

AN ORDINANCE 2008-06-19-0603

APPROVING THE TERMS AND CONDITIONS OF AN AMENDED AND RESTATED TELECOMMUNICATIONS SERVICE AGREEMENT WITH SMART CITY NETWORKS, LLC FOR TELECOMMUNICATION SERVICES AT THE HENRY B. GONZALEZ CONVENTION CENTER.

* * * * *

WHEREAS, City Ordinance No. 89088, passed and approved on January 14, 1999, authorized the City to enter into an Agreement for Telecommunication Services (the "Agreement") with Smart City Networks, LLC ("Smart City") for telecommunication services at the Henry B. Gonzalez Convention Center, Lila Cockrell Theatre and Municipal Auditorium (the "Convention Facilities"); and

WHEREAS, the primary term of the Agreement was for ten (10) years commencing on March 3, 1999 and expiring on March 3, 2009 and included a comprehensive review of Smart City's performance at the conclusion of year 5 which was undertaken by City staff and presented to City Council; and

WHEREAS, it was determined at the time of the review that Smart City had performed satisfactory and that the Agreement should remain in effect for its full term; and

WHEREAS, Smart City has now proposed an extension of the Agreement for an additional five (5) year period with a five (5) year renewal option and has offered as consideration for the extension an increase in commissions to the City, the creation of a Marketing and Technology Fund, \$25,000 annually for complimentary services, \$75,000 in upgrades to the wireless system, \$85,000 in upgrades to the telephone system, an initial payment of \$200,000 for enhancements to the Convention Facilities and an additional payment of \$50,000 upon the City's exercise of the five (5) year renewal option; and

WHEREAS, City staff is recommending approval of an extension of the Agreement based upon Smart City's history of satisfactory performance, the importance of consistency in providing a high-level of uninterrupted customer service, and the successful financial performance that Smart City has provided to the City; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of the Amended and Restated Telecommunication Services Agreement between the City and Smart City Networks, L.L.C., are hereby approved. A copy of the Amended and Restated Telecommunication Services Agreement in substantially final form is attached hereto and made a part of this Ordinance as Exhibit "A." A copy of the fully executed Agreement will be attached to this Ordinance and will replace Exhibit "A."

SECTION 2. The City Manager is authorized to enter into an agreement in accordance with Section 1 of this Ordinance. Upon the concurrence of the City Attorney, administrative changes to Exhibit A may be made prior to execution of the Agreement by the City Manager.

SECTION 3. Funds generated by this Ordinance shall be deposited into Fund No. 29006000 Hotel Motel Tax, Internal Order No. 242000000838 Convention Center Telecommunications, General Ledger 4407707, entitled "Commissions Contracts Telecommunication" or General Ledger 4407725, entitled "Miscellaneous Revenue."

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance shall become effective immediately upon its passage by eight (8) votes of the City Council and if passed upon fewer than eight (8) votes after the tenth (10th) day after passage.

PASSED AND APPROVED this 19th day of JUNE 2008.

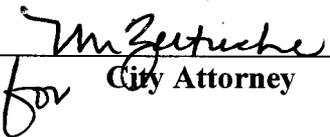

M A Y O R
PHIL HARDBERGER

ATTEST:



City Clerk

APPROVED AS TO FORM:



for City Attorney



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 62

Name:	9, 16, 17, 18, 19, 21, 24, 25, 26, 27, 31, 32, 33, 34, 41, 42, 43, 44, 45, 46, 48, 49, 50, 52, 55, 56A, 56B, 57, 58, 59, 61, 62, 66, 68, 69, 70, 72, 73, 75, 76, 78, 80, 81A, 81B, 81C, 81D, 81E, 81F, 81G, 81H, 81I, 81J
Date:	06/19/2008
Time:	02:48:38 PM
Vote Type:	Motion to Approve
Description:	An Ordinance approving the terms and conditions of an Amended and Restated Telecommunications Services Agreement with Smart City Networks, LLC for telecommunication services at the Henry B. Gonzalez Convention Center. [Penny Postoak Ferguson, Assistant City Manager; Michael J. Sawaya, Director, Convention Sports & Entertainment Facilities]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				x
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x			x	
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10	x					



CMS or Ordinance Number: CN0040000349

TSLGRS File Code:1000-25

Document Title:

CONT - Telecommunication services for Convention Center exhibitors and clients

Commencement Date:

3/3/1999

Expiration Date:

6/30/2018

**FIRST AMENDED AND RESTATED AGREEMENT
FOR TELECOMMUNICATION SERVICES AT
THE HENRY B. GONZALEZ
CONVENTION CENTER**

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**AMENDED AND RESTATED AGREEMENT FOR TELECOMMUNICATION
SERVICES AT THE HENRY B. GONZALEZ CONVENTION CENTER**

This Amended and Restated Agreement for Telecommunication Services at the Henry B. Gonzalez Convention Center (hereinafter referred to as this "Agreement") is hereby made and entered into by and between the City of San Antonio (hereinafter referred to as "City") a Texas municipal corporation acting by and through its City Manager under the authority of City Ordinance # _____, passed and approved on June 19, 2008 and Smart City LLC (hereinafter referred to as "Vendor"), for the provision of telecommunication services at the City owned Henry B. Gonzalez Convention Center, Lila Cockrell Theatre and Municipal Auditorium (collectively referred to as the "Convention Facilities"), as stated herein.

WITNESSETH:

WHEREAS, Vendor is currently engaged in the business of providing telecommunication services to tenants, event attendees, show managers, and exhibitors at the Convention Facilities under an agreement authorized by City Ordinance #89088, passed and approved on January 14, 1999; and

WHEREAS, City and Vendor hereby agree to amend and restate the terms of this Agreement as described below to make the telecommunication services provided by Vendor and as further described in this Agreement and Exhibit I hereto (the "Telecommunication Services") available to City, tenants, event attendees, show managers, and exhibitors located on or about the Convention Facilities for an additional five (5) year period and one additional five (5) year renewal period; and

WHEREAS, the City Council of the City of San Antonio by Ordinance No. _____, passed and approved on June 19, 2008, authorized this Agreement and authorized the execution hereof, in accordance with the terms of this Agreement

NOW THEREFORE, City and Vendor, in consideration of the foregoing, and the terms and conditions herein contained, do hereby agree as follows:

ARTICLE 1. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

"Agreement" is defined as this Amended and Restated Agreement for Telecommunication Services at the Convention Facilities.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Convention Facilities" shall mean the City owned facilities known as the Henry B. Gonzalez Convention Center, Lila Cockrell Theatre and Municipal Auditorium collectively. Should one or

all of these facilities no longer be owned by the City, this definition shall no longer apply.

“Director” shall mean the director of City’s Convention, Sports and Entertainment Facilities Department.

“Exhibitors” shall mean those groups or individuals who are acting under an agreement with City’s licensees to utilize the Convention Facilities to display or exhibit products.

"Gross Receipts" shall mean the aggregate amount of gross billing, including equipment sales, gratuities, service and rental charges received or charged by Smart City or any agent, employee or subcontractor of Smart City for all sales, cash or credit, made as a result of the service rights granted under this Agreement, excluding applicable sales taxes, regulatory fees, surcharges, deposits, service adjustments and refunds, billings for recovery of non-returned, lost or damaged service equipment, Administrative Services, Permanent Tenant Services and any billings to the City as specifically provided for herein.

“Lessees” shall mean an individual, company or organization who has entered a long-term lease agreement with the City for space at the Convention Facilities.

“Licensee” shall mean any person, group or organization who has entered into an agreement with City for the use of space within the Convention Facilities.

"Net Receipts" shall mean the Gross Receipts less Contractor's actual cost to provide “Special Technology Services”.

“Telecommunication Services” shall mean those services described in this Agreement and Vendor’s original and secondary proposal.

“Vendor” is defined in the preamble of this Agreement and includes its successors.

ARTICLE 2. TERM

2.1 **Initial Term.** The Initial Term of this Agreement is five (5) years commencing on July 1, 2008 and ending June 30, 2013 (hereinafter referred to as “Initial Term”).

2.2 **Renewal Term.** At the end of the Initial Term, City, in the sole discretion of the Director, may renew this Agreement for an additional five (5) year period (the “Renewal Term”) commencing on July 1, 2013 and terminating on June 30, 2018. This Agreement shall be deemed to continue in full force and effect during the Renewal Term.

2.3 **Notice of Renewal.** Vendor shall give written notice to City of its desire to exercise the Renewal Term at least ninety (90) days prior to the expiration of the Initial Term. City shall indicate within sixty (60) days of receiving notice from Vendor of its intent to exercise the Renewal Term option.

ARTICLE 3. SCOPE of SERVICES

3.1 Telecommunication Services. Vendor shall provide Telecommunication Services to the Convention Facilities, including all associated labor and equipment that may be required, and as further described below.

3.2. Telephone Services. Vendor shall provide telephone services, including long distance service, using an onsite PBX telephone switch with sufficient analog and digital telephones, features, circuits, voicemail and automated attendant capacity, and other equipment to meet the needs of City, Licensees, Exhibitors, and Lessees of the Convention Facilities. The general requirements which are the responsibility of the Vendor include:

- 3.2.1 The provision and installation of a telephone switch and associated items including all equipment, accessories, data base information, training, software, hardware, labor and materials.
- 3.2.2 Prompt, efficient and professional installation, deinstallation and maintenance of event telephones and telecom services.
- 3.2.3 Annual, monthly and routine maintenance to ensure reliable telecommunications services.
- 3.2.4 Provision and installation of circuits with local and long distance carriers for exhibit and meeting areas.
- 3.2.5 Recommendations for upgrading systems, procedures or technological advances.
- 3.2.6 A system design plan describing the switching configurations, circuit layouts, connecting arrangements, terminal plans and equipment room layouts.
- 3.2.7 All equipment, labor, etc. to provide billing and collection services for long distance services provided to licensees, exhibitors and lessees, including:
 - (a) the ability to produce on-demand reports;
 - (b) the ability to offer different rates for different shows, or groups within a show;
 - (c) the ability to detect toll fraud; and
 - (d) the ability for Convention Facilities management staff to remotely view statistics and produce reports.

3.3. ISDN/T-1/DS-3, etc. (Hi-Cap Circuits) and Data Networking Services. Hi-Cap Lines, Circuits and Data Networking services have become a required standard and the Vendor

shall provide Hi-Cap Circuits and Data Networking services within the Convention Facilities and from the Convention Facilities allowing connectivity worldwide. The general requirements which are the responsibility of the Vendor include:

- 3.3.1 Ordering Hi-Cap circuits from the local or long distance service provider as required for provisioning Hi-Cap circuits through the telecom system.
- 3.3.2 Installing Hi-Cap circuits whether from the local or long distance provider or the on-site telecom system.
- 3.3.3 Keeping current on the capabilities and capacities of the local telephone company to provide Hi-Cap services.
- 3.3.4 Notifying the management of the Convention Facilities of the local telephone company's lack of capacity, inability to provide or missed due dates regarding Hi-Cap services.

3.4 Internet Access Service. Vendor shall provide wired and wireless Internet access service to the exhibit areas of the Convention Facilities.

3.5 Cisco Wireless Upgrade. Vendor shall upgrade the current wireless system prior to the one year anniversary date of this Agreement, facility wide, to include the latest technology frequency 802.11a.

3.6 Nortel Option 61 Upgrade. Vendor shall upgrade the current Nortel Option 61 within twenty-four (24) months of contract execution, to include the latest software and voice mail as applicable to support voice related products and services for the event industry.

3.7 Special Technology Services. Vendor shall provide Special Technology Services to maximize the use of the communication infrastructure and provide for emerging technology.

- 3.7.1 Webcasting. Vendor shall make available webcasting or internet broadcasting services at the Convention Facilities.
- 3.7.2 Cyber Cafes. Vendor shall make available internet access and email stations at the Convention Facilities.
- 3.7.3 Video Email. Vendor shall make available video-email to promote attendance and to promote the Convention Facilities. Video email shall include full motion video and audio.

Vendor commits to City Vendor's continued effort to identify new products and services that will give City a competitive edge over competing convention centers while providing additional commissions from the sales of new services. As potential services are identified, with the approval of City, Vendor will conduct field trials at Convention Facilities. When a new product or service is

determined to be mutually beneficial, Vendor will make the necessary commitment to provide them as part of Vendor's standard service offerings and pay City the appropriate commissions. Should additional or new emerging special technology arise during the Initial Term or Renewal Term of this Agreement, Vendor and City shall mutually determine how such technologies shall be addressed and the applicable commission schedule for that technology prior to implementation.

3.8 Additional Services. Director, by means of a written authorization to Vendor, may request Vendor to perform additional services not specified in this Agreement at the Convention Facilities or at any other City buildings that are reasonably related to the scope of this Agreement.

3.8.1 Vendor shall perform Additional Services at Vendor's then current price for such services. Vendor shall account for Additional Services in the following month's statement to City, as a deduction from amounts otherwise owed to the City unless Director requests that the City be billed separately for Additional Services.

3.9 Complimentary Services. Upon the request of Director, Vendor agrees to provide complimentary (i.e. no cost) Telecommunication Services for City designated "special events" over the Initial Term and Renewal Term of this Agreement. Such complimentary services shall not exceed the amount of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) annually. Such complimentary services shall be rendered to show management, exhibitors and/or attendees and the rates credited for such services shall be based upon Vendor's standard pricing structure. Should labor charges be applicable for complimentary services that are not described in Vendor's standard pricing schedule and/or offered as "call for special quote," the technician labor rates shall be \$36 per hour with a minimum of one hour charged. Complimentary services shall not be subject to commission payments.

3.9.1 Any unused portion of City's \$25,000 allocation for complimentary services shall carry over for a one year period.

3.10 Cable Facilities Wiring. Vendor has provided support for cable facilities wiring (copper/fiber optic) adds, moves, and changes at the Convention Facilities and shall continue to do so for the remaining term of this Agreement, including those adds, moves and changes supporting City's administrative communications. Should City seek to expand Convention Facilities administrative communications, Vendor will coordinate work with the City's Information Technology Services Department.

3.11 Marketing & Technology Fund. Vendor shall establish and maintain a Marketing and Technology Fund which shall be comprised of funds equal to two-percent (2%) of monthly Gross Receipts that shall accrue from the commencement date of this Agreement and terminate upon the expiration of this Agreement. The purpose of the fund is to provide for additional services or special projects, which may include new infrastructure, unique equipment to enhance Telecommunication Services or to provide services for a special event (i.e. national convention or sporting event or non budgeted marketing activities of the Convention Facilities.

- 3.11.1 Expenditures from the Marketing and Technology Fund shall be subject to the prior written authorization of Director.
- 3.11.2 Should the Marketing and Technology Fund be insufficient to fund the cost of a certain project, Vendor shall advance future accruals to the Marketing and Technology Fund. In such instances, labor and material costs will be levied at Vendor's actual cost for infrastructure and special technology improvements or marketing activities. Vendor's standard exhibitor pricing structure will be levied to cover costs of Telecommunication needs for a convention or meeting group for services rendered to licensees and/or exhibitors.
- 3.11.3 Vendor shall be responsible for providing monthly reports tracking the usage of the Marketing and Technology Fund.
- 3.11.4 Should there be insufficient funds in the Marketing and Technology Fund at the expiration of this Agreement to recover Vendor's advances to the fund, the City and Vendor shall work toward an agreement to reimburse Vendor for those advanced expenditures.
- 3.11.5 Any funds remaining in the Marketing and Technology Fund at the expiration or termination of this Agreement shall belong to City.
- 3.11.6 Commission payments in accordance with Section 4.2 of this Agreement are not applicable to the initial services provided by the Marketing and Technology Fund. However, such services provided to licensees, exhibitors or lessees after the initial service upon which the expenditure was made are subject to the commission requirements of Section 4.2.

3.12 As-Built Drawings. Upon request of City, Vendor shall provide system "as-built" drawings upon completion of installation and testing of equipment installed after the commencement date of this Agreement.

3.13 City's Reserved Rights. On an event by event basis, the City expressly reserves the right to contract with a third party to provide the City any or all of the Telecommunication Services provided by Vendor under this Agreement on a limited basis whenever such contractual relationship is required for the City to book a significant event of importance. Except for this limited exception, Vendor shall be the sole Telecommunication Services provider at the Convention Facilities. In the event a third-party is contracted for services no equipment of Vendor shall be used without Vendor's prior written consent.

3.14 Inspection by City. All services, materials and workmanship shall be subject to inspection and test by City. City and Vendor shall inspect and test in accordance with the applicable industry standards, manufacturer installation manuals, and City specifications. City reserves the right to reject any services which contains defect in material or workmanship or which

fails to meet the specifications contained in the Request for Proposal, or Vendor's warranties (expressed or implied). As to rejected goods or services, Vendor shall bear all costs and risk of loss.

ARTICLE 4. PAYMENTS/SERVICE RATES/AUDIT

4.1 Initial Payment. Vendor shall pay to the City TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) no later than thirty (30) days following October 1, 2008. Should the City and Vendor agree to exercise the five (5) year renewal in accordance with Section 2.2, Vendor shall pay to the City an additional FIFTY THOUSAND DOLLARS (\$50,000.00) upon execution of a document evidencing such renewal.

4.2 Commission Percentage. For the rights and benefits conferred upon Vendor by City, Vendor shall pay City, in the manner described below, the following applicable percentage of Gross Receipts for all Telecommunication Services provided each month:

- (a) On Gross Receipts greater than \$3.5 million, Vendor shall pay to City a commission rate of Thirty-Five percent (35%);
- (b) On Gross Receipts greater than \$3.0 million but less than \$3.5 million, Vendor shall pay to City a commission rate of Thirty-Four percent (34%);
- (c) On Gross Receipts greater than \$2.5 million but less than \$3.0 million, Vendor shall pay to City a commission rate of Thirty-Three percent (33%);
- (d) On Gross Receipts greater than \$2.0 million but less than \$2.5 million, Vendor shall pay to City a commission rate of Thirty-Two percent (32%);
- (e) On Gross Receipts greater than \$1.5 million but less than \$2.0 million, Vendor shall pay to City a commission rate of Thirty-One percent (31%);
- (f) On Gross Receipts less than \$1.5 million, Vendor shall pay to City a commission rate of Twenty-Six percent (26%);

All Commissions will begin to accrue on the first day of the month in which this Agreement is executed.

4.3 Payment of Commissions. All commissions due to City shall be paid within ten (10) business days of the end of the calendar month. Failure to timely pay the rates due to the City shall bind the Vendor to pay a penalty equal to fifteen percent (15%) annual interest or the maximum rate of interest allowed by law, whichever is lower until such arrearages are paid in full. Sufficient documentation is required to accompany payment to the City. Vendor may wire transfer commissions to City.

4.4 Pricing Structure. Vendor shall utilize a pricing structure as indicated in Exhibit _____. Any significant changes in the pricing structure resulting in a cumulative increase of 15% or more must be approved by the Director, not to be unreasonably or untimely withheld.

4.5 Reports.

4.5.1 Vendor shall be responsible for submitting the following reports within thirty (30) calendar days of the end of the business cycle:

- (a) An accounting for all event related telecommunications services provided;
- (b) A complete list of equipment and services provided for each event including equipment name, type of service provided, client name and number.

