

**STATE OF NORTH CAROLINA
COUNTY OF PITT**

**PETROLEUM PRODUCTS AND
SUPPORT SUPPLIES AGREEMENT**

This Petroleum Products and Support Supplies Agreement (“Agreement”) is made and entered into on the _____, 2020, by and between the City of Greenville, a municipal corporation in the State of North Carolina, (the “City”) and _____, an [insert City] corporation duly authorized to conduct business in the State of North Carolina, (“Supplier”) (individually “Party” and collectively the “Parties”).

WITNESSETH:

WHEREAS, the City has and maintains numerous vehicles, such as fire trucks, ambulances, police vehicles, and utility vehicles, as well as the City’s generators and other equipment needed for City services which operate using petroleum products; and

WHEREAS, the City has a continuous need for petroleum products to ensure public safety and maintain continuity of operations and City services both during normal operations and during an emergency; and

WHEREAS, the City has the need for contracting with a reliable supplier of petroleum products for normal and emergency uses; and

WHEREAS, the public interest is served by having a reliable supplier of petroleum products for normal and emergency uses under contract; and

WHEREAS, allowing Supplier to serve as the reliable supplier of petroleum products to the City products for normal and emergency uses will provide a public benefit for the citizens and City of Greenville;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and agreements contained herein below, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**ARTICLE I
DEFINED TERMS**

1.0 For purposes of this Agreement, the following terms wherever used herein, whether capitalized or not, singular or plural, shall have the following meanings:

- 1.1 **Emergency**: A natural or man-made disaster including, but not limited to, severe storms, tornadoes, hurricanes, fires, flooding, warfare, civil unrest, strikes, terrorism, or fuel disruption, including but not limited to refinery or pipe lines being closed or otherwise non-operational. An emergency can be declared by the City, at its sole discretion.

- 1.2 **Petroleum Products:** Unleaded gasoline fuel, diesel fuel, and off-road diesel fuel as specified herein and as required by the City to maintain operations and provide necessary City services during both normal operations and in an emergency.
- 1.3 **City's Fuel Station:** The City's fuel station is located at the City's Public Works Department, 1500 Beatty Street, Greenville, North Carolina 27834. Both unleaded gasoline fuel and Ultra Low Sulfur No. 2 diesel fuel are stored here.
- 1.4 **City's Generators:** Collectively, the City has and maintains the following three (3) locations for generators: 1) The Emergency Operations Center (EOC) which is located at 3375 East 10th Street, Greenville, North Carolina 27858 Station 1 (Headquarters); 2) Greenville Police Department (GPD) and Greenville Fire/Rescue Department (GFR), which is located at 500 South Greene Street, Greenville, North Carolina 27834; and 3) Public Works Department (PWD), which is located at 1500 Beatty Street, Greenville, North Carolina 27834.
- 1.5 **First-Serve Basis:** Supplier's obligation to deliver fuel to the City before delivering fuel to non-governmental entities and requirement to use the closest appropriate terminal for obtaining fuel.
- 1.6 **Cargo:** Any and all petroleum products and/or goods and/or commodities sold to the City, carried, delivered, stored, transported, and/or provided to the City related to this Agreement.

ARTICLE II OBLIGATIONS

- 2.0 The City and Supplier shall perform the following obligations related to this Agreement:
 - 2.1 The Supplier agrees to sell and deliver to the City and the City agrees to purchase and accept from Supplier petroleum products pursuant to this Agreement.
 - 2.2 The petroleum products shall meet the following specifications:
 - 2.2.1 Gasoline E10, Unleaded, 87 Octane, conforming to Federal EPA specifications.
 - 2.2.2 Diesel fuel, Ultra Low Sulfur Diesel Fuel, grade no. 2-D (.0015 mass % sulfur, minimum cetane index of 40) for use in over the road diesel engines.
 - 2.2.3 Off-road diesel fuel conforming to Federal EPA specifications.
 - 2.3 The Supplier shall only provide petroleum products to the City from Environmental Protection Agency (EPA) registered terminals.

2.4 **Delivery During Normal Operations:** Request(s) for delivery of petroleum products will be made by email by the City to Supplier Monday through Friday or unless an emergency demands an alternate schedule. The Supplier shall deliver the requested petroleum products to the location as designated by the City, such as the City's Fuel Station and/or the City's Generators, within twenty-four (24) hours of the request being sent to Supplier. Deliveries by Supplier to the location as designated by the City can only be made Monday through Friday, between the hours of 7:00 am to 3:00 pm, unless an emergency demands an alternate schedule.

