

CITY OF FRANKLIN, TENNESSEE PROCUREMENT AGREEMENT

(City of Franklin Contract No. 2019-0241)

THIS PROCUREMENT AGREEMENT ("AGREEMENT") is by and between the City of Franklin, Tennessee ("CITY"), and Hayes Pipe Supply, Inc. of Nashville, Tennessee ("SUPPLIER"), who mutually agree as follows:

1. CITY issued (a) on June 27, 2019 Purchasing Office Solicitation No. 2020-005, a procurement solicitation for bids for PVC pipe and ductile iron fittings (pertaining to City of Franklin Project No. 2019-008), and (b) on July 2, 2019 Addendum No. 1 to Purchasing Office Solicitation No. 2020-005 (collectively, "SOLICITATION").
2. In response to CITY's SOLICITATION, SUPPLIER submitted a bid dated July 11, 2019 ("SUBMITTAL"), a copy of excerpts from which is attached hereto as Attachment No. 1 and hereby incorporated by reference as if fully set forth herein.
3. SUPPLIER included in SUBMITTAL CITY's Standard Procurement Terms and Conditions with SUPPLIER's contact information inserted ("CITY'S TERMS"), a copy of which is attached hereto as Attachment No. 2 and hereby incorporated by reference as if fully set forth herein.
4. CITY awarded on August 13, 2019 to SUPPLIER the purchase of PVC pipe and ductile iron fittings pursuant to SOLICITATION and SUBMITTAL.
5. Products shall be delivered to the satisfaction of CITY within fourteen (14) calendar days after receipt of order unless a later delivery has been authorized in writing by CITY. Failure by SUPPLIER to meet the delivery schedule shall constitute grounds for CITY to cancel order and/or consider SUPPLIER to be in breach of contract.
6. In the event of a conflict between the following documents, the order of precedence shall be as follows: (a) this AGREEMENT; (b) CITY's TERMS; (c) INDEMNIFICATION AGREEMENT; (d) SOLICITATION; and (e) SUBMITTAL.

EXECUTED THIS _____ DAY OF _____ 20____.

For SUPPLIER:


(signature of SUPPLIER's authorized representative)

TITLE: Sales Representative

For CITY:

(signature of CITY's authorized representative)

TITLE: City Administrator

Approved as to Form:

Shauna R. Billingsley, City Attorney

CITY OF FRANKLIN, TENNESSEE
PROCUREMENT AGREEMENT

(City of Franklin Contract No. 2019-0241)

Attachment No. 1

Excerpts from SUBMITTAL

Bid Submittal Form

a form required of Bidders and Proposers on purchases of supplies, materials, equipment and services for the

City of Franklin, Tennessee



Purchasing Office Solicitation No.: 2020-005

Bidder's name, street address, and mailing address (if different):	Hayes Pipe Supply, Inc. 950 Fiber Glass Road Nashville, TN 37201 P.O. Box 101550, 37224
Bidder's contact person's name (printed), title, telephone number and e-mail address:	Greg Barton Sales Representative 615 300-5059 gbarton@hayespipe.com
Does the bidder take any exceptions to the City's procurement solicitation?	<input type="checkbox"/> Yes, see enclosed. <input checked="" type="checkbox"/> No, bidder takes no exceptions.
Are exceptions, if any, to the City's procurement solicitation listed separately, described, compared to the City's intention as expressed and implied by the City's solicitation documents and submitted?	<input type="checkbox"/> Yes, see enclosed. <input checked="" type="checkbox"/> No, bidder takes no exceptions.
Are the City's preferred delivery terms (FOB destination, freight prepaid and allowed) acceptable to bidder?	<input checked="" type="checkbox"/> Yes. <input type="checkbox"/> No, bidder requests the following delivery terms: _____.
Are the City's preferred payment terms (net 30 days from date of delivery or date of invoice, whichever is later) acceptable to bidder?	<input checked="" type="checkbox"/> Yes. <input type="checkbox"/> No, bidder requests the following payment terms: _____.
Estimated time of delivery of the specified products:	14 _____ calendar days after receipt of order.
Last date (no sooner than September 30, 2019) that bid and associated pricing is valid and may be accepted by the City:	September 30, 2019
Method of payment – The City's default method of payment is by electronic means, either by direct deposit (i.e., "ACH" or "Electronic Funds Transfer"), or by bank credit card, rather than by conventional check. Which electronic payment method would the bidder prefer?	<input type="checkbox"/> ACH or Electronic Funds Transfer. <input checked="" type="checkbox"/> Bank credit card.