4.5.2 Vendor shall promptly provide to the City all reports related to the services provided at this facility reasonably requested by City including, but not limited to, financial statements and reports, reports and accounting of services rendered, and any other reports or documents requested.

4.6 Annual Revenue Projections. Based on the City's event projections, historical data, and Vendor's past experience, Vendor shall provide annual revenue projections to the City each February for the following Fiscal Year (October to September timeframe). City to provide event projection and historical data to Vendor forty-five (45) days in advance of date City requires projections from Vendor.

4.7. Audit. City or its authorized representative shall at all reasonable times with notice and at City's sole discretion, have the right to examine, inspect, and audit all books, papers, and bank records of Vendor as necessary to determine the accuracy of reports relative to the gross receipts of Vendor's operations. The cost and expense incurred by City incident thereto shall be the sole responsibility of and borne by City. Such records shall be made reasonably available to City by Vendor for the duration of this Agreement, and be available for inspection and/or audit by City or its agents at any reasonable time with five (5) days notice. The City may conduct an audit on an annual basis.

4.8. Maintaining Records. Vendor shall maintain records and accounting systems in accordance with Generally Accepted Accounting Principles. Vendor shall pay, on a timely basis and in accordance with all vendor terms, all proper bills and other expenses (other than those paid for by City) incurred in the normal operation of the Convention Center Telecommunications Services.

4.9. City's Waiver of Commission. The City may waive the Vendor's obligation to pay commissions whenever Vendor provides services for events at the request, or on behalf, of City departments or officials as directed by the Convention Facilities Director.

ARTICLE 5. VENDOR RESPONSIBILITIES

5.1. General Responsibility. Vendor shall be responsible for the design, purchase, installation, maintenance and operation of the telecommunications system as described in this Agreement and all costs associated therewith.

5.1.2. Vendor shall work closely with the Director or his designee and

appropriate City officials to perform any and all related tasks reasonably required by City in order to fulfill the purposes of this Agreement.

- 5.1.3. Vendor is responsible to ensure that all goods and services herein described are manufactured, sold, priced, transported, and/or installed in compliance with all Federal, State and/or Local laws, orders, rules or regulations issued thereunder.
- 5.1.4. Vendor is responsible for coordinating all service required from the public utility.

5.2. Sale and Invoicing. Vendor is responsible for the marketing, sale, invoicing and collection of payments for Telecommunication Services and/or the use of Telecommunication Service related equipment at the Convention Facilities by City's licensees or those working under the direction of City's licensees.

5.3. System Performance. Vendor guarantees the following:

- 5.3.1 Telecommunications Services will be 24 hours per day, 7 days per week, at a 99.9% level of availability with a P.01 grade of service for switched services, except during periods of routine maintenance or repair within the ordinary course of business.
- 5.3.2 An Uninterruptible Power Supply (UPS) system, able to support the core system installed by the Vendor for 4 hours in the event of a loss of commercial power.
- 5.3.3. Emergency service (for major service interruptions) shall be provided on a twenty-four (24) hours a day, seven (7) days a week basis, within one (1) hour following verbal notification to Vendor from City of such occurrence.
- 5.3.4. E911 compliance in accordance with the regulations for the venues served.
- 5.3.5 Non-emergency service provided within four (4) hours of verbal communication of such request for service to Vendor by City, or upon a mutually agreed time computing such time only upon the basis of 7:45 a.m. through 4:30 p.m., Monday through Friday, excluding legal holidays or major holidays observed by City.

5.4. Equipment & Maintenance. Vendor shall ensure that all equipment provided by the Vendor is new, unused or quality refurbished. Equipment refers to all hardware, software, common and station equipment for the PBX, voice messaging, cabling, materials and incidentals, etc.

- 5.4.1 Title to equipment, with the exception of facilities improvements as described in 5.4.2, shall remain with Vendor. Risk of loss shall be borne by Vendor. At the City's election, title of any and all equipment shall be transferred to the City at the termination of the Agreement subject to provisions hereof upon payment to Vendor of the fair market value of material components of the equipment, excluding cabling, conduit, racks, and similar supplies which shall be transferred to City without payment. If City elects not to purchase equipment, Vendor must remove equipment, if so requested by City. "Equipment" does not refer to proprietary or trademarked intellectual property.
- 5.4.2 Any facility improvements, such as cables, connections, fixtures (such as racks, etc.) which are installed by the Vendor to provide Telecommunication Services will become the property of the City at the time of installation at no additional cost to the City.
- 5.4.3 Vendor shall, at the date of delivery, have good title to any and all equipment supplied hereunder, and the equipment shall be free and clear of any and all liens and encumbrances.
- 5.4.4 Vendor shall insure that all preventative and remedial maintenance be performed in a manner that shall minimize service interruptions.
- 5.4.5 Vendor is to provide a qualified on-site representative while Vendor's equipment is in use by a licensee or exhibitor of the City and have a qualified representative on-call within 60 minutes of the City on a 24 hour per day, 7 day per week basis for unforeseen emergencies or requirements

5.5 Miscellaneous.

- 5.5.1 Vendor shall be responsible for supplying any and all requests for service and/or equipment to be required under this Agreement.
- 5.5.2 Vendor shall be responsible for meeting last minute requests for service and/or equipment. Such requests must be made within a reasonable time for Vendor to act and perform. Vendor shall use its best effort to meet all requests.
- 5.5.4 Vendor shall be responsible to staff a service desk from move-in through move-out.
- 5.5.5 Vendor shall be responsible for maintaining the IDF's, switch rooms, and other work areas.
- 5.5.6 Vendor shall be responsible for removing and storing all instruments and wiring within 6 hours of the end of each event. If a shorter time frame is

required, Vendor must comply.

- 5.5.7 Vendor shall be responsible for creating an operational plan that is adequate to cover large conventions or multiple events occurring at the same time in the convention center.
- 5.5.8 Vendor shall be responsible for providing a quarterly report which identifies trends, problems, recommends solutions and enhancements and assess the overall operation of the program.
- 5.5.9 Vendor shall be responsible for providing a monthly report of the cable infrastructure records providing a reasonably complete picture of the physical network on the day it was produced.
- 5.5.10 Vendor shall be responsible for issuing identification badges for security purposes to each of Vendor's employees. Vendor shall notify City within two (2) business days of personnel no longer employed or for employees no longer working on the Convention Facilities. Vendor shall use reasonable efforts to recover all inactive identification badges.
- 5.5.11 Vendor shall be responsible for providing an organizational chart of the project team, including both the implementation and operational teams if they are different.
- 5.5.12 Vendor shall be responsible for providing resumes for all key personnel.
- 5.5.13 Vendor shall be responsible for providing a professionally trained and outfitted staff appropriately attired.

5.6 Updates. Vendor shall notify City when software updates or enhancements become available. The City shall then have the opportunity to request installation of the new software, which shall be installed without charge to the City. Software releases intended as generic version updates or to enhance basic equipment operation, design, correct design deficiencies or improve operating efficiency shall be automatically installed by the Vendor without prior approval, notice or charge to the City. Software updates shall be supplied as long as the system is operational.

5.8. Compliance with Laws. Vendor shall be responsible for complying with all of the applicable building, zoning, electrical, and other codes, regulations, ordinances, statutes and/or laws applicable to the operation of concession services and the installation of equipment, including, but not limited to, the obtaining and paying for all usual and ordinary Vendor-required fees, permits, licenses or other governmental authorizations necessary to perform its obligations.

- 5.8.1. Vendor shall be responsible, upon demand of any governmental authority having jurisdiction over the services and/or equipment, for making any repairs, replacement and/or modifications required by such governmental authority to comply with any such applicable *governing* codes, regulations,

and/or laws.

- 5.8.2 Vendor shall be responsible for complying and ensuring compliance by its employees and suppliers, with all City's rules and regulations governing access to and conduct on the Convention Facilities. Vendor's employees shall enter the Convention Facilities through designated entrances that will be specified by the Convention Facilities Director. Vendor shall furnish City with a list of the names of its employees and provide updates to said list of names to the Convention Facilities Director within ten (10) working days as changes occur.

5.9. Workers Compensation. Vendor warrants to and covenants with City that Vendor shall, at all times, comply with all workers' compensation laws applicable to its operations, and with the rules and regulations of all commissions, boards or agencies charged with the administration of such laws, and that the Vendor shall maintain in effect workers' compensation and comprehensive general liability insurance fully protecting Vendor, in accordance with the certificate of Vendor's workers' compensation and comprehensive general liability insurance attached to the Agreement as Exhibit _.

5.10. Performance Bond. Within ten (10) days of the execution of this Agreement, the Vendor shall provide a performance bond in the amount of One Hundred Thousand Dollars (\$100,000.00) written by a surety company licensed to transact business in the State of Texas.

5.11 Personnel. Vendor is to provide adequate personnel to satisfy the overall requirements of the Agreement. Vendor shall provide additional full-time or part-time personnel, as required, to fulfill the requirements of each event scheduled at the Convention Facilities. The number of staff shall be based on the installation requirements to properly handle sales and marketing of telecom services, all show requirements and administrative support. Vendor's staff shall include:

5.11.1 One full-time Telecommunication Services manager who must:

- (a) Have at least five years telecommunications administrative management experience working in large facilities.
- (b) Have a working knowledge of PBX systems and, preferably, be certified to perform maintenance, adds, moves and changes on the system proposed.
- (c) Have a working knowledge of cable plant infrastructure and be responsible for insuring the proper installation and documentation of all adds, moves and changes to the cable plant infrastructure by the telecom staff
- (d) Be the primary point of contact between the City and the Vendor for all event coordination relative to Telecommunication Services.

- (e) Be responsible for the coordination of installation and tear down activities of all Telecommunication Services and equipment for all events and will be required to attend meetings and interface directly with show managers, event planning committees ,and EBGCC event personnel and City staff.
- (f) Work closely to assure a high level of service in all aspects of the installation requirements and administrative support.
- (g). Possess a high level of customer service orientation and the ability to work with diverse individuals.

5.11.2. One Lead telecom technician or supervisor who must:

- (a) Have at least two years of technical telecommunications experience working in large facilities.
- (b) Have a working knowledge of PBX systems and be certified to perform maintenance, adds, moves and changes on the system proposed:
- (c) Have a working knowledge of cable plant infrastructure and be responsible, for insuring the proper installation and documentation of all adds, moves and changes to the cable plant infrastructure by the telecom staff.
- (d) Be responsible for the coordination of installation and tear down activities of all telecom services and equipment for all events.
- (e) Possess a high level of customer service orientation and the ability to work with diverse individuals.

5.11.3 Telecom technicians who must:

- (a) Have at least one year of technical telecommunications experience working in large facilities.
- (b) Have a working knowledge of PBX systems. Be capable of performing maintenance, adds, moves and changes on the system proposed.
- (c) Have a working knowledge of cable plant infrastructure and be capable of installing and documenting all adds, moves and changes to the cable plant infrastructure performed.
- (d) Be responsible for the installation and tear-down activities of all telecom services and equipment for all events.

ARTICLE 6. CITY RESPONSIBILITIES

6.1 General Responsibilities. City shall be responsible for (i) providing access to telephone wire closets and distribution cabling and wiring within the Convention Facilities; (ii)

fully cooperating in the installation, maintenance, testing, and repair of Telecommunication Services and equipment, cabling and wiring related thereto; (iii) permitting Vendor to use or occupy, without cost to City (A) storage space; (B) use of toilet facilities; (C) all necessary and available, as determined by the City, space for the Telecommunication Services and equipment, including a room for installation of one or more switches which shall have any environmental climate required in connection therewith; (D) office space; (E) rooftop access as necessary and available, as determined by the City, for erection, use and maintenance of Vendor antennae and the placement thereof; and (F) one parking space; and (iv) provide at no charge to Vendor, adequate elevator access and use and adequate lighting, air conditioning, heat, water, electricity and ventilation.

6.2. Right of Entry. City shall be responsible for providing right of entry to the Convention Facilities to Vendor in order that service may be performed. Vendor shall not be liable for any delays in providing Telecommunication Services that are attributable to City's failure or delay in providing such entry or access.

6.3 Office Space. City shall be responsible for providing office space and storage space at the Convention Facilities for the use of the Vendor. It shall be Vendor's responsibility to maintain the assigned spaces in good condition, reasonable wear and tear excepted, throughout the term of this Agreement and notify City of any maintenance problems beyond the scope of Vendor's responsibility. City may inspect the Convention Facilities whenever it deems appropriate at its sole discretion. Any expenses incurred for the finish-out of the Vendor's space will be the sole responsibility of the Vendor. City shall not be responsible under any circumstances for loss or damage to Vendor's stored supplies, materials or equipment, or for any of Vendor's employees' personal belongings brought onto the Convention Facilities.

ARTICLE 7. OWNERSHIP of DOCUMENTS

All of the Vendor's documentary work product, with the exception of trademarked intellectual property, under this Agreement shall be the property of the City and, upon completion of this Agreement, such documentary work product shall be promptly delivered to City in a reasonably organized form, without restriction on its future use by City on any additional work associated with the Convention Facilities and related facilities. Vendor may retain for its files any copies of documents it chooses to retain and may use work product as it deems fit. Any materially significant work product lost or destroyed by the Vendor shall be replaced or reproduced at the Vendor's non-reimbursable, sole cost. In addition, City shall have access during the time this Agreement is in effect, and for five (5) years after Agreement termination, to all of Vendor's records and documents, maintained in connection with this Agreement for purposes of auditing same at the sole cost of the City. Nothing herein shall deny Vendor the right to retain duplicates. In lieu of maintaining originals of all documentary work at the Convention Facilities, computer records relating to the provision of all Telecommunication Services hereunder, including information on all agreements with users of Vendor's services, shall be maintained within the Vendor's offices located at the Convention Facilities and shall be accessible by City with reasonable notice.

ARTICLE 8. RECORDS RETENTION

8.1 Vendor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

8.2 Vendor shall retain documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Vendor shall retain the records until the resolution of such litigation or other such questions. Vendor acknowledges and agrees that City shall have access to such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Vendor to return said documents to City prior to or at the conclusion of said retention.

8.3 Vendor shall notify City, immediately, in the event Vendor receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Vendor understands and agrees that City will process and handle all such requests.

ARTICLE 9. DEFAULT/TERMINATION

9.1. Event of Default. Default by Vendor shall be defined as:

9.1.1. The failure to complete work within the terms of this Agreement or within the time constraints of any event related activity; or

9.1.2. The failure to perform any other term or condition of this Agreement;

9.2. Cure Period. Upon the occurrence of an event of default by Vendor, City shall give Vendor ten (10) days notice and opportunity to cure any event of default related to payments or reporting of payments, or commence such cure in good faith and pursue with reasonable diligence, prior to exercising its remedies under this Agreement.

9.3. Failure to Cure. Failure by Vendor to respond in accordance with the terms and conditions set forth in this Agreement on two or more occasions within any period of 30 consecutive days, unless waived in writing by the City, shall constitute a breach of this Agreement entitling the City to exercise any of its remedies as described in 9.5 below without notice or cure period.

9.4. City's Remedies. City's remedies upon an event of default, which continues after

applicable notice and cure period, are:

9.4.1. City may elect to terminate this Agreement in whole or in part;
and/or

9.4.2. City may recover its lost revenues that are caused by Vendor's event
of default after any notice and cure period; and/or

9.4.3. City may recover its costs of materials and services required to
remedy such default after any notice and cure periods; and/or

9.4.4. City may pursue such remedies it may have at law or in equity.

9.5. Termination. City may terminate this Agreement from its effective date for cause as specified previously in this Article. Upon termination Vendor may remove all of its equipment installed by Vendor other than that equipment which the City has elected to purchase in accordance with this Agreement.

9.6 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

9.7 Transition. Regardless of how this Agreement is terminated, Vendor shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Vendor, or provided to Vendor, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Vendor in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Vendor's sole cost and expense. Payment of compensation due or to become due to Vendor is conditioned upon delivery of all such documents, if requested.

9.8 Ceasing Operation. Upon the effective date of expiration or termination of this Agreement, Vendor shall cease all operations of services being performed by Vendor or any of its subcontractors pursuant to this Agreement. No termination of this Agreement shall limit City's obligation to pay Vendor for all services performed by Vendor hereunder through the effective date of any such termination.

ARTICLE 10. NOTICE

10.1. Written Notice. All written notices required or permitted to be given under this Agreement to any party shall be given at the addresses indicated in the following sections, or to such other address as may be communicated to the other parties in writing. All written notices shall be sent by certified mail, return receipt requested or by certified courier service.

10.2. Address. All written notices to City by Vendor shall be addressed to:

Convention Facilities
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
Attn. Convention Facilities Director

All written notices from City to Vendor shall be addressed as follows:

Smart City
5795 W. Badura Avenue, Suite 110
Las Vegas, NV 89118
Attn. President

ARTICLE 11. INSURANCE

11.1. Certificate of Insurance. Prior to the commencement of any work under this AGREEMENT, VENDOR shall furnish an original completed Certificate(s) of Insurance to the CITY's Convention Facilities Department and CITY City Clerk's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the CITY. The CITY shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to the CITY's Convention Facilities Department and the CITY City Clerk's Office, and no officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.

11.2. City's Right of Review. The CITY reserves the right to review the insurance requirements of this section during the effective period of this AGREEMENT and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by the CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this AGREEMENT, but in no instance will the CITY allow modification whereupon the CITY may incur increased risk.

11.3. Coverage Amounts. The VENDOR's financial integrity is of interest to the CITY, therefore, subject to VENDOR's right to maintain reasonable deductibles in such amounts as are approved by the CITY VENDOR shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at VENDOR's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the CITY, in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
Workers' Compensation Employers' Liability	Statutory
Commercial General (public) liability insurance to include coverage for the following:	
a. Convention Facilities/Operations	Combined Single Limit for Bodily Injury and
b. Independent contractors	Property Damage of \$2,000,000 per
c. Products/completed operations	occurrence; \$5,000,000 aggregate
d. Personal Injury	
e. Contractual liability	
f. Broad form property damage, to include fire legal liability	

Business Automobile Liability

a. Owned/leased vehicles	Combined Single Limit for Bodily Injury
b. Non-owned vehicles	and Property Damage of \$1,000,000 per
c. Hired vehicles	occurrence; \$2,000,000 aggregate

Property Insurance for physical damage to the personal property of Vendor and all Vendor improvements and betterments to the Convention Facilities	Coverage for a minimum of the replacement cost of Vendor's personal property and Vendor's improvements and betterments to the Convention Facilities
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11.4. Copies. The CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the CITY, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto. or the underwriter of any such policies). Upon such request by the CITY, the VENDOR shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

11.5. Inserted Provisions. VENDOR agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.

11.5.1. Name the City and its officers, employees, volunteers, and elected representatives, and its Convention Facilities Customers as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy;

11.5.2. The VENDOR's insurance shall be deemed primary with respect to

any insurance or self insurance carried by the City for liability arising out of operations under the contract with the City ; and

11.5.3. Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the City.

11.5.4. Certificate(s) of Insurance will identify the City of San Antonio and the Convention Facilities Department as Certificate Holders.

