

Franklin WRF

COF Contract No. 2016-0050

Owner:

City of Franklin
Franklin, Tennessee 37064
Contact: Tim Laws
Phone: (615) 791-3240
tim.laws@franklintn.gov

Scope of Supply:

One (1) Replacement Drive Unit with
Turnkey Installation

Furnished by:

WesTech Engineering, Inc
Salt Lake City, Utah 84115
Contact: David Mortensen/Eric Anderson
Phone: (801) 265-1000
Fax: (801) 265-1080
dmortensen@westech-inc.com
ejanderson@westech-inc.com

Represented by:

Eco-Tech
Steve Hart
Holly Springs, Georgia 30142
Phone: (770) 345-2118
shart@eco-tech.net

WesTech Proposal: 123624 Rev 2
24 March 2016

WESTECH

Drive Proposal Summary

WesTech is proposing the supply of a new replacement drive unit for the existing 42" cage drive. The equipment is described in **Item "A"** of this proposal. This drive unit offers the most up-to-date technology and parts for the drive unit of the clarifier. The new drive unit comes with a 5-year warranty.

WesTech is also proposing a turnkey service to remove the existing drive unit and install the new drive unit, described in Item "A" above. The service is described in **Item "B"** of this proposal. Item "B" frees your personnel from the need to install the new drive unit, and eliminates the need to go look for a qualified contractor to remove the existing drive unit and install the new drive unit.

WesTech has a team of factory approved contractors that can perform the job safely, on schedule, and right the first time – that is the WesTech way.

EQUIPMENT AND SERVICE DESCRIPTION**ITEM "A" – One (1) New Replacement 42-inch Cage Drive Unit****Scope of Supply:**

WesTech shall supply one (1) 42-inch replacement cage drive unit, WesTech Model No. DV8050, full grease lubrication, for the 100-foot WesTech COPC2 Secondary Clarifier (Project No. 5142A).

Jobsite for Delivery: Clarifier No. 9 at City of Franklin Water Reclamation Facility, 135 Claude Yates Drive, Franklin, TN 37064

Equipment: The drive unit to be furnished complete with the following components:

- A Standard WesTech Shaft Drive Unit for:
 - Output Torque (ft•lbs) AGMA 20-Year Continuous: 39,000
 - Momentary Peak Output Torque (ft•lbs): 78,000
 - Rake Output Speed (RPM): 0.041
 - Overturning Moment of Main Bearing (ft•lbs): 466,000
 - Direction of Rotation: Clockwise
- An epoxy-coated steel drive housing and base, which includes a SSPC-SP6/NACE 3 commercial blast for surface preparation, one (1) primer coat of Tnemec N140F-1255 Beige, 3-9 mils DFT, and one (1) final coat of Tnemec 1074U-B5712 Dark Blue Aliphatic Acrylic Polyurethane enamel, 2 to 5 mils DFT.
- Forged alloy steel, contoured-race, locked-ring precision main bearing, and integral spur gear with L-10 life rating in excess of 100 years (876,000 hrs.).
- Grease lubrication of the main gear, pinion, and the main bearing.
- A direct-coupled cycloidal speed reducer.
- A ½ HP TEFC motor suitable for 230/460 volt, 3-phase, 60-hertz supply power.
- The replacement drive will be designed and manufactured according to the dimensions of the existing WesTech drive, which will make the replacement drive fit directly into the existing installation with little or no field modification or adaptation.
- Stainless steel weatherproof WesTech Torkmatic torque control with visual indicator and two limit switches set for an Alarm torque at 100% & for a Shut Down Torque at 120%.

Freight: Freight to the jobsite is FOB Jobsite, with freight prepaid by WesTech and added to the invoice. All claims for damage or loss in shipment shall be initiated by WesTech.

Delivery: The estimated shipment time is 14 weeks after an approved purchase order is received at the WesTech office. If submittals are required, add an additional 6-8 weeks to the shipment time.

Warranty: Five (5) year warranty.

Field Service: None for Item "A".

Clarifications/Comments: None.

ITEM "B" – Turnkey Installation of One (1) Replacement 42-inch Cage Drive Unit

Scope of Supply:

Remove one (1) existing 42-inch WesTech cage drive unit, and install one (1) new replacement 42-inch WesTech cage drive unit, as described in Item "A", for the 100-foot WesTech COPC2 Secondary Clarifier (Project No. 5142A).

