Technical Support Services Contract
City of Waukesha – Heartland Business Systems, LLC

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, referred to herein as the City; and Heartland Business Systems, LLC, 1700 Stephen Street, Little Chute, Wisconsin 54140, referred to herein as Heartland. Together, the City and Heartland are referred to as the Parties.

Recitals

The City published a Request for Proposals, referred to as the RFP, for consulting services in connection with the following Project:

Provision of single-point-of-contact technical support for City of Waukesha end users, including support of hardware devices, desktop and application software, and connectivity, using phone, email and Heartland's Client portal, ServiceNow.

The RFP contained a specific Scope of Services to be incorporated into the successful bidder's contract.

Heartland submitted a proposal in response to the RFP, and was selected by the City to be awarded the contract for the Project.

Heartland is willing to perform consulting services according to the scope of Services stated in the RFP and Heartland's responsive Proposal, and to accept the award of the contract for the Project.

Now, therefore, the City and Heartland agree and contract as follows:

1. **Scope of Services.** Heartland shall perform the Services described on Schedule A, according to the terms and conditions of this Contract. Schedule A is incorporated into this Contract by reference.

2. **Changes to Scope of Services.** Additions or deletions to the Services shown on Schedule A, and amendments to the fees to be paid in connection with them, may only be done by the mutual, written agreement of the Parties. Heartland may provide a change order form to be used for that purpose.

3. **Standard of Services.** Heartland will perform the Services on Schedule A according to generally-accepted industry practices and the highest standards of the professions of the individual employees performing the Services for Heartland. Heartland warrants and represents to the City that all personnel involved in the performance of Heartland's duties under this Contract shall be fully trained and certified to perform all services according to that standard of care.

4. **Payment.** The City shall pay to Heartland the following fees for the Services:

   a. **Regular Hours Service Desk.** For incidents reported to Heartland between 8:00 a.m. and 4:30 p.m., Monday through Friday, federal holidays excluded, Fifteen Dollars ($15.00) per incident handled, with a minimum monthly fee of Four Thousand Five Hundred Dollars ($4,500.00).

   b. **After Hours Service Desk.** For incidents reported to Heartland at any time other than those listed in the preceding section, Forty Dollars ($40.00) per incident handled, with a minimum monthly fee of Four Hundred Dollars ($400.00).

   c. **Onsite Support.** Seven Thousand Five Hundred Dollars ($7,500.00) per month.

   d. **Non-Standard Reports.** If the scope of Services is changed to include reports in addition to the standard reports provided through ServiceNow, a report development fee of $125 per hour may be charged.

e. **Payment Terms.** Heartland shall invoice the City, monthly. Invoices shall detail amounts in excess of the minimum monthly fees. All invoices shall be payable net 30 days.

5. **Term.** The initial term of this Contract shall commence on December 1, 2015, and shall terminate on November 30, 2016. This Contract shall automatically renew for additional, successive one-year terms unless either Party gives written notice of its intent not to renew, no later than 30 days before the expiration of the then-current term.

6. **Changes.** This Contract can only be amended by the written, mutual agreement of the Parties. No change to the scope of the Services, or the total amount to be paid to Heartland, shall be effective unless done by the written, mutual agreement of the Parties.

7. **Indemnification.** The Parties each shall indemnify and hold the other harmless from any and all third-party claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind arising out of, or connected in any way with, their respective acts or omissions, including court costs and actual attorney fees, except for liabilities and obligations that are proximately caused by the acts or omissions of the Party that would otherwise be indemnified or its agents.

8. **Insurance.** Heartland shall maintain insurance of the following kinds and for not less than the following limits, at Heartland's sole expense, at all times during the term of this Contract, including any renewals or extensions. Policies shall be occurrence, and not claims-made, policies. Heartland shall obtain an endorsement making the City an additional insured and loss payee, and Heartland's insurance shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Upon the execution of this Contract, Heartland shall deliver a certificate of insurance to City showing that all requirements of this section are met.

   a. Commercial general liability, including products-completed operations, $1,000,000 per occurrence, $2,000,000 aggregate. This commercial general liability policy shall provide coverage for professional errors and omissions.

   b. Automobile liability, $1,000,000 bodily injury, $1,000,000 property damage.

   c. Excess liability-umbrella, $2,000,000.

   d. Worker compensation, statutory requirements.

