

## **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 9, 2012 and immediately thereafter publicly opened and read for the furnishing of Disposal of Scrap Metals for Recycling.

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 8:30AM – 5:00PM 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, EQUIPMENT AND SERVICES**

**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 9, 2012, the day of opening. Bids submitted in a fax or e-mail in response to this Invitation for Bids **will not be acceptable**.

**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, 401 S. GREENE STREET, GREENVILLE, NORTH CAROLINA 27834.

**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 highest 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 highest 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 if applicable.

## **15.0 CONTRACT PERIOD**

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 bidder 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.

## **16.0 CONTACT INFORMATION**

Questions regarding this bid request should be directed to, Cleve Haddock, Purchasing Technician at (252) 551-1533, [haddocgc@guc.com](mailto: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.**

[Balance of page left blank intentionally]

## **SECTION II**

### **GREENVILLE UTILITIES COMMISSION**

#### **SPECIFICATIONS FOR DISPOSAL OF SCRAP METALS FOR RECYCLING**

**OCTOBER 9, 2012**

#### **1.0 PURPOSE**

Greenville Utilities seeks bids for the services of a metal recycling company with experience in the purchase and removal of scrap metals for the purpose of recycling.

#### **2.0 BACKGROUND**

The purpose of securing the services of a metal recycling company is to obtain prompt removal service and a consistent market-place for the sale of surplus ferrous and non-ferrous scrap metals generated or collected during daily operations.

#### **3.0 INFORMATION/QUESTIONS**

Requests for information related to this bid package should be directed to Cleve Haddock, Purchasing Technician, Greenville Utilities Commission, 401 South Greene Street, Greenville, North Carolina 27834, (252) 551-1533, [haddockc@guc.com](mailto:haddockc@guc.com).

#### **4.0 BID DEPOSIT**

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

#### **5.0 PERFORMANCE BOND**

A performance bond is **NOT** required for this bid.

#### **6.0 BUY OUT CLAUSE**

If, in the event, the successful bidder sells, transfers or relinquishes, either voluntarily or by operation of law, his ownership interest in the corporation, partnership or proprietorship identified under this agreement, this agreement shall terminate unless the prior written consent has been granted by Greenville Utilities. Such consent shall not be unreasonably withheld. The successful bidder shall promptly notify Greenville Utilities of any actual or proposed change in, transfer of or acquisition by another party of control of said corporation, partnership or proprietorship. For purpose of this document, the word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. Any approval by Greenville Utilities of transfer or ownership or control shall be contingent upon the perspective controlling party becoming a signatory to this agreement and otherwise complying with all the terms and conditions herein. No sale, transfer, or acquisition by another party of control of said corporation, partnership or proprietorship shall be approved unless the perspective controlling party submits a performance bond satisfactory to Greenville Utilities and in the amount specified under this agreement.

## 7.0 AWARD AND EVALUATION CRITERIA

The contract shall be awarded to the highest responsible, responsive bidder taking in to account the bidder's ability to meet all Greenville Utilities' needs and requirements. The successful bidder shall be required to meet all federal, local and state requirements including licensing and insurance.

## 8.0 CONTRACT PERIOD

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 bidder 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.

## 9.0 MINIMUM STANDARDS

Each bidder must meet the following requirements:

- 9.1 Hold all current and proper licenses to do business as required by federal, state and local laws and maintain such throughout the duration of the contract.
- 9.2 Have adequate financial resources or the ability to obtain such resources as required for the purchase of the goods throughout duration of the contract.
- 9.3 Have a satisfactory record of performance. **Bidder shall supply with his bid a list of at least three (3) references where similar services are currently being performed or that have been completed within the last six months. Name of firm or agency, address, telephone number and name of representative are to be included.**
- 9.4 Have a satisfactory record of ethics and integrity as described in, and in compliance with, **N. C. G. S. 133 Art. 3 Restraint of Trade.**
- 9.5 Comply with schedules, rules and safety regulations as provided by Greenville Utilities and the State of North Carolina.
- 9.6 Have liability insurance. **A copy of the company's certificate of insurance must be included with response.**
- 9.7 Have and properly maintain scales certified by the State of North Carolina, Department of Agriculture or representative State Regulatory Department.
- 9.8 Bidder must agree to hold GUC harmless against any acts of negligence by its agents, employees or subcontractors.
- 9.9 Be otherwise qualified and eligible to receive contract award.

Greenville Utilities reserves the right to request additional documentation of any or all of the above listed information to determine bidder's ability to meet the minimum standards listed above.

## **10.0 GENERAL TERMS & CONDITIONS**

- 10.1 Each bidder shall comply with all federal, state, county & local ordinances, laws, statutes and regulations governing these services as provided in these specifications.
- 10.2 The resulting contract between the successful bidder and Greenville Utilities shall consist of the Specifications for the Disposal of Scrap Metals for Recycling, the Proposal Form and GUC's Terms and Conditions.
- 10.3 The resulting contract may be amended to provide for additions, deletions, and revisions in the service to be performed or to modify the terms and conditions thereof only by written amendment by Greenville Utilities. The resulting contract shall represent the entire and integrated agreement between the successful bidder, Greenville Utilities and supersedes all prior negotiations, representations or agreements either written or oral.
- 10.4 This agreement will be governed by and administered in accordance to North Carolina law.
- 10.5 Bidder or any company representative shall not accept or offer gifts of value or enter into any business arrangement with any employee or agent of Greenville Utilities who is a party to this process. Violators shall be removed from the list of eligible bidders.
- 10.6 Bidder shall submit a detailed outline and complete description of fees and compensation rates along with services proposed.

