

STANDARD CITY CONTRACT

MASTER CONTRACT FOR PRODUCTS AND SERVICES - THE CITY OF KANSAS CITY, MISSOURI

CONTRACT NO.: EV3019

TITLE/DESCRIPTION: Building Automation System

THIS Contract is between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation ("CITY"), and Control Service Company, Inc. ("CONTRACTOR").

Sec. 1. The Contract. The Contract between the CITY and CONTRACTOR consists of the following Contract Documents:

- (a) this Contract;
- (b) CONTRACTOR's Proposal dated May 26, 2023, that is attached hereto and incorporated into this Contract;
- (c) CITY's RFP No. 3019 that is incorporated into this Contract by reference;
- (d) any and all Attachments and Exhibits attached to the Contract. All documents listed in this Section 1 shall be collectively referred to as the "Contract Documents" and are incorporated into this Contract. CITY and CONTRACTOR agree that the terms "Agreement" and "Contract" and "Contract Documents" are used interchangeably in this Contract and the terms "Agreement" and "Contract" and "Contract Documents" each include all "Contract Documents."

Attachment A: SCOPE OF WORK

Attachment B: PRICING SCHEDULE

Attachment C: CONTRACTOR SUPPORT PRIORITY, RESPONSE AND RESOLUTION
GUIDELINES

Attachment D: CITY SUPPORT ESCALATION PROCEDURES

Attachment E: TECHNICAL SERVICES AND SUPPORT AGREEMENT

Sec. 2. Initial Term of Contract and Additional Periods.

- (a) Initial Term. The initial term of this Contract shall begin on _____, _____ and shall end on _____, _____. The Manager of Procurement Services is authorized to enter into an amendment of this Contract with CONTRACTOR to extend the term of this Contract and time of performance for this Contract.

- (b) **Renewal Terms.** At any time prior to the expiration of the initial term or any subsequent term, the CITY, and contractor as mutually agreed upon., may renew this Contract for up to five (5) additional one (1) year terms.
- (c) **Transition Term.** Notwithstanding the expiration of the initial term or any subsequent term or all options to renew, CONTRACTOR and CITY shall continue performance under this Contract until the earlier of when (1)the CITY has a new contract in place with either CONTRACTOR or another provider (2) or until the CITY terminates the Contract; or contractor and City mutually agree on a transition term regarding a new contract with the current supplier or contract with a different supplier.

Sec. 3. Compensation

- A. The CITY shall pay CONTRACTOR on the following basis: per Scope of Work in Attachment A and Pricing Schedule in Attachment B.
- B. CONTRACTOR shall bill the City, in a form acceptable to the City, on the following basis: per Scope of Work in Attachment A and Pricing Schedule Attachment B.
- C. CITY shall order all services to be provided by CONTRACTOR under this Contract by means of a Purchase Order issued by the CITY's Manager of Procurement Services for which funds have been certified and encumbered by the City's Director of Finance. CITY shall not have any financial obligations to CONTRACTOR under this Contract until the CITY issues a Purchase Order to CONTRACTOR. CONTRACTOR shall not provide any services in excess of the dollar amount contained in any Purchase Order and CONTRACTOR shall not be entitled to any payment in excess of the dollar amount of the Purchase Orders from CITY.

Sec. 4. Effective Date of Contract.

- (a) Notwithstanding Section 2 of this Contract, neither party has any obligation under this Contract until the Manager of Procurement Services issues a Purchase Order which shall be signed by the City's Director of Finance certifying there is a balance, otherwise unencumbered, to the credit of the appropriation to which the expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment will be made, each sufficient to meet the obligation incurred in the Purchase Order.
- (b) The date of the first Purchase Order issued by the CITY is the effective date of this Contract.
- (c) The date of the first Purchase Order issued by the CITY after the CITY renews this Contract shall be the effective date of the renewal term or transition term.

Sec. 5. Invoices.

- (a) CONTRACTOR shall submit to CITY a request for payment (hereinafter "Invoice") for services performed in sufficient detail for the CITY to determine that the amount CONTRACTOR is requesting is in fact due and payable.
- (b) CITY shall not pay any Invoice from CONTRACTOR unless CONTRACTOR is in compliance with, and not in breach or default of, all terms, covenants and conditions of this Contract. If damages are sustained by CITY as a result of breach or default by CONTRACTOR, CITY may withhold payment(s) to CONTRACTOR for the purpose of set off until such time as the exact amount of damages due to CITY from CONTRACTOR may be determined.
- (c) CITY shall not process CONTRACTOR's Invoice unless CONTRACTOR's Invoice is in proper form, correctly computed, and is approved by CITY as payable under the terms of this Contract.
- (d) CITY is not liable for any obligation incurred by CONTRACTOR except as approved under the provisions of this Contract.
- (e) If CONTRACTOR is required to meet MBE/WBE goals for this Contract, CONTRACTOR shall not submit an Invoice to the City unless CONTRACTOR's Invoice is accompanied by a copy of the most recent 00485.01 M/WBE Monthly Utilization Report submitted by CONTRACTOR to the City's Human Relations Department. CONTRACTOR shall remain current on CONTRACTOR's filing of 00485.01 M/WBE Monthly Utilization Reports. CITY shall not pay CONTRACTOR's Invoice unless CONTRACTOR is current on CONTRACTOR's filing of 00485.01 M/WBE Monthly Utilization Reports.

