

**THE CITY OF MURFREESBORO
PURCHASING DEPARTMENT**

INVITATION TO BID

The City of Murfreesboro ("City") will receive and publicly open sealed bids in the City Manager's office, P.O. Box 1139, 111 West Vine Street, Murfreesboro, Tennessee 37130-1139, telephone number (615) 893-5210. 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: 07/24/2017
BID TITLE: Mast Arm & Steel Strain Poles
CITY CONTACT PERSON: Paul Boyer
TELEPHONE NUMBER: (615) 893-5210
E-MAIL ADDRESS: purchasing@murfreesborotn.gov

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: Mast Arm Poles
P.O. Box 1139
111 West Vine Street
Murfreesboro, Tennessee 37130-1139

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: 08/08/2017
BID OPENING TIME: 3:00 p.m., Central Standard Time

1. INSTRUCTIONS AND CONDITIONS

1.1 Bid Submission to the City of Murfreesboro.

The City is seeking bids for “Mast Arm & Steel Strain Poles” for traffic signal installation. The provision of services set forth in the specifications. Sealed bids will be received by the City of Murfreesboro at the office of the City Manager, City Hall, until 3:00 p.m. local time on 08/08/2017 at which time the bids will be opened.

1.2 Deadline and Late Responses.

No bids received after bid opening date and time will be accepted. Bids postmarked on the bid opening date but received at 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 bids that are mailed or sent via private delivery services. The City will not accept bids submitted by fax or electronic mail.

1.3 Organization of Bid and Completeness.

Please submit one original bid to the City Manager’s office at the address set forth in 1.1 above. All bids must be sealed and the envelope clearly marked with the bidder’s name and the words, “Mast Arm & Steel Strain Poles”, Bid Opening Date: 08/08/2017. Failure to provide this information on the envelope may result in the bid not being considered. Bidders must allow sufficient time to ensure receipt of the bid. It shall be the sole responsibility of the bidder to have the bid delivered to the City before the bid deadline.

Each bid shall be organized in the same order as Section 4 of this Invitation to Bid. Any negative responses to these questions or failure to respond to these questions will permit the City to refuse to consider the bid.

Partial or incomplete bids will be rejected. All bid responses should be typewritten. If not typewritten, they must be written in ink and clearly legible, and numbers must be expressed in both words and figures. Erasures, white-outs, typeover’s, and other modifications should be initialed. Bidders are cautioned to verify their bid response prior to submission.

1.4 Signature.

All bids must be signed by a duly authorized officer of the company empowered with the legal right to bind the company. A typed name will not be acceptable without the person’s written signature as well. Signatures are required where indicated; failure to comply with this requirement shall be cause for rejection of bid. All submitted bids must be binding for a period of ninety (90) calendar days from the bid submission deadline.

1.5 Response to Terms and Conditions.

Unless an exception is taken, the awarded contract will contain the requirements of this Invitation to Bid. In its sole discretion, the City reserves the right to either consider or reject any bid which takes exception to the specifications or attached contract.

1.6 Additional Requirements.

If necessary, the City may request one or more bidders to make an oral presentation to the City.

1.7 Completeness of Invitation to Bid (“ITB”).

These documents constitute the complete set of specification requirements and ITB. 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 immediately direct any questions regarding the completeness of this ITB package and any addenda thereto to the City's Contact Person.

1.8 Bid Interpretation. Communication with the Purchasing Department

Paul Boyer is the City's contact for coordinating communications between the department and firms submitting bids. If additional information is required in order to make an interpretation of items in this ITB, written questions (including faxes or e-mails) will be accepted until ten (10) days prior to the bid opening date. All questions regarding the ITB should be addressed to:

Paul Boyer, Purchasing Director
111 West Vine Street
PO Box 1139
Murfreesboro TN 37133-1139
Telephone: (615) 849-2629
Email: purchasing@murfreesborotn.gov

The City specifically requests that no contact concerning this ITB be made with any other City personnel until the selection process has been completed. Failure to honor this requirement will be viewed negatively in the selection process and may result in the disqualification of a bid.

1.9 Discrepancies, Errors, and Omissions.

Any discrepancies, errors, omissions, or ambiguities in this ITB, 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 firms on record and the addendum will be incorporated in the ITB and will become part of the contract. 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.

1.10 Errors.

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.