Jobsite: Clarifier No. 9 at City of Franklin Water Reclamation Facility, 135 Claude Yates Drive, Franklin, TN 37064

Scope of Work:

WesTech will provide the manpower, supervision, and tools to remove, and replace the WesTech drive unit as follows.

WesTech includes the following:

- One (1) site mobilization and demobilization including– personnel, equipment (as needed), support of super structure (as needed), and travel time to and from the job site.
- Cranes, mats, rigging equipment as needed.
- Remove the existing drive unit.
- Install the replacement 42-inch dual-shaft drive unit, described in Item "A" of this proposal.
- Leveling of drive unit.
- Service Time: Removal of existing drive unit and installation of the new drive unit: 3-5 days. All on-site work will be performed during a Monday through Friday work week. The work day consists of one shift, up to 8 hours per day.

Freight: No freight required for Item "B".

Warranty: One (1) year warranty on labor.

Field Service: A WesTech Field Service Technician will come on site to inspect and certify the final installation, to start-up, and to provide instruction to plant personnel – (1) trip and one (1) day. The price for additional days on the same trip is \$1,235.00 per day. All field service fees include travel expenses.

Clarifications/Comments:

The new replacement drive unit is not included in the Item "B" section of this proposal.

WesTech does not include the following:

- Draining and cleaning of the tank.
- Electrical disconnect or connect.
- Overtime work hours or additional days – overtime rate \$195/hour, additional day rate \$1,235 (includes living expenses).
- Disposing of old debris/parts.
- Lubrication media for the drive unit.
- Civil work or grouting.

Installation Clarifications:

Special Requirements:

- Dehumidification equipment allowances are not included nor anticipated.
- Special considerations for breathing apparatus, air quality monitoring, vacuum evacuation of weld fumes, and fans have not been included.
- Special paint testing (spark, holiday) is not included.

Labor:

1. Price is based on open shop labor practices and rates.
2. WesTech's Project Manager/Representative will be on site at mobilization, at completion, and will make periodic site visits during installation to monitor progress.
3. Price is based on free and easy access to and around tank foundations and tank shell for no less than 12 hours during the daytime for 7 days per week. Although pricing may not include working during all the access time, we require access during these times to maintain schedule due to events that cannot be foreseen.
4. Price is based on one (1) move-in to the jobsite with clear and continuous access to and from the jobsite. If another move-in is required due to purchaser's delays or if foundations are not complete and stand-by time is required, the costs incurred by WesTech shall be to the purchaser's account and completion date will be delayed, without penalty to WesTech, by the number of days until WesTech crews remobilize on site.
5. Price does not include personnel or equipment (blankets, tenting, hose, etc.) assigned exclusively for the purpose of safety and/or fire watch/protection and/or security and/or quality/inspection unless specifically noted above. OSHA does not require a hole watch and we have assumed the tank is a non-permit-required confined space which does not require a hole watch.
6. We assume the construction parking lot to be close enough to the work site that bussing is not required. If bussing is required, all associated costs shall be for the purchaser's account.
7. If field delays are caused due to non-WesTech errors, standard T&M rates apply to the delay.

General Conditions:

1. A normal outside work site free of overhead obstructions with reasonably clear access around tanks for crane and equipment is required. Site must be drained and adequately maintained by purchaser. Should conditions at site dictate other than a normal site with reasonably clear access, our price will be adjusted accordingly.
2. All necessary materials for the installation that are to be furnished by others, but installed by WesTech shall be unloaded within fifty (50) feet of the applicable area of installation. Any materials received during our erection schedule and installed by WesTech will be unloaded by WesTech.

3. All electrical power for small tools and welding machines (460 v, 3 ph, 200 amps and 110v, 1 ph, 100 amps) along with connection and disconnection to be furnished by others at no cost to WesTech.
4. Work points, center lines, elevations, etc. to be provided by others prior to start of work.
5. WesTech does not take responsibility for damage to concrete floors, roadways, paved surfaces, or landscaping which may occur during normal erection work.
6. No welding is permitted below the minimum metal preheat temperature per API code. WesTech has not included for preheating of the base metal for cold weather conditions nor associated weather delays.
7. WesTech standard inspections apply. Third party inspection and weld maps are not included unless specifically stated in this document.

