

ADVERTISEMENT FOR BIDS

Sealed proposals will be received in the Office of the Purchasing Technician, Greenville Utilities Commission, 401 S. Greene Street, Greenville, North Carolina 27834 until 2:00 PM (EDST) on October 5, 2011 and immediately thereafter publicly opened and read for the furnishing of one (1) 3.5 Compact Excavator and one (1) 5.5 – 7.5 Compact Excavator.

Instructions for submitting bids and complete specifications will be available in the Office of the Purchasing Technician, Greenville Utilities Commission, 401 S. Greene Street, Greenville, North Carolina during regular office hours, which are 8:30 AM – 5:00 PM Monday through Friday.

Greenville Utilities Commission reserves the right to reject any or all bids.

SECTION I
GENERAL INSTRUCTIONS FOR FORMAL BIDS
RELATED TO THE PURCHASE OF APPARATUS, SUPPLIES,
MATERIALS, AND EQUIPMENT

1.0 NOTICE TO BIDDERS

Sealed bids, subject to the conditions made a part hereof, will be received in the Office of the Purchasing Technician, Greenville Utilities Commission, 401 S. Greene Street, Greenville, North Carolina 27834 until 2:00 PM (EDST) on October 5, 2011, the day of opening. Bids submitted in a fax or e-mail in response to this Invitation for Bids **will not be acceptable**.

1.1 PRE-BID MEETING – A Pre-Bid meeting will be held at Greenville Utilities Commission, 401 S. Greene Street, Greenville, North Carolina 27384 on Wednesday, September 28, 2011 at 2:00 pm (EDST).

1.1.1 The intent of the Pre-Bid Meeting is to allow the bidders an opportunity to ask questions and make clarifications prior to submitting a bid.

1.1.2 Only portions of the bid/contract will be discussed. Lack of discussion or clarifications of any portion of the bid/contract does not relieve the Bidder from conforming to the provisions of the same.

2.0 STANDARD FORMS REQUIRED

Each bidder must submit a proposal on the enclosed bid forms. **The bid must be signed by an authorized official of the firm. Return only the attached Proposal Form. Do not return the Advertisement for Bids, Instructions to Bidders or Specifications.**

3.0 PREPARATION OF BID

Bids must be in sealed envelopes clearly marked on the outside with the name of the bid and the bid opening date and time. Bid shall be addressed to PURCHASING TECHNICIAN, GREENVILLE UTILITIES COMMISSION, P. O. BOX 1847, 401 S. GREENE STREET, GREENVILLE, NORTH CAROLINA 27835-1847.

4.0 TIME FOR OPENING BIDS

Bids will be opened promptly and read at the hour and on the date set forth in the advertisement in the Office of the Purchasing Technician, Greenville Utilities Main Office, 401 S. Greene Street, Greenville, North Carolina. Bidders or their authorized agents are invited to be present.

5.0 DEPOSIT

A deposit is **NOT** required for this bid.

6.0 NC SALES TAX

Do **not** include NC sales taxes in bid figure; however, Greenville Utilities Commission (GUC) does pay sales tax. Sales tax should be added to the invoice as a separate item.

7.0 FEDERAL EXCISE TAX

GUC is exempt from Federal Excise Tax and will issue a Federal Exemption Certificate upon request to the successful bidder.

8.0 EXCEPTIONS TO BE CLEARLY STATED

If bid is not in strict accordance with Section II, "Specifications," bidder must list or note all exceptions **on the Request for Proposal Form**, otherwise, it is fully understood that the successful bidder will furnish equipment and/or materials exactly as specified. GUC reserves the right to accept or reject bids with noted minor deviations from specifications and to determine the lowest responsible, responsive bid from the standpoint of quality, performance, and price.

