of Licensor held by Customer. In addition, each party will assist the other in the orderly termination of this Agreement and in the transfer of all property, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of each party.

6.4. Within thirty (30) days of the termination, cancellation or expiration of each License granted hereunder, Customer shall, upon Licensor's request, certify in writing that to the best of its knowledge all copies of the Software, in whole or in part, have been removed from its production libraries. Concurrent with this certification, Customer will return to Licensor all documentation and Software required by Licensor to be returned and Customer's project manager and/or technology director will certify to Licensor that such documentation and Software have been destroyed.

7. Obligations Which Survive Termination

Customer recognizes and agrees that its obligations under Sections 8, 12, 14, 15 and 16 of this Agreement survive the cancellation, termination or expiration of this Agreement. These same Sections shall apply for the duration of Customer's use of Software licensed under the license granted in Section 3 hereof.

8. License Fees

8.1. The price schedule for the license fees for Software, Software Products, Software Maintenance and Support Services ordered hereunder, including any applicable discount and payment schedules, are initially indicated in Appendix D, attached hereto which may be amended from time to time, by providing Customer thirty (30) days written notice prior to the effective date of any price change.

8.2. The machine class of each Software License, where applicable, shall be determined at the time of order, in accordance with the then current listing as may be amended from time to time and initially set forth in Appendix E. Unless Customer moves the Software to a higher class CPU, said machine class shall not change for any existing License and Licensor shall not restructure machine classes or License fees in any way that will cause an increase in any License fees for Licenses already acquired by Customer, other than in accordance with this Section.

8.3. If Customer moves the Software to a higher machine class CPU, Customer shall notify Licensor in writing within thirty (30) days of the move and, if applicable, shall incur an upgrade charge which will be the difference between the License fee charged for functionally identical Software placed on the higher class CPU, after any associated discounts are applied, and the License fee paid by Customer for the Software being moved. Licensor shall invoice Customer for said upgrade charge.

9. Terms of Payment

Licensor shall invoice Customer for Software or Software Products services based upon terms described in Appendix F – Fee Schedule and Appendix G – Terms of Payment, attached hereto. Licensor may charge Customer a 1.5% monthly finance charge to be calculated monthly with respect to all outstanding amounts not paid within thirty (30) days following the date of Licensor's invoice(s) but in no event shall any finance charge exceed the maximum allowed by law.

10. Taxes

There shall be added to the charges provided for in this Agreement amounts equal to any taxes, whether federal, state, or local, however designated, which may be validly levied or based upon

this Agreement or upon the Software and Software Products furnished hereunder, excluding, however, ad valorem personal property taxes, if any, state and local privilege, excise, or use taxes based on gross revenue, taxes based on or measured by Licensor's net income, and any taxes or amounts in lieu thereof paid or payable by Licensor in respect of the foregoing excluded items. Taxes payable by Customer shall be billed as separate items on Licensor's invoices and shall not be included in Licensor's prices. Customer shall have the right to have Licensor contest with the imposing jurisdiction, at Customer's expense, any such taxes that Customer deems are improperly levied.

11. Training and Installation

If requested by Customer, Licensor shall provide, at Licensor's then existing price, instructors and the necessary instructional material, at mutually agreed upon locations and times, to install the Software on Customers Computer System and to train Customer's personnel in the operation, use and maintenance of Software furnished hereunder.

12. Confidential Information

Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information," and each party agrees that it will not, during or after the term of this Agreement, permit the duplication, use, or disclosure of any such Confidential Information to any person (other than an employee, agent or representative of the other party who must have such information for the performance of its obligation hereunder), unless such duplication, use or disclosure is specifically authorized by the other party in writing, except to the extent that Customer, as a public entity, may be required to release data and/or make copies of documents available to third parties under applicable public access / public records laws. Each party shall use reasonable diligence, and in no event less than that degree of care which such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this Agreement permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions.

