

## **CITY OF GREENSBORO**

### **PROFESSIONAL SERVICES CONTRACT**

This contract made and entered into this the \_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Greensboro, a municipal corporation of the State of North Carolina (hereafter referred to as the City) and K-M MACHINE COMPANY, INC. (hereafter referred to as the Vendor).

#### **WITNESSETH:**

#### **Professional Services Rendered**

In consideration of the monetary payment hereinafter described in Attachment A, attached hereto and made a part hereof, the Vendor will provide mechanical, electrical and distribution and collection system maintenance services to the City of Greensboro.

#### **Relationship**

The Parties in this contract agree that the Vendor is a professional corporation, and that the relationship created by this contract is that of employer and independent contractor. The Vendor is not an employee of the City of Greensboro, and is not entitled to the benefits provided by employer to its employees, including, but not limited to, group insurance and pension plan. The Vendor may practice his profession for others during those periods when the Vendor is not performing work under this contract for the City.

#### **Supervision and Inspection**

In the performance of the work contemplated in this agreement, the Vendor is an independent contractor with the authority to control and direct the performance of the details of the services that are the subject of this contract. However, the work contemplated in this agreement must meet the approval of the City and shall be subject to City's general rights of inspection and supervision to secure the satisfactory completion thereof.

#### **Specific Duties & Responsibilities**

The specific duties and responsibilities of the Vendor shall include but not be limited to the following:

1. The Consultant is required to have an active State General Contractor's License, City Privilege License, Bonding and Insurance (as described in the subsequent Section titled Insurance), and all other requirements needed to perform mechanical and/or electrical work in the State of North Carolina and the City of Greensboro.
2. The Consultant is responsible for providing all safety training and equipment for their personnel.

3. The Service Provider is responsible for providing trained personnel that are experienced and competent at performing mechanical and/or electrical work on equipment and systems typically utilized in the fields of municipal water treatment and water reclamation to include potable water distribution and wastewater collection systems.
4. The Consultant will provide all necessary tools and equipment. The City at its discretion may provide a portion or all of the materials necessary to perform the work requested. The Consultant shall at all times keep the work site free from the accumulation of waste materials and rubbish.
5. The Consultant shall not initiate any work without receipt of a written work order from the City. The work order will be utilized to provide instructions and specifications for the work requested.
6. The Consultant shall bill work in accordance with the Hourly Rate Proposal Form attached herein and made a part of this contract (Attachment A). Work shall be invoiced and referenced to specific work orders.
7. The normal work hours will be 7:00 a.m. through 3:30 p.m. however work hours shall not be restricted to eight (8) hours per day. The Consultant shall work hours at the discretion of the City and be available, with appropriate notice, to work after normal business hours, on weekends or holidays.
8. The Consultant shall familiarize himself with the City's Safety, Security and other applicable policies prior to conducting work on-site and shall make every reasonable effort to comply with the policies at all times.
9. The Consultant will be called upon to work at the City's convenience.
10. In carrying out the services described herein, the Consultant shall operate in accordance with the Equal Employment Opportunity Act.

## **Term**

The term of this Agreement shall be for a period of 36 months.

## **Compensation**

The City agrees to pay the Vendor an amount not to exceed \$461,500.00. The Vendor will be paid as detailed in Attachment A, attached hereto and made a part hereof. Compensation shall not exceed \$145,500.00 in FY 14-15, \$158,000.00 in FY 15-16 and \$158,000.00 in FY 16-17. Payments on this contract are contingent upon sufficient appropriations being approved by City Council in succeeding fiscal years. Bills for fees or other compensation for Services or expenses shall be submitted to the City in detail sufficient for a proper preaudit and postaudit thereof.

## **Non-Appropriation Clause**

The automatic renewal clause shall not apply to this contract should the Greensboro City Council fail to appropriate funds for the additional term of the contract for the ensuing fiscal year. If this non appropriation occurs the contract shall become void.

## **Invoices**

### **1. Submittal**

Invoices to the City for compensation shall be submitted not more often than monthly. Invoices will be based on 100% of the work completed during the preceding month. Submit invoices by mail to:

Veronica Covert  
City of Greensboro Water Resources Department  
PO Box 3136  
Greensboro, NC 27402-3136

### **2. Receipts Required**

Where invoices are based in part on reimbursable expenses, the Vendor shall collect and maintain receipts for said expenses and shall make the receipts available to the City, if requested. The requirement to retain receipts shall generally follow the established rules of the Federal Internal Revenue Service regarding what type of expenditure must be supported by receipts for income tax purposes.

