

**AGREEMENT BETWEEN
CITY OF OVERLAND PARK, KANSAS
AND CONFERENCE TECHNOLOGIES, INC.**

**COMMAND AND CONTROL CENTER
AUDIO/VISUAL SYSTEM IMPROVEMENTS**

THIS AGREEMENT is made and entered into this ___ day of _____, 2010, by and between the City of Overland Park, Kansas, (hereinafter the "City"), and Conference Technologies, Inc., (hereinafter the "Vendor");

WITNESSETH:

WHEREAS, the City desires to make improvements to the Command and Control Center Audio/Visual Systems including equipment, installation of equipment, programming, and software installation and configuration, and delivery (the "A/V System"); and

WHEREAS, the City published a Request for Proposals relative to the Command and Control Center Audio/Visual System Improvements (the "RFP") on or about November 11, 2009; and

WHEREAS, the Vendor submitted to the City on or about December 10, 2009, a Proposal, in accordance with the requirements of the RFP (the "Proposal"); and

WHEREAS, the City has selected the Vendor to provide the A/V System improvements upon the terms and conditions and for the sum set forth herein.

NOW, THEREFORE, in consideration of the compensation to be paid the Vendor, and of the mutual agreements herein contained, the parties hereto have agreed as follows:

ARTICLE 1. DEFINITIONS.

- a. **"Contract Documents"** shall mean this Agreement, the RFP, the Proposal, and any attachments to those documents.
- b. **"Warranty"** shall mean a guarantee by either the manufacturer, the Vendor, or both, that the equipment and assembly of the A/V System being purchased by the City will be in good working order, shall not be faulty or deficient, and shall be in conformity with the standards and specifications as set forth herein.
- c. **"Proposal"** shall mean the offer of the Vendor, submitted on the prescribed form in response to the RFP issued by the City for the Command and Control Center Audio/Visual Improvements and delivery thereof.
- d. **"System Requirements and Scope of Services"** shall mean those portions of the Agreement consisting of written requirements and general specifications and technical descriptions of equipment, quality, and service as applied to the A/V System improvements to be delivered and installed as outlined in Exhibit A.
- e. **"Work Product"** shall mean all planning, investigations, programs, drawings, specifications and other documents and data produced by Vendor for the City under this Agreement. "Work Product" will be the sole property of the City upon the City's payment for services under this Agreement.

ARTICLE 2. VENDOR'S PERFORMANCE.

The Vendor shall furnish all labor, tools, equipment, materials, and transportation required to deliver, assemble, install, and program all components to provide a fully operational and functioning A/V System for the Command and Control Center located in the Fire Training Center at 12401 Hemlock, Overland Park, Kansas 66213, all in accordance with the Contract Documents and ; all work to be done in a good and workmanlike manner to the entire satisfaction of the City, and in accordance with the terms of the Contract Documents including but not limited to the A/V System Requirements and Scope of Services and all City, State, and Federal laws applicable thereto.

ARTICLE 3. VENDOR'S RISK.

Vendor retains title to and risk of loss or damage to equipment supplied by Vendor prior to the time of delivery and acceptance by the City. Title to and risk of loss or damage will pass to the City upon delivery and acceptance, free of any and all encumbrances.

The Vendor shall assume full responsibility for the proper shipping and offloading of the A/V System and shall, at its own cost, bear any loss, and repair any damage which may occur as a result of these activities.

ARTICLE 4. PRICE AND PAYMENT TERMS.

In exchange for delivery, installation, and programming of the fully operational and functioning A/V System as described in the Contract Documents the City agrees to pay the Vendor the sum of **fifty-four thousand twenty two and 33/100 dollars (\$54,022.33) as the full negotiated price.**

All compensation due shall be payable to Vendor within thirty (30) days of receipt of Vendor's invoice by City.

ARTICLE 5. TERM.

Unless otherwise terminated as provided herein, this Agreement shall be in effect from its date of execution through payment of invoice. All insurance, indemnity and warranty provisions shall survive termination of the Agreement.

Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City to terminate this Agreement, in whole or in part, with or without cause. If City shall terminate the Agreement without cause, it shall compensate Vendor for any work satisfactorily completed prior to Vendor's receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.

