

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number
18-523-A24- **A5**

SAP Number

Innovation and Technology Department

Department Contract Representative Christine Onyango
Telephone Number 909-388-5943

Contractor International Business Machine Corporation
Contractor Representative Sara Brayton
Telephone Number 515-240-5795
Contract Term July 24, 2018 through July 23, 2023
Original Contract Amount Not-to-exceed \$5,823,000
Amendment Amount N/A
Total Contract Amount Not-to-exceed \$5,823,000
Cost Center 1200104048, 1200904048, 1201004048

Briefly describe the general nature of the contract: *Amendment to CRA Statement of Work IBM Service Extension for zOS Software Defect Support.*

FOR COUNTY USE ONLY

Approved as to Legal Form

▶ Bonnie Uphold
Bonnie Uphold, Supervising Deputy County Counsel

Date 1-25-2023

Reviewed for Contract Compliance

▶ _____

Date _____

Reviewed/Approved by Department

▶ _____

Date _____

IBM Technology Lifecycle Services (TLS) Schedule



This Schedule contains a listing of the Eligible Machines and / or Services at the Specified Locations identified herein for which IBM will provide the identified Services to the Client as described in the referenced transaction documents and any referenced Statements of Work, Service Descriptions and Change Authorizations.

Client Name and Address:
SAN BERNARDINO COUNTY
670 E GILBERT ST
SAN BERNADINO, CA 92415-0912

IBM Address:
International Business Machines Corporation
3039 E Cornwallis Rd
Research Triangle, NC 27709

Customer Number: 8477723

Contract Number: ID-00177482
Contract Start Date: 02/03/2023
Contract End Date: 07/31/2023
Agreement Number: HW65957
Attachment Number: 0000MSA
Purchase Order Number:

Prepared Date: 01/23/2023
Initial Term Commitment: Non-standard
Automatic Renewal: No

This offer is valid until: 04/19/2023

IBM must receive Client's acceptance of this Schedule by electronic signature, purchase order, or other means no later than the offer validity date or Client may request a new Schedule thereafter.

First Year Charges from 02/03/2023 to 07/31/2023
Total Service Charges from 02/03/2023 to 07/31/2023

USD 28,563.99
USD 28,563.99

Invoiced quarterly in advance

If the Contract Start Date is prior to the contract signature date, the first invoice might reflect an adjusted billing period.

Charges are based on the current inventory and services identified in this Schedule. Actual charges may vary with any additions, deletions, or changes to the inventory or services. Any applicable taxes are not included in the charge amounts herein but will be added to Client's invoice.

IBM Technology Lifecycle Services (TLS) Schedule

Summary

Title	Charges from 02/03/2023 to 07/31/2023
Maintenance Charges	0.00
Service Charges	28,563.99
One Time Charges	0.00
Total:	28,563.99

– Totals by Install Customer Number –

Installation Customer Number	Installation Name and Address Specified Locations	One-time Charge	Charges from 02/03/2023 to 07/31/2023
5853369	San Bernardino County, 670 E GILBERT ST, SAN BERNADINO 92415-0912, CA	0.00	28,563.99
Total:		0.00	28,563.99

– Totals by Billing Customer Number –

Billing Customer Number	Billing Name and Address	One-time Charge	Charges from 02/03/2023 to 07/31/2023
8477723	SAN BERNARDINO COUNTY, 670 E GILBERT ST, SAN BERNADINO 92415-0912, CA	0.00	28,563.99
Total:		0.00	28,563.99

Machine/Service List

Installation Customer Number: 5853369

Billing Customer Number: 8477723

Offering Description	Product Description	Service Level Description ⁴	QTY	Charge Start Date	Charge Stop Date ³	Code ²	Charges ¹ from 02/03/2023 to 07/31/2023
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Type/Model/Serial: 2965 N20 0203CA8

IBM Service Extension for z/OS v2.3 - 22-43 MSU	Normal business hours	1	02/03/2023	28,563.99
zOS Software Defect Support				

See Legend for details.

IBM Technology Lifecycle Services (TLS) Schedule

LEGEND

1 Change adjustments related to inventory and Service changes will be accumulated and invoiced with the next standard invoicing cycle (may be sooner for annual or semi-annual payment plans).