Sec. 6. Representations and Warranties of CONTRACTOR. CONTRACTOR hereby represents and warrants to the CITY the following:

- (a) CONTRACTOR is in good standing under the laws of the state of Missouri and each state in which it does business, except any such state where the failure to be in good standing would not have a material adverse effect on CONTRACTOR's ability to perform this Contract in accordance with its terms.
- (b) The execution, delivery and performance by CONTRACTOR of this Contract have been duly authorized by all necessary corporate action and do not and will not (i)

require any consent or approval of CONTRACTOR's board of directors; (ii) require any authorization, consent or approval by, or registration, declaration or filing with, or notice to, any governmental department, commission, board, bureau, agency or instrumentality, or any third party, except such authorization, consent, approval, registration, declaration, filing or notice as has been obtained prior to the date hereof; (iii) violate any provision of any law, rule or regulation or of any order, writ, injunction or decree presently in effect having applicability to CONTRACTOR or its articles or by-laws; and (iv) result in a breach of or constitute a default under any material agreement, lease or instrument to which CONTRACTOR is a party or by which it or its properties may be bound or affected.

- (c) CONTRACTOR shall not enter into any contract for the services to CITY that purports to grant a security interest or right of repossession to any person or entity respecting the services, or any portions thereof or chattels placed thereon.
- (d) There is no litigation, proceeding or other investigation pending or, to the knowledge of CONTRACTOR, threatened against CONTRACTOR which would prevent consummation of the transaction contemplated by this Contract or would have a materially adverse effect on CONTRACTOR.

Sec. 7. Survival of the Representations, Warranties and Covenants. All representations, warranties and covenants expressed herein shall survive the execution of this Contract for the benefit of the parties hereto.

Sec. 8. Governing Law. This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The CITY and CONTRACTOR: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum *non conveniens* as an objection to the location of any litigation.

Sec. 9. Termination for Convenience. CITY may, at any time upon fifteen (15) days written notice to CONTRACTOR specifying the effective date of termination, terminate this Contract, in whole or in part. Should CITY terminate this Contract in whole or in part, CITY is obligated to make payment for services performed (including overhead and profit) and materials purchased in connection with the Contract as of the termination effective date, along with reasonable costs involved with termination such as demobilization and overhead costs.

Sec. 10. Default and Remedies.

- (a) If CONTRACTOR shall be in material default or breach of any material provision of this Contract, CITY may terminate this Contract, suspend CITY's performance, withhold payment or invoke any other legal or equitable remedy after giving CONTRACTOR ten (10) days written notice and opportunity to cure such default or breach. if CONTRACTOR fails to cure the default(s)/breach(es) within the ten (10) days. CONTRACTOR, however, shall not be liable for consequential damages, including lost profits, allegedly caused by any default or breach of this Contract
- (b) If CITY shall be in material default or material breach of any provision of this Contract, CONTRACTOR may terminate this contract or suspend CONTRACTOR's performance, or invoke any other legal or equitable remedy after giving CITY ten (10) days written notice and opportunity to cure such default or breach if CITY fails to cure the default(s)/breach(es) within the ten (10) days. CITY, however, shall not be liable for consequential damages, including lost profits, allegedly caused by any default or breach of this Contract..

Sec. 11. Waiver. Waiver by CITY of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Contract can be waived except by written consent of CITY, and forbearance or indulgence by CITY in any regard whatsoever shall not constitute a waiver of same to be performed by CONTRACTOR to which the same may apply and, until complete performance by CONTRACTOR of the term, covenant or condition, CITY shall be entitled to invoke any remedy available to it under this Contract or by law despite any such forbearance or indulgence.

Sec. 12. Acceptance. No payment made under this Contract shall be proof of satisfactory performance of the Contract, either wholly or in part, and no payment shall be construed as acceptance of deficient or unsatisfactory services.

Sec. 13. Records.

- (a) For purposes of this Section:

1. "CITY" shall mean the City Auditor, the City's Internal Auditor, the City's Director of Civil Rights and Equal Opportunity, the City Manager, the City department administering this Contract and their delegates and agents.
 2. "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Contract and all Contract amendments and renewals.
- (b) CONTRACTOR shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this Contract and all Contract amendments. CITY shall have a right to examine or audit all Records, and CONTRACTOR shall provide access to CITY of all Records upon ten (10) days written notice from the CITY.
- (c) The books, documents and records of CONTRACTOR in connection with this Contract shall be made available to the City Auditor, the City's Internal Auditor, the City's Director of Civil Rights and Equal Opportunity and the City department administering this Contract within ten (10) days after the written request is made.

Sec. 14. Affirmative Action. If this Contract exceeds \$300,000.00 and Contractor employs fifty (50) or more people, Contractor shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, Contractor warrants that it has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract. Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 3 of City's Code. Contractor shall:

- (a) Submit, in print or electronic format, a copy of Contractor's current certificate of compliance to the City's Civil Rights and Equal Opportunity Department (CREO) prior to receiving the first payment under the Contract, unless a copy has already been submitted to CREO at any point within the previous two (2) calendar years. If, and only if, Contractor does not possess a current certification of compliance, Contractor shall submit, in print or electronic format, a copy of its affirmative action program to CREO prior to receiving the first payment under the Contract, unless a copy has already been submitted to CREO at any point within the previous two (2) calendar years.
- (b) Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.