### **1. Disputed Items**

If any items in any invoices submitted by the Vendor are disputed by the City for any reason, including the lack of supporting documentation, the City shall temporarily delete the item(s) and shall promptly notify the Vendor of dispute and request clarification and/or remedial action. After the dispute has been settled, the Vendor shall include the disputed item on a subsequent regularly scheduled invoice or on a special invoice for the disputed

item only. The undisputed portion of the invoices shall, however, be paid within the normal 30-day period.

### **Payment of Taxes and Insurance**

The Vendor assumes full responsibility for the payment of all assessments, payroll taxes, or contributions, whether State or Federal, as to all employees engaged in the performance of work under this contract. In addition, the Vendor agrees to pay any and all gross receipts, compensation, transaction, sales, use, or other taxes and assessments of whatever nature and kind levied or assessed as a consequence of the work performed or on the compensation paid under this contract.

### **Insurance**

During the performance of the services under this Agreement, the Vendor shall maintain the following insurance:

1. General Liability Insurance, including but not limited to coverage for all premises and non-premises operations, independent contractors, broad form property damage coverage, including explosion, collapse and underground property damage hazards, personal injury liability protection including coverage relating to employment of persons, contractual liability protection, and products and completed operations coverage. This insurance shall provide bodily injury limits of not less than \$1,000,000 for each occurrence and not less than \$2,000,000 in the aggregate, and with property damage limits of not less than \$500,000 for each occurrence and not less than \$500,000 in the aggregate. The General Liability Insurance shall name the City of Greensboro as an additional insured, and the insurance shall be primary and non-contributory to any other insurance that may be available to the City.
2. Professional Liability Insurance with limits of not less than \$1,000,000 for each occurrence and not less than \$2,000,000 in the aggregate. This Professional Liability Insurance shall provide coverage for the claims concerning the Contractor's errors and omissions for the scope of services provided to the City under this Agreement, including but not limited to, claims concerning the preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications, and claims relating to supervisory, inspection, architectural or engineering activities.
3. Automobile Liability Insurance, covering owned, non-owned, hired vehicles and trailers, and City vehicles to be used in connection with this project. This insurance shall provide bodily injury and property damages limits of not less than \$1,000,000 combined single limit/aggregate.

4. Worker's Compensation Insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than \$100,000 for each occurrence. In case any work is sublet under this Agreement, the Vendor shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the subcontractor's employees to be engaged in such work. This Agreement shall be void and of no effect unless the Vendor shall secure and keep in effect during the term of this Agreement the Vendor's compliance with the provisions of the Worker's Compensation laws of the State of North Carolina.

Vendor shall furnish all necessary certificates of insurance and a copy of the insurance policies for all of the insurance coverage described herein before services have begun. At least thirty (30) days written notice shall be given to the City prior to any cancellation, modification, or non-renewal of any insurance required under this Agreement. Renewed policies shall be sent to the City thirty (30) days prior to any expiration date. Original policies or certified copies of policies may be required by the City at any time. It shall be the responsibility of the proposer to insure that all subcontractors comply with the same insurance requirements that he or she is required to meet.

### **Safety**

The proposer will comply, and shall require that all laborers, comply with all Occupational Safety & Health Act (OSHA) regulations and all other current and applicable Federal, State, County, and Municipal safety, health, and environmental Laws and Regulations as well as industry-related best practices. All personnel are to wear OSHA approved safety equipment as needed per job requirements.

### **Amendments**

Alterations, deletions, and/or additions to the terms and conditions of this contract may only be made by the mutual written consent of the parties.

### **Termination for Convenience**

The City, in its sole discretion, may terminate this Agreement in whole or in part whenever the City determines that said termination is in its best interest. Any such termination shall be effected by the delivery to the Vendor of a written notice of termination thirty (30) days before the effective date of the termination.

### **Failure to Comply With Terms of Contract**

Should the Vendor fail to comply with the terms of this contract, the Vendor, upon actual or constructive notice of the default shall have thirty (30) days to remedy the default. Should the Vendor fail to remedy the default, the contract is terminated immediately upon the expiration of the thirty (30) days.

## **Rights**

City retains the exclusive rights to cancel, stop or re-schedule any or all services associated with the Contract.

## **Non-Discrimination Requirements**

In hiring, contracting, and all other acts, Vendor shall abide by all local, State and federal laws and regulations relevant to Minority/Women's Business Enterprises and shall not discriminate on the basis of sex, age, race, creed, color, religion, national origin, or disability.

## **Compliance With Applicable Law**

Any term or condition of the Contract which by operation or existence is in conflict with applicable Local, State, or Federal Law shall be rendered void and inoperative. City and the Vendor agree to accept the remaining terms and conditions.

## **Indemnification**

The Vendor does hereby agree to indemnify and save harmless the City of Greensboro, its officers, agents and employees against all claims, actions, lawsuits and demands, including reasonable attorney fees, made by anyone for any damages, loss or injury of any kind, including environmental, which may arise while the Vendor is performing, or as a result of, work pursuant to this Agreement.