Bid Submittal Form

a form required of Bidders and Proposers on purchases of supplies, materials, equipment and services for the
City of Franklin, Tennessee

Purchasing Office Solicitation No.: 2020-005

Bidder's name:	<u>Hayes Pipe Supply, Inc.</u>
Are the following components included with this Bid Submittal Form in the bid submittal? <ul style="list-style-type: none">• City of Franklin Specifications, marked by the bidder as to compliance therewith as per the instructions therein;• Identification, listing and description of any exceptions to the procurement solicitation including the Specifications;• Contact information for required references (see Instructions for Bidders);• City of Franklin Standard Procurement Terms and Conditions, with the bidder's contact information inserted;• Bidder's proposed agreement or contract, if any, the terms and conditions of which are not inconsistent with the City's Standard Procurement Terms and Conditions; and• City of Franklin Affidavit of Non-Collusion, executed in full.	<input checked="" type="checkbox"/> Yes, see enclosed. <input type="checkbox"/> No, bidder chooses not to include all of these components (WARNING: doing so may cause the City to deem the bid non-responsive).
Acknowledge any and all issued addenda to this solicitation: (Prior to submitting its bid, it is the responsibility of each potential bidder to determine whether any addenda to this procurement solicitation have in fact been issued by the City.)	<input checked="" type="checkbox"/> Addendum No. 1. <input type="checkbox"/> Addenda Nos. 1 through _____. <input type="checkbox"/> No addenda.
Subscription and affirmation of bidder's authorized representative: By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to Tennessee Code Annotated § 12-12-106.	 (signature)
Signature of bidder's authorized representative: I affirm that I am authorized by the bidder to sign this Bid Submittal Form as well as any and all companion forms and documents included herewith. I have obtained and read, and do understand and consent, to all instructions, terms and conditions, including those imposed by reference, which apply to this procurement solicitation and compliance with which is required as a condition precedent to consideration of the bid submitted herewith.	 (signature)
Title of bidder's authorized representative:	<u>Sales Representative</u>
Date of signatures:	<u>7/11/19</u>

Bid Submittal Form

a form required of Bidders and Proposers on purchases of supplies, materials, equipment and services for the
City of Franklin, Tennessee

Purchasing Office Solicitation No.: 2020-005

Bidder's name: <u>Greg Barton</u>					<u>Hayes Pipe Supply</u>		
Quoted bid pricing and other information for specified products:							
Line No.	Qty	UoM	Product Description	Name of Manufacturer	Duration of Product Warranty	Unit Price	Extended Price
1	9120	feet	12" C900 DR18 Pipe Purple	Sanderson	12 months	\$ 13.53	\$ 123,393.60
2	20	feet	8" C900 DR18 Pipe Purple	Sanderson	12 months	\$ 6.52	\$ 130.40
3	40	feet	6" C900 DR18 Pipe Purple	Sanderson	12 months	\$ 3.75	\$ 150.00
4	4	each	12" x12" x12" MJ T	Tyler Union	12 months	\$ 233	\$ 932.00
5	4	each	12" MJ Butterfly Valve Open Right Handed	Crispin	12 months	\$ 1190	\$ 4760.00
6	2	each	12" x12" x8" MJ T	Tyler Union	12 months	\$ 178	\$ 356.00
7	2	each	8" MJ Gate Valve Open Right Handed	AFC	120 months	\$ 810	\$ 1620.00
8	2	each	8" MJ Sleeve	Tyler Union	12 months	\$ 78	\$ 156.00
9	1	each	8" MJ Plug for Valve	Tyler Union	12 months	\$ 43	\$ 43.00
10	1	each	12" x12" x6" MJ T	Tyler Union	12 months	\$ 160.50	\$ 160.50
11	1	each	6" MJ Gate Valve Open Right Handed	AFC	120 months	\$ 510	\$ 510.00
12	1	each	5 1/4 Purple Fir H	AFC	120 months	\$ 1575	\$ 1575.00
13	6	each	Reclaim Valve Boxes	JBS	12 months	\$ 138	\$ 828
14	9500	feet	12GA Solid UF Wire Purple	Copperhead	12 months	\$.142	\$ 1349
15	19	each	Tracerlock DB Connector	Copperhead	12 months	\$ 1.19	\$ 22.61
16	3	each	6" Mega Lug Gland Pack for PVC	Sigma	12 months	\$ 31.98	\$ 95.94
17	4	each	8" MJ 45-degree bend	Tyler Union	12 months	\$ 63	\$ 252.00
18	13	each	8" Mega Lug Gland Pack for PVC	Sigma	12 months	\$ 43.40	\$ 564.20
19	27	each	12" MJ 45-degree bend	Tyler Union	12 months	\$ 135	\$ 3645.00
20	74	each	12" Mega Lug Gland Pack for PVC	Sigma	12 months	\$ 80	\$ 5920.00
Grand total:							\$ 146,463.25

