



Request for Proposals

**Facility Efficiencies, Energy Savings and Mechanical
Systems Assessment**

For

Greenville Utilities Commission

Of the City of Greenville, North Carolina

401 South Greene Street

Greenville, North Carolina 27834

Response Due Date, April 4, 2012, 4:00 pm (EDST)

Request for Proposal

1.0 SUBJECT

Facility Efficiencies, Energy Savings and Mechanical Systems Assessment

2.0 LOCATION

Greenville Utilities Commission, Admin Bldg, 401 S. Greene St., Greenville, N.C. 27834

3.0 STATEMENT

GUC wishes to maintain this facility by improving: reliability, reducing energy costs and reducing overall operating expenses

4.0 CRITERIA FOR VENDORS

All business/services provided to be no further than 50 miles from GUC, 401 South Greene St., Greenville, N.C. 27834. All services response time to be within (1) one hour to all calls by GUC. Vendors must complete and submit all requested information contained in this RFP. Vendors must submit at least 3 references of other commercial businesses in which they currently maintain similar type equipment. References must contain: name of business, address of business, name of a point of contact at the business and telephone numbers.

5.0 DESCRIPTION OF REQUIREMENTS

Conduct a facility assessment to determine opportunities to improve efficiencies and save on Energy costs. Provide time and material costs estimates to maintain all mechanical systems in accordance with manufacturer's specification and industry best practices for maintenance. Monitor energy consumption and develop methods to reduce energy costs with minimal impact on employees and customers. Wells Fargo Banking leases one half of the 1st floor and the mechanical systems in that area are included in this request.

Provide costs estimates (time and material) to repair mechanical systems anytime they breakdown to include emergency calls on nights, weekends and holidays.

Provide costs estimates (time and material) to monitor, maintain, and adjust the Siemens Apogee control system and its components- 24 hours a day, 7 days a week. The Building and Grounds Maintenance Supervisor will approve and call all requests for repairs to correct mechanical problems and temperature adjustment. Routine checks of the Siemens Apogee System are to be performed on all business days.

Provide costs estimates (time and material) to change HVAC filters on a recurring basis. Computer Server Units--2 each, 20"x24"x2" (non-pleated), on a monthly basis. Main HVAC Units--21 each, 24"x24"x2" (pleated), every 2 months.

Equipment shall be maintained to manufacturer's specifications and industry best practices for maintenance; to include all maintenance requirements for preventive maintenance, lubrication, replace belts, etc. Technicians must be certified and able to perform refrigerant reclaims and

add refrigerant as needed. Coil cleaning will be performed on an as needed basis but not less than 1 time per year on interior units and 2 times per year on exterior units. Interior cleaning of coils will be accomplished after hours. Coil cleaning will be accomplished with “green products.” Critical components that break down must be repaired within a 2 hour timeframe, or implement temporary measures to minimize impact on employees and customers.

Water heater will be flushed and drained as recommended by the manufacturer. The circulating pump will be lubricated per the manufacturer’s recommendations.

Monitor energy consumption throughout the facility and recommend methods to reduce energy consumption. Present recommendations to Building and Grounds Supervisor for his approval/disapproval. Additionally, recommend lifecycle upgrades to equipment via standard industry practices. All recommendations shall have a return on investment analysis for approving personnel.

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6.0 CRITICAL COMPONENT EQUIPMENT LISTING

Computer Server Room—roof top units

Unit 1: Compu-AIRE, Model # MKA-834, S/N MK-04-012-2757

Unit 2: Compu-AIRE, Model # MKA-834, S/N MK-04-012-2758

Main Building HVAC Units Located in Penthouse and on Roof

CORE Unit: AHU-2, Air Temp Chrysler, SH19, 3E100885

CORE Unit: Condenser Unit, Carrier, Model # 38AKS013---610—1997F72340

Perimeter Unit: AHU-1, RACAN, Carrier, Model # 39RW085A00000X11, S/N 900051-001-1777