9.0 EVALUATION AND AWARD OF BIDS

GUC reserves the right to reject any and all bids, to waive any and all informalities, and to disregard all nonconforming or conditional bids or counter proposals. In evaluating bids, GUC shall consider whether the bids comply with the prescribed requirements, plus all alternates or options requested. GUC reserves the right to include or exclude any option or alternative in GUC's opinion is in GUC's best interests. If a bid is to be awarded, it will be awarded to the lowest responsible, responsive bidder whose evaluation by GUC indicates that the award will be in GUC's best interests. Only firm prices will be considered for award of this bid.

10.0 PROMPT PAYMENT DISCOUNTS

Bidders are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it may be considered in the award of the contract.

11.0 NUMERICAL ERRORS

In the case of a discrepancy between a unit price and the extension (the unit price multiplied by the number of units), the unit price governs. In the case where numerical bids are stated both in numbers and in words, the words govern.

12.0 BID WITHDRAWAL

A bidder must notify GUC in writing of its request to withdraw a bid within seventy-two (72) hours after the bid opening, not including Saturdays, Sundays, or holidays. In order to justify withdrawal, the bidder must demonstrate that a substantial error exists and that the bid was submitted in good faith.

13.0 MINORITY BUSINESS PARTICIPATION PROGRAM

GUC has adopted an Affirmative Action and Minority and Women Business Enterprise Plan (M/WBE) Program. Firms submitting a proposal are attesting that they also have taken affirmative action to ensure equality of opportunity in all aspects of employment, and to utilize M/WBE suppliers of materials and/or labor.

14.0 DELIVERY TIME

Delivery time is to be stated and will be considered in the evaluation of bids.

15.0 MANUFACTURER

Bidder is to specify the manufacturer of items being quoted.

16.0 CONTACT INFORMATION

Questions regarding this bid request should be directed to Bill Darty, Fleet Manager at (252) 551-1515, dartywe@guc.com, Cleve Haddock, Purchasing Technician at (252) 551-1533, haddocgc@guc.com.

17.0 TERMS AND CONDITIONS

The attached Terms and Conditions apply to all purchases made by Greenville Utilities Commission (GUC) and must be considered as part of the bid proposal.

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SECTION II

GREENVILLE UTILITIES COMMISSION

MINIMUM SPECIFICATIONS (A) FOR ONE (1) 3.5 COMPACT EXCAVATOR

OCTOBER 5, 2011

It is the intent of these minimum specifications to describe a new, current year production model compact excavator. The unit must meet or exceed current OSHA regulations at time of purchase. Any additional equipment or accessories listed in the manufacturer's current literature as standard, but not listed in these **minimum** specifications, must be furnished.

1.0 Engine:

Tier 4 Certified –3 Cylinder
Displacement – 100 cubic in.
Fuel Injection – Direct
Fuel Injection Pump – Mechanical or electronic
Fuel - Diesel
Fuel Filter – Full flow, paper element
Cooling - Liquid
Horsepower – Net 26.5 at 2200 rpm
Max. Torque at 1100 rpm – Net 79 lb.-f

2.0 Hydraulics:

Two variable-displacement and one fixed-gear pumps, open center design
Auxiliary Hydraulics (joystick operation) (single & double acting selector valve)

3.0 Drive:

Planetary drive system
Rubber tracks

4.0 Electrical:

Voltage – 12 volts, negative ground
Alternator – 55 amp
Batteries (1) – 12 volt, low maintenance
Two (2) work lights, one (1) on work station and one (1) on boom.
Travel Alarm

5.0 Operating Weight: 8,050 lbs. max

6.0 Performance Specifications:

Max. Dig Radius	-	17 ft., 7 in.
Dig Radius at Groundline	-	17 ft., 2 in.
Max. Dig Depth	-	10 ft.
Dump Height	-	11 ft., 4 in.
Overall Reach Height	-	15 ft., 10 in. max
Bucket Rotation	-	178 °
Vertical Straight Wall dig Depth	-	7 ft. 2 in.
Arm Digging Force	-	4294 lb.
Bucket Digging Force	-	6182 lb.