City of Franklin, Tennessee Specifications

Purchasing Office Solicitation No.: 2020-005

1. Solicitation identified: These Specifications apply to the following procurement solicitation:

PVC pipe and ductile iron fittings

Purchasing Office Solicitation No.: 2020-005

2. Notice to Bidders publication date: **June 27, 2019**
3. Solicitation release date: **June 27, 2019**
4. Deadline for optional submittal in writing of questions seeking to revise or clarify any aspect of this procurement solicitation: **July 3, 2019, 2:00 p.m. Central Time**
5. Bids submittal deadline and scheduled opening: **July 11, 2019, 2:00 p.m. Central Time**
6. Tentative date of release of City's tabulation of bids received and notice of intent to award: **August 5, 2019**
7. Tentative date of award: Meeting of Board of Mayor and Aldermen at which is tentatively scheduled to be awarded the selection of the lowest and best responsive and responsible bid: **August 13, 2019**
8. Objective: To secure, by means of a competitive procurement process, the selection of the lowest and best responsive and responsible bid from a bidder to furnish all materials and means necessary to supply and deliver the products as specified below. See the accompanying Instructions for Bidders for additional information and instructions.
9. Exceptions:
- a. To avoid the need to take an exception to a specification, potential bidders may request revisions to the specifications before the deadline for optional submittal in writing of questions seeking to revise or clarify any aspect of the specifications. See the accompanying Instructions for Bidders for contact information.
 - b. Any deviation or variance from the City's specifications shall be considered by the City to be an exception.
 - c. Any exceptions to the City's specifications shall be identified by the bidder on the City's specifications document as well as listed and described in detail, along with any other exceptions to this procurement solicitation, in a separate written document to be prepared by the bidder and included in or with the bid, referencing any subsection number. Such listing shall include a description of exactly how such exceptions deviate from the City's expectations as expressed and

City of Franklin, Tennessee Specifications

Purchasing Office Solicitation No.: 2020-005

implied by the procurement solicitation, and shall indicate why such exceptions should be judged by the City to meet or exceed those expectations. Any and all exceptions to this procurement solicitation which the City, in its sole discretion, deems not to meet or exceed the City's intention as expressed and implied by the procurement solicitation may be considered by the City as a factor in evaluating the bid.

10. General terms and conditions:

- a. Bid price: The bid price shall include all equipment, labor, materials, permit(s), freight and required insurance to supply and deliver the specified products.
- b. Delivery terms: As a matter of practice, the City expects bidder awarded the purchase to ship any and all deliverables FOB destination, freight prepaid and allowed. The City's preferred delivery terms, as described in the preceding sentence, are offered to the bidder as a condition of award. If the City's preferred delivery terms are unacceptable to the bidder, then the bidder shall indicate on the Bid Submittal Form its preferred delivery terms. Delivery terms may be a factor in the City's selection criteria. Delivery terms are non-negotiable after award is made.
- c. Payment terms: As a matter of practice, the City pays for goods and/or services only after receipt and acceptance by the City of all such goods and/or services as ordered, and only after receipt of an accurate, proper, complete and itemized invoice for all such goods and/or services as ordered, net thirty (30) calendar days from date of delivery or date of invoice, whichever is later. The City's preferred payment terms, as described in the preceding sentence, are offered to the bidder as a condition of award. If the bidder prefers alternate payment terms, then the bidder shall indicate on the Bid Submittal Form its preferred payment terms. Payment terms may be a factor in the City's selection criteria. Payment terms are non-negotiable after award is made.
- d. Applicable laws and regulations: All applicable federal and state laws, city ordinances, orders, rules and regulations of all authorities having jurisdiction over the specified products shall apply to the quoted purchase price, and they will be deemed to be included in these specifications the same as though they are written out in full herein.
- e. Other documents to be required of the bidder recommended to be awarded the purchase: See the accompanying "Instructions for Bidders" for a listing of other documents to be required of the bidder recommended to be awarded the purchase.
- f. Standard Procurement Terms and Conditions: By submitting its bid, the bidder certifies that it has read and accepts all terms, conditions and requirements of this solicitation, including the terms and conditions identified and listed in the City's Standard Procurement Terms and Conditions attached hereto and hereby incorporated by reference.
- g. Refusal to honor submittal: If and after an award is made by the City, if the bidder refuses to execute an agreement or contract or in any other way honor the terms and conditions of its submittal, the City shall be entitled to seek compensation for its damages, which may include the cost of conducting a new solicitation.
- h. Confidential and/or proprietary information; trade secrets: All contents of all submittals are subject to public disclosure and shall not contain any confidential and/or proprietary information and/or trade secrets. Further, by submitting its bid, the bidder indemnifies and holds the City of Franklin harmless against any loss or damage, including reasonable attorney fees, it may incur as a result of the City's reliance upon the bidder's representation that materials supplied by the bidder do not contain trade secrets or proprietary information which is not subject to public disclosure.

