

## SECTION I

### GREENVILLE UTILITIES COMMISSION

#### GENERAL INSTRUCTIONS FOR REQUEST FOR PROPOSAL

OCTOBER 24, 2012 @ 4:00 PM

#### **1.0 NOTICE TO RESPONDENTS**

Sealed 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 October 24, 2012.

#### **2.0 STANDARD FORMS REQUIRED**

Each respondent must submit a proposal on the enclosed "Request For Proposal" (RFP) form(s). **The proposal must be signed by an authorized official of the firm. A letter, resolution, or other documentation listing official(s) authorized to sign GUC's Terms & Conditions for the company and the official legal name of the firm as registered with the appropriate local and/or state agencies must accompany the respondent's response.**

#### **3.0 DEPOSIT**

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

#### **4.0 NC SALES TAX**

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

#### **5.0 FEDERAL EXCISE TAX**

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

#### **6.0 EXCEPTIONS TO BE CLEARLY STATED**

If the proposal is not in strict accordance with Section II, "Specifications," respondent must list or note all exceptions **on the RFP Form**, otherwise, it is fully understood that the successful respondent will furnish equipment, materials, or services exactly as specified. GUC reserves the right to accept or reject proposals and to determine the best responsible, responsive proposal from the standpoint of quality, performance, and price.

#### **7.0 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.

#### **8.0 PROMPT PAYMENT DISCOUNTS**

Respondents 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 proposal.

#### **9.0 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 quotes are stated both in numbers and in words, the words govern.

#### **10.0 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.

#### **11.0 CONTACT INFORMATION:**

Questions regarding this request for proposal should be directed to Greg Roberson, Bldg & Grounds Maintenance Supervisor, (252) 329-2156, [robersag@guc.com](mailto:robersag@guc.com) or Cleve Haddock, Purchasing Technician at (252) 551-1533, [haddocgc@guc.com](mailto:haddocgc@guc.com).

#### **12.0 TERMS AND CONDITIONS**

**The attached Terms and Conditions must be considered as part of the proposal.**

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**SECTION II**  
**GREENVILLE UTILITIES COMMISSION**  
**REQUEST FOR PROPOSAL**  
**FOR (1) ONE PRE ENGINEERED CONSTRUCTED METAL BUILDING**  
**SPECIFICATIONS**  
**OCTOBER 24, 2012**

**General Description**

The successful Contractor will supply labor, tools, materials and equipment as specified necessary to provide services capable of the construction of a pre engineered metal building.

**Safety**

Job site activities shall at all times be conducted in accordance with all applicable Federal, State and Local requirements, to include but not limited to, the North Carolina Occupational Safety and Health Standards, The National Electrical Safety Code and the North Carolina Manual on Uniform Traffic Control Devices for Streets and Highways.

**Damage to Facilities**

The Contractor shall be responsible for damages to any Greenville Utilities owned facilities caused by its employees.

**Supervision**

The Contractor shall remain in close communication with the GUC Representative at all times. No work shall commence unless it has been directed by the GUC Representative.

**Scope of Work**

Design and construct the pre-engineered metal building.

**Contingency**

Any situation which occurs such that the Contractor cannot satisfactorily perform the job, should be brought to the attention of the Greenville Utilities Representative immediately. The Contractor will be required to respond to customer complaints within 24 hours. If the GUC Representative deems a complaint valid, the Contractor will be expected to resolve the claim immediately. The successful Contractor is responsible for all costs as a result of its, and/or employee(s) negligence.

