

THE CITY OF MURFREESBORO INVITATION TO BID

The City of Murfreesboro ("City") will receive and publicly open sealed bids in the City Manager's Office, Post Office Box 1139, 111 West Vine Street, Murfreesboro, Tennessee 37133-1139, telephone number (615) 849-2629. This Invitation to Bid (ITB) is subject to the instructions, conditions, specifications, addenda, and any other elements of this ITB, including those incorporated by reference. You are invited to submit a bid to supply the items specified.

A mandatory pre-bid meeting will be held on May 23, 2013, at 9:00 a.m. in the Conference Room at the Public Works Complex, 4765 Florence Road, Murfreesboro, TN.

DATE ISSUED: May 10, 2013

BID TITLE: Bulk Fuel

CITY CONTACT PERSON: Joey Smith, Director of Solid Waste

TELEPHONE NUMBER: (615) 893-3681

FAX NUMBER: (615) 904-6541

All bid responses must be received and acknowledged in the City Manager's Office on or before the day and time listed below, at which time all bids will be publicly opened and read aloud. Bids received after 3:00 p.m. on June 10, 2013 WILL NOT BE ACCEPTED AND WILL BE RETURNED TO THE BIDDER UNOPENED.

SUBMIT BID RESPONSE IN SEALED ENVELOPE TO:

City of Murfreesboro
City Manager's Office
ATTN: BID FOR BULK FUEL
111 West Vine Street
Murfreesboro, Tennessee 37133-1139

Bid envelope must include the bid title, bid opening date, and the bidder's name. Failure to provide this information on the envelope may result in the bid not being considered. Do not submit bids by fax or electronically. Bids submitted by fax or electronically cannot be accepted or considered for award. Sealed bids are required.

BID OPENING DATE: June 10, 2013

BID OPENING TIME: 3:00 p.m., Murfreesboro Tennessee local time

1. INSTRUCTIONS AND CONDITIONS

1.1. *Invitation to Bid*

- 1.1.1. The City of Murfreesboro is seeking bids for the purchase of bulk fuel as specified in section 2 of this Invitation to Bid. Sealed bids will be received by the City of Murfreesboro at the Office of the City Manager, City Hall, Post Office Box 1139, 111 West Vine Street, Murfreesboro, Tennessee 37133-1139, until 3:00 p.m. local time on June 10, 2013 at which time the bids will be opened.
- 1.1.2. Attached are the specifications and bid form for the purchase of bulk fuel. All bids shall be submitted on the attached bid form in sealed envelopes with "ATTN: Bid for Bulk Fuel" on the outside of the envelope. All bids must be signed. Failure of a bidder to sign a bid proposal removes the bid from consideration. A typed name will not be acceptable without the person's written signature as well.
- 1.1.3. A bid opening date has been set for June 10, 2013, at 3:00 p.m. local time in the Office of the City Manager. No bids received after closing time will be accepted. All late bid responses will be returned unopened to the bidder. Bids postmarked on the bid opening date but received in the City Manager's Office after the specified time will be considered late and will be returned unopened. The City shall not be responsible for bid responses that are mailed or sent via private delivery services.

A MANDATORY PRE-BID MEETING WILL BE HELD ON MAY 23, 2013, AT 9:00 A.M. IN THE CONFERENCE ROOM AT THE PUBLIC WORKS COMPLEX, LOCATED AT 4765 FLORENCE ROAD, MURFREESBORO, TN.

- 1.1.4. These documents constitute the complete set of specification requirements and bid response forms. The bidder is responsible for insuring that all pages and all addenda are received. The City advises all bidders to closely examine this ITB package, and to immediately direct any questions regarding the completeness of this ITB package and any addenda thereto to the City's Contact Person. Failure to examine is at the bidder's own risk.
- 1.1.5. Any prospective bidder desiring an explanation or interpretation of this ITB, drawings, specifications, etc., must request such explanation in a written form received by the contact person no later than six (6) days prior to the bid opening date.
- 1.1.6. There may be one or more amendments to this ITB. If your company desires to receive copies or notices of any such amendments, you must complete and submit the Contact Information Form included in the ITB. Please send this information to the contact person listed above via fax or e-mail. The City will send amendments only to those firms which timely complete and return this form via fax or provide the requested information by timely e-mail.
- 1.1.7. Any discrepancies, errors, omissions, or ambiguities in this bid, the specifications or addenda (if any) should be reported to the contact person for

the City. If necessary, a written addendum will be issued to bidders on record and the addendum will be incorporated in the bid and will become part of the purchase agreement. The City will NOT be responsible for any oral instructions, clarifications or other communications and no such oral communication may be relied on by any bidder.

- 1.1.8. These instructions, requirements and any special instructions contained in the specifications are a part of the terms and conditions of the bidder's proposal. Any exceptions to these instructions/requirements or specifications must be specified and submitted with the bidder's proposal. Failure to indicate any exceptions will be regarded as full acceptance of these requirements and instructions.
- 1.1.9 Any individuals with disabilities who wish to participate in public meetings such as a scheduled pre-bid conference or other scheduled function should contact the City contact person to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephonically, or otherwise, and should be made no less than 10 days prior to the scheduled event, to allow time for the City to provide such aid or service.

1.2. Bid Responses

- 1.2.1. Bids may be mailed or delivered to the City of Murfreesboro, Office of the City Manager, City Hall, Post Office Box 1139, 111 West Vine Street, Murfreesboro, TN 37133-1139. All bids shall be submitted on the attached bid form in sealed envelopes with "ATTN: Bid for Bulk Fuel" on the outside of the envelope. The City will not accept bid responses submitted by fax or electronic mail.
- 1.2.2. Bid responses must be submitted in a sealed envelope that includes the bid title, bid opening date, and the bidder's name. Failure to provide this information on the envelope may result in the bid not being considered.
- 1.2.3. Bid responses must be received and acknowledged in the City Manager's Office on or before the date and time specified for the receipt of bids responses. No late bid responses will be accepted. All late bid responses will be returned unopened to the bidder. Bids postmarked on the bid opening date but received in the City Manager's Office after the specified time will be considered late and will be returned unopened. The City shall not be responsible for bid responses that are mailed or sent via private delivery services.
- 1.2.4. All bid responses shall be typewritten. All bids must be signed by an individual authorized to bind the bidder. Signatures are required where indicated; failure to comply with this requirement shall be cause for rejection of bid response. Erasures, whiteouts and typeovers, and other modifications should be initialed. Bidders are cautioned to verify their bid response prior to submission. Failure of a bidder to sign a bid proposal removes that bid from consideration. **A typed name will not be acceptable without the person's written signature.**