7.0 Operator's Compartment:

TOPS/ROPS/FOPS Enclosed cab with AC & Heater
Operator's controls – joystick and foot controls
Display includes – Engine oil pressure, water temperature lamp, air filter lamp, water separator detection lamp, low fuel warning lamp, battery charge lamp, glow plug indicator lamp, water temperature gauge and hour meter
Adjustable seat with seat belt
Arm rests
Cup holder

8.0 Other:

Hydraulic backfill blade
Width - 5 ft., 9 in
Buckets
Width - 24 in.
SAE Heaped Capacity - .14 yards
Hydraulic Quick Coupler (pin grabber style)
Hydraulic Hammer (750-1000 Ft lb class) with hoses and quick couplers

9.0 Manuals: Operator and Parts/Repair (2) – must be provided at time of delivery.

10.0 Warranty: The entire unit shall have a thirty six (36) month minimum warranty, parts and labor with all warranty FOB Greenville Utilities Commission, 801 Mumford Rd., Greenville, NC. Authorized service center capable of servicing and performing all warranty work shall be within 50 miles of Greenville, NC.

GREENVILLE UTILITIES COMMISSION

MINIMUM SPECIFICATIONS (B) FOR ONE (1) 5.5 - 7.5 COMPACT EXCAVATOR

OCTOBER 5, 2011

It is the intent of these minimum specifications to describe a new, current year production model compact excavator. The unit must meet or exceed current OSHA regulations at time of purchase. Any additional equipment or accessories listed in the manufacturer's current literature as standard, but not listed in these **minimum** specifications, must be furnished.

1.0 Engine:

- Tier 4 Certified – 4 Cylinder
- Displacement – 200 cubic in.
- Fuel Injection – Direct
- Fuel Injection Pump – Mechanical or electronic
- Fuel - Diesel
- Fuel Filter – Full flow, paper element
- Cooling - Liquid
- Horsepower – Net 54 at 2000 rpm
- Max. Torque at 1550 rpm – Net 148 lb.-f

2.0 Hydraulics:

- Two variable-displacement and one fixed-gear pumps, open center design
- Auxiliary Hydraulics (joystick operation) (single & double acting selector valve)

3.0 Drive:

- Planetary drive system
- Rubber tracks

4.0 Electrical:

- Voltage – 12 volts, negative ground
- Alternator – 80 amp
- Batteries (1) – 12 volt, low maintenance
- Two (2) work lights, one (1) on work station and one (1) on boom.
- Travel Alarm

5.0 Operating Weight: 12,790 lbs. max

6.0 Performance Specifications:

- Max. Dig Radius - 20 ft., 2 in.
- Dig Radius at Groundline - 19 ft., 9 in.

Max. Dig Depth	-	11 ft., 9 in.
Dump Height	-	12 ft., 4 in.
Overall Reach Height	-	18 ft., 8 in. max
Bucket Rotation	-	178 °
Vertical Straight Wall dig Depth	-	10 ft.
Arm Digging Force	-	6,969 lb.
Bucket Digging Force	-	9,217 lb.

7.0 Operator's Compartment:

TOPS/ROPS/FOPS Enclosed cab with AC & Heater

Operator's controls – joystick and foot controls

Display includes – Engine oil pressure, water temperature lamp, air filter lamp, water separator detection lamp, low fuel warning lamp, battery charge lamp, glow plug indicator lamp, water temperature gauge and hour meter

Adjustable seat with seat belt

Arm rests

Cup holder

8.0 Other:

Hydraulic backfill blade

Width 5 ft., 9 in

Buckets –

Width - 24 in. trenching bucket

48 in. grading bucket with BOCE

Helac Powertilt with Quick Coupler (change attachments without tools)

Lever Pattern Change Valve (joystick control pattern charger)

9.0 Manuals: Operator and Parts/Repair (2) – must be provided at time of delivery

10.0 Warranty: The entire unit shall have a thirty six (36) month minimum warranty, parts and labor with all warranty FOB Greenville Utilities Commission, 801 Mumford Rd., Greenville, NC. Authorized service center capable of servicing and performing all warranty work shall be within 50 miles of Greenville, NC.

