

INVITATION TO BID
WATER TESTING DEVICES

ITB # FY23-ITB-09



CITY OF CHARLOTTE
NORTH CAROLINA

MARCH 17, 2023

**CITY OF CHARLOTTE – CHARLOTTE WATER
5100 BROOKSHIRE BOULEVARD 2ND FLOOR
CHARLOTTE, NORTH CAROLINA 28216**

Date: **March 17, 2023**

Bid Number: **FY23-ITB-09**

Subject: Invitation to Bid on the following apparatus, supplies, materials, equipment and/or services for:

WATER TESTING DEVICES

This letter extends an invitation for the submission of a bid to supply Charlotte Water, a department of the city of Charlotte, with apparatus, supplies, materials, equipment and/or services as indicated above. Sealed bids for the above will be received by the contracts administration section of Charlotte Water which is located at 5100 Brookshire Boulevard, Charlotte, NC 28216 in the 2nd floor conference room (room 201), until time 10:30 A.M. EST on May 8, 2023. Bids will be opened at the time and place indicated and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base bids and major alternates, if any, will be made available to bidders after the opening of bids. The procurement officer's cell phone shall serve as the official time clock.

As a courtesy, the public may view the bid opening via Microsoft Teams:

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

MeetingID: 273 461 897 417

Passcode: vD7FXA

[Download Teams](#) | [Join on the web](#)

Or call in (audio only)

[+1 872-256-4172,131804556#](#) United States, Chicago

Phone Conference ID: 131 804 556#

CLTWater is not responsible for technical difficulties experienced by those attending via Microsoft Teams and will proceed with opening bids in accordance with Section 1.5.1.

A Virtual Non-Mandatory Pre-Bid conference for the purpose of reviewing the Bid and answering questions will be held on Tuesday, March 28, 2023 at 9:00 A.M. EST Please see information outlined in Section 1.28.

Instructions for the preparation and submission of a Bid are contained in the attached packet. Please read them carefully.

Any changes to the terms, conditions or specifications stated in this ITB will be documented in a written addendum, issued by Charlotte Water. These addenda will be posted on the Internet at <https://charlottenc.gov/Water/Projects/Pages/Opportunities.aspx>, and may be accessed at this website by searching for Bid number **FY23-ITB-09**. Each Bidder is required to acknowledge receipt of all addenda using the space provided on the enclosed Bid Response Form. Please note that we may not consider any Bid that fails to acknowledge receipt of each issued addendum.

A response from your Company to this ITB would be appreciated. Questions should be submitted in writing to **Leigh Murray** at Elizabeth.Murray@charlottenc.gov.

Sincerely,

Leigh Murray
Commodities and Services Purchasing Agent

Checklist for Submitting a Bid:

Bid/Bid Submission Check List: Confirm by placing a check mark in the space provided that as the bidder or proposer the information listed below has been reviewed and complied with in the submission of a response to this Invitation to Bid/Request for Bids.

Step 1-Read the document fully.

Step 2-If you have any questions, send them before the deadline listed in Section 1.9.

If you plan to submit a Bid, you must follow this checklist and must include everything detailed below.

Bid Original and Copies - Please provide the specified number for each format:

- ☐ 1 (One) Copy marked “Original” in a sealed, non-transparent envelope that includes the Bidder’s name, the Bid number, and identification of the equipment, supply and/or service for which the Bid is submitted
- ☐ 1 (One) Copy on a flash drive in a searchable format such as a PDF file or Microsoft Word File

Bid Format - Bids should be formatted as follows:

- ☐ **Section 4, Required Form One: Bid Submission**
- ☐ **Section 4, Required Form Two: Addenda Acknowledgment**
- ☐ **Section 4, Required Form Three: Acceptance of Terms and Conditions**
- ☐ **Section 4, Required Form Four: Non-Discrimination Provision**
- ☐ **Section 4, Required Form Five: References**

The above items constitute all that must be included in the Bid package. If awarded a contract, you will be required to provide an insurance certificate that meets or exceeds the requirements set forth in Section 34 of the Contract Terms and Conditions in Section 5.

It is the Company’s responsibility to check <https://charlottenc.gov/Water/Projects/Pages/Opportunities.aspx> for any addenda or changes to this Project.

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INSTRUCTIONS TO BIDDERS

1.1. Review and Comply

Each reference to this Invitation to Bid (also referred to as “ITB”) includes all components listed in the Table of Contents above. Please review each of them carefully. Bidders will be held accountable for having full knowledge of the contents of this ITB and for performing any due diligence that may be necessary to submit a binding Bid.

1.2. Definitions:

Addendum:	Refers to any and all modifications or additions to this Invitation to Bid that are issued in writing by the City's Procurement Management Division.
Bid:	A bid submitted in response to this Invitation to Bid. A Bid shall be submitted on the Bid Response Forms included in Section 4 of this ITB.
Bid Response Forms:	The forms that a Bidder is required to complete and return as its Bid, as included in Section 4.
Bidder:	A person or entity that submits a Bid.
Business Days:	Monday through Friday from 8:00 a.m. to 5:00 p.m. EST, excluding City-Observed Holidays.
City-Observed Holidays:	The City observes the following holidays, which are subject to change throughout the Contract term: New Year's Day, Dr. Martin Luther King, Jr. Day, Good Friday, Memorial Day, Juneteenth, Independence Day, Labor Day, Veterans Day, Thanksgiving and the day after, and Christmas plus one additional day.
City:	Refers to the City of Charlotte, North Carolina.
Company:	During the solicitation process, refers to a company that has interest in providing the Products and Services. After the solicitation process, refers to a company that enters into a Contract with the City for all or part of the Products and Services covered by this ITB.
Contract:	A contract under which a Bidder agrees to provide all or part of the Products and Services to the City. A Contract shall include the Terms and Conditions set forth in Section 5 of this ITB, together with all attachments referenced therein.
Device:	The water testing devices requested in the specifications Section 3.5.
Procurement:	Charlotte Water Procurement.
Products:	All products that the Bidder agrees to provide to the City as part of its Bid.
Services:	All services that the Bidder agrees to provide to the City as part of its Bid, including but not limited to training, warranty and maintenance.
Specifications:	Written description of the functions or features of the Products and Services for which the City seeks bids, as shown in Section 3.
Terms and Conditions:	The City's standard contractual terms and conditions as set forth in Section 5.

1.3. Contract Documents:

Each Bid constitutes an offer to become legally bound to a Contract with the City incorporating the ITB and the Bidder's Bid. Upon Contract award by City Council, the City will send the successful Bidder the Contract, which shall consist of the Terms and Conditions contained in Section 5 of this ITB, together with all attachments referenced therein.

1.4. Multiple/Alternate Bids:

No Bidder shall submit more than one Bid unless multiple or alternate Bids are requested in the Special Conditions. Unless specifically stated in the Special Conditions, any multiple or alternate Bids must be brought to the City's attention either during the Pre-Bid Conference or submitted in writing at least five (5) days prior to the opening of the Bid.

1.5. Instructions to Bidders/Bid Opening Procedures:

1.5.1 Bids will be opened at the time and place indicated in the advertisement or invitation to bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

For the purpose of establishing the time of Bid opening, the Procurement Officer's cell phone shall serve as the official time clock.

1.5.2 The public may view the bid opening via Microsoft Teams:

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

MeetingID: 273 461 897 417

Passcode: vD7FXA

[Download Teams](#) | [Join on the web](#)

Or call in (audio only)

[+1 872-256-4172,131804556#](#) United States, Chicago

Phone Conference ID: 131 804 556#

CLTWater is not responsible for technical difficulties experienced by those attending via Webex because this option is a courtesy for the public. The official and preferred option is set forth in Section 1.5.1.

1.6. How to Prepare Bid Responses:

All bids shall be prepared as follows:

- Complete the Bid Response Forms provided in Section 4 of this Invitation to Bid. Bid responses must be submitted only on these forms.
- Bid responses must be typewritten or completed in ink, signed by the Bidder or the bidding firm's authorized representative. All erasures or corrections must be initialed and dated by the person who signs the Bid Response Form on behalf of the Bidder.

Bids must be accompanied by accurate descriptions of the exact materials, supplies, vehicles, and/or equipment offered for purchase. The Specifications may require that copies of detailed factory specifications, ratings, technical data, etc. be submitted along with the Bidder's response package.

1.7. How to Submit Bid Responses:

All Bidders shall:

- Submit their Bid in a sealed opaque envelope with the following information written on the outside of that envelope:
 - The Bidder's company name;
 - The Bid number, as indicated on the cover letter to this ITB; and
 - Identification of the equipment, supply and/or service for which the Bid is submitted, as indicated at the top of the cover letter to this ITB.
- Mail or Deliver one (1) unbound original Bid signed in ink by a company official authorized to make a legal and binding offer and one (1) electronic copies on a flash drive in a searchable PDF format or Microsoft Word to the address listed below, to be received no later than **Monday, May 8, 2023, at 10:30 A.M. EST.** The original Bid shall be complete and unabridged, and shall not refer to any other copy of the signed and sealed original for any references, clarifications, or additional information. When received, all Bids and supporting materials, as well as correspondence relating to this ITB, shall become the property of the City.

Please be advised that the electronic copies on a flash drive must be identical to the unbound original. The flash drives are for evaluation purposes only and will not be accepted as the official original Bid. The original Bid signed in ink by a company official must be submitted to be considered a responsive and valid Bid. **Bids sent by facsimile will not be accepted.**

If a Bid is sent by mail or other package delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside. Mailed Bids shall be addressed to:

Charlotte Water
Procurement Department
ATTN: Leigh Murray
5100 Brookshire Blvd
Charlotte, NC 28216

Bids may be mailed, shipped, or hand-delivered to either 1) the Procurement Officer at the bid opening or 2) the secured mailbox located outside the entrance at the above address. The secured mailbox has a security-drop door for packages with a package chute opening of 17"W by 11"H. Packages must be able to fit through this opening; otherwise the Bidder may divide their Bid into multiple packages provided that the outside of the packages are clearly marked "PACKAGE X OF X".

If submitted via mail (by a third party vendor or mail courier): Each Bidder is solely responsible for the timely delivery of their Bid. Bidders accept all risks of late delivery regardless of fault. Any Bid delivered before or after normal operating hours, regardless of the mode of delivery, will not be received by staff.