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

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

Sec. 15. Tax Compliance. If the CITY's payments to CONTRACTOR exceed \$160,000.00 for the period of May 1st through April 30th, CONTRACTOR shall provide proof of compliance with the CITY's tax ordinances administered by the CITY's Commissioner of Revenue as a precondition to the CITY making the first payment under this Contract. CONTRACTOR also shall submit to the CITY proof of compliance with the CITY's tax ordinances administered by the CITY's Commissioner of Revenue as a condition precedent to the CITY making final payment under the Contract.

Sec. 16. Buy American Preference. It is the policy of the CITY that any manufactured goods or commodities used or supplied in the performance of any CITY Contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible.

Sec. 17. Notices. All notices to be given hereunder shall be in writing and may be given, served or made by depositing the same in the United States mail addressed to the party to be notified, postpaid and registered or certified with return receipt requested or by delivering the same in person to such person. Notice deposited in the mail in accordance with the provisions hereof shall be effective unless otherwise stated in such notice or in this Contract from and after the second day next following the date postmarked on the envelope containing such notice. Notice given in any other manner shall be effective only if and when received by the party to be notified. All notices shall be sent to the following addresses:

If to the CITY:

City of Kansas City, Missouri
Procurement Services Division
414 East 12th Street, 1st Floor, Room 102 W

Kansas City, Missouri 64106
Attention: Cedric Rowan, C.P.M., Manager
Telephone: (816) 513-0814
Facsimile: (816) 513-1066

With copies to: Matthew J. Gigliotti, Esq.
City Attorney
Law Department of Kansas City, Missouri
414 East 12th Street, 23rd Floor
Kansas City, Missouri 64106
Telephone: (816) 513-3153

If to the CONTRACTOR:

Control Service Company, Inc.
3621 NE Akin Dr, Lee's Summit, MO 64064
(O) 816-600-5800
(F) 816-600-5899
Madamson@controlservice.com

Sec. 18. General Indemnification.

- (a) For purposes of this Section only, the following terms shall have the meanings listed:
1. Claims means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the CITY in the enforcement of this indemnity obligation.
 2. CONTRACTOR's Agents means CONTRACTOR's officers, employees, subcontractors, successors, assigns, invitees, and other agents.

3. CITY means CITY, its Agencies, its agents, officials, officers and employees.

(b) CONTRACTOR's obligations under this Section with respect to indemnification for from and against claims caused, in part, by acts or omissions, including negligence, of CITY, shall be limited to the coverage and limits of insurance that CONTRACTOR is required to procure and maintain under this Contract. CONTRACTOR affirms that it has had the opportunity to recover all costs of the insurance requirements imposed by this Contract in its contract price.

(c) CONTRACTOR shall defend, indemnify and hold harmless CITY from and against all claims Caused by acts or omissions in connection with this Contract by CONTRACTOR or CONTRACTOR's Agents, regardless of whether or not the City's act or omission, including negligence,

contributed in part toward causing

the claim to accrue of CITY. CONTRACTOR is not obligated under this Section,

however, to indemnify CITY if CITY's acts or omissions, including negligence, were

the principal cause of the claim for the sole negligence of CITY

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

Sec. 19. Indemnification for Professional Negligence. If this contract is for professional services, CONTRACTOR shall indemnify, and hold harmless CITY and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, proximately caused by any negligent acts or omissions in connection with this Contract, by CONTRACTOR, its employees, agents, subcontractors, or by others for whom CONTRACTOR is liable, in the performance of professional services under this Contract. CONTRACTOR is not obligated under this Section to indemnify CITY for the negligent acts of CITY or any of its agencies, officials, officers, or employees.

Sec. 20. Insurance.

(a) CONTRACTOR shall procure and maintain in effect throughout the term of this Contract insurance policies with coverage not less than the types and amounts specified in this Section. CONTRACTOR must have:

1. Commercial General Liability Insurance Policy: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:
 - a. Severability of Interests Coverage applying to Additional Insureds
 - b. Contractual Liability
 - c. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
 - d. No Contractual Liability Limitation Endorsement
 - e. Additional Insured Endorsement, ISO form CG20 10, current edition, or its equivalent.
 2. Workers' Compensation Insurance and Employers Liability Policies as required by Missouri law.
 3. Commercial Automobile Liability Insurance Policy: with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. The Policy shall provide coverage on an "any auto" basis and on an "occurrence" basis. This insurance policy will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Contract, by CONTRACTOR.
 4. If this Contract is for professional services, CONTRACTOR shall obtain Professional Liability Insurance with limits per claim and annual aggregate of \$1,000,000.
- (b) All insurance policies required in this Section shall provide that the policy will not be canceled until after the Insurer provides the CITY ten (10) days written notice of cancellation in the event that the cancellation is for CONTRACTOR's nonpayment of premiums and thirty (30) days written notice of cancellation to CITY for all other reasons of cancellation.
- (c) The Commercial General and Automobile Liability Insurance Policies specified above shall provide that CITY and its agencies, agents, officials, officers, and

employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Contract. CONTRACTOR shall provide to CITY at execution of this Contract a certificate of insurance showing all required endorsements and additional insureds.