## **Specifications / Requirements**

**Building:** shall be, have or include:

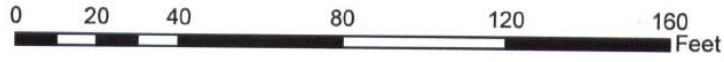
1. All site preparation and compliance with all local and state building codes, regulations and permits.
2. Building start date: **January 14, 2013**. Building completion date: **May 31, 2013**.
3. Contractor shall be responsible for all associated permits and their compliance.
4. Location of building is to be on the grassy area adjacent to and southwest of the parking lot at the LNG plant (see location map attached).
5. The building shall be pre-engineered metal and size shall be 30 feet wide by 30 feet deep and the height shall be 15 feet tall.
6. The building shall have 6 inch thick concrete floor with compacted subgrade as appropriate.
7. The building shall have a 10 foot wide concrete apron across the front and side of it with 2 each, 12 foot wide overhead doors and a 5 foot minimum concrete stoop for the personnel door.
8. The building shall have gutters and downspouts on both sides.
9. The building shall have 2 electrically controlled overhead doors (12 foot wide each) and 1 personnel door on the front side of the building facing the LNG Plant control room.
10. Building walls, roofing and doors are to be insulated per industry heating and air conditioning standards.
11. The building shall have climate control for heating and air conditioning.
12. The building shall have electricity for outlets, overhead doors, interior and exterior lighting, air compressor, and HVAC.
13. GUC will provide electrical and natural gas hook up to the building.
14. All fire and safety codes and requirements shall be incorporated into the building.
15. Contractor is to provide site clearing and grading (and tree removal if required).
16. T5 lighting is the preferred lighting.
17.  $\frac{3}{4}$ " Plywood sheathing on the walls. Walls are to be painted.
18. Finished coating on all floors.

### **Site Visits Contact:**

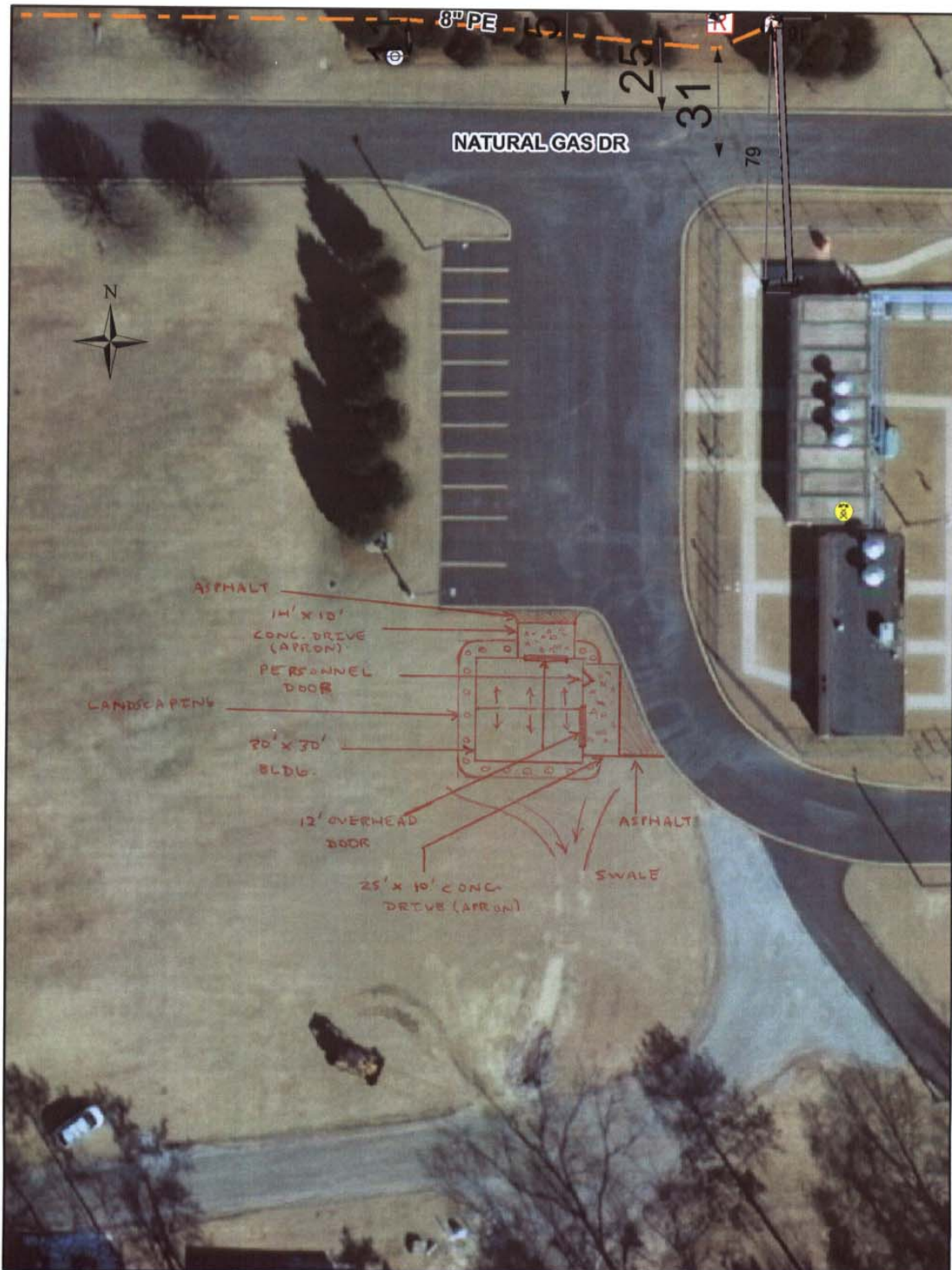
Greg Roberson, Bldg & Grounds Maintenance Supervisor, (252) 329-2156,  
[roberson@guc.com](mailto:roberson@guc.com)