SUBMIT BIDS ON ATTACHED PROPOSAL

Vendor Name: _____

GREENVILLE UTILITIES COMMISSION
PROPOSAL FORM

The undersigned bidder hereby declares that it has carefully examined the enclosed detailed specifications for furnishing GUC with the below listed item(s). The undersigned bidder further agrees, if this proposal is accepted within thirty (30) days from the date of the opening, to furnish any or all of the item(s) upon the quoted price.

ITEM NO.	QUANTITY	DESCRIPTION	UNIT PRICE	EXTENSION
I	1	(A) 3.5 Compact Excavator Delivery In Days: _____	\$ _____	\$ _____
II	1	(B) 5.5 – 7.5 Compact Excavator Delivery In Days: _____ Size Unit Quoted: _____	\$ _____	\$ _____
			Total	\$ _____

Method of Award: GUC, in its sole discretion, may award this bid as individual item(s) or as a total bid for item(s) **I – II**.

Complete and Check All Math: It is the responsibility of the Bidder to extend bid prices and supply a total for all item(s).

Vendor Name: _____

GREENVILLE UTILITIES COMMISSION
EXCEPTION/VARIATION FORM (A)
FOR ONE (1) 3.5 COMPACT EXCAVATOR

Provider's Certification: This is to certify that it is our intent to furnish equipment, material, services, etc. in absolute compliance with the bid specification except where expressly noted below.

Instructions: List all exceptions or variations to these bid specifications. Providers shall identify each exception or variation by specification page. The omission of exception or variation information shall be deemed by the Commission as the Provider's intent to absolutely comply with the bid specification. If additional space is required, Provider may reproduce this form as necessary.

<u>Page #</u>	<u>Exception/Variation</u>
_____	_____
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_____	_____

Authorized Signature of Certification: _____

Print Name: _____

Firm Represented: _____

Address: _____

Vendor Name: _____

GREENVILLE UTILITIES COMMISSION

EXCEPTION/VARIATION FORM (B)

FOR ONE (1) 5.5 – 7.5 COMPACT EXCAVATOR

Provider's Certification: This is to certify that it is our intent to furnish equipment, material, services, etc. in absolute compliance with the bid specification except where expressly noted below.

Instructions: List all exceptions or variations to these bid specifications. Providers shall identify each exception or variation by specification page. The omission of exception or variation information shall be deemed by the Commission as the Provider's intent to absolutely comply with the bid specification. If additional space is required, Provider may reproduce this form as necessary.

<u>Page #</u>	<u>Exception/Variation</u>
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Authorized Signature of Certification: _____

Print Name: _____

Firm Represented: _____

Address: _____

SECTION III

TERMS AND CONDITIONS FOR THE PURCHASE OF APPARATUS, SUPPLIES, MATERIALS, AND EQUIPMENT

These Terms and Conditions, made and entered into on this the ____ day of _____, by and between GREENVILLE UTILITIES COMMISSION OF THE CITY OF GREENVILLE, PITT COUNTY, NORTH CAROLINA, with one of its principal offices and places of business at 401 S. Greene Street, Post Office Box 1847, Greenville, Pitt County, North Carolina 27835-1847, hereinafter referred to as "GUC" and _____, a _____ organized and existing under and by virtue of the laws of the State of _____, with one of its principal offices and places of business at _____, hereinafter referred to as "PROVIDER";

1.0 TAXES

No taxes shall be included in any bid prices. GUC is exempt from Federal Excise Tax. GUC is not exempt from North Carolina state sales and use tax or, if applicable, Pitt County sales and use tax. Such taxes shall be shown as a separate item on the invoice.