Perimeter Unit 1: Carrier Split System, 38AH-054---601FA, S/N 0305F02661

Perimeter Unit 2: Carrier Split System, 38AH-064---601FA, S/N 0305F02670

Core Heat: Resistance Heat---10 electrical resistance coils

Perimeter Heat: Resistance Heat---10 electrical resistance coils

Old RPS/Storage Room

Fan Coil Unit (Inside): United Technologies/Carrier, Model # 40QAF036321, S/N 2604V19139

Condenser Unit (On Roof): Data Plate is Faded out and cannot be read

Drive Through Teller at Wells Fargo (Inside)

SANYO, Model # KHS0922, S/N 0000491

Central Exhaust Fan Located on Roof

Greenheck, Model # 6B-240-10-x, S/N 04L14069, Mark EF-1

Commercial Water Heater (in Penthouse)

American, Model # LDCE32-80H-090DV, S/N 0505107802

Bell and Gossett Hot water circulation pump, Series 100 BNFI

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7.0 SITE VISIT

If your business meets the required criteria and you would like to perform a site visit, please contact Greg Roberson at: 252-329-2156 or roberson@guc.com, to **schedule an appointment**.

8.0 PROPOSAL FORMAT

(3) Three hard copies.

9.0 PREPARATION OF PROPOSAL

Proposals must be in sealed envelopes clearly marked on the outside with the name of the proposal, date and time. Proposals shall be addressed to the PURCHASING TECHNICIAN, GREENVILLE UTILITIES COMMISSION, 401 S. GREENE STREET, GREENVILLE, NORTH CAROLINA 27834.

10.0 GOOD FAITH STATEMENT

All information provided by GUC in this RFP is offered in good faith. Individual items are subject to change at any time. GUC makes no certification that any item is without error. GUC is not responsible or liable for any use of the information or for any asserted claims.

11.0 PROPOSAL DEADLINE:

Proposals, 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 **4:00 PM (EDST) on April 4, 2012. Late proposals will not be considered.**

12.0 METHOD OF EVALUATION

Proposals will be evaluated by GUC personnel. Selected vendors may be requested to present formal presentations on site on a date and time mutually agreeable by both parties.

13.0 EVALUATION CRITERIA

Vendor selection shall be based on evaluation and rating of Vendor's demonstrated competence and qualifications for the type of services to be performed. The following guidelines will be used as minimum criteria for rating the Vendor:

- The quality of references from past customers of vendor.
- Qualifications of staff to be assigned, i.e. team members demonstrated ability, years and type of experience for similar projects
- Quality of approach and methodology for performing the effort clearly demonstrates an understanding of the issues and requirements

- Quality, extent and relevance of vendor's experience (including sub-contractors) in conducting similar efforts, particularly in a setting similar to that described by this RFP.
- Project Schedule and Deliverables
- Overall total cost for the project services.
- Staffing size and current workload will be evaluated.
- Project Understanding and Scope
- Vendor's approach to the project
- Vendor's proposed work plan

14.0 EVALUATION AND AWARD

GUC reserves the right to reject any and all proposals, to waive any and all informalities, and to disregard all nonconforming or conditional proposals or counter proposals. In evaluating proposals, GUC shall consider whether the proposals comply with the prescribed requirements, plus all alternates or options requested. GUC reserves the right to include or exclude any option or alternative(s). If interviews are necessary, interviews with selected respondents will be scheduled and conducted. If a proposal is to be awarded, it will be awarded to the lowest responsible, responsive respondent whose evaluation by GUC indicates that the award will be in GUC's best interests.

15.0 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.

16.0 VENDOR INCURRED COSTS

All costs that may be incurred to prepare proposals, attend meetings, attend site inspections, provide requested follow-up information, make formal and informal presentations, and for the entire contract negotiations process if applicable, shall be the sole responsibility of each vendor. GUC is not responsible under any circumstances for reimbursement of any costs that may be incurred by vendors during the proposal preparation, subsequent selection or negotiation stages.