- (d) All insurance policies must be provided by Insurance Companies that have an A.M. Best's rating of "A-V" or better, and are licensed or approved by the State of Missouri to provide insurance in Missouri.
- (e) Regardless of any approval by CITY, CONTRACTOR shall maintain the required insurance coverage in force at all times during the term of this Contract. CONTRACTOR's failure to maintain the required insurance coverage will not relieve CONTRACTOR of its contractual obligation to indemnify the CITY pursuant to this Section of this Contract. In the event CONTRACTOR fails to maintain the required insurance coverage in effect, CITY may declare CONTRACTOR in default.
- (f) In no event shall the language in this Section constitute or be construed as a waiver or limitation of the CITY's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

Sec. 21. Interpretation of the Contract.

- (a) CITY selected CONTRACTOR through a negotiated procurement process rather than an Invitation for Bids (IFB) solicitation. Unlike the IFB, this process allows the CITY and CONTRACTOR to discuss and negotiate a contract at arms length prior to entering a final contract that is acceptable to both the CITY and the CONTRACTOR. After negotiation and discussion, CONTRACTOR and CITY have incorporated multiple documents into this Agreement and the meaning of some of the words used in the Agreement may be uncertain, incomplete or duplicative and the Agreement may promise something at one place and take that promise away at another. In sum, the Agreement may contain words and provisions that are susceptible of more than one meaning so that reasonable persons of average intelligence may fairly and honestly differ in their construction of the words and provisions. It is the intent of the CITY and the CONTRACTOR that the CITY's taxpayers receive the reasonable benefit or advantage in the reasonable construction and interpretation of this Agreement after considering common rules of contract construction, regardless of the normal judicial rules of contract construction even if the resulting construction and interpretation of the Agreement will cost the CONTRACTOR an unreasonable amount of additional more money

and time. CITY and CONTRACTOR agree that CITY's Manager of Procurement Services shall reasonably resolve all disagreements as to the meaning of this Agreement or any ambiguity in this Agreement, in favor of the CITY and its taxpayers even unless if it will cost the CONTRACTOR an unreasonable amount of additional more money and time. The decision of CITY's Manager of Procurement shall be final and conclusive if the Manager of Procurement Services acted in good faith without rendering an unreasonable interpretation.

- (b) CONTRACTOR acknowledges and agrees that the CITY has provided CONTRACTOR with an opportunity to have CONTRACTOR's attorney review and advise CONTRACTOR on the Agreement and any potential ambiguities or areas of disagreement and the potential adverse legal consequences of CONTRACTOR agreeing to this Section as well as the entire Agreement. CONTRACTOR certifies that CONTRACTOR has provided the CITY written notice of all ambiguities, conflicts, errors or discrepancies that it has discovered in the Agreement and the written resolution thereof by the CITY as embodied in this final Agreement is acceptable to CONTRACTOR.
- (c) CONTRACTOR certifies that CONTRACTOR has either (1) waived its right to have CONTRACTOR's attorney review this Section and Agreement; or (2) CONTRACTOR has consulted with an attorney on this Section and Agreement.
- (d) CONTRACTOR knowingly and voluntarily agrees to this Section and the entire Agreement. CONTRACTOR certifies that this contract was not procured by fraud, duress or undue influence.

Sec. 22. Contract Execution. This Contract may be executed in one or more counterparts, each of which will be deemed an original copy of this Contract and all of which, when taken together, will be deemed to constitute one and the same Contract. This Contract shall be effective upon the execution of counterparts by both parties, notwithstanding that both parties may not sign the same counterpart. The parties' signatures transmitted by facsimile or by other electronic means shall be proof of the execution of this Contract and shall be acceptable in a court of law.

Sec. 23. Guaranteed Lowest Pricing. CONTRACTOR certifies that this Contract contains CONTRACTOR's lowest and best pricing for all services supplied by CONTRACTOR to any government, governmental entity, political subdivision, city, state, school district or any other public entity in the United States as of the date of this Contract.

Sec. 24. Assignability and Subcontracting.

- (a) Assignability. Contractor shall not assign or transfer any part or all of Contractor's obligation or interest in this Contract without prior written approval of City not to be unreasonably withheld. If Contractor shall assign or transfer any of its obligations or interests under this Contract without the City's prior written approval, it shall constitute a material breach of this Contract. This provision shall not prohibit contractor from subcontracting as otherwise provided for herein.
- (b) Subcontracting. Contractor shall not subcontract any part or all of Contractor's obligations or interests in this Contract unless the subcontractor has been identified in a format required by City. If Contractor shall subcontract any part of Contractor's obligations or interests under this Contract without having identified the subcontractor, it shall constitute a material breach of this Contract. The utilization of subcontractors shall not relieve Contractor of any of its responsibilities under the Contract, and Contractor shall remain responsible to City for the negligent acts, errors, omissions or neglect of any subcontractor and of such subcontractor's officers, agents and employees. City shall have the right to reject, at any point during the term of this Contract, any subcontractor identified by Contractor, and to require that any subcontractor cease working under this Contract. City's right shall be exercisable in its sole and subjective discretion. City shall not be obligated to pay or be liable for payment of any monies which may be due to any subcontractor. Contractor shall include in any subcontract a requirement that the subcontractor comply with all requirements of this Contract in performing Contractor's services hereunder.

Sec. 25. Professional Services – Conflict of Interest Certification. If this Contract is for professional services other than for medical doctors or appraisers, CONTRACTOR certifies that CONTRACTOR is not an expert witness for any party in litigation against the CITY at the time of the issuance of this Contract.

