

BILL NO.: 16-0332

ORDINANCE NO.: 16-0207

INTRODUCED BY: COUNCIL MEMBER(s) Reuter

1           **AN ORDINANCE RENEWING THE BID AWARDS FOR CERTAIN**  
2           **PRODUCTS AND SERVICES FOR MAINTENANCE SERVICE AGREEMENT**  
3           **FOR FUSION SUITE OF PRODUCTS, DEPARTMENT OF THE SHERIFF.**

4                   **WHEREAS**, Jefferson County, Missouri, (hereafter, the “County”) recommends  
5 the renewal of the following bid awards at the same terms and conditions as previously bid,  
6 as authorized by the original Invitation for Bid awarded by the County, for an additional  
7 one-year term:

8 BID NAME

9 Maintenance Service Agreement for Fusion Suite of Products

10 **AWARDED BIDDER**

11 BusComm Incorporated

12 ORDINANCE NUMBER

13 14-0246 and 15-0207

14                   **WHEREAS**, the Department of the Sheriff of Jefferson County, Missouri,

15 Council finds it is in the best interest of the County to renew the bid award for

16 Maintenance Service Agreement for Fusion Suite of Products with BusComm

17 Incorporated for the term of 5-3-16 to 5-2-17 with approval of the County Council and

18 County Executive up to the amount of **\$4,565.01** subject to budgetary limitations.

**FILED**

APR 05 2016

**1 BE IT ENACTED BY THE JEFFERSON COUNTY, MISSOURI, COUNCIL,**

## 2 AS FOLLOWS:

3           Section 1.     The County authorizes the renewal of the bid awards for an  
4 additional one-year term as follows:

5 BID NAME

## 6 Maintenance Service Agreement for Fusion Suite of Products

7 TERM

8 5-3-16 to 5-2-17

9 Upon approval of the County Council and County Executive

10 AMOUNT

Up to \$4,565.01

12 subject to budgetary limitations

13 AWARDED BIDDER

14 BusComm Incorporated

15        Section 2.     The Jefferson County, Missouri, Council hereby authorizes the  
16        County Executive to execute a renewal agreement, incorporated herein by reference and  
17        attached as Exhibit A. The County Executive is further authorized to take any and all  
18        actions necessary to carry out the intent of this Ordinance.

19           Section 3.      Copies of all Invitations for Bid, Requests for Proposals, responses  
20 thereto, and any contracts or agreements shall be maintained by the Department of the  
21 County Clerk consistent with the rules and procedures for the maintenance and retention  
22 of records as promulgated by the Secretary of State.

1           Section 4.     This Ordinance shall be in full force and effect from and after its  
2     date of approval. If any part of this Ordinance is invalid for any reason, such invalidity  
3     shall not affect the remainder of this Ordinance.

**THIS BILL BEING DULY INTRODUCED, THE MEMBERS OF THE  
JEFFERSON COUNTY, MISSOURI, COUNCIL VOTED AS FOLLOWS:**

Council Member District 1, Don Bickowski	<u>yes</u>
Council Member District 2, Renee Reuter	<u>yes</u>
Council Member District 3, Robert Boyer	<u>yes</u>
Council Member District 4, George Engelbach	<u>yes</u>
Council Member District 5, Oscar J. "Jim" Kasten	<u>yes</u>
Council Member District 6, Cliff Lane	<u>yes</u>
Council Member District 7, James Terry	<u>yes</u>

THE ABOVE BILL ON THIS 28th DAY OF March, 2016:

✓ PASSED            FAILED

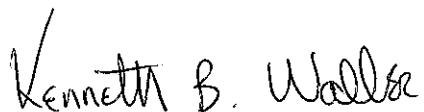


Renee Reuter, County Council Chair

Pat Schlette  
Pat Schlette, Council Administrative Assistant

THIS BILL WAS  APPROVED BY THE JEFFERSON COUNTY EXECUTIVE AND ENACTED AS AN ORDINANCE OF JEFFERSON COUNTY, MISSOURI, THIS 31<sup>ST</sup> DAY OF MARCH, 2016.