Taxes, Codes, and Permits:

1. Although it is our intent to comply with all state and local laws, ordinances, codes, and regulations, due to the large marketing area we service, it is not feasible for us to attempt to research all these requirements. We are not aware of any special state or local codes that would require changes in this proposal design, however, the associated costs would be for the purchaser's account.
2. Federal, state, and local permits to be by others at no cost to WesTech.
3. Unless otherwise stated in this proposal, all sales and/or use taxes are excluded from this proposal.

Responsibilities of the Purchaser:

The following items are listed to clearly define the responsibilities of the Purchaser/General Contractor (P/GC) and are not the responsibilities of WesTech Engineering, Inc.

1. Special construction procedures or devices may be required to protect WesTech's employees from the work of others or to protect employees of others from the work of WesTech, in order to comply with applicable safety and health laws. The cost of providing such special construction procedures or devices will be borne by the P/GC.
2. Provide a clear, well-drained, and open space adjacent to the proposed tank location adequate for receiving and storing materials and construction equipment. If dewatering and/or stabilizing materials are required, they are the sole responsibility of the P/GC.
3. Provide and maintain an unobstructed roadway to, and access around the construction site and foundation of the tank, suitable for heavy trucks and construction equipment. If dewatering and/or stabilizing materials are required, they are the sole responsibility of the P/GC.
4. Provide access to facilities for emergency medical assistance in the event of a job accident.

5. Provide all lubricants.
6. Before construction is started and without cost to WesTech, the P/GC shall remove or make safe any conditions at the construction site which present a safety hazard to workmen or equipment including, but not limited to electric or telephone wires, pipe lines, flames, smoke, flammable gases, fumes, steam, poison, noxious chemicals, and hazards from other contractors working above or below the construction work. The P/GC shall have the sole responsibility for replacement and protection of all underground piping and facilities.
7. The PURCHASER shall be responsible for responsibilities outlined for the controlling entity within OSHA 29 CFR 1926.1400 (Cranes And Derricks). WesTech acknowledges the revised OSHA Crane and Derrick Standards but does not consider itself the controlling entity as defined in Section 1926.1401.
8. PURCHASER is to provide a dedicated spotter that is in contact with our crane operator if there are power lines within our crane's operating radius per OSHA 29 CFR 1926.1408. WesTech can provide the dedicated spotter at an additional cost if the owner does not provide one. As a safety precaution, WesTech's construction forces do not operate hoisting equipment or install rigging within 15 feet of live electric power lines of 220 volts or greater.
9. All the terms and conditions of this proposal, including City of Franklin Procurement Terms and Conditions attached hereto and hereby made a part hereof, become an integral part of a resultant order.

This proposal has been reviewed for accuracy and is approved for issue:

By: 
David F. Mortensen

Date: 24 March 2016

PRICING

ITEM	EQUIPMENT/SERVICE	PRICE
"A"	One (1) New Replacement 42-inch Cage Drive Unit	\$ 40,948.00
"B"	Turnkey Installation of One (1) New Replacement 42-inch Cage Drive Unit	<u>\$ 26,367.00</u>
TOTAL		<u>\$ 67,315.00</u>

Time of Acceptance: This offer to sell is subject to receipt of your purchase order within 90 days of the date on this proposal.

Please be sure to reference this quotation number and date on your purchase order and all appurtenant documents. Please make order to:

WesTech Engineering, Inc.
3665 South West Temple
Salt Lake City, Utah 84115
Attention: Aftermarket Services

Email your purchase order to parts@westech-inc.com.

We appreciate the opportunity to offer our equipment. Upon award of an order, we assure you of our continued interest and service. At WesTech we realize that only the best possible equipment will be accepted, and we trust we will exceed your expectations.

This proposal, including all terms and conditions contained herein, shall become part of any resulting contract or purchase order. Changes to any terms and conditions, including but not limited to submittal and shipment days, payment terms, and escalation clause shall be negotiated at order placement, otherwise the proposal terms and conditions contained herein shall apply.

The above mentioned equipment was designed, and the services are offered, according to the information which we received. The dimensions may vary slightly depending upon the plant's actual design parameters. Assumed values may have been used, therefore, all information shall be verified by the engineer.

Terms: Terms are net **30 days** from completion and acceptance by the City of the project. Retentions are not allowed.

Sales Tax: No sales taxes, use taxes, or duties have been included in our pricing.

