

# COUNCIL COMMUNICATION

Meeting Date: 03/05/2026

---

**Item Title:** Thompson Machinery CAT H140S Hammer Contract

**Department:** Water Resources

**Presented by:** Valerie Smith

**Requested Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Consider purchasing a hydraulic hammer attachment for an existing excavator through Thompson Machinery Commerce Corporation.

**Staff Recommendation**

Approval of the hydraulic hammer purchase. The Water Resources Board recommended approval of this matter at the February 24<sup>th</sup> meeting.

**Background Information**

In the past, rock excavation was made easier through explosives. With this attachment the O&M crews will be able to break the rock in the trenches instead of blasting. This purchase will also eliminate buying & storing explosives.

**Fiscal Impact**

The expense, \$177,816 will be funded from a combination of the FY26 budget and working capital reserve funds. The FY26 budget included \$160,000 for this purchase.

**Attachments**

Contract with Thompson Machinery

**AGREEMENT BETWEEN  
CITY OF MURFREESBORO  
AND  
THOMPSON MACHINERY COMMERCE CORPORATION  
FOR CATERPILLAR EQUIPMENT**

This Agreement is entered into and effective as of \_\_\_\_\_ (“Effective Date”), by and between the **CITY OF MURFREESBORO**, a municipal corporation of the State of Tennessee ("City") and **THOMPSON MACHINERY COMMERCE CORPORATION**, a corporation of the State of Tennessee ("Contractor").

This Agreement consists of the following documents:

- *This Agreement;*
- *State of Tennessee SWC No. 225-72878 with Thompson Machinery Commerce Corp., effective date through November 14, 2026;*
- *Thompson Machinery Commerce Corporation’s Sales Quotation dated January 27, 2026, for one (1) Caterpillar H140 S Hydraulic Hammer, with noted accessories; one (1) Caterpillar Hydraulic Pin Grabber Quick Coupler, with noted accessories; and labor, hereinafter “Sales Quotation” (Exhibit A);*
- *Any properly executed amendments to this Agreement.*

In the event of conflicting provisions, all documents shall 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, State of Tennessee SWC No. 225-72878 with Thompson Machinery Commerce Corporation;*
- *Fourth, Sales Quotation.*

**1. Duties and Responsibilities of Contractor.**

- a. Scope of Work. Contractor is engaged by the City to provide the equipment, machinery, material, and other items (“Goods”) and to perform the installation services (“Services”) as described in Contractor’s Sales Quotation. Specifically, Contractor agrees to provide, and City agrees to purchase as specified on the Contractor’s Sales Quotation (Exhibit A) and as set forth in the State of Tennessee SWC #225-72878 with Thompson Machinery Commerce Corp.:
  - i. One (1) new CAT H140 S Hammer with accessories as listed in Exhibit A, for a price of \$109,199.70;
  - ii. One (1) CAT Hydraulic Pin Grabber Quick Coupler with accessories as listed in Exhibit A, for a price of \$11,414.70; and
  - iii. Labor as specified in Exhibit A, for a price of \$57,201.62, to occur off-site of City property;
  - iv. The total price to City amounts to \$177,816.02, as listed in Exhibit A.
- b. Supervision and Superintendence of Work.
  - i. Contractor will supervise and direct the work efficiently and with Contractor’s best skill and attention. Contractor will be solely responsible for the means, methods,

techniques, sequences, and procedures of necessary labor. Contractor will be responsible to see that the finished work complies accurately with the Contract documents.

c. Labor, Materials, and Equipment.

- i. As necessary, Contractor will furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, and all other incidentals necessary for the execution, testing, initial operation, and completion of the work.
- ii. Contractor will perform the Services using personnel with the requisite skill, experience, and qualifications to complete the tasks set forth in the Scope of Work efficiently and in a professional and skillful manner in accordance with generally accepted industry standards for similar services. The Contractor will at all times maintain good discipline and order at the site.
- iii. The Goods identified in the Scope of Work will be new, except as otherwise provided in the Contract documents. If required by the City, Contractor will furnish satisfactory evidence as to the kind and quality of materials and equipment.
- iv. The Goods identified in the Scope of Work shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processors, except as otherwise provided in the Contract documents.

d. Warranty and Guarantee.