Regardless of Delivery Method, submissions must be submitted in a **sealed envelope or box** with the following information clearly notated on the face of it:

ITB Submission ENCLOSED
ITB# FY23-ITB-09
Water Testing Devices
Name of Supplier
Address of Supplier

1.8. Trade Secrets and Personal Identification Information:

Definition

Upon receipt by Charlotte Water, all materials submitted by a Bidder (including the Bid) are considered public records except for: (1) material that qualifies as “trade secret” information under N.C. Gen. Stat. § 66-152 et seq. (“Trade Secrets”), or (2) “personal identification information” protected by state or federal law, to include, but not be limited to, Social Security numbers, bank account numbers, and driver’s license numbers (“Personally Identifiable Information” or “PII”).

Instructions for Marking and Identifying Trade Secrets

If any Bid contains Trade Secrets or PII, such Trade Secrets and PII must specifically and clearly be identified in accordance with this Section by clearly separating them from the rest of the Bid. For hard copy documents, it must be submitted in a separate, sealed envelope, marked either “Personally Identifiable Information – Confidential” or “Trade Secret—Confidential and Proprietary Information.” For electronic submissions, it must also be submitted on a separate CD or flash drive. In both hard copy and electronic format, the confidentiality caption stated above must appear on each page of the Trade Secret or PII materials.

Availability of Bids to City Staff and Contractors

By submitting a Bid, each Bidder agrees that the City may reveal any Trade Secret materials and PII contained therein to all City staff and City officials involved in the selection process, and to any outside consultant or other third parties who assist in the selection process or who are hired or appointed by the City to assist in the selection process.

Availability of Bids via Public Records Requests

Any person or entity (including competitors) may request Bids submitted in response to an ITB. Only those portions of ITBs properly designated as Trade Secret or PII are not subject to disclosure. The public disclosure of the contents of a Bid or other materials submitted by a Bidder is governed by N.C. Gen. Stat. §§ 132 and 66-152, et seq.

When determining whether to mark materials as Trade Secret, please note the following:

- Entire Bids may not be marked as Trade Secret; and
- Pricing may not be marked as Trade Secret.

The City may disqualify any Bidder that designates its entire Bid as a Trade Secret or PII, or any portion thereof that clearly does not qualify under applicable law as a Trade Secret or PII. Each Bidder agrees to indemnify, defend, and hold harmless the City and each of its officers, employees, and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material that the Bidder has designated as a Trade Secret or PII. This includes an obligation on the part of the Bidder to defend any litigation brought by a party that has requested Bids or other information that the Bidder has marked Trade Secret or PII.

1.9. Questions:

There are two (2) ways to ask questions about this ITB: (1) submit a question in writing to Leigh Murray at the email address listed below; or (2) ask a question at the Pre-Bid Conference (if one is scheduled). Other than these permitted questions to Leigh Murray, Bidders shall refrain from contacting any other City staff prior to the Bid opening date. **The City is not bound by any statements, representations or clarifications regarding this ITB other than those issued in writing via addenda by the Procurement Officer.**

Leigh Murray
ITB # FY23-ITB-09
E-mail: Elizabeth.Murray@charlottenc.gov

Section One

Instructions to Bidders

Questions should reference the ITB page and topic number. Questions must be submitted by **3:00 P.M. EST on Friday, March 31, 2023**.

The City will post answers to questions posed by prospective Bidders and/or general information concerning this ITB in the form of an addendum to the ITB on the Internet at <https://charlottenc.gov/Water/Projects/Pages/Opportunities.aspx>. It is the responsibility of the prospective Bidder to check the website for any addenda issued for this ITB.

A Non-Mandatory Pre-Bid Conference for the purpose of reviewing the ITB and answering questions regarding the Project will be held virtually via Microsoft Teams on Tuesday, March 28, 2023 at **9:00 A.M. EST**. You are encouraged to attend and have the copy of the ITB with you at that time.

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 269 154 568 839

Passcode: m2CpBa

[Download Teams](#) | [Join on the web](#)

Or call in (audio only)

[+1 872-256-4172](#), [409519915#](#) United States, Chicago

Phone Conference ID: 409 519 915#

1.10. How to Submit an Objection Relating to This Invitation to Bid:

When a Pre-Bid Conference is scheduled, Bidders should either present their objection at that time (either verbally or in writing), or submit a written objection prior to the scheduled Pre-Bid Conference.

When a Pre-Bid Conference is not scheduled, Bidders must submit objections in writing at least ten (10) days prior to the opening of the Bid.

Except for objections raised at the Pre-Bid Conference, all objections must be in writing directed to the Procurement Officer designated in the preceding section.

Failure to object in the manner specified above shall constitute a waiver of any objections the Bidder may have to the terms of this ITB, or anything that occurred in the Bid process through the end of the Pre-Bid Conference.

1.11. Binding Offer:

Each Bid shall constitute a firm offer that is binding for one hundred twenty (120) calendar days from the date of the Bid opening.

1.12. Errors in Bids:

Withdrawal of inadvertently erroneous Bids may be permitted where appropriate, if the request is submitted to the City within seventy-two (72) hours after Bid opening, not including Saturdays, Sundays, and other days the City of Charlotte is not open to the public for business. A request for withdrawal must be made in writing directed to Leigh Murray at Elizabeth.Murray@charlottenc.gov. Consideration of a request to withdraw a bid will be made in accordance with N.C. Gen. Stat. § 143-129.1.

In case of Bidder errors calculating “extended” prices stated in a Bid, the unit prices shall govern.

1.13. City’s Rights and Options:

The City reserves the following rights, which may be exercised at the sole discretion of the City of Charlotte:

- to supplement, amend, substitute or otherwise modify this ITB at any time;
- to cancel this ITB with or without the substitution of another ITB;
- to take any action affecting this ITB, this ITB process or the Products or Services subject to this ITB that would be in the best interests of the City;
- to issue additional requests for information;
- to require one or more Bidders to supplement, clarify or provide additional information in order for the City to evaluate the Bids submitted;
- to conduct investigations with respect to the qualifications and experience of each Bidder;
- to change the Bid opening date or any other dates relevant to this ITB;
- to waive any defect or irregularity in any Bid received;
- to reject any or all Bids;
- to award all, none, or any part of the items that is in the best interest of the City, with one or more of the Bidders responding, which may be done with or without re-solicitation; and
- to enter into any agreement deemed by the City to be in the best interest of the City, with one or more of the Bidders responding.

1.14. Bids on All or Part:

Unless otherwise specified by the City or by the Bidder, the City reserves the right to make award on all or part of the items to be purchased. Bidders may restrict their bids to consideration in the aggregate by so stating in the Bid. However, Bids restricted to consideration in the aggregate must also include a unit price on each item Bid.

1.15. Invitation to Bid Not an Offer:

This ITB does not constitute an offer by the City. No recommendations or conclusions from this ITB process shall constitute a right (property or otherwise) under the Constitution of the United States or under the Constitution, case law, or statutory law of North Carolina.

1.16. Vendor Inclusion:

The City's vendor management philosophy supports a fair, open, and inclusive process that offers the same access and information to all Companies. Although Companies are not required to be registered in the City's vendor registration system prior to submitting a Bid, in order to execute a contract with the City and receive payment from the City, all Companies must register with the City's vendor registration system.

Your registration provides the City with baseline information for your company including location, contact and demographic information, as well as your areas of expertise with specific commodity and/or service descriptions. You will also have the opportunity to complete any applicable certifications if your company desires to establish itself as an SBE, MBE, or WBE. The link below will provide you with the opportunity to complete your registration on-line with the City.

<http://charlottenc.gov/vendors>

1.17. Equal Opportunity:

The City has an equal opportunity purchasing policy. The City seeks to ensure that all segments of the business community have access to supplying the products and services needed by City programs. The City provides equal opportunity for all businesses and does not discriminate against any Bidders regardless of race, color, religion, age, sex, and national origin or disability.

1.18. No Collusion or Conflict of Interest:

By responding to this ITB, the Bidder shall be deemed to have represented and warranted that the Bid is not made in connection with any competing Bidder submitting a separate response to this ITB, and is in all respects fair and without collusion or fraud.

1.19. Anti-lobbying Provision:

Maintaining the integrity of its ITB process is of paramount importance for the City. To this end, we ask each Bidder's cooperation in voluntarily refraining from contacting any members of the Charlotte City Council until the award of this Contract is presented to them for approval.

1.20. Certified Test Report:

If the Specifications or Special Conditions require a certified test report, Bidders shall provide such report at their expense, prior to or with their sealed Bids. The certified test report shall be from a recognized independent testing laboratory or manufacturer's quality control laboratory and shall show all test results and full compliance with the applicable Specifications.

1.21. RESERVED:

1.22. Evaluation of Water Testing Devices:

All Devices submitted will become the property of the City upon receipt by the City. In submitting a Device, each Bidder agrees that the Device does not contain Trade Secret material, and that it may be disclosed by the City to any person or entity in the City's sole discretion. All Devices will be made available for inspection by all Bidders.

Devices must be an exact and true representation of the actual Products that will be offered in response to the ITB. Devices shall be provided at no cost to the City.

The City reserves the right to require additional Devices for further testing if the City deems it necessary. The City also reserves the right to require Bidders to have their Devices tested by an independent laboratory if the City so directs. In such event, the Bidder shall provide the requested additional Devices within five (5) business days at no cost to the City.

Upon receipt of the Devices, a committee of City employees (the "Evaluation Committee") will conduct an evaluation. In making this determination, the Evaluation Committee will inspect the Devices received for compliance with the Specifications listed in Section 3 of this ITB. It is anticipated that the evaluation of the Devices may take two (2) to four (4) weeks to complete.

During the evaluation phase, the City reserves the right to contact Bidders as the City deems necessary with questions or concerns regarding the Devices submitted or with requests for additional documentation, Devices or information. Bidders must promptly comply with all such requests.

The City will evaluate the merits of the grade or quality of the Devices based on the information furnished by the Bidder. The City is not responsible for locating or obtaining any information not identified in the request for approval. The City shall be the sole judge in determining the product acceptability of all products.

The City shall notify the Bidder of the decision in writing and post any approved Device in the form of an addendum to the ITB on the Internet at <https://charlottenc.gov/Water/Projects/Pages/Opportunities.aspx> . The pricing sheet with the approved products will be issued via addenda.

