

**KUCERA INTERNATIONAL INC.
CONTRACT AGREEMENT FOR AERIAL PHOTOGRAMMETRIC SERVICES
FOR CITY OF FRANKLIN, TENNESSEE**

1. Parties to Agreement:

Contractor

Kucera International Inc. ("Kucera")
Headquarters Office
38133 Western Parkway
Willoughby, OH 44094

Client

City of Franklin, TN ("City")
109 3rd Avenue South, Suite 108
Franklin, TN 37064

2. Date of Agreement: 11/4/17

3. Project Location and Area:

City of Franklin, TN
85 square miles
Approximately 390 tiles (2000' x 3500')

4. Place of Performance (On-Shore):

Kucera International Inc. Corporate Headquarters
38133 Western Parkway
Willoughby, OH 44094

5. Points of Contact:

- A. For Kucera – John Antalovich Jr., 440-975-4230 x 123, j.antalovich@kucerainternational.com
- B. For City – Chris Robinson, 615-550-6665, chris.robinson@franklintn.gov

6. Attachments:

- A. Project Area
- B. Rutherford County, TN 2016 Digital Orthoimagery and Planimetric Update Project RFP Pricing Breakdown
- C. City's Standard Procurement Terms and Conditions

7. Scope of Service:

- A. Digital aerial photo at 3" resolution
- B. Aerial lidar survey at 2ppsm (QL2-1' contour grade)
- C. Ground control survey
- D. Classified lidar return – ASP/USGS Classes 1, 2, 4, 6, 7, 9, 10, 17, 18
- E. Aerotriangulation
- F. Color digital orthophotography at 3" resolution
- G. New digital terrain model (DTM) breaklines and 2' contour topography
- H. New digital planimetric feature mapping of selected features – (see Attachment B)
- I. FGDC project level metadata

**KUCERA INTERNATIONAL INC.
CONTRACT AGREEMENT FOR AERIAL PHOTOGRAMMETRIC SERVICES
FOR CITY OF FRANKLIN, TENNESSEE**

8. Contract Standards/Specifications:

- A. Rutherford County, TN 2016 Digital Orthoimagery and Planimetric Update Specifications – as applicable
- B. ASPRS Class 2 Accuracy Standards – as applicable:
 - Horizontal RMSE within 2 pixel, all measured ground points within 6 pixel
 - Vertical RMSE within 1/2 contour, all measured ground points within contour interval (2')
- C. USGS Lidar Base Specifications as applicable:
 - QL2 – bare earth return vertical RMSE within 10cm, measured points within 19.6cm @ 95% confidence

9. Source Data:

- A. Project boundary – furnished by City
- B. Existing map datasets – as available from City for reference purposes

10. Contract Deliverables:

- A. Bare earth classified lidar return – in tiled LAS format
- B. Color digital orthoimagery in uncompressed GeoTIFF tile and compressed SID form
- C. DTM and contour topography in geodatabase or shapefile
- D. Planimetric feature mapping in geodatabase or shapefile

City shall have full ownership of deliverables upon acceptance and payment.

11. Compensation and Invoicing:

- A. All fees based on Rutherford County, TN 2016 Digital Orthoimagery Pricing Breakdown (see Attachment B)
- B. Phases and Fees:

1. Digital aerial photography and color digital orthoimagery at three inch (3") resolution	390 tiles at \$51.00	\$19,890.00
2. Aerial lidar for 1' contours (QL2)	390 tiles at \$34.35	13,396.50
3. Lidar classification (based on on-shore update pricing for bridges, misc. structures, tree masses, lakes (see Attachment B)	390 tiles at \$10.51	4,098.90
4. DTM breakline capture (based on on-shore update pricing for paved and unpaved roads, rivers, lakes, ponds, culverts, creeks, open drainage (see Attachment B)	390 tiles at \$28.93	11,282.70
5. Two foot contours	390 tiles at \$26.00	10,140.00
6. Planimetric feature mapping, new, on-shore (see Attachment B)	390 tiles at \$156.10	60,879.00
7. Metadata		<u>included in above</u>
	Total	\$119,687.10
- C. Invoicing will be by phase based on deliverable or other documentation of completion.
- D. Payment will be net thirty (30) calendar days from date of delivery and/or completion/rendering or date of invoice, whichever is later.