9. **Record Keeping.** Heartland shall keep all documents and records generated in the performance of the Services for no less than 7 years after completion of the Services, and shall make them available to the City at the City's request. Heartland acknowledges that such documents and records may be subject to Wisconsin's Open Records Law.

10. **Cooperation by City.** The City shall cooperate with Heartland in the performance of the Services, and shall respond timely to all reasonable requests for information and access.

11. **Parties Are Independent Contractors.** Nothing in this Contract shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Contract, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.

12. **City's Warranty of Licensing.** City warrants and represents to Heartland that City possesses all required licenses for all software being used by City, and City shall hold Heartland harmless from any claims or suits arising from violation of any third party's proprietary rights in such software.

13. **City's Warranty of Back-Up.** City warrants and represents to Heartland that City's data and system has been properly backed-up prior to the commencement of services by Heartland, and City acknowledges that Heartland shall not be liable for any damages suffered by City as a result of City's failure to back-up data properly.

14. **Non-Solicitation of Heartland Personnel.** During the term of this Contract, and for a period of one year after the termination of this Contract by either Party for any reason, City shall not (a) directly or indirectly encourage any employee of Heartland, who became known to City by virtue of such employee providing services under this Contract, to terminate his or her employment with Heartland; or (b) directly or indirectly solicit any employee of Heartland, who became known to City by virtue of such employee providing services under this Contract, for employment which would end or diminish that employee's employment by Heartland. City acknowledges that Heartland will suffer irreparable harm as a result of Buyer's violation of this paragraph and that Heartland may bring an action for injunctive relief and actual damages to enforce this provision.

15. **Suspension of Performance upon Failure of Payment.** Heartland may, at its option, suspend its performance of services under this Contract if City is delinquent on payment of any outstanding invoices.

16. **Limitation of Damages.** Heartland shall not be liable to City for any consequential or indirect damages arising from any reasonably-unforeseeable consequences of a breach of this Contract, or any damages which were not reasonably in the contemplation of the Parties upon the execution of this Contract. Nothing in this Contract shall be deemed to limit City's right to recover damages from Heartland which arise directly from Heartland's breach of this Contract, including, but not limited to, City's expenses in curing any such breach.

17. **Governmental Immunities and Notice Requirement Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.

18. **Permits and Licenses.** Heartland shall be responsible, at Heartland's expense, for obtaining all permits and new or additional licenses required for the performance of the Services, if any.

19. **Assignment Prohibited.** This Contract, and Heartland's responsibility to perform the Services under this Contract, may not be assigned by Heartland without the City's written consent.

20. **Notices.** All notices required by this Contract, and all other communications between the Parties, shall be addressed as follows:

    To the City: Attention Director of Information Technology
                     City of Waukesha
                     201 Delafield Street
                     Waukesha WI 53188

    To Heartland: Attention Rusty Konitzer
                     Heartland Business Systems, LLC
                     1700 Stephen Street
                     Little Chute WI 54140

21. **Corporate Authorization.** The individuals executing this Contract on behalf of Heartland warrant and represent that they are duly authorized to bind Heartland to this Contract. Heartland warrants and represents that the execution of this Contract is not prohibited by Heartland's articles of incorporation, by-laws, operating agreement, or other internal operating orders, or by any applicable law, regulation or court order. Heartland shall provide proof upon request.

22. **Assistance of Counsel, Voluntary Contract.** Heartland acknowledges that it has either had the assistance of legal counsel in the negotiation, review and execution of this Contract, or has voluntarily waived the opportunity to do so; that it has read and understood each of this Contract's terms, conditions and provisions, and their effects; and that it has executed this Contract freely and not under conditions of duress.