Devices must be mailed and delivered on or before Tuesday, April 4, 2023 during Delivery Hours. Provide two (2) copies of the "ATTACHMENT A" form with your Device shipment.

Delivery Hours are 8:00 A.M. to 3:00 P.M.

Devices should be mailed and addressed to:

**Charlotte Water
ATTN: Don Keaton
Device Sample FY23-ITB-09
ZONE 2
5730 General Commerce Drive
Charlotte, NC 28213**

1.23. Statutory Requirements:

Any Bid submitted in response to this ITB shall be deemed to include full conformance with all statutory requirements of North Carolina and all statutory requirements of the Federal Government, to the extent applicable. It is the responsibility of each Bidder to conduct its own due diligence as to what statutory requirements may apply.

1.24. Guarantor:

If the Bidder is a subsidiary of another entity, the City requires that the Bidder's parent entity provide a guarantee of payment of all of the Bidder's obligations under the Contract. The City may also require that the Bidder obtain a guaranty from an entity other than the parent if the City concludes that such guaranty would be beneficial to protect the City's interest. If the Bidder is not a subsidiary, the City may require that the Bidder obtain a guaranty of payment from another entity if the City concludes that such guaranty would be beneficial to protect the City's interest. If a guarantor is required, the Bidder must: (1) identify a guarantor that is acceptable to the City, (2) provide the City with the same financial information about the guarantor that the Bidder is required to provide about itself under this ITB; and (3) provide the City with a signed, legally binding guaranty agreement from the approved guarantor that is acceptable to the City in the City's sole discretion. Failure to comply with the foregoing shall be grounds for rejection of the Bidder's Bid.

1.25. Award Criteria:

The City reserves the right to award a Contract to the lowest responsive responsible Bidder taking into consideration vendor qualifications and experience, quality, delivery, workmanship, services, and inventory control. The City reserves the right to reject any Bid on the basis of function, compatibility with user requirements of utility, as well as cost.

1.26. RESERVED:

1.27. Procurement Schedule

The following chart shows the schedule of events for the conduct of this ITB. The key events and deadlines for this process are as follows, some of which are set forth in more detail in the Sections that follow:

DATE	EVENT
Friday, March 17, 2023	<i>Issuance of ITB:</i> The City issues this ITB.
Tuesday, March 28, 2023	<i>Non-Mandatory Pre-Bid Meeting</i> to be held virtually per the details indicated in Section 1.28 at 9:00 A.M. EST
Friday, March 31, 2023	<i>Submission of Written Questions After the Pre-Bid Conference.</i> Questions are due by 3:00 P.M. EST

Section One
Instructions to Bidders

DATE	EVENT
Tuesday, April 4, 2023	<i>Device Sample Deadline:</i> Per the details indicated in Section 1.22.
Friday, April 28, 2023	Last Addendum will be posted
Monday, May 8, 2023	<i>Bid Opening.</i> Bids are due by 10:30 A.M EST in accordance with Section 1.7. at Charlotte Water, Procurement Department.
Monday, June 26, 2023	<i>Contract Award by Council.</i>
Tuesday, August 1, 2023	<i>Anticipated Contract Effective Date</i> Company begins providing the Products and Services.

1.28. Non-Mandatory Pre-Bid Meeting (Virtual):

The non-mandatory pre-bid meeting will be held virtually on Tuesday, March 28, 2023 at 9:00 A.M. The public may view the pre-bid meeting via Microsoft Teams.

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

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Or call in (audio only)

[+1 872-256-4172,,409519915#](#) United States, Chicago

Phone Conference ID: 409 519 915#

CLTWater is not responsible for technical difficulties experienced by those attending via Microsoft Teams.

1.29. Contract Award by Charlotte City Council:

The Contract to be awarded under this ITB must be approved by the Charlotte City Council. If such approval is granted, Charlotte Water Procurement will provide the Contract to the Bidder for the Bidder to sign and return. In the event City Council approval is not received within one hundred twenty (120) calendar days after opening of the Bids, the Bidder may request that it be released from the Bid.

TERMS AND CONDITIONS

Each Bid submitted in response to this ITB constitutes an offer to become legally bound to a Contract incorporating terms and conditions set forth in this Section 2 as well as the Terms and Conditions in Section 5. For purposes of this Section, a Bidder that enters into a Contract with the City may be referred to as the “successful Bidder” or the “Company.”

2.1. Contract Types:

The Contract resulting from this Invitation to Bid will be of the type indicated below:

- ✓ Indefinite Quantity: The Contract will be a unit price contract for an indefinite amount of Products and Services to be furnished at specified times, or as ordered. In some cases, indefinite quantity contracts may state a minimum quantity that the City is obligated to order. The City may make available to Bidders information regarding the City’s purchase history or projected estimates of the approximate quantity of Products that will be needed. The City makes no representations as to the accuracy of such information. Each Bidder is required to perform its own due diligence on which to base its bid. Inaccuracy of purchase history or projected quantity estimates provided by the City will not give rise to any claim against the City, or entitle any Bidder to rescind its bid or terminate or amend the Contract.

2.2. Terms of Contract:

- ✓ Unit Price Contract: Contract awarded is for a unit price when product and service needs are based upon indefinite quantities, and where orders will be based on actual needs that may exceed or be less than projections. All expenditures under a unit price contract are contingent upon appropriations having been made by Charlotte City Council.

Contract Terms and Renewal Options: The Contract term shall be for a period of two (2) years from the date of award. The City, at its option, may extend the Contract for up to three (3) additional one-year extensions unless the Bidder objects in writing at least ninety (90) days prior to the beginning of the extension term.

2.3. Notice to Proceed:

The successful Bidder shall not commence work or make shipment under this ITB until duly notified by receipt of an executed Contract from the City and/or through a Purchase Order (PO). If the successful Bidder commences work or makes shipment prior to that time, such action is taken at the Bidder's risk, without any obligation of reimbursement by the City.

2.4. Delivery Time:

When delivery time is requested in this ITB (whether in the form of a specific delivery date or maximum number of days for delivery), time is of the essence. Delivery shall be FOB Destination. Each Bid shall be deemed a binding commitment of the Bidder to meet the delivery time stated herein unless the Bid specifically takes exception. If such delivery time is not met, the City shall be entitled to terminate the Contract immediately for default and/or exercise any other remedies available by law or in equity. However, failure to meet a delivery time will not be considered a breach of this section if such failure is due to a Force Majeure Event as described in Section 42 of the City’s Contract Terms and Conditions in Section 5 of this ITB.

2.5. Prices Are Firm:

Each Bidder warrants the Bid price(s), terms and conditions quoted in its Bid shall be firm for acceptance by the City for a period of one hundred twenty (120) calendar days from the date of the Bid opening. Once award is made and a Contract is in place, prices shall remain firm and fixed for

the entire Contract period, unless revised in accordance with Section 8 of the City's Contract Terms and Conditions located in Section 5 of this ITB.

If your Bid includes price increases over the term of the Contract, such increases must be clearly designated on the Bid Response Package (Pricing Sheet) Form which will be provided via addenda after Devices have been evaluated.

2.6. Price Adjustment As Part of the Bid:

To submit price adjustments as part of your Bid, you must: (1) comply with any limitations or instructions that are stated in this ITB; and (2) state very clearly in the Pricing Sheet of your Bid Response Forms the proposed price adjustments or, if permitted, the price adjustment formula. Restrictions and instructions regarding price adjustments are provided in the Bid Response Forms. It is important that the Bidder check for these restrictions and instructions carefully. In some instances price adjustments are not permitted as part of the Bid. In other instances formula price increases are prohibited due to the difficulty they create in comparing Bid prices.

2.7. Quality:

Unless this ITB specifically states otherwise for a particular item, all components used to manufacture or construct any supplies, materials or equipment or Products provided under this Invitation to Bid shall be: (a) new; (b) the latest model; (c) of the best quality and highest grade workmanship; and (d) in compliance with all applicable federal, state and local laws, regulations and requirements. By "new", the City means that the item has been recently produced and has not been previously sold or used.

2.8. Inspection at Bidder's Site:

The City reserves the right to inspect the equipment, plant, store or other facilities of a Bidder prior to Contract award, and during the Contract term from time to time as the City deems necessary to confirm that such equipment, plant, store or other facilities conform with the Specifications and are adequate and suitable for proper and effective performance of the Contract. Such inspections shall be conducted during normal business hours and upon at least three (3) days' notice to the Bidder (except that a store may be inspected at any time during regular store hours without notice).

2.9. Certification of Independent Price Determination:

By submission of a Bid, the Bidder certifies, and in the case of a joint Bid each party thereto certifies as to its own organization, that in connection with this procurement:

The prices in the Bid have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

Unless otherwise required by law, the Bidder has not knowingly disclosed the prices that have been quoted in this bid directly or indirectly to any other Bidder or to any competition prior to the opening of the bid; and

No attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not to submit a Bid for the purpose of restricting competition.

2.10. Insurance:

All Bidders must indicate compliance with the Insurance requirements stated in Section 34 Section 5, Contract Terms and Conditions.

SPECIFICATIONS

3.1. Background:

Charlotte Water's top priority is making sure that the water is safe, clean, and reliable. To ensure the water is clean after repairs, Field Operations utilizes two types of devices in harsh conditions in the field: a colorimeter and a turbidimeter. Both devices are used to measure the quality of the water. The current supplier's devices are very sophisticated and expensive to repair. Charlotte Water, Field Operations is looking to procure colorimeters and turbidimeters that can measure turbidity and chlorine according to Charlotte Water's requirements.

A colorimeter is used to measure chlorine levels in the water. The gaseous or liquid form of chlorine (Cl₂) is a water additive used by Charlotte Water to control microbes as drinking water travels from the plant to the customers.

A turbidimeter is used to measure the cloudiness of water. Turbidity has no health effects but can interfere with disinfection and provide a medium for microbial growth. Turbidity is measured in Nephelometric Turbidity Units or NTUs.

3.2. Scope:

The scope of this Invitation to Bid (ITB) is to establish a contract for the purchase, delivery and other inherently related activities to procure colorimeters and turbidimeters in accordance with the specifications and terms and conditions set forth in this ITB. The colorimeter and turbidimeter manufacturer is to be determined by low bid, so long as it meets the requirements set forth herein.