**KUCERA INTERNATIONAL INC.
CONTRACT AGREEMENT FOR AERIAL PHOTOGRAMMETRIC SERVICES
FOR CITY OF FRANKLIN, TENNESSEE**

12. Contract Period/Completion Time:

A. Project Initiation/Work Plan	December 2017
B. Ground control survey/report	January 2018
C. Aerial Photo and Lidar Acquisition	February 2018
D. Aerotriangulation and Lidar Bare Earth processing	March 2018
E. Pilot Project	April 2018
F. Orthophotography	May – June 2018
G. DTM/Contour and Plan Mapping, Lidar classification	June – August 2018

Kucera will furnish status reports on at least a monthly basis throughout contract duration. Any changes to the delivery schedule listed above shall be mutually agreed upon by the City and Kucera points of contact listed above either before being implemented or as soon as practicable thereafter, and shall be memorialized in writing.

13. Independent Contractor:

Kucera is an independent contractor, responsible for means and methods of carrying out scope of services and having no employee or subsidiary association with the City.

14. Insurance:

Before work pertaining to this project commences, Kucera shall provide the City with 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	Certificate of Insurance shall indicate Certificate Holder* as Additional Insured with Additional Insured 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 (not required of an individual or of a firm with fewer than five (5) persons)	Statutory Limits Waiver of Subrogation shall apply	Certificate Holder* only

**KUCERA INTERNATIONAL INC.
CONTRACT AGREEMENT FOR AERIAL PHOTOGRAMMETRIC SERVICES
FOR CITY OF FRANKLIN, TENNESSEE**

Type of Coverage	Limits of Coverage	Certificate of Insurance
Employers Liability (not required of an individual or of a firm with fewer than five (5) persons)	\$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
Aircraft Liability	\$5,000,000 Combined Single Limit Per Occurrence	Certificate of Insurance shall indicate Certificate Holder* as Additional Insured with Additional Insured endorsement attached
Professional Liability	\$2,000,000 Combined Single Limit Per Occurrence	Certificate Holder* only

*Certificate Holder shall be listed as follows:

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

If and when insurance coverage documented by the certificate(s) of insurance referenced above expires before the supply and delivery by Kucera and the acceptance by the City of all of the products and services ordered from Kucera pursuant to this project, then Kucera shall immediately suspend work or supply 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.

In the event that insurance coverage documented by the certificate(s) of insurance referenced above is materially modified or canceled before the supply and delivery by the Kucera and the acceptance by the City of all of the products and services ordered from Kucera pursuant to this project, then Kucera shall, immediately upon learning of any such material modification or cancellation, suspend work or supply and shall, within three (3) calendar days of such learning, notify City of any such material modification or cancellation.

Kucera agrees to impose City's insurance requirements as listed above upon any subcontractors it utilizes for this procurement. Use of any particular subcontractor for this procurement shall have been approved by City in advance of that subcontractor commencing work for this procurement.

15. Standard of Care and Warranty:

Kucera shall perform all contracted services in accordance with the designated Agreement standards/specifications and generally accepted industry practices and procedures as applicable. Data deliverables which are demonstrated to be deficient or otherwise non-conformant in relation to the applicable standards/specifications will be corrected and resubmitted within a period, to be mutually agreed upon by the City and Kucera points of contact listed above and memorialized in writing, from the time of demonstration of the deficiency or non-conformity. Kucera's warranty will apply indefinitely for major errors/defects found in Kucera's delivered data and for 90 days from delivery for cosmetic/minor revisions and replacement of missing data previously documented to have been delivered.

**KUCERA INTERNATIONAL INC.
CONTRACT AGREEMENT FOR AERIAL PHOTOGRAMMETRIC SERVICES
FOR CITY OF FRANKLIN, TENNESSEE**

16. Confidentiality:

Kucera's personnel shall not disclose any information to any party other than the City or individuals designated by the City concerning the site or Project, including the nature or results of the work performed, and shall direct all comments or questions to the City or the City's designated representative.

In the event Kucera is compelled by subpoena, court order, or administrative order ("Order") to disclose any information concerning the site or Project, Kucera shall promptly notify the City and shall cooperate with the City prior to disclosure so that the City may take necessary actions to protect such information from disclosure.

17. Compliance with the Law:

Kucera shall at all times observe and comply with all applicable statutes, ordinances, rules and regulations of federal, state and local governments in effect at the execution of this Agreement.

18. Health and Safety:

Kucera is responsible for the safety of its employees and agents while performing contract work, including observing applicable statutes, conformance with company or project safety plan, and use of appropriate procedures and gear.

