

A G R E E M E N T

THIS AGREEMENT dated the _____ day of _____, 2023, is by and between the **CITY OF STAMFORD** (hereinafter the “City”), a municipal corporation organized and existing pursuant to the laws of the State of Connecticut with a principal place of business located at 888 Washington Boulevard, Stamford, Connecticut, and acting herein by Caroline Simmons, its duly authorized Mayor, and **MCCAN SYSTEMS LLC** (hereinafter the “Contractor”), a foreign (NJ) limited liability company with a principal place of business located at 290 Fernwood Ave, Edison, New Jersey, a local place of business located at 68 South Turnpike Road, Wallingford, Connecticut, and acting herein by Thomas W. Treichel, its duly authorized Manager.

W I T N E S S E T H

WHEREAS, The City issued Request for Proposals No. 2023.0109 on June 22, 2023, for Design Build Audio Visual & Voting System Upgrade for the BOR Chambers (hereinafter the “City’s RFP No. 2023.0109”);

WHEREAS, The Contractor submitted a proposal in response to the City’s RFP No. 2023.0109 on July 20, 2023 (hereinafter the “Contractor’s Proposal”); and

WHEREAS, The City has accepted the Contractor’s Proposal pursuant to the terms hereinafter set forth;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. INCORPORATION OF RECITALS. The above terms and conditions are contractual in nature, not merely recitals and are hereby incorporated into this Agreement;

2. CONTRACT DOCUMENTS AND SCOPE OF SERVICES. The Contract Documents consist of this Agreement and the following Exhibits that, combined, define the duties, functions, obligations, responsibilities, and tasks of the Scope of Services:

Exhibit A – The City’s RFP No. 2023.0109;

Exhibit B – The Contractor’s Proposal;

Exhibit B1 – The Contractor’s Revised Proposal dated September 18, 2023;

Exhibit B – The Contractor’s Service Level Agreement;

Exhibit C – Stamford Engineering Bureau’s General Conditions; and

Exhibit D - Statement of Payments made by Contractor to Subcontractors;

all attached hereto and hereby made a part hereof as if fully set forth herein;

2. COMPENSATION. The Contractor shall be compensated for the Scope of Services as follows:

The Audio Visual Design, Equipment and Work – Two Hundred Seventy Five Thousand Four Dollars (\$275,004.00) as set forth in greater detail the Master Recapitulation Sheet included in the Contractors Revised Proposal dated September 18, 2023; and

The Warranty, Maintenance and Support Program – Sixty Nine Thousand Three Hundred Seventy Seven Dollars (\$69,377.00) for three (3) years as set forth in greater detail in The Contractor’s Service Level Agreement. Fees for any subsequent years shall not increase by greater than five percent (5%) in any given year;

4. COMMENCEMENT AND COMPLETION OF WORK. The Contractor shall commence the audio visual design, equipment and work portion of the Scope of Services upon the execution of this Agreement by both parties (the Commencement Date) and shall complete said services as follows:

Within two weeks of the Commencement Date – (a) Removal of two (2) existing equipment racks for use with new system and (b) new rack fabrication; and

Within sixty (6) day of the Commencement Date – (a) on site de-installation of existing system & installation of new system and (b) on site commission & training with Televic;

5. SERVICE LEVEL AGREEMENT. The Term of the Service Level Agreement shall commence when upon the City’s acceptance of the audio visual work that is the subject of this Agreement and shall terminate three (3) years thereafter. The Services Level Agreement shall automatically renew for year every year thereafter until terminated by either the City or the Contractor.

6. CONTRACTOR’S REPRESENTATIVE AND KEY PERSONNEL. The following representative of the Contractor shall be authorized to act on behalf of the Contractor with respect to the Scope of Services and shall have full authority to accept instructions, make decisions, communicate for and act on behalf of the Contractor at all times:

Matt Rose, Inside Sales.

In addition to the Contractor’s Representative, the following Key Personnel of the Contractor shall be assigned to, participate in and be available to the City for the Scope of Services:

Not applicable.