Freight: Prices quoted are **F.O.B. jobsite**, with freight prepaid by WesTech and added to the invoice. All claims for damage or loss in shipment shall be initiated by WesTech.

Field Service: Prices do not include field service unless noted in equipment description. Additional field service is available at \$4,450 for the first day and \$1,235.00 for each additional day (fees include travel expenses).

Paint: Any and all field surface preparation, field paint, touch-up and repair to shop painted surfaces are not by WesTech.

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such delivery, WesTech Engineering Inc. may store the equipment at Purchaser's expense.

Terms and Conditions appearing in any order based on this proposal which are inconsistent herewith shall not be binding on WesTech Engineering Inc. The sale and purchase of equipment described herein shall be governed exclusively by the foregoing proposal and the following provisions, including City of Franklin Procurement Terms and Conditions attached hereto and already made a parts hereof:

1. SPECIFICATIONS: WesTech Engineering Inc. is furnishing its standard equipment as outlined in the proposal and as will be covered by final approved drawings. The equipment may not be in strict compliance with the Engineer's/Owner's plans, specifications, or addenda as there may be deviations. The equipment will, however, meet the general intention of the mechanical specifications of these documents.

2. ITEMS INCLUDED: This proposal includes only the equipment specified herein and does not include erection, installation, accessories, nor associated materials such as controls, piping, etc., unless specifically listed.

3. PARTIES TO CONTRACT: WesTech Engineering Inc. is not a party to or bound by the terms of any contract between WesTech Engineering Inc.'s customer and any other party. WesTech Engineering Inc.'s undertakings are limited to those defined in the contract between WesTech Engineering Inc. and its direct customers.

4. PRICE AND DELIVERY: All selling prices quoted are subject to change without notice after 30 days from the date of this proposal unless specified otherwise. All prices are F.O.B. jobsite, freight prepaid and added. All claims for damage, delay or shortage arising from such equipment shall be made by Purchaser directly against WesTech Engineering, Inc. When shipments are quoted F.O.B. job site or other designation, Purchaser shall inspect the equipment shipped, notifying WesTech Engineering Inc. of any damage or shortage within forty-eight hours of receipt, and failure to so notify WesTech Engineering Inc. shall constitute acceptance by Purchaser, relieving WesTech Engineering Inc. of any liability for shipping damages or shortages.

5. PAYMENTS: All invoices are net 30 days from completion and acceptance by the City of the project. If the work to be performed hereunder is delayed by the Purchaser, payments shall be based on the purchase price and percentage of completion. Products held for the Purchaser shall be at the risk and expense of the Purchaser. Unless specifically stated otherwise, prices quoted are for equipment only. These terms are independent of and not contingent upon the time and manner in which the Purchaser receives payment from the owner.

6. ACCEPTANCE OF PRODUCTS: Products will be deemed accepted without any claim by Purchaser unless written notice of non-acceptance is received by WesTech Engineering Inc. within 48 hours of delivery if shipped F.O.B. point of destination. Such written notice shall not be considered received by WesTech Engineering Inc. unless it is accompanied by all freight bills for said shipment, with Purchaser's notations as to damages, shortages and conditions of equipment, containers, and seals. Non-accepted products are subject to the return policy stated below.

7. TAXES: Any federal, state, or local sales, use or other taxes applicable to this transaction, unless specifically included in the price, shall be for Purchaser's account.

8. TITLE: The equipment specified herein, and any replacements or substitutes therefore shall, regardless of the manner in which affixed to or used in connection with realty, remain the sole and personal property of WesTech Engineering Inc. until the full purchase price has been paid. Purchaser agrees to do all things necessary to protect and maintain WesTech Engineering Inc.'s title and interest in and to such equipment; and upon Purchaser's default, WesTech Engineering Inc. may retain as liquidated damages any and all partial payments made and shall be free to enter the premises where such equipment is located and remove the same as its property without prejudice to any further claims on account of damages or loss which WesTech Engineering Inc. may suffer from any cause.

9. INSURANCE: WesTech Engineering, Inc. hereby agrees to provide the City of Franklin with one or more certificates of insurance that meet or exceed City's Insurance requirements attached hereto and hereby made a part hereof.