Sec. 26. Intellectual Property Rights. CONTRACTOR agrees, on its behalf and on behalf of its employees and agents, that it will promptly communicate and disclose to CITY all computer programs, documentation, software and other copyrightable works ("copyrightable works") conceived, reduced to practice or made by CONTRACTOR or its agents, whether solely or jointly with others, during the term of this Contract resulting from or related to any work CONTRACTOR or its agents may do on behalf of CITY or at its request. All inventions and copyrightable works that CONTRACTOR is obligated to disclose shall be and remain entirely the property of CITY. It is agreed that all inventions and copyrightable works are works made for hire and shall be the exclusive property of CITY. CONTRACTOR hereby assigns to CITY any rights it may have in such copyrightable works. CONTRACTOR shall cooperate with CITY in obtaining any copyrights or patents.

Sec. 27. Minority and Women's Business Enterprises. RESERVED.

Sec. 28. Employee Eligibility Verification. CONTRACTOR shall execute and submit an affidavit, in a form prescribed by the CITY, affirming that CONTRACTOR does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. §1324a(h)(3). CONTRACTOR shall attach to the affidavit documentation sufficient to establish CONTRACTOR's enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration and Reform and Control Act of 1986. CONTRACTOR may obtain additional information about E-Verify and enroll at <https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES>. For those CONTRACTORs enrolled in E-Verify, the first and last pages of the E-Verify Memorandum of Understanding that CONTRACTOR will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this section. CONTRACTOR shall submit the affidavit and attachments to the CITY prior to execution of the contract, or at any point during the term of the contract if requested by the CITY.

Sec. 29. Emergencies.

- (a) Disaster means any large scale event such as an act of terrorism, fire, wind, flood, earthquake or other natural or man-made calamity which results in, or has the potential to result in a significant loss of life or property.
- (b) During and after a disaster, CONTRACTOR shall provide special services to the CITY including CONTRACTOR shall open CONTRACTOR's facilities even on nights and weekends as necessary to meet the needs of the City during a disaster.
- (c) CONTRACTOR shall not charge CITY any fee for opening facilities during an emergency or for extending CONTRACTOR's hours of operation during a disaster. CITY shall pay CONTRACTOR the agreed upon contract prices for all purchases made by CITY during the disaster and CONTRACTOR shall not charge CITY any additional mark-up, fee or cost for any purchases made by CITY during a disaster.
- (d) CONTRACTOR shall quickly mobilize CONTRACTOR's internal and external resources to assist CITY when a disaster unfolds.
- (e) Extended hours and personnel. During disasters, CONTRACTOR's facilities shall stay open 24 hours if requested by the CITY. CONTRACTOR shall utilize additional CONTRACTOR personnel to take CITY orders if necessary. CONTRACTOR's Call Center shall accept phone orders 24 hours a day.
- (f) CONTRACTOR shall have contingency plans with CONTRACTOR's suppliers to provide additional supplies and equipment quickly to CITY as needed.
- (g) CONTRACTOR shall cooperate with CITY to properly document any and all expenses incurred by CITY with CONTRACTOR and CONTRACTOR shall assist

CITY in meeting any and all documentation requirements of the Federal Emergency Management Agency (FEMA).

Sec. 30. Trade-In. If the solicitation requests a price or value for one or more pieces of equipment to be traded in as part of the purchase of new equipment, the CITY retains the option to purchase the new equipment at the full price or to reduce the price of the new equipment by the amount of the trade-in offered. The CITY is not obligated to accept the trade-in offer and may withdraw equipment offered for trade-in at any time up to award.

Sec. 31. Time of Delivery. Delivery is required to be made in accordance with the schedule shown in the solicitation and purchase order.

Sec. 32. F.O.B. Destination. Unless otherwise directed in the solicitation and purchase order, all deliveries shall be F.O.B. Destination and all freight charges shall be included in the total price. Supplies shall be delivered to the destination consignee's warehouse unloading platform, or receiving dock, at the expense of the CONTRACTOR. The CITY shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved prior to the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the CITY acting in its contractual capacity. If rail carrier is used, supplies will be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggy-back") is used, supplies will be delivered to truck tailgate at the unloading platform of the consignee. If the CONTRACTOR uses rail carrier or freight forwarder for less than carload shipments, he shall assure that the carrier will furnish tailgate delivery if transfer to truck is required to complete delivery to consignee. One of the following statements usually will appear on the purchase order, although others may be used. If no statement appears, paragraph 22(a) is applicable.

- (a) F.O.B. Destination, Freight Prepaid by Seller. The seller pays and bears all freight charges.
- (b) F.O.B. Destination, Freight Prepaid and Charged Back on Invoice. The seller pays the freight and charges the CITY by adding it to the invoice.
- (c) F.O.B. Destination, Freight Collect. The CITY pays and bears the freight charges.
- (d) F.O.B. Destination, Freight Collect and Allowed on Invoice. The CITY pays the freight charges and deducts the amount from the seller's invoice.

Sec. 33. Quality. Unless otherwise required by terms of the solicitation, all goods, supplies, and materials furnished shall be new, in current production, and the best of their kind. When applicable, parts and maintenance shall be reasonably available. New equipment that is obsolete or technically outdated is not acceptable. Remanufactured or reconditioned items are not considered new. Items shall be properly packaged, packed, labeled, and identified in accordance with commercial standards acceptable to the trade and as required by ICC and other federal and state regulations. Packing slips will accompany the shipment.

