



HISTORIC
FRANKLIN
TENNESSEE

ITEM #5
WRKS 09/28/2010

MEMORANDUM

August 16, 2010

TO: City of Franklin Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator *ES*
Fred Banner, MIT Director

SUBJECT: HP TROPOS Software Renewal

Purpose

The purpose of this memorandum is to present information to the Board of Mayor and Aldermen (BOMA) to consider a twelve month renewal of our annual software maintenance agreement with HP for the City's Wi-Fi access points (TROPOS). Our current agreement expired July 1, 2010.

Background

The amount for this agreement has not changed from the last one BOMA approved in December 2009. HP requires that we sign a new agreement each year. We are continuing our test of the Wi-Fi environment with a full implementation of this system scheduled in our current fiscal year.

Financial Impact

The software maintenance for twelve months is \$72,989 which will be paid monthly. This is a budgeted item within the MIT Departmental budget for FY2011.

Recommendation

Approval of the software renewal agreement is recommended.



Hewlett-Packard Company
Mailing Address:
10736 Charleston Place
Cooper City, Florida 33026
www.hp.com

August 30, 2010

Kristen Corn, Staff Attorney
City of Franklin
Law Department
109 3rd Avenue South
Franklin, Tennessee 37064

Judith M. Alexander, Esq.
Public Sector Contracts
HP Legal Department

Tel. 954.272.0855
Fax. 954.343.2210
judith.alexander@hp.com

Re: Tropos Support Statement of Work for City of Franklin

Dear Kristen:

As we discussed, enclosed please find two (2) signed originals of the above referenced Statement of Work for Tropos Support.

Once approved and countersigned, please forward one (1) original to my attention at the following address:

Judith M. Alexander, Esq.
Hewlett-Packard Company
10736 Charleston Place
Cooper City, Florida 33026

We appreciate your confidence in and support of Hewlett-Packard Company. Should you have any questions, please do not hesitate to contact David Harrington or me directly.

Sincerely yours,

Judith M. Alexander, Esq.
State & Local Government/Education

Enclosures (2)

Cc: David Harrington

Statement of Work
for
City of Franklin, TN
By
HP Services
For
Tropos Support



i n v e n t

Prepared by

Public Sector Technical Services

HP PID# AQR642-06162010-001

August 26, 2010

COF Contract #2010-0117



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1 PURPOSE OF STATEMENT OF WORK

This Statement of Work has been prepared by Technical Services of Hewlett-Packard Company, hereafter referred to as "HP," specifically for City of Franklin, TN WiFi, hereafter referred to as "Customer." It defines the scope of the services and the deliverables that HP will provide to Customer under this service agreement for the Tropos Software Support. It also identifies HP's and Customer's associated responsibilities, as well as the major assumptions on which HP's offer is based.

The work effort and activities used to define, develop, and deliver the deliverable items specified herein are collectively known as the Tropos WiFi Software Support and hereafter referred to as "Project." This Project represents new custom business and is independent of any existing services contract.

2 INTRODUCTION

Requirements

In order to address the Project requirements, HP is pleased to offer a solution for the Tropos WiFi Software Support.

A single point of contact for software service requests under one contract allows Franklin, TN IT personnel to spend less time contacting multiple vendors on an individual basis and to spend more time focusing on business related tasks.

This Statement of Work provides detailed descriptions of the following subjects:

- Scope of Work describing HP's service delivery activities through their sub-contracting vendor, Tropos.
- A description of the working relationship between Customer and the HP sub-contractor, including roles and responsibilities.
- A price quote based on HP's current understanding of the environment, including the assumptions upon which the estimates are based.
- Processes for change orders and issue escalations.



SCOPE OF WORK

This section identifies the service deliverables for which HP and Customer will be responsible under this Statement of Work. It also indicates the criteria to be used by Customer for acceptance of each deliverable.

2.1 Software Support

HP's solution is to provide services their sub-contracting vendor Tropos. Tropos uses a structured methodology to deliver its solutions and the overall process to ensure adherence to best practices in regards to delivery applications and resources to the City of Franklin TN WiFi community

3 PROJECT MANAGEMENT

In support of the service activities named in Section 3, this section identifies the project management deliverables for which the HP and Customer will be responsible under this Statement of Work.

3.1 Support

Prior to the contract start date, the Tropos project manager will work collaboratively with the designated City of Franklin TN project manager to review the list of equipment in each of the locations and agree on a finalized list of equipment and locations to be supported. This finalized list will serve as the baseline master equipment list for the duration of the engagement.

The assigned Tropos project manager will also collaborate with the designated City of Franklin TN project manager to develop a detailed project plan documenting project procedures, controls, and deliverables related to this contract. If SLAs are implemented, additional time may need to be added to the scope to meet the additional requirements. Additionally, site contacts and escalation procedures will be determined and finalized.