11.6. Notification to City. VENDOR shall notify the CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the CITY, by certified mail, at the following address:

City of San Antonio
Convention Facilities Department
P.O. Box 1809
San Antonio, Texas 78297

City of San Antonio
City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

11.7. Failure to Maintain. If VENDOR fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the CITY is an alternative to other remedies the CITY may have, and is not the exclusive remedy for failure of VENDOR to maintain said insurance or secure such endorsement. In addition to any other remedies the CITY may have VENDOR's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to VENDOR to stop work hereunder, and/or withhold any payment(s) which become due, to VENDOR hereunder until VENDOR demonstrates compliance with the requirements hereof.

11.8. No Limitation. Nothing herein contained shall be construed as limiting in any way the extent to which VENDOR may be held responsible for payments of damages to persons or property resulting from VENDOR's performance of the work covered under this agreement.

ARTICLE 12. INDEMNIFICATION

VENDOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury or death and property damage, made upon the CITY, directly or indirectly arising out of, resulting from or related to VENDOR's activities under this AGREEMENT, including any acts or omissions VENDOR, any agent, officer, director, volunteer, representative, employee, contractor or subcontractor of VENDOR, and

their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this AGREEMENT, all without, however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. VENDOR shall promptly advise the CITY in writing of any claim or demand against the CITY or VENDOR known to VENDOR related to or arising out of VENDOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at VENDOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving VENDOR of any of its obligations under this paragraph.

It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section (Article 8), is an INDEMNITY extended by VENDOR to INDEMNIFY, PROTECT and HOLD HARMLESS the CITY from the consequences of the CITY's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. VENDOR further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or Litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

ARTICLE 13. ASSIGNMENT AND SUBCONTRACTING

13.1 No Assignment. The rights granted by the ordinance inure to the benefit of Vendor. The rights granted by this Agreement shall not be assigned, transferred, sold or disposed of, in whole or in part, by voluntary sale, merger, consolidation or otherwise by force or involuntary sale, without the expressed written consent of the City, approved by passage by the City Council of the City of an ordinance. For the purposes of this Article, assignment, transfer, sale, disposal, merger or consolidation shall include a change of operating control of the Vendor, but shall not apply to a transfer or assignment to an affiliate or subsidiary of Vendor. Any such consent by the City shall not be withheld unreasonably.

13.2 Subcontracting. Vendor shall have the right to subcontract services to be provided under this Agreement, but shall not be relieved of its liability hereunder thereby; provided,

however, that the City shall have pre-approval authorization and the right to reject any subcontractor, such approval to not be unreasonably withheld. If there is a subcontractor change (addition or deletion) during the term of this Agreement, Vendor shall utilize the City's Small Business Economic Development Advocacy Program Change of Subcontractor Form 101 to make the request.

ARTICLE 14. INDEPENDENT CONTRACTOR

Vendor shall not be considered an employee of the City, but shall occupy the status of Independent Contractor with the City. The Vendor shall perform its tasks and duties consistent with such status, and will make no claim or demand for any right or privilege applicable to an officer or employee of the City, including, but not limited to, workers' compensation, disability benefits, accident or health insurance, unemployment insurance, social security or retirement membership.

ARTICLE 15. SBEDA

15.1 SBEDA Program. The CITY has adopted a Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the CITY. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Agreement:

15.1.1 SBEDA Enterprise ("SE") – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.

15.1.2 Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.

15.1.3 Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE's participation does not count toward the SE utilization goal.

15.1.4 SBEDA Plan – The Good Faith Effort Plan (“GFEP”), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with CONTRACTOR’s bid for this project Agreement, attached hereto and incorporated herein as “Attachment _____”.

15.2 Agreement. For this Agreement, the Parties agree that:

- (a) The terms of the CITY’s SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the “SBEDA Program”) are incorporated into this Agreement by reference; and
- (b) The failure of CONTRACTOR or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Agreement.
- (c) Failure of CONTRACTOR or any applicable SE to provide any documentation or written submissions required by the CITY Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.
- (d) During the Term of this Agreement, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in CONTRACTOR’s SBEDA Plan (“Attachment _____”) shall constitute a material breach of the SBEDA Program and this Agreement.
- (e) CONTRACTOR shall pay all suppliers and subcontractors identified in its SBEDA Plan (“Attachment _____”) in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by CONTRACTOR to the CITY Managing Department. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this Agreement.

15.3 Material Breach. The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this Agreement:

- (a) Failure of CONTRACTOR to utilize an SE that was originally listed at bid opening or proposal submission to satisfy SBEDA Program goals in order to be awarded this Agreement, or failing to allow such SE to perform a Commercially Useful Function; or

- (b) Modification or elimination by CONTRACTOR of all or a portion of the scope of work attributable to an SE upon which the Agreement was awarded; or
- (c) Termination by CONTRACTOR of an SE originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the Agreement without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so; or
- (d) Participation by CONTRACTOR in a Conduit relationship with an SE scheduled to perform work that is the subject of this Agreement.

15.4 Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any other remedies the CITY may have at law or in equity, or under this Agreement for material breach, including the specified remedies available under the SBEDA Program for Alternative Construction Delivery Method, the CITY shall be entitled, at its election, to exercise any one or more of the following remedies if the CONTRACTOR materially breaches the requirements of the SBEDA Program:

- (a) Terminate this Agreement for default;
- (b) Suspend this Agreement for default;
- (c) Withhold all payments due to the CONTRACTOR under this Agreement until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or
- (d) Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the CITY pursuant to the Agreement, or from any other amounts due to the CONTRACTOR under the Agreement.
- (e) Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area,

or if it becomes apparent that the SE is not qualified to perform work in a particular area.

15.5 Certification. The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this Agreement.

15.6 Cumulative Remedies. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

15.7 City Process For Exercising SBEDA Program Remedies. The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the CITY to exercise in the event a Contractor violates the SBEDA Program. The Managing Department Director shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the Agreement. If the recommended remedy is to terminate the Agreement, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

15.8 Special Provisions for Extension of Agreements. In the event the CITY extends this Agreement without a competitive Bid or Proposal process, the CITY Managing Department responsible for monitoring the Agreement shall establish the following, subject to review and approval by the SBEDA Program Manager:

- (a) a SBEDA Utilization Goal for the extended period; and
- (b) a modified version of the Good Faith Efforts ("Modified Good Faith Efforts Plan") set forth in the SBEDA Program Ordinance, as amended, if CONTRACTOR does not meet the SBEDA Utilization Goal; and
- (c) the required minimum Good Faith Efforts outreach attempts that CONTRACTOR shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the Agreement extension document. The CONTRACTOR entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:
 - (i) subject CONTRACTOR to any of the remedies listed above; and/or
 - (ii) result in a new bid or proposal request of the Agreement that was

considered for extension.

ARTICLE 16. CONFLICT OF INTEREST

16.1. Charter. Vendor understands that the Charter of the City provides that no officer or employee of the City shall have any financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this prohibition shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit his office or position with the City. Any violation of this prohibition, with knowledge, express or implied, of the person or corporation contracting with the City shall render the contract involved voidable by the City Manager or the City Council. The Vendor represents that no employee or officer of the City has an interest in the Vendor's corporation.

16.2 Representation. Vendor, after due diligence review of its past and present contracts, represents to City that it is not aware of any conflict of interest in the award of this Agreement that might ethically compromise Vendor's legal commitment to faithfully perform this Agreement for City. Vendor agrees to immediately notify the City if the Vendor discovers a financial interest or conflict in the future.

ARTICLE 17. AMENDMENTS

17.1 Written Amendments. No material change in, addition to, or waiver of the terms, conditions and specifications contained herein shall be a binding obligation on either the Vendor or the City, unless approved in writing by the Vendor and the City, and evidenced by the passage of a City ordinance.

17.2 Amending Telecommunication Services. Notwithstanding Section 16.1, Vendor acknowledges that City may desire to expand, reduce, change and/or modify the Telecommunication Services during the terms of this Agreement. Upon mutual agreement, Telecommunication Services shall be installed or modified within a reasonable time after receiving a request and order from the City for the same.

ARTICLE 18. INCORPORATION BY LAW/SEVERABILITY

18.1. Incorporation by Law. Each provision and clause required by law to be inserted into this Agreement shall be deemed to be enacted herein and this Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise any such provision is not inserted or is not correctly inserted, this Agreement shall be amended to make such insertion on application by either Party. This Agreement is subject to all applicable Federal, State and local laws, statutes, codes, and any applicable permits, ordinances, rules, order and regulations of any local, state or federal government authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction.

18.2 Severability. If any clause or provision of the Agreement is illegal, invalid, or

unenforceable under present or future laws effective during the term of this Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

ARTICLE 19. SURVIVAL

Any and all representations and conditions made, by Vendor under this Agreement are of the essence of this Agreement and shall survive the execution, delivery and termination of it, and all statements contained in any document required by the City, whether delivered at the time of the execution or at a later date, shall constitute representations hereunder.

ARTICLE 20. LICENSES/AUTHORIZATIONS/ CERTIFICATIONS

Vendor warrants that it shall acquire and maintain all necessary licenses or authorizations to provide all services described herein, including, but not limited to those which may be required by the Texas Public Utilities Commission and the Federal Communications Commission.

ARTICLE 21. COMPLIANCE

Vendor shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

ARTICLE 22. NONWAIVER OF PERFORMANCE

22.1. No Waiver. The failure on the part of the City herein at any time to require the performance by Vendor of any portion of this Agreement shall not be deemed a waiver of, or in any way affect the City's rights to enforce such provision or any other provisions. Any waiver by the City herein of any provision hereof shall not be taken or held to be a waiver of any other provisions hereof or any other breach hereof.

22.2. Waiver of Breach. No waiver of a breach of any provision of this Agreement by either party shall be construed or deemed to be a waiver or relinquishment for the future of said breach or any other breach or of any right arising from such breach.

ARTICLE 23. FORCE MAJUERE

Either party's performance under this Agreement is subject to acts of God, fires, floods, storms, water, power failures, riots, insurrection, civil commotion, war, directives of civil or military authorities, strikes or picketing, acts or conditions for which the other party is responsible, acts or failure to act on the part of the public utility furnishing telephone network services to City, or any other cause beyond either party's reasonable control.

ARTICLE 24. LAW APPLICABLE

24.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

24.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

ARTICLE 25. LEGAL AUTHORITY

The signator below represents to the City that he has full power and authority to execute, deliver, and perform this Agreement, and all other documents and certificates contemplated hereby, and the execution, delivery, and performance thereof have been duly authorized by Vendor and no other action is or was required to be taken to permit the execution, delivery, and performance of this Agreement, the transactions contemplated hereby, and all other documents and certificates contemplated hereby, and no consent or approval of any third party or governmental authority is or was required or appropriate in connection with the execution of this Agreement, or to consummate the transactions contemplated hereby.

ARTICLE 26. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

ARTICLE 27. CAPTIONS

27.1 Captions. The captions contained in this Agreement are for convenience or reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

27.2. Gender. Words of gender used in the Agreement shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the Agreement otherwise requires

ARTICLE 28. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

- EXHIBIT A: Vendor's Original Proposal**
- EXHIBIT B: Vendor's Unsolicited Proposal**
- EXHIBIT C: Vendor's Performance Bond**
- EXHIBIT D: Vendor's SBEDA Good Faith Effort Plan**

ARTICLE 29. ENTIRE AGREEMENT

This Agreement and the Exhibits and Attachments attached hereto and incorporated herein for all purposes constitutes the entire Agreement and supersedes all prior agreements and understandings between the Parties concerning the subject matter of this Agreement.

WITNESS, the signature of the Parties hereto in triplicate originals, this _____ day of _____, 2008, to be effective June 30, 2008.

CITY OF SAN ANTONIO, TEXAS

SMART CITY LLC

Sheryl L. Sculley
City Manager

Name:
President

Leticia Vacek
City Clerk

APPROVED AS TO FORM:

Michael D. Bernard
City Attorney

**FIRST AMENDED AND RESTATED AGREEMENT
FOR TELECOMMUNICATION SERVICES AT
THE HENRY B. GONZALEZ
CONVENTION CENTER**

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**AMENDED AND RESTATED AGREEMENT FOR TELECOMMUNICATION
SERVICES AT THE HENRY B. GONZALEZ CONVENTION CENTER**

This Amended and Restated Agreement for Telecommunication Services at the Henry B. Gonzalez Convention Center (hereinafter referred to as this "Agreement") is hereby made and entered into by and between the City of San Antonio (hereinafter referred to as "City") a Texas municipal corporation acting by and through its City Manager under the authority of City Ordinance No. 2008-06-19-0603, passed and approved on June 19, 2008 and Smart City LLC (hereinafter referred to as "Vendor"), for the provision of telecommunication services at the City owned Henry B. Gonzalez Convention Center, Lila Cockrell Theatre and Municipal Auditorium (collectively referred to as the "Convention Facilities"), as stated herein.

WITNESSETH:

WHEREAS, Vendor is currently engaged in the business of providing telecommunication services to tenants, event attendees, show managers, and exhibitors at the Convention Facilities under an agreement authorized by City Ordinance No. 89088, passed and approved on January 14, 1999; and

WHEREAS, City and Vendor hereby agree to amend and restate the terms of this Agreement as described below to make the telecommunication services provided by Vendor and as further described in this Agreement (the "Telecommunication Services") available to City, tenants, event attendees, show managers, and exhibitors located on or about the Convention Facilities for an additional five (5) year period and one additional five (5) year renewal period; and

WHEREAS, the City Council of the City of San Antonio by Ordinance No. 2008-06-19-0603, passed and approved on June 19, 2008, authorized this Agreement and authorized the execution hereof, in accordance with the terms of this Agreement

NOW THEREFORE, City and Vendor, in consideration of the foregoing, and the terms and conditions herein contained, do hereby agree as follows:

ARTICLE 1. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

"Agreement" is defined as this Amended and Restated Agreement for Telecommunication Services at the Convention Facilities.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Convention Facilities" shall mean the City owned facilities known as the Henry B. Gonzalez Convention Center, Lila Cockrell Theatre and Municipal Auditorium collectively. Should either the Lila Cockrell Theatre or Municipal Auditorium Auditorium no longer be owned or operated

by the City, this definition shall no longer encompass the facility and any rights or responsibilities City or Vendor shall have in such facility shall be extinguished.

“Director” shall mean the director of City’s Convention, Sports and Entertainment Facilities Department.

“Exhibitors” shall mean those groups or individuals who are acting under an agreement with City’s licensees to utilize the Convention Facilities to display or exhibit products.

"Gross Receipts" shall mean the aggregate amount of gross billing, including equipment sales, gratuities, service and rental charges received or charged by Smart City or any agent, employee or subcontractor of Smart City for all sales, cash or credit, made as a result of the service rights granted under this Agreement, excluding applicable sales taxes, regulatory fees, surcharges, deposits, service adjustments and refunds, billings for recovery of non-returned, lost or damaged service equipment, Administrative Services, Permanent Tenant Services and any billings to the City as specifically provided for herein.

Net Receipts” shall mean the Gross Receipts less Vendor’s actual cost to provide for “Special Technology Services”.

“Lessees” shall mean an individual, company or organization that has entered a long-term lease agreement with the City for space at the Convention Facilities.

“Licensee” shall mean any person, group or organization that has entered into an agreement with City for the use of space within the Convention Facilities.

“Telecommunication Services” shall mean those services described in this Agreement and Vendor’s original and secondary proposal.

“Vendor” is defined in the preamble of this Agreement and includes its successors.

ARTICLE 2. TERM

2.1 Initial Term. The Initial Term of this Agreement is five (5) years commencing July 1, 2008 and ending June 30, 2013 (hereinafter referred to as “Initial Term”).

2.2 Renewal Term. At the end of the Initial Term, City, in the sole discretion of the Director, may renew this Agreement for an additional five (5) year period (the “Renewal Term”) commencing on July 1, 2013 and terminating on June 30, 2018. This Agreement shall be deemed to continue in full force and effect during the Renewal Term.

2.3 Notice of Renewal. Vendor shall give written notice to City of its desire to exercise the Renewal Term at least ninety (90) days prior to the expiration of the Initial Term. City shall indicate within thirty (30) days of receiving notice from Vendor of its intent to exercise the Renewal Term option.

ARTICLE 3. SCOPE of SERVICES

3.1 Telecommunication Services. Vendor shall provide Telecommunication Services to the Convention Facilities, including all associated labor and equipment that may be required, and as further described below.

3.2. Telephone Services. Vendor shall provide telephone services, including long distance service, using an onsite PBX telephone switch with sufficient analog and digital telephones, features, circuits, voicemail and automated attendant capacity, and other equipment to meet the needs of City, Licensees, Exhibitors, and Lessees of the Convention Facilities. The general requirements which are the responsibility of the Vendor include:

- 3.2.1 The provision and installation of a telephone switch and associated items including all equipment, accessories, data base information, training, software, hardware, labor and materials.
- 3.2.2 Prompt, efficient and professional installation, deinstallation and maintenance of event telephones and telecom services.
- 3.2.3 Annual, monthly and routine maintenance to ensure reliable telecommunications services.
- 3.2.4 Provision and installation of circuits with local and long distance carriers for exhibit and meeting areas.
- 3.2.5 Recommendations for upgrading systems, procedures or technological advances.
- 3.2.6 A system design plan describing the switching configurations, circuit layouts, connecting arrangements, terminal plans and equipment room layouts.
- 3.2.7 All equipment, labor, etc. to provide billing and collection services for long distance services provided to licensees, exhibitors and lessees, including:
 - (a) the ability to produce on-demand reports;
 - (b) the ability to offer different rates for different shows, or groups within a show;
 - (c) the ability to detect toll fraud; and
 - (d) the ability for Convention Facilities management staff to remotely view statistics and produce reports.

3.3. ISDN/T-1/DS-3, etc. (Hi-Cap Circuits) and Data Networking Services. Hi-Cap Lines, Circuits and Data Networking services have become a required standard and the Vendor shall provide Hi-Cap Circuits and Data Networking services within the Convention Facilities

and from the Convention Facilities allowing connectivity worldwide. The general requirements which are the responsibility of the Vendor include:

- 3.3.1 Ordering Hi-Cap circuits from the local or long distance service provider as required for provisioning Hi-Cap circuits through the telecom system.
- 3.3.2 Installing Hi-Cap circuits whether from the local or long distance provider or the on-site telecom system.
- 3.3.3 Keeping current on the capabilities and capacities of the local telephone company to provide Hi-Cap services.
- 3.3.4 Notifying the management of the Convention Facilities of the local telephone company's lack of capacity, inability to provide or missed due dates regarding Hi-Cap services.

3.4 Internet Access Service. Vendor shall provide wired and wireless Internet access service throughout the Convention Facilities.

3.5 Cisco Wireless Upgrade. Vendor shall upgrade the current wireless system prior to the one year anniversary date of this Agreement, facility wide, to include the latest technology frequency 802.11a.

3.6 Nortel Option 61 Upgrade. Vendor shall upgrade the current Nortel Option 61 within twenty-four (24) months of contract execution, to include the latest software and voice mail as applicable to support voice related products and services for the event industry.

3.7 Special Technology Services. Vendor shall offer the following services herein referred to as "Special Technology Services" to maximize the use of the communication infrastructure and provide for emerging technology.

- 3.7.1 Webcasting. Vendor shall make available webcasting or internet broadcasting services at the Convention Facilities.
- 3.7.2 Cyber Cafes. Vendor shall make available internet access and email stations at the Convention Facilities.
- 3.7.3 Video Email. Vendor shall make available video-email to promote attendance and to promote the Convention Facilities. Video email shall include full motion video and audio.

