

**AGREEMENT BETWEEN  
CITY OF OVERLAND PARK, KANSAS  
AND VENDOR  
FOR THE PURCHASE OF  
Outdoor Warning Sirens**

THIS AGREEMENT is made and entered into this 1<sup>st</sup> day of January 2003, by and between the City of Overland Park, Kansas, hereinafter the "City," and Blue Valley Public Safety, hereinafter the "Vendor";

WITNESSETH:

WHEREAS, the City has caused to be prepared, in accordance with the law, Notice and Invitation to Bidders, Instructions to Bidders, Bid, this Agreement, Plans, Specifications and other Bidding Documents, as defined herein, for the work and/or product herein described, and has caused to be published, in the manner and for the time required by law, an advertisement inviting sealed Bids for furnishing materials, labor, tools, equipment and transportation necessary for, and in connection with, the delivery of goods and services in accordance with the terms of this Agreement and the Bidding and Contract Documents; and

WHEREAS, the Vendor, in response to the advertisement, has submitted to the City, in the manner and at the time specified, a sealed Bid in accordance with the requirements of the above referenced Bidding documents; and

WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined and canvassed the Bids submitted, and as a result of this canvass has, in accordance with the law, determined and declared the Vendor to be the lowest and best responsible bidder for the delivery of the specified goods and services, and has duly awarded to the Vendor a contract therefore upon the terms and conditions set forth in this Agreement and the Contract Documents as defined herein and for the sum or sums named in the Bid attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the compensation to be paid the Vendor, and of the mutual agreements herein contained, the parties hereto have agreed, and hereby agree, the City for itself and its successors, and the Vendor for itself, himself/herself or themselves, its, his/her or their successors and assigns, or its, his/her or their executors and administrators, as follows:

**ARTICLE 1. DEFINITIONS.**

Whenever any word or expression defined herein, or pronoun used in its stead, occurs in these Contract Documents, it shall have and is mutually understood to have the meaning herein given.

1. **"Agreement"** shall mean this Agreement and the Bidding and Contract Documents and any attachments to those documents to include Exhibits. The terms "Agreement," "Bidding Documents," and "Contract Documents" are used interchangeably in these documents and reference to one shall be reference to all of the documents.

2. **"Bid"** shall mean the offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the work or services to be performed and the goods or products to be delivered (the City reserves the right to reject any and all bids).

3. **"Bidder"** shall mean any individual, partnership, corporation, association or other entity submitting a bid for the work.

4. **"Bidding Documents"** shall mean all documents related to a bidder's submitting a bid, including, but not limited to, the advertisement for bids, if applicable, Notice and Invitation to Bid, Instructions to bidders, the Bid form, plans and specifications, the Agreement and any other forms and Documents included in the Bid Document Package, including any addenda issued prior to receipt of bids. The Bidding Documents shall be incorporated by reference into this Agreement and the Contract Documents and shall be considered as fully a part of this Agreement and the Contract Documents as if repeated verbatim herein. The Bid Documents are attached hereto as Exhibit A. The terms "Agreement," "Bidding Documents," and "Contract Documents" are used interchangeably in these documents and reference to one shall be reference to all of the documents.

5. **"City"** shall mean the City of Overland Park, Kansas.

6. **"Contract"** shall mean the work/project awarded to the bidder that submitted the lowest and best bid for the goods and services described in the Bidding Documents.

7. **"Contract Documents"** shall mean the Bidding Documents and this Agreement. The terms "Agreement," "Bidding Documents," and "Contract Documents" are used interchangeably in these documents and reference to one shall be reference to all of the documents.

8. **"Vendor"** shall mean the bidder awarded the Contract for the performance of the work or services and/or delivery of goods and products that is the subject of the Bidding Documents, together with its duly authorized agents or legal representatives.

9. **"Defective Work"** shall mean work that is unsatisfactory, faulty or deficient, or not in conformity with the Bidding and Contract Documents. It shall also include work damaged prior to approval of final payment unless responsibility for such damage shall have been expressly assumed by the City after substantial completion.