3.2 Reporting

The assigned project manager may conduct quarterly meetings to review contract obligations and provide high level call data. Standard call data reports will be provided on a monthly basis to provide case notes, disposition and a summary of the closure rate.



During the Implementation process, the Tropos project manager will collaborate with the designated City of Franklin TN project manager to determine the requirements of the project review and update meetings.

4 CUSTOMER RESPONSIBILITIES

City of Franklin TN will be responsible for the following items relating to this activity of the Project:

- Furnishing the HP sub-contractors with information and data on City of Franklin TN operations, activities, and existing systems, as reasonably required to achieve the project objectives
- Providing HP sub-contractors with the necessary security access to systems and facilities during the performance of services
- Providing and being solely responsible for the backup of all computer systems
- Providing adequate workspace and power sources at each facility where services will be performed
- Providing suitable server platforms with properly installed and patched network operating system (NOS) software, and obtaining any other commercial software licenses necessary for Tropos to complete the services described in this SOW
- Providing and being solely responsible for contract of any necessary telecommunications facilities (data communications circuit, analog phone lines, wiring, etc.), and for the costs associated with such facilities
- Ensuring the availability and responsiveness of key personnel needed to support the implementation of the project City of Franklin TN site contacts are available (on-site, pager, phone) throughout the time of the Project
- City of Franklin TN shall designate an individual to provide overall management of this engagement. This individual must have the appropriate authority to make necessary decisions regarding the engagement and shall be responsible for all engagement aspects pertinent to this SOW.
- Must ensure a suitable work area at the facility for use by HP sub-contractors.
- City of Franklin, TN agrees to pay invoices within 30 days of date of invoice.



5 ASSUMPTIONS

HP has applied the following assumptions in the preparation of the cost, resource estimates, and schedule reflected in this Statement of Work. Any changes to the assumptions may result in changes to HP's pricing and/or Project schedule.

- HP work will not commence without a signed SOW and a valid order.
- English only support will be provided.
- HP sub-contractor assumes that a project manager will work collaboratively with a designated City of Franklin TN project manager to coordinate and report project activity.
- Any changes not part of the scope of this SOW requested by the City of Franklin will be agreed upon by and between HP and City of Franklin TN via the defined change process between those two parties. If said changes affect this SOW the Change Process in this SOW will be utilized to effect the change between HP and the supplier.
- There are no SLAs or associated penalties and risks included in the offer. The addition of SLAs may change the pricing.

6 CHANGE MANAGEMENT

Any changes to this Statement of Work, or the documents incorporated herein, must be mutually agreed upon by both HP and Customer in writing through a Change Order. If there is a Project change that:

1. Affects the performance, functionality, cost, delivery date, or other technical parameter of a deliverable; or
2. If Customer delays the project schedule for any reason; or
3. If Customer is unable to fulfill its responsibilities defined in this Statement of Work, and if such a change results in increased cost to HP, then a change order will be submitted and processed in accordance with the Change Order Procedures, below. If HP and Customer are unable to resolve the disposition of the Change Order, the project Statement of Work will remain as defined in this document

"Change Order" means an agreed upon change or modification to the Deliverables, Consulting Services or other material aspect of this Statement of Work. Requests by Customer and recommendations by HP for Change Orders are subject to the procedures set forth below, and will be made in writing in the form attached to the Change Order Form (attached).



Change Order Procedures

1. Either party may request a Change Order but all Change Orders must be in writing and prepared by HP and approved by the City of Franklin. HP may charge a reasonable fee for investigating, preparing or initiating a Change Order at Customer's request. A sample Change Order is provided in Attachment B.
2. Change Order requests will be processed as soon as is reasonably possible. The change will be evaluated and any project impact will be identified. The cost, scope, and schedule impact, if any, of the change will be analyzed and documented. The change impact will then be processed for Customer authorization or closure
3. All Change Orders will be in the form attached hereto as Attachment B, and will be signed by the designated representative for each party authorized to approve changes to this Statement of Work. Change Orders will include the following:
 - a) A description of any additional work to be performed and/or any changes to the performance required of either party.
 - b) A statement of the impact of the work or changes on the Consulting Services, the Deliverables, the acceptance tests or criteria, or other requirements of the Agreement.
 - c) The estimated timetable to complete the work specified in the Change Order and the impact, if any, on the delivery schedule, pricing and payments.
 - d) Specific individuals with management or coordination responsibilities.
 - e) The documentation to be modified or supplied as part of the work.
 - f) Any additional acceptance test procedures for such work.
4. All Change Orders must be mutually agreed by the parties. Pending such agreement, HP will continue to perform and be paid as if such Change Order had not been requested or recommended, provided that if either party proposes a Change Order which, in HP's judgment, represents a material change in the Deliverables and such Change Order remains outstanding for thirty (30) days or is rejected by Customer, HP will have the right to terminate the affected Statement of Work pursuant to the termination provisions set forth in the Consulting Services Agreement.



