

INVITATION TO BID
ITB-13-2018
HAUL & DISPOSAL OF MULCH

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 37130, 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.

DATE ISSUED: December 4, 2017

BID TITLE: ITB-13-2018 – Haul and Disposal of Mulch

CITY CONTACT PERSON: Paul Boyer, Purchasing Director

TELEPHONE NUMBER: (615) 849-2629

E-MAIL ADDRESS: pboyer@murfreesborotn.gov

BID OPENING DATE: December 20, 2017

BID OPENING TIME: 3:00 p.m., CST

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.

SUBMIT BID RESPONSE IN SEALED ENVELOPE TO:

City of Murfreesboro
City Manager's Office
Attn: Bid – Haul and Disposal of Mulch
111 West Vine Street
Murfreesboro, Tennessee 37130

Bid envelope must include the bid title, bid opening date, bidder's name, bidder's contractor license number, expiration date and classification applying to the bid for the prime contractor. 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. Copies of the solicitation can be obtained from <http://www.murfreesborotn.gov/bids.aspx>

1. INSTRUCTIONS AND CONDITIONS

1.1. *Invitation to Bid*

- 1.1.1. The City of Murfreesboro is seeking bids for the disposal and hauling of mulch. Sealed bids will be received by the City of Murfreesboro at the Office of the City Manager, City Hall, 111 West Vine Street, Murfreesboro, Tennessee 37130, until 3:00 p.m. local time on December 20, 2017, at which time the bids will be opened.
- 1.1.2. Bids may be mailed or delivered to the City of Murfreesboro, Office of the City Manager, City Hall, 111 West Vine Street, Murfreesboro, TN 37130. Attached are the specifications and bid form for the disposal and hauling of mulch. All bids shall be submitted on the attached bid form in sealed envelopes with “disposal and hauling of mulch” 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. The City will not accept bid responses submitted by fax or electronic mail.
- 1.1.3. 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 bid responses. A bid opening date has been set for December 20, 2017, 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.
- 1.1.4. The City is interested in receiving as many bids as possible and urges all possible bidders to bid and take exception to any items if necessary.
- 1.1.5. 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.
- 1.1.6. 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 seven (7) days prior to the bid opening date.
- 1.1.7. 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 sign up on the website.
- 1.1.8. 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.

1.2. Bid Responses

- 1.2.1 Bid responses must be submitted in a sealed envelope that includes the bid title, bid opening date, and bidder's name on the outside. Failure to provide this information on the envelope may result in the bid not being considered.
- 1.2.2 Pursuant to T.C.A. §50-9-113, a Bidder must have a Drug-Free Workplace Program that complies with Tennessee Code Annotated, Title 50, Chapter 9 in effect at the same time of submission of its bid, at least to the extent required of governmental entities.
- 1.2.3. The City of Murfreesboro has a Drug-Free Workplace Program certified by the Tennessee Department of Labor and Workforce Development pursuant to Title 50, Chapter 9. The City of Murfreesboro Drug-Free Workplace Program is set forth in City of Murfreesboro Employee Handbook Sections 3005 and 3006 (copies are available without charge upon request). City of Murfreesboro Employee Handbook Sections 3005 and 3006 provide for the random testing, reasonable suspicion testing, pre-employment testing, promotion or transfer testing, post-accident testing, return-to-duty testing, and follow-up testing of all employees classified as safety sensitive or as CDL employees for alcohol and/or drugs. Additionally, City of Murfreesboro Employee Handbook Section 3005 provides for reasonable suspicion testing, return-to-duty testing and follow-up testing for non-safety sensitive employees for drugs and alcohol. Such testing is conducted using the same standards as in the United States Department of Transportation Regulations established for the drug and alcohol testing of CDL operators.

Bidder may satisfy this requirement by attaching a copy of a Certificate of Compliance with the applicable provisions of the Drug-Free Workplace Act from the Department of Labor and Workforce Development to the City to the required Affidavit.