Vendor commits to City continued efforts to identify new products and services that will give City state-of-the-art facility while providing additional commissions from the sales of new services. As potential services are identified, with the approval of City, Vendor will conduct field trials at Convention Facilities. When a new product or service is determined to be mutually beneficial, Vendor will make the necessary commitment to provide them as part of Vendor's standard service

offerings and pay City commissions on "net receipts." "Net receipts" in this section means Gross Receipts less Vendor's actual cost to provide Special Technology Services. Should additional or new emerging special technology arise during the Initial Term or Renewal Term of this Agreement, Vendor and City shall mutually determine how such technologies shall be addressed and the applicable commission schedule for that technology prior to implementation.

3.8 Additional Services. Director, by means of a written authorization to Vendor, may request Vendor to perform additional services not specified in this Agreement at the Convention Facilities or at any other City buildings that are reasonably related to the scope of this Agreement.

3.8.1 Vendor shall perform Additional Services at Vendor's then current price for such services. Vendor shall account for Additional Services in the following month's statement to City, as a deduction from amounts otherwise owed to the City unless Director requests that the City be billed separately for Additional Services.

3.9 Complimentary Services. Upon the request of Director, Vendor agrees to provide complimentary (i.e. no cost) Telecommunication Services for City designated "special events" over the Initial Term and Renewal Term of this Agreement. Such complimentary services shall not exceed the amount of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) annually. Such complimentary services shall be rendered to show management, exhibitors and/or attendees and the rates credited for such services shall be based upon Vendor's standard pricing structure. Should labor charges be applicable for complimentary services that are not described in Vendor's standard pricing schedule and/or offered as "call for special quote," the technician labor rates shall be in accordance with Vendor's standard labor rate with a minimum of one hour charged. Complimentary services shall not be subject to commission payments.

3.9.1 Any unused portion of City's \$25,000 allocation for complimentary services shall carry over for a one year period.

3.10 Cable Facilities Wiring. Vendor has provided support for cable facilities wiring (copper/fiber optic) adds, moves, and changes at the Convention Facilities and shall continue to do so for the remaining term of this Agreement, including those adds, moves and changes supporting City's administrative communications. Should City seek to expand Convention Facilities administrative communications, Vendor will coordinate work with the City's Information Technology Services Department.

3.11 Marketing & Technology Fund. Vendor shall establish and maintain a Marketing and Technology Fund which shall be comprised of Vendor deposits equal to two-percent (2%) of monthly Gross Receipts and that shall accrue from the commencement date of this Agreement and terminate upon the expiration of this Agreement. The purpose of the fund is to provide for additional services or special projects, which may include new infrastructure, unique equipment to enhance Telecommunication Services or to provide services for a special event (i.e. national convention or sporting event or non budgeted marketing activities of the Convention Facilities).

- 3.11.1 Expenditures from the Marketing and Technology Fund shall be subject to the prior written authorization of Director.
- 3.11.2 Should the amount accrued in the Marketing and Technology Fund be insufficient to fund the cost of a certain project, Vendor may advance future accruals to the Marketing and Technology Fund upon the concurrence of the Director. In such instances, labor and material costs will be levied at Vendor's actual cost for infrastructure and special technology improvements or marketing activities. Vendor's standard exhibitor pricing structure will be levied to cover costs of Telecommunication needs for a convention or meeting group for services rendered to licensees and/or exhibitors.
- 3.11.3 Vendor shall be responsible for providing monthly reports tracking the usage of the Marketing and Technology Fund.
- 3.11.4 Should there be insufficient funds in the Marketing and Technology Fund at the expiration of this Agreement to recover Vendor's approved expenditures to the fund, the City and Vendor shall work toward an agreement to reimburse Vendor for those approved expenditures.
- 3.11.5 Any funds remaining in the Marketing and Technology Fund at the expiration or termination of this Agreement shall belong to City.
- 3.11.6 Commission payments in accordance with Section 4.2 of this Agreement are not applicable to the initial services provided by the Marketing and Technology Fund. However, such services provided to licensees, exhibitors or lessees after the initial service upon which the expenditure was made are subject to the commission requirements of Section 4.2.

3.12 As-Built Drawings. Upon reasonable request of City, Vendor shall provide system "as-built" drawings upon completion of installation and testing of equipment installed after the commencement date of this Agreement.

3.13 City's Reserved Rights. On an event by event basis, the City expressly reserves the right to perform the services including in this Agreement itself or to contract with a third party to provide the City any or all of the Telecommunication Services provided by Vendor under this Agreement. This reservation of rights shall be exercised on a limited basis or whenever such contractual relationship is required for the City to book a significant event of importance. Except for this limited exception, Vendor shall be the sole Telecommunication Services provider at the Convention Facilities. In the event the City performs the services and/or a third-party is contracted for services no equipment (including cables, infrastructure, systems, software, and computers) of Vendor shall be used without Vendor's prior written consent.

3.14 Inspection by City. All services, materials and workmanship shall be subject to inspection and test by City. City and Vendor shall inspect and test in accordance with the applicable industry standards, manufacturer installation manuals, and City specifications. City reserves the right to reject any services which contains defect in material or workmanship or which fails to meet the specifications contained in the Request for Proposal, or Vendor's warranties (expressed or implied). As to rejected goods or services, Vendor shall bear all costs and risk of loss.

ARTICLE 4. PAYMENTS/SERVICE RATES/AUDIT

4.1 Initial Payment. Vendor shall pay to the City TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) no later than thirty (30) days following October 1, 2008. Should the City and Vendor agree to exercise the five (5) year renewal in accordance with Section 2.2, Vendor shall pay to the City an additional FIFTY THOUSAND DOLLARS (\$50,000.00) upon execution of a document evidencing such renewal.

4.2 Commission Percentage. For the rights and benefits conferred upon Vendor by City, Vendor shall pay City, in the manner described below, the following applicable percentage of Gross Receipts for all Telecommunication Services provided each month:

- (a) On Gross Receipts greater than \$3.5 million, Vendor shall pay to City a commission rate of Thirty-Five percent (35%);
- (b) On Gross Receipts greater than \$3.0 million but less than \$3.5 million, Vendor shall pay to City a commission rate of Thirty-Four percent (34%);
- (c) On Gross Receipts greater than \$2.5 million but less than \$3.0 million, Vendor shall pay to City a commission rate of Thirty-Three percent (33%);
- (d) On Gross Receipts greater than \$2.0 million but less than \$2.5 million, Vendor shall pay to City a commission rate of Thirty-Two percent (32%);
- (e) On Gross Receipts greater than \$1.5 million but less than \$2.0 million, Vendor shall pay to City a commission rate of Thirty-One percent (31%);
- (f) On Gross Receipts less than \$1.5 million, Vendor shall pay to City a commission rate of Twenty-Six percent (26%);

All Commissions will begin to accrue on the first day of the month in which this Agreement is executed. Vendor is precluded from disclosing to, in writing or otherwise, and from negotiating the percentage of revenue Vendor pays to City under this Agreement with Licensees, Exhibitors or Lessees.

4.3 Payment of Commissions. All commissions due to City shall be paid within ten (10) business days of the end of the calendar month. Failure to timely pay the rates due to the City shall bind the Vendor to pay a penalty equal to fifteen percent (15%) annual interest or the maximum rate of interest allowed by law, whichever is lower until such arrearages are paid in full. Sufficient documentation is required to accompany payment to the City. Vendor may wire transfer commissions to City.

4.4 Pricing Structure. Vendor shall utilize a pricing structure as indicated in Exhibit A. Any significant changes in the pricing structure resulting in a cumulative increase of 15% or more must be approved by the Director, not to be unreasonably or untimely withheld. Should City exercise the Renewal Term, Vendor shall propose a pricing structure and may approved or disapprove of such structure prior to the commencement date of the Renewal Term. Vendor shall not barter, trade, or discount any services provided by Vendor under this Agreement that are commissionable to City unless prior written approval is received from the Director.

4.5 Reports.

4.5.1 Vendor shall be responsible for submitting the following reports within thirty (30) calendar days of the end of the business cycle:

- (a) An accounting for all event related Telecommunications Services provided;
- (b) A complete list of equipment and services provided for each event including equipment name, type of service provided, client name and number.

4.5.2 Vendor shall promptly provide to the City all reports related to the services provided at this facility reasonably requested by City including, but not limited to, financial statements and reports, reports and accounting of services rendered, and any other reports or documents requested.

4.6 Annual Revenue Projections. Based on the City's event projections, historical data, and Vendor's past experience, Vendor shall provide annual revenue projections to the City each February for the following Fiscal Year (October to September timeframe). City to provide event projection and historical data to Vendor forty-five (45) days in advance of date City requires projections from Vendor.

4.7. Audit. City or its authorized representative shall at all reasonable times with notice and at City's sole discretion, have the right to examine, inspect, and audit all books, papers, and bank records, of Vendor as necessary to determine the accuracy of reports relative to the gross receipts of Vendor's operations. The cost and expense incurred by City incident thereto shall be the sole responsibility of and borne by City. Such records shall be made reasonably available to City by Vendor for the duration of this Agreement, and be available for inspection and/or audit by City or its agents at any reasonable time with five (5) days notice. The City may conduct an audit on an annual basis.

4.8. Maintaining Records. Vendor shall maintain an accounting systems in accordance with Generally Accepted Accounting Principles. Vendor shall pay, on a timely basis and in accordance with all vendor terms, all proper bills and other expenses (other than those paid for by City) incurred in the normal operation of providing the Convention Center Telecommunications Services.

4.9. City's Waiver of Commission. The City may waive the Vendor's obligation to pay commissions whenever Vendor provides services for events at the request, or on behalf, of City departments or officials as directed by the Director.

ARTICLE 5. VENDOR RESPONSIBILITIES

5.1. General Responsibility. Vendor shall be responsible for the design, purchase, installation, maintenance and operation of the telecommunications system as described in this Agreement and all costs associated therewith.

5.1.2. Vendor shall work closely with the Director or his designee and appropriate City officials to perform any and all related tasks reasonably required by City in order to fulfill the purposes of this Agreement.

5.1.3. Vendor is responsible to ensure that all goods and services herein described are manufactured, sold, priced, transported, and/or installed in compliance with all Federal, State and/or Local laws, orders, rules or regulations issued thereunder.

5.1.4. Vendor is responsible for coordinating all service required from the public utility.

5.2. Sale and Invoicing. Vendor is responsible for the marketing, sale, invoicing and collection of payments for Telecommunication Services and/or the use of Telecommunication Service related equipment at the Convention Facilities by City's Licensees, Exhibitor's and Lessors or those working under the direction of City's licensees.

5.3. System Performance. Vendor guarantees the following:

5.3.1 Telecommunications Services will be 24 hours per day, 7 days per week, at a 99.9% level of availability with a P.01 grade of service for switched services, except during periods of routine maintenance or repair within the ordinary course of business.

5.3.2 An Uninterruptible Power Supply (UPS) system, able to support the core system installed by the Vendor for 4 hours in the event of a loss of commercial power.

5.3.3. Emergency service (for major service interruptions) shall be provided on a twenty-four (24) hours a day, seven (7) days a week basis, within one (1) hour following verbal notification to Vendor from City of such occurrence.

5.3.4. E911 compliance in accordance with the regulations for the venues served.

5.3.5 Non-emergency service provided within four (4) hours of verbal communication of such request for service to Vendor by City, or upon a

mutually agreed time computing such time only upon the basis of 7:45 a.m. through 4:30 p.m., Monday through Friday, excluding legal holidays or major holidays observed by City.

5.4. Equipment & Maintenance. Vendor shall ensure that all equipment provided by the Vendor is new, unused or quality refurbished. Equipment refers to all hardware, software, common and station equipment for the PBX, voice messaging, cabling, materials and incidentals, etc.

- 5.4.1 Title to equipment, with the exception of facilities improvements as described in 5.4.2, shall remain with Vendor. Risk of loss shall be borne by Vendor. At the City's election, title of any and all equipment shall be transferred to the City at the termination of the Agreement subject to provisions hereof upon payment to Vendor of the fair market value of material components of the equipment, excluding cabling, conduit, racks, and similar supplies which shall be transferred to City without payment. If City elects not to purchase equipment, Vendor must remove equipment, if so requested by City. "Equipment" does not refer to proprietary, trademarked or intellectual property or work product.
- 5.4.2 Any facility improvements, such as cables, connections, fixtures (such as racks, etc.) which are installed by the Vendor to provide Telecommunication Services will become the property of the City at the time of installation at no additional cost to the City.
- 5.4.3 Vendor shall, at the date of delivery, have good title to any and all equipment supplied hereunder, and the equipment shall be free and clear of any and all liens and encumbrances.
- 5.4.4. Vendor shall insure that all preventative and remedial maintenance be performed in a manner that shall minimize service interruptions.
- 5.4.5 Vendor is to provide a qualified on-site representative while Vendor's equipment is in use by a licensee or exhibitor of the City and have a qualified representative on-call within 60 minutes of the City on a 24 hour per day, 7 day per week basis for unforeseen emergencies or requirements

5.5 Miscellaneous.

- 5.5.1 Vendor shall be responsible for supplying any and all requests for service and/or equipment to be required under this Agreement.
- 5.5.2 Vendor shall be responsible for meeting last minute requests for service and/or equipment. Such requests must be made within a reasonable time for Vendor to act and perform. Vendor shall use its best effort to meet all requests.

- 5.5.4 Vendor shall be responsible to staff a service desk from move-in through move-out.
- 5.5.5 Vendor shall be responsible for maintaining the IDF's, switch rooms, and other work areas.
- 5.5.6 Vendor shall be responsible for removing and storing all instruments and wiring within 6 hours of the end of each event. If a shorter time frame is required, Vendor must comply.
- 5.5.7 Vendor shall be responsible for creating an operational plan that is adequate to cover large conventions or multiple events occurring at the same time in the convention center.
- 5.5.8 Vendor shall be responsible for providing a quarterly report which identifies trends, problems, recommends solutions and enhancements and assess the overall operation of the program.
- 5.5.9 Vendor shall be responsible for providing a monthly report of the cable infrastructure records providing a reasonably complete picture of the physical network on the day it was produced.
- 5.5.10 Vendor shall be responsible for issuing identification badges for security purposes to each of Vendor's employees. Vendor shall notify City within two (2) business days of personnel no longer employed or for employees no longer working on the Convention Facilities. Vendor shall use reasonable efforts to recover all inactive identification badges.
- 5.5.11 Vendor shall be responsible for providing an organizational chart of the project team, including both the implementation and operational teams if they are different.
- 5.5.12 Vendor shall be responsible for providing resumes for all key personnel.
- 5.5.13 Vendor shall be responsible for providing a professionally trained and outfitted staff appropriately attired.

5.6 Updates. Vendor shall notify City within reasonable a time when software updates or enhancements become available. The City shall then have the opportunity to request installation of the new software, which shall be installed without charge to the City. Software releases intended as generic version updates or to enhance basic equipment operation, design, correct design deficiencies or improve operating efficiency shall be automatically installed by the Vendor without prior approval, notice or charge to the City. Software updates shall be supplied as long as the system is operational.

5.8. Compliance with Laws. Vendor shall be responsible for complying with all of the applicable building, zoning, electrical, and other codes, regulations, ordinances, statutes and/or laws applicable to the operation of concession services and the installation of equipment, including, but not limited to, the obtaining and paying for all usual and ordinary Vendor-required fees, permits, licenses or other governmental authorizations necessary to perform its obligations.

5.8.1. Vendor shall be responsible, upon demand of any governmental authority having jurisdiction over the services and/or equipment, for making any repairs, replacement and/or modifications required by such governmental authority to comply with any such applicable governing codes, regulations, and/or laws.

5.8.2 Vendor shall be responsible for complying and ensuring compliance by its employees and suppliers, with all City's rules and regulations governing access to and conduct on the Convention Facilities. Vendor's employees shall enter the Convention Facilities through designated entrances that will be specified by the Director. Vendor shall furnish City with a list of the names of its employees and provide updates to said list of names to the Director within ten (10) working days as changes occur.

5.9. Workers Compensation. Vendor warrants to and covenants with City that Vendor shall, at all times, comply with all workers' compensation laws applicable to its operations, and with the rules and regulations of all commissions, boards or agencies charged with the administration of such laws, and that the Vendor shall maintain in effect workers' compensation and comprehensive general liability insurance fully protecting Vendor, in accordance with the certificate of Vendor's workers' compensation and comprehensive general liability insurance.

5.10. Performance Bond. Within ten (10) days following the expiration of the current performance bond (December 1, 2008), the Vendor shall provide a performance bond in the amount of One Hundred Thousand Dollars (\$100,000.00) written by a surety company licensed to transact business in the State of Texas.

5.11 Personnel. Vendor is to provide adequate personnel to satisfy the overall requirements of the Agreement. Vendor shall provide additional full-time or part-time personnel, as required, to fulfill the requirements of each event scheduled at the Convention Facilities. The number of staff shall be based on the installation requirements to properly handle sales and marketing of telecom services, all show requirements and administrative support. Vendor's staff shall include:

5.11.1 One full-time Telecommunication Services manager who must:

- (a) Have at least five years telecommunications administrative management experience working in large facilities.
- (b). Have a working knowledge of PBX systems and, preferably, be certified to perform maintenance, adds,

- (c) moves and changes on the system proposed.
- (c) Have a working knowledge of cable plant infrastructure and be responsible for insuring the proper installation and documentation of all adds, moves and changes to the cable plant infrastructure by the telecom staff
- (d) Be the primary point of contact between the City and the Vendor for all event coordination relative to Telecommunication Services.
- (e) Be responsible for the coordination of installation and tear down activities of all Telecommunication Services and equipment for all events and will be required to attend meetings and interface directly with show managers, event planning committees ,and Convention Facilities event personnel and City staff.
- (f) Work closely to assure a high level of service in all aspects of the installation requirements and administrative support.
- (g). Possess a high level of customer service orientation and the ability to work with diverse individuals.

5.11.2. One Lead telecom technician or supervisor who must:

- (a) Have at least two years of technical telecommunications experience working in large facilities.
- (b) Have a working knowledge of PBX systems and be certified to perform maintenance, adds, moves and changes on the system proposed:
- (c) Have a working knowledge of cable plant infrastructure and be responsible, for insuring the proper installation and documentation of all adds, moves and changes to the cable plant infrastructure by the telecom staff.
- (d) Be responsible for the coordination of installation and tear down activities of all telecom services and equipment for all events.
- (e) Possess a high level of customer service orientation and the ability to work with diverse individuals.

5.11.3 Telecom technicians who must:

- (a) Have at least one year of technical telecommunications experience working in large facilities.
- (b) Have a working knowledge of PBX systems. Be capable of performing maintenance, adds, moves and changes on the system proposed.
- (c) Have a working knowledge of cable plant infrastructure and

- be capable of installing and documenting all adds, moves and changes to the cable plant infrastructure performed.
- (d) Be responsible for the installation and tear-down activities of all telecom services and equipment for all events.