- i. Contractor warrants that the Goods purchased by the City from Contractor pursuant to this Agreement will conform to the specifications set forth in the Scope of Work; that title to the Goods will pass to the City free of and clear of all liens, claims, security interests, or other encumbrances no later than the time of the City's payment for the Goods; and that the Goods do not infringe or misappropriate any third party's patent or other intellectual property rights.
- ii. With respect to any Goods manufactured by Contractor and sold to the City pursuant to this Agreement, Contractor warrants that such items will be free from any defects in workmanship, material, and design for sixty (60) months from the date of installation or the longest warranty period offered by Contractor to its customer for such items, whichever is longer. In addition, Contractor hereby assigns to the City the Contractor's right, title, benefit, and interest in and to any manufacturer warranty associated with any Goods purchased by the City from Contractor pursuant to this Agreement, including the Contractor's right to receive the benefits of and to make claim under any such manufacturer warranty.
- iii. The Contractor warrants that the Services will be performed in accordance with generally accepted industry standards and warrants the installation of the Goods against defects in workmanship for twelve (12) months from the date of installation or the longest warranty period offered by Contractor to its customer for such work, whichever is longer.
- iv. The Contractor agrees that all warranties in the Contract documents shall survive acceptance of, delivery of, and payment for, the goods, whether any defects shall be latent or patent, and agrees to indemnify and hold the City harmless from any loss, damage, or other expense, including attorneys' fees, that the City may suffer as a result of the failure of the Goods or workmanship to be as warranted.

- v. The warranties set forth in this section are cumulative and shall not exclude or affect the operation of any other warranty or guaranty provided by law or any greater warranty included in Contractor's Proposal.
  - vi. The Contractor agrees to correct any defect in the Goods or workmanship that may develop during the period of such warranties at no cost to the City and to the satisfaction of the City. Upon receipt of notice from City of noncompliance with any warranty set forth in this section or any other warranty provided by law or equity, Contractor shall, at its own cost and expense, within fifteen (15) days: (i) replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to the Contractor and the delivery of repaired or replacement Goods to the City; and/or (ii) correct or re-perform the applicable installation work.
- e. Subcontractors.
- i. Contractor will not employ any subcontractor to perform any of the work required under the Contract documents without first obtaining the written approval of the City's designated representative to employ the subcontractor.
  - ii. Contractor will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by them and of persons for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract documents shall create any contractual relationships between any subcontractor and the City or any obligation on the part of the City to pay or to see to the payment of any moneys due any subcontractor, except as may otherwise be required by law. The City may furnish to any subcontractor, to the extent practicable, evidence of amounts paid to Contractor on account of specific work done in accordance with the schedule of values.
  - iii. Contractor agrees to bind specifically every subcontractor to the applicable terms and conditions of the Contract documents for the benefit of the City.
  - iv. All work performed for Contractor by a subcontractor shall be pursuant to an appropriate written agreement between Contractor and the subcontractor.
- f. Contractor's Continuing Obligation. Contractor's obligation to perform the work and complete the Project in accordance with the Contract documents shall be absolute. Neither any payment by the City to Contractor under the Contract documents, nor any use or occupancy of the Project or any part by the City, nor any act of acceptance by the City nor any failure to do so, nor any correction of defective work by the City shall constitute acceptance of work not in accordance with the Contract documents.
2. Term. The term of this Agreement shall be from the Effective Date to the expiration of the SWC No. 225-72878 on November 14, 2026, or as amended by State of Tennessee. Contractor's performance 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. Price; Compensation; Method of Payment.**

- a. The price for the goods and services to be provided under this Agreement is set forth in the Contractor's Quote for one (1) Caterpillar H140S Hydraulic Hammer, one (1) Caterpillar Hydraulic Pin Grabber Quick Coupler, and Labor reflecting a **Total Purchase Price of \$177,816.02** as set forth in the above referenced Sales Quotation (Exhibit A). Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after delivery and acceptance of the goods and/or services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the Agreement and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete.
- b. Deliveries of all items for the Water Resources Department shall be made within 180 days of issuance of Purchase Order to Attn: Donald Hughes – Water Resources Department – 1725 South Church Street, Murfreesboro, TN 37130. Contact Person Donald Hughes (tel. 615-893-1223 ext. 3202; email: dhughes@murfreesborotn.gov) must be notified of delivery date and time within two (2) calendar days prior to delivery. Deliveries shall be made during the normal working hours of the City, Monday through Friday.
- c. Deliveries of all items shall be made as stated in the Agreement documents. Should the Contractor fail to deliver items on or before its stated date, the City reserves the right to cancel the order or Agreement. The Contractor shall be responsible for making any and all claims against carriers for missing or damaged items.
- d. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any item(s) received which fail to meet the specifications as stated in the Contractor's Quote.
- e. All deliveries made pursuant to the Agreement must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the bid price.