- 1.2.5. Certain mistakes may be corrected so long as the intended correct bid response is clearly evident. In the event of a disagreement between unit price and extended price, the unit price will control.
- 1.2.6. Specifications furnished in the request for bid are intended to establish a desired quality or performance level, or other minimum requirements, which will provide the City with the best product available at the lowest possible price. Should the bidder wish to bid on items which exceed the minimum specifications, the bidder is encouraged to attach a separate sheet providing a description of such items.
- 1.2.7. A bidder desiring to bid "No Charge" for an item must so indicate by writing "no charge" or "N/C". Bidders shall not leave an item blank since it will be construed as incomplete and may be rejected.
- 1.2.8. Bid responses may only be withdrawn until bid opening after which time no bids may be withdrawn.
- 1.2.9. Bid responses may be modified by written notice received and acknowledged by the City Manager's Office prior to the date and time for public opening of bids. Late modifications cannot be considered.
- 1.2.10. The City will not be liable for any costs incurred by the bidder in preparing a response to this solicitation. Bidders will submit responses at their own risk and expense. All responses and their accompanying documentation will become the record of the City.
- 1.2.11. The purchase of certain items of equipment and/or materials by the City is exempt from the payment of excise, transportation and sales tax imposed by the federal, state and/or local governments. Such taxes must not be included in the bid prices. Upon request, applicable federal excise exemption certificates and sales tax exemption certificates will be furnished. Vendors doing business with the City shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations to the City, nor shall any vendor be authorized to use the City's Tax Exemption Number in securing such materials. Federal excise tax claims shall be filed and paid by the vendor to the I.R.S. for current cents/gallon Federal Excise Tax on gasoline products.
- The City is exempt from payment of both gasoline and privilege and special tax on petroleum products when the following conditions exist:
- a. Shipped in lots of at least 500 gallons;
 - b. Stored by the governmental unit in a storage facility either owned or leased by a governmental unit;
 - c. Used exclusively for governmental purposes in equipment either owned or leased by a governmental unit and operated by government employees.
- 1.2.12. Exceptions to terms and conditions and/or those proposed by the bidder which may vary from the invitation to bid may render the bid unresponsive and subject the bid to rejection.

- 1.2.13. In order to provide the opportunity for vendors to submit questions, if any, concerning the invitation to bid and amendments, the City is requesting that questions be submitted in writing to the City's contact person, no later than the close of business, six (6) days prior to the opening date.
- 1.2.14. Bidders must, upon the request of the City, furnish satisfactory evidence of their ability to furnish products or services in accordance with the terms and conditions of these specifications. The City reserves the right to make the final determination as to a bidder's ability to perform.
- 1.2.15. No bid or line item shall be altered or amended after the bid opening. In the case of errors in the extension price, the unit price will govern. Failure to comply with the above shall be cause for rejection of part or all of the bid.
- 1.2.16. A bidder must have occupied a bona fide place of business with a representative inventory of products or supplies necessary for production of the products for at least three (3) years, and must provide any other evidence required and requested in order to establish evidence of the ability to furnish the products or services in accordance with the terms and conditions of the specifications.
- 1.2.17. **IF YOU DO NOT SIGN, SEAL, NOTARIZE AND RETURN THE ATTACHED BID FORM, YOUR BID MAY NOT BE CONSIDERED FOR AWARD. IF THE PERSON SIGNING THE CONTRACT IS NOT THE PRESIDENT, VICE PRESIDENT OR CEO OF YOUR COMPANY A LETTER (SIGNED BY ONE OF THE ABOVE) IS NEEDED WHICH AUTHORIZES THE PERSON WHO SIGNED THE CONTRACT TO DO SO.**

1.3. Bid Award

- 1.3.1. Any contract awarded pursuant to this ITB shall be awarded to the lowest responsive and responsible bidder whose bid response meets the requirements and criteria set forth in this ITB. A "responsive bidder" means a person who has submitted a bid response, which conforms in all material respects to the ITB. A "responsible bidder" means a person who has the capacity, reputation and experience in all respects to perform fully the contract requirements and the integrity and reliability, which will assure good faith performance within the time specified without delay or interference.
- The City may make such investigations as deemed necessary to determine the ability of the bidder to provide the products and services required by the bid package.
- 1.3.2. This solicitation in no manner obligates the City to the purchase described, implied or which may be proposed, until confirmed by a written contract approved by City Council. Progress toward this end is solely at the discretion of the City and may be terminated at any time prior to the signing of a contract.

- 1.3.3. The successful bidder shall provide unleaded regular gasoline minimum octane 87, unleaded premium gasoline minimum octane 93, and diesel fuel No. 2 low sulfur.
- 1.3.4. Any items bid deemed not of equal and/or better and of comparable quality as that specified shall be cause for rejection of bids. In addition to the price, the following aspects will also be considered in the award of a contract:
- a. The ability of the bidder to perform the contract or to provide the material for service required;
 - b. The ability of the bidder to service all City of Murfreesboro fueling locations with their own company trucks including both full tanker and bobtail loads of unleaded gasoline and diesel fuel. Subcontracting of the delivery of fuel to the City of Murfreesboro will not be accepted unless due to mechanical failure, the awarded vendor may use a sub-contractor less than 30 days as stated in 1.4.17.
 - c. Whether the bidder can perform the contract and provide the material or service promptly or within the time specified without delay or interference;
 - d. The character, integrity, reputation, experience and efficiency of the bidder;
 - e. The previous and existing compliance, by the bidder, with laws and ordinances relating to the contract or service;
 - f. The ability of the bidder to provide future service for the use of the subject contract;
 - g. Terms and conditions stated in bid;
 - h. Compliance with specifications or requests for proposal; and
 - i. The attached bid sheet is to be utilized for submittal of bid.
- 1.3.5. The City reserves the right to reject any and all bids, to waive any technical defects, irregularities and/or omissions in a bid, to make awards to more than one bidder, to accept any part or all of a bid, or to accept the bid (or bids) which in the judgment of the governing body is in the best interest of the City.
- 1.3.6. No bidder may withdraw its response for a period of ninety (90) days after the date and time set for the opening of the responses. In the event the City shall award a contract to a bidder and if during such ninety (90) day period the City determines that such bidder will be unable to properly perform the contract, the City reserves the right to terminate the contract and award the contract to the next best offer without being required to re-advertise the Bid.
- 1.3.7. The contract awarded may be terminated upon any of, but not limited to, the following occurrences: a) bankruptcy or insolvency of the bidder or one or more of the bidder's principal owners; b) unauthorized substitution of products other than those identified in the specifications or specifically approved by the City as a substitute prior to award of the contract; c) unsatisfactory performance of

products supplied by the bidder or services provided by the bidder; d) fraud and e) any other breach of the terms of the bid specifications or contract.

- 1.3.8. Bidder, by signing and making this bid, does further declare, in determining the prices and/or amounts of the bid, that bidder has not colluded with any other person, firm, corporation or association in arriving at said prices and/or amounts or in any way violated the terms, conditions and/or spirit of the provisions of 15 U.S.C. 1 through 7 (Sherman Anti-Trust Act).