17.0 CONFLICT OF INTEREST

In general, conflicts of interest relate to the potential for self-gain usually, but not always, of a fiscal nature. Potential for self-gain can serve to undermine the judgment or objectivity of vendors providing consultation services. A potential or actual conflict of interest exists when commitments and obligations to GUC are likely to be compromised by a vendor's other interests or commitments, especially economic, particularly if those interests or commitments are not disclosed. Not all conflicting interests are necessarily impermissible. Timely and complete disclosure of potential conflicts of interest may be a satisfactory remedy and protects the consultant from suspicion and accusations of breach of professional integrity.

Vendors are asked to disclose any situation or relationship that might be regarded as potential conflict of interest with, but not limited to, their expected duties and recommendations as defined in this RFP.

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These Forms Must be Completed, Signed and Returned With The
Respondents Proposal

BUSINESS STATEMENT

Company Name: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Telephone No.: _____ Fax No.: _____

Contact Person's Name: _____

Telephone No.: _____ Fax No.: _____

Email Address: _____

Business License No.: _____ City: _____

State: _____ Expiration Date: _____

Federal ID No. or Social Security No.: _____

Supply a copy of: Certificate of Liability Insurance (Please include in your proposal)

Type of Organization: (Check all that apply)

- Corporation, under the laws of the State of _____
- Individual
- Joint Venture
- Municipal, State, or Federal
- S Corporation
- General Partnership
- Limited Partnership
- Non-Profit Corporation
- Small Business Enterprise: A business enterprise that is independently owned and operated; organized for profit; is not dominant in its field; and meets the criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121.

VENDOR PROFILE QUESTIONNAIRE

Question	Answer
Organization name and corporate location?	
What is your organizations primary business?	
Is your organization a subsidiary to a larger parent company? If so, whom?	
Length of time your organization has been in business providing this type of services?	
Organization ownership?	
Number of employees: <ul style="list-style-type: none">• Total• Development• Product Support• Professional Services	

REFERENCES

The respondent must provide 3 references where the requested services of this RFP were implemented.

	REFERENCE NO. 1
NAME OF FIRM	
CUSTOMER'S BUSINESS/OPERATIONS	
ADDRESS	
CITY, STATE, ZIP	
TELEPHONE NO.	
CONTACT	
PROJECT NAME	
COMPLETION DATE	
	REFERENCE NO. 2
NAME OF FIRM	
CUSTOMER'S BUSINESS/OPERATIONS	
ADDRESS	
CITY, STATE, ZIP	
TELEPHONE NO.	
CONTACT	
PROJECT NAME	
COMPLETION DATE	
	REFERENCE NO. 3
NAME OF FIRM	
CUSTOMER'S BUSINESS/OPERATIONS	
ADDRESS	
CITY, STATE, ZIP	
TELEPHONE NO.	
CONTACT	
PROJECT NAME	
COMPLETION DATE	

It is certified that this proposal is made in good faith and without collusion or connection with any other person responding on the same above listed items. It is also certified that this proposal is made in good faith and without collusion or connection with any GUC employee(s).

Certified check or cash for \$ n/a or proposal bond for \$ n/a attached.

Firm Name _____ Phone (____) _____

Address _____

City _____ State _____ Zip Code _____

Fax (____) _____ E-Mail _____

Authorized Official _____ Title _____

Typed Name

_____ Date _____

Signature

**Three (3) copies of your proposal should be received no later than April 4, 2012
no later than 4:00 PM (EDST)**

Sample Services Agreement

SERVICES AGREEMENT

This XXXXX Services Agreement, made and entered into on this the XX day of XXXX, 2012 by and between GREENVILLE UTILITIES COMMISSION (GUC) 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 XXXXXXXX, a corporation organized and existing under and by virtue of the laws of the State of North Carolina, with one of its principal offices and places of business at XXXXXXXX, hereinafter referred to as "PROVIDER";

1.0 PERFORMANCE

Provider's performances under this Agreement shall be in accordance with the terms of this Agreement.

2.0 SERVICES

During the term of this Agreement, Provider, as an independent Contractor, agrees to perform the services set forth on the attached Exhibit "A," which are incorporated into this Agreement.