ARTICLE 6. CITY RESPONSIBILITIES

6.1 General Responsibilities. City shall be responsible for (i) providing access to telephone wire closets and distribution cabling and wiring within the Convention Facilities; (ii) fully cooperating in the installation, maintenance, testing, and repair of Telecommunication Services and equipment, cabling and wiring related thereto; (iii) permitting Vendor to use or occupy, without cost to City (A) storage space; (B) use of toilet facilities; (C) all necessary and available, as determined by the City, space for the Telecommunication Services and equipment, including a room for installation of one or more switches which shall have any environmental climate required in connection therewith; (D) office space; (E) rooftop access as necessary and available, as determined by the City, for erection, use and maintenance of Vendor antennae and the placement thereof; and (F) one parking space; and (iv) provide at no charge to Vendor, adequate elevator access and use and adequate lighting, air conditioning, heat, water, electricity and ventilation.

6.2. Right of Entry. City shall be responsible for providing right of entry to the Convention Facilities to Vendor in order that service may be performed. Vendor shall not be liable for any delays in providing Telecommunication Services that are attributable to City's failure or delay in providing such entry or access.

6.3 Office Space. City shall provide office space in Building 277 and reasonable storage space in the Convention Facilities for the use of the Vendor. It shall be Vendor's responsibility to maintain the assigned spaces in good condition, reasonable wear and tear excepted, throughout the term of this Agreement and notify City of any maintenance problems beyond the scope of Vendor's responsibility. City may inspect the Convention Facilities whenever it deems appropriate at its sole discretion. Any expenses incurred for the finish-out of the Vendor's space will be the sole responsibility of the Vendor. City shall not be responsible under any circumstances for loss or damage to Vendor's stored supplies, materials or equipment, or for any of Vendor's employees' personal belongings brought onto the Convention Facilities.

ARTICLE 7. OWNERSHIP of DOCUMENTS

All of the Vendor's documentary work product, with the exception of trademarked, proprietary or intellectual property or work product, including all software, under this Agreement shall be the property of the City and, upon completion of this Agreement, such documentary work product shall be promptly delivered to City in a reasonably organized form, without restriction on its future use by City on any additional work associated with the Convention Facilities and related facilities. Vendor may retain for its files any copies of documents it chooses to retain and may use work product as it deems fit. Any materially significant work product lost or destroyed by the Vendor shall be replaced or reproduced at the Vendor's non-reimbursable, sole cost.

ARTICLE 8. RECORDS RETENTION

8.1 Vendor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as “documents”), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

8.2 Vendor shall retain documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as “retention period”) from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Vendor shall retain the records until the resolution of such litigation or other such questions. Vendor acknowledges and agrees that City shall have access to such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Vendor to return said documents to City prior to or at the conclusion of said retention.

8.3 Vendor shall notify City, immediately, in the event Vendor receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Vendor understands and agrees that City will process and handle all such requests.

ARTICLE 9. DEFAULT/TERMINATION

9.1. Event of Default. Default by Vendor shall be defined as:

9.1.1. The failure to complete work within the terms of this Agreement or within the time constraints of any event related activity; or

9.1.2. The failure to perform any other term or condition of this Agreement;

9.2. Cure Period. Upon the occurrence of an event of default by Vendor, City shall give Vendor ten (10) days notice and opportunity to cure any event of default related to payments or reporting of payments, or commence such cure in good faith and pursue with reasonable diligence, prior to exercising its remedies under this Agreement.

9.3. Failure to Cure. Failure by Vendor to respond in accordance with the terms and conditions set forth in this Agreement on two or more occasions within any period of 30 consecutive days, unless waived in writing by the City, shall constitute a breach of this Agreement entitling the City to exercise any of its remedies as described in 9.4 below without notice or cure period.

9.4. City’s Remedies. City’s remedies upon an event of default, which continues after

applicable notice and cure period, are:

9.4.1. City may elect to terminate this Agreement in whole or in part; and/or

9.4.2. City may recover its lost revenues that are caused by Vendor's event of default after any notice and cure period; and/or

9.4.3. City may recover its costs of materials and services required to remedy such default after any notice and cure periods; and/or

9.4.4. City may pursue such remedies it may have at law or in equity.

9.5. Termination. City may terminate this Agreement from its effective date for cause as specified previously in this Article. Upon termination Vendor may remove all of its equipment installed by Vendor other than that equipment which the City has elected to purchase in accordance with this Agreement.

9.6 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

9.7 Transition. Regardless of how this Agreement is terminated, Vendor shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Vendor, or provided to Vendor, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Vendor in accordance with Article 8. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Vendor's sole cost and expense. Payment of compensation due or to become due to Vendor is conditioned upon delivery of all such documents, if requested.

9.8 Ceasing Operation. Upon the effective date of expiration or termination of this Agreement, Vendor shall cease all operations of services being performed by Vendor or any of its subcontractors pursuant to this Agreement. No termination of this Agreement shall limit City's obligation to pay Vendor for all services performed by Vendor hereunder through the effective date of any such termination.

ARTICLE 10. NOTICE

10.1. Written Notice. All written notices required or permitted to be given under this Agreement to any party shall be given at the addresses indicated in the following sections, or to such other address as may be communicated to the other parties in writing. All written notices shall be sent by certified mail, return receipt requested or by certified courier service.

10.2. Address. All written notices to City by Vendor shall be addressed to:

Convention Facilities
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
Attn. Convention Facilities Director

All written notices from City to Vendor shall be addressed as follows:

Smart City
5795 W. Badura Avenue, Suite 110
Las Vegas, NV 89118
Attn. President

And

Frank B. Burney
300 Convent #2500
San Antonio, TX 78205

ARTICLE 11. INSURANCE

11.1. Certificate of Insurance. Prior to the commencement of any work under this AGREEMENT, VENDOR shall furnish an original completed Certificate(s) of Insurance to the CITY's Convention Facilities Department and CITY City Clerk's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the CITY. The CITY shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to the CITY's Convention Facilities Department and the CITY City Clerk's Office, and no officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.

11.2. City's Right of Review. The CITY reserves the right to review the insurance requirements of this section during the effective period of this AGREEMENT and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by the CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this AGREEMENT, but in no instance will the CITY allow modification whereupon the CITY may incur increased risk.

11.3. Coverage Amounts. The VENDOR's financial integrity is of interest to the CITY, therefore, subject to VENDOR's right to maintain reasonable deductibles in such amounts as are approved

by the CITY VENDOR shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at VENDOR's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the CITY, in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
Workers' Compensation Employers' Liability	Statutory
Commercial General (public) liability insurance to include coverage for the following:	
a. Convention Facilities/Operations	Combined Single Limit for Bodily Injury and
b. Independent contractors	Property Damage of \$2,000,000 per
c. Products/completed operations	occurrence; \$5,000,000 aggregate
d. Personal Injury	
e. Contractual liability	
f. Broad form property damage, to include fire legal liability	
Business Automobile Liability	
a. Owned/leased vehicles	Combined Single Limit for Bodily Injury
b. Non-owned vehicles	and Property Damage of \$1,000,000 per
c. Hired vehicles	occurrence; \$2,000,000 aggregate
Property Insurance for physical damage to the personal property of Vendor and all Vendor improvements and betterments to the Convention Facilities	Coverage for a minimum of the replacement cost of Vendor's personal property and Vendor's improvements and betterments to the Convention Facilities

11.4. Copies. The CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the CITY, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto. or the underwriter of any such policies). Upon such request by the CITY, the VENDOR shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

11.5. Inserted Provisions. VENDOR agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.

11.5.1. Name the City and its officers, employees, volunteers, and elected representatives, and its Convention Facilities Customers as

additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy;

11.5.2. The VENDOR's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City for liability arising out of operations under the contract with the City ; and

11.5.3. Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the City.

11.5.4. Certificate(s) of Insurance will identify the City of San Antonio and the Convention Facilities Department as Certificate Holders.

11.6. Notification to City. VENDOR shall notify the CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the CITY, by certified mail, at the following address:

City of San Antonio	City of San Antonio
Convention Facilities Department	City Clerk's Office
P.O. Box 1809	P.O. Box 839966
San Antonio, Texas 78297	San Antonio, Texas 78283-3966

11.7. Failure to Maintain. If VENDOR fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the CITY is an alternative to other remedies the CITY may have, and is not the exclusive remedy for failure of VENDOR to maintain said insurance or secure such endorsement. In addition to any other remedies the CITY may have VENDOR's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to VENDOR to stop work hereunder, and/or withhold any payment(s) which become due, to VENDOR hereunder until VENDOR demonstrates compliance with the requirements hereof.

11.8. No Limitation. Nothing herein contained shall be construed as limiting in any way the extent to which VENDOR may be held responsible for payments of damages to persons or property resulting from VENDOR's performance of the work covered under this agreement.

ARTICLE 12. INDEMNIFICATION

VENDOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands,

causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury or death and property damage, made upon the CITY, directly or indirectly arising out of, resulting from or related to VENDOR's activities under this AGREEMENT, including any acts or omissions VENDOR, any agent, officer, director, volunteer, representative, employee, contractor or subcontractor of VENDOR, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this AGREEMENT, all without, however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. VENDOR shall promptly advise the CITY in writing of any claim or demand against the CITY or VENDOR known to VENDOR related to or arising out of VENDOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at VENDOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving VENDOR of any of its obligations under this paragraph.

It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section (Article 8), is an INDEMNITY extended by VENDOR to INDEMNIFY, PROTECT and HOLD HARMLESS the CITY from the consequences of the CITY's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. VENDOR further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or Litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

ARTICLE 13. ASSIGNMENT AND SUBCONTRACTING

13.1 No Assignment. The rights granted by the ordinance inure to the benefit of Vendor. The rights granted by this Agreement shall not be assigned, transferred, sold or disposed of, in whole or in part, by voluntary sale, merger, and consolidation or otherwise by force or involuntary sale, without the expressed written consent of the City, approved by passage by the City Council of the City of an ordinance. For the purposes of this Article, assignment, transfer, sale, disposal, merger or consolidation shall include a change of operating control of the

Vendor, but shall not apply to a transfer or assignment to an affiliate or subsidiary of Vendor. Any such consent by the City shall not be withheld unreasonably.

13.2 Subcontracting. Vendor shall have the right to subcontract services to be provided under this Agreement, but shall not be relieved of its liability hereunder thereby; provided, however, that the City shall have pre-approval authorization and the right to reject any subcontractor, such approval to not be unreasonably withheld. If there is a subcontractor change (addition or deletion) during the term of this Agreement, Vendor shall utilize the City's Small Business Economic Development Advocacy Program Change of Subcontractor Form 101 to make the request.

ARTICLE 14. INDEPENDENT CONTRACTOR

Vendor shall not be considered an employee of the City, but shall occupy the status of Independent Contractor with the City. The Vendor shall perform its tasks and duties consistent with such status, and will make no claim or demand for any right or privilege applicable to an officer or employee of the City, including, but not limited to, workers' compensation, disability benefits, accident or health insurance, unemployment insurance, social security or retirement membership.

ARTICLE 15. SBEDA

15.1 SBEDA Program. The City has adopted a Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the City. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Agreement:

15.1.1 SBEDA Enterprise ("SE") – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.

15.1.2 Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.

15.1.3 Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed

a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE's participation does not count toward the SE utilization goal.

15.1.4 SBEDA Plan – The Good Faith Effort Plan (“GFEP”), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with Vendor’s bid for this project Agreement, attached hereto and incorporated herein as “Attachment B”.

15.2 Agreement. For this Agreement, the Parties agree that:

- (a) The terms of the City’s SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the “SBEDA Program”) are incorporated into this Agreement by reference; and
- (b) The failure of Vendor or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Agreement.
- (c) Failure of Vendor or any applicable SE to provide any documentation or written submissions required by the City or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.
- (d) During the Term of this Agreement, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in Vendor’s SBEDA Plan (“Attachment B”) shall constitute a material breach of the SBEDA Program and this Agreement.
- (e) Vendor shall pay all suppliers and subcontractors identified in its SBEDA Plan (“Attachment B”) in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by Vendor to the City. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this Agreement.

15.3 Material Breach. The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this Agreement:

- (a) Failure of Vendor to utilize an SE that was originally listed at bid opening

or proposal submission to satisfy SBEDA Program goals in order to be awarded this Agreement, or failing to allow such SE to perform a Commercially Useful Function; or

- (b) Modification or elimination by Vendor of all or a portion of the scope of work attributable to an SE upon which the Agreement was awarded; or
- (c) Termination by Vendor of an SE originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the Agreement without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so; or
- (d) Participation by Vendor in a Conduit relationship with an SE scheduled to perform work that is the subject of this Agreement.

15.4 Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any other remedies the City may have at law or in equity, or under this Agreement for material breach, including the specified remedies available under the SBEDA Program for Alternative Construction Delivery Method, the City shall be entitled, at its election, to exercise any one or more of the following remedies if the Vendor materially breaches the requirements of the SBEDA Program:

- (a) Terminate this Agreement for default;
- (b) Suspend this Agreement for default;
- (c) Withhold all payments due to the Vendor under this Agreement until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or
- (d) Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the City pursuant to the Agreement, or from any other amounts due to the Vendor under the Agreement.
- (e) Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is

routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

15.5 Certification. The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this Agreement.

15.6 Cumulative Remedies. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

15.7 City Process For Exercising SBEDA Program Remedies. The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Director regarding appropriate remedies for the City to exercise in the event a Contractor violates the SBEDA Program. The Director shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the Agreement. If the recommended remedy is to terminate the Agreement, then the Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

15.8 Special Provisions for Extension of Agreements. In the event the City extends this Agreement without a competitive Bid or Proposal process, the City Managing Department responsible for monitoring the Agreement shall establish the following, subject to review and approval by the SBEDA Program Manager:

- (a) a SBEDA Utilization Goal for the extended period; and
- (b) a modified version of the Good Faith Efforts ("Modified Good Faith Efforts Plan") set forth in the SBEDA Program Ordinance, as amended, if Vendor does not meet the SBEDA Utilization Goal; and
- (c) the required minimum Good Faith Efforts outreach attempts that Vendor shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the Agreement extension document. The Vendor entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:
 - (i) subject Vendor to any of the remedies listed above; and/or

(ii) result in a new bid or proposal request of the Agreement that was considered for extension.

ARTICLE 16. CONFLICT OF INTEREST

16.1. Charter. Vendor understands that the Charter of the City provides that no officer or employee of the City shall have any financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this prohibition shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit his office or position with the City. Any violation of this prohibition, with knowledge, express or implied, of the person or corporation contracting with the City shall render the contract involved voidable by the City Manager or the City Council. The Vendor represents that no employee or officer of the City has an interest in the Vendor's corporation.

16.2. Representation. Vendor, after due diligence review of its past and present contracts, represents to City that it is not aware of any conflict of interest in the award of this Agreement that might ethically compromise Vendor's legal commitment to faithfully perform this Agreement for City. Vendor agrees to immediately notify the City if the Vendor discovers a financial interest or conflict in the future.

ARTICLE 17. AMENDMENTS

17.1. Written Amendments. No material change in, addition to, or waiver of the terms, conditions and specifications contained herein shall be a binding obligation on either the Vendor or the City, unless approved in writing by the Vendor and the City, and evidenced by the passage of a City ordinance.

17.2. Amending Telecommunication Services. Notwithstanding Section 17.1, Vendor acknowledges that City may desire to expand, reduce, change and/or modify the Telecommunication Services during the terms of this Agreement. Upon mutual agreement, Telecommunication Services shall be installed or modified within a reasonable time after receiving a request and order from the City for the same.

ARTICLE 18. INCORPORATION BY LAW/SEVERABILITY

18.1. Incorporation by Law. Each provision and clause required by law to be inserted into this Agreement shall be deemed to be enacted herein and this Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise any such provision is not inserted or is not correctly inserted, this Agreement shall be amended to make such insertion on application by either Party. This Agreement is subject to all applicable Federal, State and local laws, statutes, codes, and any applicable permits, ordinances, rules, order and regulations of any local, state or federal government authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction.

18.2 Severability. If any clause or provision of the Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

ARTICLE 19. SURVIVAL

Any and all representations and conditions made, by Vendor under this Agreement are of the essence of this Agreement and shall survive the execution, delivery and termination of it, and all statements contained in any document required by the City, whether delivered at the time of the execution or at a later date, shall constitute representations hereunder.

ARTICLE 20. LICENSES/AUTHORIZATIONS/ CERTIFICATIONS

Vendor warrants that it shall acquire and maintain all necessary licenses or authorizations to provide all services described herein, including, but not limited to those which may be required by the Texas Public Utilities Commission and the Federal Communications Commission.

ARTICLE 21. COMPLIANCE

Vendor shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

ARTICLE 22. NONWAIVER OF PERFORMANCE

22.1. No Waiver. The failure on the part of the City herein at any time to require the performance by Vendor of any portion of this Agreement shall not be deemed a waiver of, or in any way affect the City's rights to enforce such provision or any other provisions. Any waiver by the City herein of any provision hereof shall not be taken or held to be a waiver of any other provisions hereof or any other breach hereof.

22.2. Waiver of Breach. No waiver of a breach of any provision of this Agreement by either party shall be construed or deemed to be a waiver or relinquishment for the future of said breach or any other breach or of any right arising from such breach.

ARTICLE 23. FORCE MAJUERE

Either party's performance under this Agreement is subject to acts of God, fires, floods, storms, water, power failures, riots, insurrection, civil commotion, war, directives of civil or military authorities, strikes or picketing, acts or conditions for which the other party is responsible, acts or failure to act on the part of the public utility furnishing telephone network services to City, or any other cause beyond either party's reasonable control.

ARTICLE 24. LAW APPLICABLE

24.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

24.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

ARTICLE 25. LEGAL AUTHORITY

The signator below represents to the City that he has full power and authority to execute, deliver, and perform this Agreement, and all other documents and certificates contemplated hereby, and the execution, delivery, and performance thereof have been duly authorized by Vendor and no other action is or was required to be taken to permit the execution, delivery, and performance of this Agreement, the transactions contemplated hereby, and all other documents and certificates contemplated hereby, and no consent or approval of any third party or governmental authority is or was required or appropriate in connection with the execution of this Agreement, or to consummate the transactions contemplated hereby.

ARTICLE 26. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

ARTICLE 27. CAPTIONS

27.1 Captions. The captions contained in this Agreement are for convenience or reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

27.2. Gender. Words of gender used in the Agreement shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the Agreement otherwise requires

ARTICLE 28. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

EXHIBIT A: Customer Contract and Vendor's Rate Sheet
EXHIBIT B: Vendor's SBEDA Good Faith Effort Plan

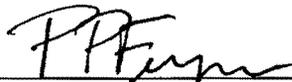
ARTICLE 29. ENTIRE AGREEMENT

This Agreement and the Exhibits and Attachments attached hereto and incorporated herein for all purposes constitutes the entire Agreement and supersedes all prior agreements and understandings between the Parties concerning the subject matter of this Agreement.

WITNESS, the signature of the Parties hereto in triplicate originals, this 30th day of June 2008, to be effective June 30, 2008.