1.4. Terms and Conditions

A representative copy of a City contract is included with this bid package. It immediately follows the Invitation to Bid document. Any bidder who is awarded a contract pursuant to this invitation to bid agrees to be bound by the terms and conditions set forth in the attached City Contract (Attachment A). If the bidder objects to any contract terms or proposes any additional terms, such objections and terms must be set forth in the bid. Rejection of any proposed City Contract terms may be a basis for rejection of the bid. If an award is made, any contract resulting from this ITB will be effective on the date the contract is signed by all required parties.

All bidders who are awarded contracts agree to be bound by these terms and conditions set forth below:

- 1.4.1. Should awarded bidder fail to fulfill, in a timely and proper manner, its obligations under the contract, or if it should violate any of the terms of the contract, the City shall have the right to immediately terminate the contract upon written notice to the bidder. The City may terminate the contract at any time, with or without cause, upon written notice to bidder. Should funding for the contract be discontinued, the City shall have the right to terminate the contract immediately upon written notice to the awarded bidder. The vendor/contractor will be required to honor all purchase orders that were prepared and dated prior to the date of expirations or cancellation, if received by the vendor/contractor within a period of thirty (30) days following the date of expiration or cancellation. Cancellation by the City does not relieve the vendor/contractor of any liability arising out of the default of nonperformance.
- 1.4.2. The City, at its option, and in lieu of immediate termination, may request that the awarded bidder repair or replace any defective goods or correct performance by written notice to awarded bidder. In that event, awarded bidder shall take corrective action within the amount of time specified by the City in the written notice. Exercise of this option shall not relieve awarded bidder of any liability to the City for damages sustained by virtue of awarded bidder's breach.
- 1.4.3. The contract may be modified only by written amendment executed by all parties and their signatories hereto.
- 1.4.4. No waiver of any provision of the contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.

- 1.4.5. Awarded bidder agrees that, in the event either party deems it necessary to take legal action to enforce any provision of the contract, and in the event the City prevails, awarded bidder shall pay all expenses of such action including the City's attorney fees and costs at all stages of the legal action and/or alternative dispute resolution process, if any.
- 1.4.6. The validity, construction and effect of the contract, and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee.
- 1.4.7. Should any provision of the contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of the contract. Any action between the parties arising from this agreement shall be maintained in the courts of Rutherford County, Tennessee.
- 1.4.8. Contractor shall indemnify and hold harmless the City, its officers, agents and employees from: i) any claims, damages, costs, and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omission of awarded bidder, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of this contract; and ii) any claims, damages, penalties, costs, and attorney's fees arising from any failure of awarded bidder, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- 1.4.9. The contractor shall procure and maintain for the duration of the contract, at the contractor's own cost and expense insurance against claims for injuries to persons or damages to property including contractual liability which may arise in connection with the performance of the work performed by the contractor, agents, representatives, employees or subcontractors under the contract. The insurance carrier(s) must be licensed to conduct business in the state of Tennessee. The insurance will be evidenced by certificates of insurance. The certificate shall include wording which states the City will be notified thirty (30) days prior to cancellation of the coverage or a major change in the coverage provided. The City shall be held harmless for any injuries, claims or judgments against the contractor. Certificates for liability coverage's shall name the City of Murfreesboro as an additional insured. Coverage's required are:

Workers' Compensation: A certificate shall be provided which indicates the contractor provides workers' compensation coverage in compliance with the State laws of Tennessee.

General Liability and Property Damage: A certificate shall be provided which indicates coverage for all operations under the proposal for at least \$1,000,000.00 combined single limit bodily injury and property damage including sudden and accidental pollution liability.

Upon notification of intent of award, the vendor is to provide the City with proof of insurance coverage as stated above within ten (10) working days after the request naming the City of Murfreesboro as an additional insured.

- 1.4.10. The bidder shall furnish to the City all such information and data for this purpose as the City may request. Such information shall be submitted to the City within five (5) days of the City's written request. The City does hereby expressly reserve the right to reject any and all bid responses, the right to request additional information, the right to clarify bids, the right to award a contract for only some but not all the articles or items in the bid, and does further expressly reserve the right to waive minor irregularities. The City does not warrant or guarantee that a contract will be awarded as a result of this ITB.
- 1.4.11. All bidders must comply with all applicable federal, state or local laws and regulations including Title VI and all provisions of the Civil Rights Act of 1964 42, U.S.C. 2000d-et seq.
- 1.4.12. The City is self-insured for its own negligence, subject to the Governmental Tort Liability Act, Title 29 Chapter 20 et.seq.
- 1.4.13. The City may inspect the facilities of any bidder or may require additional information regarding a bidder's ability to perform the proposed contract. Bids may be rejected for lack of apparent ability to perform the proposed contract.
- 1.4.14. The City may, at reasonable times, examine/audit the books and/or records of any contractor where such books and/or records relate to the performance of any contract or subcontract with the City. Such books and records shall be kept in conformity with generally accepted accounting principles and maintained by the contractor or subcontractor for a period of three (3) years from the date of final payment under the prime contractor subcontract. Said examination/audit may be performed at any reasonable time by the City, or their duly appointed representative(s).
- 1.4.15. All materials, equipment, and supplies are subject to inspection and testing. Items that do not meet specifications will be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability. When subsequent tests, after receipt, are conducted and when such tests reveal damage or failure to meet specifications, the City may seek damages regardless of whether a part or all of the merchandise has been consumed.
- 1.4.16. The City reserves the right to reject any bid that contains prices for individual items or services that are inconsistent or unrealistic when compared to other current prices in the same or other bids, if such action would be in the best interest of the City.
- 1.4.17. The contractor shall not enter into any subcontract for services without the written consent of the City Manager. The use of subcontractors for less than thirty (30) days does not require the City's approval. The awarded contractor is responsible for work, service, performance, contractual liability, workers' compensation injuries of employees and subs (unless subcontractor assumes responsibility and furnishes certificate of insurance as proof of insurance), and payment to the subcontractor. All costs incurred for subcontracting must be included in bid price.

- 1.4.18. The contract shall be in effect commencing on the date approved by Council and signed by all required parties.
- 1.4.19. CONTRACT RENEWAL OPTION:
- a. This contract is renewable for two additional one-year periods at the option of the City. Should the City desire to renew the contract, a written preliminary notice will be furnished to the contractor sixty (60) days prior to the expiration date of the contract. (Such preliminary notice will not be deemed to commit the City to renew.)
 - b. Upon receipt of the City's preliminary notice, the contractor shall submit a written agreement to continue or discontinue contract performance for an additional one-year period.
 - c. Should the City exercise this option for renewal, the contract as renewed shall be deemed to include this option provision except that the total duration of this contract, including any renewals, shall not exceed three years.
 - d. In all cases contract renewals shall be approved by Council, and sufficient appropriations shall have been made for the particular fiscal year for which the renewal is sought.
- 1.4.20. In the event of an inconsistency between provisions of this contract, the inconsistency shall be resolved by giving precedence in the following order: (i) any properly executed amendment to contract, (ii) contract, (iii) invitation to bid and bid specifications, and (iv) contractor's bid response.
- 1.4.21. The following shall remain firm for the duration of the contract:
- a. Vendor's mark-up per gallon of fuel as listed in Chart A of the Bid Form.

