EV4009 AGREEMENT FOR
INSTALLATION OF UPGRADED NETWORK

GENERAL SERVICES DEPARTMENT -PROCUREMENT SERVICES
CITY OF KANSAS CITY, MISSOURI

THIS AGREEMENT is by and between KANSAS CITY, MISSOURI a constitutionally chartered municipal corporation (the "City" or "Owner") and Smart City of Kansas City, LLC ("Contractor" or "CONTRACTOR").

1. The Contract. The Contract between the City and Contractor consists of the following Contract Documents:

   (a) this Agreement.
   (b) Scope of Project – Attachment A;
   (c) Services- Attachment B;
   (d) General Conditions/Installation Responsibilities – Attachment C;
   (e) Drawings, Equipment and Specifications List – Attachment D:

   (f) Performance and Maintenance Bond and Payment Bond Forms– Attachment E;
   (g) Prevailing Wage Order -Attachment F; and
   .

All documents listed in this section 1 shall be collectively referred to as the "Contract Documents." City and Contractor agree that the terms "Agreement" and "Contract" and "Contract Documents" are used interchangeably in this Agreement and the terms "Agreement" and "Contract" and "Contract Documents" each include all "Contract Documents."

2. Equipment and Installation.

   (a) Subject to the terms and conditions of this Agreement and in consideration for the City entering into a Temporary Utility Services Concession Agreement for seven (7) years, Contractor, at Contractor's sole cost and expense, will install up to a $2,300,000 network upgrade (the "Project") at the Kansas City Convention and Entertainment Center in accordance with the Contract Documents**.** The City shall have no funding obligation for the Project and City shall not pay Contractor any contribution to the Project. Contractor shall solely be responsible for any cost overage. If the cost of the Project is less than $2,300,000, Contractor shall pay the remainder of the $2,300,000 into a segregated City Capital Project Fund which the City and Contractor shall use on Convention's Capital Projects, Maintenance and Repairs related in any way to the contracted services over the seven (7) year term. The City shall Split any remaining Funds after the seven-year term or after all additional contract renewals at a 50/50 division.

1) Example: If the Project data network project costs Contractor $1,900,000.00, the Contractor shall pay $400,000.00 to the segregated City Capital Project Fund.

(a) Contractor hereby agrees to perform all design, coordinate all work by all contractors assigned to this Project, purchase and install the equipment itemized on **Attachment A – Scope of the Project attached** hereto and incorporated herein (the "Equipment"). Contractor shall provide and perform all work in accordance with the Contract Documents.

(b) After the five-year amortization period for the Equipment, the Contractor shall transfer all rights and title to the Equipment to the City. Substantial completion shall be defined as the date when the Contractor's installation of the Project has been accepted by the City.

(c) Contractor shall be responsible for all maintenance and replacement of the Equipment of the Project for seven (7) years and any contract renewal terms of the parties' Temporary Utility Services Concession Agreement.

3. Warranties. Contractor shall provide a seven (7) year plus any contract renewal terms Equipment, materials and workmanship warranty (the "Warranty"). The Warranty will cover any defects not due to ordinary wear and tear or improper use or care which may develop within seven (7) years plus any contract renewal terms of the date of substantial completion. All Equipment shall consist of newly manufactured parts.

4. Representations and Warranties of Contractor. Contractor hereby represents and warrants to the City the following:

(a) Contractor is a corporation duly organized, existing and in good standing under the laws of the State of Missouri and each state in which it does business, except any such state where the failure to be in good standing would not have a material adverse effect on Contractor's ability to perform this Agreement in accordance with its terms.

(b) The execution, delivery and performance by Contractor of this Agreement have been duly authorized by all necessary corporate action and do not and will not (i) require any consent or approval of Contractor's [board of directors]; (ii) require any authorization, consent or approval by, or registration, declaration or filing with, or notice to, any governmental department; commission, board, bureau, agency or instrumentality, or any third party, except such authorization, consent, approval, registration, declaration, filing or notice as has been obtained prior to the date hereof; (iii) violate any provision of any law, rule or regulation or of any order, writ, injunction or decree presently in effect having applicability to Contractor or its articles or by-laws; and (iv) result in a breach of or constitute a default under any material agreement, lease or instrument to which Contractor is a party or by which it or its properties may be bound or affected.

(c) Contractor shall not enter into any contract for the supply of materials or services to City that purports to grant a security interest or right of repossession to any person or entity respecting the Equipment, or any portions thereof or chattels placed thereon.

(d) There is no litigation, proceeding or other investigation pending or, to the knowledge of Contractor, threatened against Contractor which would prevent consummation of the transaction contemplated by this Agreement or would have a materially adverse effect on Contractor.

(e) Contractor is an expert in the design, engineering and installation of network projects.

(f) All design and engineering performed by Contractor has been done in coordination with the applicable codes and standards.

5. Survival of the Representations, Warranties and Covenants. All representations, warranties and covenants expressed herein shall survive the execution of this Agreement for the benefit of the parties hereto.

6. Indemnification.

(a) For purposes of this Section only the following terms shall have the meanings listed:

1. **Claims** means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the City in the enforcement of this indemnity agreement.
2. **Contractor's Agents** means Contractor's officers, employees, subconsultants, subcontractors, successors, assigns, invitees, and other agents.
3. **Cit**y means City and its agents, officers and employees.

(b) Contractor's obligations under this Section with respect to indemnification for acts or omissions, including negligence, of City, shall be limited to the coverage and limits of insurance that Contractor is required to procure and maintain under this Contract. Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this Contract in its contract price.