7 PRICING

HP's solution provides fixed pricing for this service. This agreement covers the purchase of all software services.

#	Task Description	Part Number	Level of Support	Annual Unit Price (list)	Annual Unit Price (discounted)	Support Term Extended
525	Standard Software Support Single Radio Router – 1 year Support term 7/1/2010 to 6/30/2011	TSRNC0SZ	HP 24x7 Software	\$143.20	\$139.03	\$72,989

The Customer Acceptance Page contains the indication that HP and Customer have agreed upon the contents contained within this Statement of Work. By applying the designated appropriate signatures to this document, both HP and Customer are bound to accept the responsibilities and obligations as indicated herein.



8 ACCEPTANCE

Customer signature(s) on this document indicates that the customer agrees that the content, timing, terms, conditions, and scope contained herein accurately reflects the services required by the customer. Customer's decision to purchase the service(s) described will be based on this description.

HP signature(s) on this document indicates that HP is prepared to undertake the services as defined in this Statement of Work, in the time frames described herein effective as of the date of the customer's decision to purchase and providing that the customer provides appropriate purchase/payment commitments.

This section contains the signatures of the Customer and HP representative authorized to approve and accept this Statement of Work, which is effective as of the last date signed below ("Effective Date").

Hewlett-Packard Company

City of Franklin, Tennessee

By: _____

By: _____

Name: Eric S. Stuckey

Name: Judith M. Alexander, Esq.

Title: City Administrator

Title: Public Sector Contracts

Date: _____

Date: 8-30-10



ATTACHMENT A: TERMS AND CONDITIONS

HP SINGLE ENGAGEMENT TERMS FOR TECHNICAL SERVICES

1. DEFINITIONS

- a. *Affiliate* of a party means an entity controlling, controlled by, or under common control with, that party.
- b. *Deliverable* means the tangible work product resulting from HP's performance of Technical Services that is specified in a Transaction Document to be provided to Customer, excluding Products, Custom Products and modifications, enhancements and derivative works thereto.
- c. *Hardware* means computer and related devices and equipment, related documentation, accessories, parts, and upgrades.
- d. *HP Branded* means Products and Technical Services bearing a trademark or service mark of Hewlett-Packard Company or any Hewlett-Packard Company Affiliate.
- e. *Product* means Hardware and Software listed in HP's standard price list at the time of HP's acceptance of Customer order, and including products that are modified, altered, or customized to meet Customer requirements ("Custom Products").
- f. *Technical Services* means consulting, integration, or technical services performed by HP under a Statement of Work or other Transaction Document, excluding Hardware maintenance and repair, Software maintenance, training, or other standard support services provided by HP ("Support").
- g. *Software* means machine-readable instructions and data (and copies thereof) and related updates and upgrades, licensed materials, user documentation, user manuals, and operating procedures.
- h. *Statement of Work* means an executed document so titled, that describes the Technical Services to be performed by HP. The parties may utilize a Statement of Work or other form of Transaction Document to describe the Technical Services.
- i. *Transaction Document(s)* means an accepted Customer order (excluding pre-printed terms) and in relation to that order valid HP quotations, HP published technical data sheets or service descriptions, HP limited warranty statements delivered with or otherwise made available to Customer with Products, and mutually executed Statements of Work, all as provided by HP, or other mutually executed documents that reference these Terms.

2. TECHNICAL SERVICES

- a. Technical Services. HP will perform the Technical Services and provide Deliverables as described in the relevant Transaction Documents and these HP Single Engagement Terms for Technical Services ("Terms").
- b. Project Representatives. Each party will appoint an individual for each project who will serve as their primary representative ("Project Representative"). Each Project Representative will:
 1. have overall responsibility for managing and coordinating the performance of the party it represents in a prompt and professional manner; and



Technical Services Statement of Work

2. meet with the other party's Project Representative at regular intervals to review progress and resolve any issues relating to the Technical Services.

The Customer's Project Representative will be available at all times when HP's personnel are at Customer's premises or will designate an alternate with the same level of authority and project knowledge in the event of unavailability. Either party may change its Project Representative at any time upon written notice.

- c. Changes. Requests by Customer and recommendations by HP for changes to the Technical Services or Deliverables are subject to the HP change management procedures set forth in the applicable Transaction Document, and shall become effective upon the execution date of such change order.
- d. Dependencies. Customer will comply with the general obligations specified in these Terms, together with any specific Customer obligations described in the relevant Transaction Document, in a timely manner. Customer acknowledges that HP's ability to deliver the Technical Services is dependent upon Customer's full and timely cooperation with HP, as well as the accuracy and completeness of any information and data Customer provides to HP. Customer acknowledges that HP bids and Customer has the right to acquire Technical Services and Products separately.
- e. Suspension of Technical Services. Except for failure to pay as set forth in section 4, HP may elect to suspend performance, if after ten (10) days written notice, Customer has not cured a failure to perform under these Terms.