Neither the Contractor's Representative nor the Key Personnel shall be replaced by the Contractor without fifteen (15) days prior written consent of the City:

7. STANDARD OF CARE AND REPRESENTATIONS. In performing the Scope of Services, the Contractor will use that degree of care and skill ordinarily exercised under similar circumstances by members of its profession practicing in the same or similar locality (the "Standard of Care"). The Contractor represents that it is qualified in relation to the Scope of Services and further represents that it has the requisite skill, expertise, and knowledge necessary to perform the Scope of Services, including any supplementary services, in accordance with the Standard of Care. The Contractor hereby acknowledges that the City has relied upon said representations in entering into this Agreement;

8. CAPACITY/INDEPENDENT CONTRACTOR. The Contractor is acting as an independent contractor and is not an employee of the City. This Agreement is for services only and does not create a partnership or joint venture between the Contractor and the City. The City shall not be required to pay, or make any contribution to, any social security, local, state or federal tax, unemployment compensation, workers' compensation, insurance premium, profit-sharing, pension or any other employee benefit for the Contractor during the Term of this Agreement. The Contractor shall be responsible for paying, and complying with reporting requirements for, all state, local, and federal taxes related to payments made to the Contractor under this Agreement;

9. INDEMNIFICATION. The Contractor shall indemnify, hold harmless and, at the City's option, defend the City, its officers, agents and employees, from third party claims for loss, cost, damage, liability, and/or injury to or death of a person, including the agents and employees of the Contractor, or loss of or damage to property, resulting directly or indirectly from the Contractor's negligent performance pursuant to this Agreement, or by any negligent omission to perform some duty imposed by law or this Agreement upon the Contractor, its officers, agents and employees. The foregoing indemnity shall include reasonable attorneys' fees and costs of suit, if applicable, shall not be limited by reason of any insurance coverage required pursuant to this Agreement, and shall survive the termination of this Agreement;

10. INSURANCE. The Contractor shall procure, at its sole expense, and maintain for the entire term of this Agreement, including any extensions, insurance coverages as set forth in the City of Stamford Insurance Requirements included in the City's Request for Proposals No. 2023.0109. The Contractor shall be solely responsible for ensuring that its agents, including contractors and subcontractors, maintain insurance coverage at levels no less than those required of the Contractor pursuant to this section;

11. LIMITATION OF LIABILITY. The Contractor's sole remedy for City delays shall be an extension of time to complete the Scope of Services and the Contractor hereby waives any claims for consequential damages, including, but not limited to, principal office expense, loss of financing, reputation and/or lost profit;

12. ASSIGNMENT. The Contractor shall not assign or transfer any portion of the Scope of Services set forth herein without the prior written approval of the City;

13. SUBCONTRACTING/SUBCONSULTING. Aside from those subconsultants or subcontractors disclosed in the Contractor's Proposal, the Contractor is prohibited from further subconsulting or subcontracting the Scope of Services or any part of it unless the City first approves such subconsulting or subcontracting in writing and approves, in writing, of the specific subconsultant(s) or subcontractor(s) the Contractor proposes to be used. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void. Should the City approve of a proposed subconsultant or subcontractor, the Contractor shall comply with the City of Stamford Code of Ordinances § 103.4;

14. REVIEW OF WORK. The Contractor shall permit the City, its agents and/or employees to review, at any time, all work performed pursuant to the terms of this Agreement at any stage of the work;

15. BOOKS AND RECORDS. The Contractor shall maintain or cause to be maintained all records, books, or other documents relative to charges, costs, expenses, fees, alleged breaches of this Agreement, settlement of claims, or any other matter pertaining to the Contractor's demand for compensation by the City for a period of not less than three (3) years from the date of the final payment for work performed pursuant to this Agreement;

16. RESPONSIBLE EMPLOYER OBLIGATIONS. Pursuant to Sec. 103-10 of the Stamford Code of Ordinances, the Contractor shall comply with, and shall be responsible for the compliance of its subcontractors with:

1. the requirements of the 1996 Stamford Construction Jobs Agreement that contractors make every effort to employ qualified residents of Stamford at a targeted goal of twenty nine percent (29%) of the project's workforce, when available, which shall include a goal of that targeted percentage of one third (1/3) minorities and/or women;
2. all state and federal laws and regulations regarding prevailing wages;
3. all applicable state and federal laws and regulations, and the provisions of the Stamford Jobs Construction Agreement, regarding maintenance and participation in apprenticeship training programs;
4. all applicable state laws concerning employee health insurance;
5. All state and federal laws concerning classification of employees as employees rather than independent contractors; workers' compensation; unemployment taxes; and social security and income tax withholdings.