ARTICLE 6. WARRANTY.

Vendor shall warrant the A/V System for a minimum of ninety (90) days after acceptance of the A/V System by the City. This Warranty shall include any and all moving and adjustable parts, materials, equipment installed, workmanship, programming, and software installation and configuration specified under the Contract Documents. Nothing in the above statements intends or implies that the Warranty shall apply to damage caused by misuse, abuse, or improper maintenance by the City. Notwithstanding anything in the Contract Documents to the contrary, all manufacturer's warranties shall apply for the full term of any stated manufacturer's warranty period.

ARTICLE 7. DESIGNATION OF CONTACT PERSONS.

The primary contacts for this Agreement are as follows:

City of Overland Park	Vendor
Bob Pledge	Jimmy LoMonaco
8500 Antioch Road	8900 Nieman Road
Overland Park, KS 66212	Overland Park, KS 66214
(913) 895-6233	(913) 894-2500 ext. 1203
rpledge@opkansas.org	jlomonaco@conferencetech.com

ARTICLE 8. INDEPENDENT CONTRACTOR.

Vendor is an independent contractor and as such is not an employee or agent of the City.

ARTICLE 9. INDEMNITY.

a. Definitions - For purposes of indemnification, the following terms shall have the meanings set forth below:

1. "The Vendor" means and includes Vendor, all of its affiliates and subsidiaries, its subcontractors and materialmen and their respective servants, agents and employees; and
2. "Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim, whether real or spurious, for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Agreement, whether arising before or after the completion of the performance required hereunder.

b. The Indemnity: For purposes of this Agreement, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Agreement, Vendor hereby agrees to indemnify, defend and hold harmless the City from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Vendor, its employees, agents, subcontractors and suppliers.

It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further, notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature.

c. General Limitation: Nothing in this section shall be deemed to impose liability on the Vendor to indemnify the City for loss when the City's negligence or other actionable fault is the sole cause of loss.

d. Waiver of Statutory Defenses: With respect to the City's rights as set forth herein, the Vendor expressly waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses

are inconsistent with or would defeat the purposes of this section.

ARTICLE 10. DISPUTE RESOLUTION.

City and Vendor agree that disputes relative to this Agreement shall first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute Vendor shall proceed with the work as per the Agreement as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the City's express written consent.

ARTICLE 11. INSURANCE.

- a. General - Vendor shall secure and maintain, throughout the duration of this contract, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Vendor shall provide certificates of insurance and renewals thereof on City provided forms or on forms approved by the City. The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

- b. Notice of Claim Reduction of Policy Limits - Vendor, upon receipt of notice of any claim in connection with the contract, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

Vendor shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the contract) if the Vendor's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. Vendor shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

- c. General Liability - The Commercial General Liability insurance coverage that is to be provided by Vendor shall comply with appropriate section. Such insurance shall specifically insure the contractual liability assumed by Vendor under SECTION VIII of this CONTRACT.

General Aggregate:	\$ 1,000,000
Products-Completed Operations Aggregate:	\$ 1,000,000
Personal & Advertising Injury:	\$ 1,000,000
Each Occurrence:	\$ 1,000,000

Policy must include the following conditions:

- 1) Broad Form Contractual/Contractually Assumed Liability
- 2) Independent Contractors
- 3) Broad Form Property Damage
- 4) **Name City of Overland Park as "Additional Insured".**

d. Automobile Liability - Policy shall protect Vendor against claims for bodily injury and/or property damage arising from the ownership or use of all owned, hired and/or non-owned vehicles and must include protection for either:

1. Any Auto

OR

2. All Owned Autos (if any);
Hired Autos; and
Non-Owned Autos.

Limits of liability protection required are the SAME as the limits for the Commercial General Liability section. Policy shall insure the contractual liability assumed by Vendor. **The City shall be named as “Additional Insured”.**

e. Workers' Compensation and Employer's Liability - This insurance shall protect Vendor against all claims under applicable state Workers' Compensation laws. Vendor shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a Workers' Compensation law. The policy shall include liability limits not less than the following:

Workers' Compensation: Statutory

Employer's Liability:

Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

f. Industry Ratings - The City will only accept coverage from an insurance carrier who offers proof that it:

1. Is licensed to do business in the State of Kansas;
2. Carries a Best's policy holder rating of A- or better; and
3. Carries at least a Class VIII financial rating **OR**
4. Is a company mutually agreed upon by the City and Vendor.

g. Subcontractors Insurance - If a part of the Agreement is to be sublet, the Vendor shall either:

1. Cover all subcontractors in its insurance policies, or
2. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, Vendor shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its subcontractors.

