



## **Request For Proposals**

### **Non-Pipeline Solution to Provide Peak Period Natural Gas Supply**

**Issue date: August 10, 2018**

**Submission Deadline: September 27, 2018 by 4:00pm (EDST)**  
**Late proposals will not be considered.**

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## **I. Introduction and Overview**

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### **A. Overview**

Greenville Utilities Commission (GUC), a body politic chartered by the State of North Carolina, is issuing this Request for Proposals (RFP) for proposals (Proposals) from qualified and experienced developers (Developers) with the capability to deliver innovative Non-Pipeline Solutions to address gas reliability and/or supply in GUC's service territory.

This Non-Pipeline Solution to Provide Peak Period Natural Gas Supply RFP is to accomplish these objectives:

1. The solution must address GUC's responsibility to provide safe, reliable and economical service, and
2. The solution must address current demands for additional peak day capacity and must allow for future base load and peak day growth, and
3. The solution must provide protection against spikes in daily spot gas prices.

In addition to meeting these objectives, once an agreement is reached regarding a solution, community support will be required to move expeditiously forward.

GUC reserves the right, but not the obligation to accept a portfolio of projects/Proposals or to aggregate Proposals to meet the resource requirements.

### **B. Proposal Purpose**

GUC is issuing this RFP for resources which will defer or eliminate the need for additional pipeline capacity and eliminate our dependence on trucked LNG during the winter period (November 1<sup>st</sup> through March 31<sup>st</sup>).

Proposals must be capable of providing the reliability support and satisfying the other requirements indicated within this RFP. Any transaction resulting from this RFP will be subject to GUC receiving all required regulatory approvals, including, but not limited to, acceptance by the North Carolina Public Utilities Commission (NCPUC) as well as approval for cost recovery acceptable to GUC. Participants in this RFP agree to execute a definitive Agreement with terms customary in the industry and appropriate under the circumstances ("Agreement") within 30 days of acceptance and approval.

### **C. General Guidelines**

GUC reserves the right to make changes to this RFP by issuance of one or more addenda or amendments and to distribute additional clarifying or supporting information relating thereto. GUC may ask any or all Developers to elaborate or clarify specific points or portions of their Proposals. Clarification may take the form of written responses to questions or phone calls or in-person meetings for the purpose of discussing the RFP, the responses thereto, or both.

It is solely the responsibility of each Developer to ensure that all pertinent and required information is included in its Proposal. GUC reserves the right to determine, at its sole discretion, whether a Proposal is incomplete or non-responsive.

Developers should clearly state all assumptions they make about the meaning or accuracy of information contained in this RFP. If you do not ask questions or clarify any assumptions, GUC will assume that you agree with and understand the requirements in the RFP. While GUC has endeavored to provide accurate information to Developers, GUC makes no such warranty or representation of accuracy.

Developers are encouraged to provide and release necessary authorizations for GUC to verify any of such Developer's previous work, except where it is contractually prohibited from doing so pursuant to customer agreements.

This RFP shall not be construed to create an obligation on the part of GUC to enter into any contract, or to serve as a basis for any claim whatsoever for reimbursement of costs for efforts expended by Developers. Furthermore, the scope of this RFP may be revised at the option of GUC at any time, or this RFP may be withdrawn or cancelled by GUC at any time - prior to execution of the Agreement. GUC shall not be obligated by any responses or by any statements or representations, whether oral or written, that may be made by GUC or its employees, principals or agent.

#### **D. Expected Schedule**

The following schedule is subject to adjustment. Any updates to the schedule will be distributed via email to interested bidders.

August 10, 2018	Issue RFP
September 7, 2018	Written Developer questions due
September 14, 2018	Date for GUC to respond to Developer questions
September 27, 2018	RFP responses due
October, 2018	Complete initial general and technical review
November, 2018	Complete negotiations
November, 2020	Anticipated resource in-service date

Due to the evolving nature of NPS project development, review and negotiation, firm dates for some milestones cannot be projected at this time. We have represented the most likely dates where possible, and anticipate that some parts of the milestone schedule may continue to require flexibility.

#### **E. Disclaimers for Rejecting Proposals**

This RFP does not constitute an offer to buy and creates no obligation to execute any Agreement or to enter into a transaction under an Agreement as a consequence of this RFP. GUC shall retain the right at any time, in its sole discretion, to reject any and all Proposals provided in response to this RFP. GUC also retains the discretion, in its sole judgment, to: (a) reject any Proposal on the basis that it does not provide sufficient ratepayer benefit or that it would impose conditions that GUC determines are impractical or inappropriate; (b) formulate and implement appropriate criteria for the evaluation and selection of Proposals; (c) negotiate with Developer(s) to maximize ratepayer benefits; (d) modify this RFP as it deems appropriate to implement the RFP and to comply with applicable law or other direction provided by the NCPUC; and (e) terminate the RFP should the NCPUC not authorize GUC to execute Agreements of the type sought through this RFP. In addition, GUC reserves the right to either suspend or terminate this RFP at any time for any reason whatsoever. GUC will not be liable in any way, by reason of such withdrawal, rejection, suspension, termination or any other action described in this paragraph to Developer(s).

