




HISTORIC
FRANKLIN
TENNESSEE

ITEM #17
BOMA
09/28/2010

MEMORANDUM

September 3, 2010

TO: Board of Mayor and Aldermen

FROM: Eric S. Stuckey, City Administrator 
Vernon Gerth, Assistant City Administrator for Community & Economic Development
Russell Truell, Assistant City Administrator for Finance & Administration
Brian Wilcox, Purchasing Manager

SUBJECT: Consideration of bid award to Battle Ground Brewery of Franklin in the amount of \$50,010.00 for sale of surplus property consisting of the two (2) institutional structures, including the single parcel of land (map & parcel no. 063N-B06400) upon which they are presently sited, located at 112 and 118 Bridge Street, said real property to be sold as a single package

Purpose

The purpose of this solicitation for bids is to dispose of certain real property that the City has declared as surplus. The property consists of the two (2) institutional structures, including the single parcel of land (map & parcel no. 063N-B06400) upon which they are presently sited, located at 112 and 118 Bridge Street. The structure at 112 Bridge Street is known as “the old, old jail” and the structure at 118 Bridge Street is known as “the old jail.” The property would be sold as a single package.

Background

The City acquired this property in September 2007 from Williamson County. The City subsequently determined that the property is of no further feasible use to the City and declared it surplus in August 2009. The property is presently zoned Civic-Institutional (CI) and mixed-uses complimentary to Franklin’s Historic Central District are limited under the CI zoning. Furthermore, recent changes to the City of Franklin’s Floodway Fringe Overlay have created additional challenges that limit the future reuse of this property.

Financial Impact

The City published on July 22 and again on July 29, 2010 a Notice to Bidders in the *Williamson Herald* soliciting bids for purchase from the City of the two (2) institutional structures, including the single parcel of land (map & parcel no. 063N-B06400) upon which they are presently sited, located at 112 and 118 Bridge Street, said real property to be sold as a single package. In addition, solicitation documents were distributed on or about July 30 directly to various parties known or thought to be interested in this solicitation. One (1) bid was received by the September 2, 2010 submittal deadline. A tabulation of the bids received in response to this solicitation is attached.

Options

1. Dismiss the bid and proceed with
 - a. evaluating and amending the Floodway Fringe Overlay restrictions that significantly limit uses



- b. rezoning of the property
- c. re-soliciting
2. Dismiss the bid and proceed with
 - a. tear down the rear one story structure
 - b. installing a new roof/minimally repair the front white structure
 - c. evaluating and amending the Floodway Fringe Overlay restrictions that significantly limit uses
 - d. re-soliciting if/when desired
3. Accept Leasing option contingent on
 - a. rezoning the base zoning district to one consistent with the desired uses and the land use plan
 - b. evaluating and amending the Floodway Fringe Overlay restrictions that significantly limit uses
4. Accept Purchase option contingent on
 - a. rezoning the base zoning district to one consistent with the desired uses and the land use plan
 - b. evaluating and amending the Floodway Fringe Overlay restrictions that significantly limit uses

Recommendation

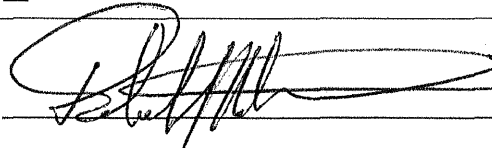
Staff recommends Option 1 as follows:

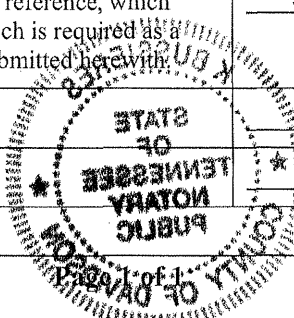
Dismiss the bid and proceed with:

- evaluating and amending the Floodway Fringe Overlay restrictions that significantly limit uses
- rezoning of the property
- re-soliciting

Bid Submittal Form City of Franklin, Tennessee

Purchasing Office Solicitation for: sale of real property at 112 and 118 Bridge St.