All Products and component parts furnished under the Contract shall be new, shall comply with the specifications and terms and conditions set forth in this ITB, and shall operate in full compliance with these Specifications.

3.3. Quantities:

The City does not guarantee quantities and will purchase quantities of Products according to actual need during the term of the Contract. The quantities listed in this ITB are estimates only, and may differ substantially from actual quantities ordered. Multiple orders will be placed on an as needed basis during the term of the Contract. Estimated annual utilization is 20 – 50 of each Device.

3.4. Product Specifications:

1. Portable Turbidimeter: Minimum Turbidity Reading must be less than 1.00 NTU
2. Chlorine, Pocket Colorimeter: Minimum Chlorine Residual must be Greater than .50 mg/L (Recommended Chlorine levels are 0.20 mg/L – 2.00 mg/L, 0.5 mg/L is recommended Chlorine level)

3.5. Device Standards:

It is essential that all devices be in compliance with the latest industry standards and other laws and requirements concerning approved procedures for the analysis of field parameters in the state of North Carolina. All standards must meet the minimum requirements of the North Carolina Department of Environmental Quality.

Total Residual Chlorine : DPD Colorimetric (no longer includes Hach 10014)	SM 4500 Cl G-2011 and Hach 8167
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Turbidity	SM 2130 B-2011
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These documents are intended to provide the approved procedures and requirements for measurement of field parameters. You may refer to the approved method reference, instrument manufacturer's manual or other resources for additional information. [Field Approved Procedures and Technical Assistance](#).

3.6. Warranty:

All Products supplied under the Contract shall be covered by a manufacturer's written guarantee and/or warranty that such Products will be free from defects in materials, workmanship and performance for a minimum of one year; merchantable and in full conformity with the Specifications set forth in this ITB, industry standards, dimension charts and Bidder's descriptions, representations and devices. The Company shall administer the warranty on the City's behalf, and shall ensure that the manufacturer repairs or replaces at no charge to the City all Products that violate either the above warranty or the applicable manufacturer's warranty.

1. The Company shall provide the City with two copies of the manufacturer's written warranty for each item of equipment.
2. It shall be the responsibility of the manufacturer to pay all shipping and crating costs associated with warranty repairs.

3.7. Pricing:

Bids shall be submitted as a fixed unit price per item that includes shipping and delivery, any discounts, vendor markup/profit, item cost and storage. No other charges are allowed. Unit Prices shall remain firm at the time of order placement. No minimum ordering thresholds, by Product or by order, shall apply. Pricing submitted shall not increase during the first year of the Contract term. Price adjustments may be considered for the renewal period, if Charlotte Water approves in accordance with Section 8 "Price Adjustment" of the sample contract within Section 5 "Sample Contract Terms and Conditions" of this ITB.

3.8. Delivery:

All Products provided under this contract must be delivered F.O.B. Destination within thirty (30) days from the placement of order. Workdays are Monday through Friday, excluding recognized City, State and Federal holidays. Delivery and freight charges are to be included in discount price. Failure to comply with this requirement shall be cause to terminate this contract unless such failure is confined to infrequent and isolated instances, which do not involve major purchases.

Each order delivered must have a packing slip enclosed. The packing slip must clearly show the purchase order number, items ordered, unit of measure, contract pricing, items enclosed and identify any items on backorder.

3.9. Delivery Personnel:

All delivery personnel of the successful Bidder may be subject to background checks at the discretion of the City. Bids shall include company policies regarding selection of personnel who will be frequenting City facilities.

3.10. Invoices:

The Company must submit invoices monthly to the City's Management & Financial Services Department, Finance Division. Invoices must include the item number, description, unit cost,

quantity and extended price, and contract or purchase order number of each item purchased. Every invoice must also include the City department that placed the order and be submitted to City of Charlotte Accounts Payable per the billing instructions of the subsequent Contract. Add specific requirements as needed (i.e. electronic billing, etc.)

1. It is acknowledged and agreed that having correctly priced invoices is a material element of the bid to the City. Failure by the Company to submit correct invoices may be grounds for termination of the contract. Without limiting the City's right to terminate the contract for incorrect pricing on invoices, the Company agrees to pay the City a service fee for correcting invoices equal to twenty-five dollars (\$25) for each item incorrectly priced on an invoice. Payment must be in the form of a deduction from other amounts owed to the Company.
2. Invoices must include only Products and Services that have been delivered and completed.
3. As a condition of payment, the Company must invoice the City for Products and Services within 60 days after such Products and Services are delivered. The Company waives the right to charge the City for any products or services that have not been invoiced to the City within 60 days after such products or services were delivered.

3.11. Award of Contract:

The City reserves the right to award this contract based on the lowest responsive responsible bidder taking into consideration vendor qualifications and experience, quality, delivery, workmanship and any applicable environmentally preferable attributes associated with the product or services.

The City also reserves the right to award contract(s) by item, combination of items or grand total, whichever is in the best interest of the City.

Multiple awards may be made as a result of this ITB if doing so will ensure that any ensuing contract(s) will allow the City to fulfill current and future requirements or in the best interest of the City.

The City reserves the right to add items excluded under this Invitation to Bid, or to delete items, which are included under this Invitation to Bid.

3.12. City Contracting Requirements:

The City will enter into an Agreement written by the City with the successful Bidder that contains the terms and conditions set forth in this ITB and sample Contract included as Section 5. Each Bidder must state specifically in its bid response any exceptions to the terms and conditions included in this ITB, or the sample Contract and any proposed additional terms or conditions deemed important by the Bidder. The City will take any such exceptions and proposed additions into account during the evaluation process. Any terms and conditions that the Bidder does not specifically object to will be incorporated into the resultant Agreement. Notwithstanding the foregoing, the City reserves the right to change the proposed contractual terms and conditions prior to contract award if it is in the City's best interest to do so.

The terms and conditions set forth in this ITB are not all inclusive. The City may propose additional terms and conditions based on the responses to this ITB and the City's analysis of the successful bid.

The term "Contract" shall refer to the contract entered into between the City and the successful Bidder, and the term "Company" shall refer to the successful Bidder.

3.13. Items Under Contract:

The City reserves the right to add or delete items to this Contract if particular items should become discontinued or an upgraded item becomes available to the industry market. Any new or replacement items added will be subject to bid statute requirements. The City may also delete Product items included in this Contract if the items are no longer needed by the City.

3.14. Company Personnel Removal or Replacement:

The City will have the right to require the removal and replacement of any personnel of the Company or the Company's subcontractors who are assigned to provide services to the City.

3.15. Applicable Laws:

The Bidder agrees to make itself aware of and comply with, and cause its subcontractors to comply with, all federal, state and local laws, regulations and ordinances relating to the performance of this Contract or to the products and services delivered hereunder, including without limitation E-Verify, workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and OSHA. The Company further agrees to obtain all verifications, permits and licenses applicable to the performance of this Contract. If any violation of this Section has occurred or does occur, the Company will indemnify and save harmless the City from all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, interest charges and other liabilities (including settlement amounts) incurred on account of such violation.

3.16. Permitting Responsibilities:

All permits and inspections are the sole responsibility of the successful Bidder.

3.17. No Limitations on Disclosure.

All Bidders agrees that the City shall be able to disclose and distribute to any persons or entities, without restriction, all Products, devices and other Products provided under in the course of this bid process or under the Contract. The Company specifically agrees that the City can and will provide devices of the Products provided under this Contract to the Company's competitors in any future procurement process.

3.18. City Department Participation:

Other City Departments shall be permitted to purchase Product items defined in this Contract. The Company shall be responsible for obtaining valid identification of such employees, and for verifying that such individuals are employed by the City and are authorized to make such purchases.

3.19. Returns and Restocking Charges:

The Company or applicable manufacturer must pick up any merchandise to be returned within twenty-four (24) hours after the City notifies the Company of the return. The City will not pay restocking fees for merchandise that has been returned unless it is subject to minimum inventory requirements under this ITB or is a specialty item and the City has been notified, at the time of placement of order, of the potential restocking charge. The Company will issue a credit memo to the City within seven (7) calendar days of the return.

3.20. Placement of Orders:

All orders will be placed by City designated personnel on an as needed basis for the quantity required at the time during the term of the Contract. Orders will be placed by means of a purchase order, or other approved authorization method.

REQUIRED FORMS

**BID SUBMISSION FORM
ITB # FY23-ITB-09
WATER TESTING DEVICES**

This Bid is submitted by:

Company Name: _____
State of Incorporation: _____
Representative (printed): _____
Representative (*signed*): _____
Address: _____
City/State/Zip: _____
Telephone: _____
(Area Code) Telephone Number
Facsimile: _____
(Area Code) Fax Number
E-Mail Address: _____

By signing above, the Bidder agrees that the City reserves the right to reject any and all Bids, to award multiple Contracts by line item, combination of items, or grand total according to the best interest of the City, to waive formalities, technicalities, to recover and re-bid this ITB. Bids are valid for one hundred twenty (120) calendar days from Bid Opening.

The representative signing above hereby certifies and agrees that the following information is correct:

1. Bid/Bid document has been signed by authorized bidder/proposer official.
2. Bid/Bid package has been properly labeled per the instructions. (See Section 1.7)
3. Bid/Bid package contains all of the Bid/Bid Response Package Forms:
 - Bid Submission - Form One
 - Addenda Acknowledgement - Form Two
 - Acceptance of Terms and Conditions – Form Three
 - Non-Discrimination Certification Compliance - Form Four
 - Bidder References - Form Five

ADDENDA ACKNOWLEDGEMENT FORM

**ITB # FY23-ITB-09
WATER TESTING DEVICES**

Addenda acknowledgement. Please acknowledge receipt of all addenda by including this form with your Bid. All addenda will be posted to the Charlotte Water's Contract Opportunities Site at <https://charlottenc.gov/Water/Projects/Pages/Opportunities.aspx> :

Addenda Receipt: The Bidder confirms receipt of any and all addenda issued for this Invitation to Bid/Request for Bids (Bidder to list all addenda received):

Addendum #

Date Issued

_____	_____
_____	_____
_____	_____

The signature below certifies that the above information has been verified as complete.

Date:

Bidder:

Print name of Bidder

By:

Signature:

Print name and title of signatory

ACCEPTANCE OF TERMS AND CONDITIONS FORM
ITB # FY23-ITB-09
WATER TESTING DEVICES

I, the undersigned Bidder agrees to provide all Products and Services requested in the ITB for the price(s) set forth in the Pricing Sheet, all in strict conformity with the terms, conditions and specifications set forth in the ITB (including any addenda or amendments).

