

**SAMPLE CONTRACT**

ATTACHMENT A

CONTRACT BETWEEN

MURFREESBORO ELECTRIC DEPARTMENT

AND

**XXXXXXXXXXXXXXXXXXXX**

FOR A 45 FT. TO BOTTOM OF PLATFORM, INSULATED HYDRAULIC-OPERATED, ARTICULATION, TELESCOPING, MATERIAL HANDLING, AERIAL DEVICE EQUIPPED WITH A ONE-MAN END MOUNTED PLATFORM AND A ALUMINUM UTILITY SERVICE BODY MOUNTED ON A FORD SUPER DUTY F-550 DRW, 4WD, REGULAR CHASSIS/CAB.

This contract is entered into on this **DATE XXXXXXXX**, by and between **MURFREESBORO ELECTRIC DEPARTMENT**, a municipal electric utility in the State of Tennessee (“MED”) and **XXXXXXXXXXXXXXXXXXXX**, a utility equipment manufacturer of the State of **XXXXXX** (“Vendor”).

This contract consists of the following documents:

- **Invitation to Bid issued August 11, 2004**
- **Bid specifications issued August 11, 2004**
- **Vendor’s Bid Response dated August 23, 2004**
- **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**
  - **Vendor’s Bid Response**
1. **Duties and Responsibilities of Vendor.** Vendor agrees to provide and MED agrees to purchase a 45 ft. to bottom of platform, insulated hydraulic operated, articulating, telescoping, material handling, aerial device equipped with a one-man end mounted platform with a aluminum utility service body mounted on a Ford Super Duty F-550 DRW, 4WD, Regular Chassis/Cab.

2. **Term.** This contract shall not be effective until approved by the Murfreesboro Electric Department Board and signed by all required parties.
3. **Payment and Delivery.**
  - 3.1 Payment will be made by MED after goods and/or services have been received, accepted, and properly invoiced. Invoices must bear the purchase order number.
  - 3.2 Truck shall be built in accordance with designed layout. Delivery to be Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m. Forty-eight (48) hours advance notice should be given prior to delivery.
  - 3.3 Delivery of all items shall be made as stated in the bid specifications. In the appropriate blank on the bid response form, the Bidder must indicate the best delivery date after receipt of order. Delivery resulting from this ITB are to be made during the normal working hours of MED. 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, MED 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. Delivery date is required. If unit is not delivered within thirty (30) calendar days of delivery date, liquidated damages of \$100 per calendar day will be subtracted from the bid price.
  - 3.4 Delivered item will not be considered "accepted" until an authorized agent for MED has, by inspection or test of such item, determined that they fully comply with specifications. MED may return, for full credit at no expense to MED, any item(s) received which fail to meet the specifications as stated in the Invitation to Bid.
  - 3.5 All deliveries made pursuant to the contract must be made pursuant to the written purchase order of MED. MED assumes no liability for goods and/ or services provided without a written purchase order from MED. Delivery and freight charges are to be prepaid and included in the bid price.
4. **Price.** The price for goods and other items and/or services shall be invoiced at the prices and charges fixed by the Vendor as per the attached bid which reflects a total price of **\$XXXXXX.**
5. **Warranty.** Unless otherwise specified the Aerial Device and accessories shall be warranted by manufacture for two years from date of delivery against defects in parts or workmanship. The both years for parts and labor with repair preformed at MED if possible.

During such warranty period, the Vendor shall replace at no charge, or repair or service, any defective or unsatisfactory items. If such items cannot be repaired within five (5) days from notice to the Vendor of such defect, the Vendor shall provide a substitute item at no additional charge.

Vendor warrants that from the date of delivery and through the warranty period, the equipment and accessories provided shall be free of any defects that interfere with or prohibit the use of the goods for the purposes for which they were obtained.

The chassis warranty is specified in the Truck Minimum Bid Specifications.

6. **Taxes.** MED is exempt from State sales tax and will issue a tax exemption certificate to the Vendor as requested. MED shall not be responsible for any taxes that are imposed on Vendor. Furthermore, Vendor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided by MED.
7. Reserved
8. Reserved
9. Reserved
10. **Compliance with Laws.** Vendor agrees to comply with any applicable federal, state and local laws and regulations.
11. **Notices.**
  - 11.1 Notices to MED including but not limited to notice of assignment of any rights to money due to Vendor under this contract must be mailed or hand-delivered to the attention of PD Mynatt, General Manager, Murfreesboro Electric Department, P.O. Box 9, Murfreesboro, Tennessee 37133-0009.
  - 11.2 Notices to Vendor shall be mailed or hand delivered to XXXXXXXXXXXXXXXXXXXX
12. **Maintenance of Records.** Vendor shall maintain documentation for all charges against MED. The books, records, and documents of Vendor, 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 MED or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.

13. **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 Murfreesboro Electric Department Board may be required. Minor modifications to the contract may be approved by the General Manager of MED.
14. **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.
15. **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.
16. **Employment.** Vendor 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.
17. **Non-Discrimination.** It is the policy of MED 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, Vendor certifies and warrants it will comply with this policy.
18. **Indemnification and Hold Harmless.** Vendor shall indemnify and hold harmless MED, 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 Vendor, its officers, employees and/or agents, including its sub or independent Vendors, in connection with the performance of the contract, and,
  - 18.2 Any claims, damages, penalties, costs and attorney fees arising from any failure of Vendor, its officers, employees and/or agents including its sub or independent Vendors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
  - 18.3 Vendor shall pay MED any expenses incurred as a result of Vendor's failure to fulfill any obligation in a professional and timely manner under this Contract.

19. **Attorney Fees.** Vendor 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 MED prevails, Vendor shall pay all expenses of such action including MED's attorney fees 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 Vendor under this contract, neither this contract nor any of the rights and obligations of Vendor hereunder shall be assigned or transferred in whole or in part without the prior written consent of MED. Any such assignment or transfer shall not release Vendor from its obligations hereunder. NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO VENDOR UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF PD Mynatt, GENERAL MANAGER, P.O. BOX 9, MURFREESBORO, TENNESSEE 37133-0009.
21. **Entire Contract.** This contract, invitation to bid, bid specifications, and Vendor'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.** No party shall have 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 war, order of legal authority, act of nature, or other unavoidable causes not attributed to fault or negligence of Vendor and/or MED.
23. **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 Vendor may provide.
24. **Venue.** Any action between the parties arising from this agreement shall be maintained in the courts for Rutherford County, Tennessee.
25. **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.
26. **Notices.** Any notice to Vendor from MED 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 Vendor at its last given address or delivered in person to said Vendor or its authorized representative on the work.

26.1 Notices to MED shall be sent to:

**Department:** Murfreesboro Electric Department

**Attention:** **PD Mynatt**, General Manager

**Address:** P.O. Box 9

Murfreesboro, TN 37133-0009

26.2 Notices to Vendor shall be sent to:

**Vendor:** XXXXX

**Attention:** XXXXX

**Address:** XXXXX

XXXXX

27. **Effective Date.** This contract shall not be binding upon the parties until it has been signed first by the Vendor and then approved by the Murfreesboro Electric Department Board and signed by the General Manager. When it has been signed, this contract shall be effective as of the date first written above.

**Approved by Murfreesboro Electric Department Board of Directors**

**Date:** \_\_\_\_\_

**Approved as to form**

**By:** \_\_\_\_\_

**Murfreesboro Electric Department Attorney**

**MURFREESBORO ELECTRIC DEPARTMENT**

XXXXXXXXXXXX

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**PD Mynatt**, General Manager

Name & Title

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