2.0 INVOICES

It is understood and agreed that orders will be shipped at the established contract prices and quantities in effect on dates orders are placed. Invoicing at variance with this provision may subject the contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate line item. All invoices must bear the GUC purchase order number. Mail all invoices to Greenville Utilities Commission, Finance Department, P. O. Box 1847, Greenville, NC 27835-1847.

3.0 PAYMENT TERMS

Payments for equipment, materials, or supplies will be made after the receipt and acceptance of the equipment, materials, or supplies and after submission of a proper invoice. GUC's normal payment policy is thirty (30) days. GUC will not be responsible for any goods delivered without a purchase order having been issued. Payment will be made in U. S. currency only.

4.0 QUANTITIES

Quantities specified are only estimates of GUC's requirements. GUC reserves the right to purchase more or less than the stated quantities at prices indicated in the submitted Proposal Form based on our actual needs.

5.0 AFFIRMATIVE ACTION

The Provider will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees, without discrimination by reason of race, color, religion, sex, national origin, or physical handicap.

6.0 CONDITION AND PACKAGING

Unless otherwise indicated in the bid, it is understood and agreed that any item offered or shipped shall be new and in first class condition, that all containers shall be new and suitable for storage or shipment, and that prices include standard commercial packaging.

7.0 SAMPLES

Samples of items, if required, must be furnished free of expense to GUC, and if not destroyed, will, upon request, be returned at the Provider's expense. Request for the return of samples must be made at the bid opening, otherwise, the samples will become GUC's property. Each individual sample must be labeled with Provider's name.

8.0 SPECIFICATIONS

Any deviation from specifications must be clearly pointed out, otherwise, it will be considered that items offered are in strict compliance with specifications, and the Provider will be held responsible. Deviations must be explained in detail. **The Provider shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable.**

9.0 INFORMATION AND DESCRIPTIVE LITERATURE

Providers are to furnish all information requested. Further, as may be specified elsewhere, each Provider must submit with its proposal: cuts, sketches, descriptive literature, and/or complete specifications covering the products offered. Reference to literature submitted with a previous bid does not satisfy this provision. Bids which do not comply with these requirements will be subject to rejection.

10.0 AWARD OF CONTRACT

As directed by statute, qualified bids will be evaluated and acceptance made of the lowest responsible, responsive bid most advantageous to GUC as determined upon consideration of such factors as prices offered, the quality of the article(s) offered, the general reputation and performance capabilities of the Provider, substantial conformity with the specifications and other conditions set forth in the bid, the suitability of the article(s) for the intended use, the related services needed, the date(s) of delivery and performance, and such other factors deemed by GUC to be pertinent or peculiar to the purchase in question.

Acceptance of the order includes acceptance of all terms, conditions, prices, delivery instructions, and specifications as shown on this set of Terms and Conditions and in this order or attached to and made a part of this order.

The conditions of this order cannot be modified except by written amendment in the form of "Amended Purchase Order," which has been approved by GUC's Purchasing Technician.

In the event of a Provider's failure to deliver or perform as specified, GUC reserves the right to cancel the order or any part thereof, without prejudice to GUC's other rights. The Provider agrees that GUC may return part of or all of any shipment at Provider's expense. GUC may charge the Provider with all reasonable expenses resulting from such failure to deliver or perform.

11.0 MEDIATION/BINDING ARBITRATION

In the event of any dispute between the Parties, the Parties agree to submit any dispute to non-binding mediation before a mutually agreeable Mediator prior to initiating litigation. If the Parties are unable to agree upon a Mediator within thirty (30) days after demand therefore, either Party may petition a Court of competent jurisdiction for the designation of a qualified Mediator for these purposes. Each Party shall bear its own costs and expenses of participating in the mediation (including, without limitation, reasonable attorneys' fees), and each Party shall bear one-half (1/2) of the costs and expenses of the Mediator. Unless otherwise agreed, the Parties will hold the mediation in Greenville, North Carolina. The matters discussed or revealed in the mediation session shall not be disclosed in any subsequent litigation.