CITY OF SAN ANTONIO, TEXAS

SMART CITY LLC

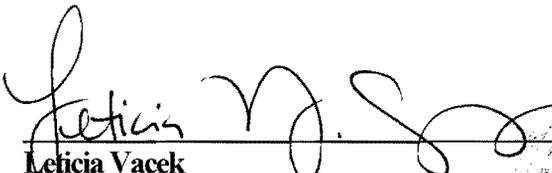


Sheryl L. Sculley
City Manager

WS



Name: MARK M. HALEY
President

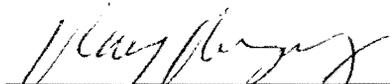


Leticia Vacek
City Clerk

br



APPROVED AS TO FORM:



Michael D. Bernard
City Attorney

City of San Antonio



INTERDEPARTMENTAL MEMORANDUM

TO: Sheryl L. Sculley, City Manager

FROM: Michael J. Sawaya, CHA, Director

SUBJECT: Magna Carta for Contract Execution

CONTRACT: First Amended and Restated Telecommunications Services Agreement with Smart City Networks, LLC

ORD. NO./DATE: 2008-06-19-0603 / June 19, 2008

COPIES: File

DATE: July 15, 2008

MAJOR PROVISIONS OF THE CONTRACT

Ord. No. 2008-06-19-0603, dated June 19, 2008, authorized the terms and conditions, as well as the execution of, a First Amended and Restated Telecommunications Services Agreement with Smart City Networks, LLC. Smart City provides telecommunications services to event clients of the Convention Center, Lila Cockrell Theatre and Municipal Auditorium on an exclusive basis.

Key terms and conditions of the new agreement include:

1. Five (5)-year initial term with five (5)-year renewal option, anticipated to commence in July or August 2008.
2. Modified commission structure from percentages of gross sales on individual services to percentages of overall gross sales. Current commission structure ranges from 15% to 30% on gross sales of individual services. New commission structure ranges from 26% to 35% on total gross sales.
3. \$200,000 signing bonus for the initial term and \$50,000 for the renewal option.
4. Establishment of a Marketing and Technology Fund for additional services and special projects, new infrastructure, unique equipment, and services for special events. Smart City to pay two percent (2%) of gross receipts into the fund.
5. Cisco wireless upgrade.
6. Nortel Option 61 (telephone switch) upgrade.
7. Provision of special technology services including web casting, cyber cafes and video email.
8. Provision of \$25,000 annually in complimentary services for special events.

POLICY ANALYSIS



CMS or Ordinance Number: OR00000200806190603

TSLGRS File Code: 1000-05

Document Title:

ORD - Telecommunication services for Convention Center exhibitors and clients

Ordinance Date:
6/19/2008

EXHIBIT A

Customer Contract and Vendor's Rate Sheet



SMART CITY
 5795 W. BADURA AVE, SUITE 110
 LAS VEGAS, NEVADA 89118
 888-446-6911
 702-943-6001 (FAX)

HENRY B GONZALEZ
CONVENTION CENTER
CUSTOMER CONTRACT
BILLING INFORMATION / PAYMENT FORM

BILLING INFORMATION / PAYMENT FORM

Company Name		Booth / Room	Show Name:
Billing Name		Show Dates: / / To / /	
Billing Address		Incentive Order Deadline: (see Incentive Price, Ts & Cs)	
City, State / Country, Zip		Email	
Contact	Telephone Number () -	Fax Number () -	
Credit Card Number: <input type="checkbox"/> AMX <input type="checkbox"/> MC <input type="checkbox"/> Visa		Expiration Date (MM / YY): /	
Print Card Holder Name:		Card Holder Signature:	

Terms and Conditions / Payment Options

Smart City is the exclusive provider and installer of all Voice, Data and Network services (wired and wireless) including communications cabling. This includes all cabling to meeting rooms, booths, within booths (under carpet and flooring), fiber optic, twisted pair (Category 3, 5 and 6), coaxial and all other data and telecommunications related cabling. ▶ The use of the network connection(s) provided by Smart City may be used only by the directors, officers and employees of the Company, its guests, its agents and consultants while performing service for the Company and cannot be resold or distributed to other companies or individuals. ▶ All devices for which Smart City directly or indirectly provides Internet / Network connectivity must pay a device charge or purchase a Smart City assigned IP address. A complete description of all Smart City services, terms and conditions may be found online at www.smartcity.com "Conventions" section.

Incentive Price applies when a completed order with payment is received no later than 21 days prior to the first day of show move-in. Base Price applies to (a) all orders received from One (1) to Twenty (20) days before show move-in has started or (b) orders received on or before the 21 day Incentive Deadline without payment (c) orders placed on site or after show move-in has started will be at Base Price plus an additional 20% X Base Price. ▶ To avoid additional charges, Floor Plans are due 5 days prior to move-in. ▶ Orders received prior to the 1st day of show move-in should be installed 24 hours prior to show opening. ▶ Late orders / changes received after show move-in has started will be installed after all other show orders are completed (additional fees may apply).

- The prices listed on this contract do not include Federal, State, Local or Other Taxes and Tax surcharges. Taxes / Tax surcharges will be included on your final bill. **Federal Tax ID is 65-0524748.**
- Purchase Orders are not accepted as a form of payment but as a convenience can be referenced on your invoice upon prior written request.
- Due to the cost of processing checks, any refunds due in the amount of \$10.00 or less will not be refunded except upon written request.
- There will be a \$25 service charge for all returned checks.
- Any unpaid balance after close of show will incur a 1.5% / month service charge.

Smart City accepts payments in US dollars. Checks drawn on a US bank, Wire Transfers or the following Credit Cards: (Amex, MasterCard, Visa,). Make all checks payable to: **Smart City**. Indicate method of payment and credit card on file: American Express MasterCard / Visa Check w / Credit Card on File Cash w / Credit Card on File Wire Transfer w / Credit Card on file. ▶ Credit Card charges are limited to \$10,000 / order. Orders exceeding \$10,000 must be paid by company check or money order. ▶ Checks must reference Facility and Show Name. ▶ Please contact Smart City for wire transfer instructions. Payer is responsible for all service charges.

A valid Credit Card number with signature MUST be on file regardless of payment method. For your convenience we will use this authorization to charge your credit card for any additional amounts incurred.

Completed Order Check List (Check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Completed Billing Information and Payment Form | <input type="checkbox"/> Completed Floor Plan |
| <input type="checkbox"/> Completed Service Contract for Internet / Network / Telephone | <input type="checkbox"/> Completed Network Security Declaration (Internet / Network Only) |
| <input type="checkbox"/> Completed Service Contract for Special Quote / SOW (if applicable) | <input type="checkbox"/> Completed Wireless Declaration (Wireless Svc Only) |

Customer Acceptance of All Smart City Terms and Conditions / Attachments:

With execution of this document the Customer hereby authorizes Smart City to provide services as requested herein, is authorized to request such services and acknowledges full and complete understanding of the Terms and Conditions and Attachments contained herein.

Print Authorized Name		Authorized Signature		Date
FOR SMART CITY USE: Payment Rec'd (Amount):		Customer No: 2008 - 017 -		
Payment Type:	<input type="checkbox"/> Check <input type="checkbox"/> Money Order <input type="checkbox"/> Cash <input type="checkbox"/> Wire Transfer <input type="checkbox"/> American Express <input type="checkbox"/> MasterCard / Visa			
Note:	CSR:	Date:		

ORDER ON LINE: www.smartcity.com/orders/placeorder.asp

TERMS AND CONDITIONS (continued from page 1)

6. **Conditions for processing service contract for On-time Installation:** (a) Full payment for service(s) must accompany signed contract. (b) Incomplete contract forms will delay processing, please provide all information requested. (c) Booth number(s) must be identified on face of contract. (d) Complete Floor Plan itemizing location of service(s) in Customer's booth must be designated on form or customer provided diagram(s) 5 days prior to the 1st day of move-in to avoid additional charges. (e) Customer provided / ordered circuits must be installed and working 2 days before show move-in. Customer(s) must provide Smart City with Circuit Number and Provider's name. (f) Late orders / changes received after show move-in has started will be installed after all other show orders are completed (additional fee's may apply).
7. **CANCELLATION** – There is a minimum \$150 Cancellation fee. Cancellations must be in writing. Additional cancellation charges will apply for orders that have already incurred labor, material, and / or engineering costs. Some broadband services and special circuits cannot be cancelled once ordered and will incur full charges listed / quoted. Credit will not be given for service(s) installed and not used.
8. Service problems must be reported to the Smart City Service Desk. Service claims will not be considered unless filed in writing by Customer prior to close of show.
9. **Any additional cost incurred by SMART CITY to:** 1) assist in trouble diagnosis or problem resolution found not to be the fault of SMART CITY or 2) collect information required to complete the installation that customer fails to provide (i.e. floor plans or special circuit numbers) may be billed to the Customer at the prevailing rate.
10. **Equipment Management:** (a) Customers should pick up hubs, wireless devices, telephone instruments and other rental equipment at the Smart City Service Desk. Unused deposits paid will be refunded by mail within 60 days of show close following final reconciliation of your bill. (b) The Customer will be fully responsible for the protection and safekeeping of rental equipment and will be responsible for returning all rental equipment to the Smart City Service Desk within one (1) hour following close of the show. (c) The Smart City Service Desk will be open to handle equipment rentals during move-in and show.
11. Only Smart City personnel are authorized to modify system wiring or cabling. Material and equipment furnished by Smart City for this service contract shall remain the property of Smart City.
12. Unless otherwise directed, Smart City is authorized to cut floor coverings to permit installation of service.
13. Prices are based upon current rates and are subject to change without notice.
14. A per line move fee starting at \$100 (Telephone), \$200 (Internet) may apply to relocate the line(s) after it is installed.

LIMITATION OF LIABILITY

Limited Warranty. SMART CITY warrants that: (a) it has the right to provide and install all Voice, Data, and Network Services and Applications (the "Services"). In the event that the Services are not performed in accordance with this warranty you agree to inform SMART CITY of such fact, by written notice prior to close of the Show / Event, and, as your sole and exclusive remedy, SMART CITY will either: (a) repair or replace the Services to correct any defects in performance without any additional charge to you, or (b) in the event that such repair or replacement cannot be done within a reasonable time, terminate the Customer Contract and provide you with a pro rata refund of the fees paid to SMART CITY for the Services hereunder with respect to such calendar year.

The foregoing warranties will not apply to the extent that: (a) the Services are used for any purpose other than those set forth in this Customer Contract regardless of whether SMART CITY has terminated this Customer Contract because of such misuse; (b) the cause of a breach of warranty is due to a malfunction in your hardware, software or communications network through which the Services are accessed; or (c) the cause of a breach of warranty is due to any other cause outside of our sole and reasonable control.

DISCLAIMER OF WARRANTY. THE FOREGOING CONSTITUTE OUR ONLY WARRANTIES WITH RESPECT TO THE PERFORMANCE OR NONPERFORMANCE OF THE SYSTEMS AND APPLICATIONS AND/OR THE SERVICES WHICH ARE OTHERWISE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE FOREGOING LIMITED WARRANTIES ARE IN LIEU OF, AND SMART CITY HEREBY EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Indemnification.

Each party agrees to indemnify, defend, and hold harmless the other party, its affiliates, and their current and former employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability (including reasonable attorneys' fees) brought by a third party arising out of, or in connection with a breach of the other party's representations, warranties, covenants and agreements set forth in this Customer Contract or to the extent attributable to such party's gross negligence or willful misconduct.

In claiming any indemnification hereunder, the indemnified party shall promptly provide the indemnifying party with written notice of any claim which the indemnified party believes falls within the scope of the foregoing paragraphs. The indemnified party may, at its own expense, assist in the defense if it so chooses, provided that the indemnifying party shall control such defense and all negotiations relative to the settlement of any such claim and further provided that any settlement intended to bind the indemnified party shall not be final without the indemnified party's written consent, which shall not be unreasonably withheld.

The terms of these provisions shall survive the expiration or termination of this Customer Contract.

LIMITATION OF LIABILITY. EXCEPT FOR OUR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, YOU AGREE THAT UNDER NO CIRCUMSTANCES IS SMART CITY LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF THE SYSTEMS OR OUR SERVICES OR OBLIGATIONS UNDER THIS AGREEMENT EVEN IF SMART CITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, YOUR EXCLUSIVE REMEDY AND OUR ENTIRE LIABILITY TO YOU FOR ANY REASON UPON ANY CAUSE OF ACTION ARISING OUT OF THE SYSTEM OR OUR SERVICES UNDER THIS AGREEMENT SHALL BE THE AMOUNT ACTUALLY PAID BY YOU TO SMART CITY WITH RESPECT TO THOSE DEFICIENT SERVICES. THE LIMITATION OF LIABILITY PROVIDED BY THIS SECTION IS LIMITED TO OUR DUTIES AND LIABILITIES BY REASON OF THIS AGREEMENT ONLY, AND DOES NOT AFFECT ANY OTHER RELATIONSHIP SMART CITY MAY HAVE WITH YOU.

THE FOREGOING LIMITATION IS A FUNDAMENTAL PART OF THE BASIS OF THE BARGAIN HEREUNDER AND IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE BEEN HELD TO BE INVALID OR INEFFECTIVE.

NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR RELATED TO THE USE OF THE SERVICES PURSUANT TO THIS AGREEMENT MAY BE BROUGHT BY YOU MORE THAN 12 MONTHS AFTER THE CAUSE OF ACTION FIRST AROSE.

(1) All Customer contracts and agreements are solely between SMART CITY and the prospective Customer; (2) SMART CITY is not the employee, agent or partner of the Facility; (3) The Facility is not a party to, nor shall it have any obligations or liabilities whatsoever to any Customer, under any Customer Contract including without limitation, the obligation to provide any of the services covered by such Customer Contract; (4) No representations or warranties are being made by the Facility with respect to any Customer Contract or any Communications Services; (5) The right of the Customer to receive any Communications Service will be terminated if this Agreement is terminated for any reason provided therein; and the Facility will have no obligation to continue providing such service unless the Facility elects in its sole discretion to continue to provide such services itself or through a third party; (6) The provisions of the Customer Contract are separate and independent from the provisions of the Customer's lease space in the building and shall not affect the Customer's obligations under such lease and without limiting the foregoing, in no event shall any default by SMART CITY under the Customer Contract or any failure with respect to any Communications Services have any effect on any Customer's obligations to the Facility under any lease or any other occupancy agreement between such Customer and the Facility.

ORDER ON LINE: www.smartcity.com/orders/placeorder.asp

*** Tipping is not permitted. Any request from personnel for gratuities should be reported to Management immediately. ***



SMART CITY
 5795 W. BADURA AVE, SUITE 110
 LAS VEGAS, NEVADA 89118
 888-446-6911
 702-943-6001 (FAX)

**HENRY B GONZALEZ
 CONVENTION CENTER
 SERVICE CONTRACT**

INTERNET - NETWORK / TELEPHONE SERVICE CONTRACT

Company Name:	Booth / Room	Show Name:
Contact:	If a show directory is published, do you want your company name and assigned numbers listed? <input type="checkbox"/> Yes <input type="checkbox"/> No	Show Dates: / / To / /
Authorized Signature:	Phone: () - Date: / /	Incentive Order Deadline: (see Incentive Price & # 8 below)

Important! Important! Please review the "Product Overview / Glossary" section of our literature to assure that the services you have selected will provide the required functionality for any application(s) you will be utilizing. A complete description of all services, product glossary and Ts & Cs may be found online at www.smartcity.com "Conventions" section. Please call if assistance is needed.

Description of Service	Type	QTY	Incentive	Base	+ Deposit	Total
1. Internet – Networking Services: (10 / 100 Base - T)						
a. Shared Ethernet Service (1 Public IP address)	SE		\$ 1,195	\$ 1,495		
b. Additional Public IP Address / Device (Ethernet)	IA-SP		\$ 150	\$ 185		
c. Shared EtherNAT Service (1 Private IP address)	NE		\$ 995	\$ 1,245		
d. Additional Private IP Address / Device (EtherNAT)	IA-SN		\$ 125	\$ 155		
e. Basic EtherNAT (up to 128K / 512K) (1 Private IP address) - Limited Qty	BE		\$ 795	\$ 995		
f. Additional Private IP Address / Device (Basic EtherNAT) (2 Max)	IA-BN		\$ 125	\$ 155		
g. Shared Wireless Internet (Up to 256 Kbps) (802.11) (See T&C 17)	WI		\$ 595	\$ 745		
h. T-1 RapidData® Internet Services (Includes 29 IP addresses)	TS		\$ 5,900	\$ 7,375		
i. Additional Block of 29 IP addresses / Devices (T-1 Service Only)	IA-29		\$ 995	\$ 1,245		
2. Internet – Networking Services: Equipment						
a. Hub Rental (8 Port) – 10 / 100 Base -T	H8		\$ 150	\$ 185	\$ 25	
b. Hub Rental (24 Port) – 10 / 100 Base -T	H4		\$ 225	\$ 280	\$ 25	
c. Patch Cable (up to 50') – Cat 5	PC		\$ 50	\$ 62		
3. Voice Services: PBX Service - Dial "9" for an outside line						
a. Basic Line (no Instrument) (unrestricted long distance)	LO		\$ 235	\$ 295	\$ 25	
b. Multi-Line Phone w / 1 main Number & 1 rollover line (unrestricted LD)	ML		\$ 375	\$ 470	\$ 25	
c. Refundable Multi-Line Instrument Deposit (See T&C 34)	ML-INST				\$ 25	
4. Voice Services: Dedicated Line (Direct line do not dial "9")						
a. For Modem use (no Instrument) (unrestricted) - Limited Quantity	DL		\$ 375	\$ 470	\$ 25	
5. Voice Services: Special Services						
a. Telephone Instrument (Single Line, Touchtone)	SL / DI		\$ 31.50	\$ 39		
b. Long Distance Restrictions (Local & Credit Card / Local Only)	CC / TLD		\$ 20	\$ 25		
c. ISDN Line 128 K BRI (2B + D) (unrestricted) - Limited Quantity	IP		\$ 500	\$ 625	\$ 200	
6. Special Line Services (For 3rd Party Circuit Extensions - Must order circuit from local Bell Co or Other Provider)						
a. Analog Extended POTS line from Demarc to Booth	DP		\$ 200	\$ 250		
b. ISDN BRI Extended circuit from Demarc to Booth	IS		\$ 350	\$ 450		
c. DSL Extended circuit from Demarc to Booth	HL		\$ 400	\$ 500		
d. T-1 Extended Data / Telco circuit from Demarc to Booth (See T&C 19)	T2 / T1		\$ 2,000	\$ 2,500		
e. DS-3 Extended circuit from Demarc to Booth (See T&C 19)	T3		\$ 9,000	\$ 11,250		
f. Labor / Floor Work - Fee per hour (See T&C 22)	FW		\$ 125	\$ 125		
g. Coax Cable Run (See T&C 22)	CX					(Call 888-446-6911 for quote)
h. Point-to-Point / Special Engineering / VPN / Web Casting (See T&C 22)	VP / MI					(Call 888-446-6911 for quote)
7. Special Quote – Attachment A or SOW (if applicable)	MI					(Call 888-446-6911 for quote)
8. Move - In / On - Site order fee (if ordering service after show move-in has started). (20%) x (Base Price)						
9. Distance Fee of \$500 Internet / \$100 Telephone for each line outside the convention venue. x (number of lines)						
						SUBTOTAL
Unused portions of deposits returned with final billing.						ESTIMATED 10% TAX / FEES DEPOSIT = SUBTOTAL x 10%
TOTAL PAYMENT MUST ACCOMPANY ORDER. Credit Card users may fax order to 702-943-6001						GRAND TOTAL

