

**INVITATION TO BID
CONFINED ENTRY EQUIPMENT**

ITB#269-2017-CES



**CITY OF CHARLOTTE
NORTH CAROLINA**

SEPTEMBER 16, 2016



**5100 Brookshire Boulevard
Charlotte, NC 28216**

Date: September 16, 2016

Bid Number: 269-2017-CES

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

CONFINED ENTRY EQUIPMENT

This letter extends an invitation for the submission of a bid to supply the **City of Charlotte** with apparatus, supplies, materials, equipment and/or services as indicated above.

Sealed bids for the above will be received on the second floor conference room at Charlotte Water located in the 2nd floor Conference Room, 5100 Brookshire Blvd., Charlotte, NC 28216 until **2:00 pm EST** on **October 6, 2016** at which time they will be opened and publicly read. Time will be established by time.gov

Late, Faxed, or e-mailed responses will not be accepted.

A Pre-Bid conference for the purpose of reviewing the ITB and answering questions regarding the Project will be held on September 23, 2016 in the 2nd floor Conference Room, 5100 Brookshire Blvd., Charlotte, NC 28216 until at 10:00 AM EST. You are encouraged to attend and to bring a copy of the ITB with you at that time.

Please read this Invitation for Bid (ITB) in its entirety as is contains specific product requirements, insurance requirements, and the instructions for the preparation and submission of a bid are contained in the attached packet.

Any changes to the terms, conditions or specifications stated in this Invitation to Bid will be documented in a written addendum, issued by the Charlotte Water Procurement. These addenda will be posted on Charlotte Water website <http://cmucontracts.charmeck.org> and may be accessed at this website by searching under Commodities-Invitation for Bid **Confined Entry Safety Products** or bid number **269-2016-CES**.

Charlotte Water requires each Bidder to acknowledge receipt of all addenda using the space provided on the enclosed Form 2: Addenda Receipt. **Please note that we will not consider any bid that fails to acknowledge receipt of each issued addendum.**

A response from your firm to this Invitation to Bid would be appreciated.

Questions should be directed to **Adrienne Lewis** at alewis@charlottenc.gov.

Sincerely,

Adrienne Lewis
Procurement Commodities and Services Manager

1.1 Review and Comply: This Invitation to Bid consists of the following components:

- "Cover Letter:"** the letter that appears on the first two pages of this Invitation to Bid;
- Section 1:** General instructions regarding the bid process (called "*Instructions To Bidders*");
- Section 2:** The City's standard contractual terms and conditions (called the "*Terms and Conditions*")
- Section 3:** Specifications that describe the functions or features of the products and services for which the City seeks bids (called "*Specifications*");
- Section 4:** Insurance and indemnity requirements (called "*Insurance Requirements*");
- Section 5:** The forms that a Bidder is required to complete and return as its Bid (called the "*Bid Response Forms*");
- Section 6:** The form contract that the City and the successful Bidder will sign upon award of a contract by City Council (called the "Form Contract");
- Addenda:** refers to any and all modifications or additions to this Invitation to Bid that are issued in writing by the City's Charlotte Water Procurement.

Each reference to this Invitation to Bid (also referred to as "ITB") includes all components listed 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:

- Bid:** A bid submitted in response to this ITB. A Bid shall be made on the Bid Response Forms included in **Section 5** of this ITB.
- Bidder:** A person or entity that submits a Bid.
- City:** The City of Charlotte, North Carolina.
- Company:** A Bidder 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 Form Contract set forth in **Section 6** of this ITB, together with all attachments referenced therein.
- 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.

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 Form Contract contained in Section 7 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 How to Prepare Bid Responses: All bids shall be prepared as follows:

All Bidders shall:

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#269-2016-CES
Confined Entry Safety Products
Name of Submitter/Vendor
Address of Submitter/Vendor**

If submitted via mail the outside sealed Submission envelope or box must contain the aforementioned information clearly identified on the face of the box or envelope.

If submitted via hand delivery, the Submission envelope must be placed inside the brown wood bid box labeled **“Construction and Commodities Only”** which is located on the 2nd floor Lobby at 5100 Brookshire Blvd., Charlotte, NC 28216. Or delivered directly to Monica Henson on day proposals are due.

Package Size Limitations:

- Packages must be the following dimensions or smaller: 12”W x 8.25”H x 11.5”D.
- If the package is larger, it must be separated into smaller packages with the outside of the package clearly marked “PACKAGE X OF X”.

