



**CITY OF WENTZVILLE
WENTZVILLE, MO 63385**

INVITATION FOR BID COVER PAGE

IFB #: 16-085
TITLE: Tahoe Equipment and Install
Bid Issued: April 22, 2016

CONTACT: Jill Schmitz
PHONE NO.: (636) 639-2188
EMAIL: jill.schmitz@wentzvillemo.org

RETURN BID NO LATER THAN: May 4, 2016, 10:00 AM prevailing Central time

MAILING INSTRUCTIONS: The Bidder is to print or type **IFB Number, Return Due Date, and Title** on the lower left hand corner of the envelope or package. Delivered sealed bids must be in the Procurement Department by return bid date and time.

RETURN BID TO:
CITY OF WENTZVILLE
IFB #16-085
310 W. PEARCE BLVD
WENTZVILLE, MO 63385

This document constitutes a request for sealed bids from qualified companies, individuals, and/or organizations to furnish the product and services as described herein. The bidder hereby declares understanding, agreement and certification of compliance to provide the product and services, at the prices quoted, in accordance with all requirements and specifications contained herein and the City of Wentzville Terms and Conditions. The bidder further agrees that the language of this IFB shall govern in the event of a conflict with his/her bid. The bidder further agrees upon receipt of an authorized purchase order from the City of Wentzville is issued by an authorized official of the City of Wentzville, a binding contract shall exist between the bidder and the City of Wentzville.

BIDDER SIGNATURE REQUIRED

AUTHORIZED SIGNATURE	DATE
PRINTED NAME	TITLE
COMPANY NAME	(Individual Or Partnership Or Corporation) STATE OF:
MAILING ADDRESS	PHONE NO.
CITY, STATE, ZIP	FAX NO.
FEDERAL EMPLOYER ID NO.	Missouri Charter Number (if licensed in MO)
EMAIL ADDRESS	

PART ONE - STANDARD INSTRUCTIONS TO BIDDERS

1.1 GENERAL INFORMATION

The City of Wentzville is seeking to establish a contract for the purchase of new police vehicle equipment and installation in new vehicles, uninstal of certain equipment from existing vehicles and the install of that existing equipment in new vehicles.

Contract Period: Date of award through completion.

1.2 CHECKLIST FOR SUBMITTING A BID:

This checklist is provided for the Bidder's information only and is not part of the Specifications and Contract Documents.

Bid package submittal shall consist of 1 original and 1 copy of the following:

- ✓ BID COVER PAGE, Page #1
- ✓ Bid Pricing Page completely filled out, properly executed by Bidder including manual signature
- ✓ Non-Collusive Affidavit filled out on the form provided
- ✓ Any addenda issued to this bid

Bid Quotation and all required attachments enclosed in a sealed envelope and

- ✓ Marked with Bid Number and Bid Title
- ✓ Marked with name of Bidder
- ✓ Due Date of Bid

1.3 FAX / E-MAIL:

The City of Wentzville for this IFB will not accept bid submissions by fax or email.

1.4 All bid pricing must be submitted on the City's IFB Pricing Pages.

1.5 QUESTIONS AND UPDATES:

A. Bidders are encouraged to submit written questions through the Procurement Department's contact person shown on the Invitation for Bid Cover Page. In order to ensure all potential respondents receive the same information, the City will post its response on the City's website:

http://www.wentzvillemo.org/departments/procurement/current_bidding_opportunities.php.

Bidders are responsible for checking the City's website for the issuance of any addendums. The Bidding Opportunities website shall be the official site for information as related to this IFB. Any documentation posted elsewhere will not be applicable should a bidder use the information as related to a contract protest. Please visit this site periodically to check for any additional information.

B. Any information provided to a bidder outside of the procedural guidelines of this IFB shall be considered not to be valid and will not be considered during the evaluation process.

C. To ensure fair consideration for all bidders, the City prohibits communication to or with any City department(s), board member(s), or employee(s) during the submission process, except as provided above. Additionally, the City prohibits communications initiated by a bidder to the City official(s) or employee(s) evaluating or considering the bids prior to the time an award decision is made. Any communication between Bidder and the City will be initiated by the appropriate City official(s) or employee(s)

in order to obtain information or clarification needed to develop a proper, accurate evaluation of the bid. Such communications initiated by a bidder may be grounds for disqualifying the offending bidder from consideration for award of the bid and/or any future bid(s).

- D. The City may add, delete, or amend services as it may deem advisable. Any and all addendums or amendments as related to this IFB must be processed and approved through the City's Procurement Department to be applicable to this IFB.

1.6 PREPARATION OF BIDS:

- A. Bidders are expected to examine the Specifications, delivery schedule, requirements and all instructions of the Invitation for Bid. Failure to do so will be at Bidder's risk. In case of a mistake in extension, the unit price(s) will govern.
- B. All supplies and equipment offered in a bid must be new and of current production unless the Invitation for Bid clearly specifies that used or reconditioned supplies or equipment may be offered.