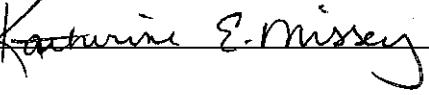
THIS BILL WAS  VETOED AND RETURNED TO THE JEFFERSON COUNTY, MISSOURI, COUNCIL WITH WRITTEN OBJECTIONS BY THE JEFFERSON COUNTY EXECUTIVE, THIS  DAY OF                   , 2016.



Kenneth B. Waller, Jefferson County, Missouri, Executive

ATTEST:

  
Wes Wagner, County Clerk

BY: 

Reading Date: 03-28-2016

# BusComm Incorporated

# CONTRACT INVOICE

Invoice Number: 122302  
Invoice Date: 03/08/2016

EXHIBIT

A

**Bill To:** Jefferson County Sheriffs Dept  
P.O. Box 100  
510 First Street  
Hillsboro, MO 63050

**Customer:** Jefferson County Sheriffs Dept  
P.O. Box 100  
510 First Street  
Hillsboro, MO 63050

Account No.	Payment Terms	Due Date	Invoice Total	Balance Due	
JEFFCOSHMO	Net 45	04/22/2016	\$4,565.01	<b>\$4,565.01</b>	
Contract Number	Contact	Contract Amount	P.O. Number	Start Date	Exp. Date
10435-04	Vickie Pratt 636-797-5380	\$4,565.01		05/03/2016	05/02/2017
Remarks					
Fusion Voice Comp Coverage***Payment of this invoice for the BusComm Service Agreement indicates agreement to the terms of BusComm Inc's Service Agreement.					

## Summary:

Contract base rate charge for the 05/03/2016 to 05/02/2017 billing period

\$4,565.01
<hr/>
\$4,565.01

## Detail:

### Equipment included under this contract

#### Fusion/310-935

Number	Serial Number	Base Adj.	Location
4 PORT ANALOG CARD-GM915364	GM915364	\$0.00	Jefferson County Sheriffs Dept P.O. Box 100 510 First Street Hillsboro, MO 63050
4 PORT ANALOG CARD-GM915395	GM915395	\$0.00	Jefferson County Sheriffs Dept P.O. Box 100 510 First Street Hillsboro, MO 63050

#### Fusion/FVM5

Number	Serial Number	Base Adj.	Location
FVM5-477441	477441	\$0.00	Jefferson County Sheriffs Dept P.O. Box 100 510 First Street Hillsboro, MO 63050

#### Fusion/FVPLAY

Number	Serial Number	Base Adj.	Location
FVPLAY-4EA-677441	677441	\$0.00	Jefferson County Sheriffs Dept P.O. Box 100 510 First Street Hillsboro, MO 63050

#### Fusion/FVPLIC

Number	Serial Number	Base Adj.	Location
FVPLIC-4EA-377441	377441	\$0.00	Jefferson County Sheriffs Dept P.O. Box 100 510 First Street Hillsboro, MO 63050

#### Fusion/FVS

**BusComm Incorporated****CONTRACT INVOICE**

Invoice Number: 122302  
Invoice Date: 03/08/2016

**Bill To:** Jefferson County Sheriffs Dept  
P.O. Box 100  
510 First Street  
Hillsboro, MO 63050

**Customer:** Jefferson County Sheriffs Dept  
P.O. Box 100  
510 First Street  
Hillsboro, MO 63050

Account No	Payment Terms	Due Date	Invoice Total	Balance Due
JEFFCOSHMO	Net 45	04/22/2016	\$4,565.01	<b>\$4,565.01</b>
Number	Serial Number	Base Adj.	Location	
FVS SERVER SOFTWARE-77441	77441	\$0.00	Jefferson County Sheriffs Dept P.O. Box 100 510 First Street Hillsboro, MO 63050	

Invoice SubTotal	\$4,565.01
Tax:	\$0.00
Invoice Total	\$4,565.01
<b>Balance Due:</b>	<b>\$4,565.01</b>