City of Franklin, Tennessee Specifications

Purchasing Office Solicitation No.: 2020-005

11. Detailed specifications: Please note:

- Bidders are required to mark with a “C” the blank line next to any specification below to which their bid COMPLIES. (Specifications without a blank line are for context and need not be marked.)
- Bidders are required to mark with an “E” the blank line next to any specification below to which their bid takes EXCEPTION. (Specifications without a blank line are for context and need not be marked.)
- Any exceptions to the City’s specifications shall be identified by the bidder on the City’s specifications document as well as listed and described in detail, along with any other exceptions to this procurement solicitation, in a separate written document to be prepared by the bidder and provided in or with the bid, referencing any subsection number. Such listing shall include a description of exactly how such exceptions deviate from the City’s expectations as expressed and implied by the procurement solicitation, and shall indicate why such exceptions should be judged by the City to meet or exceed those expectations.
- Bidders are required to submit with their bid these Specifications for this procurement, marked by the bidder as to compliance herewith as per the instructions above.

- | | | |
|---------|--------------|---|
| 11.1. | | <u>Product.</u> |
| 11.1.1. | <u> C </u> | City intends for the end-user department to use the specified products (as listed on the Bid Submittal Form) for underground distribution of non-potable water. Products as bid shall be designed and manufactured according to industry standards for this intended use. |
| 11.1.2. | <u> C </u> | Products to be purchased by the City are to be new and unused. |
| 11.1.3. | <u> C </u> | Purchased products shall have been manufactured within twelve (12) months of the bids submittal deadline and scheduled opening. |
| 11.1.4. | <u> C </u> | Bidder shall quote unit pricing for exactly all specified products. Bids for less than exactly all specified products shall be deemed non-responsive and shall be rejected. |
| 11.1.5. | <u> C </u> | The product quantities listed on the Bid Submittal Form for the specified products are exact and represent the total quantities the City intends to order from the bidder awarded the purchase. |
| 11.1.6. | <u> C </u> | The product descriptions listed on the Bid Submittal Form for the specified products are to be considered City specifications. |
| 11.1.7. | <u> C </u> | No manufacturer descriptions and specifications or product warranty descriptions are required for bids for the products as specified by the City. |
| 11.1.8. | <u> C </u> | Product substitutions are not allowed unless approved by the City. Requests to approve product substitutions shall be made by the deadline for questions and shall include detailed manufacturer descriptions and specifications, as well as product warranty descriptions, sufficient for the City to determine whether the products are substantially equivalent to the specified products. |