#### **F. Proposal Withdrawal**

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

#### **G. Minority Business Participation Program**

GUC has adopted an Affirmative Action and Minority and Women Business Enterprise Plan (M/WBE) Program. Firms submitting proposal/contracts 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.

## **II. RFP Parameters and Goals**

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#### **A. Required NPS Resource(s)**

##### **a. Scenario**

GUC's natural gas distribution system operates at 60 psi and has a MDQ of 20,000 DTs. In addition, we operate an LNG Peak Shaving Plant that has 300,000 gallon storage and 1,000 Dt/hr vaporization capacities.

During Winter Storm Grayson (12/28/17-01/07/18):

- Our interruptible customers were curtailed for 11 consecutive days.
- 12,799 Dts of LNG were vaporized (had supplies been available, more would have been used).
- GUC exceeded its MDQ for 9 of the 11 days with Excess Redelivery from Piedmont Natural Gas.
- System pressures dropped significantly below cautionary values.
- Average price was \$55 / Dt versus \$3.88 / Dt for hedged volumes.

## **b. Resource Requirements**

Resources must be able to address GUC's responsibility to provide safe, reliable and economical natural gas service to our customers with superior customer service, and must address current and future base load and peak day growth.

To address GUC's responsibility to provide safe and reliable service, any proposed resource must be able to maintain GUC's design day operating pressure of 30 psi at the system endpoint (50% of MAOP). Given projected loads, approximately 20–30 days per year would require peak shaving or another alternative. A detailed study and explanation of how the proposed resources will meet the critical day and season peak needs, provide the future base load and peak day growth requirements, and provide the required system pressure is required.

## **B. Project Specifications**

A successful Proposal(s) under this RFP will provide all or more of the benefits proposed by the following:

Local LNG Storage Volume:	2,500,000 gallons/200 MMscf (net usable)
LNG Storage Type:	Full Containment, Field Erected LNG Tank with No Bottom Penetrations
LNG Vaporization System Rate:	12 MMscfd/500 Mscfh @ 60 psig
LNG Vaporization System Type:	Vertical Shell & Tube Heat Exchanger with Remote Heat Source & Closed Loop Water/Glycol

## **C. Eligible Resources**

The proposed resource(s) will be required to operate as needed to support the local gas distribution system. GUC will consider Proposals that may include one, or more, of a combination of different technologies that meet the resource requirements.

Resources may be in the form of any or all of the following resource types:

- Introduction of CNG, LNG to the extent allowed and supported by the community and in accordance with State and Federal laws and regulations
- Other resources which meet all the requirements of this RFP

Developer(s) may submit multiple Proposals for any and all and for any combination of the resources to meet the needs listed above. GUC reserves the right, but not the obligation to accept a portfolio of projects/Proposals or to aggregate Proposals to meet the resource requirements.

As applicable, the resource shall be required to:

- Meet NCUC requirements.

- Demonstrate that they can obtain and comply with all required environmental and operating permits while meeting the requested reliability needs.
- GUC desires 200,000 dekatherms of local storage. The Developer must explicitly state those value streams within their proposal and will be included in the Developer's proposal evaluation.
- Other resources which meet all other components of the RFP requirements and which fully satisfy the load requirements will be considered as part of the Developer's proposal.

#### **D. Interconnection (as applicable)**

##### **1. Overview**

The Developer will be expected to design and work with GUC to install any interconnections to GUC's gas distribution system as may be required to operate/utilize the resources proposed.

##### **2. Standards**

Proposals will be required to meet the following standards:

- a. Facility Standards. Facilities must be designed and constructed such that all gas supply, scheduling, transmission and distribution services shall be performed in compliance with all applicable laws, operating policies, criteria, rules, and guidelines of the NCUC, State and Federal laws and regulations, follow good utility practice and meet GUC's design, construction and operating criteria.

All new systems will be designed and constructed in accordance with the latest revisions of the following major codes and standards along with the codes and standards that they reference.