10. **"Effective Date of the Agreement"** shall mean the date indicated in the Agreement on which it becomes effective, but, if no such date is indicated, it shall mean the date on which the Agreement is signed and delivered by the City to the Vendor. For this purpose, delivery shall be

accomplished by either hand-delivery to the Vendor or placing a copy in the mail, first class, postage pre-paid.

11. **"Final Acceptance"** shall mean the date when the City accepts in writing that the services or work required by the Vendor is complete in accordance with the Bidding and Contract Documents such that the entire project can be utilized for the purposes for which it is intended and/or that the Vendor has delivered the goods/products as required by the Bidding and Contract Documents and the Vendor is entitled to final payment.

12. **"Notice of Award of Contract"** shall mean the written notice by the City to the apparent successful bidder stating that upon compliance with the conditions precedent enumerated therein, within the time specified, the City has awarded this bidder the Contract to perform the work necessary to complete the project and/or delivery of the goods and will sign and deliver the Agreement and issue a Notice to Proceed to perform the work.

13. **"Notice to Proceed"** shall mean the written notice by the City to the Bidder/Vendor fixing the date on which the Vendor's performance is to commence and on which the Vendor shall start to perform its obligations as specified in the Bidding and Contract Documents. Without the prior express written consent of the City, Vendor shall do no work until the date set forth in the Notice to Proceed.

14. **"The Specifications"** shall mean those portions of the Bidding and Contract Documents consisting of written technical descriptions of products, goods, materials, equipment, construction methods and maintenance standards and workmanship as applied to the work and services to be performed and/or the goods and products to be delivered and certain administrative details applicable thereto. Specifications may include, but not necessarily be limited to:

- (1) Design specifications, e.g. measurements, tolerances, materials, inspection requirements and other information relative to the work;
- (2) Performance specifications, e.g., performance characteristics required, if any;
- (3) Purchase description specifications, e.g. products or equipment required by manufacturer, trade name and/or type;
- (4) Such other information deemed appropriate by the City for inclusion in the Specifications for the proper completion of the project and delivery of the products, goods and services.

15. **"SubVendor"** shall mean an individual, firm or corporation having a direct contract with the Vendor or with another SubVendor for the performance of a part of the work on the project.

16. **"The Work" or "The Project"** (used interchangeably) shall mean the work to be done necessary to complete the performance required of the Bidder/Vendor by the Bid and Contract

Documents, and includes all labor, materials, tools, equipment and transportation necessary to comply with the Contract Documents.

17. **"Maintenance Agreement"** means a separate agreement for maintenance between the parties and specifically does not include the initial two-year warranty on the electromechanical siren equipment and five year warranty on the entire siren head provided to City by Vendor.

18. **"Warranty Period"** means the period beginning upon receipt and acceptance of goods and extends to the lifetime limited warranty provided by the vendor.

19. Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed," or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.

20. The words "approved," "reasonable," "suitable," "acceptable," "properly," "satisfactory," or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the City.

## **ARTICLE 2. VENDOR'S PERFORMANCE.**

The Vendor will furnish at its own cost and expense all labor, tools, equipment, materials and transportation required to complete the work as designated, described and required by the Contract Documents, to wit the delivery and installation of six (6) fully functioning Outdoor Warning Sirens to the Overland Park Police Department all in accordance with the Contract Documents; all work to be done in a good, substantial and workmanlike manner to the entire satisfaction of the City, and in accordance with the laws of the City, the State of Kansas and the United States of America.

## **ARTICLE 3. RISK OF LOSS, SHIPMENT, PACKAGING**

Title to and risk of loss and damage to equipment prior to the time of its receipt and acceptance by the City is upon Vendor. The City has no obligation to accept damaged shipments and reserves the right to return, at Vendor's expense, damaged merchandise even though the damage was not apparent or discovered until after receipt of such damaged equipment. All items shall be properly packaged, packed, labeled and identified in accordance with commercial standards acceptable to the trade and in compliance with ICC and other federal and state regulations. Vendor specifically agrees to comply with all Federal, State and local laws and regulations relating to the shipment of hazardous materials as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, the Hazardous Materials Transportation Act, as amended, and in the regulations promulgated pursuant thereto, or any other Federal, State or local environmental law, ordinance, rule or regulation. Packing slips will accompany the shipment. Vendor shall notify the City of any late or delayed shipments.