***** Incentive Price applies to orders received With Payment 21 days prior to the 1st day of show move-in. *****

FOR SMART CITY USE: Type of Service	Customer No: 2008 - 017 -
Special Instructions:	CSR: _____ Date: _____

ORDER ON LINE: www.smartcity.com/orders/placeorder.asp

Smart City-017NT 12/5/07

TERMS AND CONDITIONS (continued from pages 1 & 2)

INTERNET / NETWORK SPECIFIC:

15. Up to 10 / 100 Mbps, half / full-duplex, auto-sensing Ethernet access to our backbone, with shared or dedicated Internet access up to 128 Kbps or greater (depending on service ordered) via an RJ-45 jack, is provided for each connection ordered.
16. **Shared Services Specific:** Routers, Streaming Applications, VoIP, DHCP, NAT or Proxy Servers are **not allowed with any** of our shared Internet / Network services. This includes, but is not limited to, Shared Ethernet, Shared EtherNAT, Shared Wireless and Basic EtherNAT. Smart City can engineer a custom dedicated network(s) to accommodate such special requests. Please call for quote.
17. **Wireless Specific:** (a) Smart City is the exclusive provider of voice, wired and wireless data service(s) for the Facility. **Wireless Devices not authorized by Smart City are strictly prohibited.** Customer(s) that desire to showcase their wireless products must contact Smart City 21 days in advance of show move-in to investigate the potential of Smart City engineering a customized cohesive network to operate without interference to other Customer(s), (applicable charges may apply). (b) The use of any wireless device that interferes with the facility's 2.5 / 5.8 GHz wireless data frequency range is prohibited and subject to disconnection at the Customer expense.
18. Rates listed include a single IP address, standard installation to the booth in the most convenient manner and does not include computer equipment, NIC card, TCP / IP software or power to the booth.
19. Limited Availability: T-1 / DS-3 and other special circuit orders must be placed 45 days prior to show move-in date due to limited availability and to avoid additional charges.
20. **Network Security Declaration:** The Customer is responsible for providing a signed Network Security Declaration prior to Smart City activating Internet / Network Service(s) for each Customer.
21. **Wireless Performance Declaration:** The Customer is responsible for providing a signed Wireless Performance Declaration prior to Smart City activating Wireless Service(s) for each Customer.
22. See "Billing Information / Payment Form" – **Exclusive Voice, Data, Networking and Cabling.**
23. **Use of Network Connection:** (a) Services provided by Smart City are intended to facilitate communications between the Company's authorized users and the entities reachable through the Internet. Users of Smart City services shall use reasonable efforts to promote efficient use of the networks to minimize, and avoid if possible, unnecessary network traffic and interference with the work of other users of the interconnected networks. (b) Users of Smart City services **shall not disrupt** any of the Smart City or other associated networks as a whole or any equipment of system forming part of their systems, or any services provided over, or in connection with any of the Smart City or other associated networks. Smart City services shall not be used to transmit any communication where the meaning of the message, or its transmit distribution, would violate any applicable law or regulation or would likely be highly offensive to the recipient or recipients thereof.
24. **Internet Performance Disclaimer:** Smart City does not guarantee the performance, routing, or throughput, either expressed or implied, of any data circuit(s) connectivity with regards to the Internet and / or Internet backbone(s) beyond the Facility.
25. **Internet Security Disclaimer:** Smart City does not provide security such as, but not limited to, firewalls, etc. for any data circuit(s) we provide. It is the sole responsibility of the Customer to provide any necessary security. Customer is agreeing to hold Smart City; its agents and contracts harmless for any and all liabilities arising from the use of non-secured data circuits.
26. **VIRUS PROTECTION REQUIREMENT – WARNING –** Smart City requires that all devices directly or indirectly accessing Smart City's Network have the latest virus scan software, Windows security updates, system patches, and any other technological precautions necessary to protect yourself and others from viruses, malicious programs and other disruptive applications. Any device(s) which adversely impacts Smart City's network(s) will be disconnected from the network(s) with or without prior notice at Smart City's sole discretion. The device(s) in question will remain disconnected from the network(s) until all issues are adequately resolved. Additional charges may apply for trouble diagnosis and / or problem resolution. No refunds will be issued Customer(s) as the result of Smart City's actions to disconnect disruptive device(s).

TELEPHONE / VOICE SPECIFIC:

27. **NOTE: THE CUSTOMER IS RESPONSIBLE FOR ALL LONG DISTANCE, DIRECTORY ASSISTANCE, OPERATOR ASSISTED AND OTHER APPLICABLE CHARGES AGAINST ASSIGNED TELEPHONE NUMBER(S).**
28. **A \$.95 surcharge per call will be charged on all "1-800, 950" and credit card type calls. An additional \$.95 surcharge per call will apply if duration of call is over 10 minutes. The "1-800, 950" type call surcharge does not apply to Dedicated Lines (item #4a).**
29. **A \$2.00 surcharge per call will be charged on all directory assistance, Information, "0+" and Operator assisted calls.**
30. **Long Distance and Directory Assistance:** (a) Toll restriction will block lines to local only or local and "1-800" calling only. All other "1+" or "0+" dialing will be blocked (this includes all long distance access). (b) All lines will be blocked from "976" and "900" dialing unless otherwise requested. Additional deposits may be applicable. (c) Smart City will provide a detailed listing of all toll / billable type calls made from applicable services.
31. Deposits are required for Long Distance, 800#, and Calling Card usage. Additional Long Distance deposits for International accounts may apply and will be determined upon request for service.
32. The number(s) assigned to you are for the duration of this event only. Service cannot be moved or transferred outside of the Center and intercept service cannot be provided.
33. In the case of a billable type call(s) which is not connected, but where the called telephone is allowed to ring for more than 30 seconds, Smart City's automated billing system will automatically place a charge on your account as if the call had been completed. To avoid such charges, we suggest that you observe the time when placing calls.
34. One Multi-Line Instrument Deposit is required for each Multi-Line Circuit ordered.

Mail or Fax Completed Orders with Payment and Floor Plan To

SMART CITY
 5795 W. BADURA AVENUE, SUITE 110
 LAS VEGAS, NEVADA 89118
 (888) 446-6911 FAX (702) 943-6001

ORDER ON LINE: www.smartcity.com/orders/placeorder.asp

*** Tipping is not permitted. Any request from personnel for gratuities should be reported to Management immediately. ***

Network Security Declaration

Center: Henry B Gonzalez CC (017) - Tx Company Name: _____
Show: _____ Booth / Room #: _____
Customer / Ref #: 2008 - 017 -

The Network Security Policy implemented for this Facility requires Customer(s) adherence to several necessary precautions in order for Smart City to maintain a healthy, viable network for all Customers. This declaration of compliance with the security requirements as noted herein is an acknowledgement of Smart City's filtering policies and must be completed, signed by an authorized Customer representative and mailed or faxed to Smart City prior to the requested network service(s) being activated for Customer's usage.

Network Security Policy:

Smart City requires that all devices directly or indirectly accessing Smart City's network(s) have the latest virus scan software, Windows® security updates, system patches, and any other technological precautions necessary to protect the Customer(s) and others from viruses, malicious programs, and other disruptive applications. Any device(s) which adversely impacts Smart City's network(s) may cause service interruptions to Customer(s) which can lead to disconnection of the Customer's equipment from the network(s), with or without prior notice at Smart City's sole discretion. The device(s) in question will remain disconnected until all issues are adequately resolved. All charges will apply and no refunds will be given. Additional charges may apply for trouble diagnosis and / or problem resolution.

Smart City has implemented filtering policies on all Internet routers. These filters block all inbound Internet Control Message Protocol (ICMP) -- Ping, Traceroute, etc. -- destined to any Smart City Network(s). Smart City understands that Ping and Traceroute are valuable troubleshooting tools; therefore Smart City's Policy does allow ICMP (Ping & Traceroute) packets sourced from any Smart City network(s).

Further, to avoid infection by common Internet worms (Nachi, MSBlaster, LoveSAN, etc.), Smart City has implemented similar filters on the following TCP and UDP port numbers: UDP – 137, 138, 402, 1434 and TCP – 135, 139, 402, 445, 4444.

Customers requiring inbound or outbound access to any of the filtered ports, should contact a Smart City customer service representative in advance of the event with details of the specific requirements so that Smart City may consider the potential of a customized alternative.

Each Customer's business is important to Smart City and with advanced and timely notification of a Customer's needs we are confident that we can provide network services that perform as expected for all clients.

***** Please inform all show site personnel about the importance of Smart City's Network Security compliance issues *****

***** Services are activated after Smart City is in receipt of this signed declaration of compliance with our network security requirements *****

Are You Renting Computers? Yes No Rental Company Name: _____

Rental Company Contact: _____ Contact Number: _____

Device(s) Operating System: _____ Total # of Devices: _____

Type of Anti-Virus Software Installed: Norton McAfee Other: _____

Virus Scan Last Updated: _____ Date Security Updates Last Performed: _____ Date

With execution of this document the Customer hereby attests that Customer provided equipment, which will be connected to Smart City's network(s) at the above noted Facility and Show / Event has been properly protected, contains anti-virus software, and the latest patches and security updates have been installed. Customer(s) also accepts the responsibility for the performance of Customer's equipment and understands the conditions placed on service delivery by this document as well as the potential that additional charges may be incurred should Customer's equipment be found to adversely impact Smart City's network(s) performance. The Customer acknowledges that this Network Security Declaration is part of the Customer Contract allowing Smart City to provide requested service(s) and is subject to change without notice.

Signature

Date

Printed Name

Title



Wireless Performance Declaration

Center: Henry B Gonzalez CC (017) - Tx Company Name: _____
Show: _____ Booth / Room #: _____
Customer / Ref #: 2008 - 017 -

Overview

Smart City is the exclusive provider for wired and wireless services for the Facility and has in operation a wireless 802.11 a / b / g system. The wireless service offers Internet access at speeds up to 256K servicing Customers as well as attendees. The actual maximum bandwidth available depends on how many users are accessing the network simultaneously at any given time. Routers, Streaming Applications, VoIP, DHCP, NAT or Proxy Servers are not allowed with this connection. Smart City can engineer custom dedicated network(s) to accommodate such special requests. Please call for quote.

Wireless is an entry level service ideal for web surfing and checking web based email. Smart City's Wireless Network can be accessed throughout the Facility by using a Wi-Fi® compatible 802.11 a / b / g network card or one of our rental bridge units (limited quantity of bridge units, call for availability).

Wireless service is inherently vulnerable to interference from other devices that transmit similar radio frequency signals or that operate within the same frequency spectrum. Smart City cannot guarantee that interference will not occur. Smart City does **NOT** recommend wireless service for mission critical services such as product presentation or demonstrations. For demonstrations or to present products and other mission critical activity, via the Internet, Smart City highly recommends Customer(s) purchase hardwired services such as Shared Ethernet, Shared EtherNAT or T-1 service.

If you are unsure which of our products will best suit your needs please call our Customer Service Department at (888) 446-6911 and one of our Customer Service Representatives will be happy to assist you.

Restrictions and Special Requests

Due to the extensive coverage Smart City provides for the Facility, **NO** Customer provided access points are authorized for use within the Facility without Smart City prior approval (wireless access points without adjustable power outputs can not be authorized under any circumstances). Customer(s) who attempt to set up their own wireless system can interfere with the Smart City Wireless Network. Smart City requires all Customers showcasing their wireless products to contact Smart City 21 days prior to the show move-in so that we may engineer a cohesive network operating without interference (all approvals will incur a site survey fee). Per our Terms and Conditions listed on Smart City's Customer Contract, misuse of any wireless service may result in service interruption to yourself or other Customers and can lead to disconnection of the Customer's equipment. **No service refunds will be given.**

ALL WIRELESS ACCESS POINTS NOT AUTHORIZED BY SMART CITY ARE PROHIBITED.

I hereby attest that I understand the limitations and vulnerabilities of the wireless service provided by Smart City. I also understand that if I use this service for any reason including, but not limited to, demonstrating, showcasing or presenting my product(s), Smart City will not be responsible for possible interference that I may experience. Refunds will not be given for service issues found not to be the fault of Smart City. Upon receipt of this form, Smart City Wireless Services and / or Customer(s) authorized wireless AP devices (with Smart City's approval) will be activated / available for your use.

Signature: _____ Date: _____
Printed Name: _____ Title: _____
Email: _____ Contact Phone #: _____



Floor Plan – Communications Cable

Center: Henry B Gonzalez CC (017) - Tx
 Show: _____

Company Name: _____
 Booth / Room #: _____
 Customer / Ref #: 2008 - 017 -

Voice and Data communications cabling. Smart City is the **exclusive installer** of Voice and Data communications cabling. Smart City provides cabling to booths, within booths (under carpet and flooring) and from booth-to-booth. Fiber Optic, twisted pair (Category 3, 5 and 6), coaxial and all other data and telecommunication cable fall under Smart City's area of expertise.

IMPORTANT!! Prior to installation of service, a complete floor plan is required. Please utilize this grid should you not have your own floor plan to send us. You may use a different floor plan for each service group (Telephone, Internet, etc.) or combine all services on one floor plan. For a floor plan to be considered complete it **must** include all the information listed below (Main Distribution Location "MDL", designated location of items within the booth, surrounding booths, scale-length and width).

Adjacent Booth or Aisle# _____

Adjacent Booth or Aisle#

Adjacent Booth or Aisle#

Adjacent Booth or Aisle# _____

X = Main Distribution Location (**MDL**) – The originating line(s) for service, whether from overhead, a floor pocket or a column, will be delivered to a "MDL" before being distributed within your booth. Example: Storage area, back of booth, etc. (unless specified, the default for the "MDL" will be the back of the booth or at Smart City's discretion, the most convenient location). All distribution of services to their final destination within the booth will originate from the "MDL". A per line move fee will apply to relocate services within your booth after they have been engineered and / or installed.

T = Location of Telephones, Fax lines or other telecommunications equipment "T".

I / H / PC / C = Location of primary Internet Service "I", Hubs "H", Patch Cables "PC" and / or Computers "C". For Smart City to perform your floor work, you will need to indicate the location of each item you want cabled. Make sure to order your floor work, hubs, and patch cables early and in advance of the show moving in.

Orientation = The Booth or Aisle #'s surrounding your booth. A minimum of one surrounding Booth or Aisle # is required (two or more would be more helpful) for Smart City to accurately install your services.

Size = Booth dimensions (example 10x10) _____. **Scale** = 1 Box is equal to _____ ft.



Telephone Services Overview

A – Z Introduction to Services – Smart City offers PBX dial “9” service with 1 + direct toll calling, Dedicated Line, non dial “9” service and extension of 3rd Party Circuits. Telephone lines provided by Smart City are provisioned and installed with unrestricted long distance access (UNR), which provides dialing capabilities to local, 800# type calls and any U.S. domestic and International calling. PBX telephone lines are restricted from 900 and 976 dialing unless otherwise requested. Upon request PBX service can be restricted to (a) local calls only (TLD) or (b) local and 800# type calls only (CC).

Basic Line (analog PBX dial “9” access) – Provides a basic telephone line with a single PBX number (telephone instrument optional). Customer(s) must dial a “9” to access an outside line. Customer(s) purchasing a telephone instrument with the line may keep the instrument. A deposit must accompany order(s) for each line with access to long distance, 800# type calls and local toll calls (when applicable). Not recommended for modem use.

Calling Features / Customized Programming – Custom calling features are available including intercom, speaker phones, calling restrictions, call waiting, forward no answer, call forwarding, hunt groups and voice mail. Please call customer service at 888-446-6911 to request these special programming features.

Dedicated Line (analog non dial “9” access) – Analog circuit that is best for modem and credit card machine usage. Customers purchasing a telephone instrument with the line may keep the instrument. A deposit must accompany order(s) for each line as Dedicated Lines CANNOT be toll restricted or restricted from 800 dialing. There is no guaranteed data type speed with the Dedicated Line. Customers requiring a high speed connection should consider one of Smart City’s broadband services.

Dry Pair – See “Special Line Services”.

ISDN Line – An ISDN BRI circuit (2B + D) and its two SPID numbers (provides up to 128 Kbps of throughput). Standard set up is alternate Voice and / or Data on both B channels. A deposit on both channels is required for long distance services and local calls (when applicable), as ISDN circuits CANNOT be toll restricted.

Multi-Line Phone Services and Speaker Phones (dial “9” access) – One Multi-Line telephone instrument with one primary telephone number and one “roll over” number. Multi-Line telephones are programmed exclusively for Smart City and will not work with any other telephone circuit. Must dial “9” to access an outside line. A Multi-Line instrument(s) set can have up to 14 configurable keys (default is 7) in addition to the Hold key, Release key, and Volume control bar. This instrument can also accommodate a key expansion module for additional feature keys. Transfer, conference, and forwarding features are normally included. Speakerphone capability can be added for an additional charge. A deposit must accompany order(s) for each Multi-Line telephone instrument and each line requiring access to long distance, 800# type calls and local toll calls (when applicable).

Ring Down Line – Provides a telephone line with a telephone instrument (optional) that is programmed to automatically ring to a pre-determined phone number. Typically does not receive incoming calls.

Special Line Services (Dry Pair - Extended 3rd Party Circuits) – Extension of a Customer’s service(s) ordered from the local Telephone Co. or other Provider (e.g. Sprint, Bell Telephone, AT&T etc.). The 3rd party provider will bring the circuit to the Facility Demarc and Smart City will be responsible for extending services to the Customer’s booth. Customer must order a Dry Pair Extension from Smart City. This includes Analog telephone lines, ISDN, DSL, T-1, DS-3, OC-3, or any other special circuit not provided by Smart City. If utilizing an outside carrier for telephone service, Customer(s) will need to obtain the telephone number and / or circuit number from them and provide that information to Smart City. For ISDN service please indicate the SPID #s, for T-1s or other special circuits we need to have an installation date, the carrier name and contact, and the circuit ID# so we can identify and extend the proper circuit. Consult the Order Form for extension prices.

Internet / Networking Overview

A – Z Introduction to Services

Important! Smart City offers a wide variety of bandwidth options; please review to assure that the services you have selected will provide the required functionality for the application(s) you will be utilizing. Smart City provisions services using 10 / 100 Base - T, half / full-duplex, auto-sensing Ethernet protocols. IP Addresses are statically assigned. Throughput is measured in megabits per second (Mbps) and kilobits per seconds (Kbps). Customer's computers must be configured to accept Ethernet. Customer must have their own Electrical Power, Network Interface Card (NIC), Web browser and all other necessary computer equipment / programs. While Smart City supports POP3 and SMTP mail protocols, Smart City does not offer / provide POP3 or SMTP mail server(s) / email account(s).

Shared Services, which includes but are not limited to the **Basic EtherNAT, Shared EtherNAT, Shared Ethernet and Shared Wireless** services, do not allow Routers, Streaming Applications, Voice over IP (VoIP), Dynamic Host Configuration Protocol (DHCP), Network Address Translation (NAT) or Proxy Servers with the connection. Smart City can engineer a custom dedicated network(s) to accommodate such special requests. Please call for a quote.