For the purposes of this Section, the term "Confidential Information " shall not include: information which is in the public domain; information known to the recipient party as of the date of this Agreement, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source who is not under an obligation of confidentiality with respect to such information. The provisions of this Section 12 shall survive termination or expiration of this Agreement.

13. Manuals, Documentation and Object Code

13.1. Customer shall have the right, at no additional charge, to reproduce solely for its own use, all manuals and documentation furnished by Licensor pursuant to this Agreement and any order, regardless of whether such manual or documentation is copyrighted or otherwise restricted as proprietary information. All copies of manuals or documentation made by Customer shall include any proprietary notice or stamp that has been affixed by Licensor. Licensor shall furnish for each License obtained by Customer, and at no additional charge to Customer, one (1) copy of the relevant Software documentation and any succeeding changes thereto, sufficient to enable Customer to maintain and operate the Software.

13.2. Object Code software may be reproduced by Customer, at no additional charge, only for back-up or archival purposes or as otherwise stipulated in this Agreement. Customer shall notify Licensor in writing of its methods and procedures for archiving of Object Code software prior to doing so.

14. Patent and Other Proprietary Rights Indemnification

14.1. The following terms apply to any infringement or claim of infringement of any patent, trademark, copyright, trade secret or other proprietary interest based on the licensing, use, or sale of any Software, Software Products, Software Maintenance and/or Support Services furnished to Customer under this Agreement or in contemplation hereof subject to the limitations contained herein. Licensor shall indemnify Customer for any loss, damage, expense or liability, including costs and reasonable attorney's fees, that may result by reason of any such infringement or claim, except where such infringement or claim arises solely from Licensor's adherence to Customer's written instructions or directions which involve the use of merchandise or items other than (1) commercial merchandise which is available on the open market or is the same as such merchandise, or (2) items of Licensor's origin, design or selection: and Customer shall so indemnify Licensor in such excepted cases. Each party shall defend or settle, at its own expense, any action or suit against the other for which it is responsible hereunder. Each party shall notify the other promptly of any claim of infringement for which the other is responsible, and shall cooperate with the other in every reasonable way to facilitate the defense of any such claim.

14.2. In addition, in the event an injunction or order shall be obtained against Customer's use of any item by reason of any such infringement allegation or if, in Licensor's sole opinion, the item is likely to become the subject of a claim of infringement or violation of patent, copyright, trademark, trade secret, or other proprietary right of a third party, Licensor will, without in any way limiting the foregoing, in Licensor's sole discretion and at Licensor's expense either: (a) Procure for Customer the right to continue using the item: (b) Replace or modify the item so that it becomes non-infringing, but only if the modification or replacement does not, in Licensor's reasonable sole opinion, adversely affect the functional performance or specifications for the item or its use by Customer: or (c) If neither (a), nor (b), above is practical, remove the item from Customer's Site and refund to Customer any charges paid by Customer for periods subsequent to removal, and release Customer from any further liability under the applicable order. In the event Customer must replace any Software or Software Product with a comparable product from a third-party supplier at a higher cost to Customer than available under this Agreement or the applicable order, Licensor shall reimburse Customer for the difference between Licensor's price for the replaced Software or Software product and the third-party supplier's price for its comparable product, with Customer providing satisfactory documentation to Licensor to substantiate such reimbursement.

14.3. In no event shall Customer be liable to Licensor for any charges after the date that Customer no longer uses the item because of actual or claimed infringement.

15. Indemnity

Subject to the limitations contained herein, Licensor agrees to indemnify and save harmless Customer, and Customer agrees to indemnify and save harmless Licensor respectively, from any liabilities, lawsuits, penalties, claims or demands (including the costs, expenses and reasonable attorney's fees on account thereof) that may be made: (1) by any third party for injuries, including death, to persons or damage to property, including theft, resulting from the indemnifying party's

negligent or willful acts or omissions or those of persons furnished by the indemnifying party, its agents or subcontractors or resulting from use of the Software, Software Products and/or Support Services furnished hereunder; or (2) by any employee or former employee of the indemnifying party or any of its subcontractors for which the indemnifying party or subcontractor's liability to such employee or former employee would otherwise be subject to payments under state worker's compensation or similar laws. Licensor agrees to defend Customer, at Customer's request, and Customer agrees to defend Licensor, at Licensor's request, against any such liability, claim, or demand. Customer and Licensor respectively agree to notify the other party promptly of any written claims or demands against the indemnified party for which the indemnifying party is responsible hereunder. The foregoing indemnity shall be in addition to any other indemnity obligations of Licensor or Customer set forth in this Agreement