**ARTICLE 4. PRICE AND PAYMENT TERMS**

Vendor agrees to sell and deliver to the City six (6) Outdoor Warning Sirens, as described in the Contract Documents, and in consideration the City agrees to pay to the Vendor for the performance required by this Agreement and as specified in the Contract Documents, and the Vendor will accept in full compensation therefore, the sum of One Hundred Eleven Thousand Eight Hundred Sixteen and 00/100 Dollars (\$111,816.00) for all work covered by and included in the Contract and Bidding Documents to include but not be limited to the delivery and installation of five (5) fully functioning Outdoor Storm Warning Sirens, a *two year warranty* on all electromechanical siren equipment and a *five year warranty* on the entire siren head, payment thereof to be made in cash or its equivalent and in the manner provided herein.

Provided this Agreement is properly executed between the parties and in effect, seventy-five (75%) of the amount described in this Article shall be due and payable to Vendor in United States currency within thirty (30) days of presentment of Vendor's invoice and receipt by City of all Outdoor Warning Sirens. Final payment of any remaining monies due, shall be payable upon Final Acceptance by the City.

**ARTICLE 5. MAINTENANCE AND OPERATOR'S MANUALS.**

Vendor shall provide to City a copy of all maintenance and operator's manuals for the Outdoor Warning Sirens.

**ARTICLE 6. MISCELLANEOUS OBLIGATIONS OF CITY.**

Designated Person. The City will designate a person to coordinate all activities with Vendor. The designated person (or a designated alternate) shall be available at all times to make decisions on behalf of the City, which shall include, but not be limited to, the approval and acceptance of all deliverable items. The designated person shall work and cooperate with Vendor, but the designated person will not be under the direction or control of Vendor and shall at no time be considered an employee or agent of Vendor.

**ARTICLE 7. MISCELLANEOUS OBLIGATIONS OF VENDOR**

a. Designated Person. Vendor will designate a person to coordinate all activities with the City. This person (or a designated alternate) shall be available during all normal business hours.

b. Vendor's Prime Responsibilities. Vendor shall be responsible for the deliver and warranty of the Outdoor Warning Sirens. Vendor will be the sole point of contact with regard to contractual matters.

**ARTICLE 8. BIDDING DOCUMENTS, CONTRACT DOCUMENTS AND AGREEMENT COMPLIMENTARY**

The Bidding Documents, Contract Documents and Agreement are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the Bidding Documents, Contract Documents and Agreement is to include all construction, labor, materials, tools, equipment and transportation necessary for the workmanlike completion of the project in accordance with the Bidding Documents, Contract Documents and Agreement. The Contract Documents supersede all previous agreements and understandings between the parties, which previous agreements and understandings are of no further force and effect. This Agreement and the Contract Documents may not be amended or modified except by a modification as herein provided.

**ARTICLE 9. PERMITS AND NOTICES.**

(a) All permits and licenses necessary to complete the work required by this Agreement and the Contract Documents shall be secured and paid for by Vendor, unless otherwise specified.

(b) Vendor shall give all notices required by and all work shall be done in accordance with all applicable federal and state laws, City and County laws and ordinances, building codes and rules and regulations bearing on the conduct of the work.

(c) Vendor shall notify all affected utilities of the work and coordinate with the utilities to avoid interruption of utility service and damage to utility lines and property. This notice requirement shall also apply as to the owner/operator of any affected underground facility. Any project delay, damages or increase in performance costs due to utility relocation delays shall be at the Vendor's risk.

**ARTICLE 10. VENDOR'S EMPLOYEES.**

(a) Vendor shall at all times enforce strict discipline and good order among its employees and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.

(b) Vendor shall be responsible for compliance with all state and federal laws, if applicable, pertaining to wages, hours and benefits for workers employed to carry out the work.

**ARTICLE 11. PROTECTION OF WORK AND PROPERTY.**

(a) Vendor shall maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of life, the work, supplies, materials and equipment on the project site not yet incorporated in the work, City's property and adjacent property.