(c) Contractor shall defend, indemnify and hold harmless City from and against all claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by Contractor or Contractor's Agents, regardless of whether or not caused in part by any act or omission, including negligence, of

City. Contractor is not obligated under this Section to indemnify City for the sole negligence of City.

(d) Nothing in this section shall apply to indemnification for professional negligence which is specified in a separate provision of this Contract.

(e) In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunity and protections as provided by the federal and state constitutions or by law.

7. Indemnification for Professional Negligence. Contractor shall indemnify, and hold harmless City and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any negligent acts or omissions in connection with this Contract, caused by Contractor, its employees, agents, subcontractors, or caused by others for whom Contractor is liable, in the performance of professional services under this Contract. Contractor is not obligated under this section to indemnify City for the negligent acts of City or any of its agencies, officials, officers, or employees.

8. Insurance.

(a) Contractor shall procure and maintain in effect throughout the duration of this Contract insurance coverage not less than the types and amounts specified in this section. In the event that additional insurance, not specified herein, is required during the term of this Contract, Contractor shall supply such insurance at City's cost. Policies containing a Self-Insured Retention are unacceptable to the City unless City approves in writing the Contractor's Self-Insured Retention.

1. Commercial General Liability Insurance: with limits of $1,000,000 per occurrence and $2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

a. Severability of Interests Coverage applying to Additional Insureds

b. Contractual Liability

c. Per Project Aggregate Liability Limit

d. No Contractual Liability Limitation Endorsement

e. Additional Insured Endorsement, ISO form CG20 10 and CG20 37, current edition, or their equivalent.

2. Workers' Compensation Insurance: as required by statute, including Employers Liability with limits of:

Workers' Compensation Statutory Employers Liability $100,000 accident with limits of:

$500,000	disease-policy	limit
$100,000	disease-each employee	

3. Commercial Automobile Liability Insurance: with a limit of $1,000,000 , covering owned, hired, and non-owned automobiles. Coverage provided shall be on an "any auto" basis and written on an "each accident" basis. This insurance will be written on a Commercial Automobile Liability form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Contract, by Contractor.

4. If applicable, Professional Liability Insurance with limits per claim and an annual aggregate of $2,000,000.

5. Property Insurance
   (a) Contractor shall purchase and maintain property insurance on the work at the site in the amount of the full replacement cost thereof with a deductible amount not to exceed $10,000. This insurance shall:
      (1) include the interests of City, Contractor, Subcontractors, and any other persons or entities identified in Sec. 6, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

      (2) be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, tornado, collapse, debris removal, demolition occasioned by enforcement of Laws or Regulations, water damage, damage caused by frost and freezing, and acts of God;
      3) be maintained in effect until final payment is made unless otherwise agreed to in writing by CITY with thirty (30) days written notice to each other additional insured to whom a certificate of insurance has been issued.
      © City shall not be responsible for purchasing and maintaining any property insurance to protect the interests of Contractor, Subcontractors or others involved in the Work to the extent of any deductible amounts. The risk of loss within the deductible amounts will be borne by Contractor, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

(b) The Commercial General Liability Insurance and Property Insurance specified above shall provide that City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds, including completed operations, for the services performed under this Contract. Contractor shall provide to City at execution of this Contract a certificate of insurance showing all required coverage and additional insureds. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

(c) All insurance coverage must be written by companies that have an A.M. Best's rating of "A-V" or better, and are licensed or authorized by the State of Missouri to do business in Missouri.

(d) Contractor's failure to maintain the required insurance coverage will not relieve Contractor of its contractual obligation to indemnify the City. If the coverage afforded is cancelled or changed or its renewal is refused, Contractor shall give at least thirty (30) days prior written notice to City. In the event of Contractor's failure to maintain the required insurance in effect, City may order Contractor to immediately stop work, and upon ten (10) days' notice and an opportunity to cure, may pursue its remedies for breach of this Contract as provided for herein and by law.

(e) In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

(f) Contractor shall obtain evidence that all Subcontractors have in force general, automobile, and employer's and workers' compensation liability insurance in the amounts required by these Contract Documents, and evidence that each is current on its unemployment insurance payments before Subcontractors begin Work at the Site. Contractor shall retain such evidence in its files and make it available to City within ten (10) days after written request.

9. Bonds. Contractor shall furnish a Performance and Maintenance Bond and Payment Bond, to City on City furnished forms, executed by a Surety, in the amount of the cost of the Project including all equipment and all installation costs, which has been estimated at $500,000 and will guarantee Contractor's faithful performance of each and every term of this Contract and all authorized changes thereto, including those terms under which Contractor agrees to pay legally required wage rates including the prevailing hourly rate of wages in the locality, as determined by the Department of Labor and Industrial Relations

or by final judicial determination, for each craft or type of worker required to perform under this Contract; guaranteeing the payment of all obligations as provided in Section 107.170 RSMo.; and guaranteeing the services and work against faulty workmanship and faulty materials.

(a) All Bonds required by the Contract Documents to be purchased and maintained by Contractor shall be obtained from surety or insurance companies that are duly licensed in the State of Missouri to issue Bonds or insurance policies for the limits and coverages so required. All surety and insurance companies shall hold an A.M. Best rating of A-, V, or better.

(b) The Bonds shall remain in effect at least one (1) year after the date of substantial completion.

(c) If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is ceases to meet the requirement of this Contract, Contractor shall within twenty (20) days thereafter substitute another Bond and surety, both of which must be acceptable to City.