In the event the matter is not resolved in mediation, either Party may request arbitration. The parties shall jointly select an Arbitrator, and shall be bound by the decision of the Arbitrator with respect to any dispute between the parties with respect to this Agreement. If the parties are unable to mutually agree upon an Arbitrator, the Parties shall each select an Arbitrator, and the two Arbitrators so selected shall select a third Arbitrator, and the decision of the majority of the Arbitrators shall be conclusive and binding upon the Parties. The Parties at all times agree to equally split the costs of any Arbitrator(s) selected in an effort to resolve the dispute between the Parties. Any party desiring to resolve a dispute under the terms of this Agreement shall notify the other Party in writing, and the Parties shall seek to agree upon a mutually agreed-upon Arbitrator within a period of ten (10) days from the date of such written demand. If the Parties are unable to agree within such ten (10) day period, the Parties shall each select an Arbitrator, and the two (2) Arbitrators so selected shall select a third Arbitrator within fifteen (15) days from the date of the written demand for arbitration, and a decision shall be rendered by the Arbitrator(s) so selected within five (5) days after such Arbitrator(s) is selected.

12.0 GOVERNMENT RESTRICTIONS

In the event any Governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship, or performance of the items offered on this bid prior to their delivery, it shall be the responsibility of the successful Provider to notify the GUC Purchasing Technician, at once, indicating in its letter the specific regulation which required such alterations. GUC reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or, in the sole discretion of GUC, to cancel the contract.

13.0 INSURANCE

13.1 Coverage – During the term of the contract, the Provider at its sole cost and expense shall provide commercial insurance of such type and with the following coverage and limits:

13.1.1 Workers' Compensation – The Provider shall provide and maintain Workers' Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$1,000,000 each accident, covering all Provider's employees who are engaged in any work under the contract. If any work is sublet, the Provider shall require the subcontractor to provide the same coverage for any of its employees engaged in any work under the contract.

13.1.2 General Liability – Commercial Liability Coverage written on an “occurrence” basis in the minimum amount of \$1,000,000 per occurrence.

13.1.3 Automobile – Automobile Liability Insurance, to include coverage for all owned, hired, and non-owned vehicles used in connection with the contract with a minimum combined single limit of \$1,000,000 per accident.

13.2 Requirements - Providing and maintaining adequate insurance coverage is a material obligation of the Provider. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized to do business in North Carolina by the Commissioner of Insurance. The Provider shall at all times comply with the terms of such insurance policies and all requirements of the insurer under any of such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the Provider shall not be interpreted as limiting the Provider’s liability and obligations under the contract. It is agreed that the coverage as stated shall not be canceled or changed until thirty (30) days after written notice of such termination or alteration has been sent by registered mail to GUC’s Purchasing Technician.

14.0 PATENTS AND COPYRIGHTS

The Provider shall hold and save GUC, its officers, agents, and employees, harmless from liability of any kind, including costs and expenses, including reasonable attorney fees, on account of any copyrighted articles or any patented or unpatented invention, device or appliance manufactured or used in the performance of this contract.

15.0 PATENT AND COPYRIGHT INDEMNITY

The Provider will defend or settle, at its own expense, any action brought against GUC to the extent that it is based on a claim that the product(s) provided pursuant to this agreement infringe any U.S. copyright or patent; and will pay those costs, damages, and attorney fees finally awarded against GUC in any such action attributable to any such claim, but such defense, settlements, and payments are conditioned on the following: (1) that Provider shall be notified

promptly in writing by GUC of any such claim; (2) that Provider shall have sole control of the defense of any action on such claim and of all negotiations for its settlement or compromise; (3) that GUC shall cooperate with Provider in a reasonable way to facilitate the settlement of defense of such claim; (4) that such claim does not arise from GUC modifications not authorized by the Provider or from the use of combination of products provided by the Provider with products provided by GUC or by others; and (5) should such product(s) become, or in the Provider’s opinion likely to become, the subject of such claim of infringement, then GUC shall permit Provider, at Provider’s option and expense, either to procure for GUC the right to continue using the product(s), or replace or modify the same so that it becomes non-infringing and performs in a substantially similar manner to the original product.