3. PRICES, PAYMENT SCHEDULE, AND TAXES

- a. Prices. Prices shall be as specified in the current local published HP price list at the time HP receives Customer's order or valid Transaction Document. Customer will be responsible for payment of reasonable out of pocket expenses incurred by HP in connection with the performance of Technical Services, including travel and travel-related expenses (such as lodging and meals), unless otherwise stated in the Transaction Document.
- b. Payment Schedule. Any applicable payment schedule will be set forth in the Transaction Document. Any Technical Services provided on a time and expense basis will be invoiced monthly, unless otherwise agreed in the Transaction Document.
- c. Taxes. Prices are exclusive of, and Customer shall pay, all taxes, duties, levies or fees, or other similar charges imposed on HP or on the Customer by any taxing authority (other than taxes imposed on HP's income) related to Customer's order, unless Customer has provided HP with an appropriate resale or exemption certificate for the delivery location. "Delivery location" means the location where Technical Services are performed. If Customer requests that specific HP personnel perform Technical Services outside the city, state, province, or country in which such personnel are based, Customer shall reimburse HP for increased taxes and related out of pocket costs incurred by HP and/or its personnel as a result of providing such Services.
- d. Withholding Tax. If Customer is required by law to withhold and remit tax relating to the Technical Services, Customer shall:
 1. be entitled to reduce the payment by the amount of such tax;
 2. withhold and remit such tax to the applicable tax jurisdiction;
 3. assist HP to obtain the benefit of any reduced withholding tax under applicable tax treaties; and
 4. furnish to HP a tax certificate or other acceptable evidence of payment of such tax as required by the relevant taxing authorities.



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4. PAYMENT

Customer agrees to pay, without offset, all invoiced amounts within thirty (30) days of HP's invoice date. HP may change credit or payment terms for unfulfilled orders if, in HP's reasonable opinion, Customer's financial condition, previous payment record, or relationship with HP merits such change. HP may discontinue performance if Customer fails to pay any sum when due.

5. ACCEPTANCE

Acceptance of Technical Services occurs upon HP's performance of the Technical Services. Acceptance of Deliverables occurs upon delivery, unless otherwise specified in the relevant Transaction Document. If a Deliverables acceptance procedure is set forth in the relevant Transaction Document, such procedure and associated remedies do not apply to Products or Custom Products, even if they can be used in connection with the Technical Services or Deliverables.

6. CUSTOMER ORDERS

Orders are subject to acceptance by HP. The associated delivery schedule for an order shall not exceed twelve (12) months, unless otherwise provided in a Transaction Document.

7. WARRANTY

- a. HP warrants that it will perform Technical Services using generally recognized commercial practices and standards. HP will re-perform any Technical Services not performed in accordance with the foregoing warranty provided that HP receives written notice from Customer within thirty (30) days after such Technical Services were performed. To the extent permitted by local law, this will be Customer's sole and exclusive remedy for a breach of the foregoing warranty.
- b. HP warrants that the final Deliverable provided to Customer will substantially conform to the requirements set forth in the applicable Transaction Document for such Deliverable for a period of thirty (30) days following the date of acceptance. If Customer provides written notice to HP, within thirty (30) days after acceptance of the Deliverable, of any non-conformance with this warranty, HP will attempt to correct any non-conformance confirmed by HP within a reasonable time. Customer will provide HP with sufficient information to permit HP to confirm such non-conformance, and will provide assistance and cooperation as reasonably requested by HP to permit HP to attempt to correct such non-conformance. If HP is unable to comply with the foregoing obligations, HP will refund a reasonable portion of the price stated in the Transaction Document applicable to that Deliverable upon Customer's prompt return of the affected Deliverable to HP. To the extent permitted by local law, this will be Customer's sole and exclusive remedy for a breach of the foregoing warranty. This Deliverables warranty and associated remedies do not apply to Products or Custom Products, even if they can be used in connection with the Technical Services or Deliverables.

HP will not be responsible for a breach of warranty that would not have occurred but for:

1. changes to a Deliverable that were implemented by Customer or a third party without HP's prior written authorization;
2. changes to software or hardware with which the Deliverable operates or interfaces, or on which the Deliverable or the Technical Services otherwise rely, made by Customer or a third party, including the vendors of such software or hardware without HP's prior written authorization;
3. errors or defects in software or hardware with which the Deliverable operates or interfaces, or on which the Deliverable or Technical Services otherwise rely (excluding HP Branded Hardware and Software provided in connection with the Deliverable); or