## **Severance**

Should any part of this contract be declared unenforceable, all remaining sections remain in force.

## **Non-Assignment**

The Vendor, without the written approval of the City, shall not assign this contract.

## **Governing Law**

This Agreement is made under, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of North Carolina. Venue for any legal action resulting from this Agreement shall lie in Guilford County.

## **Scope of Agreement**

This Agreement is intended by the parties hereto to be the final expression of their Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made.

## **Confidentiality**

The Recipient will not disclose to any third party, or make any use of the Discloser's Confidential Information except as required by the North Carolina Public Records Act. The Recipient will use at least the same standard of care to maintain the confidentiality of the Discloser's Confidential Information that it uses to maintain the confidentiality of its own Confidential Information, but in no event less than reasonable care. The obligations hereunder will remain in full force with respect to each item of Confidential Information for a period of ten (10) years after Recipient's receipt of that item. However, The City's obligations to maintain software as confidential will survive in perpetuity. "Discloser" means the party providing Confidential Information to the Recipient. "Recipient" means the party receiving Confidential Information from the Discloser. "Confidential Information" means non-public information of a party to this Agreement that is identified as or would be reasonably understood to be confidential and/or proprietary and is marked "confidential" and meets the requirements of North Carolina General Statutes 132-1.2. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Recipient; (ii) the Discloser regularly discloses to third parties without restriction on disclosure; (iii) the Recipient obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation; or (iv) is independently developed by the Recipient without access to Confidential Information.

Pursuant to the North Carolina Public Records Act, trade secrets or confidential information as defined by the North Carolina Public Records Act that are identified as such prior to disclosure to the Recipient is not public information and will not be released to the public by the Recipient except as set out below. Recipient will notify Discloser of any public records request, and if Discloser objects to Recipient disclosing any of the records responsive to the request, Discloser will notify the Recipient in writing within forty-eight (48) hours. If so notified, Recipient will not disclose the records until ordered to do so by a court of competent jurisdiction, and Discloser will enter an appearance as a party in-interest and defend Recipient in any claim, suit, mediation, litigation, or arbitration proceeding concerning the release of the records to which Discloser objected. Discloser will indemnify, save harmless, and pay any and all attorney's fees incurred by Recipient, and any attorney's fees Recipient is ordered to pay to any person(s) or organization(s) as a result of Discloser's objection to the release of the public records. Discloser will also indemnify, save harmless, and pay any and all claims for damages, court costs, or other fees Recipient incurs as a result of Discloser's objection to the release of the records requested pursuant to the North Carolina Public Records Act.

## **E-Verify**

The Vendor certifies that it currently complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and that at all times during the term of this Agreement, it will continue to comply with these requirements. The Vendor also certifies that it will require that all of its subcontractors that perform any work pursuant to this Agreement to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. The terms "Contractor", "Sub-Contractor" and "comply" shall have the same meanings intended by

Chapter 160A Section 20.1(b) of the North Carolina General Statues. Violation of this section shall be deemed a material breach of this Agreement.

# Attachment A

## Mechanical and Electrical Maintenance Services HOURLY RATE PROPOSAL

Mechanical, Electrical, and Distribution and Collections Maintenance Services

### ATTACHMENT E HOURLY RATE PROPOSAL FORM

PROPOSER'S NAME: K-M Machine

FID NUMBER: 56-2198285

**HOURLY RATE PROPOSAL**

DATE 07/29/2014

We understand that by submitting this hourly rate proposal, we are agreeing to all of the terms and conditions of the City of Greensboro's RFP. Below please find our quoted pricing under this RFP.

**1 MECHANICAL**

1.1 Quoted Hourly Billing Rate for the following positions: Rate Sheet Attached

Position	Regular Hourly Rate	2nd Shift Hourly Rate	Overtime Hourly Rate
Foreman/Superintendent	\$	\$	\$
Journeyman Plumber	\$	\$	\$
Journeyman Pipefitter	\$	\$	\$
Certified Welder	\$	\$	\$
Plumbing Apprentice	\$	\$	\$
Laborer	\$	\$	\$
Equipment Operator	\$	\$	\$
Bobcat /Trencher Rental	\$	\$	\$
Backhoe/Loader/Dump truck rental	\$	\$	\$
Crane rental	\$	\$	\$

1.2 Trade Work to be performed by a subcontractor to the On Call Underground Utilities Maintenance: Provide a quoted percentage mark-up that will apply to any quoted subcontractor costs.