1.11 Further Negotiation.

The City reserves the right to further negotiate, after the ITBs are opened, with any potential vendor if such is deemed necessary at the discretion of the City.

1.12 Economy of Preparation.

ITB should be prepared simply and economically, providing a straightforward, concise description of bidder's capabilities to satisfy the requirements of the ITB. Emphasis should be on completeness and clarity of content.

1.13 Subcontracting.

If any part of the work is, or is to be, subcontracted, the bidder shall provide within the ITB a description of the subcontracting organization and the contractual arrangements made therewith. All subcontractors will be subject to approval by the City. The successful bidder will also furnish the corporate or company name and the names of the officers or principals of said companies proposed as subcontractors by the bidder.

1.14 Bid Modification.

Bids may be modified, withdrawn, and/or resubmitted in writing to the City prior to the deadline for bid submission. After this deadline, no withdrawals or resubmissions may be made for any reason.

1.15 Tax Exempt.

The City is exempt from federal and state taxes. Upon request, the City will provide a sales tax exemption certificate to the awarded firm. Contractors 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.

1.16 Pricing Effective for Duration of Contract.

The successful bidder shall provide in the bid price the cost for services rendered and the various components of equipment, including all parts, labor, accessories and any other standard equipment necessary to make these items function as intended. Pricing for each component shall be effective from date of bid award for the duration of the contract. If, in the bidder's opinion, additional equipment or services are necessary to make the system 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 set forth in this ITB.

1.17 Approval Required.

No award or acquisition can be made until approved by the City Council. The City will not be obligated to bidders for equipment and/or services until the completion of a signed contract approved by authorized officials of the City. This solicitation in no manner obligates the City to the eventual rental, lease, or purchase of any equipment or services described, implied, or which may be proposed, until confirmed by a written contract. Progress towards this end is solely at the discretion of the City and may be terminated at any time prior to the signing of a contract.

1.18 Consideration of Bid.

Any items proposed deemed not of equal and/or better and of comparable quality as that specified shall be cause for rejection of a bid. The bid price shall include all parts, accessories and other standard equipment necessary to make these items function as intended. Though price is the main factor, the following aspects will 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 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 the ITB;
- h. Utilization of the format set forth in Section 4 for submittal of a bid; and,
- i. Bidder's past performance with the City.

1.19 Terms and Conditions.

The City reserves the right to reject any and all bids, to waive any irregularities 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. The City also reserves the right to make revisions to any quantity shown on the bid form dependent upon bid prices and available funding. Prices bid on each item shall be firm regardless of the actual quantity of item(s) purchased.

1.20 Withdrawal of Bid.

No bidder may withdraw its bid for a period of ninety (90) calendar days after the date and time set for the opening of the responses. In the event the City awards a contract to a bidder and during such ninety (90) day period 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 project.

1.21 Cost of Response.

The City will not be liable for any costs incurred by the bidders in preparing a response to this solicitation. Bidders will submit responses at their own risk and expense. The City makes no guarantee that any equipment or services will be purchased as a result of the solicitation and reserves the right to reject any and all responses. All responses and their accompanying documentation will become the record of the City.

1.22 Contract.

The successful bidder's response to this ITB shall be included as an addendum to the contract. Should any conflict or discrepancy arise between the ITB and the contract, the contract shall control. All bidders who are awarded contracts pursuant to this ITB agree 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.

1.23 Contract Termination.

The City reserves the right to cancel the contract for the work without cost or penalty to the City if, in the City's opinion, there is a failure at any time by the contractor to adequately perform the contract, or if there is any attempt to willfully impose upon the City a material or product or workmanship which is, in the opinion of the City, of an unacceptable quality. Cancellation of the contract shall not impair any rights or claim of the City to damages for the breach of any covenants of the contract by the contractor.

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 ITB specifications or contract.

1.24 Contract Modification.

The contract may be modified only by written amendment executed by all parties and their signatories hereto.

1.25 Replacement or Repair.

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.

The City, at its option and in lieu of immediate termination, may request the awarded bidder replace or repair any defective goods or correct performance by written notice to the contractor. In that event, the contractor shall take corrective action within the amount of time specified by the City in the written notice. Exercise of this option shall not relieve the contractor of any liability to the City for damages for the breach of any covenants of the Contract by the contractor.

1.26 Expense of Legal Action.

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.