### **Location:**

Print provided on page 5 of 20.



1 inch = 40 feet



LNG STORAGE BUILDING LOCATION

**GREENVILLE UTILITIES COMMISSION**

**PROPOSAL FORM**

**VENDOR PROFILE QUESTIONNAIRE**

1. Please provide a brief history of your firm: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Please provide your firm's office location(s): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Please provide a list of similar work completed or in process: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Questions 1–4 must be answered. GUC reserves the right to reject any proposal that has incomplete responses.

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

**GREENVILLE UTILITIES COMMISSION**

**PROPOSAL FORM**

**FOR (1) ONE PRE ENGINEERED CONSTRUCTED METAL BUILDING**

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

		<b>ESTIMATED DAYS FOR COMPLETION</b>	<b>ITEM NO.</b>	<b>Cost</b>		
--	--	--	---------------------	-------------	--	--

\_\_\_\_\_ I Materials \$ \_\_\_\_\_

II Labor \$ \_\_\_\_\_

**TOTAL** \$ \_\_\_\_\_  
**ITEMS I-II**

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

**Submit your design, drawings, prints, written proposal, etc. identified with your  
companies name when returning this proposal form(s).**







MEMORANDUM

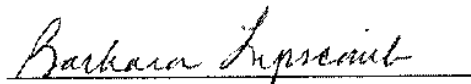
TO: All Employees  
DATE: September 14, 2012  
SUBJECT: 2013 HOLIDAY SCHEDULE

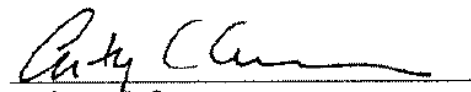
The following holidays will be observed by the City of Greenville and Greenville Utilities Commission during 2013:

New Year's	Tuesday, January 1, 2013
Martin Luther King, Jr. Day	Monday, January 21, 2013
Good Friday	Friday, March 29, 2013
Memorial Day	Monday, May 27, 2013
Independence Day	Thursday, July 4, 2013
Labor Day	Monday, September 2, 2013
Veterans Day	Monday, November 11, 2013
Thanksgiving	Thursday, November 28, 2013 Friday, November 29, 2013
Christmas	Tuesday, December 24, 2013 Wednesday, December 25, 2013
New Year's (2014)	Wednesday, January 1, 2014

This information is being provided now in order to allow you to make personal plans for the use of the holidays.

dr

  
Barbara Lipscomb  
City Manager

  
Anthony C. Cannon  
GUC General Manager/CEO

### **SECTION III**

#### **TERMS AND CONDITIONS**

#### **CONSTRUCTION/SERVICES AGREEMENT**

This Construction/Services Agreement ("Agreement"), made and entered into on this the \_\_\_\_\_ day of \_\_\_\_\_, 2010 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 \_\_\_\_\_ corporation, with one of its principal offices and places of business at \_\_\_\_\_, hereinafter referred to as "PROVIDER".

#### **1.0 GUC's REQUEST FOR PROPOSAL**

The Provider's performance of the construction/services set forth in Section II shall be in accordance with the requirements and this Agreement.

#### **2.0 SERVICES**

Provider, as an independent contractor, agrees to perform during the term of this Agreement, each and every construction/service set forth in Section II "for (1) one pre engineered constructed metal building."

#### **3.0 STANDARD OF SKILL**

Provider and Provider's staff, if any, is skilled to perform the work agreed to be done pursuant to this Agreement. GUC relies upon the skill of the Provider and Provider's staff, if any, to do and perform such work in a skillful manner.

