

1 **BILL NO. S-24-01-20**

2
3 SPECIAL ORDINANCE NO. S-15-24

4
5 **AN ORDINANCE** approving THE MULTIMODAL
6 BIOMETRIC IDENTIFICATION SYSTEM (AFIS)
7 ANNUAL MAINTENANCE - QUOTE DATED
8 NOVEMBER 3, 2023 – \$120,000.00 between NEC
9 CORPORATION OF AMERICA and the City of Fort
10 Wayne, Indiana, as a Special Procurement under I.C.
11 5-22-10 by and through its Fort Wayne Police
12 Department.

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

15 **SECTION 1.** That the MULTIMODAL BIOMETRIC
16 IDENTIFICATION SYSTEM (AFIS) ANNUAL MAINTENANCE PROCUREMENT -
17 QUOTE DATED NOVEMBER 3, 2023 - \$120,000.00 between NEC
18 CORPORATION OF AMERICA and the City of Fort Wayne, Indiana, as a Special
19 Procurement under I.C. 5-22-10 by and through its Fort Wayne Police Department,
20 is hereby ratified, and affirmed and approved in all respects, respectfully for:

21 All labor, insurance, material, equipment, tools, power,
22 transportation, miscellaneous equipment, etc., necessary for the
23 procurement of the Multimodal Biometric Identification System
24 (AFIS) Annual Maintenance;

25 involving a total cost of ONE HUNDRED TWENTY THOUSAND AND 00/100
26 DOLLARS - (\$120,000.00) all as more particularly set forth in said MULTIMODAL
27 BIOMETRIC IDENTIFICATION SYSTEM (AFIS) ANNUAL MAINTENANCE
28 PROCUREMENT between NEC CORPORATION OF AMERICA which is on file in
29 the Office of the Department of Purchasing, and is by reference incorporated
30 herein, made a part hereof, and is hereby in all things ratified, confirmed and
approved.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

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


Malak Heiny, City Attorney



November 3, 2023

Mary Hale
Fort Wayne Police Department
1 E. Main St Ste. 108
Fort Wayne, IN 46802

Dear Ms. Hale:

The term of your maintenance agreement on your NEC MBIS (Multimodal Biometric Identification System) equipment is due for renewal. The Annual Maintenance Charge (AMC) for 2024/25 will be \$120,000. Please accept this letter as notification for the maintenance charges of your NEC MBIS with coverage effective March 29, 2024 through March 28, 2025.

Total 5 Year Maintenance Agreement Amount:	\$	600,000.00
Annual Maintenance Amount:	\$	120,000.00
Total Year 2 Maintenance Amount Due:	\$	120,000.00

This is not an invoice. Invoices will be sent separately from our billing team upon receipt of a purchase order.

The NECAM team is proud of our history supporting national, state and local law enforcement in their crucial roles and we are committed to providing you with excellent service and support. NEC appreciates your past business and we look forward to fulfilling your future MBIS needs.

Sincerely,

Maria Hansen

Maria Hansen
Project Specialist
NEC Corporation of America
Ph: 910-746-3211
Maria.hansen@necam.com