3.0 COMPENSATION

GUC shall pay Provider for the services described in Exhibit "A" the compensation set forth on the attached Exhibit "B," which are incorporated into this Agreement. Any pricing change must be completed by an approved change order, signed by authorized signatories of Provider and GUC, as set forth on the attached Exhibit "C," which are incorporated into this Agreement.

4.0 TAXES

No taxes shall be included in any proposal 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 by Provider as a separate item on the invoice.

5.0 INVOICES

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

6.0 PAYMENT TERMS

Payments for equipment, materials, supplies or services will be made in U.S. currency only after the receipt and acceptance of the apparatus, supplies, materials, equipment or services and after submission of a proper invoice. GUC will not be responsible for any goods delivered or services rendered without a purchase order having been issued. GUC's normal payment

policy is thirty (30) days.

7.0 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 proposal does not satisfy this provision. Proposals which do not comply with these requirements will be subject to rejection.

8.0 SAMPLES

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

9.0 SPECIFICATIONS

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

10.0 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 GUC's actual needs.

11.0 AWARD OF CONTRACT; CONTRACT PERIOD

As directed by State statute, qualified proposals will be evaluated and acceptance made of the lowest responsible, responsive proposal 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 Provider, substantial conformity with the specifications and other conditions set forth in the proposal, 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.

It is the intent of Greenville Utilities Commission (GUC) to enter into a multi-year contract at the time the contract is awarded by GUC to the successful proposer for a total contract period not to exceed three (3) years. **Prices shall remain fixed during the first year** with option for annual extensions at the same or negotiated unit prices for up to two (2) additional years if market and service conditions so warrant and prove to be in the best interest of GUC.

12.0 CONDITION AND PACKAGING

Unless otherwise indicated in the proposal, 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.

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 amendment in the form of "Amended Purchase Order," which has been expressly approved by an authorized signatory of GUC.

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, Provider agrees that GUC may return part of or all of any shipment at Provider's expense. GUC may charge Provider with all reasonable and direct expenses resulting from such failure to deliver or perform; provided, after written notice, Provider is afforded an opportunity to commence cure within thirty (30) days prior to GUC enacting said remedies.

13.0 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

14.0 GOVERNMENT RESTRICTIONS

In the event any governmental restrictions may be imposed which would necessitate alteration of the materials, quality, workmanship, or performance of the items offered on this proposal prior to their delivery, it shall be the responsibility of the successful Provider to notify GUC 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 to discretion of GUC, to cancel the contract.

15.0 INSURANCE

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

15.1.1 Workers' Compensation: 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 \$1,000,000.00 each accident, covering all Provider's employees who are engaged in any work under the contract. If any work is sublet, Provider shall require the subcontractor to provide the same coverage for any of its employees engaged in any work under the contract.

15.1.2 General Liability: Commercial Liability Coverage written on an "occurrence" basis in the minimum amount of \$1,000,000.00 per occurrence.

15.1.3 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 \$1,000,000.00 per accident.

15.2 Requirements: Providing and maintaining adequate insurance coverage is a material obligation of 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. 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 Provider shall not be interpreted as limiting 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.

16.0 PATENTS AND COPYRIGHTS, INDEMNITY

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 U.S. copyrighted articles or any patented or unpatented invention, device, or appliance manufactured or used in the performance of this contract, or for any other violation of intellectual property law rights.

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 reasonable 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 Provider or from the use of combination of products provided by Provider with products provided by GUC or by others; and (5) should such product(s) become, or in Provider's opinion be 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 become non-infringing and performs in a substantially similar manner to the original product.

17.0 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 Provider's proposal.

18.0 CONFIDENTIAL INFORMATION

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

19.0 ASSIGNMENT

No assignment of Provider's obligations or Provider's right to receive payment hereunder shall be permitted without the express written consent of GUC, which shall not be unreasonably withheld; provided, however, upon written request approved by GUC, solely as a convenience to Provider, GUC may:

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

20.0 ACCESS TO PERSON AND RECORDS

GUC shall have reasonable access to persons and records of Provider pertaining to this order.