49 CFR Part 193	Liquefied Natural Gas Facilities: Federal Safety Standards, Latest Revision
NFPA 59A	Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG), 2001 & 2006 editions or newer editions as referenced in 49 CFR Part 193
NCSBC	North Carolina State Building Code, Volume I, General Construction
NCSBC	North Carolina State Building Code, Volume I-A, Administration and Enforcement Requirements
NFPA 70	National Electric Code

- b. Protective Apparatus. The project design and associated facilities must include but shall not be limited to the following safety and control equipment which GUC requires be in place prior to operation of all facilities in order to protect

its gas distribution system as well as GUC personnel and the general public from potential damage or harm as a result of abnormal operating conditions: safety relief valves to protect against gas system over pressurization; gas odorization equipment to ensure readily detectible levels of gas-in-air concentrations should a leak occur; gas pressure, gas temperature, online water and hydrogen sulfide monitoring equipment capable of being remotely monitored; remote telemetering equipment (RTU) for local system operating function awareness and remote communication with GUC's Gas Control Center; site security devices such as lighting, equipment locks, building entry alarms and tamper-proof man gates; combustible gas indicators to monitor for the presence of gas within facility areas and the installation of cathodic protection devices for all buried steel gas facilities all in accordance with the latest editions of GUC's Gas Operating & Maintenance Manual, USDOT 29 CFR Part 192, National Electric Code (NEC), National Fuel Gas Code and applicable National Fire Protection Association (NFPA), API, ANSI and ASME.

### **3. Dedicated Facilities and Transmission Charges (as applicable)**

It is not required but it is possible that a response to this RFP may require a separate (i.e. "dedicated") "city gate tap" or other facilities connecting the resources to a gas supply pipeline or other source. Dedicated facilities in this case would be all facilities needed to interconnect this source of supply to the GUC natural gas distribution system. Developer is solely responsible for the design, planning, permitting, installation and costs of the Dedicated Facilities (City Gate Tap).

### **E. Representations and Warranties, Binding Proposal**

Developer's Proposal(s) shall be deemed to have made the following representations, warranties, and covenants to GUC, which representations, warranties, and covenants shall be deemed to be incorporated in their entireties into Developer(s)' Proposal(s). Any Proposal shall include Developer's agreement to be bound by the conditions of the RFP, including these conditions, in submitting Developer's Proposal.

1. Developer has read, understands and agrees to be bound by all terms, conditions and other provisions of the RFP Documents;
2. Developer has had the opportunity to seek independent legal and financial advice of its own choosing with respect to the RFP, the RFP Documents, including any appendices;
3. Developer acknowledges and agrees that, in GUC's evaluation of Proposals pursuant to this RFP, GUC reserves the right to disqualify Developer if it is unwilling or unable to meet GUC's credit requirements;
4. Developer will obtain all necessary authorizations, approvals and waivers, if any, required by Developer as a condition of submitting its Proposal and, if Developer's

Proposal is selected and a final Proposal ("Final Proposal") is requested, Developer will execute an Agreement with GUC; Developer may, but is not required to, include with their RFP response, preliminary agreements with all required Host Customers to participate as specified in the Bid response, which shall be replaced with binding Host Customer agreements prior to execution on any service agreement contemplated in this RFP;

5. Developer is submitting its Proposal subject to all applicable laws and regulations;
6. Developer has not engaged and covenants that it will not engage in any collusion or other unlawful or unfair business practices in connection with this RFP;
7. The information submitted by Developer to GUC in connection with this RFP, and all information submitted as part of the Proposal is true and accurate as of the date submitted by Developer. Developer covenants that any information requested herein and such attachments, but not provided to GUC as part of the Proposal, will be provided to GUC on or before the date that Developer specified for provision of the information in the timeline provided. Developer also covenants that it will promptly update such information upon any material change thereto;
8. In addition, Developer's submission of a Proposal is Developer's acknowledgement and agreement that:
  - a. GUC will rely upon all representations, warranties, and covenants in the Proposal Submittal Package; and
  - b. GUC may disclose information as set forth in the Confidentiality Agreement;
9. Developer represents and warrants that each project that is the subject of Developer's Proposal meets the design-life requirements of this RFP.
10. Developer covenants that it will provide information requested not longer than one week following Developer's receipt of GUC's request for such information;
11. Developer covenants that it will promptly provide GUC with any changes or updates to the implementation schedule;
12. Developer covenants that it will promptly provide GUC with any changes to its proposal between the date of the Proposal and the execution of an Agreement, including any changes to applicable sites and agreements;
13. Developer agrees and acknowledges that GUC reserves the right at any time, in its sole discretion, to abandon this RFP, to change any dates specified in this RFP, to change the basis for the evaluation of Proposals, to terminate further participation in this process by any party, to accept any Proposal or to enter into any Agreement, to evaluate the qualifications of Developer and/or the terms and conditions of any Proposal, to reject any or all Proposals, to prohibit or limit mutually exclusive Proposals, to consider additional products, to change any form, document, term or

condition used in this RFP at any time during the RFP process, or waive any irregularities, all without notice and without assigning any reasons and without incurring liability of GUC, or any of their respective subsidiaries, affiliates, or representatives to Developer or any other party. GUC shall have no obligation to consider any Proposal submitted. GUC will not reimburse Developer for its expenses related to this RFP under any circumstances, regardless of whether the bidding process proceeds to a successful conclusion or is abandoned. GUC shall not be deemed to have accepted any Proposal, and shall not be bound by any term thereof, unless and until an authorized representative of GUC executes an Agreement with Developer; and