**BUSCOMM INCORPORATED**  
**REQUIRED GUARANTEED MAINTENANCE SUPPORT AGREEMENT**

This **REQUIRED GUARANTEED MAINTENANCE SUPPORT AGREEMENT** ("Agreement") is effective the 3rd day of May, 2016 ("Effective Date") by and between **BUSCOMM INCORPORATED**, a Missouri corporation ("BusComm") and **Jefferson County Sheriff's Dept**, a Missouri corporation ("Purchaser") (individually, each a "Party," or collectively, the "Parties").

**WITNESSETH:**

**WHEREAS**, Purchaser has a need for hardware and software maintenance of Purchaser's Fusion Suite of Products (the "System");

**WHEREAS**, BusComm provides hardware and software maintenance support (collectively, the "Support") for the System;

**WHEREAS**, the Parties desire to enter into this Agreement whereby BusComm will provide certain maintenance Support to Purchaser, as more fully detailed herein.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**I. TERM AND TERMINATION**

- 1.1 Term.** The term of this Agreement shall commence on the Effective Date and will continue until May 2, 2017 and from year to year thereafter unless terminated by either Party upon written notice given to the other Party at least thirty (30) days prior to the end of the first year or subsequent year. No refund or pro-rating on the remainder of the Agreement is allowed. This Agreement is not transferable and becomes void upon sale of the equipment.
- 1.2 Termination Due to End of Life.** In the event your software has been covered by a BusComm Guaranteed Maintenance Support Agreement for a minimum of four (4) years, BusComm reserves the right to terminate this Agreement based on the age of the hardware platform housing the software. BusComm will provide a minimum of forty-five (45) days notice and offer the opportunity for Purchaser to upgrade their current hardware platform to continue support.
- 1.3 Termination With Cause.** In the event BusComm commits a material breach of any of the provisions of this Agreement, Purchaser may terminate this Agreement upon thirty (30) days written notice.
- 1.4 Effect of Termination.** Upon termination of this Agreement, neither Party shall have any further obligations hereunder, except for obligations accruing and becoming payable prior to the date of termination or obligations that are expressly

made to extend beyond the term.

## II. OBLIGATIONS OF BUSCOMM

- 2.1 **Support**. BusComm shall provide Support to Purchaser as set forth for the System. BusComm shall begin providing Support following the warranty period.
- 2.2 **Response to Support Calls**. BusComm agrees to provide prompt response to all support calls twenty-four (24) hours per day, seven (7) days a week, and three hundred and sixty-five (365) days a year. BusComm agrees that Purchaser is a comprehensive maintenance customer and is guaranteed priority support and response to reported System issues via remote diagnostic software, a phone call, or an on-site visit. BusComm will make a diagnostic call within thirty (30) minutes of receipt of Purchaser's support request.
- 2.3 **Replacement Parts**. Replacement parts, if covered, will be furnished and installed by BusComm personnel (the "Support Technicians") at no extra charge. The parts replaced become the property of BusComm.
  - 2.3.1 **Accessories**. Accessories purchased with the Fusion Suite of Products are not covered by this Agreement. Accessories include, but are not limited to, headsets, foot pedals, microphones, Speechmics, and DPM's.
  - 2.3.2 **Refurbished Parts**. Hardware, component parts, assemblies, or subassemblies may be replaced with new or refurbished items at BusComm's option. If parts must be replaced due to causes other than normal wear and tear, BusComm will charge the price in effect at the time for such parts and all reasonable expenses associated with BusComm's cost to replace said parts.
- 2.4 **Software Updates**. BusComm will provide and install updates to Purchaser's software during normal business hours as deemed necessary without any additional charge to Purchaser as long as this Agreement is effective and there are no payments in arrears due to BusComm. "**Updates**" are defined as any System's software in which numbers to the right of the first decimal point have increased (i.e. 8.1, 8.2, and 8.3). After normal business hours, Monday through Thursday, BusComm will bill for labor to install updates at Two Hundred Twenty-Five and 00/100 Dollars (\$225.00) per hour and travel will be billed at One Hundred Twelve and 50/100 Dollars (\$112.50) per hour
- 2.5 **Software Upgrades**. BusComm will make available software upgrades to Purchaser's software as they become available. "**Upgrades**" are defined as a numeric increase to the left of the first decimal point (i.e. 8.0, 9.0, and 10.0). During normal business hours, BusComm will bill for labor to install upgrades at One Hundred Fifty and 00/100 Dollars (\$150.00) per hour and travel will be billed at Seventy-Five and 00/100 Dollars (\$75.00) per hour. After normal business hours,