1.5. Standards

Bidder, by signing and making this bid, makes the following affirmative declaration and statement as of the date said bid is signed, to wit:

- 1.5.1. Bidder affirms that by its employment policy, standards and practices, it does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to the individual's race, creed, color, national origin, age or sex and it is not in violation of and will not violate any applicable laws concerning the employment of individuals with disabilities. The contractor shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to employees and applicants, notices of non-discrimination.
- 1.5.2. It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in

admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this contract, Contractor certifies and warrants it will comply with this policy.

- 1.5.3. Bidder understands that it shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore.
- 1.5.4. A breach of ethical standards could result in civil and/or criminal sanctions and/or debarment or suspension from being a contractor or subcontractor under City contracts.

1.6. *Payment and Delivery*

- 1.6.1. Payment will be made by the City after goods and/or services have been received, accepted, and properly invoiced as indicated in the contract and/or purchase order. Invoices must bear the purchase order number.
- 1.6.2. Deliveries of all items shall be made as stated in the bid specifications. Deliveries resulting from this ITB are to be made during the normal working hours of the City, unless otherwise permitted and/or requested by the City when the order is placed with the Contractor. Time is of the essence. Should the awarded bidder fail to deliver items on or before its stated date, the City reserves the right to cancel the order or contract. The awarded bidder(s) shall be responsible for making any and all claims against carriers for missing or damaged items.
- 1.6.3. Bidder shall maintain an emergency response plan and comply with State law in the event of a spill.
- 1.6.4. All deliveries made pursuant to this ITB, and the contract award, must be made pursuant to written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Unless otherwise specified in this ITB, delivery and freight charges are to be prepaid and included in the bid price.
- 1.6.5. DELIVERY.
 - a. All prices quoted shall be based on delivery F.O.B. Murfreesboro, Tennessee or to any points located within the municipal corporate limits.
 - b. A successful bidder is required to keep the City contact person advised at all times of the status of the order. All materials, supplies or equipment

shall be delivered within three (3) business days from the issuance of the purchase order to the tanks at 4765 Florence Road and/or 630 W. Main Street, as directed when ordered, unless specified otherwise. Deliveries to all other locations shall be made within one (1) business day.

- c. It shall be the responsibility of the bidder to follow-up with the City pursuant to "special delivery handling." An example of special delivery/handling would be the pumping of fuel in lieu of gravity unloading. Any special delivery/handling charges that may be incurred by the bidder are to be incorporated in the bidder's "mark-up" cost. The City does not provide for separate or additional billing.
- d. The City is to be billed for actual gallons delivered at the "OPIS Nashville, TN Rack Average" plus the markup or minus the discount included on the Bid Form (Chart A).

Prices for fuel for the Nashville rack are updated weekdays at 12 a.m., central time, and shall be effective until 11:59 p.m., central time.

The vendor is permitted to obtain fuel from any source it chooses as long as it meets the specifications. Regardless of the location of the vendor's supply, the pricing shall be based upon the Nashville, TN Rack Average.

The successful bidder must maintain a record of the OPIS pricing for each delivery to enable the City to audit the prices charged. These records shall be made available to the City upon request.

1.6.7. All quotations shall be F.O.B. destination. The term F.O.B. destination shall mean delivered and unloaded into the designated storage tank of any City department and when applicable, with all charges for unloading via gravity or pumping to be prepaid by the vendor/contractor. The contractor shall deliver each item F.O.B. Destination, Murfreesboro, Tennessee, to the following locations:

- a. One 24,000 gallon No. 2 low sulfur diesel tank, and one 24,000 gallon 87 octane unleaded gasoline tank, located at the Public Works Complex, 4765 Florence Road;
- b. One 12,000 gallon No. 2 low sulfur diesel tank, one 12,000 gallon 87 octane unleaded gasoline tanks, and one 8,000 gallon 87 octane unleaded gasoline tank located at 630 West Main Street;
- c. Two 2,000 gallon No. 2 low sulfur diesel tanks, located at the Water Treatment Plant, 5528 Sam Jared Drive;
- d. One 1,100 gallon 87 octane unleaded gasoline tank and one 250 gallon No. 2 low sulfur diesel tank located at Old Fort Golf Course, 1028 Golf Lane;
- e. Overall Creek pumping station, located at 4656 N.W. Broad Street, number PS38 generator has a 1,000 gallon capacity of No. 2 low sulfur diesel fuel;

- f. One 900 gallon No. 2 low sulfur diesel generator located at 302 S. Church Street;
 - g. One 300 gallon no. 2 low sulfur diesel generator located at 302 S. Church Street;
 - h. One 150 gallon No. 2 low sulfur diesel generator located at the Communications Tower, 1735 South Church Street;
 - i. One 500 gallon No. 2 low sulfur diesel generator located at 111 West Vine Street City Hall; and
 - j. One 2000 gallon 87 octane regular unleaded gasoline (no ethanol) tank located at 205 N Walnut Street, Murfreesboro Electric Department.
- 1.6.8. Invoices are to be billed to the address shown on individual purchase order releases.

PAYMENT/INVOICE:

The invoice packet(s) must contain the following:

- a. Each invoice shall include the vendor's name and address.
- b. Each invoice must contain the Name of the Ship to Address (example - Solid Waste Department, 630 W. Main Street, Murfreesboro, Tennessee).
- c. Each invoice must include the Purchase Order number.
- d. Each invoice shall include a copy of the signed delivery ticket.
- e. Itemization of each item purchased shall contain:
 - 1. Product.
 - 2. Price per gallon.
 - 3. Gross gallons delivered.
 - 4. Net gallons delivered.
- f. Total Invoice Amount.
- g. Date of delivery.
- h. Invoices shall NOT reflect any outstanding back orders.

The vendor is not required to list the rack price on the invoice; however, they are required to provide a copy of the OPIS rack pricing report upon request. The vendor shall maintain a copy of each day's OPIS report for all dates they deliver to the City for the term of the Contract.