2.5 **Delivery During Emergency:** Request(s) for delivery of petroleum products during an emergency will be made by email by the City to Supplier and will be agreed upon by the City and Supplier at the time the email is sent to the Supplier. Expected delivery by the Supplier to the location as designated by the City, such as the City's Fuel Station and/or the City's Generators, will be twenty-four (24) hours but shall not exceed seventy-two (72) hours, unless otherwise agreed in writing by the parties.

2.5.1 During an emergency, the Supplier shall provide petroleum products to the location as designated by the City on a first-serve basis.

2.5.2 During an emergency, the Supplier may deliver petroleum products as requested by the City to the location as designated by the City by way of tank wagon delivery.

2.5.2 In a case where the City's fuel station is flooded and no fuel can be obtained from the City's fuel station, the Supplier shall provide the ability to obtain fuel from a tank wagon, portable tanks, or other means to the location as designated by the City.

2.6 **Labor and Equipment:** Supplier will provide all labor and equipment associated with and as may be required for the delivery of petroleum products to the City's fuel station during regular delivery requests and emergency requests.

2.7 **Late Delivery:** If circumstances beyond the control of the Supplier result in a late delivery of any petroleum products to the City, it is the responsibility and obligation of the Supplier to make the details known to the City's Fleet Superintendent immediately. Excessive delays in delivery will be cause for termination of this Agreement.

2.8 **Diesel Fuel—Highway Ultra Low Sulfur:** Supplier shall provide ultra-low sulfur #2 diesel fuel to the City to use for highway diesel under the following terms and conditions:

2.8.1 The diesel fuel shall be delivered by Supplier FOB to the City's Fuel Station as require by the City.

2.8.2 The fuel delivered to City by Supplier shall be ultra-low sulfur #2 highway diesel and meet the quality standard for ultra-low sulfur #2 highway diesel fuel properly treated for local climate conditions. **Fuel**

sulfur content shall not exceed 15 ppm. Supplier may be required to provide sulfur content test results to the City as described herein.

- 2.8.3 The City will pay to Supplier Selma OPIS Rack Avg. Price per gallon OPIS Average Rack price for End of Day (6:00 pm). Supplier will provide proof of Selma Rack Price with invoice. The City will also pay to the Supplier the following:

Cost of Diesel Fuel Additive	
Transportation price per gallon	
Inspection Fee, LUST & Oil Spill Tax per gallon	
Total Profit margin per gallon	

2.9 **E10 Unleaded Highway Gasoline Fuel:** Supplier shall provide unleaded highway gasoline fuel to the City under the following terms and conditions:

- 2.9.1 Supplier shall provide unleaded gasoline fuel to the City FOB to the City's Fuel Station as required by the City.
- 2.9.2 The unleaded gasoline shall be suitable for use as fuel for automobiles and pickup trucks. The automobile fuel shall meet all regulatory requirements for commercial, regular unleaded gasoline.
- 2.9.3 The City will pay to Supplier Selma OPIS Rack Avg. Price per gallon OPIS Average Rack price for End of Day (6:00 pm). Supplier will provide proof of Selma Rack Price with invoice. The City will also pay to the Supplier the following:

Transportation price per gallon	
Inspection Fee, LUST & Oil Spill Tax per gallon	
Total Profit margin per gallon	

2.10 **E10 Unleaded Tank Wagon Load or Portable Tank:** The Supplier shall provide upon request by the City E10 unleaded fuel on tank wagon or portable tanks. The tank wagon or portable tank shall have the mean to meter fuel dispense.

- 2.10.1 The City will provide the location of the tanks wagon or portable tanks upon request.
- 2.10.2 The City will pay to Supplier Selma OPIS Rack Avg. Price per gallon OPIS Average Rack price for End of Day (6:00 pm). Supplier will provide proof of Selma Rack Price with invoice. The City will also pay to the Supplier the following:

Transportation price per gallon	
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Inspection Fee, LUST & Oil Spill Tax per gallon	
Total Profit margin per gallon	

2.11 **Ultra-Low Sulfur Diesel Fuel Tank Wagon or Portable Storage:** The Supplier shall provide upon request by the City ultra-low sulfur diesel fuel tank wagon or portable storage. The tank wagon or portable tank shall have the mean to meter fuel dispense.