Subcontractor's Mark-up/Percentage: 10 %

Material Mark-up/Percentage: 12 %

# Attachment A

## Mechanical and Electrical Maintenance Services HOURLY RATE PROPOSAL

Mechanical, Electrical, and Distribution and Collections Maintenance Services

**2 ELECTRICAL** *N/A*

2.1 Quoted Hourly Billing Rate for the following positions:

### HOURLY RATE PROPOSAL FORM (Cont.)

Position	Regular Hourly Rate	2nd Shift Hourly Rate	Overtime Hourly Rate
Foreman/Superintendent	\$	\$	\$
Journeyman Electrician	\$	\$	\$
Electrician Apprentice	\$	\$	\$
Instrumentation / Electronics Technician	\$	\$	\$
HVAC Technician			
Helper / Laborer	\$	\$	\$
Equipment Operator	\$	\$	\$
Bobcat /Trencher Rental	\$	\$	\$
Backhoe/Loader/Dump truck rental	\$	\$	\$
Crane rental	\$	\$	\$

2.2 Trade Work to be performed by a subcontractor to the On Call Underground Utilities Maintenance: Provide a quoted percentage mark-up that will apply to any quoted subcontractor costs.

Subcontractor's Mark-up/Percentage: 10 %  
 Material Mark-up/Percentage: 12 %

**3 DISTRIBUTION AND COLLECTIONS**

3.1 Quoted Hourly Billing Rate for the following positions: *N/A*

Position	Regular Hourly Rate	2nd Shift Hourly Rate	Overtime Hourly Rate
Foreman/Superintendent	\$	\$	\$
Laborer	\$	\$	\$
Equipment Operator	\$	\$	\$
Bobcat /Trencher Rental	\$	\$	\$
Backhoe/Loader/Dump truck rental	\$	\$	\$
Crane rental	\$	\$	\$

# Attachment A

## Mechanical and Electrical Maintenance Services HOURLY RATE PROPOSAL

### Mechanical, Electrical, and Distribution and Collections Maintenance Services

3.2 Trade Work to be performed by a subcontractor to the On Call Underground Utilities Maintenance: Provide a quoted percentage mark-up that will apply to any quoted subcontractor costs.

Subcontractor's Mark-up/Percentage: 10 %  
Material Mark-up/Percentage: 12 %

Some trades will overlap between the disciplines, please fill in all rates relevant to the discipline and trade positions for the scope of work you are proposing on. The City reserves the right to request additional wage rate information from the Proposer.

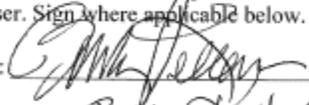
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We, the Proposer, understand that the Proposer's Contractor's license shall remain in force under this Hourly Rate Proposal submission.

We understand that the City of Greensboro reserves the right to award or not award a contract for all items, or any parts thereof, as set forth in detail under the information furnished in the RFP.

The Proposer represents, and it is a condition precedent to acceptance of this proposal, that the Proposer has not been a party to any agreement to submit a fixed or uniform price and that the signatory is authorized to financially obligate the Proposer. Sign where applicable below.

Corporate Seal

SIGNED:   
PRINTED NAME: Bobby Kellam  
TITLE: VP  
DATE: \_\_\_\_\_

*RATE Sheet Attached*  


At the sole discretion of the City, an annual cost escalator of no more than 2% may be added to the submitted rates. A written request from the Contractor at the end of each one year period from the contract date will be required to consider any rate adjustments.

# Attachment A

## Mechanical and Electrical Maintenance Services HOURLY RATE PROPOSAL



### K-M MACHINE COMPANY, INC.

GREENSBORO DIVISION
---------------------

MAINTENANCE WORK / FIELD WORK
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CUSTOMER : CITY OF GREENSBORO	PO#
	JOB#

SCOPE OF WORK	QTY	UNIT	PRICE
7/29/2014			
<p style="text-align: center;"><b>City of Greensboro Maintenance Services</b></p> <p>KM Machine will provide labor and equipment for all maintenance and field work required.                      These prices will include all expendable materials.                      The rates will be as followed.                      \$70.00 an hour per man at regular time.                      \$105.00 an hour per man at overtime.</p> <p><b>All work after 8 hours a day will be considered overtime.</b>                      All work on Saturday &amp; Sunday will be considered overtime.                      All work will be charged from port to port.</p> <p><b>This will include emergency services to the best of our ability.</b>                      All heavy equipment will be charged at our standard rates.                      60 Ton Crane \$160.00 an hour.                      30 Ton Crane and smaller \$100.00 an hour.                      Tractor Trailer \$85.00 an hour.                      All heavy equipment includes operators.</p>			
	<b>TOTAL</b>		

**PRICES GOOD FOR 30 DAYS**

Tony Goots  
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 Office - 910-428-2368  
 Fax - 910-428-4046  
[tgoots@kmmachineco.com](mailto:tgoots@kmmachineco.com)