1.6.9. Emergency Pricing Terms. All quotations and participation in this bid process are made with the express agreement and understanding that in the event of a gasoline or diesel fuel shortage, for any and all reasons, the contract arising from this Invitation to Bid will include the following contract term which will govern the pricing of bulk fuel under any contract awarded:

“When the Parties mutually agree that due to situations beyond the Parties’ control when the supply of fuel has been dramatically altered, the following emergency pricing formula shall be utilized until the shortage has passed: “cost + double freight rate”. The City Manager shall have authority to agree to such emergency pricing for two (2) weeks without obtaining Council approval. Emergency pricing exceeding two (2) weeks shall require Council approval. The shortage is deemed to have passed when (a) the product is available at a minimum of two cents (\$.02) below the OPIS Nashville Rack Average; or (b) the product is available at fifty percent (50%) of the vendors whose posted price is less than the OPIS average. The City shall determine when this section no longer applies.”

2. SPECIFICATIONS

2.1 Overview

- 2.1.1. Invitation to Bid for a contract to provide bulk fuel for the City of Murfreesboro.
- 2.1.2. The contractor shall furnish and supply the below listed item(s) in accordance with the terms, conditions and provisions set forth herein.
- 2.1.3. The contract shall be in effect commencing on the date of award or date approved by Council for a period of one year.
- 2.1.4. ESTIMATED ANNUAL REQUIREMENTS (NO GUARANTEE):
 - a. The total purchases of any individual item in the contract are not known. The City has attempted to give an accurate estimate of probable purchases of each item from the current contract period and projected estimates for the new contract period. The City does not guarantee that the City will buy any or all estimated amounts of any specified item or any total amount. Such estimate only includes purchases for the main pumping station located at 630 West Main Street (Attachment B).
The contractor will only be paid for services rendered hereunder pursuant to purchase order releases issued to the contractor from the City. The City is under no obligation to request work from the contractor in any specific dollar amounts per year under this contract.
 - b. The contractor agrees to furnish all quantities ordered by the City during the contract period.
 - c. The City agrees to place orders with the contractor for all its requirements for those items shown in the price schedule, as awarded, except as follows:
 - 1. Quantities of items needed under conditions of emergency or public exigency as approved by the City Manager.
 - 2. Quantities of items obtainable from State contracts, as approved by the City Manager.
 - 3. Quantities of items where federal funds are involved and other action is warranted for federal regulatory compliance purposes.
 - 4. Quantities of items awarded under specific and separate contracts.
 - 5. Quantities of items which otherwise are determined to be outside the general scope and intent of this contract.
 - d. If requirements for any awarded items do not materialize for the quantity estimated in the applicable price schedule, such failure shall not constitute grounds for equitable adjustment or additional compensation.

2.1.5. Any Contractor supplying the City of Murfreesboro materials that require a Material Safety Data Sheet (MSDS) will furnish the required sheet or a composite concentration list in one of the following manners:

- a. Submitted as part of the bid document
- b. Submitted prior to contract award
- c. Submitted with the product invoice
- d. Submitted at the request of the City

In all instances, the Contractor shall furnish the material safety data sheets with the products at delivery, and shall comply with all local, state and federal laws providing for identification of materials transported to or from the City. The appropriate bid title, delivery ticket number, or invoice number shall be clearly marked on the material safety data sheet or the composite concentration lists. Any question regarding this requirement should be directed to the following address:

Murfreesboro Risk Management Division
(615) 217-3030
P.O. Box 1044
111 West Vine Street
Murfreesboro, TN 37133-1044

2.2 Specifications

Technical Specifications for the Supply and Delivery of Bulk Automotive Fuels:

- 2.2.1. Items furnished under this contract shall perform the functions for which they were designed and produced.
- 2.2.2. Unit price bids are requested on products or services that equal or exceed the specifications listed. The absence of detailed specifications or the omission of detail descriptions shall be recognized as meaning that only the best commercial practices are to prevail and that only first quality materials are to be used. All interpretations of specifications shall be made from this statement. It is understood that the specifications or references to available specifications shall be sufficient to make the terms of such specifications binding on the vendor/contractor.
- 2.2.3. The delivered price per gallon of fuel shall be exclusive of Federal and State Excise Tax. The City of Murfreesboro will complete any forms provided by the vendor in this regard.

- 2.2.4. The City provides essential emergency services to protect and maintain the health, safety and welfare of the community. Therefore, the City must maintain an adequate supply of fuel to continue essential operations. Thus, should the supplier at any time fail to supply the product in accordance with the terms of this contract, the City shall have the option to purchase on the open market such materials as are necessary to operate essential services, of an equivalent quantity, and charge any excess cost of such purchase or purchases over the gallon as shown in this contract against any monies due or which may become due to the supplier from the City. The City shall give the Contractor at least 2-hours notice before exercising this option so the Contractor can decide whether they can fulfill the order themselves.
- 2.2.5. The City shall not be bound in any manner to accept any amount of material greater than its immediate requirements as advised in advance by telephone from the ordering Department.
- 2.2.6. Freight charges must be included in the vendor's mark-up per gallon of fuel.
- I. Gasoline: (a) US unleaded regular gasoline with a minimum 87 octane rating and (b) US unleaded premium gasoline with a minimum 93 octane. Price per gallon of fuel shall include delivery charges to any of the City's various fueling sites. Delivery quantities shall be determined by the net gallons as adjusted to 60 degrees F. by prevailing API standards.
 - II. Diesel Fuel: No. 2 Diesel fuel (low sulfur) (API Gravity 29-39 per ASTM:D287, minimum 40 cetane, sulfur content 0.05% maximum). Price per gallon of fuel must include delivery charges to any of the City's fueling sites. Delivery quantities shall be determined by the net gallons as adjusted to 60 degrees F by prevailing API standards. As required by applicable law or regulation, during the summer months bidder shall provide fuel for the Metropolitan Nashville non-attainment area, 7.8% Reid Vapor Pressure Fuel or as same may be specified.
 - III. Product Specifications. Gasoline and Diesel:
 - a. Gasoline: Gasoline supplied under this contract shall meet or exceed requirements for volatility Class B, C and D of the American Society for Testing and Materials (ASTM) standards specification D-439-77 and Environmental Protection Agency standards. The antiknock index (RON + MON/2) shall be no less than the values specified below:
 - Unleaded Regular Gasoline – minimum 87 octane
 - Unleaded Regular Gasoline – minimum 87 octane with 10% ethanol
 - Unleaded Premium Gasoline – minimum 93 octane
 - b. Diesel Fuel No. 2-D (low sulfur): Diesel fuel No. 2-D supplied under this contract shall meet the requirements of the American Society for Testing and

Materials (ASTM) standards D-975-78 and D-913-79, and Environmental Protection Agency standards.

c. Tests:

Distillation – method D-86, distillation of petroleum products.

Vapor liquid ratio – method D-2533, for vapor liquid ratio of gasoline.

Vapor pressure – method D-323, test for vapor pressure of petroleum products (Reid method), or method D-2551, test for vapor pressure of petroleum products (micro method).

Research method octane number – method D-2699, test for knock characteristics of motor fuels by research method, or method D-2885, research and motor method octane ratings using on-line analyzers.