Monday through Thursday, BusComm will bill for labor to install upgrades at Two Hundred Twenty-Five and 00/100 Dollars (\$225.00) per hour and travel will be billed at One Hundred Twelve and 50/100 Dollars (\$112.50) per hour. Additionally, third party software upgrades are billable.

2.6 **System Availability.** Under this Agreement, BusComm agrees to work toward providing System availability approaching one hundred percent (100%). In order to do this, BusComm may, based on technical judgments made by Support Technicians, request to be able to monitor machine functions remotely, but always with the prior knowledge, approval, and cooperation of the Purchaser. At such time BusComm may also make changes to the resident software, but never in a way that would knowingly disrupt normal operations, violate security, or disturb the Purchaser's records. In addition, BusComm may, from time to time, recommend and initiate replacement of suspect component parts at no expense to the Purchaser, but with Purchaser's planned cooperation regarding replacement work. This will always be done with every intention of minimizing disruption. Finally, if BusComm deems it advisable for a Support Technician to visit and perform machine or operational remediation on site, such a trip will be initiated by BusComm, but with the full knowledge and cooperation of the Purchaser. The full expenses for such travel including per diem, living expenses and all incidental costs relating either to the trip or the support work will be paid by BusComm, resulting in no cost to the Purchaser. An exception to this is if it is determined that the problem developed from a part damaged by causes other than normal wear and tear.

2.7 **Environmental Conditions.** The Purchaser will maintain the environmental conditions specified. These conditions will be within the common environmental range of all System's components.

### III. TITLE

3.1 **Title.** BusComm will retain full title to the software. The Purchaser will have a nonexclusive, nontransferable, fully paid perpetual license to use such software for its business purposes as long as it has a current Maintenance Agreement on the product, and agrees to hold in confidence all technical and trade secret information, including, without limitation, the content of and information relating to software, including source code, object code, software updates supplied by BusComm in respect thereto, all subsequent modification of code made by BusComm pursuant to maintenance and/or diagnostic evaluation, and all documentation relating to any of the foregoing. The Purchaser ensures that access to such information will be limited to employees who must have access in order to use the System efficiently for Purchaser's business purposes.

3.2 **Diagnostic Software.** BusComm may remove any maintenance materials or diagnostic software at any time, either temporarily or permanently. The diagnostic software provided to facilitate the servicing of the System is not necessarily for the operation of basic System software.

## IV. EXCLUSIONS

**4.1 Excluded Support Services**. Some Support Services may not be covered by this Agreement. These items may be referred to as *Move/Add/Change* and Purchaser is responsible for all charges including the cost of parts, labor, assistance over the telephone and travel relating to:

- 4.1.1 Electrical work external to the equipment;
- 4.1.2 Maintenance of accessories, attachments, machines, or other devices not furnished or manufactured by BusComm or not listed on the contract invoice;
- 4.1.3 Repair of damages resulting from accident, neglect or misuse, fluctuations of electric, temperature or humidity, failure of electrical power, or causes other than ordinary use including fires and acts of God, or resulting from moving, disconnecting, maintenance or repair of the equipment by persons other than BusComm personnel or its authorized representatives, or damages caused by installation of third-party software not purchased from and/or authorized by BusComm;
- 4.1.4 Adding or removing accessories, attachments, or other devices;
- 4.1.5 Services rendered impractical due to alterations to the equipment, or because of electrical or mechanical connections to equipment not supplied by BusComm;
- 4.1.6 De-install/Re-install of users, to include software applications;
- 4.1.7 Upgrading/Updating/Supporting any third-party software needed to support the System, including but not limited to Structured Query Language (SQL), Anti-Virus, Annual Anti-Virus Updates, RightFax Business Server or Fax Boards, Microsoft Operating System, Microsoft Word;
- 4.1.8 Installation of System Software Upgrades, defined as a numeric increase to the left of the first decimal point (i.e. 8.0, 9.0, 10.0);
- 4.1.9 New report formats;
- 4.1.10 Changes to existing report formats;
- 4.1.11 Setting up additional departments;
- 4.1.12 Installing and training additional users;
- 4.1.13 Re-training existing staff;
- 4.1.14 Reloading software due to customer upgrades/changes or computer virus infections;
- 4.1.15 Connectivity to internet service provider from remote site to customer's network;
- 4.1.16 Interfacing client's Virtual Private Network with remote site;
- 4.1.17 Removing viruses from servers or workstations caused by a lack of Customer provided Anti-Virus software being loaded or failure to update the Customer provided Anti-Virus software.

## **V. MODIFICATION OF AGREEMENT**

**5.1 Modification/Deletion.** BusComm reserves the right to modify or delete any term of this Agreement by giving thirty (30) days prior written notice to the Purchaser. Purchaser may then elect to accept the Agreement with such modification(s) or deletion(s), or terminate the Agreement. Failure by the Purchaser to terminate within the thirty (30) day notice period will signify acceptance of the Agreement as amended. As used in this section, modification includes, but is not limited to, changes in price, term or the character or extent of support, including withdrawal of support for particular hardware or software systems or subsystems.

## **VI. CHARGES**

**6.1 Charges.** Charges for support provided under this Agreement are invoiced on an annual basis and are payable within (30) days of receipt of invoice.

**6.2 Adjustment of Charges.** Additions and/or deletions in hardware or software may result in an adjustment of support charges. The support charges for hardware or software additions to the Agreement will be the current published rate at the time the equipment is added, and will be pro-rated to coincide with the anniversary date of this Agreement. Deletions will be adjusted when the Agreement renews. No refund or pro-rating on the remainder of the Agreement is allowed.

**6.3 Overdue Invoices.** BusComm reserves the right to withhold support for non-payment of any invoice(s) sixty (60) days beyond the Effective Date.

## **VII. COMPENSATION**

**7.1 Compensation.** Purchaser shall pay BusComm Four Thousand Five Hundred Sixty Five and 01/100 Dollars (\$4,565.01) per year for Support. Unless otherwise specified, the Support and Purchaser's obligation to pay the compensation shall commence on the Effective Date under the terms described herein.

7.2 **Hourly Rate.** The following rates apply to Support not included under this Agreement. There is a one-hour minimum charge for all labor, including telephone support.

**Labor**

Move/Add/Change	\$150.00 per hour
After-Hours Support or Move/Add/Change	\$225.00 per hour
Sunday/Holiday* Support or Move/Add/Change	\$300.00 per hour

**Travel**

Normal Business Hours	\$75.00 per hour
After-Hours	\$112.50 per hour
Sunday/Holiday*	\$150.00 per hour

\*The Holiday rate applies to: New year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

## VIII. GENERAL

8.1 **Amendments.** This Agreement may be amended only by an instrument in writing signed by the Parties.

8.2 **Assignment.** Any or all of BusComm's rights or obligations under this Agreement may be assigned by BusComm, with written notice to Purchaser, and will be exercised by any assignee thereof.

8.3 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. A signature to this Agreement shall be deemed validly executed and delivered, binding and enforceable upon transmittal of the signed Agreement to the other Party by facsimile or by transmission of a PDF copy of such signed Agreement by e-mail.

8.4 **Damages.** In no event will BusComm be liable for any loss of data, lost charges, or special indirect or consequential damages.