Bidder's name, street address, and mailing address:	<u>Battle Ground Brewery LLC</u> <u>108 BRIDGE ST.</u> <u>FRANKLIN, TN 37064</u>
Bidder's contact person's name (printed), title, and telephone number:	<u>FREDERICK MINDERMAN</u> <u>PRESIDENT</u> <u>615-300-7723</u>
Does the bidder take any exceptions to the City's instructions, requirements, terms and conditions?	<input type="checkbox"/> Yes, see enclosed for detailed description of each exception. <input checked="" type="checkbox"/> No, bidder takes no exceptions.
Does the bidder offer any requirements, terms and conditions as a condition of its bid?	<input checked="" type="checkbox"/> Yes, see enclosed for detailed description of each conditional stipulation. <input type="checkbox"/> No, bidder makes no conditional stipulations.
Total quoted bid price for purchase of two (2) institutional structures, including the single parcel of land (map & parcel no. 063N-B06400) upon which they are presently sited, located at 112 and 118 Bridge Street, said real property to be sold as a single package:	<u>\$ 50,010.00</u> <u>or \$1 per month Lease x 7 years</u>
Estimated time of transfer of ownership:	<u>* Pending conditions zoning etc. 3+ months*</u> days after notice of award.
Last date (no sooner than September 30, 2010) that bid and associated pricing is valid and may be accepted by the City:	<u>OCT. 1 2010</u>
Are the following included with this Bid Submittal Form in the bid submittal? <ul style="list-style-type: none"> • Standard Procurement Terms and Conditions of the City of Franklin, with the Bidder's contact information inserted; • 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 documents.
Receipt acknowledged of any and all issued addenda to this solicitation:	<input checked="" type="checkbox"/> Addendum No. <u>A</u> received. <input type="checkbox"/> Addenda Nos. _____ received. <input type="checkbox"/> No addenda received.
Signature of bidder's authorized representative: I have received and read, and do understand and consent, to all instructions, requirements, terms and conditions, including those imposed by reference, which apply to this solicitation and compliance with which is required as a condition precedent to consideration of the bid submitted herewith.	
Title of bidder's authorized representative:	<u>PRESIDENT</u>
Date of signature:	<u>September 2nd 2010</u>



Affidavit of Non-Collusion
City of Franklin, Tennessee

State of Tennessee)
County of Williamson) SS

Affiant, Fredrick J Mindermann, deposes and makes oath that:
(printed name of person signing Affidavit)

1. (He) or she is the President of
(Owner or Authorized Partner, Officer, Representative or Agent of Owner)
Battleground Brewery LLC,
(legal name of entity submitting bid or proposal)

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

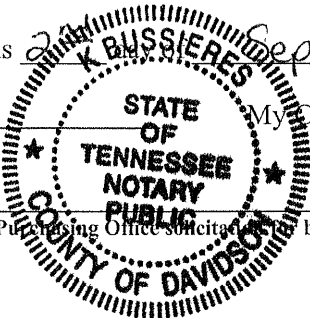
2. The Bidder or Proposer is fully informed respecting the preparation and content of the attached bid or proposal and of all pertinent circumstances respecting such bid or proposal;
3. Such bid or proposal is genuine and is not a collusive or sham bid or proposal;
4. Neither the said Bidder or Proposer 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.

[Signature]
(signature of Affiant)

PRESIDENT
(title of Affiant)

Sworn and subscribed to before me this 27th September, 2010

[Signature]
(Notary Public)



My Commission Expires: 7-7-2014

ADDENDUM A

September 2, 2010

To: City of Franklin
From: Frederick Mindermann-Battle Ground Brewery, LLC
RE: Bid for property 112 and 118 Bridge St.

Battle Ground Brewery, LLC 108 Bridge Street, Franklin, TN would like to acquire or lease the 118 jail property and allow a non profit organization like the Franklin Heritage Foundation or new non profit to be determined to have or lease the 112 White Jail Building.

If Battle Ground Brewery, LLC is awarded the purchase of both properties we will donate 112 to an agreed upon non-profit organization so that it can be preserved for historic purposes and ideally be utilized after renovation for community arts and museum purposes using fund raising and donations like the Franklin Theatre project.