Technical Services Statement of Work

4. improper use or operation of a Deliverable or any portion thereof.
 - c. Non-HP Branded Products and Technical Services. HP provides third-party products, software, and Technical Services that are not HP Branded "AS IS" without warranties of any kind, although the original manufacturers or third party suppliers of such products, software and Technical Services may provide their own warranties.
 - d. Disclaimer. HP DOES NOT WARRANT THAT DELIVERABLES WILL BE ERROR FREE OR THAT THEY WILL BE COMPATIBLE WITH PRESENT OR FUTURE PRODUCTS OF HP OR OTHER VENDORS. THE WARRANTIES AND ANY ASSOCIATED REMEDIES EXPRESSED OR REFERENCED IN THESE TERMS ARE EXCLUSIVE. NO OTHER WARRANTY, WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED BY HP OR MAY BE INFERRED FROM A COURSE OF DEALING OR USAGE OF TRADE. TO THE EXTENT ALLOWED BY LOCAL LAW HP DISCLAIMS ALL IMPLIED WARRANTIES OR CONDITIONS INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.
8. INTELLECTUAL PROPERTY INFRINGEMENT
- a. Third-Party Claims. HP will defend or settle third party claims against Customer brought in the country where the Technical Services and Deliverables are provided under these Terms resulting from: (i) HP's infringement of any trade secrets, copyrights, trademarks, service marks, or trade names alleged to have occurred in relation to the Deliverables, or ii) HP's knowing infringement of the patent of a third party in connection with the performance of the Technical Services or the provision of the Deliverables, if Customer:
 1. promptly notifies HP of the claim in writing;
 2. cooperates with HP in the defense of the claim; and
 3. grants HP sole control of the defense and settlement of the claim.

HP will pay infringement claim defense costs, HP-negotiated settlement amounts, and court-awarded damages.
 - b. Remedies. If such a claim appears likely, HP may modify the infringing Technical Services or Deliverable, procure any necessary rights to use, or replace the affected Technical Services or Deliverable with one that is at least functionally equivalent. If HP determines that none of these alternatives is reasonably available, then HP will issue a refund to Customer for a pro-rata portion of the charges paid by Customer for the infringing Technical Services or Deliverable upon discontinuance of the Technical Services or return of the Deliverable to HP.
 - c. Exclusions. HP has no obligation for any claim of infringement arising from:
 1. any third party materials;
 2. HP's compliance with or use of Customer's information, technology, designs, specifications or instructions, including those incorporated into any Transaction Document or Deliverable;
 3. modifications made by Customer or a third party;
 4. Customer's non-compliance with the Transaction Documents or the licensing or use restrictions set forth herein; or
 5. Customer's use of the Deliverables with non-HP Branded products or third party materials.
 - d. Sole and Exclusive. This section 8 states HP's entire liability and Customer's sole and exclusive remedies for claims of intellectual property infringement, to the extent permitted by local law.



Technical Services Statement of Work

9. INTELLECTUAL PROPERTY RIGHTS

- a. Intellectual Property Rights. All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights ("IPR") existing prior to the effective date of the relevant Transaction Document shall belong to the party that owned such rights immediately prior to the effective date.
- b. License to HP. Customer grants HP a non-exclusive, worldwide, royalty-free right and license (or right to use or sublicense) to use, copy, make derivative works of, distribute, display, perform, and transmit Customer's and third parties' intellectual property rights to the extent necessary for HP to perform its obligations and exercise its rights under these Terms.
- c. Deliverables and License to Customer. HP will own all IPR in the Deliverables created hereunder. HP grants to Customer a worldwide, non-exclusive, fully paid, royalty-free license to use, execute, reproduce, display, and make copies of such Deliverables for its internal use. To the extent that the Deliverables include Software, Customer's license as set forth above is to the object code version of the Software. Notwithstanding the foregoing, any third party Software incorporated into any licensed Deliverable will be subject to the license terms applicable to such Software.

10. CONFIDENTIALITY

In connection with the Technical Services described in the Transaction Document, either party may receive or have access to technical information, information about product plans and strategies, promotions, customers and related technical, financial or business information which the disclosing party considers to be the confidential information of that party or its third party contractors or suppliers ("Confidential Information"). The following will apply to any such Confidential Information:

- a. Before any Confidential Information is disclosed, the parties will first agree to disclose and receive such information in confidence. If then disclosed, the Confidential Information will be marked as confidential at the time of disclosure, or if disclosed orally but stated to be confidential, will be designated as confidential in a writing by the disclosing party summarizing the Confidential Information disclosed and sent to the receiving party within thirty (30) days after such oral disclosure.
- b. Confidential Information may be used by the receiving party only with respect to the performance of its obligations under these Terms and the relevant Transaction Document, and only by the employees of the receiving party and its employees, agents or contractors who have a need to know such information for purposes of these Terms and the relevant Transaction Document. The receiving party will protect, and will ensure that its employees, agents and contractors will protect, the disclosed Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as the receiving party uses to protect its own confidential information of a like nature.
- c. The receiving party's confidentiality obligation will be for a period of three (3) years after the date of disclosure.
- d. The confidentiality obligations of the parties will not extend to information that:
 1. was in the receiving party's possession before receipt from the disclosing party;
 2. is or becomes publicly known without breach by the receiving party;
 3. is rightfully received by the receiving party from a third party without a duty of confidentiality;
 4. is independently developed or learned by the receiving party;
 5. is disclosed by the receiving party with the disclosing party's prior written approval; or



Technical Services Statement of Work

6. is deemed a public record pursuant to the Tennessee Public Records Act.