16. Limitation of Warranty and Liability

16.1. EXCEPT AS SET FORTH IN SECTION 18, LICENSOR MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SOFTWARE, SOFTWARE PRODUCTS OR SERVICES OR THEIR CONDITION, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE BY CUSTOMER. LICENSOR SHALL NOT BE LIABLE FOR ANY (I) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, ARISING FROM OR RELATED TO THE OPERATION OR USE OF THE SOFTWARE, SOFTWARE PRODUCTS AND SERVICES INCLUDING SUCH DAMAGES, WITHOUT LIMITATION, AS DAMAGES ARISING FROM LOSS OF DATA OR PROGRAMMING, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, DAMAGE TO EQUIPMENT, AND CLAIMS AGAINST CUSTOMER BY ANY THIRD PERSON, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (II) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY LICENSOR TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND ITS REASONABLE CONTROL; OR (III) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST LICENSOR MORE THAN TWO YEARS AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, LICENSOR'S LIABILITIES UNDER THIS AGREEMENT SHALL NOT BE GREATER THAN THE AMOUNTS ACTUALLY RECEIVED BY LICENSOR PURSUANT TO THE TERMS OF THIS AGREEMENT.

16.2. With the exception of liability arising from Customer's breach of Section 12, Customer's payment obligations hereunder or Customer's obligations under the terms of its License set forth in Sections 3 and 15, Customer shall not be liable for any (i) special, indirect, incidental, or consequential damages, including loss of profits, arising from or related to operation or use of the Software and Software Products or services including such damage, without limitation, as damages arising from loss of data or programming, loss of revenue or profits, failure to realize savings or other benefits, damage to equipment, and claims against Licensor by any third person, even if Customer has been advised of the possibility of such damages; (ii) damages (regardless of their nature) for any delay or failure by Customer to perform its obligations under the agreement due to any cause beyond its reasonable control; or (iii) claims made a subject of a legal proceeding against Customer more than two years after such cause of action first arose.

17. Acceptance

17.1. At Customer's option, Customer shall conduct Software and Software Products acceptance tests during the installation process at a Customer designated location(s) and during a ten (10) day

acceptance period. The acceptance period will commence once the Software is operational in the Customer designated location(s). The Software and Software Products shall: (1) comply with the provisions of the order; (2) function substantially in accordance with Licensor's specifications and response times; (3) be compatible and conform to user documentation and operating manuals furnished by Licensor: and (4) comply with a mutually agreed upon Software Acceptance Plan which shall be developed and agreed to in writing by Customer and Licensor prior to installing the Software in the first Customer specified location. Customer will assume the responsibility for the initial preparation of the Software Acceptance Plan.

17.2. If, during the acceptance period, Customer determines that the Software and/or Software Products do not substantially meet the above requirements, Customer shall so notify Licensor in writing, specifying the area of noncompliance. Licensor shall perform its good faith efforts to correct all conditions which prevent the Software and/or Software Products from substantially meeting the above requirements within sixty (60) calendar days following receipt of notice from Customer. If all Customer reported conditions which prevent the Software and/or Software products from substantially complying with the acceptance criteria are not corrected by the end of acceptance period, the Customer will notify the Licensor, in writing, within ten (10) calendar days following the end of the acceptance period identifying the specific areas of non-compliance. Failure to notify Licensor in writing will constitute acceptance of the Software and/or Software Products. Upon receipt of written notice of non-compliance an extension period of thirty (30) calendar days begins which will supply Licensor with the time necessary to correct the deficiencies identified in the notice. Within ten (10) days after the extension period ends the Customer will provide written notice to Licensor indicating Customer's acceptance of the Software and/or Software Products, Customer's desire to extend the "extension period" or the Customer's intent to terminate this Agreement without penalty or further financial obligation.