10. SHIPMENTS: Any shipment of delivery dates recited represent WesTech Engineering Inc.'s best estimate.

If delivery is specified at a point other than WesTech Engineering Inc. or its supplier's shipping points, and delivery is postponed or prevented by strike, accident, embargo, or other cause beyond WesTech Engineering Inc.'s reasonable control and occurring at a location other than WesTech Engineering Inc. or its supplier's shipping points, WesTech Engineering Inc. assumes no liability in delivery delay. If Purchaser refuses

11. WARRANTY: WESTECH ENGINEERING INC. WARRANTS EQUIPMENT IT SUPPLIES ONLY IN ACCORDANCE WITH THE WARRANTY EXPRESSED IN THE ATTACHED COPY OF "WESTECH WARRANTY" AGAINST DEFECTS IN WORKMANSHIP AND MATERIALS WHICH IS MADE A PART HEREOF.

12. PATENTS: WesTech Engineering Inc. agrees that it will, at its own expense, defend all suits or proceedings instituted against Purchaser and pay any award of damages assessed against it in such suits or proceedings, so far as the same are based on any claim that the said equipment or any part thereof constitutes an infringement of any apparatus patent of the United States issued at the date of this Agreement, provided WesTech Engineering Inc. is given prompt notice in writing of the institution or threatened institution of any suit or proceeding and is given full control of the defense, settlement, or compromise of any such action; and Purchaser agrees to give WesTech Engineering Inc. needed information, assistance, and authority to enable WesTech Engineering Inc. so to do. In the event said equipment is held or conceded to infringe such a patent, WesTech Engineering Inc. shall have the right at its sole option and expense to a) modify the equipment to be non-infringing, b) obtain for Purchaser the license to continue using said equipment, or c) accept return of the equipment and refund to the Purchaser the purchase price thereof less a reasonable charge for the use thereof. WesTech Engineering Inc. will reimburse Purchaser for actual out-of-pocket expenses, exclusive of legal fees, incurred in preparing such information and rendering such assistance at WesTech Engineering Inc.'s request.

13. SURFACE PREPARATION AND PAINTING: If furnished, shop primer paint is intended to serve only as minimal protective finish. WesTech Engineering Inc. will not be responsible for the condition of primed or finish painted surfaces after equipment leaves its shops. Purchasers are invited to inspect paint in shops for proper preparation and application prior to shipment. WesTech Engineering Inc. assumes no responsibility for field surface preparation or touch-up of shipping damage to paint. Painting of fasteners and other touch-up to painted surfaces will be by Purchaser's painting contractor after mechanism installation.

Motors, gear motors, and other components not manufactured by WesTech Engineering Inc. will be painted with that manufacturer's standard paint system. It is WesTech Engineering Inc.'s intention to ship major steel components as soon as fabricated, often before drive, motors, and other manufactured components. Unless Purchaser can ensure that shop primed steel shall be field painted within thirty (30) days after arrival at the job site, WesTech Engineering Inc. encourages the Purchaser to order these components without primer.

WesTech Engineering Inc.'s prices are based on paints and surface preparations as outlined in the main body of this proposal. In the event that an alternate paint system is selected, WesTech Engineering Inc. requests that Purchaser's order advise of the paint selection. WesTech Engineering Inc. will then either adjust the price as may be necessary to comply or ship the material unpainted if compliance is not possible due to application problems or environmental controls.

14. RETURN OF PRODUCTS: No products may be returned to WesTech Engineering Inc. without WesTech Engineering Inc.'s prior written permission. Said permission may be withheld by WesTech Engineering Inc. at its sole discretion.

15. BACKCHARGES: WesTech Engineering Inc. will not approve or accept backcharges for labor, materials, or other costs incurred by Purchaser or others in modification, adjustment, service, or repair of WesTech Engineering Inc.-furnished materials unless such back charge has been authorized in advance in writing by a WesTech Engineering Inc. employee, by a WesTech Engineering Inc. purchase order, or work requisition signed by WesTech Engineering Inc.

16. ENTIRE AGREEMENT: This proposal, including all attachments referenced elsewhere, expresses the entire agreement between the parties hereto superseding any prior understandings, and is not subject to modification except by a writing signed by an authorized officer of each party.

17. MOTORS AND MOTOR DRIVES: In order to avoid shipment delays of WesTech Engineering Inc. equipment, the motor drives may be sent directly to the job site for installation by the equipment installer. Minor fit-up may be required.

18. EXTENDED STORAGE: Extended storage instructions will be part of information provided to shipment. If equipment installation and start-up is delayed more than 30 days, the provisions of the storage instructions must be followed to keep WARRANTY in force.