10. Minority and Women's Business Enterprises. **RESERVED**

11. Workforce. If Contractor is required to pay prevailing wages for the work performed pursuant to this Contract, Contractor agrees to comply with all requirements of City's Construction Employment Program as enacted in City's Code, Sections 3-501 through 3-525 and as hereinafter amended. Contractor shall meet or exceed the construction employment goals unless the same shall have been waived in the manner provided by law. Contractor's compliance with this provision is a material part of this Contract.

Contractor shall comply with City's Workforce Program Reporting System requirements. Contractor shall use City's Internet web-based Workforce Program Reporting System provided by City and protocols included in that software during the term of this Contract. Contractor shall maintain user applications to the City's provided system for all applicable personnel and shall require subcontractors to maintain applications.

12. Prevailing Wage.

(a) Prevailing Wage.

1. Contractor shall comply and require its Subcontractors to comply with;

a. Sections 290.210 to 290.340, RSMo the State of Missouri Prevailing Wage Law (the "Law"); and

b. 8 CSR 30-3.010 to 8 CSR 30-3.060, the Prevailing Wage Law Rules (the "Rules"); and

c. the Annual Wage Order (Wage Order) issued by the State of Missouri's Department of Labor and Industrial Relations; and

d. any applicable Annual Incremental Wage Increase (Wage Increase) to the Annual Wage Order.

2. The Law, Rules, Wage Order and any Wage Increase are incorporated into and made part hereof this Contract and shall be collectively referred to in this Section as the "Prevailing Wage Requirements." In the event this Contract is renewed for an additional term, the Wage Order in effect as of the commencement date of the additional term, as amended by any applicable Wage Increase, shall be deemed incorporated herein and shall apply to and remain in effect for the duration of the additional term. The new Wage Order and any applicable Wage Increase shall govern notwithstanding the fact that the Wage Order being replaced might be physically attached to this Contract.

3. Contractor shall pay and require its Subcontractors to pay to all workers performing work under this Contract not less than the prevailing hourly rate of wages for the class or type of work performed by the worker in accordance with the Law, Rules, Wage Order and any applicable Wage Increase. Contractor shall take whatever steps are necessary to ensure that the prevailing hourly wage rates are paid and that all workers for Contractor and each of its Subcontractors are paid for the class or type of work performed by the worker in accordance with the Prevailing Wage Requirements.

4. Prior to each of its Subcontractors beginning Work on the Site, Contractor shall require each Subcontractor to complete City's Form 00490 entitled "Pre-contract Certification" that sets forth the Subcontractor's prevailing wage and tax compliance history for the two (2) years prior to the bid. Contractor shall retain one (1) year and make the Pre-contract Certifications available to City within five (5) days after written request.

5. Contractor shall keep and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to keep full and accurate records on City's:

    a. Keep and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to keep full and accurate records on City's "Daily Labor Force Report" Form indicating the worker's name, occupational title or classification group and skill and the workers' hours. City shall furnish blank copies of the Daily Labor Force Report Form to Contractor for its use and for distribution to Subcontractors. Contractor shall submit its and its Subcontractors Daily Labor Force Reports to City each day; and

    b. Submit, and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to submit, electronically, in a format prescribed by the City, Certified Payroll Report Information indicating the worker's name, address, social security number, occupation(s), craft(s) of every worker employed in connection with the public work together with the number of hours worked by each worker and the actual wages paid

in connection with the Project and other pertinent information as requested by the City; and

c. Submit, and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to submit, electronically, in format prescribed by the City, a Payroll Certification. The Payroll Certification must be signed by the employee or agent who pays or supervises the payment of the workers employed under the Contract for the Contractor and each Subcontractor.

d. The Daily Labor Force Report, documents used to compile information for the Certified Payroll Report, and Payroll Certification are collectively referred to in this Section as the "Records."

6. Contractor shall make all of Contractor's and Subcontractors' Records open to inspection by any authorized representatives of City and the Missouri Department of Labor and Industrial Relations at any reasonable time and as often as they may be necessary and such Records shall not be destroyed or removed from the State of Missouri for a period of one (1) year following the completion of the public work in connection with which the Records are made. Contractor shall have its and its Subcontractors Certified Payroll Reports and Payroll Certifications available at the Contractor's office and shall provide the Records to the City electronically at the City's sole discretion. In addition, all Records shall be considered a public record and Contractor shall provide the Records to the City in the format required by the City within three (3) working days of any request by City at the Contractor's cost. City, in its sole discretion, may require Contractor to send any of the Records directly to the person who requested the Record at Contractor's expense.

7. Contractor shall post and keep posted a clearly legible statement of all prevailing hourly wage rates to be paid to all workers employed by Contractor and each of its Subcontractors in the performance of this Contract in a prominent and easily accessible place at the Site of the Work by all workers.

8. If the Contract Price exceeds $250,000.00, Contractor shall and shall require each Subcontractor engaged in any construction of public works to have its name, acceptable abbreviation or recognizable logo and the name of the city and state of the mailing address of the principal office of the company, on each motor vehicle and motorized self-propelled piece of equipment which is used in connection with the Project during the time the Contractor or Subcontractor is engaged on the project. The sign shall be legible from a distance of twenty (20') feet, but the size of the lettering need not be larger than two (2") inches. In cases where equipment is leased or where affixing a legible sign to the equipment is impractical, the Contractor may place a temporary stationary sign, with the information required

pursuant to this section, at the main entrance of the Project in place of affixing the required information on the equipment so long as such sign is not in violation of any state or federal statute, rule or regulation. Motor vehicles which are required to have similar information affixed thereto pursuant to requirements of a regulatory agency of the state or federal government are exempt from the provisions of this subsection.