18. Warranty

Except as provided below, Licensor warrants that it owns all rights, title and interest in and to the Software and Software Products, except for any third party database software, that all Software and Software Products shall substantially conform to the criteria described in Section 17 above, and that the Software and Software products shall be free from material defects in workmanship and materials which prevent them from substantially meeting the aforementioned criteria. This warranty coverage shall include all maintenance performed and any modifications made to the Software by Licensor. Such warranty shall extend for 180 days from the beginning of the acceptance period. Licensor's responsibility under this warranty shall be to correct or replace, at no additional charge to Customer, any part of the Software or Software Products found to be defective. If within a commercially reasonable period Licensor neither corrects such defects nor replaces the defective Software or Software Products, then Customer's sole and exclusive remedy shall be to receive a refund in an amount equal to the license fees paid to Licensor for use of the defective Software or Software Products. Licensor further warrants that any Services provided by Licensor under this Agreement shall be performed in a fully workmanlike manner and in accordance with the prevailing professional standards of the software industry. This warranty shall survive inspection, test, acceptance, use and payment. Licensor FURNISHES THE ABOVE WARRANTIES IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Any and all warranties shall be void as to Software or Software Products damaged or rendered unserviceable by: (1) the acts or omissions of non-Licensor personnel; (2) misuse, theft, vandalism, fire, water, or other peril; (3) moving, relocation, alterations or additions not authorized by Licensor.

19. Right to Move

Any Software License may be temporarily transferred to a backup computer system while the licensed computer system is inoperative or for emergency testing purpose. Customer may re-designate the Site or the CPU on which the Software will be used for on-going operation. Customer shall be permitted concurrent operation at the new and old Site or CPU for not more than thirty (30) days and such operation will require no additional fees. Customer shall provide the Licensor written notice of the re-designation within a reasonable length of time of the Software being moved to the new Site or CPU. In the event Customer moves the Software to another Customer Site or CPU, or assigns Software licensed under this Agreement. Licensor agrees that it shall continue the warranty or the Software Maintenance of the product, and assist in its transfer to such other Site, CPU or assignee.

20. Software Maintenance Implementation and Data Conversion

20.1. During the period for which Customer has ordered and paid for Software Maintenance, Licensor shall be responsible for performing Software Maintenance to the latest Generic Release. Such Software Maintenance shall include corrections of any and all Errors, regardless of how any such Error is brought to the attention of Licensor. The maintenance period for the Software or Software Products shall be for the term of the license obtained under each order or as set forth in the Software Maintenance agreement, but no longer then the period of time in which the Software or Software Products are in use by the Customer. The fees for such Software Maintenance and additional terms for the Software Maintenance agreement shall be as set forth in Appendix H.

20.2. If requested in an order accepted by Licensor, Licensor shall provide Data Conversion Services to Customer as set forth in Appendix I which also includes the fees and additional terms for such services.

21. Fixes, Upgrades and Enhancements

21.1. Customer will notify Licensor verbally of Errors, with written notification to Licensor by Customer within twenty-four (24) hours. Licensor shall provide Customer with a telephone number designated to accept Error reports.

21.2. Licensor shall use its good faith efforts to immediately correct any Critical Errors affecting Customer's continued business use of the Software after Licensor's notification of the Error. Licensor will use its good faith efforts to correct all other Errors within five (5) days after Licensor's notification of the error.

21.3. As part of the Maintenance support provided by Licensor, Licensor agrees to incorporate any Customer specific or unique Software in any new versions of Licensor's Software, at Licensor's cost to Customer, other than any applicable charge for an Enhancement and Software Maintenance fees relating thereto in accordance with Appendix J attached hereto.