ACCEPTED BY PURCHASER

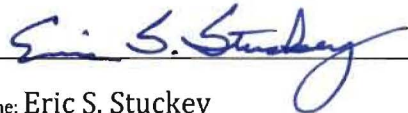
Customer Name: City Of Franklin, Tennessee

Customer Address: 109 3rd Ave. South,
Franklin, TN 37064

Contact Name: Tim Laws

Contact Phone: 615-791-3240

Contact Email: tim.laws@frinklntn.gov

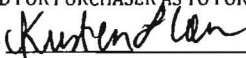
Signature: 

Printed Name: Eric S. Stuckey

Title: City Administrator

Date: 4-1-2016

APPROVED FOR PURCHASER AS TO FORM

Signature: 

Printed Name: Kristen L. Corn

Title: Assistant City Attorney

Date: 03.29.16



Five Year Warranty

WesTech equipment is backed by WesTech's reputation as a quality manufacturer, and by many years of experience in the design of reliable equipment.

Equipment manufactured or sold by WesTech Engineering, Inc., once paid for in full, is backed by the following warranty:

For the benefit of the original user, WesTech warrants all new equipment manufactured by WesTech Engineering, Inc. to be free from defects in material and workmanship, and will replace or repair (F.O.B. its factories or other location designated by it) any part or parts returned to it which WesTech's examination shall show to have failed under normal use and service by the original user within five (5) years from shipment to the purchaser.

Such repair or replacement shall be free of charge for all items except for those items such as resin, filter media, and the like that are consumable and normally replaced during maintenance, with respect to which, repair or replacement shall be subject to a pro-rata charge based upon WesTech's estimate of the percentage of normal service life realized from the part. WesTech's obligation under this warranty is conditioned upon its receiving prompt notice of claimed defects, which shall in no event be later than thirty (30) days following expiration of the warranty period, and is limited to repair or replacement as aforesaid.

This warranty is expressly made by WesTech and accepted by purchaser in lieu of all other warranties, including warranties of merchantability and fitness for particular purpose, whether written, oral, express, implied, or statutory. WesTech neither assumes nor authorizes any other person to assume for it any other liability with respect to its equipment. WesTech shall not be liable for normal wear and tear, corrosion, or any contingent, incidental, or consequential damage or expense due to partial or complete inoperability of its equipment for any reason whatsoever.

This warranty shall not apply to equipment or parts thereof which have been altered or repaired outside of a WesTech factory, or damaged by improper installation, application, or maintenance, or subjected to misuse, abuse, neglect, accident, or incomplete adherence to all manufacturer's requirements, including, but not limited to, Operations & Maintenance Manual guidelines & procedures.

This warranty applies only to equipment made or sold by WesTech Engineering, Inc.

WesTech Engineering, Inc. makes no warranty with respect to parts, accessories, or components purchased by the customer from others. The warranties which apply to such items are those offered by their respective manufacturers.

Standard Procurement Terms and Conditions

City of Franklin, Tennessee

1. Assignment/Subcontracting. Neither party may assign any rights or obligations under these Standard Procurement Terms and Conditions or any Statement of Work without the prior written consent of the other party. These Standard Procurement Terms and Conditions will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Vendor may subcontract any portion of the work only with the prior consent of the City, but such subcontracting will not relieve Vendor of its duties under these Standard Procurement Terms and Conditions.
2. Time of the Essence. The parties agree that TIME IS OF THE ESSENCE with respect to the vendor's performance of all provisions of this procurement.
3. Taxes. As a tax-exempt entity, the City shall not be responsible for sales or use taxes incurred for products or services. Upon request, the City shall supply Vendor with a copy of its Sales and Use Tax Exemption Certificate. Vendor shall bear the burden of providing its suppliers with a copy of the City's tax exemption certificate and shall assume all liability for such taxes, if any, that should be incurred.
4. Notices. Any notice provided pursuant to these Standard Procurement Terms and Conditions, if specified to be in writing, will be in writing and will be deemed given: (a) if by hand delivery, then upon receipt thereof; (b) if mailed, then three (3) City business days after deposit in the mail where sender is located, postage prepaid, certified mail return receipt requested; (c) if by next day delivery service, then upon such delivery; or (d) if by facsimile transmission or electronic mail, then upon confirmation of receipt. All notices will be addressed to the parties at the addresses set forth below (or set forth in such other document which these Standard Procurement Terms and Conditions may accompany, or such other address as either party may in the future specify in writing to the other):

In the case of the City:

City of Franklin

Attn: Purchasing Manager

109 Third Ave. South

P.O. Box 305

Franklin, TN 37065-0305

FAX: 615/550-0079

E-mail: purchasing@franklintn.gov

In the case of Vendor:

WesTech Engineering, Inc.