(b) Vendor shall comply with any and all instructions from the City regarding prevention of accidents, fires or for the elimination of any unsafe practice and shall observe all the applicable recommendations of the National Fire Protection Association Standards.

(c) In an emergency affecting the safety of life, the work, City's property or of adjoining property, Vendor, without special instruction or authorization from the City, is hereby permitted to act, at its discretion, to prevent such threatened injury or loss. Any compensation claimed by Vendor on account of emergency work shall be determined by mutual agreement of City and Vendor.

(d) Vendor shall be solely liable for all damages to the City or the property of the City, to other Vendors or other employees of the City, to neighboring premises, or to any private or personal property, due to improper, illegal or negligent conduct of the Vendor, its SubVendors, employees or agents in and about said work, or in the execution of the work. The Vendor shall be liable to the City for any damages, whether property damage or personal injury, occasioned by Vendor's use of any scaffolding, shoring, apparatus, ways, works, machinery, plant or any other process or thing that is required for the work.

## **ARTICLE 12. DELAYS AND EXTENSION OF TIME.**

(a) If Vendor shall be delayed at any time in the progress of the work by an act or omission of City or by any separate Vendor employed by City and over which Vendor has no control and which is not a result of the Vendor's acts or the acts of any of its employees, SubVendor or suppliers, negligent or otherwise, then the time of completion shall be extended for such reasonable time as the City shall decide, and no adjustment shall be made in the consideration to be paid.

(b) No such extension shall be made for delay unless Vendor provides written notice to City of such delay, the reasons therefore and the expected length of delay within seven (7) days of the commencement of such delay.

(c) In executing this Agreement, the Vendor expressly covenants and agrees that, in undertaking to complete the work within the time therein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials, workers, weather conditions or otherwise.

(d) The Vendor shall delay or suspend the progress of the work or any part thereof, whenever it shall be so required by written order of the City for such periods of time as the City shall require; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City shall not otherwise modify or invalidate in any way, any of the provisions of this Agreement.

## **ARTICLE 13. PATENT LIABILITY CLAUSE.**

Vendor agrees to defend any claim, action or suit that may be brought against City, its governing body, officers, agents or employees for infringement of any Letters Patent of the United

States arising out of the performance of this Agreement or out of the use or disposal by or for the account of City of products, materials, goods or work performed hereunder, and also to indemnify and hold harmless City, its governing body, officers, agents, and employees against all judgments, decrees, damages, costs and expenses recovered against it or them or sustained by it or them on account of any such actual or alleged infringement. It is understood that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment used in or furnished for the work shall be included in the Agreement price. Final payment to the Vendor by the City shall not be made while any suit or claim involving infringement or alleged infringement of any patent remains unsettled.

**ARTICLE 14. INDEPENDENT CONTRACTOR.**

The right of general observation and inspection of the City shall not make the Vendor an agent of the City, and the liability of the Vendor for all damages to persons, firms and corporations arising from the Vendor's execution of the work shall not be lessened because of such general observation and inspection, but as to all such persons, firms and corporations, and the damages, if any, to them or their property, the Vendor herein is an independent contractor in respect to the work.

**ARTICLE 15. INDEMNITY.**

(a) Definitions

For purposes of indemnification requirements as set forth throughout the Contract, the following terms shall have the meanings set forth below:

(1) "The Vendor" means and includes Vendor, all of its affiliates and subsidiaries, its SubVendors and materialmen and their respective servants, agents and employees; and

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

(b) The Indemnity

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



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

(c) General Limitation

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

(d) Waiver of Statutory Defenses

With respect to the City's rights as set forth herein, the Vendor expressly waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purposes of this section.