22. Customer Preparation

If the Software or Software Products are to be installed by Licensor, the Customer shall have all things in readiness for installation, including, but not limited to, other equipment, connections and facilities for installation at the time the Software or Software Products are delivered. In the event the Customer shall fail to have all things in readiness for installation on the scheduled installation

date, the Customer shall reimburse Licensor for any and all expenses caused by Customer's failure to have things in readiness, unless Customer has notified Licensor at least five (5) business days prior to the scheduled installation date. Customer agrees to provide and bear the cost of a dedicated communications facility equipped with a compatible modem for the purposes of remote access and support by the Licensor consultant or phone support group.

23. Assignment

Customer may not assign or transfer its interests, rights or obligations under this Agreement by written agreement, merger, consolidation, operation of law or otherwise, without the prior written consent of an authorized executive officer of Licensor.

24. Amendments, Modifications or Supplements

Amendments, modifications or supplements to this Agreement shall be permitted, provided: (1) changes shall be in writing signed by the authorized representatives of both parties; (2) changes shall reference this Agreement and identify the specific articles or sections contained herein which are amended, modified or supplemented; (3) changes shall not adversely affect vested rights or causes of action which have accrued prior to the effective date of such change.

25. Independent Contractor

All work performed by Licensor in connection with the Software, Software Products, Software Maintenance, and/or Support Services described in this Agreement shall be performed by Licensor as an independent contractor and not as the agent or employee of Customer. All persons furnished by Licensor shall be for all purposes solely the Licensor's employees or agents and shall not be deemed to be employees of Customer for any purpose whatsoever. Licensor shall furnish, employ and have exclusive control of all persons to be engaged in performing Support Services under this Agreement and shall prescribe and control the means and methods of performing such Services by providing adequate and proper supervision. Licensor shall be solely responsible for compliance with all rules, laws and regulations relating to employment of labor, hours of labor, working conditions, payment of wages, and payment of taxes, such as employment, Social Security, and other payroll taxes including applicable contributions from such persons when required by law. Licensor may engage subcontractors to perform any of the work and in such case those persons shall not be deemed to be employees, agents or contractors of Customer for any purpose whatsoever.

26. Publicity

Licensor agrees to submit to Customer all advertising, sales promotions, press releases and other publicity matters relating to the Software, Software Products or Support Services provided by the Licensor under this Agreement wherein Customer's corporate or trade names or trademarks or those of Customer's Affiliated Companies are mentioned or language from which the connection of said names or trademarks therewith may be inferred or implied. Licensor further agrees not to publish or use such advertising, sales promotions, press releases or publicity matters without Customer's prior written approval, which approval shall not be unreasonably withheld.

27. Compliance With Laws

Licensor and Customer each shall comply with the provision of all applicable federal, state,

county and local laws, ordinances, regulations, and codes including, but not limited to, Licensor's and Customer's obligations as an employer with regard to the health, safety and payment of its employees, and identification and procurement of required permits, certificates, approvals, and inspections in Licensor's and Customer's performance of this Agreement. Notwithstanding whether a specification is furnished, if Software, Software Products and Support Services, or containers furnished are required to be constructed, packaged, labeled, or registered in a prescribed manner, Licensor shall comply with federal laws and applicable state or local law. Licensor further agrees that, during the term of this Agreement, the Software and Software Products will comply with and be capable of being certified by all applicable state, county and local governing bodies, including without limitation, the State Board of Accounts and the Department of Local Government and Finance, and Licensor will be, and will cause the Software and Software Products to be, annually certified and in good standing with such governing bodies. Licensor shall indemnify Customer for, and defend Customer against, and Customer shall indemnify Licensor, and defend Licensor against, any loss or damage sustained because of such indemnifying party's noncompliance in accordance with the provisions set forth in Section 15 hereof.

28. Security, Access and Safety Requirements

Licensor shall instruct its employees, agents and subcontractors that they shall comply with Customer's security, access and safety requirements for the protection of Customer's facilities and employees while on Customer's premises.