2.11.1 The City will provide the location of the tanks wagon or portable tanks upon request.

2.11.2 The City will pay to Supplier Selma OPIS Rack Avg. Price per gallon OPIS Average Rack price for End of Day (6:00 pm). Supplier will provide proof of Selma Rack Price with invoice. The City will also pay to the Supplier the following:

Cost for diesel fuel additive	
Transportation price per gallon	
Inspection Fee, LUST & Oil Spill Tax per gallon	
Total Profit margin per gallon	

2.12 **Off-Road Ultra Low Sulfur Diesel Fuel (tank wagon) Deliver to Generators:** The Supplier shall provide upon request by the City off-road ultra-low sulfur diesel fuel to any or all City-owned generators as requested by the City. There are three location for generators (each generator holds 500 gallons):

- A. EOC
3375—East Tenth Street, Greenville, NC 27858.
- B. Station 1 (Headquarters)
500 South Greene Street, Greenville, NC 27834.
- C. Public Works Generator
1500 Beatty Street, Greenville NC 27834.

2.12.1 The City will pay to Supplier Selma OPIS Rack Avg. Price per gallon OPIS Average Rack price for End of Day (6:00 pm). Supplier will provide proof of Selma Rack Price with invoice. The City will also pay to the Supplier the following:

Cost for diesel fuel additive	
Transportation price per gallon	
Inspection Fee, LUST & Oil Spill Tax per gallon	
Total Profit margin per gallon	

2.13 **Diesel Exhaust Fluid (DEF):** The Supplier shall provide upon request by the City under the following terms and conditions:

2.13.1 The DEF shall be delivered by Supplier FOB to the City’s Fuel Station

as require by the City.

2.13.2 The Supplier must ensure the DEF satisfies all requirements set in ISO 22241 to ensure that it is high-quality.

2.13.3 DEF must contain contain 67.5% distilled or de-ionized water and 32.5% high-grade pharmaceutical urea that will work at temperatures as low as 12F.

2.13.4 The City will pay to Supplier Selma OPIS Rack Avg. Price per gallon OPIS Average Rack price for End of Day (6:00 pm). Supplier will provide proof of Selma Rack Price with invoice. The City will also pay to the Supplier the following:

Cost for diesel fuel additive	
Transportation price per gallon	
Inspection Fee, LUST & Oil Spill Tax per gallon	
Total Profit margin per gallon	

2.14 **Price All Inclusive:** All prices to be paid to Supplier pursuant to this Agreement include all product costs, loading, transportation, cargo insurance, bonding, offloading expense, and federal LUST and Superfund taxes, if applicable.

2.15 **Prices to Remain Firm:** Prices must remain firm throughout the terms of the contract in accordance to Section 4 of the Informal Bid Request #20-21-11, which is fully incorporated herein.

2.16 **Supply Guarantee:** If Supplier is unable to supply the quantities or types of petroleum products required as set forth in this Agreement, all costs incurred by the City in procuring the required amount or type of petroleum products from an alternate source, which exceeds the costs set forth in this Agreement, shall be borne by Supplier.

2.17 **Damage:** Any damage to City equipment or vehicles due to supplying fuel that does not meet the City's specifications as stated in this Agreement shall be remedied by Supplier to the complete satisfaction of the City.

2.18 **Compliance with Regulations:** Supplier shall comply with 40 CFR 112 and all other Federal, State, and Local regulations regarding the transportation, transfer, and discharge of all petroleum products specified in this Agreement.

2.19 **Payment:** The Supplier will submit invoices to the City within twenty-four (24) hours of delivery. All invoices must be submitted by email to Angel Maldonado, Public Works Department, Fleet Superintendent (amaldonado@greenvillenc.gov). Upon receipt of the invoice by the City, the invoice is then payable to the Supplier within thirty (30) days from the receipt, provided the invoice has first been approved by the City.

2.20 **Issues Related to Delivery of Petroleum Products:** Issues related to delivery of fuel may include, but are not limited to, incorrect order, delivering wrong fuel, and cross-fueling. The party at fault will be responsible for all direct costs incurred to correct any such issue.

2.21 **Supplier's Agreement to Pay Additional Costs:** Supplier agrees to pay any and all additional costs incurred by the City to procure emergency fuel elsewhere if Supplier fails to deliver per the requirements of this Agreement and Supplier further agrees to reimburse the City for any out-of-pocket expenses the City directly or indirectly incurs due to Supplier's failure to meet the requirements. Additional costs include but are not limited to the cost to purchase fuel above and beyond the price per this Agreement.