23. **Adequacy of Consideration.** The Parties acknowledge that the consideration expressed in this Contract is adequate and sufficient to make the obligations contained in this Contract binding upon the Parties.

24. **Costs of Enforcement.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.

25. **Severability.** If any term of this Contract is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Contract without affecting the enforceability of the remainder of this Contract or substantially frustrating its purpose, it will be so severed, and the remainder of this Contract will remain in effect and enforceable.

26. **Survival and Parties Bound.** Unless specifically limited in this Contract, any term, condition or provision of this Contract will survive the execution of this Contract or any stated time periods, to the extent necessary for their performance. This Contract is binding upon, and inures to the benefit of, the Parties' successors, assigns, heirs, executors, trustees and personal representatives.

27. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Contract, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.

28. **Impossibility of Performance.** Neither Party shall be in breach of this Contract if their failure to perform is due to unforeseeable circumstances, not in the Parties' control, which render the Party's performance impossible; provided the Parties resume performance promptly upon the end of the circumstances that had made performance impossible.

29. **Integration.** This Contract constitutes the entire agreement of the Parties formed by the City's RFP and Heartland's responsive proposal; however, if any ambiguity in this Contract requires resolution, or this Contract is silent on a material point, then reference may be made to the RFP and Heartland's proposal, in that order of priority, to construe this Contract. All other agreements and understandings of the parties with respect to the subject matter expressed in this Contract are unenforceable.

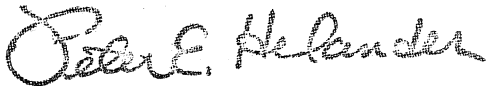**[remainder of this page left intentionally blank]**

City of Waukesha

_____
By Shawn N. Reilly, Mayor
Date:_____

To certify that funds are provided for payment:

_____
Richard L. Abbott, Director of Finance
Date:_____

_____
Attested by Gina L. Kozlik, City Clerk
Date:_____

Heartland Business Systems, LLC

_____
By (print name) Peter Helander
Title: Managing Member
Date:_____10- 28- 2015_____

_____
By (print name)_____
Title:_____
Date:_____

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Schedule A
Scope of Services

This Schedule A is incorporated into the Technical Support Services Contract between the City of Waukesha and Heartland Business Systems, LLC.

Heartland has been engaged to provide services for remote Helpdesk, Level 1 and Level 2 support. Heartland will perform the following tasks:

1.   Remote Service Desk

Heartland Business Systems has been engaged to provide single point of contact technical support for City of Waukesha end users. This includes support of hardware devices, desktop and application software and connectivity via phone, email and Heartland's Client portal (ServiceNow).

Heartland will receive and resolve technology questions related to hardware, connectivity, MS Office applications and Level 1 support for City of Waukesha's proprietary applications, including triage, problem resolution and closure.

Heartland will provide the City of Waukesha a standard monthly reporting package. Reports are based on the standard reports generated through ServiceNow. If the City of Waukesha requires specific reports to be created, there may be a development fee applied at a rate of $125 per hour. During the first 2 months of support, the implementation manager will work with the City of Waukesha to determine if additional reports are required. (some example of the reports are: All Incidents, Closed incident by week, day, month and year, Unsolved incidents, Reports by Service level agreement)

All support issues will be logged into Heartland's Incident Management System by Heartland's Service Desk personnel. Specified City of Waukesha support personnel will have access to ServiceNow.

The Service Desk will act as a single point of contact solution, any changes to the applications supported will be reviewed by City of Waukesha and Heartland, and changes to the solution will be submitted via the Heartland change process (Appendix A).

Services Included

- Level 1 and Level 2 support for Common off the shelf products (industry standard).

- Password Reset - The Client must provide necessary access, hardware, connectivity, documentation, process and training.

- Level 1, commercially-reasonable Support for proprietary applications following training and knowledge base documentation.

- Assigned Incident Tracking.

- Remote Control .

- Knowledge Base (IT users and End users).

Service Levels (Remote Service Desk):

- Average Speed of Answer: ≤ 90 seconds during standard hours of operation (industry average).

- Abandon Rate (dropped call): ≤ 8%.