Basic EtherNAT, Shared EtherNAT and Shared Wireless are entry level services that are good for surfing the web, showing and checking web based email. They use Static Private IP Addresses or Log-in and Password (with NAT addressing) to provide access to the Internet. The following is a partial list of the basic capabilities and limitations of these services:

Supported Services

- General web browsing: HTTP and HTTPS
- Outbound services originating from the center: FTP (file transfer), TFTP (file transfer), Telnet, POP3 mail and SMTP mail protocols
- Most outbound remote control applications such as PC Anywhere, Citrix, and Remote Desktop Protocol (RDP)
- Basic Instant Messaging

Limitations

- Any application or service that requires an outside Internet user to directly access an internal server or service such as a Web server or email server in the booth
- Virtual Private Networks (VPN) will probably not work and cannot be guaranteed or supported
- Inbound Simple Network Management Protocol (SNMP) connections will not work
- Inbound File Transfer Protocol (FTP) connections will not work
- Net Meeting will not work inbound or outbound
- Advanced features of Instant Messaging such as whiteboard sharing will not work
- Inbound remote access / control Applications such as PC Anywhere, Citrix, and Remote Desktop (RDP) Service will not work
- No proxy servers or other NAT devices allowed. This includes Netgear and Linksys Cable / DSL routers. These devices will not function properly because the private IP addresses that we use will overlap with what are generally Linksys, Netgear and DLink

Basic EtherNAT – (up to 128 K Up / 512 K Down) (Private IP Address) (Limited Quantity) (10 / 100 Base - T) –

Provides a shared entry level rate limited service of up to 128 Kbps Upstream and 512 Kbps Downstream that is ideal for basic web surfing and checking web based email. It is up to 10 / 100 Mbps, half / full-duplex, auto-sensing Ethernet access to the backbone with shared Internet access of up to 1.54 Mbps or greater. The actual maximum bandwidth available is dependent upon how many users are accessing the backbone simultaneously at any given time. Access for the originating connection plus a maximum of two additional devices can be purchased with this service. Basic EtherNAT uses Log-in and Password (with NAT addressing) to provide access to the Internet. Routers, Streaming Applications, VoIP, DHCP, NAT or Proxy Servers are not allowed with this connection. Smart City can engineer a custom dedicated network(s) to accommodate such special requests. Please call for a quote.

Custom Engineering

- **Dynamic Host Configuration Protocol (DHCP)** – Provides a mechanism for allocating IP addresses dynamically, so that addresses automatically can be reused when hosts no longer need them. This service requires special accommodation and configuration and must be arranged with Smart City in advance of the show.
- **LAN / WAN / VPN Construction** – Smart City can customize the network configuration you need to make your event a success. Networking booth-to-booth, to surrounding hotels, or to your home office Intranet? Call Smart City and let us design a network that fits your needs and your budget!
- **Network Address Translation (NAT)** – A method of connecting multiple computers to the Internet using one IP address. Allows customer(s) to have a private internal network separate from the Internet, but can receive information from it. NAT allows customer(s) to have multiple hosts on an internal network and use of the Internet via a single gateway connection. Automatically provides firewall style protection without any special setup by only allowing connections that originate on the inside of the network. This service requires special accommodation and configuration and must be arranged with Smart City in advance of the show.
- **Special Circuits** – Smart City can provision DS-3s, OC-3s, and larger circuits / bandwidth. Call for availability and pricing.
- **Virtual Local Area Network (VLAN)** – A means of configuring devices (PCs) so that they can communicate as if they were attached to the same wire, when in fact they are located on a number of different LAN segments. Because VLANs are based on logical instead of physical connections they are extremely flexible, provide security through utilizing virtual private networking, and can be used to connect remote locations.

Internet / Networking Overview

Custom Engineering (continued)

- **Web Casting** – Live video or recorded videos from the Facility event to the website of choice.

Cyber Café – Computers in one or more areas allowing attendees and Facility customer(s) to browse the Internet and access to email.

Dry Pair (Extended 3rd Party Circuits) – See "Special Line Services".

Hub Rental – 8 Port or 24 Port (10 / 100 Base - T) – Allows a 10 / 100 Mbps, half / full-duplex, auto-sensing Ethernet connection to be distributed for up to 7 other users (8 port hub) or 23 other users (24 port hub). Deposit required for rental. Customer is responsible for the return of the equipment.

Patch Cable – Up to 50 foot Category 5 - Ethernet standard Category 5 cable terminated with the proper jacks on either end. The default termination is RJ45.

Shared EtherNAT – (Private IP Address) (10 / 100 Base - T) – Provides a shared entry level service that is ideal for basic web surfing and checking web based email. It is up to 10 / 100 Mbps, half / full-duplex, auto-sensing Ethernet access to the backbone with shared Internet access of up to 384 Kbps. The actual maximum bandwidth available is dependent upon how many users are accessing the backbone simultaneously at any given time. EtherNAT uses private IP addresses. The private IP's all map to a single "real" public IP address. Connection comes with a single IP address. Additional IP addresses can be purchased and multiple computers can be connected to the network using this connection. Routers, Streaming Applications, VoIP, DHCP, NAT or Proxy Servers are not allowed with this connection. Smart City can engineer a custom dedicated network(s) to accommodate such special requests. Please call for a quote.

Shared Ethernet – (Public IP Address) (10 / 100 Base - T) – Provides shared access to the Internet via a shared 10 / 100 Mbps, half / full-duplex, auto-sensing Ethernet access to the backbone with shared Internet access of up to 1.54 Mbps and greater. The actual maximum bandwidth available is dependent upon how many users are accessing the backbone simultaneously at any given time. Connection comes with a single IP address. Additional IP addresses can be purchased and multiple computers can be connected to the network using this connection. Routers, Streaming Applications, VoIP, DHCP, NAT or Proxy Servers are not allowed with this connection. Smart City can engineer a custom dedicated network(s) to accommodate such special requests. Please call for a quote.

Shared Wireless – See "Wireless Internet".

Special Line Services (Dry Pair - Extended 3rd Party Circuits) – Extension of a Customer's service(s) ordered from the local Telephone Co. or other Provider (e.g. Sprint, Bell Telephone, AT&T etc). The 3rd party provider will bring the circuit to the Facility Demarc and Smart City will be responsible for extending services to the Customer's booth. Customer must order a Dry Pair Extension from Smart City. This includes T-1, DS-3, OC-3, or any other special circuit not provided by Smart City. If utilizing an outside carrier for T-1s or other special circuits we need to have an installation date, the carrier name and contact, and the circuit ID# so we can identify and extend the proper circuit. Consult the Order Form for extension prices.

T-1 RapidData® Internet (Dedicated) (10 / 100 Base - T) – Smart City's RapidData® T-1 provides up to 10 / 100 Mbps, half / full-duplex, auto-sensing Ethernet access to the backbone with dedicated Internet access of 1.5 Mbps. Connection programmed for 29 IP addresses / Devices. Additional IP addresses / Devices can be purchased. Best for Routers, Streaming Applications, VoIP, DHCP, NAT or Proxy Servers.

Wireless Internet (Shared Service) (Private IP Address) – Provides shared access to the Internet with up to 256 Kbps of throughput via a Wireless Local Area Network connection for a single connection to a single computer. This is an entry level service that is ideal for web surfing and checking web based email. Smart City's wireless network can be accessed throughout the Facility by using a Wi-Fi® compatible 802.11 a / b / g network card or one of our rental bridge units (limited quantity of bridge units, please call for availability). The actual maximum bandwidth available is dependent upon how many users are accessing the wireless network simultaneously at any given time. Customer(s) will be issued a unique User ID and Password for each wireless connection ordered. Customer(s) cannot utilize a hub, router, or data switch to distribute to multiple computers with this service.

Wireless service is inherently vulnerable to interference from other devices that transmit similar radio frequency signals or that operate within the same frequency spectrum. Smart City cannot guarantee that interference will not occur. Smart City does NOT recommend wireless service for mission critical services such as product presentation or demonstrations. For demonstrations and product presentations we highly recommend Customers purchase hard wired services such as Shared Ethernet, Shared EtherNAT, Basic EtherNAT or T-1 service. Due to the extensive coverage Smart City provides for the Facility, **NO** Customer provided wireless access points are authorized for use within the Facility without Smart City approval (wireless access points without adjustable power outputs can not be authorized under any circumstances). Routers, Streaming Applications, VoIP, DHCP, NAT or Proxy Servers are not allowed with our Shared Wireless service. **Wireless Access Points Not Authorized By Smart City Are Prohibited.** Smart City can engineer a custom dedicated wireless network(s) to accommodate special requests (WEP Key with 40 or 128 bit encryption, authentication, DHCP, etc). Please call for a quote.

EXHIBIT B

Vendor's SBEDA Good Faith Effort Plan

GOOD FAITH EFFORT PLAN

(Page 1 of 4)

First Amended and Restated Agreement for Telecommunication

**NAME OF
PROJECT:**

Services at the Henry B. Gonzalez Convention Center

BIDDER/PROPOSER INFORMATION:

Name of Bidder/Proposer: **Smart City**

Address: 5795 West Badura Avenue, Ste. 110

City: **Las Vegas** State: **NV**. Zip Code: **89118**

Telephone: **713-853-8177**

E-mail Address: **rpatterson@Smartcity.com**

Main Contact: **Ron Patterson, Vice President of Operations**

Is your firm certified? ___ Yes ___ **X** No (If yes, please submit Certification Certificate.)

- List all subcontractors/suppliers that will be used for this contract. (Indicate all MBEs-WBEs-AABEs-SBEs. Use additional sheets as needed.)

NAME AND ADDRESS OF SUBCONTRACTOR'S/SUPPLIER'S COMPANY July 1, 2008 to June 30, 2009	CONTRACT AMOUNT	% LEVEL OF PARTICIPATION	MBE-WBE-AABE- SBE CERTIFICATION NUMBER
Accutronics, Inc. 1429 W. Hildebrand, SATX 78201	\$300.00	.1%	MBE-SBE 207090904- 9/09
G&P Line Cords and Fones 27206 Wells Lane Conroe, Tx 77385	\$1,500.00	.3%	SBE-WBE 207111192-11/09
LNM Office Supply, Inc 5311 Jackwood, SATX 78239	\$1,500.00	.3%	SBE, MBE, WBE 207090047- 9/-09
Spring Garden Flower Shop dba:Doge, Inc 211 Brooklyn, SATX 78215	\$1000.00	.2%	SBE, MBE, WBE 20611357- 11/08
Telesource Installers 738 Avant Ave, SATX 78210	\$5,000.00	1.1%	SBE, WBE 207086141- 8/09
One Source Networks, Inc. 110 StoneOak Loop #104 SATX 78258	\$22,000.00	4.8%	SBE, MBE 207107284- 10/09
SAT Radio Communications,LTD Dba: Industrial Comm.	\$500.00	.1%	SBE, WBE 207092281- 9/09

1019 E. Euclid Ave, SATX 78212			
Gotcha Kovered Houston, TX	\$1,100.00	.2%	SBE, MBE, AABE 207096191-9/09
The Julian Group PO Box 16AA, SATX 78201	\$45,000.00	9.8%	SBE, MBE, AABE 207096191- 9/09
Louis P. Terrazas, Mgt. & Consultant PO Box 16AA, SATX 78201	\$36,000.00	7.8%	SBE, MBE 208060278 – 10/09

Totals for year July 1, 2008 to June 30, 2009 \$113,900.00

The Good Faith Effort Plan will be reviewed and updated annually.

Only companies certified as an MBE, WBE, AABE or SBE by the City of San Antonio or its certifying organization can be applied toward the contracting goals. All MBE-WBE-AABE-SBE subcontractors or suppliers must submit a copy of their certification certificate through the Prime Contractor. Proof of certification must be attached to this form. If a business is not certified, please call the Small Business Program Office at (210) 207-3900 for information and details on how subcontractors and suppliers may obtain certification.

GOOD FAITH EFFORT PLAN

(Page 2 of 4)

It is understood and agreed that, if awarded a contract by the City of San Antonio, the Contractor will not make additions, deletions, or substitutions to this certified list without consent of the Director of Economic Development and Director of the appropriate contracting department (through the submittal of the Request for Approval of Change to Original Affirmed Good Faith Effort Plan).

NOTE: If MBE-WBE-AABE-SBE contracting goals were met, skip to #9.

2. If MBE-WBE-AABE-SBE contracting goals were not achieved in a percentage that equals or exceeds the City's goals, please give explanation.

See Attached letter to Grace Luna, dated June 9, 2008 (Attachment 1)

See Notorized Document statement showing ownership. (Attachment 2)

3. List all MBE-WBE-AABE-SBE Listings or Directories utilized to solicit participation.

South Central Texas Regional Certification Agency
City of San Antonio Small Business Program Office
Word of mouth

4. List all contractor associations and other associations solicited for MBE-WBE-AABE-SBE referrals.

South Central Texas Regional Certification Agency
City of San Antonio Small Business Program Office
Word of mouth
Past and future contractor and suppliers

5. Discuss all efforts aimed at utilizing MBE-WBE-AABE-SBEs.

Same as special projects and /or new products and services arise over the contracted term, Smart City will first review the South Central Texas Regional Certification Agency for applicable contractors and suppliers available such services at competitive rates.

6. Indicate advertisement mediums used for soliciting bids from MBE-WBE-AABE-SBEs.

Following review of the South Central Texas Regional Certification Agency's directory, direct contract will be via phone and/or email for solicitation of applicable services.

GOOD FAITH EFFORT PLAN

(Page 3 of 4)

7. List all MBE-WBE-AABE-SBE bids received but rejected. (Use additional sheets as needed.)

COMPANY NAME	MBE-WBE-AABE-SBE CERTIFICATION NUMBER	REASON FOR REJECTION
NOT APPLICABLE		

8. Please attach a copy of your company's MBE-WBE-AABE-SBE policy.

See Cover Letter and Attachment #4

9. Name and phone number of person appointed to coordinate and administer the Good Faith Efforts of your company on this project.

Sylvia Herrera, General Manager for the San Antonio branch, San Antonio, 210-258-8119
Ron Patterson, Vice President of Operations
Louis P. Terrazas, Partner

-
10. This Good Faith Effort Plan is subject to the Economic Development Department's approval.

GOOD FAITH EFFORT PLAN
(Page 4 of 4)

GOOD FAITH EFFORT PLAN AFFIRMATION

I HEREBY AFFIRM THAT THE INFORMATION PROVIDED IN THIS GOOD FAITH EFFORT PLAN IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER UNDERSTAND AND AGREE THAT, IF AWARDED THE CONTRACT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.

Ron Peterson
SIGNATURE OF AUTHORIZED OFFICIAL

Vice President
TITLE OF OFFICIAL

8/28/08 *713-853-8177*
DATE PHONE

FOR CITY USE

Plan Reviewed By: *Justin M. Mohr*

Recommendation: Approval Denial

Action Taken: Approved Denied

Justin M. Mohr
DIRECTOR OF ECONOMIC DEVELOPMENT
8/29/08



CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 62
 Council Meeting Date: 6/19/2008
 RFCA Tracking No: R-3392

DEPARTMENT: Convention Sports and
 Entertainment Facilities

DEPARTMENT HEAD: Michael Sawaya

COUNCIL DISTRICT(S) IMPACTED:
 Council District 1

SUBJECT:
 Telecom Services Agreement with Smart City Networks, LLC

SUMMARY:

This ordinance authorizes the extension of a contract between Smart City Networks, LLC and the City. Smart City Networks provides telephone, Internet, network, and wireless services to customers of the Henry B. Gonzalez Convention Center, generating an estimated \$500,000.00 in commissions to the City annually. Smart City has submitted an unsolicited offer to extend the current telecommunications contract. The proposed new Agreement term shall be for two (2) five year terms, total of ten (10) years. The Initial Term shall commence on July 1, 2008. The Term may be renewed and extended for one (1) successive renewal period of five (5) years at the sole discretion of the Director of the Convention, Sports & Entertainment Facilities Department. If renewed, this Agreement shall be deemed to continue in full force and effect on the previously existing terms and condition.

BACKGROUND INFORMATION:

Approved by Ordinance #89088 on January 14, 1999, the Agreement for Telecommunication Services with Smart City Networks, LLC (formerly U. S. Telecom) has been in effect since March 3, 1999 and will expire on March 3, 2009. This current agreement requires the vendor to pay commissions to the City utilizing the following commission structure:

Telephone Revenue Share:	
0-800 lines	25%
801-1500 lines	28%
1501+ lines	30%
Long distance	30%
Instrument Sales	25%
Cellular Phones	15%
Internet Services	25%
Wireless Fidelity Services	25%

The agreement also required a comprehensive review to be conducted by the City and (be) presented to City Council for a determination of satisfactory performance at the end of the fifth year. At the time of the review, it was determined that Smart City had performed satisfactorily. They consistently satisfied customer needs, maintained at least a 90% approval rating from Convention Facilities customer surveys, and were responsive to reasonable requests for service by the Convention, Sports, and Entertainment Facilities Director. As a result of this favorable conclusion, the contract remained in effect.

Under the terms of the new contract, Smart City is proposing a one-time signing bonus of \$200,000.00 payable to the City on October 1, 2008 and an additional \$50,000.00 for an optional five year term. Their proposal also provides commissions to the City based on their gross sales, the creation of a 2% Marketing & Technology Fund, \$25,000.00 annually for complimentary services and a \$75,000.00 investment to upgrade the wireless system as well as a \$85,000.00 investment to upgrade the telephone system. Expenditures from the Marketing & Technology Fund will be subject to prior written authorization from the Director or designee. Complimentary Services requests are to be made directly to the Director's office.

ISSUE:

The opportunity for the continuation of high level customer service to the facility attendees along with increased financial opportunities are key elements in this contract extension.

ALTERNATIVES:

The City can continue to contract with Smart City through the expiration of the current contract while entertaining proposals from all interested parties. However, Smart City is the only provider which has this level of telecommunications experience and as such conducts business in meeting and convention facilities across the country. Based on consistent high performance and familiarity of our facility, Smart City would ultimately be the best qualified candidate if solicitations were issued.

FISCAL IMPACT:

Revenue in the first year of the contract is projected to be approximately \$745,000.00 to include \$200,000.00 signing bonus and \$545,000.00 in revenue related to telecommunications commissions. Every year thereafter, the fiscal impact is projected to be approximately \$545,000.00 with an additional \$50,000.00 in year five for a total of \$5.7M over the ten-year term.

The annual gross revenue and commission schedule that is being proposed is as follows:

Gross Receipts greater than	\$3,500,000.00		35%
Gross Receipts greater than or equal to	\$3,000,000.00	but less than \$3,500,000.00	34%
Gross Receipts greater than or equal to	\$2,500,000.00	but less than \$3,000,000.00	33%
Gross Receipts greater than or equal to	\$2,000,000.00	but less than \$2,500,000.00	32%
Gross Receipts greater than or equal to	\$1,500,000.00	but less than \$2,000,000.00	31%

Gross Receipts less than or equal to	\$1,500,000.00	26%
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RECOMMENDATION:

Considering the history of past satisfactory performance, the importance of consistency in providing a high-level of uninterrupted customer service, and the successful financial performance that Smart City has provided to the City of San Antonio, staff recommends approval of this contract extension.

ATTACHMENT(S):

File Description	File Name
Voting Results	
Ordinance/Supplemental Documents	200806190603.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

Michael J. Sawaya Director Convention Sports and Entertainment Facilities

APPROVED FOR COUNCIL CONSIDERATION:

Penny Postoak Ferguson Assistant City Manager