9. Contractor must correct any errors in Contractor's or any Subcontractors' Records, or Contractor's or any Subcontractors' violations of the Law, Rules, Annual Wage Order and any Wage Increase within fourteen (14) calendar days after notice from City.

10. Contractor shall and shall require its Subcontractors to cooperate with the City and the Department of Labor and Industrial Relations in the enforcement of this Section, the Law, Rules, Annual Wage Order and any Wage Increase. Contractor shall and shall require its Subcontractors to permit City and the Department of Labor and Industrial Relations to interview any and all workers during working hours on the Project at Contractor's sole cost and expense.

11. Contractor shall file with City, upon completion of the Project and prior to final payment therefore, affidavits from Contractor and each of its Subcontractors, stating that each has fully complied with the provisions and requirements of the Missouri Prevailing Wage Law. City shall not make final payment until the affidavits, in proper form and order, from Contractor and each of its Subcontractors, are filed by Contractor.

12. Contractor shall forfeit as a statutory penalty to the City one hundred dollars ($100.00) for each worker employed, for each calendar day, or portion thereof, such worker is paid less than the prevailing hourly rates for any work done under this Contract, by Contractor or by any of Contractor's Subcontractors. If Contractor or any of its Subcontractors have violated any section(s) of 290.210 to 290.340, RSMo, in the course of the execution of the Contract, City shall when making payments to the Contractor becoming due under this Contract, withhold and retain therefrom all sums and amounts due and owing as a result of any violation of sections 290.210 to 290.340, RSMo.

(b) Prevailing Wage Damages. Contractor acknowledges and agrees that, based on the experience of City, violations of the Missouri Prevailing Wage Act, whether by Contractor or its Subcontractors, commonly result in additional costs to City. Contractor agrees that additional costs to City for any particular violation are difficult to establish and include but are not limited to: costs of construction delays, additional work for City, additional interest expenses, investigations, and the cost of establishing and maintaining a special division working under the City Manager to monitor prevailing wage compliance.

1. In the event of the failure by Contractor or any of its Subcontractors to pay wages as provided in the Missouri Prevailing Wage Act, City shall be entitled to deduct from the Contract Price, and shall retain as liquidated

damages, one hundred dollars ($100.00) per day, per worker who is paid less than the prevailing hourly rate of wages, to approximate the additional costs. The sum shall be deducted, paid or owed whether or not the Contract Times have expired.

City shall give written notice to Contractor setting forth the workers who have been underpaid, the amount of the statutory penalty and the amount of the liquidated damages as provided for in this Subparagraph. Contractor shall have fourteen (14) calendar days to respond, which time may be extended by City upon written request. If Contractor fails to respond within the specified time, the City's original notice shall be deemed final. If Contractor responds to City's notice, City will furnish Contractor a final decision in writing within five (5) days of completing any investigation.

© Excessive Unemployment.

1. Resident Laborers" means laborers who have been residents of the State of Missouri for at least thirty days and who intend to remain Missouri residents, and residents of Nonrestrictive States.

2. "Nonrestrictive States" means states identified by the Missouri Department of Labor and Industrial Relations Division of Labor Standards that have not enacted state laws restricting Missouri laborers from working on public works projects. A list of Nonrestrictive States can be found on the Division web site at http://www.dolir.mo.gov/ls/index.htm.

3. A period of Excessive Unemployment is declared when the Missouri Department of Labor and Industrial Relations Division of Labor Standards provides notice of such declaration. When in effect, notice will be provided on the Division web site at http://www.dolir.mo.gov/ls/index.htm. It is Contractor's obligation to determine whether a period of Excessive Unemployment is in effect when this Contract is let.

4. Contractor agrees to follow the provisions of Section 290.560 - 290.575 RSMo and agrees that if a period of Excessive Unemployment has been declared at any point during the term of this Contract, it will employ and require all Subcontractors of whatever tier to employ only Resident Laborers for the Work to be performed under this Contract. Provided, however, Contractor may use laborers who are not Resident Laborers when Resident Laborers are not available or are incapable of performing the particular type of work involved if Contractor so certifies in writing to City and City issues a written approval. This provision does not apply to regularly employed nonresident executive, supervisory or technical employees.

13. Contract Information Management System. Contractor shall comply with City's Contract Information Management System requirements. Contractor shall use City's Internet web-based Contract Information Management System/Project Management Communications

Tool provided by City and protocols included in that software during the term of this Contract. Contractor shall maintain user applications to City's provided system for all personnel, subcontractors or suppliers as applicable.

14. Records.

(a) For purposes of this section:

1. "City" shall mean the City Auditor, the City's Internal Auditor, the City's Director of Civil Rights and Equal Opportunity Department, the City Manager, the City department administering this Contract and their delegates and agents.
2. "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Contract and all Contract amendments and renewals.

(b) Contractor shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this Contract and all Contract amendments. City shall have a right to examine or audit all Records and Contractor shall provide access to City of all Records upon ten (10) days written notice from the City.

© The books, documents and records of Contractor in connection with this Contract shall be made available to the City Auditor, the City's Internal Auditor, the City's Director of Civil Rights and Equal Opportunity Department and the City department administering this Contract within ten (10) days after the written request is made.

14. Compliance with Laws. Contractor shall use its best efforts to cause the design of the Equipment prepared by Contractor or any Contractor's subcontractor and the performance of the Services to comply with all federal, state and local laws, ordinances and regulations applicable thereto.