**ARTICLE 16. PROTECTION OF PROPERTY/LIABILITY.**

Without in any manner limiting Vendor's responsibilities as provided elsewhere in the Contract Documents, the Vendor shall assume full responsibility for the protection of all public and private property, structures, sewers and utilities, both above the ground and underground facilities, along, beneath, above, across or near the site or sites of the work being performed under this Contract, or which are in any manner affected by the prosecution of the work or the transportation of men/women or materials in connection therewith. Barriers shall be kept placed at all times to protect persons other than those engaged on or about the work from accident, and the Vendor will be held responsible for all accidents to persons or property resulting from the acts of Vendor or its employees. The Vendor shall give reasonable notice to the affected owner or owners when any such property is liable to injury or damage through the performance of the work and shall make all necessary arrangements with such owner or owners relative to the removal and replacement or protection of such property and/or utilities. The Vendor shall satisfactorily shore, support and protect any and all structures and all pipes, sewers, drains, conduits and other facilities and shall be responsible for any damage resulting thereto. The Vendor shall not be entitled to any additional time nor damages or extra compensation on account of any postponement, interference or delay caused by any such structures and facilities being on the line of the work, whether they are shown on the plans or not, specifically including, but not limited to, damages due to delay in utility relocation.

**ARTICLE 17. PROVISION FOR EMERGENCIES.**

Whenever, in the opinion of the City, the Vendor has not taken sufficient precaution for the safety of the public or the protection of the work to be performed pursuant to this Agreement, or of adjacent structures or property which may be injured by process of construction, and whenever, in

the opinion of the City, an emergency shall arise and immediate action shall be considered necessary in order to protect property interests and to avoid personal injury and/or death, then the City, with or without notice to the Vendor, shall, upon notification to the City, provide suitable protection to the said interests by causing such work to be done and materials to be furnished at places as the City may consider necessary and adequate. The cost and expense of such work and material so furnished shall be borne by the Vendor and, if the same shall not be paid on presentation of the bills therefore, such costs shall be deducted from any amounts due or to become due the Vendor. The performance of such emergency work shall in no way relieve the Vendor of responsibility for damages that may occur during or after such precaution has been duly taken.

**ARTICLE 18. DISPUTE RESOLUTION.**

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

**ARTICLE 19. RIGHT OF CITY TO TERMINATE CONTRACT.**

Without in any manner limiting the right of the City to terminate this Agreement or declare the Vendor in default thereof for any reason set forth in the Contract Documents, if the work to be done under this Agreement shall be abandoned by the Vendor; or if this Agreement shall be assigned by Vendor otherwise than as herein provided; or if the Vendor should be judged as bankrupt; or if a general assignment of its assets should be made for the benefit of its creditors; or if a receiver should be appointed for the Vendor or any of its property; or if at any time the performance of the work under this Agreement is being unnecessarily delayed, that the Vendor is violating any of the conditions or covenants of this Agreement or the specifications therefore, that it is executing the same in bad faith or otherwise not in accordance with the terms of said Agreement; or if all bid items of the project are not completed within the time named for their completion or within the time to which such completion date may be extended; then, in addition to other rights the City may choose to exercise, the City may, at its option, serve written notice upon the Vendor and its surety of City's intention to terminate this Agreement, and, unless within five (5) days after the serving of such notice upon the Vendor, a satisfactory arrangement be made for the continuance thereof, this Agreement shall cease and terminate. In the event of such termination, the City shall immediately serve notice thereof upon the surety and the Vendor, and the surety shall have the right to take over and complete the work; provided, however, that if the surety does not commence performance thereof within thirty (30) days from the date of said notice of termination, the City may take over the work and prosecute same to completion, by contract or otherwise, for the amount and at the expense of the Vendor, and the Vendor and its surety shall be liable to the City for any and all excess cost sustained by the City by reason of such prosecution and completion; and in such event the City may take possession of, and utilize in completing the work, all such materials, equipment, tools and plant as may be on the site of the work and necessary therefore. When Vendor's services have been so

terminated, such termination shall not affect any rights or remedies of City against Vendor then existing or which may later accrue. Similarly, any retention or payment of monies due Vendor shall not release Vendor from liability.