19. Termination:

The City may terminate all or part of this contract for its convenience. In such event Kucera shall be compensated for costs incurred up to the date of termination and reasonable termination expenses.

If either Kucera or the City significantly and persistently fails to meet the terms of this contract agreement or otherwise materially breaches the contract, the opposite party may, by written notice, terminate the contract if the fault or breach is not corrected within 10 days of potential termination. In this case the terminated party shall be obligated for any additional costs and expenses incurred as a result of the termination.

20. Severability:

If any of the provisions of this Agreement are held invalid or unenforceable under applicable law, the enforceability of the other remaining provisions shall not be impaired.

21. Integration:

This Contract Agreement, including the City's Standard Procurement Terms and Conditions attached hereto as Attachment C and hereby fully incorporated herein, represents the entire understanding of the parties as to the contracted services. No prior oral or written understanding shall be of any force or effect with respect to those matters. Other than changes to the delivery schedule identified above, and other than the schedule of delivery of any corrections to data deliverables as discussed above,

**KUCERA INTERNATIONAL INC.
CONTRACT AGREEMENT FOR AERIAL PHOTOGRAMMETRIC SERVICES
FOR CITY OF FRANKLIN, TENNESSEE**

this Agreement may not be modified except by an Amendment in writing, signed by authorized representatives of both parties.

22. Contract Jurisdiction:

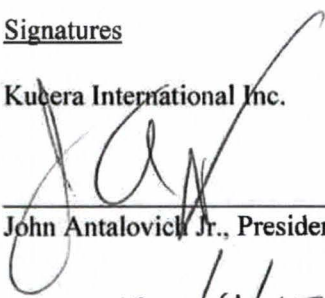
This Contract Agreement is made under and will be construed in accordance with the laws of State of Tennessee without giving effect to any state's choice of law rules. The choice of forum and venue shall be solely in the Courts of Williamson County, TN.

23. Signatures:

The parties hereto execute this Agreement effective as of the date shown above.

Signatures

Kucera International Inc.



John Antalovich Jr., President

Date

12/11/17

City of Franklin, Tennessee




Eric S. Stuckey, City Administrator

Date

12-14-2017

Approved as to form:



Kristen L. Corn, Assistant City Attorney

Attachment A (Franklin)



B. Pricing Breakdown for Individual Datasets and Optional Items

Please fill in the sections below that you are submitting prices for. Place the cost estimate in the correct column for On-shore and Off-shore pricing. Pricing may be provided for only On-shore processing but **NOT** for only Off-shore. On-Shore pricing is listed in the **ON** column and Off-Shore pricing is listed in the **OFF** column. Vendors may submit pricing for individual groups or all deliverables. See subcontracting section E item 11 if partnering with another vendor.

Group A: Orthoimagery and Planimetrics Section

Please initial that your company is qualified, willing and able to provide these services as described: 

Color Imagery and Elevation	Whole County		100 Scale Tile	
	ON	OFF	ON	OFF
One Foot Resolution	21,000.00		7.00	
Six Inch Resolution	58,350.00		19.45	
Three Inch Resolution	153,000.00		51.00	
Color Infrared for 1'=2750 for 0.5'=5500 for 25'	11,000.00		\$1-2, \$4 per	
LIDAR for 2' Contours 65000 for 1' Contours	103,000.00		34.35	
Two Foot Contours	77,000.00		28.00	
One Foot Contours	306,000.00		102.00	
Planimetrics – See breakdown below				

Planimetric Data Collection	Update Pricing				New Generation Pricing				Check if NOT included Please Explain
1"=100' Mapping Using 6" Imagery	Whole County		Per 100 Index		Whole County		Per 100 Index		
Features	ON	OFF	ON	OFF	ON	OFF	ON	OFF	
Impervious Surface Features									
Paved Road	34,800	27,000		9.00	58,000	45,000	19.50	15.00	
Unpaved Road	10,530	8,100		2.70	17,550	13,500	5.85	4.50	
Bridge	3,510	2,700		.90	5,850	4,500	1.95	1.50	
Public Sidewalk	28,080	21,600	9.36	7.20	46,800	36,000	15.60	12.00	
Private Sidewalk	22,815	17,550	7.59	5.85	38,025	29,250	12.65	9.75	
Paved Drive	29,835	22,950	9.96	7.65	49,725	38,250	16.60	12.75	
Unpaved Drive	3,510	2,700	1.17	.90	5,850	4,500	1.95	1.50	
Paved Parking	10,530	8,100	3.51	2.70	17,550	13,500	5.85	4.50	
Unpaved Parking	10,530	8,100	3.51	2.70	17,550	13,500	5.85	4.50	
Occupied Building	34,800	27,000	11.70	9.00	58,000	45,000	19.50	15.00	
Unoccupied Building	3,510	2,700	1.17	.90	5,850	4,500	1.95	1.50	