21.0 INSPECTION AT PROPOSALDER'S SITE

On reasonable written notice, 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.

22.0 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.

23.0 GOVERNING LAWS; 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 of this contract shall be determined and construed.

24.0 ADMINISTRATIVE CODE

Proposals and awards are subject to applicable provisions of the North Carolina Administrative Code.

25.0 EXECUTION

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

26.0 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 a duly authorized signatory of Provider and GUC.

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. Parties shall have thirty (30) days after signed and acknowledged receipt of said letter to commence cure prior to terminating for just cause. 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 material provisions of these 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 AFFIRMATIVE ACTIVE; NONDISCRIMINATION

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.

29.0 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. GUC shall visually inspect equipment and materials within ten (10) days of delivery for damage and specified components. Goods found nonconforming shall be remedied pursuant to the Warranty Provision. Delivery hours are between 8:00 a.m. and 4:30 p.m. Monday through 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.

30.0 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 Third Party claims, actions, costs, expenses, including reasonable attorney fees, judgments, or other damages resulting from injury to any person (including injury resulting in death), or damage (including loss or destruction) to third party tangible property arising out of the negligent 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 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 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.

31.0 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 the Agreement.

32.0 WARRANTY(IES), Limited Warranty

(a) Limited Product Warranty Statements: For each Product purchased from Provider or an authorized reseller, Provider makes the following limited warranties: (i) the Product is free from defects in material and workmanship; (ii) the Product materially conforms to Provider's specifications that are attached to, or expressly incorporated by reference into, these terms; (iii) at the time of delivery, Provider has title to the Product free and clear of liens and encumbrances; and (iv) for professional services performed by Provider hereunder, Provider warrants the services will be performed in accordance with generally accepted professional standards (collectively, the "Limited Warranties"). The Limited Warranties set forth herein does not apply to any software furnished by Provider. If software is furnished by Provider, then the attached Software License Addendum shall apply.

(b) Conditions to the Limited Warranties: The Limited Warranties are conditioned on: (i) GUC storing, installing, operating, and maintaining the Product in accordance with Provider's instructions; (ii) no repairs, modifications, or alterations being made to the product other than by Provider or its authorized representatives; (iii) using the Product within any conditions or in compliance with any parameters set forth in specifications that are attached to, or expressly incorporated by reference into, these terms; (iv) GUC discontinuing use of the Product after it has, or should have had, knowledge of any defect in the Product; (v) GUC providing prompt written notice of any warranty claims within the warranty period described below; (vi) at Provider's discretion, GUC either removing and shipping the Product or non-conforming part thereof to Provider, at GUC's expense, or GUC granting Provider access to the Products at all reasonable times and locations to assess the warranty claims; and (vii) GUC not being in default of any payment obligation to Provider under these terms.

(c) Exclusions from Limited Warranty Coverage: The Limited Warranties specifically exclude any equipment comprising part of the Product that is not manufactured by Provider or not bearing its nameplate. To the extent permitted, Provider hereby assigns any warranties made to Provider for such equipment. Provider shall have no liability to GUC under any legal theory for such equipment or any related assignment of warranties. Additionally, any Product that is described as being experimental, developmental, prototype, or pilot is specifically excluded from the Limited Warranties and provided to GUC "as is" with no warranties of any kind. Also excluded from the Limited Warranties are normal wear and tear items including any expendable items that comprise part of the Product, such as fuses, light bulbs, and lamps.

(d) Limited Warranty Period: GUC shall have twelve (12) months from initial operation of the Product, or eighteen (18) months from shipment, whichever occurs first (or in the case of services, twelve (12) months from the completion of services), to provide Provider with prompt, written notice of any claims of breach of the Limited Warranties. Continued use or possession of the Product after expiration of the warranty period shall be conclusive evidence that the Limited Warranties have been fulfilled to the full satisfaction of GUC, unless GUC has previously provided Provider with notice of a breach of the Limited Warranties.