City reserves the right, in its sole discretion and for its convenience and without cause or default on the part of Vendor, to terminate this Agreement by providing written notice of such termination to Vendor. Upon receipt of such notice from City, Vendor shall: (1) immediately cease all work; or (2) meet with City and, subject to City's approval, determine what work shall be required of Vendor in order to bring the Project to a reasonable termination in accordance with the request of City. If City shall terminate for its convenience as herein provided, City shall: (1) compensate Vendor for all purchased materials and actual cost of work completed to date of termination; and (2) release and indemnify Vendor against any liability Vendor may have to any third parties as the result of any contracts, commitments, purchase orders or any other such liabilities Vendor may have incurred as a result of its obligations under the provisions of the Contract. Vendor agrees that it shall minimize such potential liabilities by, where practical, informing third parties of City's right to terminate and attempting to obtain from such third parties a waiver of any liability in the event of such termination.

Any termination of the Agreement for alleged default by Vendor that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.

#### **ARTICLE 20. CITY'S RIGHT TO DO WORK.**

Without otherwise limiting City's rights under the Contract Documents, if Vendor should neglect to prosecute the work properly or fail to perform any provision of the Contract Documents, City, after three (3) days' written notice to Vendor may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due Vendor.

#### **ARTICLE 21. BONDS.**

If required by the Bid Documents, Vendor shall after notice of award furnish City the Performance Bond and the Statutory Bond as required by the Instructions to Bidders. Failure to furnish such bonds within the time specified in the notice of award may, at the City's option, be the basis for declaring Vendor in default and pursuing such legal rights as the City deems in its best interest, including, but not limited to, enforcement of the City's rights as to bid security.

#### **ARTICLE 22. LAWS AND ORDINANCES.**

The Vendor shall be fully familiar with all City, County, State and Federal laws, ordinances or regulations which would in any way control the actions or operations of those engaged in the

performance of this Contract or which would affect the materials supplied to or by them. It shall at all times observe and comply with all ordinances, laws and regulations and shall protect and indemnify and defend the City and the City's officers and agents against any claims or liability arising from or based on any violation of same.

**ARTICLE 23. VENDOR'S RISK.**

The Vendor shall assume full responsibility for the work performed pursuant to the Contact Documents and shall bear any loss and repair any damage at his/her own cost occasioned by neglect, accident, vandalism or natural cause, whether foreseen or unforeseen, during the progress of the work and until the work and performance is completed and accepted by the City.

**ARTICLE 24. SAFETY RULES.**

(a) Vendor shall be responsible for enforcing safety rules to assure protection of the employees and property of City, to assure uninterrupted production and to assure safe working conditions for Vendor and SubVendors and their employees and to assure the safety of the general public. In addition to any other rights the City might exercise, Vendor and/or any SubVendor failing to follow safety rules shall be subject to eviction from the job site and may be refused reentry.

(b) Vendor is expected to establish and enforce a comprehensive safety program on this project for the protection of its personnel, its SubVendors' personnel, City's employees and all other persons exposed to hazards resulting from Vendor's operations. As a minimum requirement, Vendor shall review and discuss the details of its program with City at the first project meeting. The items to be covered shall include, but not necessarily be limited to,

1. Personal protective equipment;
2. First aid - personnel and facilities;
3. Arrangements for medical attention;
4. Sanitary facilities;
5. Fire protection;
6. Signs, signals and barricades;
7. Security regulations;
8. Safety inspections;
9. Designation of persons responsible for the program;
10. Reporting forms and procedures;
11. Material handling and storage;
12. Lines of communication;
13. Determination of potential hazards;
14. Personnel safety meetings and education;
15. Access to work areas;
16. SubVendors involvement in the program;
17. Inspections and corrective action.

Vendor is fully responsible for the safety program and any and all methods and procedures provided for therein whether or not City shall have reviewed such program.

**ARTICLE 25. AFFIRMATIVE ACTION/OTHER LAWS.**

A. The Vendor agrees that:

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

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

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

B. The Vendor further agrees that the Vendor shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

**ARTICLE 26. FEDERAL LOBBYING ACTIVITIES.**

31 USCS Section 1352 requires all subgrantees, Vendors, SubVendors and consultants who receive federal funds via the City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan or cooperative agreements.

In addition, contract applicants, recipients and subrecipients must file a form disclosing any expenditures they make for lobbying out of non-federal funds during the contract period.