11. LIMITATION OF LIABILITY AND REMEDIES

- a. Limitation of Liability. Except for the amounts in section 8 above and damages for bodily injury (including death), and only to the extent provided by local law, HP's total aggregate liability is limited to the amount paid by Customer for the Technical Services or Deliverable under the Transaction Document that is the subject of the claim.
- b. Disclaimer. TO THE EXTENT PROVIDED BY LOCAL LAW, EXCEPT FOR CLAIMS BY A PARTY FOR INFRINGEMENT OF THEIR INTELLECTUAL PROPERTY RIGHTS AGAINST THE OTHER PARTY, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL COSTS OR DAMAGES OF ANY KIND OR FOR ANY DOWNTIME COSTS; LOST BUSINESS, REVENUES, OR PROFITS; FAILURE TO REALIZE EXPECTED SAVINGS; LOSS OR UNAVAILABILITY OF OR DAMAGE TO DATA; OR SOFTWARE RESTORATION WHETHER OR NOT THAT PARTY WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH COSTS, EXPENSES, OR DAMAGES.
- c. Legal Theory. TO THE EXTENT ALLOWED BY LOCAL LAW, THESE LIMITATIONS WILL APPLY REGARDLESS OF THE BASIS OF LIABILITY, INCLUDING NEGLIGENCE, MISREPRESENTATION, BREACH OF ANY KIND, OR ANY OTHER CLAIMS IN CONTRACT, TORT OR OTHERWISE.

12. TERMINATION

- a. Termination for Convenience. For Technical Services performed on a time and expense basis, either party may terminate the relevant Transaction Document to which these Terms are attached for convenience upon thirty (30) days prior written notice to the other party, unless otherwise prohibited by these Terms or in the Transaction Document.
- b. Termination for Cause. Either party may terminate the relevant Transaction Document to which these Terms are attached on written notice for cause if the other party fails to comply with these Terms after it has been notified in writing of the nature of the failure and been provided with a reasonable time to cure the failure.
- c. Bankruptcy. If either party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, the other party may terminate the relevant Transaction Document to which these Terms are attached without notice and may cancel any unfulfilled obligations.
- d. Effect of Termination. Upon termination of a Transaction Document, Customer will pay HP for all Technical Services performed and charges and expenses incurred by HP up to the date of termination, and Customer will receive all work in progress for which Customer has paid. Should the sum of such amounts be less than any advance payment received by HP, HP will refund the difference within thirty (30) days of such termination.
- e. Effect of Termination of Licenses. HP may terminate Customer's license in the Deliverables upon notice for failure to comply with these Terms. In the event of termination of Customer's license, Customer will immediately destroy or return to HP the affected Deliverables and all partial or complete copies thereof, or provide satisfactory evidence of their destruction to HP.
- f. Survival. Any provision in these Terms which by their nature extend beyond the termination or expiration will remain in effect until fulfilled and will apply to both parties' respective successors and permitted assigns. Any termination under this section 12 will be without prejudice to the party's legal rights and remedies, including injunction and other equitable remedies.

13. HIRING OF EMPLOYEES



Technical Services Statement of Work

Customer agrees not to solicit, or make offers of employment to, or enter into consultant relationships with, any HP employee involved, directly or indirectly, in the performance of Technical Services hereunder for one (1) year after the date such employee ceases to perform Technical Services under these Terms. Customer shall not be prevented from hiring any such employee who responds to a general hiring program conducted in the ordinary course of business and not specifically directed to such HP employees.