Sec. 34. Price. Prices quoted are to be firm and final. All prices quoted shall be net and shall reflect any available discount except for discounts for timely payment. All prices are to be F.O.B. designated delivery point. All shipping, packing, and drayage charges are the responsibility of the supplier. C.O.D. shipments will not be accepted unless otherwise agreed to by the City.

Sec. 35. Brand Name or Equal. Whenever the name of the manufacturer or the supplier is mentioned on the face hereof and the words "or equal" do not follow, it shall be deemed that the words "or equal" shall follow such designations unless the face hereof specifies "no substitutions". The CITY may assume that items submitted are equal or it may request samples and proof thereof and unless approved before shipment, reserves right to return at the CONTRACTOR'S expense all items that are not acceptable as equals, said items to be replaced by the CONTRACTOR with satisfactory items at the original submitted price.

Sec. 36. Commercial Warranty. The CONTRACTOR agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the CONTRACTOR gives to any customer for such supplies or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the CITY by any other clause of this contract.

Sec. 37. Discounts.

- A. Prompt payment discounts offered for payment within less than twenty (20) calendar days will not be considered in evaluating proposals for award, unless otherwise specified in the solicitation. However, offered discounts of less than twenty (20) days will be taken if payment is made within the discount period, even though not considered in the evaluation of proposals.
- B. In connection with any discount offered, time will be computed from date of delivery of the supplies to the carrier when acceptance is at the point of origin, or from date of delivery at destination when delivery and acceptance is at destination, or from the date the correct invoice or voucher is received in the office specified by the CITY, if the latter is later than the date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the CITY check.

- C. Any discount offered other than for prompt payment should be included in the net price quoted and not included in separate terms. In the event this is not done, the CITY reserves the right to accept the discount offered and adjust prices accordingly on the purchase order.

Sec. 38. Sellers Invoice. Invoices shall be prepared and submitted in duplicate to address shown on the purchase order. Separate invoices are required for each purchase order. Invoices shall contain the following information: purchase order number, item number, description of supplies or services, sizes, unit of measure, quantity, unit price, and extended totals.

Sec. 39. Inspection and Acceptance. Inspection and acceptance will be at destination unless specified otherwise and will be made by the CITY department shown in the shipping address or other duly authorized representative of the CITY. Until delivery and acceptance, and after any rejection, risk of loss will be on the CONTRACTOR unless loss results from negligence of the CITY. CONTRACTOR will be notified of rejected shipments. Unless agreed otherwise, items will be returned freight collect.

Sec. 40. Loss and Damaged Shipments. Risk of loss or damage to items prior to the time of their receipt and acceptance by the CITY is upon the CONTRACTOR. The CITY has no obligation to accept damaged shipments and reserves the right to return at CONTRACTOR's expense damaged merchandise even though the damage was not apparent or discovered until after receipt of the items.

Sec. 41. Late Shipments. Supplier or CONTRACTOR is responsible to notify the CITY department receiving the items and the Senior Buyer of any late or delayed shipments. The CITY reserves the right to cancel all or any part of an order if the shipment is not made as promised.

Sec. 42. Tax Exemption - Federal and State.

- A. The CITY is exempt from Federal Excise and Transportation taxes on purchases under Chapter 32, Internal Revenue Code. The federal tax registration number issued by the St. Louis District Director on November 11, 1974 is No. 43740340K.
- B. The CITY is exempt from payment of Missouri Sales and Use Tax in Accordance with Section 39(10) Article 3, of the Missouri Constitution and Sections 144.040 and 144.615 RSMo 1969 and supplement thereto. A copy of the exemption from Missouri Sales and Use Tax is available upon request.

Sec. 43. Annual Appropriation of Funds.

- A. Multi-year term supply and service contracts and leases and the exercise of options to renew term contracts are subject to annual appropriation of funds by the City Council. Payments made under term contracts and leases are considered items of current expense. Purchase orders are funded when issued, therefore are current expense items and are not subject to any subsequent appropriation of funds.
- B. In the event sufficient funds are not appropriated for the payment of lease payments or anticipated term contract payments required to be paid in the next occurring lease or contract term and if no funds are legally available from other sources, the lease or contract may be terminated at the end of the original term or renewal term and the CITY shall not be obligated to make further payments beyond the then current original or renewal term. The CITY will provide notice of its inability to continue the lease or contract at such time as the Manager of Procurement Services is aware of the nonappropriation of funds; however, failure to notify does not renew the term of lease or contract. If a lease is cancelled, the events of default will occur as described in the lease and/or the section titled TERMINATION FOR DEFAULT. The CITY has no monetary obligations in event of termination or reduction of a term contract since such contracts represent estimated quantities and are not funded as a contract, but only to the extent of purchase orders issued.

Sec. 44. Quality Services Assurance Act. If this Contract exceeds \$160,000.00, CONTRACTOR certifies CONTRACTOR will pay all employees who will work on this Contract in the city limits of Kansas City, Missouri at least \$12.50 per hour in compliance with the CITY's Quality Services Assurance Act, Section 3-66, Code of Ordinances or CITY has granted CONTRACTOR an exemption.