(e) Remedies for Breach of Limited Warranty: GUC's sole and exclusive remedies for any breach of the Limited Warranties are limited to Provider's choice of repair or replacement of the Product, or non-conforming parts thereof, re-performance of the services, or refund of all or part of the purchase price. The warranty on repaired or replaced parts of the Product or re-performed services shall be for twelve (12) months from repair or replacement. However, the warranty period for repair and replacement of Product shall not exceed one (1) year from

expiration of the Original Warranty. Unless otherwise agreed to in writing by Provider: (i) GUC shall be responsible for any labor required to gain access to the Product so that Provider can assess the available remedies; and (ii) GUC will be responsible for providing Provider with working access to the Products, including the removal, disassembly, replacement, or reinstallation of any equipment, materials, or structures to the extent necessary to permit Provider to perform its warranty obligations, or transportation costs to and from the Provider factory or repair facility, or for damage to equipment components or parts resulting in whole or in part from improper maintenance or operation or from their deteriorated condition. All exchanged Products replaced under this Limited Warranty will become the property of Provider.

(f) Transferability: The Limited Warranties shall be transferable during the warranty period to the initial end-user of the Product.

THE LIMITED WARRANTIES SET FORTH IN THIS SECTION ARE PROVIDER'S SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITS OF LIABILITY SET FORTH BELOW. PROVIDER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.

33.0 INTEGRATED CONTRACT

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

34.0 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.

35.0 NOTICES

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

GUC:

PROVIDER:

36.0 LIMITATION OF LIABILITY

NEITHER PROVIDER, NOR ITS SUPPLIERS, SHALL BE LIABLE, WHETHER IN CONTRACT, WARRANTY, FAILURE OF A REMEDY TO ACHIEVE ITS INTENDED OR ESSENTIAL PURPOSES, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY, OR ANY OTHER LEGAL THEORY, FOR LOSS OF USE, REVENUE SAVINGS OR PROFIT, OR FOR COSTS OF CAPITAL OR OF SUBSTITUTE USE OR

PERFORMANCE, OR FOR INDIRECT, SPECIAL, LIQUIDATED, PUNITIVE, EXEMPLARY, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE, OR FOR CLAIMS BY GUC, ITS SUCCESSORS OR ASSIGNS, FOR DAMAGES OF GUC'S CUSTOMERS.

PROVIDER'S MAXIMUM LIABILITY UNDER THIS CONTRACT SHALL BE THE ACTUAL PURCHASE PRICE RECEIVED BY PROVIDER FOR THE PRODUCT AT ISSUE. GUC AGREES THAT THE EXCLUSIONS AND LIMITATIONS SET FORTH IN THIS SECTION ARE SEPARATE AND INDEPENDENT FROM ANY REMEDIES WHICH GUC MAY HAVE HEREUNDER AND SHALL BE GIVEN FULL FORCE AND EFFECT WHETHER OR NOT ANY OR ALL SUCH REMEDIES SHALL BE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THESE LIMITATIONS OR LIABILITY ARE EFFECTIVE EVEN IF PROVIDER HAS BEEN ADVISED BY GUC OF THE POSSIBILITY OF SUCH DAMAGES. PROVIDER LIABILITY WITH REGARD TO THIS AGREEMENT SHALL CEASE UPON THE EXPIRATION OF THE LIMITED WARRANTY PERIOD.

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GREENVILLE UTILITIES COMMISSION

By: _____
Ronald D. Elks

Title: General Manager/CEO
(Authorized Signatory)

Date: _____

Attest: _____

Name (Print): _____

Title: Executive Secretary

Date: _____

(OFFICIAL SEAL)

XXXXXX

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: _____

CERTIFICATE OF INSURANCE

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EXHIBIT A

GREENVILLE UTILITIES

SCOPE OF SERVICES FOR XXXXXX SERVICES

It is the intent of Greenville Utilities Commission (GUC) to procure:

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EXHIBIT B

COMPENSATION FOR XXXXXXXX SERVICES

1.0 COMPENSATION FOR SERVICES

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THE XXXXXX PRICE PROPOSAL

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PRICING SUMMARY

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