Necessary forms are available from the City Engineer and must be returned to the City with other contract documents. It is the responsibility of the general Vendor to obtain executed forms from any SubVendors who fall within the provisions of the Code and to provide the City with the same.

**ARTICLE 27. RECORDS.**

Vendor shall maintain copies of records pertaining to this project for a period of five (5) years from the date of final payment. Such records shall be made available to the City for audit and review purposes upon written request therefore from City or its authorized agent(s) during the construction period and the five (5) year period following final payment.

**ARTICLE 28. TITLES, SUBHEADS AND CAPITALIZATION.**

Titles and subheadings as used herein and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents. Some terms are capitalized throughout the Contract Documents, but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

**ARTICLE 29. NO WAIVER OF RIGHTS.**

No waiver of any breach of this Agreement or Contract Documents shall be construed to be a waiver of any other or subsequent breach.

**ARTICLE 30. SEVERABILITY.**

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

**ARTICLE 31. APPLICABLE LAW.**

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

**ARTICLE 32. WARRANTY AND REMEDIES.**

a. Warranty. Vendor warrants that for a period of two years for the electromechanical siren equipment and five years for the entire siren head from the date of acceptance, the Outdoor Warning Sirens will operate in all material respects in accordance with the product description and specifications set forth in this Agreement and the Contract Documents. During the warranty period Vendor shall provide maintenance and parts without charge to the City to insure the operation of all Outdoor Warning Sirens. If, during the Warranty Period, the Outdoor Warning Sirens fail to comply with the Warranty, then after notice from the City of such noncompliance, Vendor shall replace the Outdoor Warning Sirens, at no cost to the City.

b. Exceptions. The Warranty shall not include any replacement of repairs necessary to correct any system(s) failure, or potential failure, attributable in whole or in part to:

(1) Any neglect or misuse of the system(s) by the City or any third party, or use or attempted use of the system(s) for purposes other than that for which it was designed;

(2) Any alteration, maintenance, attachment, or repair to the system(s) not performed by Vendor, or any use of software, supplies, materials, attachments, interconnections, accessories, power, or other goods or services not supplied or approved by Vendor;

c. The City shall notify Vendor of any failure of the Outdoor Warning Sirens. The City is responsible for determining initially that the Outdoor Warning Sirens requires warranty service. The Outdoor Warning Sirens replaced under the Warranty shall become the property of Vendor.

**ARTICLE 33. PROPRIETARY RIGHTS.**

Title. Title to and risk of loss or damage to each item sold to the City under this AGREEMENT, will pass to the City upon Acceptance (or delivery, if after Acceptance), free of any and all encumbrances.

**ARTICLE 34. NOTICE TO PARTIES.**

All notices and demands of any kind which either party may serve upon the other party under this AGREEMENT shall be served by personal service, or by leaving the notice or demand at the address set forth below, or by forwarding a copy thereof by first class mail, postage prepaid, or by telex or telecopier, addressed as follows:

To City: Overland Park Police Department  
12400 Foster  
Overland Park, Kansas 66213

ATTN: Major Tim Lynch

To Vendor: Blue Valley Public Safety/Federal Signal Corporation  
210 Cannon  
Box AM  
Grain Valley, MO 64029

or to such other address as may be specified from time to time by the relevant party. Service shall be deemed complete when the notice or demand is received by the party to whom it is addressed.

**ARTICLE 35. EXHIBITS.**

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

EXHIBIT A: Bidding Documents

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

City: City of Overland Park, Kansas

By: \_\_\_\_\_  
Ed Eilert, Mayor

ATTEST:

\_\_\_\_\_  
Marian Cook  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Tammy M. Owens  
Assistant City Attorney II

SELLER: Vendor, Inc.

By: \_\_\_\_\_



ATTEST \_\_\_\_\_

CORPORATE ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

BE IT REMEMBERED, That on this \_\_\_\_ day of \_\_\_\_\_, 2002, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, President of \_\_\_\_\_, a corporation duly organized, incorporated and existing under and by virtue of the laws of \_\_\_\_\_; and \_\_\_\_\_, President of said corporation, who are personally known to me to be such officers and who are personally known to me to be the same persons who executed as such officers within instrument on behalf of said Corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_