Attn: Aftermarket Services

3665 South West Temple (Zip Code 84115)

P.O. Box 65068

Salt Lake City, UT 84165-0068

FAX: 801-265-1080

E-mail: parts@westech-inc.com

Standard Procurement Terms and Conditions

City of Franklin, Tennessee

5. Confidentiality and Proprietary rights. Vendor waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page (or section as the case may be) as confidential or proprietary. Proprietary rights do not extend to the data created by the City's users of the System; all rights to that data (including derivative or hidden data such as metadata) shall vest solely in City at the moment of creation and City shall retain exclusive rights, title, and ownership of all data and images created therefrom at the moment of creation and utilization, through and including image creation. City may be required to disclose documents under state or federal law. City shall notify Vendor if a request for documents has been made and shall give Vendor a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. In exchange, Vendor agrees to indemnify, defend, and hold harmless City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of City's reliance upon Vendor 's representation that materials supplied by Vendor (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Vendor and Vendor assumes control over that claim.
6. Derivative Works. To the extent that the Agreement contains Vendor's reservation of rights, such definitions and limitations are superseded by the following: "Derivative Work" means a program that is based on or derived from one or more existing programs or components. If the original software is modified to create a new program, a derived work is created. If the original software was designed to accept plug-ins or drivers using a defined mechanism, such a driver or plug-in does not form a derived work. Linking to a library in the way it was designed to be interfaced with, does *not* constitute deriving a work. "Derivative work" is *not* the data that the Licensee inputs, manipulates, modifies or otherwise improves, nor the images resulting therefrom.
7. Arbitration/Mediation. No arbitration shall be required as a condition precedent to filing any legal claim arising out of or relating to the Contract. No arbitration or mediation shall be binding.
8. Waiver. Neither party's failure or delay to exercise any of its rights or powers under these Standard Procurement Terms and Conditions will constitute or be deemed a waiver or forfeiture of those rights or powers. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (a) a future or continuing waiver of that same right or power, or (b) the waiver of any other right or power.
9. Warranties/Limitation of Liability/Waiver. City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by Vendor to limit its liability shall be void and unenforceable.
10. Severability. If any term or provision of these Standard Procurement Terms and Conditions is held to be illegal or unenforceable, the validity or enforceability of the remainder of these Standard Procurement Terms and Conditions will not be affected.

Standard Procurement Terms and Conditions

City of Franklin, Tennessee

11. Precedence. In the event of conflict between the provisions of these Standard Procurement Terms and Conditions and any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany, the provisions of these Standard Procurement Terms and Conditions will to the extent of such conflict take precedence unless such document expressly states that it is amending these Standard Procurement Terms and Conditions.
12. Indemnification. Vendor agrees to indemnify and save the Government of Franklin, the City of Franklin and individual, on or off duty, officers, and employees of the City of Franklin, harmless from any and all losses, damages and expenses, including court costs and attorneys' fees, by reason of any loss, whatsoever, arising out of or relating to or in consequence of the work done in connection with the contract of which this agreement is a part, excepting only such losses as shall be occasioned by the negligence of the City of Franklin.
13. Additions/Modifications. If seeking any addition or modification to the Contract, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of the Contract, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refer to the Contract or to the specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify the Contract; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.
14. Applicable Law; Choice of Forum/Venue. These Standard Procurement Terms and Conditions are made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to any state's choice-of-law rules. The choice of forum and venue shall be exclusively in the Courts of Williamson County, TN.
15. Termination. Unless the City has indicated otherwise for a specific procurement solicitation, either party may terminate these Standard Procurement Terms and Conditions, with or without cause, upon thirty (30) calendar days' notice to the other. Upon termination by the vendor, the City shall be entitled to retain ownership of any and all goods and equipment purchased. Upon termination by the City, the vendor shall be entitled to receive any amounts due as a result of goods and equipment already delivered and/or services already rendered; however, the City shall maintain ownership and control of any goods and equipment purchased. Upon termination of services, whether connected or unconnected to goods and equipment, such services shall be rendered until the conclusion of the 30th calendar day as stated in the notice or until a contractual benchmark has been achieved, or as the parties may otherwise agree.