1.27 Governing Laws.

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.

1.28 Severability.

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.

1.29 Indemnification and Hold Harmless.

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.

1.30 Liquidated Damages.

Liquidated damages for failure to meet installation and/or supply schedules shall be in the amount of one-hundred dollars (\$100.00) per calendar day.

1.34 Statutory Disqualification.

By submitting a response, it is represented that neither it nor any of its officers, directors, shareholders, member, or partners has been convicted or plead guilty or nolo contender to any violation of the Sherman Anti-Trust Act, mail fraud, or other state or federal criminal violation in connection with a contract let by the City of Murfreesboro or any political subdivision of the State of Tennessee.

1.35 Contractor's Employment Practices.

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 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.

1.36 City's Employment Practices.

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.

1.37 Conflict of Interest.

By submitting a response, it is represented that no officer, committee member, or director of the City or other persons whose duty is to vote for, let out, overlook, or in any manner supervise any work on any contract for the City has a "direct interest", as defined by T.C.A. §12-4-101, in the bidder or in the work which is subject to this ITB.

1.38 Ethical Standards.

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 bid therefore.

1.39 Breach of Ethical Standards.

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.

1.40 Payments & Delivery.

Payments under the contract shall be made upon submittal of an invoice after performance of the portion of the services which each payment represents. The final payment shall not be made until after the performance is complete. 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.

Forty-eight (48) hours advance notice should be given prior to delivery. Deliveries resulting from this ITB are to be made during the normal working hours of the City, 8:30 a.m. through 4:30 p.m., Monday through Friday. Time is of the essence and the bidder's delivery date must be specified and adhered to. 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. All items must be delivered within seventy-five (75) calendar days of bid award.

Delivery Address: 311 Overall Street, Murfreesboro, TN 37129

1.41 Contract Term and Renewal.

The term of this contract shall be for one year and may be automatically renewed in one year increments for an additional two (2) years at the discretion of the City.

1.42 Codes & Regulation.

All services and/or equipment must comply with city, county, state, and federal laws, rules, codes and regulations. The contractor will obtain and pay for all permits, if any, necessary to complete the work.

1.43 Bid Modification & Registration.

Bids may be modified, withdrawn, and/or resubmitted in writing to the City prior to the deadline for bid submission. After this deadline, no withdrawals or resubmissions may be made for any reason. Offerors are encouraged to register with **Vendor Registry** to insure that all relevant written communications are available to them in the preparation of their proposal. Registration can be accomplished through Vendor Registry's website at: <https://vrapp.vendorregistry.com/Vendor/Register/Index/murfreesboro-tn-vendor-registration>

1.44 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.

2. SCOPE OF PROJECT

2.1 Purpose.

The purpose of this Invitation to Bid (ITB) is to solicit and select the most qualified bidder(s) to provide Mast Arm & Steel Strain Poles to the Murfreesboro Transportation Department.

2.2 Bid Submission & Requirements.

To achieve a uniform review process and obtain the maximum degree of comparability, it is required that the bid be organized in the manner specified below and contain all specified information.

Bids shall not exceed twenty-five (25) pages in length (excluding title pages, table of contents, resumes or dividers). Information in excess of those allowed will not be evaluated/scored. One page shall be interpreted as one side of single lined, typed, 8½" x 11" piece of paper.

References.

Please provide contact information for the experience identified in Section 3.4, including name, title and telephone number for the representative of the organizations or firms for which you performed similar duties.

Cost.

The bid shall include an estimated total price for the services included in this ITB.

3. EVALUATION

3.1 Bid Evaluation.

Each bid will be evaluated based on the following criteria:

- a. *Bidder's Compliance.* The City will evaluate bids for compliance and completeness.
- b. *Costs and Terms.* The City will evaluate whether the proposed costs and terms are, in the City's judgment, consistent with current market pricing, appropriate for the services provided, and commensurate with the level of quality expected. Bid will be based on lowest grand total cost for each line item which conforms to all specifications.
- c. *Other.* Any other information that the City deems relevant and material in evaluating the bidders.

It is estimated that the City evaluation will result in a recommendation of an award of contract to the City Council within thirty (30) calendar days.

The specifications described in this ITB are designed to establish a minimum level of quality and are not meant to preclude equipment manufactured of equal or better quality. The City reserves the right to reject any and all bids for failure to meet specifications if the proposed substitute is unacceptable to the City.