14. GENERAL

- a. Restricted Use. Technical Services and Deliverables acquired by Customer under these Terms are solely for Customer's own internal use and are not for resale or distribution. Deliverables are not specifically designed, manufactured, or intended for use as parts, components, or assemblies for the planning, construction, maintenance, or direct operation of a nuclear facility. Customer is solely liable if Deliverables purchased by Customer are used for these applications and will indemnify and hold HP harmless from all loss, damage, expense, or liability in connection with such use.
- b. Force Majeure. Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control; however, this provision will not apply to Customer's payment obligations.
- c. Assignment. Customer may not assign, delegate or otherwise transfer all or any part of its rights or obligations under these Terms without prior written consent from HP. Any such attempted assignment, delegation, or transfer will be null and void.
- d. Export and Import. Customer who exports, re-exports, imports, or otherwise transfers Deliverables, technology, or technical data purchased hereunder, assumes responsibility for complying with applicable laws and regulations and for obtaining required export and import authorizations. HP may suspend performance under these Terms: 1) if the Customer is in violation of any applicable laws or regulations, and 2) to the extent necessary to assure compliance under the U.S. or other applicable export or similar regulations.
- e. Governing Law. Disputes arising under these Terms will be governed by the law of the State of Tennessee with venue in the courts of Williamson County.
- f. Notices. All notices that are required under these Terms will be in writing and will be considered effective upon receipt.
- g. Entire Agreement. These Terms, Attachment B, the Addendum, and the relevant Transaction Documents represent the entire agreement between HP and Customer regarding Customer's purchase of Technical Services, and supersedes and replaces any previous communications, representations, or agreements, or Customer's additional or inconsistent terms, whether oral or written. In the event any provision of these Terms is held invalid or unenforceable the remainder of the Terms will remain enforceable and unaffected thereby.
- h. Waiver. Neither party's failure to exercise or delay in exercising any of its rights under these Terms will constitute or be deemed a waiver or forfeiture of those rights.
- i. Background Checks. HP conducts background checks in accordance with HP's policies and procedures.
- j. Independent Contractor. HP is an independent contractor in the performance under these Terms and neither HP nor any HP personnel are employees or agents of Customer. Nothing in these Terms will be construed as creating a joint venture, partnership or employment relationship between the parties, nor will either party have the right, power or authority to create any obligation or duty, express or implied, on behalf of the other.
- k. Authorization to Install Software. During the provision of Technical Services, HP may be required to install copies of



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third-party or HP Branded Software and be required to accept license terms accompanying such software ("Shrink-Wrap Terms") on behalf of Customer. Shrink-Wrap Terms may be in electronic format, embedded in the software, or contained within the Software documentation. Customer hereby acknowledges that it is Customer's responsibility to review Shrink-Wrap Terms at the time of installation, and hereby authorizes HP to accept all Shrink-Wrap Terms on its behalf.

- i. Publicity. Neither party will publicize nor disclose to any third party without the consent of the other party either the price or these Terms or the fact of its existence and execution, except as may be necessary to comply with other obligations stated in these Terms. Notwithstanding the foregoing, HP may use Customer's name and identification of this engagement in connection with general lists of Customers and experience.
- m. Products and Support. These Terms for Technical Services do not contemplate the sale of Products or Support, which shall require the necessary terms and conditions for such purchase. In the event Customer wishes to purchase Products or Support, the terms governing such purchase will need to be established between the parties.
- n. Similar Services. Nothing in these Terms will prohibit HP from providing Technical Services similar to those provided hereunder to other customers.
- o. Electronic Orders and EDI. Where facilitated under local law, the parties may do business electronically, including order placement and acceptance. Once accepted, such orders create fully enforceable obligations subject to these Terms. Such orders and acceptance will be deemed for all purposes to be an original signed writing. Customer and HP will adopt commercially reasonable security measures for password and access protection.



ATTACHMENT B: CHANGE MANAGEMENT

A change is an alteration to the project scope, deliverables, or milestones that affects the project cost, schedule, quality, or conformance of the deliverables to the agreed specifications. The Technical Services primary contact has overall responsibility for the change process.

When a change is desired, the requester (HP or the Customer) completes a Change Request Form (at the end of this section) detailing the change and the justification for the change. The person who initiates the request should forward it to the Technical Services primary contact. Then HP performs the following procedure:

Step	Action
1.	Logs and files the Change Request Form, noting the date and the time the change request was received.
2.	Acknowledges acceptance of the Change Request to the requester within two (2) business days of receipt of form.
3.	Reports the status of the Change Request in Progress Reports.
4.	Determines impact to the project schedule and cost resulting from an assessment of the Change Request. The assessment impact is recorded on the Change Request Form and presented to the Customer Project Coordinator.
5.	If the assessment of the Change Request will have an effect on the project milestones or budget, the Technical Services primary contact obtains additional Customer funding before proceeding with the assessment.
6.	Directs the assessment effort with appropriate resources. This assessment results in an impact statement (with cost, schedule, and resource requirements), technical feasibility, and desirability of implementing the Change Request. The change will be classified as one that: <ul style="list-style-type: none">• Can be done with no impact on project cost or delivery schedule• Can be done but will impact Customer's cost or delivery schedule• Is recommended as a follow-on project• Cannot be done due to technical unfeasibility (explanation provided).
7.	If the assessment indicates the change will have no effect on the cost and/or the schedule of the project, the Technical Services primary contact makes the final decision on the disposition of the request. The disposition can be to unconditionally accept the request for change, conditionally accept (subject to management approval), reject the request, or ask for more information.
8.	If the assessment reveals that the change will impact the cost and/or schedule of the project and/or customer satisfaction with the project, the Technical Services primary contact quantifies the impact.
9.	The Change Request Form is then returned to the requester and Customer Project Coordinator for review and acceptance. The Customer Project Coordinator and HP's signatures on the Change Request Form signify acceptance of the change. HP and Customer will revise contract/purchase orders as necessary.