Any Contractor who fails to comply with subsections 1 through 5 of this Paragraph shall be subject to one or more of the following sanctions:

1. Cessation of work on the project until compliance is obtained;
2. Permanent removal from any further work on the project;
3. Withholding of payment due under any contract or subcontract;
4. Liquidated damages to the City in the amount of five percent (5%) of the dollar value of the contract; and/or
5. Exclusion from the performance of future work on behalf of the City of Stamford;

17. INSPECTION OF CONTRACT WORK. Pursuant to Section 103-8 of the City's Code of Ordinances, as a condition precedent to the release of any Performance Bond hereunder, the Contractor shall inspect the work performed under this Agreement within thirty (30) days of the completion thereof. The City will additionally perform its own independent inspection;

18. ACCEPTANCE OR REJECTION OF CONTRACT WORK. Pursuant to Section 103-9 of the City' Code or Ordinances, as a condition precedent to the release of any performance bond required hereunder, immediately following the inspection of contract work conducted pursuant to Paragraph 16 hereof, the Contractor shall submit to the City an affidavit setting forth either acceptance of the work performed under this Agreement or an itemized list of work to be corrected, repaired, or replaced;

19. PROOF OF PAYMENTS TO SUBCONTRACTORS. Upon receipt of any payment from the City, the Contractor shall pay each subcontractor and material supplier in proportion to the percentage of work completed by each subcontractor and material supplier. If for any reason, the Contractor receives less than the full payment due from the City, the Contractor shall be obligated to disburse on a pro rata basis those funds received, such that the Contractor, subcontractors and material suppliers each receive a prorated portion based upon the amount of the payment.

Within thirty (30) calendar days of the receipt of any payment from the City, the Contractor shall be required to submit a Statement of Payments Made by Contractor to Subcontractors to the Project Manager, Clerk of the Works, Staff Engineer, or other City employee or official directly supervising the work of the Contractor. Failure to timely submit such form to the City shall entitle the City to withhold future payments to the Contractor until such time as the form has been submitted to the City;

20. CHANGE ORDERS AND CONTRACT EXTRAS. Pursuant to the City of Stamford Code of Ordinances, Section 23-18.4 C., all change orders and contract extras

regarding this Agreement shall be governed by the City of Stamford Charter and/or Code of Ordinances. The City shall not be liable for payment of any additional costs, except as otherwise expressly set forth in this Agreement, unless the provisions of the City of Stamford Charter and/or Code of Ordinances are fully complied with. The City of Stamford Charter and Code of Ordinances can be found at www.municode.com;

21. COMPLIANCE WITH CITY OF STAMFORD CODE PROVISIONS. The Contractor shall fully comply, to the extent applicable, with the requirements of the City of Stamford Code of Ordinances, Sections 103-1 through 103-10, regarding contractors in general. The provisions of the City of Stamford Code of Ordinances can be found at www.municode.com;

22. COMPLIANCE WITH LAWS. The Contractor shall be responsible for compliance with all applicable federal, state and local laws, rules, regulations, codes, orders, ordinances, charters, statutes, policies and procedures related to the Scope of Services.