Battle Ground Brewery would share parking between 112 and 118. Battle Ground Brewery, LLC intends to utilize the 118 building for storage, events, art and music events, gift and food market retail in on half of the building. On the other half there would be administration offices, video-audio production studio and Battle Ground Brewery 7 barrel Production system for brewing beer primarily for the 108 Bridge Street Battle Ground Brewery and Restaurant and for sale on site with an outdoor beer garden. This is the same size system that Cool Springs Brewery has and is the average size system used for on site BrewPub operations. It is not a commercial bottling system like Yazoo Brewery in Nashville and 118 would be used for keg production and filling what are called Growlers 64 oz like Cool Springs Brewery.

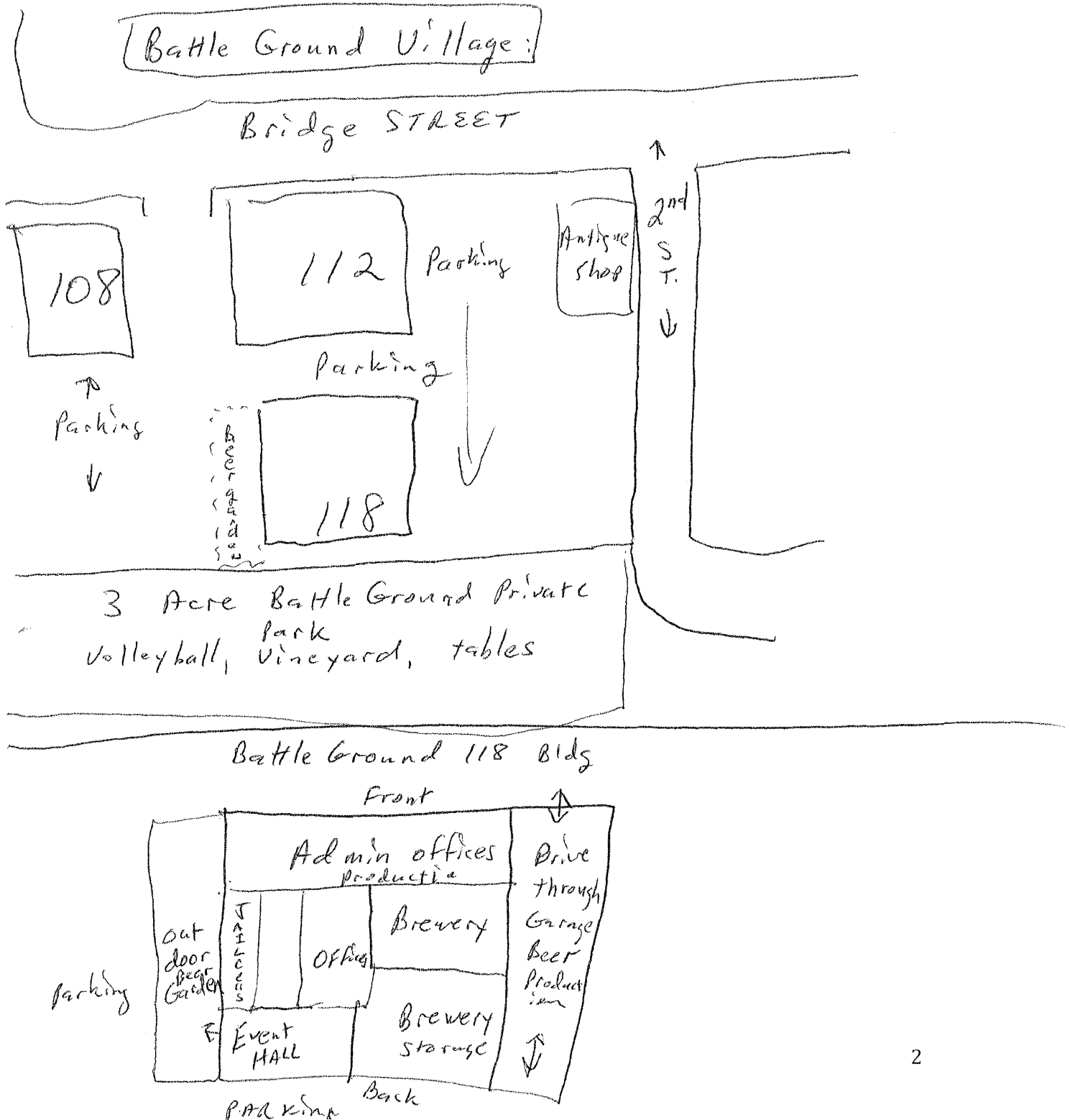
We would require immediate zoning changes or we would close transaction upon zoning approval for commercial and light industrial and retail like the adjoining properties are now. Ideally we would like immediate access to allow us to ship and store our 7 Barrel System that is completed and ready in California. This could be done on a temporary lease arrangement but again only if zoning can be assured for our operation. In the future we may submit plans for increased production but for the short term we are going to contract with a Nashville Brewery or other to bottle for us and keep the 118 operation limited to the 7 Barrel System.