1.7 PRICE:

- A. All prices shall be as indicated on the Pricing Page. The City shall not pay nor be liable for any other additional costs including but not limited to fuel, fuel surcharges, taxes, shipping and handling charges, personnel, time, travel, vehicles, mileage, insurance, interest, penalties, termination payments, attorney fees, liquidation damages, etc.
- B. Unless otherwise indicated, prices quoted shall be firm for acceptance for ninety (90) calendar days from bid opening and for the specified contract period.

1.8 DEVIATION OF SPECIFICATION:

Any bidder deviating from the specifications must provide supportive documentation explaining such deviation. The supportive documentation is required with the bid submission.

1.9 OPEN COMPETITION:

Any manufacturer's name, trade names, brand names, information and/or catalog numbers listed in a specification and/or requirement are for informational purposes only and are not intended to limit competition. The bidder may offer any brand of product that meets or exceed the specifications. Determination of equivalency shall rest solely with the City. Bids that do not comply with the requirements and specifications, are subject to rejection without further consideration.

1.10 ESTIMATED QUANTITY:

The quantity specified in this IFB is an estimate only. If the City requires more or less material than stated, the Seller shall furnish and deliver the City's requirements at the contracted unit price. The Seller shall not be entitled to damages and/or additional compensation by reason of quantity reductions.

1.11 MODIFICATION OR WITHDRAWALS OF BIDS:

Bids may be modified or withdrawn by written notice received prior to the official closing date and time specified. A bid may also be withdrawn or modified in person by the Bidder or his authorized representative provided proper identification is presented before the official closing date and time. Verbal phone requests to withdraw or modify a bid will

not be considered. After the official closing date and time, no bid may be modified or withdrawn.

1.12 INCURRED EXPENSES:

The City is not responsible for any expenses which bidders may incur in preparing and submitting bids called for in this Invitation for Bid.

1.13 BID OPENING:

The bid opening shall be public on the date and at the time specified on the Invitation for Bid document.

1.14 TABULATIONS:

The bid tabulation will be posted on the City's website:

http://www.wentzvillemo.org/departments/procurement/bid_tabulations.php

1.15 All bids become the property of the City. If any proprietary information is contained in the bid, it should be clearly identified. Marking the entire bid as proprietary will be neither accepted nor honored. If a request is made to view a Bidder's bid submission, the City will comply according to Missouri Sunshine Law.

1.16 PAYMENT:

Bidder shall be paid the amount quoted on the Pricing Page. The Bidder shall submit all invoices complete with necessary support documentation to City and City shall make payment within 30 days of receipt of an invoice after satisfactory performance of and receipt of the products as shown on the Pricing Page.

1.17 COMPLIANCE WITH TERMS AND CONDITIONS:

The Bidder is cautioned when submitting pre-printed terms and conditions regarding proprietary information, copyright, usage restrictions, license agreements, etc., to make sure documents do not contain other terms and conditions which conflict with those of the IFB and its contractual requirements.

1.18 BUY AMERICAN:

Bidders are encouraged to purchase American-made equipment and products.

1.19 BUY STATE OF MISSOURI PREFERENCE:

Bidders are encouraged to purchase commodities and tangible property manufactured, produced, or grown within the local area and in State of Missouri and from all firms, corporations, or individuals with licensed businesses in the State of Missouri. This guideline pertains to all commodities and tangible property when quality is equal or better and the delivered price is the same or less, or when competing bids, in their entirety, is comparable.

1.20 CITY SEAL, FLAG AND LOGO:

In accordance with City of Wentzville Ordinance No. 2633, the City of Wentzville logo is a registered trademark. The City logo is not to be used in bid submissions or advertisements. The Bidder agrees that it shall not use in any form or medium the name of the City for any advertising unless it receives the prior written consent of the Board of Aldermen of the City.

1.21 The City of Wentzville hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this solicitation, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

PART TWO - SPECIFICATIONS

2.1 GENERAL INFORMATION

- A. **Schedule:** The following schedule of events is anticipated by the City. The City may, at its discretion, revise the schedule of events at any time as may be in the best interests of the City.

Publish the Invitation for Bid	April 22, 2016
Deadline for Questions from Bidders	April 28, 2016
City's Response to Questions	April 29, 2016
Bid due Date	May 4, 2016 10:00 AM

- B. **Delivery:** The Bidder shall deliver in accordance with the contracted delivery time specified in the bid or City-issued Purchase Order. Noncompliance with this specification may be viewed as noncompliance with the bid specifications. Failure of the Bidder to complete delivery as stated in the bid; the City reserves the right to cancel orders, or any part thereof, without obligation, if delivery is not completed within the time frame(s) specified in the bid. If the Bidder fails to complete authorized deliveries as specified; the City reserves the right to obtain services by any means the City deems necessary to fulfill the City's requirements. The Bidder shall be required to reimburse the City the cost differential of the City's payment for services and that of the contracted price.