Change Request Form

Project/Opportunity: _____

Change Request Number: _____ Date of Request: _____

Description of Change:

More Descriptive Details / Documents Attached to Request Form: Yes No

Reasons for Proposed Change: (X)

<input type="checkbox"/>	Problem/Error/Non-conformance (corrective change)
<input type="checkbox"/>	Improvement/Enhancement (perfect change)
<input type="checkbox"/>	Change in Environment (adaptive change)
<input type="checkbox"/>	Other

Documents/Deliverables Requiring Update: (X)

<input type="checkbox"/>	Statement of Work	<input type="checkbox"/>	Subcontract Agreement	<input type="checkbox"/>	HP Purchase Order
<input type="checkbox"/>	Project Plan	<input type="checkbox"/>	Quality Plan	<input type="checkbox"/>	PM Schedule
<input type="checkbox"/>	Other	<input type="checkbox"/>		<input type="checkbox"/>	

Estimate of Impact

Degree of Impact: (X) Minimal Moderate Major

Cost Impact of Requested Change	
Time/Schedule: (Yes/No) (Detail Below)	Dollars: (Yes/No) (Details Below)

Immediate Resolution: (X) Yes No – Start Formal Change Control Process

Full Evaluation Required: (X)	<input type="checkbox"/>	No	<input type="checkbox"/>	Yes – (Enter Estimates Below)
Cost Estimates / Evaluation	Hours:	<input type="checkbox"/>	Dollars:	<input type="checkbox"/>

Name / Recommended Evaluator: _____ Title: _____

Approvals For Full Evaluation:



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Hewlett-Packard: _____ Title: _____

Supplier: _____ Title: _____

Evaluation Results

Date of Review: _____

Decision: (X)

<input type="checkbox"/>	Approved	<input type="checkbox"/>	Rejected	<input type="checkbox"/>	Deferred Until:
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Agreed:

Supplier: _____ Date: _____

Hewlett-Packard: _____ Date: _____



ADDENDUM

This addendum shall modify and supersede the contract titled Hewlett Packard – Technical Services Statement of Work, (the “Agreement”) and entered into as of the Effective Date, by the City of Franklin, Tennessee and Hewlett-Packard Company (“Vendor”) and together with same shall constitute the entire agreement (“Contract”). Acceptance of payment as stated in the Contract constitutes Vendor’s acceptance of all terms and conditions stated herein.

Standard Terms and Conditions

1. Time of the Essence. The parties agree that TIME IS OF THE ESSENCE with respect to the parties’ performance of all provisions of the Agreement.
2. Confidentiality and Proprietary rights. Vendor waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page (or section as the case may be) as confidential or proprietary. Proprietary rights do not extend to the data created by the City’s users of the System; all rights to that data (including derivative or hidden data such as metadata) shall vest solely in City at the moment of creation and City shall retain exclusive rights, title, and ownership of all data and images created therefrom at the moment of creation and utilization, through and including image creation. City may be required to disclose documents under state or federal law. City shall notify Vendor if a request for documents has been made and shall give Vendor a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. In exchange, Vendor agrees to indemnify, defend, and hold harmless City for any claims by third parties relating thereto or arising out of the City’s release of documents as a result of City’s reliance upon Vendor’s representation that materials supplied by Vendor (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Vendor and Vendor assumes control over that claim.
3. Warranties/Limitation of Liability/Waiver. The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by Vendor to limit its liability shall be void and unenforceable.
4. Arbitration/Mediation. No arbitration shall be required as a condition precedent to filing any legal claim arising out of or relating to the Contract. No arbitration or mediation shall be binding.
5. No Taxes, No Interest Payments. As a tax-exempt entity, the City shall not be responsible for sales or use taxes incurred for products or services. The City shall supply Vendor with its Sales and Use Tax Exemption Certificate upon Vendor’s request. Vendor shall bear the burden of providing its suppliers with a copy of the City’s tax exemption certificate and shall assume all liability for such taxes, if any, that should be incurred. The City does not agree to pay any interest for late payments, having agreed to pay in a timely manner.



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6. Severability. If any term or provision of the Contract is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Contract will not be affected.
7. Precedence. In the event of conflict between this Addendum and the provisions of the Agreement, or any other contract, agreement or other document to which the Agreement or this Addendum may accompany or incorporate by reference, the provisions of this Addendum will, to the extent of such conflict (or to the extent the Agreement is silent), take precedence unless such document expressly states that it is amending this Addendum.
8. Additions/Modifications. If seeking any addition or modification to the Contract, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of the Contract, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refer to the Contract or to the specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify the Contract; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.
9. Survival. This Addendum shall survive the completion of or any termination of the Contract, agreement or other document to which it may accompany or incorporate by reference.