City of Franklin, Tennessee Specifications

Purchasing Office Solicitation No.: 2020-005

- 11.2. C **Delivery.**
- 11.2.1. C Delivery schedule:
- 11.2.1.1. C Except for (a) the 9120 feet of 12" C900 DR18 Pipe Purple and (b) the 9500 feet of 12GA Solid UF Wire Purple, all specified products shall be delivered to the satisfaction of City within fourteen (14) calendar days after receipt of order unless a later delivery has been authorized in writing by City.
- 11.2.1.2. C At the bidder's discretion, bidder awarded the purchase may deliver less than (but at least approximately one-third (33%) of) the 9120 feet of 12" C900 DR18 Pipe Purple and the 9500 feet of 12GA Solid UF Wire Purple to the satisfaction of City within fourteen (14) calendar days after receipt of order, with any undelivered balance of the total specified quantities to be delivered subsequently, within fourteen (14) calendar days after receipt of subsequent order, in not more than two subsequent deliveries each for at least approximately one-third (33%) of the total specified quantities, unless a later delivery has been authorized in writing by City.
- 11.2.1.3. C Failure by the bidder awarded the purchase to meet this delivery schedule shall constitute grounds for the City, at its exclusive discretion, to cancel the order(s) and/or consider the bidder awarded the purchase to be in breach of contract.
- 11.2.1.4. C Bidder shall indicate on the Bid Submittal Form the estimated time of delivery, measured in number of calendar days after receipt of order, of the specified products.
- 11.2.2. C Bidder specifically acknowledges and accepts City's standard delivery terms as expressed under "General terms and conditions" above.
- 11.2.3. C Bidder shall include in the bid pricing delivery of the specified products to the following location (jobsite staging area) unless an alternative delivery location is requested in writing by City:
- 1364 Ascot Lane
Franklin, TN 37064
- 11.2.4. C City shall provide any labor and equipment necessary to unload or offload the deliverables at the designated delivery location.
- 11.2.5. C Delivery shall be made between the hours of 7:00 a.m. and 3:30 p.m., Monday through Friday except holidays observed by the City.

Affidavit of Non-Collusion

a form required of Bidders and Proposers on purchases of supplies, materials, equipment and services for the
City of Franklin, Tennessee

State of Tennessee

County of Williamson) SS

Affiant, Greg Barton, deposes and makes oath that:
(printed name of person signing Affidavit)

1. He or she is the Representative of
(Owner or Authorized Partner, Officer, Representative or Agent of Owner)
Hayes Pipe Supply, Inc.
(legal name of entity submitting bid or proposal)

the Bidder or Proposer who has submitted the attached bid or proposal;

2. The Bidder or Proposer is fully informed respecting the preparation and content of the attached bid or proposal and of all pertinent circumstances respecting such bid or proposal;
3. Such bid or proposal is genuine and is not a collusive or sham bid or proposal;
4. Neither the said Bidder or Proposer nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this Affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any official or agent of the City of Franklin or with any other firm, person, or potential or actual bidder or proposer to submit a collusive or sham bid or proposal in connection with the contract for which the attached bid or proposal has been submitted, or to refrain from bidding or proposing indirectly, or sought by agreement, or collusion, or communication, or conference with any other firm, person, or potential or actual bidder or proposer to fix the price or prices or cost element of the bid, quoted or proposed price or the bid, quoted or proposed price of any other potential or actual bidder or proposer, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against the City of Franklin or any person interested in the proposed contract;
5. The price or prices quoted in the attached bid or proposal are fair and proper and are not tainted by a collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or Proposer or any of its agents, representatives, owners, employees, or parties in interest, including this Affiant; and
6. He or she understands that Article VIII, Section 16, of the City Charter of Franklin, and T.C.A. §6-54-107, prohibit any member of the Board of Mayor and Aldermen, or officer elected by said Board, from being interested in any contract, or work of any kind whatever, under its control and direction, and any contract in which any such person shall have an interest shall be void and unenforceable, subjecting any funds received by contractor to be returned in full to the City, in addition to any other penalties provided by law.

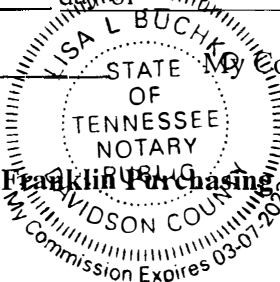
Greg Barton
(signature of Affiant)

Sales Representative

(title of Affiant)

Sworn and subscribed to before me this 11 day of July, 2019

Lisa Buchholz
(Notary Public)



My Commission Expires: 3/7/2023

(Submitted in response to City of Franklin Purchasing Office Solicitation No. 2020-005)

CITY OF FRANKLIN, TENNESSEE PROCUREMENT AGREEMENT

(City of Franklin Contract No. 2019-0241)

Attachment No. 2

CITY'S TERMS

Standard Procurement Terms and Conditions

City of Franklin, Tennessee

1. Assignment and Successors. 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.
2. Subcontracting. 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.
3. 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.
4. 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.
5. 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 Purchasing Office Solicitation No. 2020_005

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:

Hayes Pipe Supply, Inc.

Dalton Phillips

950 Fiber Glass Road

P.O. Box 101550

Nashville, TN 37224

615-256-8836

dphillips@hayespipe.com

Standard Procurement Terms and Conditions

City of Franklin, Tennessee

6. 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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

12. 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.
13. 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.
14. 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.
15. 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.
16. 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

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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.

17. 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.
18. 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.
19. 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.
20. 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.