Additional Information:

- **Proposer shall allow enough time to sign in at the reception desk and obtain a visitor badge in order to access the 2nd floor.**
- **No responsibility will be attached to the City for prematurely opening of a Proposal that is not properly addressed or identified.**
- **Each Proposer is solely responsible for the timely delivery of their Proposals.**
- **Proposers accept all risks of late delivery regardless of fault.**
- **Any Proposals received after the date and time specified, regardless of the mode of delivery, shall not be considered.**
- **The Procurement Officer will confirm receipt of Proposal to all Proposers via email within 24 hours of the Proposal deadline.**

One (1) unbound original bid, signed in ink by a company official authorized to make a legal and binding offer shall be complete and unabridged and shall not refer to any other copy of the signed/sealed original for any references, clarifications, or additional information. Regardless of Delivery Method, submissions must be submitted in a sealed

All documents must be received no later than **October 6, 2016 no later than 2:00 PM EST.**

Section 1 Instructions to Bidders

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 copy on flash drive must be identical to the unbound original. The electronic copy is 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.**

Late, e-Mailed, or faxed will not be accepted.

Mail or Deliver to:
Charlotte Water-Procurement Unit
5100 Brookshire Boulevard
Charlotte, NC 28216
Attn: **Adrienne Lewis**

Bids not received by the time and date specified in the Cover Letter of this Invitation to Bid will not be opened or considered, unless the delay is a result of the negligence of the City, its agents, or assigns.

Note that the Bid opening date listed above is based on the assumption that one or more Bidders will submit samples of alternate products for evaluation by the City. In the event no samples are submitted, or in the event the evaluation does not require as much time as anticipated, the City may move up the Bid opening date by issuing a written addendum to this ITB. The City reserves the right to change the Bid opening date, or any other dates relevant to this procurement process, at any time in its sole discretion.

- 1.6 Trade Secrets/Confidentiality:** Upon receipt at the Charlotte Water Procurement, your Bid is considered a public record except for material which qualifies as "trade secret" information under N.C. Gen. Stat. 66-152 et. seq. After the Bid opening your Bid will be provided to City staff and others who participate in the evaluation process, and to members of the general public who submit public records requests. To properly designate material as trade secret under these circumstances, each Bidder must take the following precautions: (a) any trade secrets submitted by a Bidder must be submitted in a separate, sealed envelope marked "Trade Secret - Confidential and Proprietary Information - Do Not Disclose Except for the Purpose of Evaluating this Bid," and (b) the same trade secret/confidentiality designation must be stamped on each page of the trade secret materials contained in the envelope.

Do not attempt to designate your entire Bid as a trade secret, and do not attempt to designate pricing information as a trade secret. Doing so may result in your Bid being disqualified.

In submitting a Bid, each Bidder agrees that the City may reveal any trade secret materials contained in such response to all City staff and City officials involved in the selection process, and to any outside consultant or other third parties who assist the City in the selection process. Furthermore, each Bidder agrees to indemnify 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, which the Bidder has designated as a trade secret.

- 1.7 Questions:** The City is committed to providing all prospective Bidders with accurate and

consistent information in order to ensure that no Bidder obtains an unfair competitive advantage. To this end, from the date of this Invitation to Bid until the time of Bid opening, no interpretation or clarification of the meaning of any part of this Invitation to Bid will be made orally to any prospective Bidder. Requests for information or clarification of this Invitation to Bid must be made in writing and addressed to Adrienne Lewis at the address, fax, or email address listed below, with e-mail being the preferred method of communication. Questions should reference the Invitation to Bid page and topic number.

ADRIANNE LEWIS
Charlotte Water Procurement
ITB # 269-2016-CES
5100 Brookshire Boulevard
Charlotte, NC 28216
Fax: 704-632-8512
E-mail: alewis@charlottenc.gov

The City will post answers to questions posed by prospective Bidders and/or general information concerning this Invitation to Bid in the form of an addendum to the Invitation to Bid on the Internet at <http://cmucontracts.charmeck.org>. **It is the responsibility of the prospective Bidder to check the website for any addenda issued for this Invitation to Bid.** The City reserves the right to disqualify any prospective Bidder who contacts a City employee, or agent concerning this Invitation to Bid, other than in accordance with this Section.

1.8 How to Submit an Objection Relating to This Invitation to Bid:

- (A) 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.
- (B) 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.
- (C) Except for objections raised at the pre-bid conference, all objections must be in writing directed to the Procurement Services contact designated in the preceding section.
- (D) Failure to object in the manner specified above shall constitute a waiver of any objections the Bidder may have to the terms of this Invitation to Bid, or anything that occurred in the bid process through the end of the pre-bid conference.

1.9 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.