Deliver to the following address **F.O.B. Destination:**
City of Wentzville Law Enforcement Center
1019 Schroeder Creek Blvd.
Wentzville, MO 63385

- C. **Inspection and Acceptance:** No material received by the City pursuant to this contract shall be deemed accepted until the City has had reasonable opportunity to inspect said material. All material which is discovered to be defective, or which does not conform to any warranty of the Bidder herein, upon inspection, or at any later time if the defects contained in the material were not reasonably ascertainable upon the initial inspection, may be returned at the Bidder's expense for full credit or replacement. Such right to return offer to the City arising from the City's receipt of defective goods shall not exclude any other legal, equitable or contractual remedies the City may have therefore.
- D. **Warranty:** Bidder expressly warrants that all articles, materials and work covered by this contract will conform to each and every specification, drawing, sample or other description which is furnished to or is adopted by the City and that they will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from defect. Such warranty shall not be deemed waived either by reason of the City's acceptance of said material or goods or by payment for them.
- E. **Time of Completion:** Contractor shall complete work under this Agreement within 45 days of the City issuing written Notice to proceed and shall fully complete all items of the Work within the time set forth in the Contract Documents. The parties understand that time is of the essence and that the rate of progress and prompt

completion are essential conditions, and that in the event the Work is not fully completed within the period provided herein, the Contractor shall pay to the City the sums provided in the Contract Documents.

- E. **Liquidated Damages:** The Contractor agrees and acknowledges that time is of the essence of this Agreement and that delay in the project becoming Available for Use, in Project Closeout, and in Final Acceptance will inconvenience the public and increase administrative costs of the City, the costs of which the Contractor and the City are incapable of ascertaining at this time. Should the Contractor, or in the case of Contractor's default, the surety, fail to complete the Work and/or receive Final Acceptance within the times stipulated in this Agreement, or within such extensions of time as may be allowed by the City in the manner set forth in the Contract Documents, the Contractor (or surety, as applicable) shall pay to the City as liquidated damages, and not as a penalty, the sum of **One Hundred Dollars (\$100.00)** for each calendar day that the Work and Final Closeout documents including Maintenance Bond and Final Lien waivers from all subcontractors, remain incomplete after the time allowed for the completion, including approved extensions. In the sole discretion of the City, the amount of the liquidated damages may be deducted from any money due the Contractor under this Agreement. Permitting the Contractor to finish the Work or any part thereof after the expiration of the time for completion or any approved extension, shall in no way operate as a waiver of the City of any of rights under this Agreement.

2.2 SPECIFICATIONS

The contractor shall be required to perform the services as described in accordance with the vehicle manufacturer specifications. If the manufacturer specifications differ from the specifications shown in the Invitation for Bid, the bidder shall be responsible for showing those differences within the bidder’s response.

Alternate brands/models will be considered for items unless indicated as “No Substitute”. The City shall determine if items bid are equal; the City’s determination is final. If bidding other than brand/model specified, bidder must submit product specification sheet with bid.

The specifications below describe the Police Equipment.

Bidders are to indicate “yes” or “no” if the equipment they are offering meets the specification. Return this page with your bid.

EQUIPMENT for 2016 Chevy Tahoe Police Vehicle:

DESCRIPTION OF NEW PRODUCT

Supervisor Vehicle

- Code 3 Supervisor Light Bar or Equal YES: ____ NO: ____
- Code 3 Citadel Light Bar or Equal YES: ____ NO: ____
- Sound Off Signal Headlight Flasher ETHTAH-07+ or Equal YES: ____ NO: ____
- Code 3 3100 Siren Speaker & Bracket No Substitute YES: ____ NO: ____
- Jotto Console Includes 425-6268 console, 425-3704 Dual Cup, 425-6260 Arm Rest or Equal YES: ____ NO: ____
- Able 2 12 volt 3 Hole Accessory Outlet or Equal YES: ____ NO: ____
- XT4 in Fog Light Location Flasher or Equal YES: ____ NO: ____
- Bracket for installing Fog Light FOGBKT-TH-15 or Equal YES: ____ NO: ____
- Code 3 Hide-a-blast HB6PAK-R & HB6PAK-B or Equal YES: ____ NO: ____
- Code 3 License Plate Bracket and Lights XT3LPBKT, TRX6B, TRX6B or Equal YES: ____ NO: ____

Fully Marked Vehicle

- Code 3 Light Bar Lens Upgrade KIT2-21TR No Substitutes YES: ____ NO: ____
- Code 3 Light Bar Brackets to fit Tahoe No Substitutes YES: ____ NO: ____
- Code 3 Citadel Light Bar or Equal YES: ____ NO: ____
- Sound Off Headlight Flasher ETHTAH-07+ or Equal YES: ____ NO: ____
- Code 3 3100 Siren Speaker & Bracket YES: ____ NO: ____
- Jotto Console Includes 425-6268 console, 425-3704 Dual Cup, 425-6260 Arm Rest or Equal YES: ____ NO: ____
- Able 2 12 volt 3 Hole Accessory Outlet or Equal YES: ____ NO: ____
- Jotto Prisoner containment System or Equal YES: ____ NO: ____
- Lind DC Power Supply (No Substitutes) YES: ____ NO: ____
- Priority Start Battery Saver or Equal YES: ____ NO: ____
- Code 3 HB915 or Equal YES: ____ NO: ____

PART THREE - PRICING PAGE

The Bidder shall provide the following bid prices for providing services in accordance with the provisions and requirements stated herein. All costs (shipping/handling, personnel, time, travel, fuel, fuel surcharge, vehicles, mileage, reporting, or other costs) associated with providing the services listed below shall be considered incidental and are to be included in the bid price. **Deliveries shall be FOB Destination.**