5

Pink - selected services for digital orthoimagery, lidar, and contour mapping

Green - services for lidar classification

Blue - services for DTM breakline capture

Yellow - selected features/services for planimetric mapping

Runway/Helipad/Taxiway	737	567	0.25	0.19	12,228	945	0.41	0.32
Slab (> 100 sq. ft.)	2,246	1,728	0.75	0.58	3,744	2,880	1.95	1.50
Pool (In ground Only)	2,246	1,728	0.75	0.58	3,744	2,880	1.95	1.50
Misc. Structure (>10x10)	10,140	7,800	3.38	2.60	16,900	13,000	5.65	4.35
Tree Mass (>5 Acres)	10,530	8,100		2.70	17,550	13,500	5.85	4.50
Hydro & Stormwater Features								
	21,060	16,200		5.40	35,100	2,700	11.70	9.00
River (Centerline)	2,246	1,728	0.75	0.58	3,744	2,880	1.25	0.96
Lake	7,371	5,670	2.45	1.89	12,285	9,450	4.10	3.15
Pond	2,246	1,728		0.58	3,744	2,880	1.25	0.96
Headwall	3,510	2,700	1.17	0.90	5,850	4,500	1.95	1.50
Culvert	3,510	2,700		0.90	5,850	4,500	1.95	1.50
Paved Ditch (Polygon Outline)								
Catch Basin	13,603	14,310	6.20	4.77	31,005	23,850	10.34	7.85
	3,510	2,700		0.90	5,850	4,500	1.95	1.50
Open Drainage	3,510	2,700		0.90	5,850	4,500	1.95	1.50
Optional Features								
Utility Poles	14,850	11,340	4.95	3.78	24,750	18,900	8.20	6.30
Tree Mass <5 Acres	14,850	11,340	4.95	3.78	24,750	18,900	8.20	6.30
Transmission Lines	2,106	1,620	0.70	0.54	3,510	2,700	1.17	0.90
Fence Lines	10,530	8,100	3.51	2.70	17,550	13,500	5.85	4.50
Vertical Obstructions	14,850	11,340	4.95	3.78	24,750	18,900	8.20	6.30
Required Documentation								
Metadata	3,500	—	1.16	—	3,500	—	1.16	—
Feature Code Index	2,500	—	0.83	—	2,500	—	0.83	—

Group B: Optional Items

1. Oblique Imagery Section

Please initial that your company is qualified, willing and able to provide these services as described:

Oblique Imagery	Whole County		100 Scale Tile	
	ON	OFF	ON	OFF
Three Inch Oblique Imagery	80,000		500/tile	
Four Inch Oblique Imagery	69,000		400/tile	
Six Inch Oblique Imagery	54,000		300/tile	

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 contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, without the prior written consent of the other party. These Standard Procurement Terms and Conditions, and any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, 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 and any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply.
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 the contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply.
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, or any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, 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 to which these Standard Procurement Terms and Conditions apply, 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

Re: City of Franklin Contract No. 2017_0301

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:

Kucera International, Inc.

Attn: John Antalovich, Jr., President

38133 Western Parkway

Willoughby, OH 44094

FAX: 440-975-4238

E-mail: j.antalovich@kucerainternational.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 any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply. 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, or any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, 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 that of any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, 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 any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, excepting only such losses as shall be occasioned solely by the negligence of the City of Franklin.
13. Additions/Modifications. If seeking any addition or modification to any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, 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 any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply or to the specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply; 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 and any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply 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 in the contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, either party may terminate the contract or agreement or purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, 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

Standard Procurement Terms and Conditions

City of Franklin, Tennessee

- 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.
16. Breach. Upon deliberate breach of these Standard Procurement Terms and Conditions, or of any contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, by either party, the non-breaching party shall be entitled to terminate the contract or agreement or purchase order or other procurement to which these Standard Procurement Terms and Conditions apply 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, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, then the City (i) may cancel the contract, agreement, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, 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, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply, 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, purchase order or other procurement to which these Standard Procurement Terms and Conditions apply.