- First Call Closure for Software (Common off the Shelf Software): 80%.

- Basic User Administration can include the following:

  o Network: Password resets/unlocks.

- The client must provide necessary access, hardware, WAN connectivity, licensing; documented process and training.

- FAQ support for Proprietary and/or Non-standard Applications (No closure service levels).

- Call received by Email or self-service (60%), Voice (40%).

- After Hours support: call back within one hour (Sixty Minutes).

- The City of Waukesha will forward calls to Heartland Service Desk.

- The City of Waukesha will create an internal email that will be forwarded to the Heartland Service Desk.

- SLA will take effect after 90-day transition period.

- Common of- the-shelf products (may include: Microsoft Office, Email, Adobe, etc.).

2. Level 1 On-Site Support

Break/Fix Support

- Heartland will repair all Desktop and Laptop PC Devices, according to OEM specifications.

- PCs will be repaired on site.

- Repairs will be performed regardless of the warranty status. Heartland is an authorized warranty provider for Dell, HP and Lenovo.

- For non-warranty repairs Heartland shall provide the City of Waukesha with an estimate of the parts cost to perform the repair prior to start. The City of Waukesha shall make the decision to perform the repair or replace the unit. If replacement is chosen Heartland will return the non-functioning unit to the City of Waukesha inventory.

- Repairs to in warranty units will be performed in accordance to manufacturer warranty processes.

- Routine manufacturer recommended preventive maintenance tasks will be performed while onsite.

- Respond within four (4) business hours of creation of incident through service desk and complete repairs by Next Business Day (NBD) for calls received before noon. Subject to parts availability supplied by the City of Waukesha or manufacturer if in warranty.

- SLA attainment of 80% (eighty percent). This is based on items that may fall outside the control of the City of Waukesha. Example: Manufacture sends a service part three days later resulting in a missed SLA.

- All Heartland employees who work on the City of Waukesha equipment or systems will undergo a background check and drug test.

Desk Side Support

- Level 2 support of Microsoft Operating Systems and Common Off The Shelf software. This includes support of device drivers and basic network setup.

- Respond via phone call within four (4) business hours of creation of incident through service desk and complete issue or escalate to Level 3 by Next Business Day (NBD) for calls received before noon.

- SLA attainment of 80% (eighty percent).

Install, Move, Add & Change ("IMAC")

Install

- Physical tasks required to place the device in its designated work area from un-boxing to connecting all cables.

- Place the City of Waukesha supplied image to the device; transfer data from the City of Waukesha supplied backup media; and update required settings.

- If Install is replacing an existing device, then the Install will also include removal and packaging of existing device and executing a data removal tool supplied by the City of Waukesha.

Move

- Physical relocation of the device and any peripherals including removing all cables at the original site and connection of all the cables at the destination site.

- Modification of configuration variables needed to function at the new device location.

Add

- Installation of compatible hardware or software to a device and required configuration.

Change

- Modification or removal of installed hardware or software to a device and required configuration.

Response time is three (3) business days.

Any IMAC requests affecting 10 or more devices shall be considered a project and priced separately at the time of the request. If the SLA's are not affected the engineer may perform IMAC's greater than 10 devices.

SLA attainment is 80% (eighty percent).

3. Level 2 Support (Onsite)

Heartland Engineer will work with The City of Waukesha Network team and management with the below tasks.

- Heartland Engineer will work with the City of Waukesha for measuring, monitoring, evaluating, and improving the efficiency of the City of Waukesha information technology systems, networks, and services.

- Heartland Engineer will work with the City of Waukesha for IT team in the day to day support for the City of Waukesha's information technology systems, providing for an efficient help desk that meets the needs of the City of Waukesha's workforce.

- Heartland Engineer will work with the City of Waukesha on Collaborating with the data management team to provide systems to support the City of Waukesha's tracking requirements and business processes.

- Heartland Engineer will work with the City of Waukesha for planning, implementing, and managing the City of Waukesha's telecommunications assets, including phone systems and telecommunications services from various providers at all company locations.