SECTION 1 – NEW EQUIPMENT FOR ONE 2016 CHEVY TAHOE SUPERVISOR VEHICLE

Description	Quantity	Brand & Model Bid	Equipment Unit Price	Extended Price	Install Price
Code 3 Supervisor Light Bar	1		\$_____	\$_____	\$_____
Code 3 Citadel Light Bar	1		\$_____	\$_____	\$_____
Sound Off Headlight Flasher ETHTAH-07+	1		\$_____	\$_____	\$_____
Code 3 3100 Siren Speaker	1		\$_____	\$_____	\$_____
Jotto Console includes 425-6268 Console, 425-3704 Dual Cup, 425-6260 Arm Rest	1		\$_____	\$_____	\$_____
Able 2 12 volt 3 Hole Accessory Outlet	1		\$_____	\$_____	\$_____
XT4 in Fog Light location Flasher	2		\$_____	\$_____	\$_____
FOGBKT-TH-15 Bracket for installing Fog Light	2		\$_____	\$_____	\$_____
Code 3 Hide-a-Blast (HB6PAK-R & HB6PAK-B)	2		\$_____	\$_____	\$_____
Code 3 License Plate Bracket and Lights (XT3LPBKT, TRX6B, TRX6B)	1		\$_____	\$_____	\$_____
Subtotal				\$_____	\$_____
Section 1 Total - Equipment Extended Price and Install Price					\$_____

If bidding other than brand/model specified, bidder must submit product specification sheet with bid.

SECTION 2 – NEW EQUIPMENT FOR FOUR FULLY MARKED 2016 CHEVY TAHOE'S

Description	Quantity	Brand & Model Bid	Equipment Unit Price	Extended Price	Install Price
Code 3 Light Bar Lens upgrade KIT2-21TR	4		\$ _____	\$ _____	\$ _____
Light bar Brackets to fit Tahoe	4		\$ _____	\$ _____	\$ _____
Code 3 Citadel Light Bar	4		\$ _____	\$ _____	\$ _____
Sound Off Headlight Flasher ETHTAH-07+	4		\$ _____	\$ _____	\$ _____
Code 3 3100 Siren Speaker	4		\$ _____	\$ _____	\$ _____
Jotto Console includes 425-6268 Console, 425-3704 Dual Cup, 425-6260 Arm Rest	4		\$ _____	\$ _____	\$ _____
Able 2 12 volt 3 Hole Accessory Outlet	4		\$ _____	\$ _____	\$ _____
Jotto Prisoner Containment System	4		\$ _____	\$ _____	\$ _____
Lind DC Power Supply (No Substitutes)	4	No Substitutes	\$ _____	\$ _____	\$ _____
Priority Start Battery Saver	4		\$ _____	\$ _____	\$ _____
Gamber Johnson Computer Base Plate for Tahoe	4		\$ _____	\$ _____	\$ _____
Code 3 HB915	16		\$ _____	\$ _____	\$ _____
Subtotal				\$ _____	\$ _____
Section 2 Total - Equipment and Install					\$ _____

If bidding other than brand/model specified, bidder must submit product specification sheet with bid.

SECTION 3 – REMOVE EQUIPMENT BELOW FROM EXISTING VEHICLES AND INSTALL ON NEW VEHICLES

Description	Quantity	Unit Price to remove from existing vehicle and install on new vehicle	Extended Price
Code 3 Master Com Siren	5	\$ _____	\$ _____
Jotto Dual Gun Rack	4	\$ _____	\$ _____
Gamber Johnson computer Mount	4	\$ _____	\$ _____
Code 3 Light Bar	4	\$ _____	\$ _____
Radio	5	\$ _____	\$ _____
Radar Units	4	\$ _____	\$ _____
ETS Antenna System	2	\$ _____	\$ _____
Section 3 Total - Remove and Install Equipment			\$ _____

If bidding other than brand/model specified, bidder must submit product specification sheet with bid.

Grand total for all equipment and install Section 1, 2 & 3 \$ _____

Bid prices valid until (show date): _____

Company Legal Name: _____

Address: _____

Signature: _____ Print Name: _____

Phone: _____ Fax: _____

Email: _____

State in which bidding company is incorporated: State of _____ and the

State Registration Number: _____

PART FOUR - BID EVALUATION AND AWARD

4.1 Method of Award:

The solicitation shall be awarded to the lowest, responsive, responsible bidder. The City reserves the right to reject any or all bids, or portions thereof, to waive technicalities or deficiencies in any or all the bids. The City of Wentzville reserves the right to cancel this IFB in part or in its entirety. This IFB does not commit the City of Wentzville to award a contract or to pay any costs to bidders in preparation of their bid.

4.2 Before providing the City with the item(s), Seller must receive a properly authorized Purchase Order.

4.3 Per City of Wentzville Procurement Policy of March 25, 2015, for the purchase of goods valued at or above \$25,000, where a responsive, responsible local proposer meets all specifications and submits a bid that is within 5% of the lowest, responsive, responsible proposer, the local proposer will be provided an opportunity to match the same price, terms and conditions of the lowest, responsive, responsible proposer, and if it does match such bid, then the award will go to the local proposer unless otherwise prohibited by law. A local proposer is defined as having a City Business license as required by Section 605.040 of the Wentzville Municipal Code.