14. Developer agrees and acknowledges that information provided by it to GUC pursuant to this RFP will be subject to the disclosure requirements of all applicable laws or regulations; and

#### **F. Developer's Waiver of Claims and Limitations of Remedies**

Except as expressly set forth in this RFP, by submitting a Proposal, Developer knowingly and voluntarily waives any rights under statute, regulation, state or federal constitution, or common law to assert any claim or complaint or other challenge in any regulatory, judicial or other forum, including the NCPUC, the FERC, the Supreme Court or any other court in the State of North Carolina ("State Court") or United States District Court or any other United State's Court ("Federal Court") concerning or related in any way to the RFP and/or any appendices to the RFP ("Waived Claims"). The assertion of any Waived Claims by Developer at the NCPUC, FERC, State Court, Federal Court, or otherwise shall, to the extent that Developer's Proposal has not already been disqualified, provide GUC the right, and may result in GUC electing, to reject such Proposal or terminate the RFP.

#### **G. Credit and Performance Assurances**

In its evaluation of a Proposal, GUC will consider Developer's capability to perform all of its financial and other obligations including, without limitation, Developer's ability to provide performance assurance that the resource would be available and operate as required under the executed Agreement ("Performance Assurance"). This assurance will be provided to GUC by the expected effective date in the Agreement. This assurance includes the ability of Developer to fund the reliability Proposal as described in this RFP.

Developer is required to provide the credit and finance information as requested in this RFP. The Developer will be required to post collateral to support its ability to provide the reliability Proposal by the date noted in the Agreement and, depending on its credit standing, may need to post collateral acceptable to GUC to support performance of other obligations under the Agreement.

### III. Information Required from Developers

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#### A. Introduction

Developers must provide the information described below in order for GUC to consider their Proposal(s).

GUC will entertain proposals for resources that meet the requirements described within this RFP.

If applicable, any resource must demonstrate to GUC that they have the capability to respond to automated control signals provided by GUC's Gas Operations.

If applicable, Developer(s) shall provide the following information for each resource proposed:

1. Location;
2. Operational Capacities and Constraints;
3. Developer must provide information about the fuel supply including duration of fuel stored onsite, and demonstrate the ability to obtain and replenish the fuel supply to the facility;
6. Developer is responsible for obtaining all local building, zoning and/or operating permits as required;
7. Developer must provide total and monthly costs associated with each Proposal, temporary (construction) and permanent jobs created with each Proposal, and expected property tax payments associated with each Proposal.

#### B. All Resources

If applicable, Developer(s) shall provide the following information for each resource proposed:

1. For resources proposed that are not 100% available, Developer shall include a description of the redundancy included to ensure that the proposed services will be provided. GUC will require the redundancy necessary to ensure the adequate level of reliability service is provided. GUC reserves the right, but not the obligation to aggregate Proposals to meet the reliability need;
2. Developer must provide a Measurement and Verification plan (M&V Plan) which substantiates the reasonableness of the estimated supply values including methods and techniques that will be used to determine supply and/or savings performance from a specific NPS contracted project. The plan should include all M&V options needed to address all of the NPS measures installed as part of the NPS project. M&V activities may include site surveys, energy measurements, metering of key variables, data analyses, calculations, quality assurance procedures, and reporting, all of which need to be adequately detailed in the M&V Plan. In general, the contents of a project-specific M&V Plan should provide an overview of the NPS Project and verification activities, including:
  - i. State the goals and objectives of the verification activities