23. CONFIDENTIALITY. During and after the term of this Agreement, the Contractor, including, without limitation, its employees, agents, servants and representatives, shall not directly or indirectly disclose or make available to any person, firm, corporation, association or other entity for any reason or purpose whatsoever, or use or cause to be used in any manner adverse to the interest of the City, any financial, administrative or other confidential business information;

24. GIFTS. During the Term of this Agreement, including any extensions, the Contractor shall refrain from making gifts of money, goods, real or personal property or services to any appointed or elected official or employee of the City of Stamford or the Stamford Board of Education or any appointed or elected official or employee of their Boards, Commissions, Departments, Agencies or Authorities. All references to the Contractor shall include its members, officers, directors, employees, and owners of more than 5% equity in the Contractor;

25. CODE OF ETHICS. The Contractor is prohibited from using its status as a contractor to the City to derive any interest(s) or benefit(s) from other individuals or organizations and the Contractor shall comply with the prohibitions set forth in the Stamford Municipal Code of Ethics as codified in Chapter 19 of the City of Stamford Code of Ordinances;

26. MORALS CLAUSE. Neither the Contractor, the Contractor's Representatives nor the Contractor's Key Personnel shall commit any act or do anything which might reasonably be considered: (i) to be immoral, deceptive, scandalous or obscene; or (ii) to injure, tarnish, damage or otherwise negatively affect the community and/or the reputation and goodwill associated with the City. If either the Contractor, the Contractor's Representative or the Contractor's Key Personnel is accused of any act involving moral or ethical issues, dishonestly, theft or misappropriation, under any law, or any act which casts an unfavorable light upon its association with the community and/or is accused of performing or committing any act which could adversely impact the Contractor's events,

programs, services, or reputation, the City shall have the right to terminate this Agreement upon fifteen (15) days written notice specifying the reason, within which period the Contractor may cure such offense. The determination of whether and to what extent the offense is cured shall be made by the City at its sole discretion;

27. TERMINATION.

- A. **TERMINATION FOR CAUSE, SANCTIONS AND PENALTIES.** If, through any cause, the Contractor shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if the Contractor shall violate any laws or any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement for cause by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished reports, documents, data, studies, photographs, or other material prepared by the Contractor pursuant to its performance under this Agreement shall, at the option of the City, become the City's property. The Contractor shall be entitled to receive just and equitable compensation for any satisfactory services completed up to the effective date of termination. The Contractor shall not be responsible for any claims resulting from the City's use of the documents on another project or changes made to the documents without the Contractor's express written permission;

The term "cause" includes, without limitation the following:

- 1) If the Contractor furnished any statement, representation, warranty or certification in connection with this Agreement, which is materially false, deceptive, incorrect, or incomplete;
- 2) If the Contractor fails to perform to the City's satisfaction any material requirement of this Agreement or is in violation of any specific provision thereof or any State or Federal law or requirement; or
- 3) If the City reasonably determines that satisfactory performance of this Agreement is substantially endangered or can reasonably anticipate such an occurrence or default.

Should the City terminate this Agreement for cause, the Contractor shall not be relieved of liability to the City for any damages sustained by the City by virtue of any breach of this Agreement by the Contractor and the City may withhold any payment to the Contractor for the purposes of setoff until such time as the exact amount of damages due the City from the Contractor is determined. Further, if applicable, the City shall have the right to:

- 1) Complete the Scope of Services, or any part thereof, either by itself or by other contractors, at the expense of the Contractor;

- 2) Purchase the products or services that are the subject of this Agreement elsewhere and hold the Contractor responsible for any increase in cost;
- 3) Pursue any equitable remedy, including, but not limited to, specific performance or injunction; and/or
- 4) Disqualify the Contractor from bidding on, submitting proposals for, or being awarded any City contract for a period not to exceed two (2) years from the date of such termination;

B. **TERMINATION FOR CONVENIENCE.** The City may terminate this Agreement at any time the City determines that the purposes of the distribution of monies pursuant to this Agreement would no longer be served by the services provided. The City shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials as described Subsection A shall, at the option of the City, become property of the City. If this Agreement is terminated by the City as provided herein, the Contractor shall be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed to the effective date of termination bear to the total services of the Contractor pursuant to the terms of this Agreement, less payments of compensation previously made, and subject to the City's right of set off for any damages pursuant to the terms of this Agreement;

28. CLAIMS FOR DAMAGES. Should either party to this Agreement suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage;