1.10 Errors in Bids: In case of error in extension of prices in the Bid, the unit prices shall govern.

1.11 City's Rights and Options: The City reserves the following rights, which may be exercised at the sole discretion of the City of Charlotte:

- 1.11.1 to supplement, amend, substitute or otherwise modify this ITB at any time;
- 1.11.2 to cancel this ITB with or without the substitution of another ITB;

Section 1 Instructions to Bidders

- 1.11.3 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;
 - 1.11.4 to issue additional requests for information;
 - 1.11.5 to require one or more Bidders to supplement, clarify or provide additional information in order for the City to evaluate the Bids submitted;
 - 1.11.6 to conduct investigations with respect to the qualifications and experience of each Bidder;
 - 1.11.7 to change the Bid opening date or any other dates relevant to this ITB;
 - 1.11.8 to waive any defect or irregularity in any Bid received;
 - 1.11.9 to reject any or all Bids;
 - 1.11.10 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
 - 1.11.11 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.
- 1.12 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.
- 1.13 Invitation to Bid Not an Offer:** This Invitation to Bid does not constitute an offer by the City. No recommendations or conclusions from this Invitation to Bid 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.
- 1.14 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.
- 1.15 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.
- 1.16 Anti-lobbying Provision:** Maintaining the integrity of its Invitation to Bid 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.
- 1.17 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.

- 1.18 Brand Name:** If and whenever brand names, makes, names of manufacturers, trade names, bidder catalogs or model numbers are stated in this ITB, they are for the purpose of establishing a grade or quality of material.
- 1.19 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 up to each Bidder to conduct its own due diligence as to what statutory requirements may apply.
- 1.20 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: (a) identify a guarantor that is acceptable to the City, (b) provide the City with the same financial information about the guarantor that the Bidder is required to provide about itself under this ITB; and (c) 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 forgoing shall be grounds for rejection of the Bidder's Bid.
- 1.21 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, and services,. The City reserves the right to reject any bid on the basis of function, compatibility with user requirements of utility as well as cost.
- 1.22 Environmental Preferable Purchasing:** The City promotes the practice of Environmentally Preferable Purchasing (EPP) in acquiring products or services. Applicable EPP attributes that may be taken into consideration as environmental criterion include the following:

Recycled content	Renewable resources
Recyclability	Packaging
Biodegradability	Reduced toxicity
Energy and water efficiency	Low volatile organic compounds
Durability	Take back options

Environmentally Preferable Products have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.

Bidders able to supply Products or Services containing any of the applicable environmentally preferable attributes that meet performance requirements are encouraged to offer them in their Bids. Bidders must provide certification of environmental standards and other environmental claims, such as recycled content and emissions data or a formal statement signed by a senior company official.
- 1.23 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, the 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.

Section 2 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. 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:

Definite Quantity: The Contract will be a fixed-price contract that provides for delivery of a specified quantity of Products and Services either at specified times or when ordered.

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:

(A) **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 one (1) year from the date of award. The City at its option may extend the contract for up to two (2) additional one-year extensions unless the Bidder objects in writing at least ninety (90) days prior to the beginning of the extension term.

(B) **One Time Purchase:** Contract awarded is for a specific quantity purchased at one time.

2.3 Notice to Proceed: The successful Bidder shall not commence work or make shipment under this Invitation to Bid until duly notified by receipt of an executed Contract from the City. 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 Invitation to Bid, (whether in the form of a specific delivery date or maximum number of days for delivery) **time is of the essence.** 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 at law or in equity.

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.

- 2.6 Quality:** Unless this Invitation to Bid 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.

Whenever this Invitation to Bid or any other part of the 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 Invitation to Bid or the Contract.

- 2.7 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).

2.8 Preparation for Delivery:

- (A) **Condition and Packaging.** All containers/packaging shall be suitable for handling, storage or shipment, without damage to the contents. The Bidder shall make shipments using the minimum number of containers consistent with the requirements of safe transit, available mode of transportation routing. The Bidder 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.
- (B) **Marking.** All cartons shall be clearly identified with the City purchase order number and the name of the department or key business 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).
- (C) **Shipping.** The Bidder shall follow all shipping instructions included in this Invitation to Bid, the City’s purchase order or in the Contract with the City.

- 2.9 Acceptance of Products/Services:** The Products delivered under this Invitation to Bid shall remain the property of the successful Bidder 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 successful Bidder and return such Products (and any related goods) to the Bidder at the Bidder’s expense. In the event the Services provided under this Invitation to Bid 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 successful Bidder. 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.