Motor method octane number – method D-2700, test for knock characteristics of motor and aviation type fuels by the motor methods or method D-2885, research and motor method octane ratings using on-line analyzers.

Corrosion – method D-130, test for detection of copper corrosion from petroleum products by the copper strip tarnish test 3-H at 122 degrees F (50 degrees C).

Existent gum – method D-381, test for existent gum in fuels by jet evaporation.

Sulfur – method D-1266, test for sulfur in petroleum products (lamp method) or method D-2622, test for sulfur in petroleum products (x-ray spectrographic method).

Lead – method D-2547, test for lead in gasoline, volumetric chromate method or method D-2599, test for lead in gasoline by x-ray spectrometry. For lead levels below 0.1 G/gal. (0.03 G/liter) use method D-3116, test for trace amounts of lead on gasoline.

Oxidation stability – method D-525, test for oxidation stability of gasoline induction period method.

IV. Bidding Conditions and Instructions:

- a. Special Delivery/Handling: It shall be the responsibility of the bidder to follow-up with the City pursuant to “special delivery/handling.” An example of special delivery/handling would be the pumping of fuel in lieu of gravity unloading. Note: Some above ground tanks are identified. Any special delivery/handling charges that may be incurred by the bidder are to be incorporated in the bidders “mark-up” cost. The City does not provide for separate or additional billing.

- b. Delivery Tickets: For purposes of verification by the requesting department and at no additional cost to the City, all delivery vehicles are to be equipped with a metered pump or shall have properly calibrated compartments with the capacity clearly marked on each compartment. If a metered pump is provided, a metered delivery ticket shall accompany delivery.
- c. Combined Deliveries: Should delivery of other fuels be made in a single trip using a multi compartment vehicle and total combined volume is over 3,000 gallons, the City shall be billed at the tanker load mark-up cost for each product.

“Rack pricing” is available through O.P.I.S.

- d. Taxes: Federal excise tax claims shall be filed and paid by the vendor to the I.R.S. for the current cents/gallon Federal excise tax on gasoline products.

The City is exempt from state and local sales and use taxes. The City is exempt from payment of both gasoline and privilege and special taxes on petroleum products when the following conditions exist:

- 1. shipped in lots of at least 500 gallons;
- 2. stored by the governmental unit in a storage facility either owned or leased by a governmental unit;
- 3. used exclusively for governmental purposes in equipment either owned or leased by a governmental unit and operated by governmental employees.

All applicable taxes and fees shall be shown as separate line items on the vendors’ invoice to the department and shall not be included in the cost of the fuel or in the vendors’ mark-up.

- 2.2.9. Bidder shall add anti-gel formula to the diesel fuel during winter season as needed based on freezing conditions to avoid non-starts of vehicles.

3. BID FORM

All prices must include all costs. Costs included in the bid prices shall include labor, freight and delivery. Pricing for each component shall be effective for one (1) year from date of bid award. The City is not subject to sales or excise tax.

In compliance with this ITB, and subject to all conditions thereof, the undersigned agrees that if this bid response is accepted within ninety (90) days from the date of opening, to furnish any or all of the items upon which price(s) are quoted, at the price set opposite each item unless otherwise specified.

How to Complete Price Sheets:

Bidders are to quote fuel products by fuel group.

Quotations are to be made by fuel group as follows:

Gas group: ULR and ULP in 2 delivery quantities: bobtail load and tanker load.

Diesel group: diesel No.2-d low sulfur in 2 delivery quantities: bobtail load and tanker load.

Failure to bid all lines within a fuel group (gas and/or diesel) may be cause for rejection of a bid.

Enter Your Mark-up/Discount +/-

"Mark-up/discount is the difference, expressed in cents, over Nashville, TN Rack Average, quoted (+) or below (-) the Nashville, TN Rack Average." Vendors are cautioned that when bidding a minus (-) to their cost that usage patterns may change during the contract period (i.e., larger or smaller quantities may be used and/or requisitioning departments may change from ULR to ULP or ULP to ULR.) Mark-up/discounts are not to include any federal or state taxes or fees. Including them may constitute cause for rejection of a bid. (See section 1.2.12., for more information on taxes.) Mark-ups/discounts exceeding 4 decimal places to the right of the decimal point will be rounded back to the 4th place. Mark-ups/discounts that don't include (+) or (-) will be interpreted as (+).

Bidders must complete the tables. Failure to make required entries for the bid may result in your bid being considered "non-responsive."

The City will evaluate and award bid based on the lowest total in Chart B.

Bidder _____

CHART A

Markup/Discount

(cents over rack price)

Product	Delivery Size	List four decimal places
Unleaded 87	Bobtail Delivery	<input style="width: 100%;" type="text"/>
Unleaded 87	Tanker Delivery	<input style="width: 100%;" type="text"/>
Unleaded 87 10% Ethanol Tanker Delivery		<input style="width: 100%;" type="text"/>
Diesel 2	Bobtail Delivery	<input style="width: 100%;" type="text"/>
Diesel 2	Tanker Delivery	<input style="width: 100%;" type="text"/>
<i>Unleaded 93</i>	<i>Bobtail Delivery</i>	<input style="width: 100%;" type="text"/>
<i>Unleaded 93</i>	<i>Tanker Delivery</i>	<input style="width: 100%;" type="text"/>

Bidder must complete the sample invoice and use the markup/discount set forth in Chart A when completing Chart B. The low bidder will be determined based upon Chart B of the bid form. Both Charts A and B must be typed.

NOTE: Even though the City has discontinued use of unleaded premium (Octane 93), pricing is requested in the event the City resumes purchase of it.

**Chart B
Bid Form - Sample Invoice**

Column	B	C	D	E	F
Product	Gallons Delivered	Nashville, TN Rack Avg (cents)	Markup/Discount (cents) 4 decimal places	Unit Cost (C+D) 4 decimal places	Extended Cost (B times E) 2 decimal places
Unleaded 87 - Bobtail	900	\$ 3.0560			
Unleaded 87 - Tanker	5,592	\$ 3.0560			
Unleaded 87 %10 ethanol- Tanker	5,592	\$ 3.0560			
Diesel 2 - Bobtail	1,000	\$ 3.1443			
Diesel 2 - Tanker	6,090	\$ 3.1443			
Grand Total					

Notes:

Column B - While the tanker quantities are based upon an average delivery size, please note that the bobtail deliveries can be intermittent in terms of frequency and the quantities ordered may be more or less.

Column C - This is a recent rack average price from Nashville for the purposes of this chart. Do not change these figures.

Column D - You must use the markup/discount from Chart A and fill in Column D. Please list in cents and carry out to four decimal places.

Column E - Please add the rack price and the markup/discount to come up with the unit cost per gallon. Please list in the following format: \$x.xxxx.

Column F - Please multiply the number of gallons in column B by the unit cost in column E.