- ii. Define the M&V option and techniques to be used for each measure
- iii. Identify the key physical characteristics of the facility or installation, system, and NPS resource(s) to be installed
- iv. Define the critical factors that affect the performance of the system
- v. Adequately define the baseline conditions, including:
  - 1. Identify the key baseline performance characteristics of the system
  - 2. Define baseline operating conditions, such as loads and hours of operation
  - 3. Detail all measurements, data analyses procedures, algorithms, and assumptions
  - 4. Define all performance period verification activities, including:
    - a. Specify the parameters to be measured, period of metering, accuracy requirements, calibration procedures, metering protocols, sampling protocols, and archiving requirements. Note, GUC requires the inclusion of parameters needed to ensure accurate reliability measurement and reporting according to the system needs defined in this NPS RFP and applicable to any future associated resource contracts. Additionally, required measurement and reporting frequency may increase over the lifetime of the NPS assets as these assets age and as the distribution system loading increases.
    - b. Provide GUC with adequate notice to witness the M&V activities.
    - c. Detail the schedule and content of periodic M&V reports and procedures for the NPS Project Owner and for the Company.
    - d. Describe procedures and details for annual inspections.
    - e. Detail how performance will be reported and how it will affect payments for the resource(s), and
    - f. Provide rationale and procedures for any baseline or reporting period energy adjustments anticipated.
- 3. Developer must agree to: (i) provide reliability support to GUC; (ii) operate and maintain the facility in accordance with Good Utility Practice.
- 4. GUC will evaluate the corporate structure which Developer proposes for this project. Regardless of Developer's form, Developer shall provide the information requested below as part of its Proposal.
  - a. Developer will provide Developer's exact and complete name, form of organization (e.g., corporation, Limited Liability Company).
  - b. Developer will provide State of incorporation or organization.

- c. Developer will provide copies of corporate or equivalent documents (e.g., articles of incorporation, by-laws or membership agreements) containing customary corporate separateness provisions.
- d. Developer's Principal Business: Developer will provide a detailed description.
- e. Parent or Consortium Information: If applicable, Developer will provide the information with respect to: Developer's ultimate corporate parent if Developer is a subsidiary of any other corporation; and/or each of Developer's members, partners, or participants if Developer is a partnership, limited liability company, or other association or organization (identifying the controlling member); and each member of the group of persons acting in concert if Developer is a group or member of a group acting in concert for purposes of this Proposal (identifying the controlling member).
- f. Guarantor Information: If Developer proposes to provide a guaranty to GUC, Developer has provided or will provide the information required above with respect to Developer's Guarantor, if any. In addition, Developer has provided or will provide a copy of the proposed form of guaranty.
- g. Developer's Organization: Developer will provide its organizational chart showing each level of ownership up to the ultimate parent.
- h. Annual Report, Form 10-K, Form 10-Q, Audited Financial Statements: If applicable, Developer will provide copies of Developer's or Guarantor's Annual Report to shareholders and Form 10-K for the past two years and all subsequent quarterly filings on Form 10-Q as filed with the Securities and Exchange Commission ("SEC") containing audited, in the case of Form 10-K, or unaudited, in the case of Form 10-Q, financial statements of Developer or Guarantor, or if applicable, each member of the bidding group (or if any member is a consortium or other association or organization whose controlling member(s) is (are), or a group acting in concert whose controlling member(s) is (are), required to file reports under the Securities Exchange Act of 1934, the most recent Annual Report to shareholders or Annual Report on Form 10-K as filed with the SEC containing audited financial statements of each such reporting person). If none of the foregoing applies, Developer has attached copies of the two most recent audited annual financial statements, including certified independent accountants report thereon, and subsequent quarterly financial statements of Developer or Guarantor, or if applicable, each member of the bidding group and, Developer's or each member of the bidding group's controlling member for at least the three prior full fiscal years or, if shorter, the life of such Developer or member of a bidding group or such controlling persons. Developer has included with the audited financial statements, information related to the history of Developer or member of the bidding group and a description of its business and material matters relating to such business, including the level of detail that would be required if Developer or member of the

bidding group were subject to the disclosure requirements of Items 3 and 7 of Form 10-K. If available, Developer has provided a web link to the statements provided in this attachment.

- i. Developer's Debt Ratings: Developer will provide its or its Guarantor's Moody's and Standard and Poor's senior unsecured debt rating or, if such entities do not have a senior unsecured debt rating, then Developer's or Developer's Guarantor's corporate credit rating or long term issuer rating, if any;
  - j. Developer shall provide a copy of the most recent Dun and Bradstreet (D&B) report which includes the Supplier Evaluated Risk Rating ("SER") and Failure Score.
5. Developer's Experience Information: if applicable, Developer will provide a description of its experience in developing projects such as contemplated in the Proposal. Developer shall list its references by name, address and contact number;
6. Project Financial Information: if applicable, Developer will provide the following project finance information:
  - a. Amount and type of financing for the project (sources and amount of debt and equity);
  - b. A description of construction and operating period financing for the project including expected debt to equity ratios, debt coverage ratios, liens, and restricted covenants;
  - c. Any report of an independent engineer or other consultant regarding the project prepared for, or as part of, the project financing; and
  - d. The identification and description of other transactions by Developer that have been leveraged, either prior or subsequent to the construction or commercial operation date, including, without limitation, all financing arrangements for such transactions, loan to equity ratios, coverage ratios, liens, and restrictive covenants agreed to by the Developer.
7. If applicable, Developer shall provide a description (quantity, size, manufacturer, etc.) of the main mechanical and electrical pieces of equipment used for the project.
8. Developer agrees to provide such information, including but not limited to facility and utility account information access as either GUC or the NCPUC shall require for purposes of evaluating any activities which may eventually be undertaken as a result of this RFP.
9. Developer will provide the price proposed to be charged to GUC for contracting resources over the life of the project. This will be the "bid" or "asking" price. GUC strongly suggests that Developers provide project pricing in the format of a fixed monthly price over the life of the project, including any and all escalators during that time.