Sec. 45. Anti-Discrimination Against Israel. If this Contract exceeds \$100,000.00 and CONTRACTOR employs at least ten employees, pursuant to Section 34.600, RSMo., by executing this Contract, CONTRACTOR certifies it is not currently engaged in and shall not, for the duration of this contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.

Sec. 46. Force Majeure. If the performance by either party of this Contract is interrupted, prevented, made commercially impractical, hindered, or delayed directly or indirectly by reason of acts of God, acts of requirements of government, war, flood, fire, explosion, accident, sabotage, pandemic, inability to obtain fuel, power or essential materials, breakdown of machinery or equipment or by reason of the acts of another contractor performing work under a contract with the CITY, or from any other cause beyond the reasonable control of the parties hereto, and such non-performance could not have been prevented by reasonable precautions,

then the parties hereto shall be excused from the performance of this Contract while and to the extent that it is prevented from so performing by one or more of such causes and the performance of this subcontract shall be continued as soon as practicable after such disability is removed. The parties hereto shall use all commercially reasonable efforts to remove such causes or conditions interfering with such performance and to resume such performance as promptly as possible, but in no event shall either party be held liable for consequential damage of any nature arising from delay caused by force majeure. The party whose performance is prevented, hindered, or delayed by an event described herein shall promptly notify the other party of the occurrence of such event and describe in reasonable detail the nature of the event

CONTRACTOR

I hereby certify that I have the authority to execute
this document on behalf of CONTRACTOR.

Contractor: _____

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM

Assistant City Attorney (Date)

KANSAS CITY, MISSOURI

By: _____

Title: _____

Date: _____

Attachment A: SCOPE OF WORK

Existing CTRL Retrofit:

- Automated Logic communication module
- Building setup on existing WebCTRL server – including all floor plan graphics
- Chilled water system to include:
 - York Chiller - enable/status
 - (2) CHW pumps – enable/status
 - Trigen/Veolia/Vicinity CHW enable
 - Chilled Water and Condenser Water supply return temps
 - (1) Fan coil unit control
- DSC – 14 & 15 Panel to include:
 - 32 Points listed on JCI control drawings sheet 05-09-PNT
 - Steam Valve control (assume reuse of existing valves)
 - Multiple door status &/OR enable
 - Temperature and pressure monitoring/alarm
 - Generator status
- (21) AHUs Control of similar type:
 - B; East and West: 1, 2, 4, 5, 6, 13, 16, 18, 22; 3 West; 25 East
- (5) AHUs Control of similar type – increased points:
 - 10W, 10E, 25W, 28W, 28E
- (1) AHU 3E: Includes control of existing VFD
- (3) Dual Duct AHUs: 8W, 8E, 29
- (14) Dual Duct box controls
- (1) Basement mechanical room AHU
- (1) Council AHU and Exhaust fan control
- (1) Forum AHU Control
- (1) Electric Pulse meter input (basement level transformer room)
- (1) Basement room EF control
- (2) DX unit controls (David Page's office & Emergency Prep Office)
- (4) Unit heater controls with new CO detectors – 2 detectors per UH
- (2) Exhaust Fans – Lower Level and Upper Level
- (1) Fountain Pump
- (8) Radiator Isolation Steam Valves

Assumptions:

- WebCTRL license is excluded – assuming this will reside on existing server for Waste Water Department
- Work to be done during normal hours
- Reuse major end devices such as: actuators & valves (all pneumatic actuation at AHUs to remain)
- Any valve replacements are excluded and would be done by Mechanical contractor
- Basic sensors will be replaced with new – temp sensors, freeze stats, duct pressure sensors, electronic to pneumatic transducers etc.

Exclusions:

- CSC believes the following additional scope exists, beyond the Johnson Control drawings:
 - o (360) Cooling only VAV boxes
 - o (20) Fin Tube heater – control valves required
 - o (28) Lobby Fin Tube heaters – control valves required
 - o (3) South Lobby Fin Tube stats
 - o This does not include mechanical installation of control valves.
- Individual Radiator controls – appears all are manually adjustable.

Attachment B: PRICING SCHEDULE

Prices are firm and fixed.

Existing CTRL Retrofit:

\$460,000

Exclusions:

- CSC believes the following additional scope exists, beyond the Johnson Control drawings:
 - o (360) Cooling only VAV boxes
 - o (20) Fin Tube heater – control valves required
 - o (28) Lobby Fin Tube heaters – control valves required
 - o (3) South Lobby Fin Tube stats
 - o To retrofit this we estimate the cost to be **\$695,000**
 - o This does not include mechanical installation of control valves

Individual Radiator controls – appears all are manually adjustable.

Standard Service Rates

SERVICE CATEGORY	Non Service Contract	With Service Contract
Technical Phone Support (Per ½ Hour)	\$95.00 ½ HR.	\$00.00
Automated Logic System Training	\$200.00 HR.	\$00.00
Engineering	\$205.00 HR.	\$155.00 HR.
Technical Service	\$195.00 HR.	\$145.00 HR.
After Hours Premium (In addition to rates above)	\$65.00 HR.	\$60.00 HR.
Holiday Hours Premium (In addition to rates above)	\$130.00 HR.	\$110.00 HR.
Trip Charge per Visit	\$100.00 Per Visit	\$70.00 Per Visit
Automated Logic Parts	20% off List Price	60% off List Price