General Terms and Conditions – Hardware and/or Software Maintenance Services

- 1. GENERAL** The General Terms and Conditions (“*Agreement*”) contained herein shall apply to all quotations, renewals and offers made by and purchase orders accepted by **NEC Corporation of America** (“*NEC*”). These terms, including terms referenced in any Appendices and/or Exhibit, if any, apply to all NEC Maintenance Services which customer acquires from NEC, except to the extent that terms conflict with an existing contract where those terms and conditions (signed by NEC and customer) shall take precedence over this document. As used herein, “*NEC Maintenance Service(s)*” means, as applicable, preventive, remedial, repair, special and/or on-site maintenance services relating to NEC equipment, software and/or hardware provided by NEC under this Agreement. The General Terms and Conditions shall take precedence over any terms referenced in customer’s purchase order and shall become binding irrespective of whether the customer accepts these conditions by a written acknowledgement, by implication, or acceptance and payment of products ordered hereunder. NEC’s failure to object to provisions contained in any communication from customer shall not be deemed a waiver of the provisions herein. Any changes in the terms contained herein, or any additional or different terms must specifically be agreed to in writing, and signed by an authorized representative of NEC before becoming binding on either party. For the purposes of this Agreement, an “*Order(s)*” means a written binding document outlining additional or different terms covering a specific transaction; such terms shall be contained in a Statement of Work (“*SOW*”), purchase order, NEC quotation or addendum (together, either collectively or individually), with this Agreement, referred to as an “*Order*”. NEC reserves the right to reject any Order which is not credit-approved or does not conform to the provisions of this Agreement.
- 2. SCOPE OF THE AGREEMENT** It is the intent of this AGREEMENT that NEC will maintain the hardware and/or software, as applicable, covered in the applicable Order, (the “*PRODUCTS*”) in good working condition, furnish Remedial Maintenance during the Principal Period of Maintenance Coverage and be responsible to the maintenance needs of the CUSTOMER subject to the conditions herein. As used herein, the “*Principal Period of Maintenance Coverage*” is the period between 8:00 A.M. and 5:00 P.M. (US Pacific time) Monday through Friday, excluding US holidays with next day response for each incident.

As used herein, “*Remedial Maintenance*” shall mean maintenance performed by the NEC which results from system failure and which is performed as required, on an unscheduled basis.
- 3. TERM OF AGREEMENT** Unless otherwise specified in the applicable Order, this Agreement shall be effective from the date specified in the applicable Order, and shall continue for a period of one (1) year (“*Initial Term*”). Unless one party notifies the other of its intent to terminate the AGREEMENT at least thirty (30) days prior to the expiration of the Initial Term (or at the end of any one-year Renewal Term,) the AGREEMENT shall automatically renew thereafter for additional twelve (12) month terms, upon the same terms and conditions contained herein (“*Renewal Term(s)*”), except NEC may adjust its service rates to conform to NEC’s prevailing local service rates for the renewal term. After the Initial Term, either party may terminate this AGREEMENT at any time upon ninety (90) days written notice.
- 4. ELIGIBLE EQUIPMENT** NEC supplied PRODUCTS in good working order are eligible for inclusion under this AGREEMENT. The CUSTOMER may, subject to written acceptance by NEC, add additional PRODUCTS under the terms and conditions of this AGREEMENT by executing an Addendum to this AGREEMENT. Upon NEC’s written acceptance, the maintenance and support service charges will be adjusted and/or a CUSTOMER-issued purchase order will be provided to NEC for the additional PRODUCTS being requested. NEC maintenance prices then in effect shall apply and the term of such Addendum shall be the same as this AGREEMENT.
- 5. RESPONSIBILITIES OF NEC** For the charges stated herein, NEC shall maintain the covered PRODUCTS in compliance with manufacturing specifications by providing unscheduled on-call emergency remedial maintenance as required during the Principal

more than ten (10) miles from the maintenance rates for the new lo NEC to dismantle, prepare for shi at the then current NEC Special and associated cost is the respon

- 7. TERMINATION** If either party r AGREEMENT, and such failure cc thereof, the other party shall have of duly presented invoices shall cor cancellation sixty (60) days after th
- 8. RESPONSIBILITIES OF CUSTO PRODUCTS failure and will allk CUSTOMER agrees to allow NEC charge subject only to CUSTOM advance for review. The CUSTO engagement, including schedulir necessary information. The CU equipment which includes reboo queue sizes, stopping and starting service is being performed.**
- 9. HARDWARE AND/OR SOFTWA** all hardware and/or software, as equipment in accordance with NE NEC hardware and software supj is contingent upon the CUSTOM NEC and upon the CUSTOME information. CUSTOMER agrees services or any part thereof, or pr third party’s behalf; (ii) permit thir support services; (iii) reverse er software that provides the maini derive the source code of such s provided software or technical dat received, without all required Unit
- 10. CHARGES** Under the terms of th in the applicable Order, for m AGREEMENT. CUSTOMER wil execution of this AGREEMENT v charge for Preventive and Repair Order. NEC may change the mc Renewal Term by giving the C increased charges shall not exc support services or three (3%) per The charges for additional PROC be the current established rates a