4. BID SPECIFICATIONS

4.1 Description and Scope of Services Requested – Mast Arm Poles.

- 4.1.1 All materials fabricated and delivered under this bid shall generally conform to the current TDOT Standard Drawing T-SG-9. Specific specifications associated with proposed location of installation are indicated per attached drawing.

4.1.2 Anchor bolts and templates designed to support and facilitate the installation of the mast arm poles specified herein shall be pre-shipped and shall be received by the City within forty-five (45) calendar days of bid award. Shipping cost shall be included within the bid price.

4.1.3 Pole finish – powder coated flat black paint.

4.2 Description and Scope of Services Requested – Steel Strain Poles.

4.2.1 All materials fabricated and delivered under this bid shall generally conform to the current TDOT Standard Drawing T-SG-8 and attached drawings. These poles are not identified for a specific installation location but are to be used as stocked inventory.

4.2.2 Anchor bolts and templates designed to support and facilitate the installation of the steel strain poles specified herein shall be pre-shipped and shall be received by the City within forty-five (45) calendar days of bid award. Shipping cost shall be included within the bid price.

4.2.3 Pole finish – galvanized.

**PURCHASING DEPARTMENT
BID FORM**

You are invited to bid on the following:

Title: Mast Arm & Steel Strain Poles

INSTRUCTIONS:

All prices must include all costs. Costs included in the bid prices shall include services rendered and parts, labor, accessories and any other standard equipment necessary provide this service, freight, delivery, installation. Pricing for each component shall be effective for one (1) year from date of bid award. The City is not subject to sales tax.

ITEM NO.	QUANTITY (ESTIMATED)	UNIT	DESCRIPTION	UNIT PRICE
1	4	EA.	Mast Arm Pole	
	1	EA.	• Pole 1 – 70'	_____
	1	EA.	• Pole 3 – 35'	_____
	1	EA.	• Pole 5 – 50'	_____
	1	EA.	• Pole 7 – 60'	_____
2	8	EA.	32' Steel Strain Pole	_____

MAST ARM POLE TOTAL: _____

STEEL STRAIN POLE TOTAL: _____

NOTE: All prices quoted shall remain firm for period of 365 calendar days after the due date of the quotation submittal, unless a longer period has been agreed upon by both parties. City has the option to award to the lowest and best bid individually for the Mast Arm Poles and Steel Strain Poles

SIGNATURE SHEET

I, the undersigned, do hereby agree to all terms and conditions listed within this formal solicitation, and will supply all information as required in this solicitation.

COMPANY NAME: _____

ADDRESS: _____

TELEPHONE: _____ FAX: _____

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: _____

REFERENCE LISTING FORM

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 5 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: _____
CONTRAT 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 Business License Number: _____

Expires: _____

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

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 received 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, 3006, and 3023 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 of Principal Officer

Signature by Principal Officer

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: _____

******SIGN AND SUBMIT WITH BID PACKAGE******

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 BID ENCLOSED

Company Name: _____

Company Address: _____

Company Telephone Number: _____

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

Solicitation No: ITB-01-2018
Solicitation Title: Mast Arm & Steel Strain Poles
Solicitation Due Date & Time (CST): 08/08/2017

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-01-2018 – Mast Arm & Steel Strain Poles" 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 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.
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.
 - c. Copyright, Trademark, Service Mark, or Patent Infringement.
 - i. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City in order to enable Contractor to do so. The City reserves the right to participate in the defense of any such action. Contractor has the right to enter into negotiations for and the right to effect settlement or

compromise of any such action provided (i) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (ii) no cost or expense whatsoever accrues to the City at any time; and (iii) such settlement or compromise is binding upon the City upon approval by the Murfreesboro City Council.

- II. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:
 - a. Procure for the City the right to continue using the products or services.
 - b. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the City, so that they become non-infringing.
 - c. Remove the products or discontinue the services and cancel any future charges pertaining thereto; provided however, Contractor will not exercise this option until Contractor and the City have determined that each of the other options are impractical.
- III. Contractor has no liability to the City if any such infringement or claim thereof is based upon or arises out of the use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor, the use of the products or services in a manner for which the products or services were neither designated nor contemplated, or the claimed infringement in which the City has any direct or indirect interest by license or otherwise, separate from that granted herein.

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