2 Codes:

E	End of Service
H	Indicates a Machine on an existing contract
L	Limited Support
O	One-time Charge
P	ETS
W	Machine under Warranty

3 Charge Stop Dates shown are those that differ from the Contract End Date.

4 Service Level Descriptions:

ORT	Onsite Response Target
SD	Same Day
SBD	Same Business Day (excluding weekends and holidays)
NBD	Next Business Day (excluding weekends and holidays)

UNLESS OTHERWISE SPECIFIED, SERVICE LEVELS ARE OBJECTIVES ONLY.

IBM Technology Lifecycle Services (TLS) Schedule

Data Processing Protection - IBM's Data Processing Addendum (DPA) at <http://ibm.com/dpa> and the DPA Exhibit at <https://www.ibm.com/mysupport/s/article/support-privacy> apply to Client personal data, if and to the extent: i) the European General Data Protection Regulation (EU/2016/679); and ii) other data protection laws identified at www.ibm.com/dpa/dpl apply.

The parties acknowledge and agree that COVID-19 is an event beyond the parties' reasonable control and it is not possible to foresee (or advisable to try and foresee) its duration, impact or extent (including measures and recommendations that may be put in place by regulators). As such, where a party's non-monetary obligations are not performed, affected, and/or delayed and that is attributable to COVID-19 or its related impacts, notwithstanding any other provision in the agreement, the affected party will not be responsible for such non-performance, affected performance or delay. The parties will act reasonably to discuss the affected obligations, potential work-arounds and related issues in good faith and will document any agreed changes to the agreement.

For purposes of this transaction, the following terms replace the terms of your Attachment with IBM.

Price Protection Options are replaced by the following:

Price protection will apply from the start date through the committed term as follows:

- a. no price increase announced by IBM will apply for the committed term specified in the TD; and
- b. Client will receive the benefit of a price decrease as of the stated effective date, if the price decrease is announced by IBM with an effective date during the committed term specified in the TD.

All newly added Eligible Products and Services, and changes to existing Eligible Product configurations and Services, will be charged at the then-current rate, and price protection will apply, for the term specified in the new TD.

Termination is replaced by the following:

Client has committed to continue Services for the entire transaction contract period as documented in the applicable TD. However, Client may terminate Services for an Eligible Product if Client: a) replaces the terminated Services with equivalent new IBM Services, or b) on 60 days' written notice to IBM if Client permanently removes the Eligible Machine from productive use within Client's Enterprise. For qualified State and Local Government Clients: Client may also terminate Services immediately prior to the start of any fiscal year for which funds have not been appropriated.

Client will receive a credit for any remaining prepaid period associated with Services Client terminates in accordance with this provision and a separate invoice for the equivalent Services added, if applicable. Otherwise, no credit is given for Client termination during the committed term.

This 1) Schedule, 2) the Statement(s) of Work and/or Service Description(s) referenced below, 3) the Attachment, and 4) the Agreement specified herein comprise the complete agreement regarding the Services and replace any prior oral or written communications between Client and IBM. Accordingly, neither party is relying upon any representation that is not specified in the complete agreement including, without limitation, any representations concerning 1) levels of service, hours, or charges to provide any Service; 2) the experiences of other clients; or 3) results or savings Client may achieve.

By accepting this Schedule, Client agrees that it has received, read, and agrees to be bound by, the terms comprising the complete agreement as listed herein. Client accepts the terms of this Schedule by 1) ordering, paying for, or using the Service referenced herein, or 2) signing it (or any other document that incorporates it by reference) by hand or electronically where recognized by law, if signature is required by either party. Client accepts each of the Transaction Documents listed below as if each were signed individually. Client further agrees that the Transaction Documents listed below also apply to the Services Client is acquiring under this Schedule.

The parties agree that the version of the Transaction Document(s) referenced below and in effect on the date that the signature page is created (as specified in the footer) will apply. Client is responsible for retaining a complete copy of the applicable terms for each transaction.

Software Support Extension

1. Scope of Work

Service Extension Support (Service) includes remote assistance (from IBM's support center or by electronic access as specified below) in response to problems discovered after a Program version reaches end of service as announced by IBM.