NON-COLLUSIVE AFFIDAVIT OF PRIME BIDDER

State of Missouri)
S.S.
County of _____)

_____, being first duly sworn, deposes and says that:

1. They are the (owner, partner, officer, representative, or agent) of _____, the Bidder that has submitted the attached Bid;
2. They are fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
3. Such bid is genuine and is not a collusive or sham bid; and that all statements made and fact set out in the Proposal are true and correct;
4. Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest including this affidavit, has in any way colluded, considered, connived, or agreed, directly or indirectly with any other bidder, firm, or person, to submit a sham bid in connection with the Contract for which the attached bid has been submitted or to refrain from bidding in connection with such Contract; or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other bidder, firm, or person to fix the price or prices in the attached Bid or of any other bidder, or to fix the overhead, profit, or cost element of the Bid price of the other bidder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against the City of Wentzville or any person interested in the Proposed Contact.
5. The price or prices quoted in the attached Bid are fair and proper, and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affidavit; and
6. They further certify that bidder is not financially interested in or financially affiliated with any other Bidder on this project.

Signed: _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, 2016.

Notary Public

My Commission expires: _____

**AGREEMENT FOR THE SALE OF GOODS
CONTRACT #16-085**

THIS AGREEMENT FOR THE SALE OF GOODS (this "Agreement"), is made and entered into as of this ____ day of _____, 2016, by and between _____, a _____ having a principal office at _____ (the "Seller"), and the City of Wentzville, a Missouri municipal corporation located in St. Charles County (the "City"). *All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Contract Documents (as hereinafter defined).*

RECITALS

A. In response to INVITATION FOR BID #16-085 of the City requesting bids for certain equipment the Seller has submitted a certain bid in accordance with the Bid Documents to perform the Services.

B. After due consideration, the City has accepted the bid response of the Bidder, and the parties hereto desire to enter into this Agreement whereby the Bidder shall undertake the performance of the Services in accordance with the Contract Documents and the City shall pay the Bidder as hereinafter specified.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth the City and the Bidder hereby agree as follows:

1. **Contract Documents.** This Agreement shall consist of: (i) IFB #16-085 including, without limitation:
 - a. Bid Cover Page
 - b. Bid Pricing Page(s) completely filled out
 - c. Non-Collusive Affidavit filled out on the form provided
 - d. Any addendums issued to the bid
 - e. Invitation for Bids
 - f. Executed Agreement for Sale of Goods
 - g. General Conditions
 - h. Affidavit of Participation in Federal Work Authorization Program
 - i. E-Verify Memorandum of Understanding with Electronic Signatures
 - j. Notice of Award issued by City
 - k. Notice to Proceed issued by City
2. **Term:** The Agreement shall become effective upon its execution by all parties and shall expire on December 31, 2016, subject to the "Multi-year contracts; Non-appropriation" paragraph below.
3. **Description of Goods:** Seller agrees to transfer and deliver to Buyer 45 days from Notice to Proceed issued by the City the goods described in Seller's PRICING PAGE incorporated herein by reference.
4. **Payment:** Seller shall be paid the amount quoted on the Pricing Page. The Seller shall submit all invoices complete with necessary support documentation to City and City shall make payment within 30 days of receipt of an invoice after satisfactory performance of

the delivery and receipt of the products as shown on Exhibit A. Payment Terms are net 30 days. Remit Address is City of Wentzville, Accounts Payable, 5 W. Pearce Blvd., Wentzville, MO 63385.

5. **Time of Completion:** Contractor shall complete work under this Agreement within 45 days after of receipt of written Notice to Proceed from the City and shall fully complete all items of the Work within the time set forth in the Contract Documents. The parties understand that time is of the essence and that the rate of progress and prompt completion are essential conditions, and that in the event the Work is not fully completed within the period provided herein, the Contractor shall pay to the City the sums provided in the Contract Documents.

7. **Guaranty:** The Contractor hereby expressly guarantees the aforesaid Work as to workmanship and quality of materials used in connection herewith for a term of one (1) year, commencing on the date of Final Acceptance by the City, and binds itself, its successors or assigns, to make all repairs or replacements which may become necessary within said period due to construction defects and non-conformity with the Contract Documents. Whenever notified by the City that said repairs or replacements are required, the Contractor shall at once make the same as directed at its own expense. If the Contractor does not proceed with such repairs or replacements within five (5) days after receipt of written notice, the City may use (and the Contractor agrees and consents to such use) the Maintenance Bond, according to the terms thereof, to make any necessary repairs or replacements to any portion of the Work. Upon expiration of the one (1) year guaranty period, the City shall release the Maintenance Bond, less any amounts reasonably necessary to remedy any of the Contractor's performance and/or maintenance obligations under this Agreement that may still be outstanding at the time of expiration of the guaranty period.