Pursuant to T.C.A. §50-9-114(d), unless suit is filed in Chancery Court, bidders shall have seven (7) calendar days to contest a contract entered by contractor's subject to the provisions of this section. Bidders who do not contest such contracts within seven (7) calendar days of filing suit in Chancery Court waive any right to challenge such contract for violating the provisions of T.C.A. §50-9-113 and T.C.A. §50-9-114. Such suits shall be brought in the Chancery Court for Rutherford County.

- 1.2.4 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.
- 1.2.5 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 components.
- 1.2.6 If bidding a substitute article, the bidder may, no less than five (5) working days in advance of the bid opening, request a determination from the City whether the substituted item is equal and/or better and of comparable quality as specified. The bidder will receive notice of City's determination no later than two (2) working days in advance of the bid opening. Bidder is not required to seek such pre-bid approval but the bid may be rejected for failure to meet specifications if the proposed substitute is unacceptable to City.

- 1.2.7 Where more than one item is listed, any item(s) not bid upon should be indicated "No Bid". All items left blank will be considered a "No Bid" for that item.
- 1.2.8 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.
- 1.2.9 Bid responses may only be withdrawn until bid opening after which time no bids may be withdrawn for a period of ninety (90) days after bid opening.
- 1.2.10 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.
- 1.2.11 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.
- 1.2.12 The City is exempt from federal and state taxes. Upon request, the City will provide a sales tax exemption certificate to the awarded bidder. 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.
- 1.2.13 Iran Divestment Act of Tennessee.
- By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to §12-12-106. Bids not conforming to this provision shall not be opened. Failure of any bidder to comply therewith shall void such bid and such bid shall not be considered.

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. 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 the transportation to haul and dispose of the mulch generated by the City of Murfreesboro. The City will load the tractor trailers with mulch.

If in the bidder's opinion, additional equipment or services are necessary to make the equipment fully operational, this shall be included with explanation in the bid. It is requested that bidders raise any such questions in advance of submitting a bid to the City. To submit a bid implies consent to the terms as set forth in this bid.

1.3.4 Any items bid deemed not of equal and/or better and of comparable quality and similar in design 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. Whether the bidder can perform the contract and provide the material, equipment, or service promptly or within the time specified without delay or interference;
- c. The character, integrity, reputation, experience and efficiency of the bidder;
- d. The previous and existing compliance, by the bidder, with laws and ordinances relating to the contract or service;
- e. The ability of the bidder to provide future maintenance and service for the use of the subject contract;
- f. Terms and conditions stated in bid;
- g. Compliance with specifications or requests for proposal;
- h. The attached bid sheet is to be utilized for submittal of bid; and
- i. Bidder's past performance with the City.

1.3.5 The City reserves the right to reject all bids, to waive any irregularities in a bid, to make awards to more than one bidder, to accept any part or all 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

- 1.4.1 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.
- 1.4.2 All bidders who are awarded contracts agree to be bound by these terms and conditions set forth below:
- 1.4.3 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.
- 1.4.4 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 awarded bidder's breach.
- 1.4.5 The contract may be modified only by written amendment executed by all parties and their signatories hereto.
- 1.4.6 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.
- 1.4.7 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, expenses, and costs at all stages of the legal action and/or alternative dispute resolution process, if any.
- 1.4.8 The validity, construction and effect of the contract, and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee.
- 1.4.9 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.

1.4.10 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.

1.4.11 Awarded bidder shall maintain insurance sufficient to cover any claims arising from the acts of the awarded bidder about the performance of this contract and subject to the approval of the City.

1.4.11.1. Workers' Compensation Insurance: The awarded bidder shall procure and shall maintain during the life of this contract Workers' Compensation Insurance for all of its employees to be engaged in work on the project under this contract, and in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workers' Compensation Insurance.