2.22 The Supplier shall comply with all applicable Federal, State, and local laws, ordinances, rules, and regulations pertaining to the performance of Supplier's obligations under this Agreement.

2.23 The Supplier is to procure all permits, licenses, and certificates, as required by any laws, ordinances, rules, and/or regulations, for proper execution and completion of all obligations under this Agreement.

ARTICLE III INSURANCE

3.0 Supplier agrees to secure, carry, and maintain at its expense, insurance coverage with an A.M. Best Rating of A-VII or better for all obligations, operations, and deliveries pursuant to this Agreement. The City shall be named as an additional insured.

3.1 All insurance companies must be admitted to do business in North Carolina and be acceptable to the City's Risk Manager. If the insurance company(s) is/are a permitted surplus lines insurer, the insurance company name, and NAIC number must be submitted to the City's Risk Manager for approval before commencing work. Supplier shall be required to provide the City no less than thirty (30) days' notice of cancellation, or any material change, to any insurance coverage required by this Agreement.

3.2 A Certificate of Insurance (COI) must be issued by an authorized representative of the insurance carrier(s). Certificates of Insurance must have the Insurance Company name and NAIC number clearly identified.

3.3 The City's review or acceptance of Certificates of Insurance shall not relieve Supplier of any requirement to provide the specific insurance coverages set forth in the Agreement nor shall the City's review or acceptance of Certificates of Insurance constitute a waiver of the specific insurance coverage requirements set forth in the Agreement or acknowledgement that all insurance coverage requirements set forth in the Agreement have been met.

3.4 Supplier agrees to purchase at its own expense insurance coverages to satisfy the following minimum requirements—a certificate reflecting the following minimum coverages shall accompany this Agreement:

3.4.1 **Commercial General Liability:**

Limits:

Each Occurrence:	\$1,000,000
Personal and Advertising Injury	\$1,000,000
General Aggregate Limit	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000

The aggregate limit must apply per project. The form of coverage must be the ISO CG 00 01 policy as approved by the State of North Carolina Department of Insurance. If a form of coverage other than the CG 00 01 is used it must be approved by the Risk Manager for the City. Any endorsed exclusions or limitations from the standard policy must be clearly stated in writing and attached to the Certificate of Insurance. Completed Operations coverage must be maintained for the period of the applicable statute of limitations.

The City must be added as an Additional Insured to the Commercial General Liability policy.

3.4.2 **Workers' Compensation Insurance:**

Supplier shall furnish a Certificate of Insurance for Workers' Compensation for all of Supplier's employees subject to the North Carolina Workers' Compensation Act.

Limits:

Workers' Compensation: Statutory for the State of North Carolina

Employers Liability: Bodily Injury by Accident \$1,000,000 each accident.
Bodily Injury by Disease \$1,000,000 policy limit.
Bodily Injury by Disease \$1,000,000 each employee.

No sub-contractor may exclude executive officers. Workers' Compensation must include all employees.

3.4.3 **Supplier's Personal Property:** Supplier shall bear the risk of loss and the City will not be responsible for any of Supplier's property which may be destroyed or damaged during any obligations, operations, or deliveries by Supplier.

3.4.4 **Cargo Liability:** Supplier shall bear the risk of loss covering Cargo until fully and completely delivered to City.

3.4.5 **Cyber:** The City will not be responsible for providing Supplier any cybersecurity or related coverage.

3.4.6 **Commercial Automobile Liability:**

Limits: \$5,000,000 combined single limit and as otherwise required by the Federal Motor Carrier Safety Act.

The City must be added as an Additional Insured on the Commercial Auto Liability policy.

3.4.7 **Pollution Liability/Spills:**

Limits: \$5,000,000 combined single limit.

3.4.8 **Crime:** The City will not be held responsible for any theft, embezzlement for acts of theft, dishonesty, robbery, disappearance, destruction, or losses related to obligations, operations, or deliveries related to this Agreement. Supplier shall obtain adequate commercial crime insurance coverage.