29. Releases Void

Neither party shall require waivers or releases of any personal rights from representatives of the other in connection with visits to Licensor's and Customer's respective premises. No such releases or waivers shall be pleaded by Licensor or Customer or third persons in any action or proceeding against an employee.

30. Applicability of Uniform Commercial Code

To the extent this Agreement or any order entails the delivery of Software, Software Products or Services, such software, software products or services shall be deemed "goods" within the meaning of the UCC, except when deeming services as "goods" would cause an unreasonable result. This Agreement or an order shall control where there is a conflict in provisions with the UCC.

31. Governing Law

The validity, construction, interpretation and performance of this Agreement shall be governed by and construed in accordance with the domestic laws of the State of Indiana except as to its principals of conflicts of laws.

32. Waiver of Breach

No waiver of breach or failure to exercise any option, right or privilege under the terms of this Agreement on any occasion or occasions shall be construed to be a waiver of the same or any other option, right or privilege on any other occasion.

33. Force Majeure

Neither party shall be responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, act or omission of carriers or other similar causes beyond its control. If any such event of force majeure occurs, the party delayed or unable to perform shall give immediate notice to the other party, and the party affected by the other's delay or inability to perform may elect at its sole discretion to: (a) terminate this Agreement or the affected order solely upon mutual agreement of the parties; (b) suspend such order for the duration of the condition and obtain or sell elsewhere Software, Software Products, or Support Services comparable to the Software, Software Products, or Support Services to have been obtained under the order; or (c) resume performance of such order once the condition ceases with an option in the affected party to extend the period of this Agreement up to the length of time the condition endured. Unless written notice is given within thirty (30) days after the affected party is notified of the condition, this option (c) shall be deemed selected.

34. Severability

If any of the provisions of this Agreement shall be invalid or unenforceable under the laws of the State of Indiana applicable to the entire Agreement, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of Licensor and Customer shall be construed and enforced accordingly.

35. Conflict of Interest

Licensor stipulates that no officer or employee of Customer or any of its Affiliated Companies has been employed, retained, induced or directed by Licensor to solicit or secure this Agreement with Customer upon an agreement, offer, understanding or implication involving any form of remuneration whatsoever. Licensor agrees, in the event of an allegation of substance that there has been a violation hereof, Licensor will cooperate in every reasonable manner with Customer in establishing whether the allegation is true. Notwithstanding any provisions of this Agreement to the contrary, if a violation of this provision is found to have occurred and is deemed material by Customer, Customer may request that Licensor take the appropriate legal action to discipline the responsible party.

36. Notices

With the exception of invoices, insurance papers, shipping papers and reports, all notices, demands, or other communications herein provided to be given or which may be given by any party to the other shall be deemed to have been duly given when made in writing and delivered in person, or upon receipt, if deposited in the United States mail, postage prepaid, certified mail, return receipt requested, as follows:

Notices to Customer:
Chris Beeson
Wayne County Auditor
Wayne County Administration Building
401 East main Street
Richmond, Indiana 47374

Notices to Licensor:
PVDNet, LLC,
Attention: Eric V. Goodnight
11367 West 275 N
Thorntown, Indiana 46071

or to such address as the parties may provide to each other in writing from time to time.

37. Risk of Loss

Risk of loss or damage to Software and/or Software Products licensed by Customer under this Agreement shall vest in Customer when the Software and/or Software Products have been received by Customer, or its representative, provided that such loss or damage is not caused by Licensor, employees or its agents.

38. Enumerations, Background and Headings

The enumerations, "Background" and headings contained in this Agreement are inserted for convenience only and are not intended to have any substantive significance in interpreting this Agreement.

39. Incorporation of Appendices

Appendices A through J, referred to in this Agreement and attached hereto, are integral parts of this Agreement and are incorporated herein by this reference.