Battle Ground Brewery, LLC is currently negotiating the lease or purchase of the 3 acres directly behind 108 Bridge St property and it is our intention to create a "Battle Ground Village" park like atmosphere that would eventually adjoin the proposed Bicentennial Park. We do not plan on building any structures on the 3 acres.

Battle Ground Brewery LLC would like to either purchase the property for the proposed amount in this bid or as an alternative set up a 7-10 year lease on the

properties for \$1 per month and assume renovation and maintenance responsibilities. This would allow the city to potentially realize increased property value while having Battle Ground Brewery LLC and a non-profit organization renovate and maintain a tourist revenue generating operation.

Below is a rough drawing of our plan.



Standard Procurement Terms and Conditions

City of Franklin, Tennessee

1. Assignment/Subcontracting. Neither party may assign any rights or obligations under these Standard Terms and Conditions or any Statement of Work without the prior written consent of the other party. These Standard 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 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 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) 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 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
Re: City of Franklin Purchasing Office Solicitation for bids for sale of real property at 112 and 118 Bridge St.
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:

Battle Ground Brewery LLC
Attn: Frederick Mindermann
108 Bridge St
Franklin, TN 37064
Tel: 615 790 1108
FAX 615 790 1950
Fredm@battlegroundbrewery.com

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

Standard Procurement Terms and Conditions City of Franklin, Tennessee

- 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 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 Terms and Conditions is held to be illegal or unenforceable, the validity or enforceability of the remainder of these Standard Terms and Conditions will not be affected.
 11. Precedence. In the event of conflict between the provisions of these Standard Terms and Conditions and any contract, agreement or other document which these Standard Terms and Conditions may accompany, the provisions of these Standard Terms and Conditions will to the extent of such conflict take precedence unless such document expressly states that it is amending these Standard Terms and Conditions.
 12. Indemnification. Vendor agrees to indemnify and hold City harmless from and against legal liability for all judgments, losses, damages, and expenses to the extent such judgments, losses, damages, or expenses are caused by Vendor's negligent act, error or omission in the performance of the services of this agreement. In the event judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of Vendor and City, they shall be borne by each party in proportion to its own negligence. The

Standard Procurement Terms and Conditions City of Franklin, Tennessee

terms and conditions of this paragraph shall survive completion of this services agreement.

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 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. Either party may terminate these Standard Terms and Conditions, with or without cause, upon thirty (30) 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 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 Terms and Conditions by either party, the non-breaching party shall be entitled to terminate these Standard Terms and Conditions without notice, with all of the remedies it would have in the event of termination under section 10 above, and may also have such other remedies as it may be entitled to in law or in equity.
17. Entire Agreement. These Standard Terms and Conditions, including any contract, agreement or other document which these Standard 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 Terms and Conditions. The terms and conditions of these Standard Terms and Conditions may not be changed except by an amendment expressly referencing these Standard Terms and Conditions by section number and signed by an authorized representative of each party.
18. Survival. These Standard Terms and Conditions shall survive the completion of or any termination of any contract, agreement or other document which these Standard Terms and Conditions may accompany.