10. Developer will provide the complete installed costs of the proposed project, including costs which may not accrue directly to GUC for payment, but which should be utilized in the project's Benefit Costs Analysis.
11. Developer shall provide a list of benefits which they believe will accrue to customers, the utility and to society, from their Proposal. GUC may, but is not required to, include any reported benefits (including financial valuation of reported benefits) in the BCA calculation.

#### IV. Evaluation of Proposals

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To evaluate Proposals, GUC may primarily consider:

1. **Reliability** – the ability of the resource to alleviate the identified pressure problems and allow for future growth
2. **Ratepayer cost** – total ratepayer revenue requirements associated with the Proposal(s);

GUC may also consider the following other factors as applicable to each reliability need:

1. **Environmental and Economic impacts**
  - a. **Environmental impacts** – including but not limited to, air, noise, visual, water and soil impacts. Specifically, net carbon reduction may be considered;
  - b. **Economic impacts**- temporary and permanent jobs created, economic development, and property tax payments;
2. **Credit** - Developer's capability and willingness to perform all of its financial and other obligations under the Agreement, including, without limitation, Developer's ability to provide Performance Assurance under the Agreement. GUC will consider Developer's financial strength, as determined by GUC, as well as any credit assurances acceptable to GUC that Developer may submit with its proposal;
3. **Developer Qualification** – the experience of the developer, Engineering, Procurement and Construction ("EPC") contractor, prime subcontractors and, if applicable, O&M operator or other entity responsible for the development of the proposed resource. This may include their experience (demonstrated track record) in successfully developing and operating similar projects in North America;
4. **Project Viability** - the probability that the resource(s) associated with a Proposal can be financed and completed as required by the Agreement. This will include an assessment of the degree of detail and feasibility of schedules (e.g. engineering, procurement plan and lead times, equipment delivery, construction, start-up and testing), plans (procurement plan, site access/equipment delivery, engineering/construction division of responsibility ("DOR")), construction plan/subcontractors, existing labor agreements in place, labor availability, construction facility and laydown, water supply, wastewater discharge), adequacy of

financing during construction and operation of the plant, lender commitment provided, equity commitment provided, the controls provided to prevent construction cost overruns, debt coverage ratios are adequate, interest rates and fees are reasonable, quality and completeness of financing package, ownership structure, interest rate risk, whether Developer has commitment letters from project participants or financial institutions indicating that the project will be able to obtain financing, and Developer's project financing experience. The project's progress in the Department of Environmental Conservation ("DEC") permitting process will also be evaluated, including its Environmental Characteristics such as Air Quality, Water Supply, Land Use, Hazardous Material usage, Wetlands & other Waters, Biological Resources, Cultural Resources, Socioeconomics, degree of control of property, and other aspects that would help ensure project completion. The quantities and potential costs to GUC and to society associated with all of these characteristics will be considered;

5. **Technical Reliability** – the type of technology and the equipment being proposed. This will examine whether there is high reliability due to plant construction design that is tried and proven with historical evidence of high availability,
6. **Conformance with GUC's non-price terms and conditions** - the degree to which Developer accepts GUC's proposed terms and conditions. Terms and conditions evaluated elsewhere will not be considered in this evaluation criterion (e.g. credit terms). GUC reserves the right to specify non-price terms and conditions for any reason including, but not limited to, the specific characteristics of the alternatives proposed or the ability of Developer to meet other requirements of the RFP. The RFP evaluation may impute for the purposes of evaluation an additional amount to Developer's Proposal price to reflect Developer's proposed modifications to the non-price terms and conditions that result in GUC incurring additional costs or risks.
7. **Impact on Low Income Customers** – the extent that a Developer's Proposal impacts low income customers may be taken into consideration when evaluating proposals.
8. **In-Service Date** - provided that all technical and financial requirements of the RFP are met, proposed solutions with sooner in-service dates may receive positive consideration when compared to proposed solutions with significantly later in-service dates.

## V. Participation Protocols

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### A. Overview

All Proposals from Developer(s) must be received in both hard copy and electronic form by Thursday, September 27, 2018 at 4:00 p.m. (EPT) via hand-delivery or delivery to:

**Greenville Utilities Commission  
Cleve Haddock – Procurement Coordinator  
401 S. Greene Street  
Greenville, NC 27858**

If there is disagreement between the electronic and hard copies, the hard copy will prevail.