In addition to the charges due unc reimburse NEC any taxes or char a taxing authority, except for taxe similar exemption, CUSTOMER i deliveries are to be made or servi
- 11. METHOD OF PAYMENT** In AGREEMENT, unless advance Payment for maintenance and su the Order) by remittance to the e charges for fractional parts of a ca (1/30) of the monthly rate for each

Payment is due within thirty (30) c sixty (60) days shall incur a serv

PERSONAL INJURY SHOWN TO HAVE BEEN CAUSED DIRECTLY BY NEC'S GROSS NEGLIGENCE.

NEITHER NEC NOR CUSTOMER SHALL INSTITUTE ANY ACTION IN ANY FORM ARISING OUT OF THIS AGREEMENT MORE THAN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION HAS ARISEN, OR IN THE CASE OF NON-PAYMENT, MORE THAN EIGHTEEN (18) MONTHS FROM THE DATE OF LAST PAYMENT OR PROMISE TO PAY. THIS LIMITATION DOES NOT APPLY TO ANY ACTION FOR NON-PAYMENT OF TAXES.

IN NO EVENT SHALL NEC BE LIABLE TO CUSTOMER FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR ANY DAMAGES OR EXPENSES DIRECTLY OR INDIRECTLY ARISING OR RESULTING FROM LOSS OF USE, DATA OR PROFITS OR A THIRD PARTY'S UNAUTHORIZED USE OF THE PRODUCTS OR ITS COMPONENTS, EITHER SEPARATELY OR IN COMBINATION WITH OTHER EQUIPMENT.

THE FOREGOING COVENANTS AND SERVICE COMMITMENTS ARE EXCLUSIVE AS TO BOTH PRODUCTS OR SERVICES PROVIDED HEREUNDER. NEC EXTENDS NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO CUSTOMER FOR THE SERVICES PROVIDED BY THIS AGREEMENT.

- 13. INSURANCE** NEC shall have and maintain in full force and effect for the duration of this AGREEMENT insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by the NEC, its agents, representatives, or employees.

NEC shall maintain coverage and limits no less than:

(a) Comprehensive General Liability of \$1,000,000 per occurrence for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom, and \$2,000,000 in aggregate.

(b) Comprehensive Automobile Liability (any auto) of \$1,000,000 combined single limit per occurrence for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.

(c) Professional Liability of \$1,000,000 limit for claims arising out of professional services caused by the CONTRACTOR's errors, omissions, or negligent acts.

(d) Workers' Compensation limits as required by the State of Michigan and employers Liability limits of \$1,000,000 per accident.

(e) Umbrella Liability of \$1,000,000.

CUSTOMER (and any applicable Authority) shall be made an additional insured on General Liability Auto Liability and Umbrella Liability policies.

With respect to "bodily injury" or "property damage" claims directly arising out of the operations performed by or on behalf of the named insured, NEC, such insurance as is afforded by these policies is primary and is not additional to or contributing with any other insurance carried by or for the benefit of the additional insured, CUSTOMER, provided claims that give rise are from the Named Insured's negligence and arising out of operations for the CUSTOMER.

NEC agrees to waive all rights of subrogation, except for commercial general liability, against the CUSTOMER, the Board of Commissioners, its officers, officials, employees, and volunteers from losses arising from work performed by the CONTRACTOR for the CUSTOMER.

Certificates of Insurance, and any subsequent renewals, must reference specific bid/contract by project name and project/bid number.