**4. 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 (1) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (2) no cost or expense whatsoever accrues to the City at any time; and (3) 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:
      1. Procure for the City the right to continue using the products or services.
      2. 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.
      3. 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.
5. **Notices.** Notice of assignment of any rights to money due to Contractor under this Contract must be mailed first class mail or hand delivered to the following:

If to the City of Murfreesboro:

City of Murfreesboro  
Attn: City Manager  
Post Office Box 1139  
111 West Vine Street  
Murfreesboro, TN 37133-1139

If to the Contractor:

Thompson Machinery Commerce Corp  
Attn: Joseph Fisher  
1245 Bridgestone Blvd.  
LaVergne TN 37086

6. **Taxes.** The City of Murfreesboro is exempt from State sales tax and will issue a tax exemption certificate to the Contractor as requested. City shall not be responsible for any taxes that are imposed on Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to City.
7. **Compliance with Laws.** Contractor agrees to comply with any applicable federal, state and local laws and regulations.
8. **Maintenance of Records.** Contractor shall maintain documentation for all charges against City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the Agreement, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by City or its duly appointed representatives. The records shall be maintained in accordance with 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. **No Waiver of Limitations Periods.** The parties shall have and maintain any applicable limitation period provided by state law in which to provide a notice, present a claim, or initiate an action in a court of competent jurisdiction. To the extent any other provision in the documents forming this Agreement provides a shorter limitation period, the City disclaims such provision, and Contractor acknowledges such disclaimer.
12. **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.
13. **Employment.** Contractor shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying-off of any individual due to race, creed, color, national origin, age, sex, 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.
14. **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.

15. **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.
16. **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
17. **Integration.** This Agreement, Sales Quotation, and State contract set forth the entire agreement between the parties with respect to the subject matter hereof and govern the respective duties and obligations of the parties.
18. **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, epidemic, pandemic or other cause of similar or dissimilar nature beyond its control.
19. **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.
20. **Severability.** Should any provision of this Agreement 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 Agreement.
21. **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.
22. **Iran Divestment Act of Tennessee.** By submission of the Contractor's Bid, Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that Contractor is not on the list created pursuant to Tenn. Code Ann. §12-12-106.
23. **Non-Boycott of Israel.** By submission of the Contractor's Bid, Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that each supplier is not boycotting Israel pursuant

to Tenn. Code Ann. § 12-4-119 and will not boycott Israel during the term of Agreement. This applies to contracts of \$250,000 or more and to contractors with ten (10) or more employees.

24. **Effective Date.** This Agreement shall not be 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.

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

**CITY OF MURFREESBORO**

**THOMPSON MACHINERY COMMERCE CORPORATION**

By: \_\_\_\_\_  
Shane McFarland, Mayor

Signed by:  
By: Joseph S. Fisher  
A76A18E609BE48F  
Joseph Fisher, Territory Manager

APPROVED AS TO FORM:

Signed by:  
Adam F. Tucker  
43A2038E51F9401...  
Adam F. Tucker, City Attorney



1-27-2026

City of Murfreesboro- Water and Sewer Department.

Per your request, we are pleased to present the following bid for CAT Worktools equipped as follows:

- CAT H140 S Hammer
- Silenced, Flat Top
- Tool
- Mounting Bracket
- Connecting Hoses
- Hammer Mounted Autolube System
- Total CAT List Price- \$121,333.00**
- Less State Contract 10%- \$12,133.30**
- City of Murfreesboro Price- \$109,199.70 +Labor/Hydraulics ( reference shop quote) for 324D SN# PY100366**
  
- CAT Hydraulic Pin Grabber Quick Coupler
- Connecting Lines
- 1 Set of Pins
- Total CAT List Price- \$12,683.00**
- Less State Contract 10% - \$1,268.30**
- City of Murfreesboro Price- \$11,414.70 +Labor/Hydraulics ( reference shop quote) for 324D SN# PY100366**

**PRICE EQUIPMENT AS ABOVE \$120,614.40 + \$57,201.62 Labor/Hydraulics (reference shop quote) for 324D SN# PY10036= Total Price \$177,816.02.**

TERMS: Net Cash. Pricing based on State Contract Number: 0000000000000000000072878.

WARRANTY: Factory warranty-12 month Parts and Labor.

SERVICE BRANCHES: Thompson Machinery maintains full-service branches and rental stores in La Vergne, Clarksville, Camden, Cookeville, Manchester, Jackson, and in Memphis TN. Greenwood, Tupelo, and Columbus MS.

Thank you for the opportunity to submit this bid, which will remain valid for 30 days. Should you have any questions, please feel free to contact me at (615) 405-4792. Thank you for choosing to partner with Thompson Machinery and Caterpillar for your equipment needs. We look forward to earning your valued business!

Thompson Machinery Company

Joseph S. Fisher  
Territory Manager