**Hard copy documents:** Developer must submit one hard copy (bound or unbound).

**Electronic Documents:** The electronic documents must be in a Microsoft Word (standard edition 2010) and/or Excel file (standard edition 2010), as applicable. Developer should not provide documents in other electronic formats, versions, and/or in hard copy alone. Electronic Documents must be emailed to [haddocgc@guc.com](mailto:haddocgc@guc.com). Electronic documents should be unlocked to allow view of calculations.

### B. Communications:

To insure accuracy and transparency of the information provided, GUC strongly prefers that all communications take the form of an e-mail. All communications regarding this RFP, including technical questions, should be directed to [haddocgc@guc.com](mailto:haddocgc@guc.com). Developers are encouraged to submit questions at any time prior to the deadline for written questions which is August 31, 2018. All questions and answers will be shared with all interested Developers, but the originating Developer's name will be withheld. GUC may, in its sole discretion, decline to respond to any email or other inquiry without liability or responsibility.

## **VI. Negotiations and Contract Approval**

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### **A. Execution of Agreement**

By submitting a Proposal, Developer agrees, if its Proposal is selected, to negotiate and execute a definitive Agreement. Execution of Agreement will follow the GUC's acceptance and approval of cost recovery. Among other things, the Agreement will include damages provisions for failure to meet schedule requirements including holding the Developer liable for any FERC and/or NCPUC penalties assessed to GUC resulting from Developer's failure to meet the Agreement's schedule/performance requirements. GUC's evaluation of Developer's Proposal will not constitute a contract by GUC to enter into an Agreement with Developer.

### **B. Agreement by Developer**

Developer must agree to be bound by its Proposal(s) for a period of six (6) months from the date of GUC acceptance. If the NCPUC grants (subject to appeal) regulatory approval of the Agreement(s) within the six-month period, Developer must agree to be bound by its Proposal(s) for any additional period of time required for the NCPUC order granting regulatory approval to become final and non-appealable.

### **C. Regulatory Approval:**

The effectiveness of any Agreement is expressly conditioned on GUC's receipt of Regulatory Approval. "Regulatory Approval" means a final and non-appealable order or orders of each regulatory or other governmental body designated by GUC, including without limitation the NCPUC and if applicable FERC, without conditions or modifications unacceptable to GUC, which, in the case of Regulatory Approval by a governmental body other than the NCPUC grants the approvals requested in the application.

### **D. Termination of the RFP and Related Matters**

GUC reserves the right at any time, in its sole discretion, to terminate the RFP for any reason whatsoever without prior notification to Developer and without liability of any kind to or responsibility of GUC or anyone acting on GUC's behalf. Without limitation, grounds for termination of the RFP may include the assertion of any Waived Claims by Developer or a determination by GUC that, following evaluation of the Proposals, there are no Proposals that provide adequate ratepayer benefit.

GUC reserves the right to change the Proposal evaluation criteria for any reason, to terminate further participation in this process by Developer, to accept any Proposal or to enter into any definitive Agreement, to evaluate the qualifications of Developer, and to reject any or all Proposals, all without notice and without assigning any reasons and without liability to GUC or anyone acting on GUC's behalf. GUC shall have no obligation to consider any Proposal.

In the event of termination of the RFP for any reason, GUC will not reimburse Developer (s) or Participant(s) for any expenses incurred in connection with the RFP regardless of whether Developer's Proposal is selected, not selected, rejected or disqualified.

## **VII. Appendix**

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**A. Terms And Conditions**

**B. Letter of Compliance to E-Verify for Greenville Utilities Commission**

## **TERMS AND CONDITIONS**

These Terms and Conditions, made and entered into on this purchase order date 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 the vendor as identified on the purchase order, 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, N.C. 27835-1847.

### **3.0 PAYMENT TERMS**

Payments for apparatus, supplies, materials, equipment or services will be made after the receipt and acceptance 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 CONDITION AND PACKAGING**

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.

### **5.0 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.**

### **6.0 AWARD OF CONTRACT**

All purchases will be based on the lowest responsible, responsive offer that is 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 the suitability of the article(s) for the

intended use, the related materials 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 Department.

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.

## **7.0 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.

## **8.0 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 Procurement Coordinator, 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.

## 9.0 **INSURANCE**

9.1 **Coverage** – The Provider at its sole cost and expense shall provide commercial insurance of such type and with the following coverage and limits:

9.1.1 **Worker's Compensation** – The Provider shall provide and maintain Worker's 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.

9.1.2 **General Liability** – Commercial Liability Coverage written on an "occurrence" basis in the minimum amount of \$1,000,000 per occurrence.