I, the undersigned, hereby acknowledge that my company was given the opportunity to indicate any Trade Secret materials or Personally Identifiable Information ("PII") as detailed in Section 1.6. I understand that the City is legally obligated to provide my Bid documents, excluding any appropriately marked Trade Secret information and PII, upon request by any member of the public. As such, my company has elected as follows:

___ The following section(s) of the of the Bid are marked as Trade Secret or PII: _____

___ No portion of the Bid is marked as Trade Secret or PII.

I, the undersigned, hereby acknowledge that my company was given the opportunity to provide exceptions to the ITB Specifications and/or Contract Terms and Conditions as included herein as **Exhibit A**. As such, I have elected to do the following:

___ Include exceptions to the Contract Terms and Conditions in the following section of my Bid: _____

___ Not include any exceptions to the Contract Terms and Conditions.

The signature below certifies that: (a) the Bidder's Bid complies with the requirements of this Invitation to Bid; and (b) that the Bidder takes no exception to the terms of the ITB other than those listed in the chart contained in this Form.

(Please Print Name)

Date

Authorized Signature

Title

Company Name

NON-DISCRIMINATION PROVISION
ITB # FY23-ITB-09
WATER TESTING DEVICES

All requests for bids or Bids issued for City contracts shall include a certification to be completed by the Bidder or Proposer in substantially the following form:

The undersigned Bidder or Proposer hereby certifies and agrees that the following information is correct:

1. In preparing the enclosed Bid, the Bidder has considered all bids submitted from qualified, potential subcontractors and suppliers, and has not engaged in discrimination as defined in **Section 2**.
2. For purposes of this Section, discrimination means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor or supplier on the basis of race, ethnicity, gender, age, religion, national origin, marital status, familial status, sexual orientation, gender identity, gender expression or disability or any otherwise unlawful form of discrimination. Without limiting the foregoing, discrimination also includes retaliating against any person or other entity for reporting any incident of discrimination.
3. Without limiting any other remedies that the City may have for a false certification, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the Bid submitted with this certification, and terminate any contract awarded based on such Bid. It shall also constitute a violation of the City's Commercial Non-Discrimination Ordinance and shall subject the Bidder to any remedies allowed thereunder, including possible disqualification from participating in City contracts or bid processes for up to two years.
4. As a condition of contracting with the City, the Bidder agrees to promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation and selection of suppliers and subcontractors in connection with this solicitation process. Failure to maintain or failure to provide such information shall constitute grounds for the City to reject the Bid and to any contract awarded on such bid or Bid. It shall also constitute a violation of the City's Commercial Non-Discrimination Ordinance, and shall subject the Bidder to any remedies that are allowed thereunder.
5. As part of its bid, the Bidder shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against Bidder in a legal or administrative proceeding alleging that Bidder discriminated against its subcontractors, vendors or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.
6. As a condition of submitting a bid to the City, the Bidder or Proposer agrees to comply with the City's Commercial Non-Discrimination Policy as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder.

NAME OF COMPANY: _____

BY: _____ TITLE: _____

SIGNATURE OF AUTHORIZED OFFICIAL: _____

DATE: _____

REFERENCES
ITB # FY23-ITB-09
WATER TESTING DEVICES

Company Name: _____

List three (3) clients excluding the City of Charlotte, for whom you have provided services similar to those outlined in this Invitation to Bid, for reference check:

NAME OF FIRM:	
ADDRESS OF FIRM:	
CONTACT PERSON:	
TELEPHONE NUMBER:	
FAX NUMBER:	
NAME OF FIRM:	
ADDRESS OF FIRM:	
CONTACT PERSON:	
TELEPHONE NUMBER:	
FAX NUMBER:	
NAME OF FIRM:	
ADDRESS OF FIRM:	
CONTACT PERSON:	
TELEPHONE NUMBER:	
FAX NUMBER:	

ATTACHMENT A**DEVICE EVALUATION FORM
ITB # FY23-ITB-09
WATER TESTING DEVICES**

Company Name: _____

Please provide two (2) copies of this form with your Device shipment per Section 1.22 of the Instruction to Bidders.

Company Name and Address:	
Contact Name:	
Contact Number:	
Contact Email:	
Device #1 Portable Turbidimeter Manufacturer / Part #: Warranty Included (yes/ no)? Please explain your warranty plan.	
Device #2 Chlorine, Pocket Colorimeter Manufacturer / Part #: Warranty Included (yes/ no)? Please explain your warranty plan.	
Additional Maintenance Service Agreement Options Available (yes/ no)?	

**If you are only providing one Device for evaluation, please make a note on the form by the Device name.

For Internal Use Only:

Date/ Time Received at Zone 2: _____

Does Device meet Specifications (Yes or No)?: _____

CONTRACT TERMS AND CONDITIONS

Parties will execute a contract similar to the contract terms and conditions as used in this Section of the ITB. The term "Contract" shall refer to the agreement entered into between the City and the Supplier, and the term "Company" shall refer to the Supplier.

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

**CONTRACT NO. _____
CONTRACT TO PROVIDE
WATER TESTING DEVICES**

This Contract (the "Contract") is entered into as of this ___ day of _____ 2023 (the "Effective Date"), by and between (insert Company name), a corporation doing business in North Carolina (the "Company"), and the City of Charlotte, a North Carolina municipal corporation (the "City").

STATEMENT OF BACKGROUND AND INTENT

- A. The City issued an Invitation to Bid (ITB Number FY23-ITB-09) dated **March 17, 2023** requesting bids from qualified firms to provide the City with (insert product/service description), hereafter referred to as ("Products"). This Invitation to Bid, together with all attachments and any amendments, is referred to herein as the "ITB."
- B. The Company submitted a Bid in response to ITB # FY23-ITB-09 on (insert date). This Bid, together with all attachments and separately sealed confidential trade secrets, is referred to herein as the "Bid."
- C. The City awarded this Contract on _____, 2023 to the Company to provide **WATER TESTING DEVICES** to the City all in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and conditions contained in this Contract, the parties agree as follows:

A G R E E M E N T

- 1. INCORPORATION OF EXHIBITS.** The following exhibits are attached to this Contract and incorporated into and made a part of this Contract by reference:

Exhibit A: Pricing Sheet (Bid Response Form **X** as submitted by the Company)

Exhibit B: Specifications (Section 3 of the ITB and all addenda thereto, marked to show any exceptions taken by the Company in its Bid)

Exhibit C: Bid Response Forms (the Bid Response Forms contained in Section 4 of the ITB and submitted by the Company, except for Form **X**, the Pricing Sheet)

Exhibit D: Additional Materials (Any additional materials submitted by the Company to describe the Products or Services)

Each reference to this Contract shall be deemed to include all Exhibits, any conflict between language in an Exhibit to this Contract and the main body of this Contract shall be resolved in favor of the main body of this Contract. The materials in Exhibit D shall be deemed incorporated into this Contract only to the extent they do not conflict with the main body of this Contract or any of the other Exhibits. Any conflict between Exhibit D and any other Exhibit shall be resolved in favor of the other Exhibit. Any limitations of liability, limitations of warranty, exclusion of damages or similar

terms contained in Exhibit D shall be deemed in conflict and shall be excluded. Each reference to **(insert company name)** in the Exhibits and Appendices shall be deemed to mean the Company.

2. **DEFINITIONS.** The following terms shall have the following meanings for purposes of this Contract (including all exhibits):
 - 2.1 **EFFECTIVE DATE.** The term “Effective Date” refers to the effective date identified in the first paragraph of this Contract.
 - 2.2 **PRODUCTS.** The term “Products” shall mean WATER TESTING DEVICES and all other related items the Company agreed to provide to the City in its Bid.
 - 2.3 **SERVICES.** The term “Services” shall include all services that the Company agreed to provide to the City in its Bid.
3. **TERM.** The initial term of this Contract will be for two (2) years from the Effective Date with an option to renew for three (3) additional one-year terms. This Contract may be extended only by a written amendment to this Contract signed by both parties.
4. **AGREEMENT TO PROVIDE PRODUCTS AND SERVICES.**
 - 4.1 The Company shall provide the Products and Services in accordance with the terms and conditions set forth in this Contract and the attached Exhibits when ordered from time to time by the City. Except as set forth Exhibit A, the prices set forth in Exhibit A constitute all charges payable by the City for the Products and Services, and all labor, materials, equipment, transportation, facilities, storage, information technology, permits, and licenses necessary for the Company to provide the Products and Services. The Company shall perform any Services for the City on site at the City’s facilities in Charlotte, North Carolina, except as otherwise stated in this Contract or agreed in writing by the City.
 - 4.2 **Placement of Orders:** All orders will be placed by personnel designated by the City on an as needed basis for the quantity required at the time during the term of this Contract.
5. **OPTIONS AND ACCESSORIES.** The City may, in its discretion, purchase from the Company options and accessories beyond what is called for in the Specifications, provided that such purchase does not create unfairness so as to defeat the purpose of the bid statutes, and provided the City is authorized by law to make such purchases without a formal bid process.
6. **DOCUMENTATION.** The company will provide for all Products purchased under this Contract written or electronic documentation that is complete and accurate, and sufficient to enable City employees with ordinary skills and experience to utilize such Products for the purpose for which the City is acquiring them.
7. **COMPENSATION.** The City shall pay the Company for the Products and Services delivered in compliance with the specifications at the unit prices set forth in Exhibit A. This amount **constitutes** the maximum fees and charges payable to the Company in the aggregate under this Contract and will not be increased except by a written amendment duly executed by both parties in compliance with the price adjustment provisions set forth in Exhibit A. The Company shall not be entitled to charge the City any prices, fees or other amounts that are not listed in Exhibit A.
8. **PRICE ADJUSTMENT.**
 - 8.1 The price(s) stated in this Contract shall not increase for the entire two (2)-year term of this Contract. The prices shall also not increase during the three (3), one-year renewal option terms unless the City approves a price adjustment in writing in accordance with the following terms:

SECTION 5 CONTRACT TERMS AND CONDITIONS

- 8.1.1 Price increases shall only be allowed when justified in the City's sole discretion based on legitimate, bona fide increases in the cost of materials. No adjustment shall be made to compensate the Company for inefficiency in operation, increase in labor costs, or for additional profit.
- 8.1.2 To obtain approval for a price increase, the Company shall submit a written request to the Procurement Office representative, at the address listed below and/or via email at Elizabeth.Murray@charlottenc.gov, together with written documentation sufficient to demonstrate that the increase is necessary based on a legitimate increase in the cost of materials. The request must state and fully justify the proposed price increase per unit over the price originally proposed.