Grand Total - Please add the extended cost for all 4 tanks. The grand total figure for Column F will determine the low bidder for this bid and consideration of an award of contract.

THIS BID RESPONSE SHALL BE REJECTED IF NOT SIGNED WHERE INDICATED.

Name of Firm:

Form of Business:

Authorized Signature and Date:

Name Printed and Title:

Address:

Telephone Number: _____ Fax Number: _____

E-Mail: _____

Length of Time in Business: _____

Location: _____

Comparable Contracts:

1. Name/Address: _____

Date Completed: _____

Contact: _____

Phone: _____

2. Name/Address: _____

Date Completed: _____

Contact: _____

Phone: _____

3. Name/Address: _____

Date Completed: _____

Contact: _____

Phone: _____

4. CONTACT INFORMATION FORM

There may be one or more amendments to this Invitation to Bid. If your company desires to receive copies or notices of any such amendments, you must provide the information requested below to the City. Please send this information to the City's contact person listed above via mail or fax. The City will send amendments only to those firms which timely complete and return this form via mail or fax.

Bid Title _____

Company name _____

Mailing address _____

Phone number _____

Fax number _____

Email _____

Company Contact Person _____

(Published in the Murfreesboro Post on May 12, 2013)

NOTICE TO BIDDER

Notice is hereby given that The City of Murfreesboro will receive sealed bids at the **OFFICE OF THE CITY MANAGER**, Post Office Box 1139, 111 West Vine Street, Murfreesboro, Tennessee 37133-1139, telephone number (615) 849-2629, until 3:00 p.m., on the 10th day of June, 2013 for: Bulk Fuel. A mandatory pre-bid meeting will be held May 23rd, 2013, at 9:00 a.m., at 4765 Florence Road, Conference Room, Murfreesboro, TN.

Bids shall be made in accordance with the Invitation to Bid Packet which is on file in the Office of the City Manager, 111 West Vine Street, Murfreesboro, Tennessee 37133-1139, and are made a part of this notice as though fully set forth herein.

Bids filed with the City Manager shall be opened at the time stated above in the Administration Conference Room, located on the 1st floor of City Hall. Bids received after 3:00 p.m., on the above mentioned date, will not be accepted and will be returned to the bidder unopened. There will be no exceptions to this policy. All bids shall remain on file at least 48 hours thereafter before a contract shall be made and entered into hereon.

/s/ Robert J. Lyons
CITY MANAGER

TO BE RUN: May 12, 2013

ATTACHMENT "A"
CONTRACT BETWEEN
CITY OF MURFREESBORO
AND
[NAME OF CONTRACTOR]
FOR BULK FUEL

This contract is entered into on this _____ of _____, 2013, by and between **THE CITY OF MURFREESBORO**, a municipal corporation of the State of Tennessee ("City") and **[INSERT CONTRACTOR NAME]**, **[INSERT TYPE OF ENTITY]** of the State of Tennessee ("Contractor"). This contract consists of the following documents:

- **Invitation to Bid (ITB) issued** _____
- **Bid specifications issued** _____
- **Contractor's Bid Response dated** _____
- **This Contract**

In the event of conflicting provisions, all documents shall be construed according to the following priorities:

- **Any properly executed amendment or change order to this contract (most recent with first priority)**
- **This Contract**
- **Invitation to Bid & Bid Specifications**
- **Contractor's Bid Response**

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide and City agrees to purchase bulk fuel as set forth in the attached Bid Form.

2. **Term.** This contract shall not be effective until approved by the City Council and signed by all required parties and remain in effect through _____. As stated in bid specification sections 1.4.19 and 1.4.21, the contract is renewable for two additional one-year terms at the same mark-up/discount as listed in Chart A.

3. **Payment and Delivery.**

3.1. Payment will be made by the City after goods and/or services have been received, accepted, and properly invoiced. Invoices must bear the purchase order number.

3.2. Deliveries of all items shall be made as stated in the bid specifications. Should the awarded bidder fail to deliver items on or before its stated date, the City reserves the right to cancel the order or contract. The awarded bidder(s) shall be responsible for making any and all claims against carriers for missing or damaged items.

3.3. All deliveries made pursuant to the contract must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services

provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the bid price.

3.5. The risk of loss or damage shall be borne by the bidder at all times until the acceptance of goods and delivered, by the City.

4. **Price.** The price for goods and other items and/or services shall be invoiced at the prices and charges fixed by the Contractor as per the attached bid.
5. **Taxes.** The City of Murfreesboro is exempt from State sales tax and will issue a tax exemption certificate to the Contractor as requested. City shall not be responsible for any taxes that are imposed on Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to City.
6. **Termination—Breach.** In the event that any of the provisions of the Contract are violated by the Contractor, the City may serve written notice upon the Contractor of its intention to terminate the Contract, and unless within seventy-two (72) hours after the serving of such notice upon the Contractor, such violation or delay shall cease and satisfactory arrangement for correction be made, the City may immediately terminate the Contract at anytime after said seventy-two (72) hours. Such termination shall not relieve Contractor of any liability to City for damages sustained by virtue of any breach by Contractor.
7. **Termination—Funding.** Should funding for this contract be discontinued, City shall have the right to terminate the contract immediately upon written notice to Contractor.
8. **Termination—Notice.** City may terminate this contract at any time upon thirty (30) days written notice to Contractor. In that event, the Contractor shall be entitled to receive just and equitable compensation for any satisfactory authorized work completed as of the termination date.
9. **Compliance with Laws.** Contractor agrees to comply with any applicable federal, state and local laws and regulations.
10. **Notices.**
 - 11.1. Notices to City including but not limited to notice of assignment of any rights to money due to Contractor under this contract must be mailed or hand delivered to the attention of City Manager, Post Office Box 1139, 111 West Vine Street, Murfreesboro, Tennessee 37133-1139.
 - 11.2. Notices to Contractor shall be mailed or hand delivered to Contractor, CONTRACTOR NAME & ADDRESS.
11. **Maintenance of Records.** Contractor shall maintain documentation for all charges against City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by City or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.
12. **Modification of Contract.** This contract may be modified only by written amendment executed by all parties and their signatories hereto. Depending upon the nature and amount of the amendment, the approval of the City Council may be required. Minor modifications to the contract may be approved by the City Manager.