ARTICLE 12. AFFIRMATIVE ACTION/OTHER LAWS.

a. The Vendor agrees that:

1. The Vendor shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;
2. In all solicitations or advertisements for employees, the Vendor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the commission;
3. If the Vendor fails to comply with the manner in which the Vendor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Vendor shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;
4. If the Vendor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, the Vendor shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and
5. The Vendor shall include the provisions of subsections (1.) through (4.) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this section shall not apply to an Agreement entered into by a Vendor:

1. Who employs fewer than four employees during the term of such contract; or
2. Whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

b. The Vendor further agrees that the Vendor shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

ARTICLE 13. CONTRACT DOCUMENTS COMPLIMENTARY.

All components of the RFP, Proposal, and this Agreement are complementary, and what is called for by any one shall be as binding as if called for by all. The Agreement supersedes all previous agreements and understandings between the parties, which previous agreements and understandings are of no further force and effect. This Agreement may not be amended or modified except by written agreement of both parties.

ARTICLE 14. ORDER OF PRECEDENCE

Any conflict or inconsistency to the provisions of this Agreement and the documents incorporated by reference shall be determined by the following order of precedence:

- 1) Written modifications and addenda to this Agreement;
- 2) This Agreement;
- 3) The Proposal, including any appendices and exhibits;
- 4) The RFP.

ARTICLE 15. SEVERABILITY.

The parties agree that should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason such provision(s) shall be null and void but that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

ARTICLE 16. APPLICABLE LAW.

This Agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas.

ARTICLE 17. EXHIBITS.

The following documents form a part of and are incorporated into this AGREEMENT by this reference:

- System Requirements and Scope of Services (EXHIBIT A).
- The RFP
- The Proposal

IN WITNESS WHEREOF the parties have executed this AGREEMENT as of the date first written above.

CITY OF OVERLAND PARK, KANSAS

By: _____
Carl Gerlach
Mayor

ATTEST:

Marian Cook
City Clerk

APPROVED AS TO FORM:

Tammy M. Owens
Senior Assistant City Attorney

Conference Technologies, Inc.

By: _____
Jimmy LoMonaco
Branch Director

EXHIBIT A
SCOPE OF WORK/SERVICES

Services, work, and equipment to be provided by the Vendor shall include:

1. Vendor will meet with designated City staff to confirm and fully verify Project requirements and the scope of work.
2. Vendor will conduct site visits and review existing building and system plans and documentation to become fully familiar with the existing installation and configuration.
3. Vendor will provide all equipment, supplies, installation, programming, and shipping/delivery to provide a fully functional and operational system based on the work and components listed below.
 - Rack mount and configure an Extron CrossPoint 450 plus 32x32 matrix switcher with ADSP, IP Link for RGB, and stereo audio. Coordinate rack mount location with City staff. All racks and rack AC power is existing and is to be reused.
 - Remove existing Cornet matrix switcher.
 - Vendor will provide plenum rated RGBHV 5 wire video and 22 AWG shielded 2 wire plenum rated audio cable and termination for up to 20 VGA computer devices/inputs to the new rack mounted matrix switcher. City to be responsible for pulling Vendor supplied cable.
 - Vendor will provide plenum rated RGBHV 5 wire video cable and termination for up to 12 projectors/outputs from the new rack mounted matrix switcher to the existing projectors. All existing NEC projectors to remain in place. City to be responsible for pulling Vendor supplied cable.
 - Vendor to provide rack work as required to facilitate install. Vendor shall re-dress existing cabling and wiring to a manageable level but not a total rework.
 - All existing DVD/VCR equipment and composite video cable to the existing projectors to be reused. Existing Pelco video quads to be reused to retain the same level of functionality. Vendor will provide for the required composite video and audio cabling and connections between the existing DVD/VCRs and Pelco quads to the Extron matrix switcher. All broadcast TV feeds currently available through the 8 existing DVD/VCRs shall be retained along with the ability to display these feeds in single or quad screen configuration. Existing functionality to include the ability to view broadcast TV through a VLC connection at the desk PCs and the ability to control channel selection through the Crestron controls shall be maintained.
 - Vendor will provide and terminate plenum rated composite video and audio cable from a new DVD/VCR at the Command Desk to the matrix switcher. City to be responsible for providing the new DVD/VCR and pulling the Vendor supplied cable.
 - All audio cable shall be terminated at each source device and the new matrix switcher for future use.
 - Vendor shall work with the City to configure the existing PC, digital overhead projector, and Sympodium telestrator at the Command Desk to facility the optimal use of the functions and features available with this equipment.
 - All source computers and related software, LCD monitors keyboards, mice, Command Desk support furniture, and LAN connections to be provided by City.