City of Charlotte
Charlotte Water Procurement
5100 Brookshire Blvd.
Charlotte, NC 28216

- 8.1.3 No proposed price increase shall be valid unless accepted by the City in writing. The City may approve such price increase for the remaining term of this Contract or for a shorter specified period, in the City's sole discretion. If the City rejects such price increase, the Company shall continue performance of this Contract.
 - 8.1.4 If the City approves a price increase pursuant to this Section and the market factors justifying the increase shift so that the increase is no longer justified, the City shall have the right to terminate the price increase and revert back to the prices that were in effect immediately prior to the increase. The Company shall notify the City in writing if the market factors on which the City granted the increase change such that the City's reasons for granting the increase no longer apply.
 - 8.2 If the Company's unit prices for any Products and/or Services should decrease, the Company shall provide the affected Products and/or Services at the lower discounted price. The Company will provide the City with prompt written notice of all decreases in unit prices.
 - 8.3 If a Product becomes unavailable, or if a new Product becomes available, the Company will promptly send the City a proposed revised version of Exhibit A. The City reserves the right to add or delete items to this Contract if particular items should become discontinued or an upgraded item becomes available to the industry market. Any new or replacement items added may be subject to bid statute requirements. At no additional cost to the City, the Company may substitute any Product or Service to be provided by the Company, if the substitute meets or exceeds the Specifications, is compatible with the City's operating environment and is of equivalent or better quality to the City. Any substitution will be reflected in a written signed change order.
9. **BILLING.** Each invoice sent by the Company shall include all reports, information and data required by this Contract (including the Exhibits) necessary to entitle the Company to the requested payment. The Company shall send one (1) copy only of each invoice using one of the following options:
- E-mail one (1) copy of each invoice to cocap@charlottenc.gov. The Company shall not mail invoices that have been sent via e-mail.
- The City is not tax exempt from sales tax. The Company shall include all applicable State and County sales taxes on the invoice and not combined with the cost of the goods.
- Payment of invoices shall be due within thirty (30) days after the City has received all of the following: (a) an accurate, properly submitted invoice; (b) all reports due for the month covered by

the invoice; and (c) any other information reasonably requested by the City to verify the charges contained in the invoice.

10. **CONTRACT MONITORING.** The City shall have the right to audit the Company's compliance with the terms and conditions of the Contract at such times as the City deems appropriate. Unless the City elects to terminate the Contract, the Company shall develop a written action plan to correct any Contract deficiency identified during these compliance audits, and shall submit such plan to the City within thirty (30) days of notification of non-compliance.
11. **REPORTING.** The Company shall provide such written reports of purchasing and expenditures as may be requested by the City from time to time, including without limitation any reports described in the Specifications.
12. **AUDIT.** During the term of the Contract and for a period of three (3) years after termination or expiration of this Contract for any reason, the City shall have the right to audit, either itself or through a third party, all books and records (including but not limited to the technical records) and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of the Contract or the City's payment obligations. The City shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Company. However, if non-compliance is found that would have cost the City in excess of \$5,000 but for the audit, then the Company shall be required to reimburse the City for the cost of the audit.
13. **GENERAL WARRANTIES.** Company represents and warrants that:
 - 13.1 It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of (Company's State of Incorporation), and is qualified to do business in North Carolina;
 - 13.2 It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;
 - 13.3 The execution, delivery, and performance of this Contract have been duly authorized by Company;
 - 13.4 No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Contract;
 - 13.5 In connection with its obligations under this Contract, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and
 - 13.6 The Company shall not violate any agreement with any third party by entering into or performing this Contract.
14. **ADDITIONAL REPRESENTATIONS AND WARRANTIES.** Company represents warrants and covenants that:
 - 14.1 The Products and Services shall comply with all requirements set forth in this Contract, including but not limited to the attached Exhibits;
 - 14.2 All work performed by the Company and/or its subcontractors pursuant to this Contract shall meet industry accepted standards, and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
 - 14.3 Neither the Services, nor any Products provided by the Company under this Contract will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party; and

SECTION 5 CONTRACT TERMS AND CONDITIONS

- 14.4 The Company and each of its subcontractors have complied and shall comply in all material respects with all applicable federal, state and local laws, regulations and guidelines relating to the performance of this Contract or to the products and services delivered hereunder, including but not limited to E-Verify, and shall obtain all applicable verifications, permits, and licenses.
15. **COMPLIANCE WITH LAWS.** All Products and Services delivered under this Contract shall be in compliance with all applicable federal, state and local laws, regulations and ordinances. In performing the Contract, the Company shall obtain and maintain all licenses and permits, and comply with all federal, state and local laws, regulations and ordinances.
16. **DELIVERY TIME.** When delivery time is requested in the ITB, (whether in the form of a specific delivery date or maximum number of days for delivery) time is of the essence. The Company's Bid shall be deemed a binding commitment of the Company to meet the delivery time stated herein unless the Bid specifically takes exception. If such delivery time is not met, the City shall be entitled to terminate the Contract immediately for default and/or exercise any other remedies available at law or in equity. However, failure to meet a delivery time will not be considered a breach of this section if such failure is due to a Force Majeure Event as described in Section 42 below.
17. **QUALITY.** Unless this Contract specifically states otherwise for a particular item, all components used to manufacture or construct any supplies, materials or equipment or Products provided under this Contract shall be: (a) new; (b) the latest model; (c) of the best quality and highest grade workmanship; and (d) in compliance with all applicable federal, state and local laws, regulations and requirements. By "new", the City means that the item has been recently produced and has not been previously sold or used.
- Whenever this Contract states that a Product or Service shall be in accordance with laws, ordinances, building codes, underwriter's codes, applicable A.S.T.M. regulations or similar expressions, the requirements of such laws, ordinances, etc., shall be construed to be minimum requirements that are in addition to any other requirements that may be stated in this Contract.
18. **DESIGN AND/OR MANUFACTURER REQUIREMENT.** All Products and Services shall meet the Specifications set forth in Section 3 of the ITB.
19. **INSPECTION AT COMPANY'S SITE.** The City reserves the right to inspect the equipment, plant, store or other facilities of the Company during the Contract term from time to time as the City deems necessary to confirm that such equipment, plant, store or other facilities conform with the Specifications and are adequate and suitable for proper and effective performance of the Contract. Such inspections shall be conducted during normal business hours and upon at least three (3) days' notice to the Company (except that a store may be inspected at any time during regular store hours without notice).
20. **PREPARATION FOR DELIVERY.**
- 20.1 Condition and Packaging. All containers/packaging shall be suitable for handling, storage or shipment, without damage to the contents. The Company shall make shipments using the minimum number of containers consistent with the requirements of safe transit, available mode of transportation routing. The Company will be responsible for confirming that packing is sufficient to assure that all the materials arrive at the correct destination in an undamaged condition ready for their intended use.
- 20.2 Marking. All cartons shall be clearly identified with the City purchase order number and the name of the department making the purchase. Packing lists must be affixed to each carton identifying all contents included in the carton. If more than one carton is shipped, each carton

must be numbered and must state the number of that carton in relation to the total number of cartons shipped (i.e. 1 of 4, 2 of 4, etc.).

- 20.3 Shipping. The Company shall follow all shipping instructions included in the ITB, the City's purchase order or in the Contract.
21. **ACCEPTANCE OF PRODUCTS/SERVICES.** The Products delivered under this Contract shall remain the property of the Company until the City physically inspects, actually uses and accepts the Products. In the event Products provided to the City do not comply with the Contract, the City shall be entitled to terminate the Contract upon written notice to the Company and return such Products (and any related goods) to the Company at the Company's expense. In the event the Services provided under this Contract do not comply with the Contract, the City reserves the right to cancel the Service and rescind any related purchase of products upon written notice to the Company. The remedies stated in this Section are in addition to and without limitation of any other remedies that the City may have under the Contract, at law or in equity.
22. **GUARANTEE.** Unless otherwise specified by the City, the Company unconditionally guarantees the materials and workmanship on all Products and Services. If, within the guarantee period any defects occur due to a faulty Product or Services (including without limitation a failure to comply with the Specifications), the Company at its expense, shall repair or adjust the condition, or replace the Product and/or Services to the complete satisfaction of the City. These repairs, replacements or adjustments shall be made only at such time as will be designated by the City to ensure the least impact to the operation of City business.
23. **NO LIENS.** All Products shall be delivered and shall remain free and clear of all liens and encumbrances.
24. **MANUFACTURER OR DEALER ADVERTISEMENT.** No manufacturer or dealer shall advertise on Products delivered to the City without prior approval by the City.
25. **RIGHT TO COVER.** If the Company fails to comply with any term or condition of the Contract or the Company's response to the ITB, the City may take any of the following actions with or without terminating the Contract, and in addition to and without limiting any other remedies it may have:
- a. Employ such means as it may deem advisable and appropriate to obtain the applicable Products and/or Services (or reasonable substitutes) from a third party; and
 - b. Recover from the Company the difference between what the City paid for such Products and/or Services on the open market and the price of such Products and/or Services under the Contract or the Company's response to the ITB.
26. **RIGHT TO WITHHOLD PAYMENT.** If Company breaches any provision of the Contract, the City shall have the right to withhold all payments due to the Company until such breach has been fully cured.
27. **RESERVED**
28. **OTHER REMEDIES.** Upon breach of the Contract, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.
29. **TERMINATION.**
- 29.1 **TERMINATION FOR CONVENIENCE.** The City may terminate the Contract at any time without cause by giving sixty (60) days prior written notice to the Company. As soon as practicable after receipt of a written notice of termination without cause, Company shall submit a statement to the City showing in detail the Services performed under this Contract

through the date of termination. The forgoing payment obligation is contingent upon the Company having provided the City with written documentation reasonably adequate to verify the number of hours of Services rendered through the termination date and the percentage of completion of each task..