#### **4.0 INDEPENDENT CONTRACTOR**

Provider is retained and employed by GUC only to the extent set forth in this Agreement, and the Provider's relationship to GUC is that of an independent contractor. Provider shall not be considered to have the status of an employee under this Agreement or be entitled to participate in any insurance, medical care, vacation, sick leave, or other benefits provided for GUC's officers and employees.

#### **5.0 TAXES**

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 such as the purchase of stone.

#### **6.0 INVOICES**

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.

## **7.0 PROGRESS REPORTING AND PAYMENT**

Provider shall submit invoices to GUC on a monthly basis for services rendered to the date thereof. Such invoices shall be supported by appropriate documentation based upon on agreed percent completion of each Item of the project. GUC's normal payment policy is thirty (30) days. Payment will be made in U.S. currency only. GUC shall give Provider prompt written notice of disputed items in an invoice and shall pay Provider the undisputed portion of the invoice.

## **8.0 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.

## **9.0 MEDIATION/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.

## **10.0 COST OF LITIGATION**

If any legal action is necessary to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provisions of this Agreement, the prevailing party shall be entitled to receive from the losing party all costs and expenses in such amount as the court may determine to be reasonable. In awarding the cost of litigation, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of actual costs and expenses and reasonable attorneys' fees paid or incurred in good faith.

## **11.0 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, (3) Provider's substantial violation of the provisions of the Terms and Conditions, (4) Provider's failure to perform in accordance with the scope of work as outlined in Section II, or (5) Provider's failure to follow GUC's policies and procedures.

## **12.0 SAFETY REQUIREMENT**

GUC reserves the right to issue restraint or cease and desist orders to the Provider when unsafe or harmful acts are observed or reported relative to the performance of the work under this Agreement. Any hazardous condition noted by the Provider, which is not the result of its operations, shall immediately be reported to GUC.

## **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 such terms and limits as may be reasonably associated with the contract. As a minimum, the Provider shall provide and maintain the following coverage:

**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, covering the Provider and all 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 his employees engaged in any work under the contract.

**13.1.2 Commercial General Liability.** General Liability Coverage, provided on a Commercial General Liability Policy, written on an "occurrence" basis, in the minimum amount of \$1,000,000 per "occurrence" limit.

**13.1.3 Automobile.** Automobile Liability Insurance, to include liability

coverage, covering all owned, hired and non-owned vehicles, used in connection with the contract. The minimum combined single limit shall be \$1,000,000 bodily injury and property damage.

**13.1.4 Errors and Omissions Insurance.** Errors and Omissions Insurance which includes coverage for professional malpractice, in the amount of \$1,000,000. The policy shall provide for coverage of all claims occurring during the term of the policy notwithstanding the fact that the claim may be asserted subsequent to the expiration of the policy for a minimum period of three (3) years.

**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.

**13.3 Miscellaneous Insurance Requirement.**

**13.3.1 Recovery from Provider's Insurance.** Provider agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, the Provider shall look solely to its insurance for recovery.

**13.3.2 Failure to Secure.** If Provider at any time during the term of this Agreement, should fail to secure or maintain any insurance required under this Agreement, GUC shall be permitted to obtain such insurance in the Provider's name or as an agent of the Provider and GUC shall be compensated by the Provider for the cost of the insurance premiums at the maximum rate permitted by law computed from the date written notice is received that the premiums have been paid. Such costs can be assessed by deducting such costs from any amounts due and payable to the Provider as compensation under the terms of this Agreement.

**13.3.3 Additional Insured.** The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as an additional insured, and an additional insured named under this Agreement shall not be held liable for any premium or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute toward any loss or expense covered by the insurance provided by this policy. Proceeds from any policy or policies shall be payable to GUC primarily, and to the Provider secondarily, if necessary.

**13.3.4 Evidence of Insurance.** If requested by GUC, Provider shall furnish Certificates of Insurance evidencing the required coverages or the original of the insurance policies for review by GUC's Purchasing Technician.