Standard Procurement Terms and Conditions

City of Franklin, Tennessee

16. Breach. Upon deliberate breach of these Standard Procurement Terms and Conditions, or of any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany, by either party, the non-breaching party shall be entitled to terminate these Standard Procurement Terms and Conditions without notice, with all of the remedies it would have in the event of termination under section 10 (“Severability”) above, and may also have such other remedies as it may be entitled to in law or in equity.
17. Default. If Vendor fails to perform or comply with any provision of these Standard Procurement Terms and Conditions, or of any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany, then the City (i) may cancel the purchase award and/or the accompanying contract or agreement or purchase order, in whole or in part, without penalty or protest by Vendor; (ii) may consider such failure to perform or comply as a breach of contract; (iii) reserves the right to purchase its requirements from the vendor that submitted the next lowest and best responsive and responsible bid, or the vendor that submitted the next best proposal, if that vendor will still honor that bid or proposal, or to seek new bids or proposals, or to pursue one or more other options available to the City in compliance with its then current purchasing policy; and (iv) may hold the defaulting vendor liable for all damages provided by law, including cost of cover.
18. Entire Agreement. These Standard Procurement Terms and Conditions, including any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany, constitutes the entire agreement between the parties and supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of these Standard Procurement Terms and Conditions. The terms and conditions of these Standard Procurement Terms and Conditions may not be changed except by an amendment expressly referencing these Standard Procurement Terms and Conditions by section number and signed by an authorized representative of each party.
19. Survival. These Standard Procurement Terms and Conditions shall survive the completion of or any termination of any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany.

City of Franklin Insurance Requirements

City of Franklin Contract No.: 2016-0050

1. Before commencing delivery of the products and services specified in the contract to which these Insurance Requirements apply, the vendor shall provide one or more unexpired certificates of insurance providing evidence of the following minimum types and limits of insurance coverage:

Type of Coverage	Limits of Coverage	Certificate of Insurance
Commercial General Liability	\$1,000,000 Each Occurrence \$2,000,000 General Aggregate \$1,000,000 Personal and Advertising Injury \$2,000,000 Products-Completed Operations Aggregate General Liability is to be Primary and Non-Contributory	Certificate of Insurance shall indicate Certificate Holder* as Additional Insured with Additional Insured blanket endorsement attached for both Premises/Operations and Products/Completed Operations
Automobile Liability (Owned, Non-Owned, and Hired Vehicles)	\$1,000,000 Combined Single Limit Each Accident	Certificate Holder* only
Workers Compensation	Statutory limits Waiver of Subrogation is to be indicated	Certificate Holder* only
Employers Liability	\$1,000,000 Bodily Injury Each Accident \$1,000,000 Policy Limit Bodily Injury by Disease \$1,000,000 Each Employee Bodily Injury by Disease	Certificate Holder* only
Installation Floater	Total insurable property value of installed equipment at \$40,948	Certificate of Insurance shall indicate Certificate Holder* as Loss Payee
Professional Liability or Errors or Omissions Liability	\$1,000,000 Combined Single Limit	Certificate Holder* only

*Certificate Holder shall be listed as follows:

City of Franklin
 109 3rd Ave. South
 Franklin, TN 37064

2. If and when insurance coverage documented by the certificate(s) of insurance referenced above expires before the expiration of the maintenance phase for the ordered products and/or services, then the vendor shall immediately suspend on-site maintenance services unless and until it provides one or more unexpired replacement certificates of insurance that indicates the new date(s) of insurance coverage expiration and that meets or exceeds the insurance requirements as specified above.
3. In the event that insurance coverage documented by the certificate(s) of insurance referenced above is materially modified or canceled before the expiration of the maintenance phase for the ordered products and/or services, then the vendor shall, immediately upon learning of any such material modification or cancellation, suspend on-site maintenance services and shall, within three (3) calendar days of such learning, notify the City of any such material modification or cancellation.
4. The vendor agrees to impose the City's insurance requirements upon any subcontractors it utilizes for this procurement. Use of any particular subcontractor for this procurement shall have been approved by the City in advance of that subcontractor commencing work for this procurement.