

**BOARD OF PUBLIC WORKS AND SAFETY  
Agenda Request Form**

(Form B-01-2012)

*Organizations and individuals are asked to submit a request form and supporting documents to be placed on the agenda. You will be contacted by the City confirming the date of the meeting in which your request will be heard. Please make sure that your contact information is accurate in case we need to get in touch with you. The Board of Works meets on the 1st and 3rd Monday of each month at 5:00 p.m. in City Hall located at 70 E. Monroe Street.*

<b>Date Submitted:</b>	08/16/16	<b>Meeting Date:</b>	09/19/16
<b>Contact Information:</b>			
<b>Requested by:</b>	City Attorney Lynn Gray		
<b>On Behalf of Organization or Individual:</b>		Franklin Fire Department	
<b>Telephone:</b>	317-738-3365		
<b>Email address:</b>			
<b>Mailing Address:</b>			
<b>Describe Request:</b>			
Request Approval & Signatures on KME Agreement for Purchase of Fire Truck			
<b>List Supporting Documentation Provided:</b>			
KME Agreement for Purchase			
<b>Who will present the request?</b>			
<b>Name:</b>	Lynn Gray	<b>Telephone:</b>	317-738-3365

*In order for an individual and/or agency to be considered for new business on the Board of Works agenda, this reservation form and supporting documents must be received in the Mayor's office no later than 4:00 p.m. on the Wednesday before the meeting.*

## **AGREEMENT FOR PURCHASE OF GOODS AND SERVICES**

THIS AGREEMENT FOR PURCHASE OF GOODS AND SERVICES ("Agreement") is hereby entered into by and between the City of Franklin, Indiana, acting by and through its Board of Public Works and Safety ("City"), and Kovatch Mobile Equipment Corp., an entity duly authorized to do business in the State of Indiana ("Vendor").

### **TERMS AND CONDITIONS**

#### **1. ACKNOWLEDGEMENT, ACCEPTANCE:**

Vendor acknowledges that it has read and understands this Agreement, and agrees that its execution of same constitutes its acceptance of all of the Agreement's terms and conditions, including the terms and conditions set forth in the bid specifications and instructions relating to the City's bid request for a new fire engine purchase.

#### **2. PERFORMANCE:**

City agrees to purchase the goods and/or services (the "Goods and Services") from Vendor using City appropriated funds. Vendor agrees to provide the Goods and Services and to otherwise perform the requirements of this Agreement by applying at all times the highest technical and industry standards.

#### **3. PRICE AND PAYMENT TERMS:**

3.1 Vendor agrees that the total price for the Goods and Services to be provided to City hereunder shall be no more than six hundred seven thousand nine hundred twenty six Dollars (\$607,926 ) (the "Price"). Vendor shall submit an invoice to City no more than once every thirty (30) days detailing the Goods and Services provided to City within such time period. City shall pay Vendor for such Goods and Services within sixty (60) days after the date of City's receipt of Vendor's invoice detailing same, so long as and to the extent such Goods and Services are not disputed, are in conformance with the specifications set forth in Vendor's bid proposal, are submitted on an invoice that contains the information required by the City of Franklin Clerk Treasurer's Office and Vendor has otherwise performed and satisfied all the terms and conditions of this Agreement.

3.2 Vendor agrees not to provide any Goods and Services to City that would cause the total cost of the Goods and Services provided by Vendor to City hereunder to exceed the Price, unless City has previously agreed, in writing, to pay an amount in excess thereof.

#### **4. WARRANTY:**

Vendor expressly warrants that the Goods and Services covered by this Agreement will conform to those certain specifications, descriptions and/or quotations regarding same as were provided to Vendor by City and/or by Vendor to and accepted by City pursuant to or as part of that certain City of Franklin new custom fire engine bid proposal received by the City of Franklin on the 20th day of June, 2016, all of which documents are incorporated herein by reference, and that the Goods and Services will be delivered in a timely, good and workmanlike manner and free from defect. Vendor acknowledges that it knows of City's intended use and expressly warrants that the Goods and Services provided to City pursuant to this Agreement have been selected by Vendor based upon City's stated use and are fit and sufficient for their particular purpose.