Program-specific terms, if any, will be specified in an Appendix A. The selected support level, supported products, charges, coverage period dates, and other details are specified in the Schedule.

IBM Software Maintenance, IBM Passport Advantage, or equivalent coverage must be maintained for Programs covered by Software Support Extension.

IBM will provide assistance for routine, short duration installation and usage (how-to) questions and code related questions, via electronic access and if available, telephone, only to Client's Information Systems (IS) technical support personnel during normal business hours. IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Support Guide for additional details on response criteria and call handling process by severity at <https://www.ibm.com/support/pages/ibm-support-guide>

Assistance is provided only to Client's technical support personnel within Client's enterprise and not to Client's end users. IBM does not warrant uninterrupted or error-free operation of an IBM Product or Service or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access.

2. Software Support Extension Support Levels

2.1 Usage Support Only - IBM will provide remote assistance for how-to, usage, configuration and product documentation questions for the Eligible Machines and supported products. This Service does not include preventive service, or the creation of patches, bypasses or fixes or the development of any software, including those designed to address security.

2.2 Defect Support Only - IBM will provide remote assistance for new and known defects for the supported products as follows:

- a. provide assistance with questions regarding product documentation related to the supported products;
- b. review diagnostic information to assist in the isolation of a problem cause (which would include, assistance interpreting traces and dumps for installation problems);
- c. provide technical assistance to address **known defects** for which available corrective service information and program fixes are available under the IBM Program license for the supported product. For the avoidance of doubt, Defect Support does not include: (1) preventive service, or (2) the creation of patches, bypasses, or fixes, or the development of any new software, including those that are designed to address security; and
- d. if it is determined that the supported product contains defects such that it does not conform to program specifications when properly used in the supported operating system environment for which the program was designed, IBM will use commercially reasonable efforts to provide a corrective restriction, bypass, or fix package, which may require prerequisite or co-requisite fix packages. Any fix is provided at the then-current maintenance level on the release for the supported product. For the avoidance of doubt, IBM will not always be able to provide a corrective restriction, bypass, update, patch, or fix for a security issue. For example, IBM may determine at its sole discretion that a resolution is not feasible due to size, complexity, or risk factors associated with code implementation and dependent architectural modifications.

2.3 Usage and Known Defect Support - IBM will provide assistance for routine, short-duration installation and usage (how-to) questions and code related questions. IBM will also assist on supported product known defects for which corrective service information and fixes are available. For the avoidance of doubt, this Service does not include: (1) preventive service, and (2) the creation of patches, bypasses, or fixes, or the development of any new software, including those that are designed to address security.

2.4 New Defect Support - If the supported Product contains a defect such that it does not conform to Program specifications when properly used in the supported operating system environment for which the Program was designed. IBM will use commercially reasonable efforts to provide a corrective restriction, bypass, update, patch, or fix, that may require prerequisite or co-requisite fix packages. A fix, if any, is provided at the then-current maintenance level for the supported Product. For the avoidance of doubt, IBM will not always be able to provide a corrective restriction, bypass, update, patch, or fix for a security issue. For example, IBM may determine at its sole discretion that a resolution is not feasible due to size, complexity, or risk factors associated with code implementation and dependent architectural modifications.

3. Client Responsibilities

Client agrees to:

- a. ensure that any access codes IBM provides are used only by Client's authorized personnel;
- b. install the latest available corrective service level, if requested;
- c. not apply any fixes obtained from non-IBM sources;
- d. maintain IBM Software Maintenance, IBM Passport Advantage, or an equivalent agreement for Programs covered by Software Support Extension; and
- e. provide IBM with all relevant diagnostic information (including product or system information) that pertains to the software problem management record.

In addition to the above Client Responsibilities, for Support levels that include Defect Support, Client agrees to:

- a. perform a regression test before accepting any fix, to verify its integrity within Client's System z environment; and
- b. apply all fixes supplied by IBM that pass regression testing to update software to assist with problem resolution. If the fix package does not pass Client's regression test, IBM will use commercially reasonable efforts to re-work the problem.

4. Termination

IBM may withdraw this Service upon 90 days' written notice. Client may terminate the Service upon one month's written notice, after the Service has been in effect for at least two months for each of the Eligible Machines and supported Products or Programs. Client will receive a credit for any remaining prepaid period associated with the terminated Service. This Service does not automatically renew.