9.1.3 **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.

9.2 **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 insurance carrier will provide 30 day written notice of cancellation by regular mail to the GUC's Procurement Coordinator. Any waiver of insurance must be approved by the Procurement Coordinator.

Waiver approved: \_\_\_\_\_

Procurement Coordinator

## 10.0 **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.

## 11.0 **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.

## **12.0 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 Procurement Coordinator, 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.

## **13.0 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.

## **14.0 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.

## **15.0 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.

## **16.0 GOVERNING LAWS**

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

## **17.0 ADMINISTRATIVE CODE**

Quotes, bids, proposals, and awards are subject to applicable provisions of the North Carolina Statutes, Rules, Regulations, or Administrative Codes.

## **18.0 CLARIFICATIONS/INTERPRETATIONS**

Any and all questions regarding these Terms and Conditions must be addressed to the GUC Procurement Coordinator. 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 GUC's Procurement Coordinator.**

## **19.0 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.

## **20.0 TERMINATION OF AGREEMENT**

GUC or Provider may terminate this Agreement for just cause at any time. Provider will be paid for all labor and expenses incurred as of the termination date. 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 failure to comply with the services in this agreement, (2) Provider's failure to perform in accordance with this Agreement, (3) Provider's disregard of laws and regulations related to this Agreement, (4) Provider's violation of the provisions of the Agreement, (5) Provider's failure to perform in accordance with all project requirements, or (6) Provider's failure to work in accordance with GUC's policies and/or procedures.

## **21.0 DELIVERY**

Time is of the essence with respect to all deliveries under this Agreement.

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.

## **22.0 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.

### **23.0 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.

### **24.0 STANDARD OF CARE**

The Provider hereby agrees to abide by the standard of care generally accepted in the engineering profession in the performance of services under this contract.

### **25.0 INTEGRATED CONTRACT**

These Terms and Conditions represent the entire contract between the Parties. No verbal or other written agreement(s) shall be held to vary the provisions of this Agreement.

### **26.0 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.

### **27.0 E-VERIFY**

E-Verify - I understand that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-25 et seq. I am aware of and in compliance with the requirements of E-Verify and Article 2 of Chapter 64 of the North Carolina General Statutes. To the best of my knowledge, any subcontractors employed by me as a part of this contract are in compliance with the requirements of E-Verify and Article 2 of Chapter 64 of the North Carolina General Statutes.

### **28.0 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.

## **29.0 IRAN DIVESTMENT ACT CERTIFICATION**

By acceptance of this purchase order, Vendor/Contractor certifies that, as of the date of the purchase order or contract, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. § 143-6A-4. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 143C-6A-5(b), Vendor/Contractor shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

## **30.0 UNIFORM GUIDANCE**

Contracts funded with federal grant or loan funds must be procured in a manner that conforms with all applicable federal laws, policies, and standards, including those under the Uniform Guidance (2 C.F.R. Part 200).

## **31.0 NOTICES**

Notices to the Parties should be sent to the addresses specified on the first page of these Terms and Conditions.

Cleve Haddock, CLGPO  
Procurement Coordinator  
Greenville Utilities Commission  
401 South Greene Street  
Greenville, N.C. 27834

## **Letter of Compliance to E-Verify for Greenville Utilities Commission**

1. I have submitted a bid for contract or desire to enter into a contract with the Greenville Utilities Commission;
2. As part of my duties and responsibilities pursuant to said bid and/or contract, I affirm that I am aware of and in compliance with the requirements of E-Verify, Article 2 of Chapter 64 of the North Carolina General Statutes, to include (mark which applies):
3. \_\_\_\_ After hiring an employee to work in the United States I verify the work authorization of said employee through E-Verify and retain the record of the verification of work authorization while the employee is employed and for one year thereafter; or
4. \_\_\_\_ I employ less than fifteen (15) employees in the State of North Carolina.
5. As part of my duties and responsibilities pursuant to said bid and/or contract, I affirm that to the best of my knowledge and subcontractors employed as a part of this bid and/or contract, are in compliance with the requirements of E-Verify, Article 2 of Chapter 64 of the North Carolina General Statutes, to include (mark which applies):
6. \_\_\_\_ After hiring an employee to work in the United States the subcontractor verifies the work authorization of said employee through E-Verify and retains the record of the verification of work authorization while the employee is employed and for one year thereafter; or
7. \_\_\_\_ Employ less than fifteen (15) employees in the State of North Carolina.

Specify subcontractor: \_\_\_\_\_

\_\_\_\_\_ (Company Name)

By: \_\_\_\_\_ (Typed Name)

\_\_\_\_\_ (Authorized Signatory)

\_\_\_\_\_ (Title)

\_\_\_\_\_ (Date)