15. Affirmative Action.

If this Contract exceeds $300,000.00 and Contractor employs fifty (50) or more people, Contractor shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, Contractor warrants that it has an affirmative action program in place and will maintain the affirmation action program in place for the duration of the Contract. Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 3 of City's Code. Contractor shall:

(a) Execute and submit the City of Kansas City, Missouri CREO Affirmative Action Program Affidavit warranting that the Contractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract.

(b) Submit, in print or electronic format, a copy of Contractor's current certificate of compliance to the City's Civil Rights and Equal Opportunity Department (CREO) prior to receiving the first payment under the Contract, unless a copy has already been submitted to CREO at any point within the previous two calendar years. If, and only if, Contractor does not possess a current certification of compliance, Contractor shall submit, in print or electronic format, a copy of its affirmative action program to CREO prior to receiving the first payment under the Contract, unless a copy has already been submitted to CREO at any point within the previous two calendar years.

(c) Require any Subcontractor awarded a subcontract exceeding $300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.

(d) Obtain from any Subcontractor awarded a subcontract exceeding $300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to CREO within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, Contractor shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to CREO within thirty (30) days from the date the subcontract is executed.

City has the right to take action as directed by City's Civil Rights and Equal Opportunity Department to enforce this provision. If Contractor fails, refuses or neglects to comply with the provisions of Chapter 3 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, canceled or suspended, in whole or in part, and Contractor may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

16. Tax Compliance. Contractor shall provide proof of compliance with the City's tax ordinances administered by the City's Commissioner of Revenue as a precondition to the City making the first payment under this Agreement or any contract renewal when the total contract amount exceeds $160,000.00. Notwithstanding the foregoing, the parties acknowledge and agree that this Agreement provides for a pro bono engagement where the City will only be responsible for reimbursement of Contractor's expenses, which will not exceed $50,000.00, as set forth herein. If Contractor performs work on a contract that is for a term longer than one year, Contractor also shall submit to the City proof of compliance with the City's tax ordinances administered by the City's Commissioner of Revenue as a condition precedent to the City making final payment under the contract.

17. Employee Eligibility Verification. If this Agreement exceeds five thousand dollars ($5,000.00), Contractor shall execute and submit an affidavit, in a form prescribed by the City, affirming that Contractor does not knowingly employ any person in connection with

the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U. S. C. § 1324a(h)(3). Contractor shall attach to the affidavit documentation sufficient to establish Contractor's enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986. Contractor may obtain additional information about E-Verify and enroll at www.dhs.gov/ files/programs/gc_1185221678150.shtm. For those Contractors enrolled in E-Verify, the first and last pages of the E-Verify Memorandum of Understanding that Contractor will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this Section. Contractor shall submit the affidavit and attachments to the City prior to execution of this Agreement, or at any point during the term of this Agreement if requested by the City.

18. Anti-Discrimination Against Israel. If this Agreement exceeds $100,000.00 and Contractor employs at least ten (10) employees, pursuant to Section 34.600, RSMo., by executing this Agreement, Contractor certifies it is not currently engaged in and shall not, for the duration of this Agreement, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel. Notwithstanding the foregoing, the parties acknowledge and agree that this Agreement provides for a pro bono engagement where the City will only be responsible for reimbursement of Contractor's expenses, which will not exceed $50,000.00, as set forth herein.

19. Non-Discrimination in Employment. Contractor shall not discriminate against any employee or candidate for employment on the basis of an individual's race, hair texture or hair style associated with an individual's race, color, sex, religion, national origin, or ancestry, disability, sexual orientation, gender identity, age, or in any other manner prohibited by Chapter 38 of the City Code. Contractor shall not engage in any discrimination as prohibited by Chapter 3 of the City Code.

20. Ban the Box in Hiring and Promotion.

    a. Pursuant to Section 38-104, City Code Ordinances, Contractor shall not base a hiring or promotional decision on an applicant's criminal history or sentence related thereto, unless the employer can demonstrate that the employment-related decision was based on all information available including consideration of the frequency, recentness and severity of a criminal record and that the record was reasonably related to the duties and responsibilities of the position.

    b. Notwithstanding subsection (a), Contractor may inquire about an applicant's criminal history after it has been determined that the individual is otherwise qualified for the position, and only after the applicant has been interviewed for the position. Any such inquiry may be made of all applicants who are within the final selection pool of candidates from which a job will be filled.

    c. This provision shall not apply to positions where employers are required to

exclude applicants with certain criminal convictions from employment due to local, state or federal law or regulation.

21. Title VI of the Civil Rights Act of 1964. Title VI of the Civil Rights Act of 1964 requires that no person in the United States shall, on the grounds of race, color, or national or origin (including limited English proficient individuals), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The City of Kansas City, Missouri requires compliance with the requirements of Title VI in all of its programs and activities regardless of the funding source. Contractor shall not discriminate on the grounds of race, color, or national or origin (including limited English proficient individuals).

22. Buy American and Missouri Preference Policies. It is the policy of the City that any manufactured goods or commodities used or supplied in the performance of any City contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible. Pursuant to Section 71.140 RSMo., preference shall be given to materials, products, supplies and all other articles produced, manufactured, made or grown within the State of Missouri.

23. Professional services certification.

(a) For the purposes of this section, the terms "board" or "commission" shall be defined as including the Land Clearance for Redevelopment Authority of Kansas City, Missouri, the Tax Increment Financing Commission of Kansas City, the Port Authority of Kansas City, the Planned Industrial Expansion Authority of Kansas City, the Industrial Development Authority of Kansas City, the Kansas City Maintenance Reserve Corporation, the Kansas City, Missouri Homesteading Authority, the Landmarks Historic Trust Corporation, the Metropolitan Ambulance Services Trust, and the Kansas City Municipal Assistance Corporation.