29.2 TERMINATION FOR DEFAULT BY EITHER PARTY. By giving written notice to the other party, either party may terminate this Contract upon the occurrence of one or more of the following events:

29.2.1 The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Contract, provided that, unless otherwise stated in this Contract, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or

29.2.2 The other party attempts to assign, terminate or cancel this Contract contrary to the terms hereof; or

29.2.3 The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

Any notice of default pursuant to this Section shall identify and state the party's intent to terminate this Contract if the default is not cured within the specified period.

29.3 ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE CITY. By giving written notice to the Company, the City may also terminate this Contract upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

29.3.1 The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Contract, Company's Bid, or any covenant, agreement, obligation, term or condition contained in this Contract; or

29.3.2 The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Contract, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Contract, or failure to provide the proof of insurance as required by this Contract.

29.4 NO EFFECT ON TAXES, FEES, CHARGES, OR REPORTS. Any termination of the Contract shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to the City, nor relieve the Company of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Company from any claim for damages previously accrued or then accruing against the Company.

29.5 OBLIGATIONS UPON EXPIRATION OR TERMINATION. Upon expiration or termination of this Contract, the Company shall promptly (a) return to the City all computer programs, files, documentation, data, media, related material and any other recording

devices, information, or compact discs that are owned by the City; (b) provide the City with sufficient data necessary to migrate to a new vendor, or allow the City or a new vendor access to the systems, software, infrastructure, or processes of the Company that are necessary to migrate to a new vendor; and (c) refund to the City all pre-paid sums for Products or Services that have been cancelled and will not be delivered.

- 29.6 **NO SUSPENSION.** In the event that the City disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in this Contract, the Company agrees that it will not terminate this Contract or suspend or limit the delivery of Products or Services or any warranties or repossess, disable or render unusable any Software supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.
- 29.7 **AUTHORITY TO TERMINATE.** The City Manager or their designee is authorized to terminate this Contract on behalf of the City.
- 29.8 **TRANSITION SERVICES UPON TERMINATION.** Upon termination or expiration of this Contract, the Company shall cooperate with the City to assist with the orderly transfer of the Products, Services, functions and operations provided by the Company hereunder to another provider or to the City as determined by the City in its sole discretion. The transition services that the Company shall perform if requested by the City include but are not limited to:
 - 29.8.1 Working with the City to jointly develop a mutually agreed upon transition services plan to facilitate the termination of the Services; and
 - 29.8.2 Notifying all affected vendors and subcontractors of the Company of transition activities;
 - 29.8.3 Performing the transition service plan activities;
 - 29.8.4 Answering questions regarding the products and services on an as-needed basis; and
 - 29.8.5 Providing such other reasonable services needed to effectuate an orderly transition to a new system.
30. **NO DELAY DAMAGES.** Under no circumstances shall the City be liable to the Company for any damages arising from delay, whether caused by the City or not.
31. **MULTIPLE CONTRACT AWARDS.** This Contract is not exclusive. The City reserves the right to award multiple contracts for the Products and Services required by this Contract if the City deems multiple Contracts to be in the City's best interest.
32. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties established by this Contract is solely that of independent contractors, and nothing contained in this Contract shall be construed to (i) give any party the power to direct or control the day-to-day activities of the other; (ii) constitute such parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; (iii) make either party an agent of the other for any purpose whatsoever, or (iv) give either party the authority to act for, bind, or otherwise create or assume any obligation on behalf of the other. Nothing herein shall be deemed to eliminate any fiduciary duty on the part of the Company to the City that may arise under law or under the terms of this Contract.
33. **INDEMNIFICATION.** To the fullest extent permitted by law, the Company shall indemnify, defend and hold harmless each of the "Indemnitees" (as defined below) from and against any and all "Charges" (as defined below) paid or incurred any of them as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Work or any Products or deliverables provided to the City pursuant to this Contract ("Infringement Claims"); (ii)

seeking payment for labor or materials purchased or supplied by the Company or its subcontractors in connection with this Contract; or (iii) arising from the Company's failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from a violation of any federal, state or local law, regulation or ordinance by the Company or any its subcontractors (including without limitation E-Verify or other immigration laws); or (v) arising from any claim that the Company or an employee or subcontractor of the Company is an employee of the City, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like. For purposes of this Section: (a) the term "Indemnitees" means the City and each of the City's officers, officials, employees, agents and independent contractors (excluding the Company); and (b) the term "Charges" means any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts) or any other legal theory or principle, in connection with an Infringement Claim.

- 34. INSURANCE.** Throughout the term of the Contract, the Company shall comply with the insurance requirements described in this Section. In the event the Company fails to procure and maintain each type of insurance required by this Section, or in the event the Company fails to provide the City with the required certificates of insurance, the City shall be entitled to terminate the Contract immediately upon written notice to the Company.

The Company agrees to purchase and maintain the following insurance coverage during the life of the Contract with an insurance company acceptable to the City of Charlotte, authorized to do business in the State of North Carolina:

- a. **Automobile Liability:** Bodily injury and property damage liability covering all owned, non-owned, and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident; and, \$1,000,000 property damage, or \$1,000,000 combined single limit each occurrence/aggregate.
- b. **Commercial General Liability:** Bodily injury and property damage liability as shall protect the successful Company and any subcontractor performing work under the Contract from claims of bodily injury or property damage which arise from performance of the Contract, whether such work is performed by the Company, any subcontractor or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, services, completed operations, personal injury liability and contractual liability assumed under the indemnity provision of the Contract.
- c. **Workers' Compensation:** Meeting the statutory requirements of the State of North Carolina and Employers Liability - \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit, providing coverage for employees and owners.

The City shall be named as additional insured under the commercial general liability insurance for operations or services rendered under this Contract. The Company's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Consultant's operations under this agreement. The Company and each of its subcontractors shall and does waive all rights of subrogation against the City and each of the Indemnitees, as defined in Section 5.1.

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The Company shall not commence any work in connection with the Contract until it has obtained all of the types of insurance set forth in this Section, and such insurance has been approved by the City. The Company shall not allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.

All insurance policies shall be with insurers qualified and doing business in North Carolina recognized by the Secretary of State and the Insurance Commissioner's Office. The Company shall furnish the City with proof of insurance coverage by certificates of insurance accompanying the Contract.

Certificates of all required insurance shall contain the provision that the City will be given thirty (30) days written notice of any intent to amend or terminate by either the insured or the insuring company. All insurance certificates must include this Contract number in the description field.

The City shall be exempt from, and in no way liable for any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.

- 35. COMMERCIAL NON-DISCRIMINATION.** **Company Name** agrees to comply with the Non-Discrimination Policy set forth in Chapter 2, Article V of the Charlotte City Code, which is available for review at <http://library.municode.com/index.aspx?clientId=19970> and incorporated herein by reference. **Company Name** consents to be bound by the award of any arbitration conducted thereunder.
- 36. COMPANY WILL NOT SELL OR DISCLOSE DATA.** The Company will treat as confidential information all data provided by the City in connection with this agreement. City data processed by the Company shall remain the exclusive property of the City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by this agreement.
- 37. WORK ON CITY'S PREMISES.** The Company will ensure that its employees and agents shall, whenever on the City's premises, obey all instructions and directions issued by the City's project manager with respect to work on the City's premises. The Company agrees that its personnel and the personnel of its subcontractors will comply with all rules, regulations and security procedures of the City when on the city's premises.
- 38. BACKGROUND CHECKS.** The Company agrees that it has conducted or will conduct background checks on all personnel who will be working at the Charlotte service facility or delivering Products or Services under the Contract. The Company will conduct such background checks prior to the personnel commencing work hereunder, whether as part of the Company's standard pre-employment screening practices or otherwise. The Company will complete a background check on an annual basis for each person working at the Charlotte facility. Background check will include at a minimum:
- a. Criminal records search,
 - b. Identification verification; and
 - c. Proof of authorization to work in the United States.
- The Company agrees if any personnel does not meet the background qualifications, he/she shall not be assigned to perform services under this Contract. The Company will notify the City immediately if a background check reveals any conviction(s). If there is any question as to whether any personnel meets the background qualifications, prior to assignment of any Services under this Contract, the Company shall contact the City immediately.
- 39. RESERVED.**

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- 40. NOTICES.** Any notice, consent or other communication required or contemplated by this Contract shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below. Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by telefax or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment, or waiver of any provision of this Contract shall be sent to:

For The Company:	For The City:
	Leigh Murray
	Charlotte Water Procurement Unit
	5100 Brookshire Blvd.
	Charlotte, NC 28216
	Phone: (980) 766-7570
	E-mail: Elizabeth.Murray@charlottenc.gov
With Copy To:	With Copy To:
	Mandana Vidwan
	Senior Assistant City Attorney
	600 East Fourth Street
	Charlotte, NC 28202
	Phone: (980) 432-4834
	E-mail: Mandana.Vidwan@charlottenc.gov

All other notices shall be sent to the other party's Project Manager at the most recent address provided in writing by the other party.

- 41. SUBCONTRACTING.** The Company shall not subcontract any of its obligations under this Contract without the City's prior written consent. In the event the City does consent in writing to a subcontracting arrangement, Company shall be the prime contractor and shall remain fully responsible for performance of all obligations which it is required to perform under this Contract. Any subcontract entered into by Company shall name the City as a third party beneficiary.
- 42. FORCE MAJEURE.** Neither party shall be liable for any failure or delay in the performance of its obligations pursuant to the Contract, and such failure or delay shall not be deemed a default of the Contract or grounds for termination hereunder if all of the following conditions are satisfied:

If such failure or delay:

- Could not have been prevented by reasonable precaution;
- Cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
- If, and to the extent, such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, public health emergencies, epidemics, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.

An event that satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the affected party shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as

long as (a) such Force Majeure Event continues and (b) the affected party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

Upon the occurrence of a Force Majeure Event, the affected party shall promptly notify the other by telephone (to be confirmed by written notice within five (5) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than fifteen (15) days, the City shall have the right to terminate the Contract by written notice to the Company.

Notwithstanding anything contained herein to the contrary, strikes, slow-downs, walkouts, lockouts, and industrial disputes of the Company or its subcontractors shall not constitute “Force Majeure Events” and are not excused under this provision. Nothing in the preceding Force Majeure provisions shall relieve the successful Company of any obligation it may have regarding disaster recovery, whether under the Contract or at law.