1.4.11.2. Public Liability and Property Damages Insurance: The awarded bidder shall take out and maintain during the life of this contract such Public Liability and Property Damage Insurance as shall protect it and any subcontractor performing work covered by this contract from claims for damage for personal injury, including accidental death, as well as from claims for property damage which may arise from operations under this contract, whether such operations are by it or by any subcontractor or by anyone directly or indirectly employed by either of them. The amount of such insurance shall be as follows:

- a. Public Liability Insurance in the amount of not less than \$1,000,000.00 on any account of any one accident.
- b. Property Damage Insurance in an amount not less than \$500,000.00 for any one damage claim.
- c. Combined Single Limit Public Liability and Property Damage in an amount of not less than \$1,000,000.00 per occurrence.
- d. Proof of Carriage of Insurance. A Certificate of Insurance and endorsement shall be furnished to the City, and the City of Murfreesboro shall be named as an additional insured. Copies of insurance policies will be furnished to the City upon request. The

City shall be furnished not less than ten (10) days notice of material changes or cancellation of insurance policies.

- 1.4.12 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 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 because of this ITB.
- 1.4.13 The term of this contract ends December 30, 2018. The contract can be renewed for two (2) additional one (1) year option periods in any combination and the entire contract cannot exceed three (3) years. Renewal options can be exercised by mutual written agreement.

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, after being first duly sworn, 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 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.
- 1.5.2 It is the policy of the City not to discriminate based on 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. About 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 The awarded bidder shall commence the work to be performed under the specifications shall fully complete all work hereunder except as otherwise provided in the bid specifications. Work shall proceed as set forth in the bid specifications.
- 1.6.2 Work will not be considered “accepted” until an authorized agent for the City has, by inspection, determined that it fully complies with specifications. Payment shall be withheld until compliance with the specifications has been completed and approved by the City.

2. APPLICATION SPECIFICATIONS

The hauling and disposal of mulch

- 2.1. This work shall consist of hauling and properly disposing of mulch generated at the City of Murfreesboro’s mulch site located at 4765 Florence Road. The site operates 4 days a week on Monday, Tuesday, Thursday, and Friday. Operating hours are from 6:00am till 3:45pm. We start loading at safe light in the mornings during the winter season.
- 2.2. All trailers must be at least 33 cubic yards. Any variance of trailer size must be acknowledged and explained in the bid sheet.
- 2.3. The City expects the bidders to detail a plan for removal of existing mulch from the pad. The City also expects a minimum and maximum number of loads each week for planning purposes. The City of Murfreesboro expects to move a minimum of 20 truckloads of mulch per week.

3a. BID FORM INSTRUCTIONS

The Hauling and Disposal of Mulch

All prices must include all costs. Costs included in the bid prices shall include: The haul and transportation of mulch. The pricing shall be by the truckload. Pricing shall be effective for the 2018 calendar year.

Awarded bidder will honor the competitive process for other local governments.

In compliance with this ITB, and subject to all conditions thereof, the undersigned agrees that if this bid response is accepted, to haul excess mulch price(s) are quoted, at the price set opposite each item unless otherwise specified.

3b. PRICING FORM

Bid Price per haul and disposal of trailer loads of mulch: \$ _____

SIGNATURE SHEET

I, the undersigned, do hereby agree to all terms and conditions listed within this formal solicitation, and will supply all labor and materials as required with this specification.

COMPANY NAME:

ADDRESS:

TELEPHONE:

EMAIL:

ADDENDUM ACKNOWLEDGEMENT

The proposer shall acknowledge obtaining all addenda issued to this formal solicitation by completing the blocks below. Failure to acknowledge all addenda may be cause for rejection of the response.

Addendum No.

Date Issued:

Addendum No.

Date Issued:

Addendum No.

Date Issued:

AUTHORIZED SIGNATURE:

TITLE:

(Print / type name as signed above):

DATE:

Before submitting your bid, check with Vendor Registry website to look for any Addenda associated with this solicitation.