(b) Neither the City Manager, nor any department, board or commission of the City shall contract for professional services with any attorney who, at the time of the issuance of the contract, either in an individual or firm capacity, represents any party in litigation against the City, exclusive of representation in municipal court, exclusive of those attorneys employed by a not-for-profit legal services corporation and exclusive of where the City is named as a nominal party, where the litigation has been filed with the agreement of the City and the party represented by the attorney, or where the Council has otherwise waived this requirement. Nothing set forth in this section shall be deemed to supersede the Rules of Professional Conduct for Attorneys.

(c) Neither the City Manager, nor any department, board nor commission shall contract for professional services with any architect, engineer or other professional, exclusive of medical doctors or appraisers, who, at the time of the issuance of the contract, serves as an expert witness for any party in litigation against the City.

24. Conflicts of interest. Contractor certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Contract, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement concerning employment to perform services on behalf of Contractor in this Contract.

25. Missouri Sales Tax Exemption. Pursuant to Section 144.062, RSMo, City is a Missouri exempt entity and tangible personal property to be incorporated or consumed in the construction of this Project may be purchased without sales tax. City shall furnish Contractor a Missouri Project Exemption Certificate for Sales Tax at the time of issuance of the Notice to Proceed.

26. Assignment. Contractor may not assign any of its rights under this Agreement without the advance written approval of the City. Any such assignment, however, will not change the obligations of Contractor to the City. Any assignment or transfer prohibited by this provision will be void. Contractor understands that the City may, at its option, assign or transfer this Agreement or its rights or obligations under this Agreement without the consent of Contractor

27. Subcontractors. Contractor shall enter into subcontracts only with the persons mutually agreed to in writing by City and Contractor, both acting reasonably. Contractor shall require each subcontractor, to extent of such subcontractor's responsibility for the manufacture or installation of the Equipment, to be bound to Contractor by the terms of this Agreement, and to assume toward Contractor all the obligations and responsibilities which Contractor, by this Agreement, assumes towards City.

28. Governing Law. This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The City and Contractor: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum non conveniens as an objection to the location of any litigation.

29. Default and Remedies.

(a) If Contractor shall be in default or breach of any provision of this Contract, City may terminate the City's Contract with Smart City to provide Temporary Utility Concession Services, after giving Contractor ten (10) days written notice and opportunity to cure such default or breach.

(b) If City shall be in default or breach of any provision of this Contract, Contractor may terminate this contract or suspend Contractor's performance after giving City ten (10) days written notice and the opportunity to cure such default or breach

30. Waiver. Waiver by City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Agreement can be waived except by written consent

of City, and forbearance or indulgence by City in any regard whatsoever shall not constitute a waiver of same to be performed by Contractor to which the same may apply and, until complete performance by Contractor of the term, covenant or condition, City shall be entitled to invoke any remedy available to it under this Agreement or by law despite any such forbearance or indulgence.

31. Modification. Unless stated otherwise in this Agreement, no provision of this Agreement may be waived, modified or amended except in writing signed by City and Contractor.

32. Headings; Construction of Agreement. The headings of each section of this Agreement are for reference only. Unless the context of this Agreement clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

33. Severability of Provisions. Except as specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

34. Ownership of Documents.

(a) Upon substantial completion, pursuant to the terms of this Agreement, Contractor shall provide original documents, including plans, specifications, reports, maps, models and renderings, including electronic media, prepared or obtained under the terms of this Agreement shall be delivered to and become property of City and basic survey notes, diaries, sketches, charts, computations and other data shall be made available upon request by City without restriction or limitation with regard to the Project or future modifications to the Project; provided, however, that the City agrees not to use such documents for other projects; and provided, further, that in the event that any of the documents are reused by City for this Project or future improvements to this Project, the nameplates or other identification to the Contractor will be removed and the Contractor will be released of subsequent liabilities.

(b) City and Contractor agree that drawings, specifications, electronic media, models, renderings, work product and/or other materials connected with this Project to be provided by Contractor will contain certain concepts and component details incorporated into such documents by the Contractor but which may be the property of the City, the Contractor or third parties, and any such concepts or component

details shall remain the property of their respective owners. These concepts and details are typically repetitive in nature, not Project-specific, function rather than form-oriented, and were not developed for or identifiable with the Project. Continued use by the City, Contractor or applicable third party will not compromise the complete transfer to City of the unique features of the design for this Project and will not result in a compromise of the City's absolute right, title and ownership to the work product.

(c) The Contractor shall be permitted to retain copies, including reproducible copies for marketing, informational and reference purposes.

33. Miscellaneous

(a) No party shall be liable for delay in performance hereunder due to causes beyond its control, including but not limited to acts of God, fires, strikes, intervention of any governmental authority or acts of war.

(b) This Agreement, including the attachments hereto, constitutes the entire agreement between the parties with respect to the Equipment and Services provided hereunder and supersedes all prior proposals and agreements, both written and oral, and all other written and oral communications between the parties.

(c) This Agreement may not be amended or altered in any manner except in a writing signed by both parties.