#### **5. TIME AND PERFORMANCE:**

This Agreement shall become effective as of the last date on which a party hereto executes same ("Effective Date"), and both parties shall thereafter perform their obligations hereunder in a timely manner. Time is of the essence of this Agreement.

#### **6. DISCLOSURE AND WARNINGS:**

If requested by City, Vendor shall promptly furnish to City, in such form and detail as City may direct, a list of all chemicals, materials, substances and items used in or during the provision of the Goods and Services provided hereunder, including the quantity, quality and concentration thereof and any other information relating thereto. At the time of the delivery of the Goods and Services provided hereunder, Vendor agrees to furnish to City sufficient written warning and notice (including appropriate labels on containers and packing) of any hazardous material utilized in or that is a part of the Goods and Services.

#### **7. LIENS:**

Vendor shall not cause or permit the filing of any lien on any of City's property. In the event any such lien is filed and Vendor fails to remove such lien within ten (10) days after the filing thereof, by payment or bonding, City shall have the right to pay such lien or obtain such bond, all at Vendor's sole cost and expense.

#### **8. DEFAULT:**

In the event Vendor: (a) repudiates, breaches or defaults under any of the terms or conditions of this Agreement, including Vendor's warranties; (b) fails to provide the Goods and Services as specified herein; (c) fails to make progress so as to endanger timely and proper provision of the Goods and Services and does not correct such failure or breach within five (5) business days (or such shorter period of time as is commercially reasonable under the circumstances) after receipt of notice from City specifying such failure or breach; or (d) becomes insolvent, is placed into receivership, makes a general assignment for the benefit of creditors or dissolves, each such event constituting an event of default hereunder, City shall have the right to (1) terminate all or any parts of this

Agreement, without liability to Vendor; and (2) exercise all other rights and remedies available to City at law and/or in equity.

#### **9. INSURANCE AND INDEMNIFICATION:**

Vendor shall procure and maintain in full force and effect during the term of this Agreement, with an insurer licensed to do business in the State of Indiana, such insurance as is necessary for the protection of City and Vendor from all claims for damages under any workers' compensation, occupational disease and/or unemployment compensation act; for bodily injuries including, but not limited to, personal injury, sickness, disease or death of or to any of Vendor's agents, officers, employees, contractors and subcontractors; and, for any injury to or destruction of property, including, but not limited to, any loss of use resulting therefrom. The coverage amounts shall be no less than those amounts set forth in attached Exhibit "A". Vendor shall cause its insurers to name City as an additional insured on all such insurance policies, shall promptly provide City, upon request, with copies of all such policies, and shall provide that such insurance policies shall not be canceled without thirty (30) days prior notice to City. Vendor shall indemnify and hold harmless City from and against any and all liabilities, claims, demands or expenses (including, but not limited to, reasonable attorney fees) for injury, death and/or damages to any person or property arising from or in connection with Vendor's provision of Goods and Services pursuant to or under this Agreement or Vendor's use of City property.

Vendor further agrees to indemnify, defend and hold harmless City and its officers, officials, agents and employees from all claims and suits of whatever type, including, but not limited to, all court costs, attorney fees, and other expenses, caused by any act or omission of Vendor and/or of any of Vendor's agents, officers, employees, contractors or subcontractors in the performance of this Agreement. These indemnification obligations shall survive the termination of this Agreement.

#### **10. GOVERNMENT COMPLIANCE:**

Vendor agrees to comply with all federal, state and local laws, executive orders, rules, regulations and codes which may be applicable to Vendor's performance of its obligations under this Agreement, and all relevant provisions thereof are incorporated herein by this reference. Vendor agrees to indemnify and hold harmless City from any loss, damage and/or liability resulting from any such violation of such laws, orders, rules, regulations and codes. This indemnification obligation shall survive the termination of this Agreement.