8.5 **Delays.** BusComm's obligations hereunder are subject to delays caused by labor difficulties, fires, casualties and accidents; acts of the elements; acts of public enemy; transportation difficulties; inability to obtain equipment, materials or qualified labor sufficient to fill its orders; government interference or regulations and other causes beyond BusComm's control.

8.6 **Disclaimer of Warranty.** BusComm disclaims all warranties, including all warranties or merchantability and fitness for a particular purpose.

8.7 **Entire Agreement.** This Agreement supersedes all previous contracts or agreements between the Parties for the same Support, and constitutes the entire

Agreement between the Parties. Neither Purchaser nor BusComm shall be entitled to benefits other than those specifically enumerated herein.

**8.8 Governing Law.** This Agreement shall be construed and governed by the laws of the state of Missouri. Unless otherwise required by law, the Parties shall submit to the jurisdiction of the courts within the county where BusComm is located in the state of Missouri.

**8.9 Indemnification.** Each Party agrees to indemnify and hold the other harmless from any and all claims, suits, damages, fines, penalties, judgments, liabilities and expenses (including reasonable attorney's fees and court costs) arising from: (i) any negligent or willful act or omission of the Party, its agents, or employees; (ii) breach of this Agreement or (iii) violation of a Law. Notwithstanding anything to the contrary in this Agreement, a Party's obligations with respect to indemnification for acts described in this section shall not apply to the extent that such application would nullify any existing insurance coverage of such Party or as to that portion of any claim of loss in which an insurer is obligated to defend or satisfy. This section 8.9 shall survive the expiration or earlier termination of this Agreement.

**8.10 Liability.** With regard to the Support to be performed by BusComm pursuant to the terms of this Agreement, BusComm shall not be liable to Purchaser, or to anyone who may claim any right due to any relationship with Purchaser, for any acts or omissions in the performance of Support on the part of BusComm, except when said acts or omissions of BusComm are due to willful misconduct or gross negligence. Purchaser shall hold BusComm free and harmless from any obligations, costs, claims, judgments, attorneys' fees, and attachments arising from or growing out of the Support rendered to Purchaser pursuant to the terms of this agreement or in any way connected with the rendering of Support, except when the same shall arise due to the willful misconduct or gross negligence of BusComm.

**8.11 Notice.** Notices or communications herein required or permitted shall be given to the respective Party by registered or certified mail (each notice being deemed given as of the date of mailing) overnight courier, facsimile, or by hand delivery at the address listed under the Party's signature to this Agreement unless either Party shall designate a new address by written notice. The notice shall be deemed to be received as follows: (i) in the case of actual delivery, on the date of its receipt by the Party entitled to it; in the case of facsimile transmission, on the next business day; (ii) in the case of overnight courier service, on the next business day following mailing; and (iii) in the case of certified or registered mail, three (3) days after the date of its mailing.

**IF TO PURCHASER:**

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

**IF TO BUSCOMM:**

11696 Lilburn Park Road  
St. Louis, MO 63146  
Attn: Contract Manager

**8.12 Severability.** If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable, then the remainder of this Agreement and the application of any term or provision to any person or circumstances, other than those to which it is held invalid or unenforceable, shall not be affected thereby and all other terms shall be valid and enforceable to the fullest extent permitted by law.

**8.13 Third-Party Rights.** Except as otherwise expressly stated herein, the Parties do not intend to create any enforceable rights in any third-party under this Agreement and there are no third-party beneficiaries to this Agreement.

**8.14 Waiver of Breach.** The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as, nor be construed to be, a waiver of any subsequent breach hereof.

*[Signature Page Follows]*

**WHEREOF**, a duly authorized officer and representative of Purchaser and BusComm have executed this Agreement on the date as indicated below.

**BUSCOMM:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BusComm Incorporated**

Date: \_\_\_\_\_

**PURCHASER:**

By: Kenneth Waller

Name: KENNETH WALLER

Title: COUNTY EXECUTIVE

Date: 4-5-2016