13. **Partnership/Joint Venture.** Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.
14. **Waiver.** No waiver of any provision of this contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
15. **Employment.** Contractor shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.
16. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this contract, Contractor certifies and warrants it will comply with this policy.
17. **Indemnification and Hold Harmless.** Contractor shall indemnify and hold harmless City, its officers, agents and employees from:
 - 18.1. Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Contractor, its officers, employees and/or agents, including its sub or independent Contractors, in connection with the performance of the contract, and,
 - 18.2. Any claims, damages, penalties, costs and attorney fees arising from any failure of Contractor, its officers, employees and/or agents, including its sub or independent Contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
 - 18.3. Contractor shall pay City any expenses incurred as a result of Contractor's failure to fulfill any obligation in a professional and timely manner under this Contract.
18. **Insurance.** The contractor must maintain insurance as required by the invitation to bid and specifications.
19. **Attorney Fees.** Contractor agrees that, in the event either party deems it necessary to take legal action to enforce any provision of the contract, and in the event City prevails, Contractor shall pay all expenses of such action including City's attorney fees, expenses, and costs at all stages of the litigation.
20. **Assignment—Consent Required.** The provisions of this contract shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this contract, neither this contract nor any of the rights and obligations of Contractor hereunder shall be assigned or transferred in whole or in part without the prior written consent of City. Any such assignment or transfer shall not release Contractor from its obligations hereunder. NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO CONTRACTOR UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF CITY MANAGER, POST OFFICE BOX 1139, 111 WEST VINE STREET, MURFREESBORO, TENNESSEE 37133-1139.

21. **Entire Contract.** This contract, invitation to bid, bid specifications, and Contractor's bid response set forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.
22. **Force Majeure.** This contract shall be inoperative during such period of time that the aforesaid delivery or acceptance may be rendered impossible by reason of fire, Act of God or government regulation. Provided, however, to the extent that the bidder has any commercially reasonable alternative method of performing this contract by purchase on the market or otherwise, the bidder shall not be freed of any obligations hereunder by this clause, even though the goods intended for this contract were destroyed or their delivery delayed because of an event described above.
23. **Federal Certifications and Assurances.** The City of Murfreesboro's purchasing procedures are governed by the State of Tennessee, the City of Murfreesboro, and various Federal laws, executive orders, and regulations, by Office of Management and Budget Circular A-102, Executive Order 12612, Federalism and Federal Transit Administration Circular 4220.1F "Third Party Contracting Requirements". Contractor shall comply with the following federal certifications and assurances:
- 23.1. Cargo Preference - Use of United States-Flag Vessels (46 U.S.C. 1241; 46 CFR Part 381).** The Contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.
- 23.2. Energy Conservation (42 U.S.C, 6321 et seq; 40 CFR Part 18).** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- 23.3 CLEAN WATER REQUIREMENTS (33 U.S.C. 1251).** - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
- 23.4 Access to Records and Reports (49 U.S.C. 5325; 18 CFR 18.36; 49 CFR 633.17).** The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).
4. FTA does not require the inclusion of these requirements in subcontracts.

23.4 **Federal Changes (49 CFR Part 18).** Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA(10) dated October, 2003) between City and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

23.5 **Recovered Materials (42 U.S.C. 6962; 40 CFR Part 247; Executive Order 12873).** The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C.6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

23.6 **No Government Obligation to Third Parties**
 (1) The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

23.7

Program Fraud and False or Fraudulent Statements and Related Acts (31 U.S.C. 3801 et seq.; 49 CFR Part 31; 18 U.S.C. 1001; 49 U.S.C. 5307

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

23.8

Government-wide Debarment and Suspension

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City of Murfreesboro. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City of Murfreesboro, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise

from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

23.9

Civil Rights Requirements

The following requirements apply to the underlying contract:

- (1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- (2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
 - (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - (b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - (c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- (3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

23.10 **Disadvantaged Business Enterprises**

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26. Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. Rover Public Transit's overall goal for DBE participation is 3%. A separate contract goal has not been established for this procurement.
- b. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as City of Murfreesboro deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. The successful bidder/offeror will report to the City its DBE participation on the contract obtained through race-neutral means.
- d. The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than thirty (30) days after the Contractor's receipt of payment for that work from the City of Murfreesboro. In addition, the Contractor may not hold retainage from its subcontractors.
- e. The Contractor must promptly notify the City of Murfreesboro whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the City.

23.11 **Incorporation of Federal Transit Administration Terms (FTA Circular 4220.1F)**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Murfreesboro requests which would cause City of Murfreesboro to be in violation of the FTA terms and conditions.

23.12 **ADA Access**

Contractor shall meet the requirements of the Americans with Disabilities Act of 1990, Standards for Accessible Design.

23.13 CLEAN WATER REQUIREMENTS 33 U.S.C. 1251

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

23.14 CLEAN AIR 42 U.S.C. 7401 et seq, 40 CFR 15.61, 49 CFR Part 18

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

23.15 Compliance with Federal Lobbying Policy

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal Contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal Contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to the recipient.

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Part 20, "New Restrictions on Lobbying".

DATE _____

COMPANY NAME _____

TITLE _____

SIGNATURE _____

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY and VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTION**

(To be submitted with all bids exceeding \$25,000.)

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

The lower tier participant (Bidder/Contractor) certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

DATE _____

SIGNATURE _____

COMPANY _____

NAME _____

TITLE _____

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public _____

My Appointment Expires _____

- 24. **Governing Law.** The validity, construction and effect of this contract and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that the Contractor may provide.
- 25. **Venue.** Any action between the parties arising from this agreement shall be maintained in the courts of Rutherford County, Tennessee.
- 26. **Severability.** Should any provision of this contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.
- 27. **Notices.** Any notice to Contractor from the City relative to any part of the Contract shall be considered delivered and the service thereof completed when said notice is posted by registered mail, to the said Contractor at its last given address or delivered in person to said Contractor or its authorized representative on the work.

26.1 Notices to City shall be sent to:

Department: City of Murfreesboro Administration
Attention: City Manager
Address: Post Office Box 1139
 111 West Vine Street
 Murfreesboro, TN 37133-1139

26.2 Notices to Contractor shall be sent to:

Contractor:
Attention:
Address:

- 28. **Effective Date.** This contract shall not be binding upon the parties until it has been signed first by the Contractor and then approved by the City Council and signed by the Mayor. When it has been so signed, this contract shall be effective as of the date first written above.

THE BIDDER SHALL BE RESPONSIBLE FOR COMPLYING WITH ALL APPLICABLE FEDERAL, STATE AND LOCAL LAWS.

**CITY OF MURFREESBORO
 COMPANY]**

By: _____

 Tommy Bragg, Mayor

**CONTRACTOR NAME
 [TYPE IN THE NAME OF THE**

**SAMPLE CONTRACT DO NOT SIGN
 By: _____**

**[INSERT NAME & TITLE OF SIGNING
 AUTHORITY FOR CONTRACTOR]**

Approved as to form:

STATE OF _____)
: ss
COUNTY OF _____)

Susan Emery McGannon, City Attorney

Kelley Blevins Baker, Staff Attorney

Before me, the undersigned notary public, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be the _____, or other officer authorized to execute the foregoing instrument for the purposes therein contained.

WITNESS MY HAND and seal this
____ day of _____, 20____.

Notary Public

My Commission Expires: _____