#### **11. NONDISCRIMINATION:**

Vendor represents and warrants that it and all of its officers, employees, agents, contractors and subcontractors shall comply with all laws of the United States, the State of Indiana and City prohibiting discrimination against any employee, applicant for employment or other person in the provision of any Goods and Services provided by this Agreement with respect to their hire, tenure, terms, conditions and privileges of employment and any other matter related to their employment or subcontracting,

because of race, religion, color, sex, handicap, national origin, ancestry, age, disabled veteran status and/or Vietnam era veteran statu

**12.E-VERIFY**

Pursuant to I.C. §22-5-1.7 etseq., as the same may be amended from time to time, and as is incorporated herein by this reference (the "Indiana E-Verify Law"), Vendor is required to enroll in and verify the work eligibility status of its newly-hired employees using the E-Verify program, and to execute the Affidavit attached herein as Exhibit 11811 affirming that it is enrolled and participating in the E-verify program and does not knowingly employ unauthorized aliens. In support of the Affidavit, Vendor shall provide the City with documentation indicating that it has enrolled and is participating in the E-Verify program. Should Vendor subcontract for the performance of any work under and pursuant to this Agreement, it shall fully comply with the Indiana E-Verify Law as regards each such subcontractor. Should the Vendor or any subcontractor violate the Indiana E-Verify law, the City may require a cure of such violation and thereafter, if no timely cure is performed, terminate this Agreement in accordance with either the provisions hereof or those set forth in the Indiana E-Verify Law. The requirements of this paragraph shall not apply should the E- Verify program cease to exist.

**13. NO IMPLIED WAIVER:**

The failure of either party to require performance by the other of any provision of this Agreement shall not affect the right of such party to require such performance at any time thereafter, nor shall the waiver by any party of a breach of any provision of this Agreement constitute a waiver of any succeeding breach of the same or any other provision hereof.

**14. NON-ASSIGNMENT:**

Vendor shall not assign or pledge this Agreement, whether as collateral for a loan or otherwise, and shall not delegate its obligations under this Agreement without City's prior written consent.

**15. RELATIONSHIP OF PARTIES:**

The relationship of the parties hereto shall be as provided for in this Agreement, and neither Vendor nor any of its officers, employees, contractors, subcontractors and agents are employees of City. The contract price set forth herein shall be the full and maximum compensation and monies required of City to be paid to Vendor under or pursuant to this Agreement.

**16. GOVERNING LAW; LAWSUITS:**

This Agreement is to be construed in accordance with and governed by the laws of the State of Indiana, except for its conflict of law provisions. The parties agree that, in the event a lawsuit is filed hereunder, they waive their right to a jury trial, agree to file any such lawsuit in an appropriate court in Johnson County, Indiana only and agree that such court is the appropriate venue for and has jurisdiction over same.

**17. SEVERABILITY:**

If any term of this Agreement is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with same, and the remaining provisions of this Agreement shall remain in full force and effect.

**18. NOTICE:**

Any notice provided for in this Agreement will be sufficient if it is in writing and is delivered by postage prepaid U.S. certified mail, return receipt requested, to the party to be notified at the address specified herein:

**19. TERMINATION:**

19.1 Notwithstanding anything to the contrary contained in this Agreement, City may, upon notice to Vendor, immediately terminate this Agreement for cause, in the event of a default hereunder by Vendor and/or if sufficient funds are not appropriated or encumbered to pay for the Goods and Services to be provided hereunder. In the event of such termination, Vendor shall be entitled to receive only payment for the undisputed invoice amount representing conforming Goods and Services delivered as of the date of termination, except that such payment amount shall not exceed the Estimate amount in effect at the time of termination, unless the parties have previously agreed in writing to a greater amount.

19.2 City may terminate this Agreement at any time upon thirty (30) days prior notice to Vendor. In the event of such termination, Vendor shall be entitled to receive only payment for the undisputed invoice amount of conforming Goods and Services delivered as of the date of termination, except that such payment amount shall not exceed the Estimate amount in effect at the time of termination, unless the parties have previously agreed in writing to a greater amount.