EXHIBIT A
SCOPE OF WORK/SERVICES (continued)

- General equipment list to be provide by Vendor:
 - Extron CrossPoint 450 Plus 3232 matrix switcher.
 - 11 Extron P/2 DA2xi MT two outputs VGA and audio distribution amplifier.
 - 8 Extron P/2 DA2xi two output VGA distribution amplifier.
 - 1 Extron Extender Series VGA and audio line drive.
 - 1 Extron CVEQ 100 composite video and audio line driver with gain and equalization.
 - 2 Extron BUC 102 two channel audio balanced and unbalanced converter (BUC).
- 4. Existing Crestron MC2E processor and Creston touch panel control to be reused. Vendor will revise the Crestron system code and components to provide required control for new and existing audio visual components. Vendor shall review operational and control requirements and touch panel layout with designated City staff and provide conceptual control plans and touch panel layout for review and approval by the City. Crestron control via the touch panel shall include the ability to independently select any of the input sources to the new 32 X 32 matrix switcher with output to any of the existing projectors. Existing HVAC, lighting, and VCR channel control shall be retained. Vendor shall include the necessary programming and configuration to provide for Web-based Crestron control.
- 5. The City shall provide the Vendor a copy of the existing Creston code. Vendor shall provide the City a copy of the final Creston and any other control source code as a part of the Project documentation. The code shall be in an unrestricted format for use by the City or other parties that may be retained by the City to make changes or modifications to the Cestron system.
- 6. Vendor shall test and calibrate all installed systems and equipment to assure optimal performance.
- 7. Vendor shall provide a set of “as built” drawings upon completion of the Project. To the extent required to fully convey the configuration and operation of the system and system components, Vendor shall include existing components and wiring in the “as built” drawings for the Project. “As built documentation shall clearly identify source, output, termination, and connection/port information.
- 8. Vendor shall provide, in notebook form, cut sheets; equipment specifications; operating/user manuals; and warranty information for all equipment and systems installed as a part of this Project. One electronic (PDF format) and one hardcopy notebook of the documentation outlined in this section shall be provided to the City upon Project completion.
- 9. Vendor shall provide basic user and system support training and will work with the City to develop a user manual for future staff reference. It is understood that as a cost saving component that responsibility for the development of a user manual has been transferred from the Vendor to the City and that the requirement for development of the user manual is the responsibility of the City.
- 10. The existing Ethernet connection and NEC software to allow projection from any POD computers shall be maintained.

EXHIBIT A
SCOPE OF WORK/SERVICES (continued)

All planning, investigations, programs, drawings, specifications, and other documents and data produced by the Vendor under this Agreement defined as work product will be the sole property of the City upon payment for services under this Agreement. Any and all work product shall be promptly transmitted or turned over to the City upon payment for services.

Vendor shall provide a standard ninety (90) day parts and labor warranty. The parts and labor warranty period shall commence upon final acceptance of the Project by the City. The Project shall be tax exempt.

Work will be performed during the Vendor's regularly scheduled work hours, generally Monday through Friday, 8 a.m. to 5 p.m. The City will work with the Vendor to provide consecutive 8 hour blocks of time to facilitate the installation. Vendor acknowledges that an event or emergency requiring activation of the Command and Control Center during a scheduled work period will take precedent over the Vendor's scheduled work.