43. CONFIDENTIALITY.

43.1. DEFINITIONS. As used in this Contract, The term “Confidential Information” shall mean any information, in any medium, whether written, oral or electronic, not generally known in the relevant trade or industry, that is obtained from the City or any of its suppliers, contractors or licensors which falls within any of the following general categories:

- 43.1.1. Trade secrets. For purposes of this Contract, trade secrets consist of information of the City or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.
- 43.1.2. Information of the City or its suppliers, contractors or licensors marked “Confidential” or “Proprietary.”
- 43.1.3. Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.
- 43.1.4. Information contained in the City’s personnel files, as defined by N.C. Gen. Stat. 160A-168. This consists of all information gathered by the City about employees, except for that information which is a matter of public record under North Carolina law.
- 43.1.5. Citizen or employee social security numbers collected by the City.
- 43.1.6. Computer security information of the City, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.
- 43.1.7. Local tax records of the City that contains information about a taxpayer’s income or receipts.
- 43.1.8. Any attorney / client privileged information disclosed by either party.
- 43.1.9. Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.

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- 43.1.10. The name or address of individual home owners who, based on their income, have received a rehabilitation grant to repair their home.
- 43.1.11. Building plans of city-owned buildings or structures, as well as any detailed security plans.
- 43.1.12. Billing information of customers compiled and maintained in connection with the City providing utility services.
- 43.1.13. Other information that is exempt from disclosure under the North Carolina public records laws.

Categories 43.1.3 through 43.1.13 above constitute “Highly Restricted Information,” as well as Confidential Information. The Company acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) the Company will also comply with any more restrictive instructions or written policies that may be provided by the City from time to time to protect the confidentiality of Highly Restricted Information.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential Information shall include information disclosed or revealed within one year prior to the date of this Contract.

- 43.2. RESTRICTIONS. Company shall keep the Confidential Information in the strictest confidence, in the manner set forth below:

- 43.2.1. Company shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by the City in writing.
- 43.2.2. Company shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an agent, subcontractor or vendor of the City or Company having a need to know such Confidential Information for purpose of performing work contemplated by written agreements between the City and the Company, and who has executed a confidentiality agreement incorporating substantially the form of this the Contract. Company shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted to any third party without the City’s prior written consent.
- 43.2.3. Company shall not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
- 43.2.4. Company shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.
- 43.2.5. Company shall use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, vendors, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Contract.
- 43.2.6. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, Company shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a

protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.

- 43.2.7. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.
- 43.2.8. Company shall restrict employee access to the Confidential Information to those employees having a need to know for purposes of their jobs.
- 43.2.9. Company shall take reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Contract. The Company shall have each of its employees who will have access to the Confidential Information sign a confidentiality agreement which provides the City and its vendors, licensors, subcontractors, employees and taxpayers the same level of protection as provided by this Contract.
- 43.3. EXCEPTIONS. The City agrees that Company shall have no obligation with respect to any Confidential Information that the Company can establish:
 - 43.3.1. Was already known to Company prior to being disclosed by the City;
 - 43.3.2. Was or becomes publicly known through no wrongful act of Company;
 - 43.3.3. Was rightfully obtained by Company from a third party without similar restriction and without breach hereof;
 - 43.3.4. Was used or disclosed by Company with the prior written authorization of the City;
 - 43.3.5. Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, Company shall first give to the City notice of such requirement or request;
 - 43.3.6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Company shall take reasonable steps to obtain an agreement or protective order providing that this Contract will be applicable to all disclosures under the court order or subpoena.

44. MISCELLANEOUS.

- 44.1 ENTIRE AGREEMENT. This Contract, including all Exhibits and Attachments constitute the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Contract supersedes all prior agreements, negotiations, representations and proposals, written or oral. Notwithstanding the foregoing, the parties agree that the ITB and the Bid are relevant in resolving any ambiguities that may exist with respect to the language of this Contract
- 44.2 AMENDMENT. No amendment or change to this Contract shall be valid unless in writing and signed by the party against whom enforcement is sought. Amendments that involve or increase in the amounts payable by the City may require execution by a Department Director, the City Manager, or an Assistant City Manager; depending on the amount. Some increases may also require approval by City Council.

SECTION 5 CONTRACT TERMS AND CONDITIONS

- 44.3 **GOVERNING LAW AND JURISDICTION.** North Carolina law shall govern the interpretation and enforcement of this Contract, and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). All legal actions or other proceedings relating to this Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Contract, the parties submit to the jurisdiction of such courts and hereby irrevocably waive any and all objections which they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.
- 44.4 **BINDING NATURE AND ASSIGNMENT.** This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign this Contract without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void. For purposes of this Section, a Change in Control, as defined in Section 42.8 constitutes an assignment.
- 44.5 **SEVERABILITY.** The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Contract or the Exhibits shall not affect the validity of the remaining portion of this Contract or Exhibits so long as the material purposes of this Contract can be determined and effectuated. If any provision of this Contract or Exhibit is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 44.6 **NO PUBLICITY.** No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Contract or the City in any manner without the prior written consent of the City. Notwithstanding the foregoing, the parties agree that the Company may list the City as a reference in responses to requests for proposals, and may identify the City as a customer in presentations to potential customers.
- 44.7 **WAIVER.** No delay or omission by either party to exercise any right or power it has under this Contract shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Contract shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Contract shall be effective unless in writing and signed by the party waiving the rights.
- 44.8 **CHANGE IN CONTROL.** In the event of a change in “Control” of the Company (as defined below), the City shall have the option of terminating this Contract by written notice to the Company. The Company shall notify the City within ten days of the occurrence of a change in control. As used in this Contract, the term “Control” shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.
- 44.9 **NO BRIBERY.** The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the foregoing has bribed or attempted to bribe an officer or employee of the City in connection with this Contract.
- 44.10 **FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES.** The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Company further agrees that it will at all times during the term of this Contract be in compliance with all applicable

SECTION 5 CONTRACT TERMS AND CONDITIONS

federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the work.

44.11 TAXES. The Company shall pay all applicable federal, state and local taxes which may be chargeable against the Products and/or Services.

44.12 SURVIVAL OF PROVISIONS. Those Sections of the Contract and the Exhibits, which by their nature would reasonably be expected to continue after the termination of the Contract shall survive the termination of the Contract, including but not limited to the following:

- "Term"
- "General Warranties"
- "Additional Representations and Warranties"
- "Guarantee"
- "Other Remedies"
- "Termination"
- "Insurance"
- "Indemnification"
- "Notices"
- "Confidentiality"
- "Miscellaneous"

44.13 NON-APPROPRIATION OF FUNDS. If City Council does not appropriate the funding needed by the City to make payments under this Contract for a given fiscal year, the City will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the City will promptly notify the Company of the non-appropriation and this Contract will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the City, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Contract.

44.14 PRECLUSION OF BLACK DIAMOND PRODUCTS FOR PAVEMENT SEALANT WORK.

44.14.1 Sec. 18-77. Definitions. High PAH Pavement Product means a product, material or substance that contains greater than 0.1% (1000 ppm) PAH by weight and is intended for use on an asphalt or concrete surface. High PAH pavement product may contain coal tar, coal tar pitch volatiles, RT-12, refined tar, steam-cracked petroleum residues, heavy pyrolysis oil, steam-cracked asphalt, pyrolysis fuel oil, heavy fuel oil, ethylene tar, ethylene cracker residue, or a variation of those substances assigned the chemical abstracts service (CAS) numbers 65996-92-1, 65996-93-2, 65996-89-6, 8007-45-2, 64742-90-1, or 69013-21-4.

44.14.2 Use of High PAH Pavement Products Prohibited. No Person shall use, or permit to be used, a high PAH pavement product within the City. For the purposes of this subsection, the term "high PAH pavement product" means a product, material or substance that contains greater than 0.1% (1000 ppm) polycyclic aromatic hydrocarbons (PAH) by weight, and, is intended for use on an asphalt or concrete surface, including but not limited to, a driveway, playground, parking area, sidewalk, pathway, or roadway.

44.15 NC REQUIRED TERMS. The following terms are incorporated into this Contract for compliance with state law:

SECTION 5 CONTRACT TERMS AND CONDITIONS

- 44.15.1 E-Verify. Company will comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and shall require each of its subcontractors to do so as well.
- 44.15.2 NC Prohibition on Contracts with Companies that Invest in Iran or Boycott Israel. Company certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58 (collectively, the “Treasurer’s IDA List”); (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a company engaged in the boycott of Israel (such designation being referred to as the “Treasurer’s IB List”); and (iii) it will not take any action causing it to appear on the Treasurer’s IDA List or the Treasurer’s IB List during the term of this Contract. In signing this Contract Company further agrees, as an independent obligation, separate and apart from this Contract, to reimburse the City for any and all damages, costs and attorneys’ fees incurred by the City in connection with any claim that this Contract or any part thereof is void due to Company appearing on the Treasurer’s IDA List or the Treasurer’s IB List at any time before or during the term of this Contract.
- 44.16 PRE-AUDIT. No pre-audit certificate is required under N.C. Gen. Stat. 159-28(a) because this Contract is for an indefinite quantity with no minimum purchase requirement. Notwithstanding anything contained herein to the contrary, this Contract does not require the City to purchase a single product or service, and a decision by the City to not make any purchase hereunder will violate neither this Contract nor any implied duty of good faith and fair dealing. The City has no financial obligation under this Contract absent the City’s execution of a valid and binding purchase order or contract addendum containing a pre-audit certificate.”

[Signature Page Follows]

**EXHIBIT A
PRICING SHEET
FY23-ITB-09**

INTENTIONALLY LEFT BLANK AND WILL BE COMPLETED IN FINAL CONTRACT

**EXHIBIT B
SPECIFICATIONS
FY23-ITB-09 AND ALL ADDENDA**

INTENTIONALLY LEFT BLANK AND WILL BE COMPLETED IN FINAL CONTRACT

**EXHIBIT C
BID RESPONSE FORMS
FY23-ITB-09**

INTENTIONALLY LEFT BLANK AND WILL BE COMPLETED IN FINAL CONTRACT

**EXHIBIT D
ADDITIONAL MATERIALS**

INTENTIONALLY LEFT BLANK AND WILL BE COMPLETED IN FINAL CONTRACT

ATTACHMENT 1