19.3 The City may terminate this Agreement pursuant to Paragraphs 9,11 and 12 hereof, as appropriate.

**20. REPRESENTATIONS AND WARRANTIES**

The parties represent and warrant that they are authorized to enter into this Agreement and that the persons executing this Agreement have the authority to bind the party which they represent.

**21. ADDITIONAL GOODS AND SERVICES**

Vendor understands and agrees that City may, from time to time, request Vendor to provide additional goods and services to City. When City desires additional goods and services from Vendor, the City shall notify Vendor of such additional goods and services desired, as well as the time frame in which same are to be provided. Only after City has

approved Vendor's time and cost estimate for the provision of such additional goods and services, has encumbered sufficient monies to pay for same, and has authorized Vendor, in writing, to provide such additional goods and services, shall such goods and services be provided by Vendor to City. A copy of the City's authorization documents for the purchase of additional goods and services shall be numbered and attached hereto in the order in which they are approved by City.

**22. TERM**

Unless otherwise terminated in accordance with the termination provisions set forth in Paragraph 19 hereinabove, this Agreement shall be in effect from the Effective Date through December 31, 2016 and shall, on the first day of each January thereafter, automatically renew for a period of one (1) calendar year, unless otherwise agreed by the parties hereto.

**23. HEADINGS**

All heading and sections of this Agreement are inserted for convenience only and do not form a part of this Agreement nor limit, expand or otherwise alter the meaning of any provision hereof.

**24. BINDING EFFECT**

The parties, and their respective officers, officials, agents, partners, successors, assigns and legal representatives, are bound to the other with respect to all of the covenants, terms, warranties and obligations set forth in Agreement.

**25. NO THIRD PARTY BENEFICIARIES**

This Agreement gives no rights or benefits to anyone other than City and Vendor.

**26. IRAN CERTIFICATION:**

Pursuant to I.C. §5-22-16.5, the Vendor shall certify that, in signing this document, I does not engage in investment activities within the Country of Iran.

**27. ADVICE OF COUNSEL:**

The parties warrant that they have read this Agreement and understand it, have had the opportunity to obtain legal advice and assistance of counsel throughout the negotiation of this Agreement, and enter into same freely, voluntarily, and without any duress, undue influence or coercion.

**28. ENTIRE AGREEMENT:**

This Agreement, together with any exhibits attached hereto or referenced herein, constitutes the entire agreement between Vendor and City with respect to the subject matter hereof, and supersedes all prior oral or written representations and agreements regarding same. Notwithstanding any other term or condition set forth herein, but subject to paragraph 16 hereof, to the extent any term or condition contained in any exhibit attached to this Agreement or in any document referenced herein conflicts with any term or condition contained in this Agreement, the term or condition contained in this Agreement shall govern and prevail. This Agreement may only be modified by written amendment executed by both parties hereto, or their successors in interest

**INTRODUCED & APPROVED** by the Board of Public Works and Safety of the City of Franklin, Johnson County, Indiana this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**City of Franklin, Indiana, By its Board of Public Works and Safety:**

**Voting Affirmative:**

**Voting Opposed:**

\_\_\_\_\_  
Mayor Joseph E. McGuinness

\_\_\_\_\_  
Mayor Joseph E. McGuinness

\_\_\_\_\_  
Stephen Barnett

\_\_\_\_\_  
Stephen Barnett

\_\_\_\_\_  
Robert Swinehamer

\_\_\_\_\_  
Robert Swinehamer

Attest:

**Kovatch Mobile Equipment Inc.**

\_\_\_\_\_  
Jayne Rhoades, Clerk Treasurer

  
\_\_\_\_\_

Philip J. Gerace

Sales & Marketing Mgr.

\_\_\_\_\_  
8/2/16 Date

Prepared by: Lynnette Gray

Attorney No.: 11567-41