40. Entire Agreement

This Agreement, the orders, appendices, and subordinate documents referenced in such orders constitute the entire agreement between the parties with respect to the subject matter contained herein, superseding all previous agreements pertaining to such subject matter, and may be modified only by an amendment executed in writing by authorized representatives of both parties hereto. All prior agreements, representations, statements, negotiations, understandings and undertakings are superseded hereby. Both parties hereto represent that they have read this Agreement, understand it, agree to be bound by all terms and conditions stated herein, and acknowledge receipt of a signed, true and exact copy of this Agreement.

41. Specifications

Licensor reserves the right, without prior approval from or notice to Customer, to make changes to the Software and Software Products and to substitute Software and Software Products reflecting those changes provided the Software and Software Products delivered substantially conform to the new specifications.

42. Third Party Software

Customer shall have sole responsibility to obtain and pay for any third party software necessary or desirable to operate the Software.

43. Antidiscrimination Clause

In the hiring of employees for the performance of work under this contract or any subcontract hereunder, no contractor or subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, religion, color, sex, national origin or ancestry, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates.

No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, religion, color, sex, national origin or ancestry.

There may be deducted from the amount payable to the contractor by Wayne County, Indiana, under this contract, a penalty of five dollars ($5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this contract.

This contract may be cancelled or terminated by Wayne County, Indiana and all money due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract.

Breach of the terms or conditions of this section of the contract may be regarded as a material breach of the contract.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the day and year first written above.

Government Utilities Technology Service, Inc

By: _____

Printed: Eric V. Goodnight

Customer

By: _____

Printed: _____

By: _____

Printed: Mary C Heyob

By: _____

Printed: _____

APPENDIX A – AFFILIATES

There are no "Affiliates" for this contract.

APPENDIX B – CUSTOMER SPECIFIC ENHANCEMENTS

GUTS, believes that the County will accept the PVD program as advertised and demonstrated to county personnel. However GUTS agrees that the County may request minor changes to the program to facilitate the County's requirements and further agrees that it will provide up to 80 free hours of programming to make such minor changes.

As of October 30. 2006 the County has not requested any specific enhancements above the current release of PVD. If the County requires any specific enhancements beyond the current release a change order must be filed with the Licensor and the Licensor will provide a price for the work which must be agreed to in writing and approved by the County before any commencement of work.

The Billable rate for this work will be $120.00 per hour.

APPENDIX C – SOFTWARE ACCEPTANCE PLAN

A software acceptance plan will be negotiated between the Licensor and the County prior to the final installation of the product. This plan will be agreed to by both parties and then become Appendix C of this document.

APPENDIX D – ORDER FORM

	Auditor / Treasurer	Assessor / Auditor / Treasurer
PVD Property Management and Tax Software	25 full edit seats and 10 read only seats	35 full edit seats and 15 read only seats
Integration Software	Tax Sales / Sales Disclosure	Tax Sales / Sales Disclosure
Software Customization	PVD to ProVal Plus	NA
Installation	1	1
Training	7 days	7 days
Conversion	1	1
Yearly Support (1)	Provided after 90 days of sign off and annually thereafter	Provided after 90 days of sign off and annually thereafter
Daily Cash Sheet for the Treasurer	Yes	Yes

(1) This amount will be prorated for the first year;

APPENDIX E – SOFTWARE MACHINE CLASS

The specifications below are based on single server installations of 0 - 100 users. The PVD system is a robust application requiring significant resources. These hardware recommendations should be reviewed for your site and verified prior to implementation.