3.5 **Indemnification and Hold Harmless Agreement:** To the fullest extent permitted by law, Supplier shall, to the extent of the Supplier's negligence, indemnify, hold harmless, and defend the City, its elected officials, employees, agents, volunteers, and consultants against **any** liability of any nature or kind, including, but not limited to, costs and expenses for or on account of any and all causes of action or claims of any character whatsoever arising out of, or alleged to arise from, Supplier's performance of this Agreement or in any way arising out of or **in connection with** any of the operations, deliveries, performance, or **obligations** of Supplier under this Agreement, including, but not limited to, any said operations, deliveries, or obligations subcontracted or assigned to a different person or entity from claims, damages, losses, and expenses, including but not limited to attorneys' fees, which is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, caused by acts or omissions of Supplier or anyone directly or indirectly employed by it or anyone for whose acts Supplier may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder and all claims relating in any way to the release into or upon the air, water, or ground of any petroleum product described in this Agreement from any vessel, tank, vehicle, or pipeline owned or leased by Supplier or any agent, employee, contractor, or subcontractor retained by Supplier. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligation of indemnity which would otherwise exist as to a party or person described in this paragraph.

Furthermore, Supplier holds the City harmless and indemnifies the City from any breach, fines, or penalties, ransomware, or any other first or third-party claims that arise in any way from this Agreement.

3.6 **Waiver of Subrogation:** Supplier waives its right of recovery against the City for damage to real or personal property caused by any peril of loss.

3.7 **Hazardous Substances, Oil, and/or Petroleum Product Spills:** Supplier shall be responsible for any and all costs (direct or indirect) associated with damage and/or cleanup of

any hazardous substance, oil, or petroleum product spill caused by the Supplier, its officers, employees, or agents. This responsibility shall extend to freight carriers hired or contracted by Supplier to deliver the commodity. While on any City property, the Supplier shall comply with all local, state, and federal requirements for the proper handling of hazardous substances, oil, and petroleum products.

ARTICLE IV TERM AND TERMINATION

4.0 **Term:** The Agreement shall have an initial term of two (2) years beginning 24 September 2020. The City reserves the option to extend this contract for two (2) additional one (1) year renewal periods.

4.1 **Termination:** The City may terminate this Agreement at any time upon any of the following grounds:

4.1.1 The Supplier fails to perform any of the services required in this Agreement.

4.1.2 For the convenience of the City, in the City's discretion for any reason whatsoever upon written notice to Supplier. In the event that this Agreement is wrongfully terminated under any of the other grounds enumerated herein, termination shall be treated as a termination for convenience. If this Agreement is terminated for convenience or wrongfully terminated upon any of the other grounds enumerated herein, the indemnification and hold harmless provisions of this Agreement shall remain in force and the Supplier's sole and exclusive remedy is to be compensated for services rendered up to the date of termination.

4.1.3 Force majeure.

4.2 Upon expiration of this Agreement, this Agreement is terminated, if not extended, in accordance with the terms and conditions of this Agreement.

ARTICLE V MISCELLANEOUS

5.0 **Notice to City of Spill:** Supplier shall immediately notify Angel Maldonado, Public Works Department, Fleet Superintendent (Telephone: (252) 329-4831; Cellular: (252) 258-9639) and/or _____, Public Works Department, Parts Manager (Telephone: (252) 329-4533) if any hazardous substance, oil, and/or petroleum product specified under this Agreement is discharged into the air, water, or ground in the course of any delivery under this Agreement to the City.

5.1 **Notice to City of Access Issues:** Supplier shall immediately notify Angel Maldonado, Public Works Department, Fleet Superintendent (Telephone: (252) 329-4831; Cellular: (252) 258-9639) and/or _____, Public Works Department, Parts Manager (Telephone:

(252) 329-4533), should Supplier have any problems accessing any point of delivery to the City.

5.2 **Notice:** Unless otherwise specified herein, any notice or other communication provided for herein by a Party shall be in writing and shall be served upon the other Party by either (A) hand-delivery, (B) electronic mail or facsimile transmission, and/or (C) by overnight courier service (with all fees prepaid) to the receiving Party as follows, or to any other address which either Party may hereafter designate for itself in writing:

City: City of Greenville
Fleet Superintendent
Public Works Department
Physical: 1500 Beatty Street
Greenville, North Carolina 27834

Mailing: Post Office Box 7207
Greenville, North Carolina 27835-7207
Telephone: (252) 329-4831
Cellular: (252) 258-9639
Facsimile: (252) 329-4704
Email: amaldonado@greenvillenc.gov
(Angel Maldonado, Fleet Manager)

With a copy to: City of Greenville
City Attorney's Office
Post Office Box 7207
Greenville, North Carolina 27835
Telephone: (252) 329-4426
Facsimile: (252) 329-4626
Email: emcgirt@greenvillenc.gov
(Emanuel McGirt, City Attorney)

Supplier:

If either Party hereto changes its address or other contact information for purposes of this Agreement, the Party so changing shall give the other Party appropriate written notice of change of address in the manner specified above.