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of _____

County of _____

_____, being first duly sworn, deposes and says that;

1. The undersigned is the (owner, partner, officer, representative, or agent) of _____, the bidder submitting the attached bid.
2. Bidder is fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such bid.
3. Neither the said bidder nor any of its officer, partners, owners, agents, representatives, employees or parties in interest, including this affiant has in any way collude, conspired, connived or agreed, directly or indirectly, with any other bidder, firm or person to submit an collusive or sham bid in connection with the contract for which the attached bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other bidder, or, to fix any overhead, profit, or cost element of the bid price or unlawful agreement any advantage against the City of Murfreesboro or any person interested in the proposed contract.
4. The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the bidder or any of its agent, representatives, owners, employees, or parties in interest including this affidavit.

Name of Bidder

Printed Name and Title

**BIDDER AFFIDAVIT ON COMPLIANCE
WITH DRUG-FREE WORKPLACE ACT AND CERTIFICATE**

State of _____

County of _____

Bidder, after being first duly sworn, affirms that it has a Drug-Free Workplace Program that complies with Tennessee Code Annotated, Title 50, Chapter 9, in effect at the time of submission of its bid, at least to the extent required of governmental entities. Bidder affirms that:

1. It has receives a Certificate of Compliance with the applicable sections of the Drug-Free Workplace Act from the Department of Labor and Workforce Development and has attached a copy of such certificate to this affidavit; or
2. It operates a drug and alcohol testing program at least as stringent as the City of Murfreesboro's drug and alcohol testing program as contained in Sections 3005 and 3008 of the City of Murfreesboro Employee Handbook and shall, upon request, provide documentation of such program to the city.

Name of Bidder

Printed Name and Title

REFERENCES

List a minimum of 3 references (other than the City of Murfreesboro) for similar projects and contracts, preferably governmental, which you have completed within the past 3 years.

1. CUSTOMER NAME: _____

ADDRESS: _____

TELEPHONE: (____) _____ EMAIL: _____

CONTACT NAME: _____

DATE OF COMPLETION OF PROJECT: _____

CONTRACT AMOUNT: \$ _____

2. CUSTOMER NAME: _____

ADDRESS: _____

TELEPHONE: (____) _____ EMAIL: _____

CONTACT NAME: _____

DATE OF COMPLETION OF PROJECT: _____

CONTRACT AMOUNT: \$ _____

3. CUSTOMER NAME: _____

ADDRESS: _____

TELEPHONE: (____) _____ EMAIL: _____

CONTACT NAME: _____

DATE OF COMPLETION OF PROJECT: _____

CONTRACT AMOUNT: \$ _____

My company has been in this type of business for ____ years

State License Number: _____

Expires: _____

Iran Divestment Act

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not a person included within the list created pursuant to T.C.A. §12-12-106.

Signature: _____ Date: _____

Title: _____

Sealed Response Envelope Label:

The label provided below, with all appropriate information completed, should be used for the proper processing of the ITB submittal. The label will facilitate the City Manager's Office to properly handle the sealed envelope without revealing the contents until the solicitation is opened.



SEALED QUOTE ENCLOSED

Company Name: _____

Company Address: _____

Company Telephone Number: _____

**City of Murfreesboro
Attn: City Manager's Office
Purchasing Department
111 West Vine Street
Murfreesboro, TN 37130**

Solicitation No: ITB-13-2018

Solicitation Title: Haul and Disposal of Mulch

Solicitation Due Date & Time (CST): December 20, 2017 by 3:00 p.m.

Sample Agreement for _____

This Agreement is entered into and effective as of the ____ day of _____ 2017, by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and _____, a _____ ("Contractor").

This Agreement consists of the following documents:

- This document
- ____ [Solicitation] _____ issued _____ (the "Solicitation");
- Contractor's Proposal, dated _____ ("Contractor's Proposal");
- Contractor's Price Proposal, dated _____ (the "Price Proposal"); and,
- Any properly executed amendments to this Agreement.

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

- First, any properly executed amendment or change order to this Agreement (most recent amendment or change order given first priority);
- Second, this Agreement;
- Third, the Solicitation; and
- Lastly, Contractor's Proposal.