- 14. FORCE MAJEURE** Except for the obligation to pay monies due and owing neither party

Notwithstanding the foregoing (include information which: (i) has in the public domain through no legitimate possession of the rece any obligation of confidence; (iii) who lawfully possesses the info Confidential Information to the r receiving party without use of disclosure by the disclosing part

Each party understands and a Agreement, or in contemplation Information of the other party. Th disclosed by the other party shal services under this Agreement. care to protect such Confidential data, but in no event, less than a

Confidential Information may be governmental body or as other receiving party first gives notice cooperated in the disclosing p appropriate court or other gove containing the Confidential Infor with the provisions of the feder statutes.

- 18. INTELLECTUAL PROPERTY OI** Products may contain, embody c secrets, copyrights and other inte Rights") owned or controlled by N manufacturer or supplier, respect Property Rights in the Products.

- 19. SEVERABILITY** If any provisic unenforceable, all other provisio and the unenforceable provision provision consistent with the Par

- 20. SURVIVAL OF OBLIGATIONS** this Agreement which by the cancellation or expiration of the expiration.

- 21. WAIVER OF TERMS AND CON** terms or conditions shall not cor any other terms or conditions.

- 22. SOFTWARE RELEASE POLIC'** compatibility with all interface modifications, including applicati Appendix A follows software tecl

- 23. NOTICES** Any notice hereunde writing and delivered by hand, mail, postage prepaid, return rec address. Notice to NEC shall be t – **Contract Administration Dej TX 75063.**

- 24. COMPLETE AGREEMENT** Unle existing contract where those ter take precedence over this doc applicable. is the complete agree

Appendix A

NEC Biometrics Software Release Policy

1.1.1 NEC's software release policy follows an industry standard process. The main activities involved in Release are:

- Developing new versions.
- Establishing a planning policy for the implementation of new versions.
- Testing new versions in an environment that simulates the live environment as closely as possible.
- Validating the new versions.
- Implementing new versions in the live environment.
- Version control.

The software release version is identified by three numbers. For example, software release 4.6.1:

- "4" reflects a version of a major release of software
- "6" reflects a version of a minor release of software
- "1" reflects a version of a supplemental release of software

1.1.2 NEC's policy for system upgrades are provided on an if-and-when available basis as follows:

- **Supplemental Releases** - are defined as releases that materially affect the operational performance or reliability of the software (e.g., via patches and issue fixes (e.g., from version 5.0 to 5.0.1). All NEC Customers are entitled to receive such supplemental releases free of charge. All expenses for software, and professional services required for installation of such supplemental releases, as set forth in the Support Agreement with NEC, will be covered by NEC.
- **Minor Releases or Enhancements** - are defined as releases that improve or augment the utility, efficiency, or reliability of the software (e.g., from version 5.0 to 5.1). NEC Customers are entitled to receive this software release free of charge. All expenses for software, and professional services required for implementation of the release, assuming Customer has a subcontract agreement, which includes maintenance and support with the software, are covered by NEC.
- **Major Releases** - are defined as releases that, in whole or in part, introduce new advances in technology (e.g., new algorithms). Major releases reflect significant improvements in the software product, for which the Customer is responsible for all applicable license fees and professional services, including all applicable license fees required for implementation of the release. In NEC's software release policy, a Major Release may be discounted for Customers with a current subcontract agreement, which includes maintenance and support with the software, for a limited period of time only.

1.1.3 The following are not covered by software support:

- Any problem resulting from the misuse, improper use, alteration, or damage of the software;
- Any problem caused by modifications in any version of the software not made or authorized by NEC;
- Any problem resulting from programming other than the software supplied by NEC; or
- Any problem resulting from the combination of the software with other programming or systems as referenced in the Support Agreement, which has not been approved by NEC.

Customer shall be responsible to pay NEC's normal charges and expenses for time or other resources provided by NEC to resolve such problem.