PVD Hardware / Software Requirements	
Minimum requirements for server	**Recommended specifications for server**
Server	
Processor:	**Processor:**
2.8GHz Intel Xeon	Dual 3.2 GHz (1MB cache) Intel Xeon processors
Memory:	**Memory:**
2GB of RAM (Preferably ECC)	4GB of ECC RAM (servers supporting multiple applications)
Disk Subsystem:	**Disk Subsystem:**
Wide Ultra160 SCSI RAID Controller	Wide Ultra320 SCSI RAID Controllers (1 or 2 channels)
RAID Level 1 Drives (Two 10,000 RPM Disk Drives) or	RAID Level 1 Drive (Two 15,000 RPM Disk Drives)
RAID Level 5 Drives (Three 10,000 RPM Drives)	- Operating system, memory swap file and RDBMS Logs
	RAID Level 5 Drive (Three or more 15,000 RPM Drives)
	- SQL Database
	- User Data
Power:	**Power:**
UPS – 750Kva (External)	UPS – 750Kva (External)
	Redundant power supplies
Peripherals:	**Peripherals:**
3.5" Floppy drive	3.5" Floppy drive
24x CD-ROM Drive	Combo CD / DVD-ROM Drive
Backup System:	**Backup System:**
40 / 80GB DLT Tape Drive	80 / 160GB DLT Tape Drive
Veritas Backup Exec V10.0	Veritas Backup Exec V10.0
- Open File option	- Open File option
	- SQL Agent Option
Software:	**Software:**
Windows 2000 Server Standard	Windows 2003 Server Standard
SQL Server 2005	SQL Server 2005 Standard with Software Assurance

Workstation Hardware / Software Requirements	
Hardware:	Hardware:
1.4GHz Pentium III	2.4GHz Pentium IV
256MB of RAM	512MB of RAM
15" Monitor (1024x768 resolution)	17" Monitor (1024x768 resolution)
40GB Disk Drive	80GB Disk Drive
100Mbit Ethernet Network Card	100Mbit Ethernet Network Card
24X CD-ROM Drive	24X CD-ROM Drive
Software:	
Windows 2000 Professional SP4	Windows XP Professional SP2
Microsoft Office 2000	Microsoft Office Professional 2003

APPENDIX F – FEE SCHEDULE

	Wayne County	
	Auditor / Treasurer	**Assessor / Auditor / Treasurer (6)**
Software	25 edit seats and 10 read only seats	35 edit seats and 15 read only seats
Integration Software	Tax Sale / Sales Disclosure (1)	Tax Sale / Sales Disclosure (1)
Software Customization - PVD to ProVal plus	Yes	NA
Installation	Yes	Yes
Training (7 days)	Yes	Yes
Conversion	Yes (2) (4)	Yes (3) (4)
Totals	$158,592.00	$189,500.00
Yearly Support Services / Maintenance (after 90 days of sign off)	$31,800.00 (5)	$43,350.000 (5)
Daily Cash Sheet for Treasurer	No Charge	No Charge

(1) County elects to have the Tax Sale or Sales Disclosure Software.

(2) Conversion only of cleaning and converting Treasurer and Auditor Data. This does not include converting any data from the Assessor.

(3) Conversion of cleaning and converting Assessor, Treasurer and Auditor Data.

(4) If the County wants to have GUTS create the new state parcel numbers please add $15,000.

(5) This amount will be prorated for the first year;
Example – if the solution is installed and signed off of in March 2006 plus 90 days the first year maintenance would be $15,900.00

(6) This price is good for two years to allow the Assessor to move to PVD.

APPENDIX G – TERMS OF PAYMENT

10% of total project required within 15 days of contract signature
10% of total project retained by county until county sign-off
20% of total project to be paid per month during project (four months)

Programming Fees (for work requested and agreed to by the County in writing)
$120.00 per hour

APPENDIX H – MAINTENANCE AGREEMENT / FEES

Annual Support Services / Maintenance (telephone support, software updated, legislative changes and changes required by the DLGF or state board of accounts).

Support and maintenance will begin 90 days after the Customer has accepted the software.

First year support and maintenance will be prorated for the remainder of the year beginning after the 90 day sign off period discussed above.

Annual maintenance to be paid by February 1st each following year.

Annual Fee for Auditor / Treasurer	$31,800.00
Annual Fee for Auditor / Treasurer / Assessor	$43,350.00

APPENDIX I – DATA CONVERSION SERVICES / FEES

The Licensor will provide data conversion of the data from the County's Treasurer, Assessor and Auditor's current legacy system to the PVD software. The Licensor is responsible to work with the current Vendor or internal staff to insure a full conversion of the existing data.

APPENDIX J – CUSTOMER SPECIFIC SOFTWARE

None