1. Duties and Responsibilities of Contractor.

Provide the following services based on "ITB-13-2018 – Haul and Disposal of Mulch" listed under "Bid Specifications" of the ITB.

2. Term.

The term of this Agreement commences on the Effective Date [] and expires on [], unless extended by mutual agreement of Contractor and the City or earlier terminated as set forth herein Termination. Contractor's services may be terminated in whole or in part:

- a. Upon 30-day prior notice, for the convenience of the City.
- b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination
- c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
- d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.

- e. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.
- 3. **Compensation; Method of Payment.** Contractor will be compensated on a monthly basis upon the completion of tasks as outlined in the Price Proposal and upon the completion of a Task and submission of an invoice to the City at its address for Notices. Bill will be sent to: Solid Waste Department, PO Box 1739, Murfreesboro, TN 37133-1739
- 4. **Work Product.** Except as otherwise provided herein, all data, documents and materials produced by Contractor under this Agreement are the property of the City, which retains the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents or other materials. Any of the City's property, including but not limited to books, records and equipment, that is in Contractor's possession must be maintained in good condition and repair and returned to the City by Contractor at the end of this Agreement
- 5. **Insurance.** During the term of this Agreement, Contractor must maintain comprehensive general liability insurance with limits of not less than \$1,000,000, as well as automotive and workers' compensation insurance policies. Contractor will provide to the City: (i) a standard certificate of insurance evidencing this coverage prior to commencement of work and upon renewal or expiration of the policies reflected thereupon, (2) upon request, an endorsement naming the City as additional insured under the terms of the policy as follows: "The City of Murfreesboro, Tennessee, its officers, employees, contractors, consultants, and agents."
- 6. **Indemnification.**
 - a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
 - b. Pursuant to Tennessee Attorney General Opinion 93-01, the City will not indemnify, defend or hold harmless in any fashion Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that Contractor may provide.
- 7. **Notices.** Notice of assignment of any rights to money due to Contractor under this Agreement must be mailed first class mail or hand delivered to the following:

If to the City of Murfreesboro:

City Manager
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130

If to Contractor:

8. **Maintenance of Records.** Contractor must maintain documentation for all charges against the City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the Agreement, must be maintained for a period of three full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by the City or its duly appointed representatives. Accounting records must be maintained in accordance with the Generally Accepted Accounting Principles.
9. **Modification.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
10. **Relationship of the Parties.** Nothing herein may 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 may hold itself out in a manner contrary to the terms of this paragraph. No party becomes liable for any representation, act, or omission of any other party contrary to this section.
11. **Waiver.** No waiver of any provision of this Agreement affects 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.
12. **Employment.** Contractor may 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, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
13. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law 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 Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.
14. **Gratuities and Kickbacks.** It is 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 therewith. It is a breach of ethical

standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under the City contracts.

15. **Assignment.** The provisions of this Agreement inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this Agreement, neither this Agreement nor any of the rights and obligations of Contractor hereunder may be assigned or transferred in whole or in part without the prior written consent of the City. Any such assignment or transfer does not release Contractor from its obligations hereunder.
16. **Integration.** This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and governs the respective duties and obligations of the parties.
17. **Force Majeure.** No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
31. **Governing Law and Venue.** The validity, construction and effect of this Agreement and any and all extensions or modifications thereof are governed by the laws of the state of Tennessee regardless of choice of law doctrine or provision in any attachment or other document that Contractor may provide. Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.
18. **Severability.** Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision will be severed and not affect the validity of the remaining provisions of this Agreement.
19. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
20. **Effective Date.** This Agreement is not binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date set forth above.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the parties enter into this agreement as of _____, 2017 (the "Effective Date").

Contractor

By: _____

Its: _____

City of Murfreesboro, Tennessee

By: _____
Shane McFarland, Mayor

Approved as to form:

Craig Tindall, City Attorney