8. **Contractor's Liability Insurance:** The Contractor shall obtain and maintain during the term of the Project and the City Contractor Agreement the insurance coverage's at least equal to the coverage's set forth in this paragraph 10, and as further provided in the General Conditions, but no event less than the individual and combined sovereign immunity limits established by Section 537.610 RSMo. Insurance policies providing required coverage's shall be with companies licensed to do business in the State of Missouri and rated no less than AA by Best or equivalent. All costs of obtaining and maintaining insurance coverage's are included in the Bid Amount and no additional payment will be made therefor by the City:

Comprehensive General Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$1,000,000 per occurrence \$2,735,000 aggregate
Comprehensive Automobile Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$1,000,000 per occurrence
Employer's Liability	\$1,000,000 bodily injury by accident (each accident) \$1,000,000 bodily injury by disease (each employee) \$1,000,000 bodily injury policy limit

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for all workers employed at the Project site. The Contractor shall also provide a policy of Builder's Risk Insurance in the amount of 100% of the complete insurable value of the Project, which policy shall protect the Contractor and the City, as their respective interests shall appear.

Before commencing any work, the Contractor shall provide to the City certificates of insurance evidencing the issuance and maintenance in force of the coverage's required by this paragraph 10. Each such certificate shall show the City, and such other governmental agencies as may be required by the City to be insured by underlying grant or contract relating to the Project, as an additional insured, on a primary and non-contributory basis, and shall bear an endorsement precluding cancellation of or change in coverage without at least thirty (30) days written notice to the City.

The City may waive any insurance coverage's or amounts required by this paragraph 10 when the City deems such waiver to be in the interest of the public health, safety, and general welfare.

9. **Indemnification:** To the fullest extent permitted by law, the Contractor agrees to defend with counsel approved by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suit, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or money damages, or trespass, or any other circumstances, sustained by the City or others, arising from the Contractor's breach of the Contract or out of services or products provided by the Contractor or its subcontractors under the terms of this agreement. The Contractor shall not be liable for any loss or damage attributable solely to the negligence of the City. To the extent required to enforce this provision, the Contractor agrees that this indemnification requires the Contractor to obtain insurance in amounts specified in the Contract Documents and that the Contractor has had the opportunity to recover the costs of such insurance in the compensation set forth in this Agreement.

In any and all claims against the City or any of its agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

10. **Attorney Fees' and Costs:** The Contractor shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement, the Contractor's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.
11. **Liquidated Damages:** The Contractor agrees and acknowledges that time is of the essence of this Agreement and that delay in the project becoming Available for Use, in Project Closeout, and in Final Acceptance will inconvenience the public and increase administrative costs of the City, the costs of which the Contractor and the City are incapable of ascertaining at this time. Should the Contractor, or in the case of

Contractor's default, the surety, fail to complete the Work and/or receive Final Acceptance within the times stipulated in this Agreement, or within such extensions of time as may be allowed by the City in the manner set forth in the Contract Documents, the Contractor (or surety, as applicable) shall pay to the City as liquidated damages, and not as a penalty, the sum of **One Hundred Dollars (\$100.00)** for each calendar day that the Work and Final Closeout documents including Maintenance Bond and Final Lien waivers from all subcontractors, remain incomplete after the time allowed for the completion, including approved extensions. In the sole discretion of the City, the amount of the liquidated damages may be deducted from any money due the Contractor under this Agreement. Permitting the Contractor to finish the Work or any part thereof after the expiration of the time for completion or any approved extension, shall in no way operate as a waiver of the City of any of rights under this Agreement.

12. **Termination:** The City shall have the right to terminate this Agreement at any time for any reason by giving the Contractor written notice to such effect. The City shall pay to the Contractor in full satisfaction and discharge of all amounts owing to the Contractor under this Agreement an amount equal to the cost of all Services performed by the Contractor up to such termination date, less all amounts previously paid to the Contractor on account of this Agreement Price. The Contractor shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the Contractor for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Services.
13. **Compliance with Federal, State and Local Law:** The Contractor shall comply with all applicable federal, state and local law requirements for performance under this Agreement. The Contractor shall abide by all health and environmental requirements imposed by law in performance of its duties.
14. **Prevailing Wage:** The Contractor shall be required to comply with all applicable provisions concerning the payment of prevailing wages on public works projects, as provided in the General Conditions. A copy of the applicable Annual Wage Order and Incremental Increases for each occupational title required under this project is included in the Bid Documents and shall be included in the Contract Documents.
15. **Required OSHA Training:** Pursuant to Section 292.675 RSMo., Contractor shall require all on-site employees to complete the ten-hour training program as required under Subsection 292.675.2 RSMo. This program shall be provided by Contractor and shall be a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for Contractor's on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations ("MoDOLIR") which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work under this Agreement. Contractor shall further require all subcontractors under Contractor to provide the ten-hour training program required under Subsection 292.675.2 RSMo. to such subcontractors' on-site employees. On-site employees who have previously completed such ten-hour training program must hold documentation of prior completion of the program.