Total 1 Year Contract Cost	\$ 15,012.00
Quarterly Billing Cost	\$ 3,753.00

ATTACHMENT C
CONTRACTOR SUPPORT PRIORITY, RESPONSE
AND RESOLUTION GUIDELINES

Performance Standards: If any of the Licensed Products fails to conform to the specifications set forth in the Licensed Products Documentation, supplier agrees to respond according to the following priority schedule:

CONTRACTOR will use reasonable efforts to respond to all support requests. Support requests are prioritized by the CITY at time of submission into one of three categories, and CONTRACTOR will make a reasonable effort to resolve the request within the specified time:

Service Level	Response	Resolution	Definition
Emergency	1 business hour	1 business day	Service is offline or unavailable, data has been corrupted or lost and must be restored from a backup, and/or a business critical feature/function is not available.
Urgent	2 business hours	2 business days	Important features of the Software are unavailable with no acceptable workaround; however, operations can continue in a restricted fashion.
Routine	8 business hours	5 business days	Inquiry regarding a routine technical issue; information requested on application capabilities, navigation, installation or configuration; bug affecting a small number of users. Acceptable workaround available.

ATTACHMENT D
CITY SUPPORT ESCALATION PROCEDURES

CONTRACTOR's day to day point of contact for service-related issues is:

Technical Phone Support (8 X 5) (816-600-5850)

Emergency Services (816-600-5850)

This service agreement provides for priority dispatching of emergency services to the customer's facility 24 hours a day, 7 days a week. As an agreement customer, calls for emergency service will be given CSC's highest priority. Additional charges based on the rate schedule within this agreement will apply.

CONTRACTOR's day to day point of contact for operational related issues is:

Name:

Phone:

Email:

CONTRACTOR's day to day point of contact for service/technical related issues is:

1st Line

Name:

Phone:

Ticket:

2nd Line

Name:

Phone:

Email:

The City's day to day point of contact for operational/service/technical related issues is:

1st Line

Brandon Iloilo, Energy Manager

Phone: 816-513-0782

Email: Brandon.Iloilo@kcmo.org

2nd Line

Thomas Santillan, Jr.

Phone: 816-876-0302

Email: thomas.santillan@kcmo.org

The City's day to day point of contact for contract related issues is:

Cory Burress, Procurement Manager

Phone: 816-513-0808

Email: Cory.Burress@kcmo.org

Attachment E: TECHNICAL SERVICES AND SUPPORT AGREEMENT

Automated Logic Software and Hardware Assurance

This service agreement provides for major software version upgrades, service packs, patches, hardware drivers and any other updates required to keep the Automated Logic System Software and Hardware current. This service includes the cost of the software and provides for CSC personnel to update the system as required.

CSC will back up the Automated Logic System files and databases to the customer's local web server as well as transfer a copy off site for storage at CSC's facility.

CSC will review the customer's alarm and system logs and provide a report with anything found to be abnormal or needing attention as well as a list of all updates and backups performed.

FREQUENCY: Annual WebCTRL upgrade and cumulative updates as they are released from Automated Logic

Quarterly Visits by CSC Technician.

Technical Phone Support (8 X 5) (816-600-5850)

This service agreement provides for unlimited technical phone support Monday through Friday between the hours of 8:00 AM and 5:00 PM. The customer will be connected with one of CSC's full time technical support engineers who will help with troubleshooting problems, assist with any configuration or setup changes and answer any questions about the building automation system. When the issues cannot be resolved remotely, a technical support engineer will arrange for the appropriate service technician to be dispatched for final resolution.

Technical phone support is available 24 hours a day, 7 days a week. Calls received after 5:00 PM and prior to 8:00 AM will be directed to the on call technical support engineer. Additional charges based on the rate schedule within this agreement will apply.

Emergency Services (816-600-5850)

This service agreement provides for priority dispatching of emergency services to the customer's facility 24 hours a day, 7 days a week. As an agreement customer, calls for emergency service will

be given CSC's highest priority. Additional charges based on the rate schedule within this agreement will apply.

Continuous Training Program

This service agreement provides unlimited access to training classes in CSC's local training center in Lee Summit, MO. This access provides the ability to learn as much as the customer wants to know about the building automation system.

A variety of sessions on applicable topics are offered throughout the year specifically for service agreement customers. The service agreement allows you and your staff access to all of these courses as many times as you would like to attend during the service agreement term.

CSC will email a list of training classes and utilize a ticketing system to schedule classes. As a contract customer, anyone within your organization you chose to add to the recipient list will be contacted as classes are scheduled. Call 816-600-5850, or email training@controlservice.com with any questions.

To ensure we provide world class training that you can apply to your facility, we limit our classes to a maximum of eight students per session. All of our training is offered on a first come first serve basis.

Preventative Maintenance

Our control technician will be on site at scheduled intervals performing preventative and assistive services. We recommend you keep a log book containing any issues or questions that we can review at the beginning of each visit so they can be addressed while onsite. Alarms and system logs within WebCTRL will be reviewed for abnormalities and be prioritized for diagnosis. Control strategies will be reviewed for efficiency and alarm monitoring and paging will be adjusted based on your feedback. We will assist and train you on system configuration for control parameters, alarms, custom trends, and reports. A full report noting all of our activities and recommended items for follow-up will be provided at the conclusion of each visit.

FREQUENCY: Quarterly in conjunction with Software and Hardware Assurance (Four (4) Eight (8) Hour visits