5.3 **Modifications or Amendments:** Any amendments to this Agreement shall be in writing and agreed to by both Parties.

5.4 **Binding Effect:** This Agreement shall be binding upon the Parties, and their successors in interest.

5.5 **Taxes:** The Parties agree that any sales under the Agreement are not subject to local taxes.

5.6 **Iran Divestment Act Certification:** The Supplier hereby certifies that, it is not on the Iran Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. § 147-86.58. The Supplier shall not utilize in the performance of the Agreement any subcontractor that is identified on the Iran Final Divestment List.

5.7 **E-Verify Requirements:** The Supplier shall comply with the requirements of Chapter 64, Article 2 of the North Carolina General Statutes. Furthermore, if the Supplier utilizes a subcontractor, the Supplier shall require the subcontractor to comply with the requirements of Chapter 64, Article 2 of the North Carolina General Statutes. The Supplier represents that the Supplier and its subcontractors are in compliance with the requirements of Chapter 64, Article 2 of the North Carolina General Statutes.

5.8 **Assignment:** Supplier may not assign this Agreement nor any of its rights or obligations under this Agreement, without the express written consent of the City.

5.9 **Default:** In the event Supplier defaults on any of its obligations under this Agreement, the City shall give Supplier a Ten (10) day period to correct said defaults. If Supplier, in the City's sole discretion, fails to correct the said defaults, then the City may take any or all of the following actions:

5.9.1 Terminate this Agreement.

5.9.2 Pursue any and all other remedies available to City at law or in equity.

In the event City employs an attorney or attorneys on account of any violation of any of the terms or conditions of this Agreement by Supplier, Supplier shall pay all expenses incurred including reasonable attorney fees.

5.10 **Severability:** The non-enforceability or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.

5.11 **Headings:** The paragraph headings contained herein are only for convenience and reference, and are not intended to be part of this Agreement or in any manner to define, limit, or describe the scope and intent of this Agreement for the particular paragraph to which they refer.

5.12 The Parties further agree that this Agreement is to be deemed to have been prepared jointly by the Parties hereto, after arm's length negotiations, and that any ambiguity or uncertainty existing herein, if any, shall not be interpreted against the other Party.

5.13 It is expressly understood that this Agreement sets forth the entire agreement of the Parties and supersedes any prior written or oral agreements between them concerning the subject matter contained herein, oral or otherwise, and that there is no other agreement between the Parties other than that contained and incorporated herein.

5.14 The Parties further agree to sign any and all instruments or documents necessary to carry out the full purpose and intent of this Agreement.

5.15 **Choice of Law and Forum; Service of Process:**

5.15.1 This Agreement shall be deemed made in Pitt County, North Carolina and shall be governed by and construed in accordance with the laws of the State of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Pitt County, North Carolina. Such actions shall neither be commenced in nor removed to federal court. This subsection shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection.

5.15.2 “Agent for Service of Process” means every person now or hereafter appointed by Supplier to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, Supplier agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. Supplier will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to Supplier. This subsection (5.15.2) does not apply while Supplier maintains a registered agent in North Carolina with the office of the North Carolina Secretary of State and such registered agent can be found with due diligence at the registered office.

5.16 **Waiver:** No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

5.17 The undersigned hereby certify that this Agreement is made without prior understanding, agreement, or connection with any corporation, firm, or person who submitted bids for obligations covered by this Agreement and this Agreement is in all respects fair and without collusion or fraud. As to Supplier, the undersigned hereby warrants and certifies that he/she is authorized to enter into this Agreement and to execute same on behalf of the Supplier as the act of the said Supplier.

5.18 This Agreement, including any Attachments hereto, which are fully incorporated herein, contains all the terms and conditions agreed upon by the parties. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto.

- A. **Attachment 1**—Informal Bid Request# 20-21-11
- B. **Attachment 2**—Addendum No. ____
- C. **Attachment 3**—Addendum No. ____
- D. **Attachment 4**—**Awarded Firm**'s Bid

Awarded Firm

By: _____

Print Name: _____

Title: _____

Date: _____

CITY OF GREENVILLE

By: _____

Print Name: P.J. Connelly

Title: Mayor

Date: _____

APPROVED AS TO FORM:

BY: _____
Emanuel D. McGirt, City Attorney

PRE-AUDIT CERTIFICATION:

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

Byron Hayes, Director of Financial Services

Date: _____

Account Number: _____

Project Code (if applicable) _____

DRAFT