## **11.0 INSTRUCTIONS TO BIDDERS**

- 11.1 All metals collected "MUST" be recycled. Under no conditions are they to be landfilled or incinerated without prior written approval of GUC or its designee.
- 11.2 The successful bidder shall not under any condition use or sell any item or materials for any purpose other than the recycling of scrap metal.
- 11.3 The quantities specified herein are estimates. If the requirements for any given item exceeds or falls below the estimates, GUC will be allowed to sell such quantities as its requirements dictate at the unit revenue price proposed.

## **12.0 SCOPE OF SERVICE**

- 12.1 The scrap metals will be collected by GUC personnel or their agent(s), placed in appropriate containers provided by the successful bidder and stored in a designated area at 801 Mumford Rd, Greenville, North Carolina. The metals will be held and maintained in this area until a scheduled pick-up is made by the successful bidder. The successful bidder will leave empty like containers of equal number with each scheduled pick-up of metals.

- 12.2 Prior to removal of loaded containers, the successful bidder shall provide a signed and pre-numbered receipt of pick-up indicating the number of containers for each grade of metal removed.
- 12.3 GUC, as it deems necessary, may require that containers be weighed both empty and full at the closest independent scale.
- 12.4 Price per pound for non-ferrous scrap metals and price per ton for ferrous metals shall be offered by a specified percentage of the highest quoted price by grade collected and indicated on the enclosed proposal forms. The proposals shall be based on the current metal markets as indicated by the "Mill Buying Prices" for ferrous metals and by the "Secondary Market Prices" by category for non-ferrous and red metals in effect according to the first (1<sup>st</sup>) issue of The American Metal Market (AMM) of each month. Current monthly prices are to be faxed or e-mailed to Cleve Haddock, Purchasing Technician, phone 252-551-1533, fax 252-551-3302, [haddocgc@guc.com](mailto:haddocgc@guc.com) no later than the 10<sup>th</sup> of the month.
- 12.5 Payment by check is to be made by the 10<sup>th</sup> of the current month for purchases made the preceding month. (Purchase made from December 1-31 must be paid by January 10). Make check payable to Greenville Utilities Commission and remit to Linda Morgan, Accounting Department, Greenville Utilities Commission, P. O. Box 1847, Greenville, North Carolina 27835-1847. Payments are to be made in U.S. currency only.
- 12.6 A monthly statement is required with each payment to include:
- Date of pick-up and locations;
  - Gross, tare and net weights of each container and grade;
  - Pick-up receipt or bill of lading number; and
  - Unit price
- 12.7 The successful bidder shall properly dispose of any waste (fluff, wood, plastics, etc.) associated with the metals collection procedure and pay or assume any disposal fees.

**SUBMIT BID ON ATTACHED PROPOSAL FORM**

[Balance of page left blank intentionally]



Vendor Name: \_\_\_\_\_

**GREENVILLE UTILITIES COMMISSION**

**PROPOSAL FORM**

The undersigned bidder hereby declares that he has carefully examined the enclosed detailed specifications for the disposal of scrap metals for recycling that are surplus to Greenville Utilities needs. The bidder's proposal is valid for thirty (30) days from the date of the bid opening, to consummate the contract within 30 days after acceptance.

ITEM NO (A)	EST. QUANT. (B)	DESCRIPTION (C)	AMM MARKET CL & % (D)	CURRENT NET TON/LB PRICE (E)	EXTENSION (B) x (D) x (E)
I	2,500 lbs	Copper	_____	_____	\$ _____
II	4,500 lbs	Insulated Copper	_____	_____	\$ _____
III	35,000 lbs	Brass	_____	_____	\$ _____
IV	2,500 lbs	Bare Aluminum	_____	_____	\$ _____
V	75,000 lbs	Triplex Aluminum	_____	_____	\$ _____
VI	45,000 lbs	UG Insulated Aluminum	_____	_____	\$ _____
VII	125,000 lbs	Scrap Iron and Steel	_____	_____	\$ _____
		<b>TOTAL ITEMS I – VII</b>			\$ _____
			<b>AMM Price Effective Date:</b>		
			_____		

**Method of Award:** Items I through VII will be awarded as a total bid for all seven (7) items together.

**Complete and Check All Math:** It is the responsibility of the Bidder to extend bid prices and supply a total for all items.

Please provide at least three (3) references with contact information:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



Vendor Name: \_\_\_\_\_

**GREENVILLE UTILITIES COMMISSION**  
**EXCEPTION/VARIATION FORM**

**Specifications for:** Disposal of Scrap Metals for Recycling

**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>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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 highest 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  
401 South Greene Street  
Greenville, NC 27834

Vendor Specified on Page 1 of Section III when awarded.

GREENVILLE UTILITIES COMMISSION

By: \_\_\_\_\_  
Anthony C. Cannon

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: \_\_\_\_\_