- 2.10 Guarantee:** Unless otherwise specified by the City, the Bidder 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 Bidder 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.
- 2.11 Manufacturer or Dealer Advertisement:** No manufacturer or dealer shall advertise on Products delivered to the City without prior approval by the City.
- 2.12 Right to Cover:** If the successful Bidder fails to comply with any term or condition of the Contract or the Bidder's response to this Invitation to Bid, 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 such Bidder 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 Bidder's response to this Invitation to Bid.
- 2.13 Right to Withhold Payment:** If a Bidder breaches any provision of the Contract, the City shall have the right to withhold all payments due to the Bidder until such breach has been fully cured.
- 2.14 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:
- (A) 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; and
 - (B) 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.
 - (C) 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.
- 2.15 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.
- 2.16 Compliance with Laws:** All Products and Services delivered under this Invitation to Bid shall be in compliance with all applicable federal, state and local laws, regulations and ordinances. In performing the Contract, the successful Bidder shall obtain and maintain all

licenses and permits, and comply with all federal, state and local laws, regulations and ordinances.

- 2.17 No Liens:** All Products shall be delivered and shall remain free and clear of all liens and encumbrances.
- 2.18 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.
- 2.19 Amendment:** No amendment or change to the Contract shall be valid unless in writing and signed by both parties to the Contract.
- 2.20 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:
- (A) If such failure or delay:
 - (1) could not have been prevented by reasonable precaution;
 - (2) cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
 - (3) if, and to the extent, such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.
 - (B) 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.
 - (C) 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 successful Bidder 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 successful Bidder.
 - (D) Notwithstanding anything contained herein to the contrary, strikes, slow-downs, walkouts, lockouts, and industrial disputes of the successful Bidder 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 Bidder of any obligation it may have regarding disaster recovery, whether under the Contract or at law.
- 2.21 No Publicity:** No advertising, sales promotion or other materials of the successful Bidder or

its agents or representations may identify or reference the Contract or the City in any manner without the prior written consent of the City. Notwithstanding the forgoing, the parties agree that the successful Bidder may list the City as a reference in responses to requests for Bids, and may identify the City as a customer in presentations to potential customers.

2.22 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 all definitions and a list of surviving Sections which will be included in the final Contract.

In this Section of the ITB, a Bidder that enters into a Contract with the City may be referred to as the “successful Bidder” or the “Company.”

- 3.1 Scope of Work:** The Successful Supplier shall provide a full-service, turnkey solution to provide the Products and Services set forth in this ITB. The Company will provide the specific brands of Products listed in these Specifications.

This shall include, but not be limited to, providing all new equipment for Confined Space entry, equipment training to CLT Water staff , repair services, fitting and tailoring services, inspections (annual/as needed), inspection reporting and provide written reports and other related services. Due to the length of repair time the vendor must be made available to pick up at the applicable CLT Water site any equipment that needs service within 24 hours of notice. Notice will be sent to the successful bidder via email. The successful Supplier will be required to work the City Project Manager to schedule all inspection services at all location identified in Attachment A

- 3.2 Repairs:** The Successful Supplier shall provide flat fee pricing when equipment with the same specification is left for CLT Water use when equipment is being repaired. This equipment shall be the same specifications until the out of service unit is returned and accepted by CLT Water staff. If loaner equipment is damaged while in the custody of CLT Water staff, the successful supplier must report the damage, document the damage and receive written approval from the City Project Manager before sending an invoice for payment. The City shall pay for shipping costs for equipment being repaired. No other costs allowed.

- 3.3 Product Specifications:** All Products and component parts furnished under the Contract shall be new, shall meet all requirements of these Specifications and shall operate in full compliance with the model, brand and type as outlined in the Pricing Sheet.

- 3.4 Quantities:** The City will issue purchase orders for quantities of Products as needed during the term of the Contract. The City reserves the right to purchase Products and Services according to actual need and does not guarantee quantities. 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.

- 3.5 Warranty:** All Products supplied under the Contract shall be covered by the manufacturer’s written lifetime warranty guarantee. The warranty shall indicate that all Products will be free from defects in materials, workmanship and performance for the lifetime of the Product; merchantable and in full conformity with the Specifications set forth in this ITB, industry standards.. 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.

3.5.1 The Company shall provide the City with two copies of the manufacturer’s written warranty for each item of equipment when ordered.

- 3.6 Training:** The successful supplier shall provide in person training when requested. This training will be needed when staff utilizes new equipment not used by that staff. Training sessions shall have a maximum of 25 personnel in attendance.

- 3.7 Pricing:** The lowest responsive, responsible bidder will be determined by pricing submitted for equipment cost. Equipment training, discount pricing and rental pricing is not the determining factor in the lowest pricing. The equipment training, discount pricing and rental

pricing may be negotiated. Bids shall be submitted as a fixed unit cost per item, which includes shipping and delivery, training on equipment use, etc. Pricing shall be fixed for the initial term and during all renewal option terms. No other charges are allowed.