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 #	
Awarded To	
Amount	
Conflict of interest on file?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Number of Registrants	
Number of Bidders	
Required Attachments	

EXTENSIONS

Date Last Bid Out	N/A
# Extensions Granted To Date	None

SPECIAL PROCUREMENT

Sole Source/Compatibility Justification	NEC Corporation of America is the only vendor to provide the annual maintenance on the AFIS system.
-----------------------------------------	-----------------------------------------------------------------------------------------------------

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

Most Responsible, Responsive Lowest	Yes <input type="checkbox"/> No <i>If no, explain below</i>
If not lowest, explain	

COUNCIL DIGEST SHEET

COST COMPARISON

<i>Increase/decrease amount from prior years For annual purchase (if available).</i>	N/A
--------------------------------------------------------------------------------------	-----

DESCRIPTION OF PROJECT / NEED

<i>Identify need for project & describe project; attach supporting documents as necessary.</i>	Annual maintenance on our fingerprint system (AFIS)

REQUEST FOR PRIOR APPROVAL

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

FUNDING SOURCE

<i>Account Information.</i>	2024 Police budget

BILL NO. S-24-01-20

REPORT OF COMMITTEE ON FINANCE

February 6, 2024

Sharon Tucker Chair

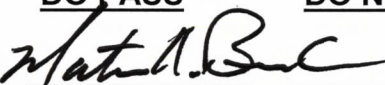


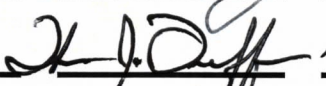

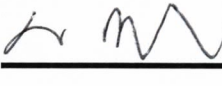
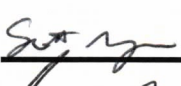
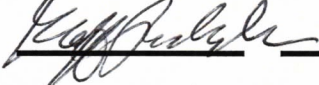
Marty Bender Co-Chair

All Council Members

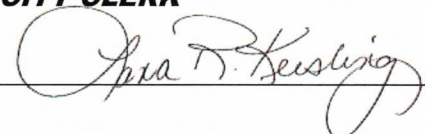
An Ordinance approving the Multimodal Biometric Identification System (AFIS) Annual Maintenance - Quote Dated November 3, 2023 – between NEC Corporation of America and the City of Fort Wayne, Indiana, as a Special Procurement under I.C. 5-22-10 by and through its Fort Wayne Police Department

Involving a total cost of \$120,000.00

COMMITTEE ON FIANANCE HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance

<u>COUNCIL MEMBER</u>	<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>
<u>BENDER</u>			
<u>CHAMBERS</u>			
<u>ENSLEY</u>			
<u>FREISTROFFER</u>			
<u>HARTMAN</u>			
<u>JEHL</u>			
<u>MYERS</u>			
<u>PADDOCK</u>			
<u>TUCKER</u>			

**LANA R. KEESLING
CITY CLERK**



Public Hearing Date: N/A

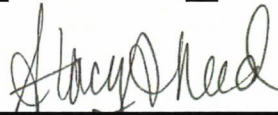
Read the first time in full and on motion by Councilperson Tucker.

Read the second time by title and referred to the Finance Committee.

Read the third time in full and on motion by Councilperson Tucker, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
BENDER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CHAMBERS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ENSLEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HARTMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JEHL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MYERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TUCKER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED: February 13, 2024

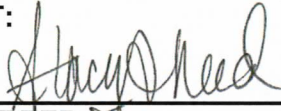


STACY REED, DEPUTY CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

Special Ordinance No. S-24-01-20 on the 13th day of February, 2024

ATTEST:

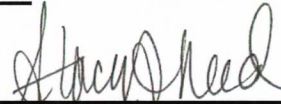


STACY REED
DEPUTY CITY CLERK



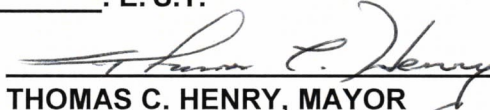
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 14th of February 2024, at the hour of 9:00 o'clock A.M. E.S.T.



STACY REED, DEPUTY CITY CLERK

Approved and signed by me this 15th day of FEBRUARY 2024, at the hour of 4:30 o'clock Pm E. S.T.


THOMAS C. HENRY, MAYOR