(d) All notices to be given hereunder shall be in writing and may be given, served or made by depositing the same in the United States mail addressed to the party to be notified, postpaid and registered or certified with return receipt requested or by delivering the same in person to such person. Notice deposited in the mail in accordance with the provisions hereof shall be effective unless otherwise stated in such notice or in this Agreement from and after the second day next following the date postmarked on the envelope containing such notice. Notice given in any other manner shall be effective only if and when received by the party to be notified. All notices shall be sent to the following addresses:

If to the City:
City of Kansas City, Missouri
Procurement Services Division
414 East 12th Street, 1st Floor, Room 102 W
Kansas City, Missouri 64106
Ps-purchasing@kcmo.org

Director
Kansas City Convention and Entertainment Facilities
301 W. 13th Street, Suite 100
Kansas City, Missouri 64105

With copies to: City Attorney

Law Department of Kansas City, Missouri
414 East 12th Street, 28th Floor
Kansas City, Missouri 64106
Telephone: (816) 513-3147

If to Contractor:

Smart City of Kansas City, LLC
Attention: President
5795 West Badura Avenue, Ste 110
Las Vegas, NV 89118

Smart City of Kansas City, LLC
Attention: CEO/ Chairman 3100 Bonnet Creek Rd
Lake Buena Vista, FL 32830

(e) Each party hereto shall pay its own expenses, including without limitation accounting and attorneys' fees, in connection with this Agreement, whether or not consummated.

(f) The City and Contractor are not partners or joint venturers.

THIS CONTRACT CONTAINS INDEMNIFICATION PROVISIONS

CONTRACTOR
I hereby certify that I have the authority to
execute this document on behalf of Contractor
Contractor: _____
By: _____
Title: _____
Date: _____

(Affix Corporate Seal)

Approved as to form:

_____
Assistant City Attorney (Date)

KANSAS CITY, MISSOURI

By:_____
Title: _____
Date: _____

ATTACHMENT A.
Scope of Project

Sec. 1 Scope of Project.

A. **Overview.** This contract is for the necessary equipment and installation to upgrade the network at the Kansas City Convention center. The money allocated will be used to purchase equipment, provide installation of access points and cabling to the wireless access points by a sub-contractor, and complete the configuration of all the network equipment by Smart City personnel. Once the project has been completed, a 5-year straight-line amortization starting on the first day of the following month from the date that the that the equipment becomes live.

B. **Purchase.** Smart City's significant buying power will be utilized to purchase Cisco networking equipment to provide Temporary Telecommunications services to all event customers within the Kansas City Convention center.

Network Equipment:

- Core Switch (Cisco 9606R) along with all cards, power supplies and licenses
- Edge Switches (Cisco 9600) 48-port 25GE/10GE/1GE
- Firewall (Cisco ASA 1010) appliance for cyber security of network equipment
- Wireless Controller (Cisco C9800) wireless system control, monitoring and management system
- Wireless Access Points (Cisco C9130) Multi-radio Wi-Fi 6 capable wireless access points
- Additional licenses, accessories, mounting hardware and power cables necessary for deployment.
- Uninterruptible Power Supply (UPS) to provide stable and standby power in the event of power loss.

Cabling:

- Category 6A copper cabling for use in connecting the access points throughout the Kansas City Convention center
- Terminals utilized in providing connection between wireless equipment and the network.

C. **Installation.** There will be two (2) types of installation that will take place during the project. Sub-contracted cabling and access point installation, and Smart City Staff installation of networking equipment.

Sub-Contractor:

- An installation scope for the wireless Access point cabling and installation will be created by our internal project manager.
- An RFP invitation will be sent out to local cabling companies to request bids.
- A walk-through will be scheduled for bidders to attend.
- Bids will be reviewed for scope responsiveness and financial efficiencies.

Smart City Staff:

- All network equipment will be received, inventoried, labeled and staged for installation.
- All network cabinet and rack installations will be performed by Smart City staff. Large racks in the MDF and smaller wall cabinets within all IDF locations.
- Core equipment (located in MDF) will be put together and installed in racks within the MDF.
- Edge equipment will be configured and then mounted in specific (IDF) locations throughout the facility.
- Wireless Access Points and the specific antennas will be staged for Sub-contractor to provide installation location and all required hardware.
- Smart City does employ a Project Manager on all Sub-Contracted projects. Dedicated hours to the project will be billed against the capital budget.

D. **Configuration.** Initial and ongoing configuration and settings for all networking equipment will be completed by Smart City staff.
   - This will include NOC/Technology department
   - Local staff
   - Personnel recruited from other Smart City locations to assist in the initial setup of the network at the Kansas City Convention Center.

E. **Amortization.** Such costs shall be amortized on a 5-year straight line basis, with a zero-salvage value, over the period which shall commence on the first day of the month following the date that the equipment has power and is placed into service.

ATTACHMENT B.
SERVICES

The following services are to be provided in connection with the design, manufacture and installation of the Equipment, in some cases as more fully described on Attachment C.

1. Project Management services to include in-house project manager to oversee the project schedule, manufacturing and project coordination. The proposed project schedule shall be provided to City within ten (10) days following execution of this Agreement for the City's Project Manager. The project schedule is subject to City's approval based on such coordination.

2. Any required engineering services shall be performed by a certified Cisco wireless network licensed engineer.

3. System Design and documentation, including manuals and shop drawings (a minimum of five sets of each to be provided, or such larger number as agreed upon by the City and Contractor)

4. Installation of Equipment shall be in accordance with the Agreement in a good and workmanlike manner, consistent with the design requirements, and all the materials furnished and used in connection therewith shall be new (unless otherwise indicated in the Agreement). Contractor shall cause all materials to be readily available as and when required in accordance with the Schedule.