This Statement of Work, its applicable Transaction Documents, applicable Attachments, and the Client Relationship Agreement (CRA), IBM Customer Agreement (ICA), or equivalent in effect between us are the complete agreement regarding Services and replace any prior oral or written communications between us. Accordingly, neither party is relying upon any representation that is not specified in the complete agreement including, without limitation, any representations concerning 1) levels of service, hours, or charges to provide any Service; 2) the experiences of other clients; or 3) results or savings Client may achieve. Each party accepts the terms of this Statement of Work by signing this Statement of Work by hand or, where recognized by law, electronically.

IBM Technology Lifecycle Services (TLS) Schedule

Transaction Documents:

Statement(s) of Work (SOW)

[SOW for Software Support Extension](#)

Z126-9278

Service Description(s):

Service Description(s) for IBM Technology Services can be viewed at: www.ibm.com/terms/?cat=technology-services.

The above Statement(s) of Work and/or Service Description(s) can be found at the links provided above. While viewing the Transaction Document(s) referenced above, local equivalents of corresponding documents can be viewed by selecting Client's local country / language, if necessary. If any of the referenced documents are not accessible, please request a copy from Client's sales contact.

IBM Technology Lifecycle Services (TLS) Schedule

Agreed to:

SAN BERNARDINO COUNTY (Client)

By:



Authorized signature

Name:

Jake Cordova

Title:

Interim Chief Information Officer

Date:

February 10, 2023

Agreed to:

International Business Machines Corporation (IBM)

By:



Authorized signature

Name:

Sandy Levin

Title:

IBM Systems Support Specialist

Date:

January 24, 2023



County of San Bernardino DELEGATED AUTHORITY – DOCUMENT REVIEW FORM

This form is for use by any department or other entity that has been authorized by Board of Supervisors/Directors action to execute grant applications, awards, amendments or other agreements on their behalf. All documents to be executed under such delegated authority must be routed for County Counsel and County Administrative Office review prior to signature by designee.

Note: This process should NOT be used to execute documents under a master agreement or template, or for construction contract change orders. Contact your County Counsel for instructions related to review of these documents.

Complete and submit this form, along with required documents proposed for signature, via email to the department's County Counsel representative and Finance Analyst. If the documents proposed for signature are within the delegated authority, the department will submit the requisite hard copies for signature to the County Counsel representative. Once County Counsel has signed, the department will submit the signed documents in hard copy, as well as by email, to CAO Special Projects Team for review. If approved, the department will be provided routing instructions as well as direction to submit one set of the executed documents to the Clerk of the Board within 30 days.

For detailed instructions on submission requirements, reference Section 7.3 of the Board Agenda Item Guidelines as the Delegation of Authority does not eliminate the document submission requirements.

Department/Agency/Entity: Innovation and Technology Department

Contact Name: Christine Onyango Telephone: 909-388-5943

Agreement No.: 18-523 Amendment No.: 5-24 Date of Board Item 6/28/22 Board Item No.: 53

Name of Contract Entity/Project Name: International Business Machine Corporation

Explanation of request/Special Instructions:
Please see attached.

COUNTY OF SAN BERNARDINO
CLERK OF THE BOARD OF SUPERVISORS
2023 FEB 21 AM 9:49
CALIFORNIA

Insert check mark that the following required documents are attached to this request:

- Documents proposed for signature (Note: For contracts, include a signed non-standard contract coversheet for contracts not submitted on a standard contract form).
- Board Agenda item that delegated the authority

Department Routed to County Counsel	County Counsel Name: Bonnie Uphold	Date Sent: 1/26/23
Reviewing County Counsel Use Only	Review Date <u>1-31-2023</u> Signature	Determination: <input checked="" type="checkbox"/> Within Scope of Delegated Authority <input type="checkbox"/> Outside Scope of Delegated Authority
CAO-Special Projects Use Only	Review Date <u>2/9/23</u> Signature	Disposition: <input checked="" type="checkbox"/> Route for signature to: <input type="checkbox"/> Chair <input checked="" type="checkbox"/> CEO <input checked="" type="checkbox"/> Department <input type="checkbox"/> Return to Department for preparation of agenda item