16.0 EXCEPTIONS

All proposals are subject to the terms and conditions outlined herein. All responses will be controlled by such terms and conditions and the submission of other terms and conditions, price

catalogs, and other documents as part of a Provider's response will be waived and have no effect on this Request for Proposal or any other contract that may be awarded resulting from this solicitation. The submission of any other terms and conditions by a Provider may be grounds for rejection of the Provider's proposal. The Provider specifically agrees to the terms and conditions set forth in this set of Terms and Conditions by affixing its name on the signatory page contained herein.

17.0 CONFIDENTIAL INFORMATION

Except as provided by statute and rule of law, GUC will keep trade secrets which the Provider does not wish disclosed confidential. Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Provider. Cost information shall not be deemed confidential. The determination of whether a matter is confidential will be determined by North Carolina law.

18.0 ASSIGNMENT

No assignment of the Provider's obligations or the Provider's right to receive payment hereunder shall be permitted without the express written consent of GUC, provided however, upon written request approved by the GUC Purchasing Technician, solely as a convenience to the Provider, GUC may:

- Forward the Provider's payment check directly to any person or entity designated by the Provider, and
- Include any person or entity designated by Provider as a joint payee on the Provider's payment check.
- In no event shall such approval and action obligate GUC to anyone other than the Provider, and the Provider shall remain responsible for fulfillment of all contract obligations.

19.0 ACCESS TO PERSON AND RECORDS

GUC shall have reasonable access to persons and records of Provider as a result of all contracts entered into by GUC.

20.0 INSPECTION AT BIDDER'S SITE

GUC reserves the right to inspect, at a reasonable time, the item, plant, or other facilities of a prospective Provider prior to contract award and during the contract term as necessary for GUC's determination that such item, plant, or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the contract. Provider may limit GUC's access to restricted areas.

21.0 AVAILABILITY OF FUNDS

Any and all payments of compensation of this specific transaction and any continuation or any renewal or extension are dependent upon and subject to the allocation of GUC funds for the purpose set forth in this Agreement.

22.0 GOVERNING LAWS

All contracts, transactions, agreements, etc., are made under and shall be governed by and construed in accordance with the laws of the State of North Carolina.

23.0 ADMINISTRATIVE CODE

Bids, proposals, and awards are subject to applicable provisions of the North Carolina Administrative Code.

24.0 EXECUTION

In the discretion of GUC, failure of a duly authorized official of Provider to sign the Signatory Page may render the bid invalid.

25.0 CLARIFICATIONS/INTERPRETATIONS

Any and all questions regarding these Terms and Conditions must be addressed to the GUC Purchasing Technician. Do not contact the user directly. **These Terms and Conditions are a complete statement of the parties' agreement and may only be modified in writing signed by Provider and the GUC Purchasing Technician.**

26.0 SITUS

The place of all contracts, transactions, agreements, their situs and forum, shall be North Carolina, where all matters, whether in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

27.0 TERMINATION OF AGREEMENT

GUC or Provider may terminate this Agreement for just cause at any time. Provider will be paid for all time and expenses incurred as of the termination date. Termination for just cause by either party shall be by certified letter and shall be effective thirty (30) days after signed and acknowledged receipt of said letter. Just cause shall be based on reasonable grounds, and there must be a fair and honest cause or reason for such action. The causes for termination, include, but are not limited to: (1) Provider's persistent failure to perform in accordance with the Terms and Conditions, (2) Provider's disregard of laws and regulations related to this transaction, and/or (3) Provider's substantial violation of the provisions of the Terms and Conditions.

28.0 DELIVERY

Shipments will be made only upon releases from a purchase order issued by GUC in accordance with GUC's current needs.