29. DISPUTE RESOLUTION.

A. **EXECUTIVE MEETING.** The parties shall endeavor to resolve all claims, disputes, or other matters in controversy arising out of or related to this Agreement (“Claims”) through a meeting of the chief executives of each party, or their respective designees (“Executive Meeting”);

A request for an Executive Meeting shall be made by a party in writing and delivered to the other party. The request may be made concurrently with the filing of a non-binding mediation as set forth herein. The Executive Meeting shall be a condition precedent to mediation unless 30 days have passed after the Executive Meeting has been requested with no meeting having been held; and

The Executive Meeting shall be held in the place where the Project is located, unless another location is mutually agreed upon;

- B. **MEDIATION.** Any Claim subject to, but not resolved by, an Executive Meeting shall be subject to mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation;

The request may be made concurrently with the filing of arbitration but, in such event, mediation shall proceed in advance of arbitration, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings; and

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof;

- C. **ARBITRATION.** Any Claim subject to, but not resolved by, mediation shall, in the sole discretion of the City, be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration;

A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim;

The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law; and

Any judgment will be entered or court action will be brought in a court of competent jurisdiction within the State of Connecticut;

D. PERFORMANCE DURING DISPUTE. Unless otherwise directed by the City, the Contractor shall continue performance under this Agreement while matters in dispute are being resolved;

30. SETOFF OF PROPERTY TAXES OWED TO THE CITY OF STAMFORD.

Pursuant to the City of Stamford Code of Ordinances Section 23-18.4.1 and Section 12-146b of the Connecticut General Statutes, as amended, the City shall have the right to set-off or withhold any payment, or portion thereof, due to the Contractor pursuant to this Agreement if any taxes levied by the City of Stamford against any property, both real and personal, owned by the Contractor are delinquent and have been so delinquent for a period of not less than one year. Any amount withheld from the Contractor pursuant to this section shall be applied to the Contractor's delinquent taxes, provided, however, that no such amount withheld shall exceed the amount of tax, plus penalty, lien fees and interest, outstanding at the time of withholding;

31. NON-APPROPRIATION. The City is a municipal corporation and, therefore, the City's obligation to make payments under this Agreement is contingent upon the appropriation by the City of Stamford Board of Representatives of funds sufficient for such purposes for each budget year in which this Agreement is in effect;

32. GOVERNING LAWS AND VENUE. The parties deem this Agreement to have been made in the City of Stamford, State of Connecticut and that it is fair and reasonable for the validity and construction of this Agreement to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Fairfield, at Stamford, only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court. The parties hereby waive any objection which they may now have or will have to the laying of venue of any claims in any forum and further irrevocably submit to such jurisdiction in any suit, action or proceeding;

33. INTERPRETATION. The City, in its sole discretion, shall determine the terms and/or document(s) which shall prevail and take precedence in the event of any ambiguity between the terms of this Agreement and any of the incorporated Exhibits;

34. NON-WAIVER. The failure of either party to insist upon strict performance of any of the terms, conditions or covenants herein shall not be deemed a waiver of any rights or remedies that party may have; and shall not be deemed a waiver of any subsequent breach or default of the terms, conditions or covenants herein contained. The parties reserve the right to require strict compliance therewith at any time, with or without notice, except as may be otherwise required herein; and

35. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. The counterparts shall together constitute but one Agreement. Any signature on a copy of this Agreement or any

document necessary or convenient thereto sent by facsimile, PDF or other electronic format shall be binding upon such transmission and the facsimile, PDF or other electronic format copy shall be deemed an original for the purposes of this Agreement. Paper copies or "printouts," if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written. Signed, sealed and delivered in the presence of:

CITY OF STAMFORD

Print:
Witness

By: _____
Caroline Simmons, Mayor
Date: _____

Print:
Witness

MCCANN SYSTEMS LLC

Print:
Witness

By: _____
Thomas W. Treichel, Manager
Date: _____

Print:
Witness

Approved as to Form:

Approved as to Insurance:

Chris Dellaselva
Asst. Corp. Counsel

David Villalva
Risk Manager

Date: _____

Date: _____