Notice is hereby given to Contractor that it shall be subject to the penalties set forth in Subsection 292.675.4 RSMo. and such penalties shall be forfeited to the City pursuant to such Subsection. MoDOLIR shall investigate any claim of violation of Section 292.675 RSMo. Upon City's receipt of notification from MoDOLIR of violations of 292.675 by

Contractor and a determination by MoDOLIR that penalties shall be assessed for such violations, the City shall withhold and retain from the contract all sums and amounts due and owing to the City as a result of any violation of Section 292.675 RSMo. All words in this paragraph shall have the definitions as provided in Section 292.675.1 RSMo.

16. **Taxes:** The City is exempt from federal excise tax and Missouri sales tax and the Contractor shall not charge the same to the City and shall comply in all respects with the Special Sales Tax Provisions of the General Conditions.
17. **Other Representations, Warranties and Other Covenants by the Contractor:** The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Services and has provided services such as the ones to be performed under this Agreement to other municipalities and/or private enterprises and that the Contractor has sufficient expertise, knowledge, information and data, and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer. The Contractor agrees that the Contractor shall not use in any form or medium the name of the City for any advertising unless the Contractor receives the prior written consent of the City.
18. **Amendment; Waiver:** No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing signed by an authorized representative of the party against whom such provision as amended or modified or such waiver is sought to be enforced. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.
19. **Compliance with State Immigration Statutes:** As a condition for the award of this Agreement, the Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Contractor shall also sign an (Affidavit of Participation in Federal Work Authorization Program) affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Services. The Contractor shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 RSMo.
20. **Governing/Choice of Law; Jurisdiction:** This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws, and shall be deemed to be executed and performed in the County of St. Charles, Missouri. Any legal action arising out of, or relating to this agreement, shall be governed by the laws of the State of Missouri, and the parties agree to the exclusive jurisdiction and venue over them by a court of competent jurisdiction located in the County of St. Charles, Missouri, or the U.S. District Court for the Eastern District of Missouri.
21. **Headings:** The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.
22. **Representations:** Contractor agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Agreement. The parties agree this Agreement represents the entire agreement between the parties.
23. **Severability:** The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this Agreement, which shall remain in full force and effect to the maximum extent

permitted by law.

- 24. **Counterparts:** This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.
- 25. **Delivery:** Seller will arrange for delivery through a carrier chosen by Seller, the costs of which shall be F.O.B. City of Wentzville.
- 26. **Risk Of Loss:** The risk of loss from any casualty to the Goods, regardless of the cause, will be the responsibility of the Seller until the Goods have been received and accepted by the City.
- 27. **Acceptance:** City will have the right to inspect the goods upon receipt, and within ten (10) business days after delivery, City must give notice to Seller of any claim for damages on account of condition, quality, or grade of the goods, and City must specify the basis of the claim in detail. All notices between the parties must be in writing and delivered by courier or by U.S. mail.
- 28. **Force Majeure:** City or Seller may, without liability, delay performance or cancel this Agreement on account of force majeure events or other circumstances beyond its control, including, but not limited to, strikes, acts of God, political unrest, embargo, or casualty.
- 29. **Miscellaneous:** This Agreement contains the entire agreement between the parties and supersedes and replaces all such prior agreements with respect to matters expressly set forth herein. No modification shall be made to this Agreement except in writing and signed by both parties. This Agreement shall be binding upon the parties and their respective heirs, executors, administrators, successors, assigns and personal representatives.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

CONTRACTOR

CITY OF WENTZVILLE, MISSOURI

Signature

Nickolas Guccione, Mayor

Title

ATTEST:

Address

City Clerk

City, State, Zip

Date

Date

**CITY OF WENTZVILLE, MISSOURI
TERMS AND CONDITIONS**

Independent Contractor. The Contractor shall be and operate as an independent Contractor in the performance of this Agreement. The Contractor shall have complete charge of the personnel engaged in the performance of the Services, and all persons employed by the Contractor shall be employees of said Contractor and not employees of the City in any respect.

Compliance with Laws. The Contractor shall comply with all applicable City ordinances and other laws and regulations, Federal, State, and any political subdivision thereof, including but not limited to, unemployment and workers' compensation, occupational safety, equal employment and affirmative action and wage and price laws insofar as applicable to the performance of this Agreement. In the event of a conflict between laws, codes and regulations of various governmental entities having jurisdiction over the Services, the Contractor shall notify the City of the nature and impact of such conflict.

Subcontracts. The Contractor shall not subcontract any of the Services to be performed by it hereunder without the express written consent of the City, except as provided herein. In the event Contractor utilizes a subcontractor, the Contractor shall ensure that any agreement between Contractor and such subcontractor complies with all requirement imposed for such agreement by federal, state, and local law. In addition, this Agreement shall not be assigned by the Contractor.

If the Contractor submits invoices to the City which include payments to be made on account of work performed by a subcontractor, such payments shall be conditioned upon submission by the Contractor of waiver of liens, or such other documents satisfactory to the City to protect the City's title to land, buildings, or improvements or to otherwise protect the City's interest. By submitting an invoice to the City, the Contractor warrants and guarantees that title to all land, buildings or improvements which may be subject to a lien under 429.015 RSMo, upon the receipt of such payment by the Contractor, will not be subject to a lien under 429.015 RSMo.