5. Contractor may perform certain phases of the installation and assembly through subcontractors pursuant to the terms of the Agreement, but Contractor shall have at least one employee of Contractor on site at all times to supervise the installation and assembly of the Equipment, initial activation of the Equipment and 100% testing for the Equipment.

6.

7. Contractor is responsible for shipping of all Equipment to the project site in Kansas City, Missouri.

ATTACHMENT C.

GENERAL CONDITIONS / INSTALLATION RESPONSIBILITIES

GENERAL CONDITIONS:

1. Installation of equipment is based upon normal work hours and access to the Convention Center during normal work hours (8 hr. days) to be established by the City in consultation with Contractor and the City.

2. The Contractor shall provide protective padding, tarpaulins, and other material as necessary to ensure existing floor, wall, and ceiling finishes are not damaged. Any damage caused by demolition and construction activities of this project shall be remedied by the Contractor at no additional cost to the City.

CONTRACTOR:

1. Contractor will receive and unload and uncrate the Equipment from Contractor freight forwarder.

2. Contractor will provide the engineering, design and certification of all of the Equipment and install all of the Equipment listed in Attachment A.

4. Contractor Installation supervisor will coordinate the installation efforts with the City Project Manager to assure proper placement of equipment and final hookup / testing of the system.

6. After installation and prior to the first convention event, Contractor shall provide appropriate protection for all installed Equipment.

City

1. City to provide adequate access to the site as stated in the General Conditions above.

Capital Improvement equipment listing

Part Number	Description	Qty
FPR1120-NGFW-K9	Cisco Firepower 1120 NGFW Appliance, 1U	2
CON-SNTE-FRP11209	SNTC-8X5X4 Cisco Firepower 1120 NGFW Appliance, 1U	2
L-FPR1120T-TMC-3Y	Cisco FPR1120 Threat Defense Threat, Malware and URL 3Y Subs	2
L-FPR1120-P-3Y	Cisco Defense Orchestrator for Firepower 1120 3yr subscr	2
C9800-40-K9	Cisco Catalyst 9800-40 Wireless Controller	2
CON-SNTE-C98004KA	SNTC-8X5X4 Cisco Catalyst 9800-40 Wireless Controller	2
C9800-AC-750W-RED	Cisco Catalyst 9800-40 750W AC Power Supply	2
C9300X-48HX-E	Catalyst 9300 48-port mGig UPoE+, Network Essentials	56
PWR-C1-1100WAC-P/2	1100W AC 80+ platinum Config 1 Secondary Power Supply	56
C9300-DNA-E-48-3Y	C9300 DNA Essentials, 48-port - 3 Year Term License	56
C9300X-NM-8Y	Catalyst 9300 8 x 10G/25G Network Module SFP+/SFP28	56
C9136I-B	Cisco Catalyst 9136I Series, Internal Antennas, -B Regulator	56
CW9164I-B	Catalyst 9164I AP (W6E, tri-band 4x4) w/Reg-B	80
CW9166D1-B	Catalyst 9166D1 AP (W6E, tri-band 4x4, XOR) w/Reg-B	171
C9130AXE-STA-B	Cisco Catalyst 9130AXE w/Stadium Antenna, -B reg domain	151
C-ANT9104	2.4/5 GHz Directional Antenna, 8-port, DART, Self ID	151
C9606R	Cisco Catalyst 9600 Series 6 Slot Chassis	2
CON-L1NBX-C9606R	CX LEVEL 1 8X5XNBD Cisco Catalyst 9600	2
C9600X-SUP-2	Cisco Catalyst 9600 Series Supervisor 2 Module	2
C9600-LC-48TX	Cisco Catalyst 9600 Series 48-Port Copper	2
C9600X-LC-56YL4C	Cisco Catalyst 9600 Series 56-Port 10G/25G/50G, 4-Port 100G	2
C9600X-LC-56YL4C	Cisco Catalyst 9600 Series 56-Port 10G/25G/50G, 4-Port 100G	2
C9600X-LC-56YL4C	Cisco Catalyst 9600 Series 56-Port 10G/25G/50G, 4-Port 100G	2
C9600-PWR-2KWAC	Cisco Catalyst 9600 Series 2000W AC Power Supply	8
C9600-DNX-A-3Y	C9600 Adv software subscription, Chassis, 3Yr Lic	2
CON-L1SWX-96DNXA3Y	CX LEVEL 1 SW C9600 DNA Advantage	2
C9200CX-8UXG-2X-E	Catalyst 9000 Compact Switch 8-Port UPoE with 4xmGig,240W,E	10
C9200CX-DNAE8-3Y	C9200CX Cisco DNA Essentials, 3Y Term License, 8P	10
C9105AXW-B	Cisco Catalyst 9105AX Series-Wallplate	15

CW-MNT-ART2-00	Articulating AP Arm	5

CW-ACC-GPS1=	Catalyst Wireless GPS/GNSS Module, USB	60

9PX 9PX11K	Eaton 9PX UPS management unit	1
9PX 9PXEBM240RT	Eaton 9PX Extended Battery Module	4
MBP11K208	Eaton 9PX Maintenance Bypass module	1
Maintenance	5-year upgrade plan Onsite/Next Day Resp.	4
Warranty	Eaton Extended Warranty	1

PDU	Eaton Heavy-Duty PDU P	20

Power Dist. Unit	Pulizzi Z-Line T2235-3209	1

Mikrotik	MIK-CCR2216-1G-12XS-2XQ	4

Eaton	Eaton G4	2

ATTACHMENT E

Performance and Maintenance Bond and Payment Bond Forms

ATTACHMENT F

PREVAILING WAGE ORDER