Delivery of all equipment, materials, or supplies shall be made Free on Board (FOB) GUC Warehouse, 801 Mumford Road, Greenville, North Carolina 27834, unless otherwise specified. The agreed price for such equipment, materials, or supplies shall include all costs of delivery and ownership, and risks of loss shall not be transferred from Provider to GUC until express written acceptance of delivery and inspection by GUC. Delivery hours are between 8:00 AM and 4:30 PM Monday-Friday only. **GUC's purchase order number is to be shown on the**

packing slip or any related documents. GUC reserves the right to refuse or return any delivery with no purchase order number or which is damaged. GUC will not be charged a restocking fee for any delivery which is refused or returned.

29.0 INDEMNITY PROVISION

Provider agrees to indemnify and save GREENVILLE UTILITIES COMMISSION of the City of Greenville, Pitt County, North Carolina, and the City of Greenville, North Carolina, its co-owners, joint venturers, agents, employees, and insurance carriers harmless from any and all losses, claims, actions, costs, expenses including reasonable attorney fees, judgments, subrogations, or other damages resulting from injury to any person (including injury resulting in death), or damage (including loss or destruction) to property of whatsoever nature of any person arising out of or incident to the performance of the terms of this Contract by Provider, including, but not limited to, Provider's employees, agents, subcontractors, and others designated by Provider to perform work or services in, about, or attendant to, the work and services under the terms of this Contract. Provider shall not be held responsible for any losses, expenses, claims, subrogations, actions, costs, judgments, or other damages, directly, solely, and proximately caused by the negligence of Greenville Utilities Commission of the City of Greenville, Pitt County, North Carolina. Insurance covering this indemnity agreement by the Provider in favor of Greenville Utilities Commission of the City of Greenville, Pitt County, North Carolina, and the City of Greenville, North Carolina, shall be provided by Provider.

30.0 FORCE MAJEURE

Neither party shall be considered in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. In any such event of force majeure, the parties shall advise each other of such event, and the parties shall negotiate an equitable adjustment to their respective obligations under this Agreement.

31.0 WARRANTY(IES)

The Provider hereby includes all warranties, whether expressed or implied, including, but not limited to, the Implied Warranty of Merchantability and the Implied Warranty of Fitness for a Particular Purpose.

32.0 INTEGRATED CONTRACT

These Terms and Conditions, Instructions to Bidders, Specifications, and the selected Provider's bid represents the entire contract between the Parties. No verbal or other written agreement(s) shall be held to vary the provisions of this Agreement.

33.0 CONTRACT PROVISIONS

Each of the provisions of these Terms and Conditions shall apply to the full extent permitted by law, and the invalidity in whole or in part of any provision shall not affect the remainder of such provision or any other provisions.

34.0 NOTICES

Notices to the Parties should be sent to the names and addresses specified below:

Cleve Haddock
Purchasing Technician
Greenville Utilities Commission
P.O. Box 1847
Greenville, NC 27835-1847

Bill Darty
Fleet Manager
Greenville Utilities Commission
P.O. Box 1847
Greenville, NC 27835-1847

Vendor Specified on Page 1 of Section III when awarded.

GREENVILLE UTILITIES COMMISSION

By: _____
Ronald D. Elks

Title: General Manager/CEO
(Authorized Signatory)

Date: _____

Attest: _____

Name (Print): Amy Carson Quinn

Title: Executive Secretary

Date: _____

(OFFICIAL SEAL)

COMPANY NAME:

By: _____

Name (Print): _____

Title: _____
(Authorized Signatory)

Date: _____

Attest: _____

Name (Print): _____

Title: Corporate Secretary

Date: _____

(CORP. SEAL)

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

By: _____
Jeff W. McCauley

Title: Chief Financial Officer

Date: _____

APPROVED AS TO FORM AND LEGAL CONTENT:

By: _____
Phillip R. Dixon

Title: Commission Attorney

Date: _____