Indemnification. To the fullest extent permitted by law, the Contractor agrees to defend with counsel approved by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suits, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by the City or others, arising from breach of this Agreement or out of services negligently performed hereunder by the Contractor, or claims relating thereto, and including but not limited to the City's reliance on or use of the services or products provided by the Contractor under the terms of this agreement. The Contractor shall not be liable for any loss or damage attributable solely to the negligence of the City. To the extent required by law to enforce this provision, the Contractor agrees that this indemnification requires the Contractor to obtain insurance in amounts specified herein and that the Contractor has had the opportunity to recover the costs of such insurance in the compensation set forth in this Agreement.

No Aldermen, officer, administrator, director, board member, or employee of the City shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement. The Contractor shall look solely to the City for the satisfaction of any claims the Contractor may have arising under this Agreement.

Insurance. The Contractor shall furnish the City the certificates of insurance for workers' compensation, public liability, and property damage, including automobile coverage in the amounts specified by the City in the request for proposals, if any, otherwise in the amounts required by the City, if any, but in no event less than the maximum amounts of liability set forth in Chapter 537.610 RSMo, as amended, applicable to political subdivisions. The policies of insurance shall be in such form and shall be issued by such company or companies as may be satisfactory to the City. In addition to the foregoing, the Contractor shall maintain Professional Liability "errors and omissions" insurance in the

form for the coverages satisfactory to City as indicated in the request for proposals, if any, but in no event less than the maximum amounts of liability set forth in Chapter 537.610 RSMo applicable to political subdivisions unless otherwise approved by the City. The City, and such additional persons and entities as may be deemed to have an exposure to liability as a result of the performance of the Contractor's services, as determined by the City, shall be named as additional insured on a primary and non-contributory basis, with duty of defense on all insurance policies required hereunder.

Nondisclosure/Confidentiality. The Contractor agrees that it will preserve the confidentiality of all City data and account information and will not divulge to third parties without the written consent of the City any information obtained from or through the City in connection with the performance of this Agreement.

Changes. No change in this Agreement shall be made except in writing prior to the change in Services or terms being performed. The Contractor shall make any and all changes in the Services without invalidating this Agreement when specifically ordered to do so in writing by the City. The Contractor, prior to the commencement of such changed or revised Services, shall submit promptly to the City, a written cost or credit proposal for such revised Services. If the City and the Contractor shall not be able to agree as to the amount, either in consideration of time or money to be allowed or deducted, it shall nevertheless be the duty of the Contractor, upon written notice from the City, to immediately proceed with such alteration or change, and the Contractor shall be compensated the reasonable value of such Services. **No work or change shall be undertaken or compensated for without prior written authorization from the City and shall be subject to any required approval from state or federal departments or agencies.**

Multi-year contracts; Non-appropriation. Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments set forth in the attached contract as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year at the discretion of the City. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "**Event of Non-appropriation**"), this Agreement will terminate at the end of the then current fiscal year as if terminated expressly. The failure or inability of the City to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party. If applicable, this Agreement may be annually renewed at each fiscal year by inclusion of specific appropriation for this Agreement, from year to year not to exceed the maximum renewal period or term as set forth in the Agreement.

Accounting. During the period of this Agreement, the Contractor shall maintain books of accounts of its expenses and charges in connection with this Agreement in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Contractor.

Other Contractors. The City reserves the right to employ other Contractors in connection with the Services.

Invitation for Bids. If the City issued an Invitation for Bids in connection with the Services, such Invitation for Bids and the bid proposal of the Contractor in response thereto are incorporated herein by reference and made a part of this Agreement. In case of any conflicts between the Invitation for Bids and the executed City-Contractor Agreement or proposal of the Contractor, the requirements of the City's Invitation for Bids and this executed City-Contractor Agreement shall control and supersede unless a change thereto is specifically stated in this Agreement.

Work Records and Work Product. The Contractor shall provide the City with copies of all documents pertinent to the Services which shall include, without limitation, reports, correspondence, meeting minutes, and originals of all deliverables. The City shall own all right, title and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of the Contractor created in performance of or relating to this Agreement. The Contractor agrees to take all steps reasonably requested by the City to evidence, maintain, and

defend the City's ownership rights in the Work Product. Upon termination of this Agreement, the Contractor shall promptly deliver to City any documents, and work product, whether printed or electronic.

Personnel. The Services shall be performed exclusively by the personnel of the Contractor identified in the Contractor's proposal and no other personnel of the Contractor shall perform any of the Services without the express written approval of the City.

Compliance with State Immigration Statutes. As a condition for the award of this Agreement, the Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Contractor shall also sign an (Affidavit of Participation in Federal Work Authorization Program) affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Services. The Contractor shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 R.S.Mo.

Representations. The Contractor agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Agreement. The parties agree this Agreement represents the entire agreement between the parties.

Governing/Choice of Law; Jurisdiction. This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws, and shall be deemed to be executed and performed in the County of St. Charles, Missouri. Any legal action arising out of, or relating to this Agreement, shall be governed by the laws of the State of Missouri, and the parties agree to the exclusive jurisdiction and venue over them by a court of competent jurisdiction located in the County of St. Charles, Missouri or the U.S. District Court for the Eastern District of Missouri.

Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.