## **14.0 CONFIDENTIALITY**

Provider acknowledges and agrees that in the course of the performance of the services pursuant to this Agreement, Provider may be given access to, or come into possession of, confidential information of GUC which may contain trade secrets, proprietary data, privileged material, or other confidential information. Provider acknowledges and agrees, except if required by law or by judicial or administrative order, trial, or other governmental proceeding pertaining to this matter, that it will not use, duplicate, or divulge to others any such information, including without limitation, trade secrets belonging to or disclosed to Provider by GUC without first obtaining written permission from GUC. "Confidential information" as used herein, includes information developed during this Agreement. All tangible embodiments of such information shall be delivered to GUC by Provider upon termination hereof, or upon request by GUC, whichever first occurs. GUC acknowledges Provider has the right to maintain its own set of work papers which may contain confidential information.

Confidentiality requirements shall not apply where (a) the information is, at the time of disclosure by the Provider, then in the public domain; (b) the information is known to the Provider prior to obtaining the same from GUC; (c) the information is obtained by the Provider from a third party who did not receive the same directly or indirectly, from the GUC or who received it from the GUC without breach of this Agreement; or (e) the information is subpoenaed by court order or other legal process, but in such event, Provider shall notify GUC, who, at its sole cost and discretion, may seek to quash such demand. Provider's obligations of confidentiality shall be binding for a period of three (3) years from the earlier of termination of the Agreement or the completion of Provider's Services.

## **15.0 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 General Manager/CEO, or designee, 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.

## **16.0 INTEGRATED CONTRACT**

This Agreement together with the GUC's Request for Proposal, and Provider's response thereto, represents the entire and sole agreement between the Parties with respect to the

subject matter hereof and supersedes any and all prior negotiations, understandings, representations, or consulting agreements whether written or oral. This Agreement cannot be modified, changed, or amended, except in writing signed by the Parties.

#### **17.0 NUISANCE**

Provider shall not maintain, commit, or permit the maintenance or commission of any nuisance in connection with the performance of services under this Agreement.

#### **18.0 PERMITS AND LICENSES**

Provider, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

#### **19.0 CONFLICT OF INTEREST**

Provider agrees to be familiar with and comply with all applicable federal, state, and local conflict of interest laws.

#### **20.0 WAIVER**

The failure of either Party to require performance by the other of any provision hereof shall in no way affect the right to require performance at any time thereafter, nor shall the waiver of a breach of any provision hereof be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself. A waiver by GUC of any breach of any term, covenant, or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement whether of the same or different character.

#### **21.0 RELATIONSHIP**

Nothing herein contained shall be construed to imply a joint venture, partnership, or principal-agent relationship between Provider and GUC; and neither Party shall have the right, power, or authority to obligate or bind the other in any manner whatsoever, except as otherwise agreed to in writing.

#### **22.0 SEVERABILITY**

If any provision of this Agreement is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

#### **23.0 GOVERNING LAW**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of North Carolina.



#### **24.0 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.

#### **25.0 ADMINISTRATIVE CODE**

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

#### **26.0 EXECUTION**

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

#### **27.0 CLARIFICATIONS/INTERPRETATIONS**

Questions regarding this Services Agreement must be addressed to the Purchasing Technician.

#### **28.0 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.

#### **29.0 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.

#### **30.0 CONTRACT PROVISIONS**

Each of the provisions of this Services Agreement 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.

#### **31.0 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.

#### **32.0 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 proposal/bid

prior to their delivery, it shall be the responsibility of the successful Provider to notify the 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.

### **33.0 PATENTS AND COPYRIGHTS**

The Provider shall hold and save GUC, its officers, agents, and employees, harmless from third-party liability, 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, violating the rights in patent or copyright of a third party.

### **34.0 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 third-party 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's 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.

### **35.0 LIMITATIONS**

Neither party shall be liable to the other party for loss of profits or revenue; loss of use; loss of opportunity; loss of goodwill; cost of substitute facilities, good or services; cost of capital; cost of replacement power; governmental and regulatory sanctions; and claims of customers for such damages; or for any special, consequential, incidental, indirect or exemplary damages. The warranties, obligations, liabilities and remedies of the parties, as provided herein, are exclusive and in lieu of any others available at law or in equity. Provider's total aggregate liability under this Agreement shall not exceed the compensation received by Provider under this agreement. To the fullest extent allowed by law, releases from, waivers of, and limitations of liability shall apply notwithstanding the breach of contract, tort including negligence, strict liability or other theory of legal liability of the party released or whose liability is limited.

### **36.0 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

Greg Roberson  
Bldg & Grounds Maintenance Supervisor  
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: \_\_\_\_\_  
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: \_\_\_\_\_