- 3.8 Delivery:** All confined entry equipment provided under this contract must be delivered F.O.B. Destination within 10 business days from the placement of order. Workdays are Monday through Friday, excluding City, State and Federal recognized holidays. Delivery and freight charges are to be included in the 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.
- 3.8.1 Deliveries must be made to each individual location identified on the Purchase Order when orders are placed.
- 3.8.2 Each order delivered must have a packing slip enclosed. The packing slip must clearly show the 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 Supplier may be subject to background checks at the discretion of the City.
- 3.10 Invoices:** The Company must submit invoices monthly to the City Finance Department. Invoices must include the Purchase Order, item number, description, unit cost, quantity and extended price, and City of Charlotte contract number of each item purchased. Every invoice must also include the City department that placed the order.
- 3.10.1 Invoices must include only Products and Services that have been delivered and completed.
- 3.10.2 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 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 **Confined Entry Equipment** items included in this Contract if items are no longer needed or no longer issued as part of uniforms.
- 3.12 Company Personnel Removal or Replacement:** The City will have the right to require the removal and replacement of any personnel of the Company who are assigned to provide services to the City.
- 3.13 Applicable Laws:** The Suppliers must be familiar with, have a working knowledge of, and comply with all federal, state, and local laws, statutes, ordinances and regulations as applicable to the service requirements of this ITB. These shall include the rules, regulations and interpretations of the North Carolina Department of Labor relative to Occupational Safety and Health Standards.
- 3.14 Permitting Responsibilities:** All permits and inspections are the sole responsibility of the successful Bidder.
- 3.15 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 uniforms, samples 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 samples of the uniforms and other Products provided under this Contract to the Company's competitors in any future procurement process.

- 3.16 City Department Participation:** Other City Key Business Units, shall be permitted to purchase **Confined Entry Equipment** 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.
- 3.17 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 CLT Water has been notified, at the time of placement of order, of the potential restocking charge.
- 3.18 Placement of Orders:** All orders will be placed by personnel designated by CLT Water 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 an approved authorization method.

4.1 Indemnification. To the fullest extent permitted by law, and except to the extent any Charge (as defined below) arises from or results from any breach, negligence or willful misconduct of any Indemnitee(s) (as defined below), the Company shall indemnify, defend and hold harmless each of the Indemnitees 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 Products or Services (“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 from any allegations of the forgoing; or (iv) arising from the Company’s violation of any law, regulation or ordinance, or from any allegation of the forgoing; 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 workers’ 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).

If an Infringement Claim occurs, the Company shall either: (i) procure for the City the right to continue using the affected Product or Service; or (ii) repair or replace the infringing Product or Service so that it becomes non-infringing, provided that the performance of the overall Product(s) and Service(s) provided to the City shall not be adversely affected by such replacement or modification. If the Company is unable to comply with the preceding sentence within thirty days after the City provides notice to the Company that it has been directed to cease use of a Product or Service, then such failure shall be deemed a Major Performance Failure and the City shall have the right to pursue any legal or equitable remedies it may have.

4.2 Insurance: Throughout the term of the Contract, the successful Bidder shall comply with the insurance requirements described in this Form. In the event the successful Bidder fails to procure and maintain each type of insurance required by this Form, or in the event the successful Bidder 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 successful Bidder.

The successful Bidder 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.

Section 4 Insurance Requirements

- (B) **Commercial General Liability:** Bodily injury and property damage liability as shall protect the successful Bidder 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 successful Bidder, 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 4.1**.

The successful Bidder shall not commence any work in connection with the Contract until it has obtained all of the types of insurance set forth in this Form, and such insurance has been approved by the City. The successful Bidder 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 successful Bidder shall furnish the City with proof of insurance coverage by certificates of insurance accompanying the Contract and shall name the City as an additional named insured under the commercial general liability.

Certificates of all required insurance shall contain the provision that the City will be given (30) days written notice of any intent to amend or terminate by either the insured or the insuring company. **All insurance certificates must include the City of Charlotte's 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 successful Bidder and/or subcontractor providing such insurance.

BID SUBMISSION FORM
ITB # 269-2016-CES
CONFINED ENTRY EQUIPMENT

This Bid is submitted by:

Vendor Name: _____

Representative (printed): _____

Representative (signed): _____

Address: _____

City/State/Zip: _____

Phone Number: _____
(Area Code) Telephone Number

Facsimile: _____
(Area Code) Fax Number

Email Address: _____

For written confirmation and questions regarding the proposal submission, the City should contact:

Name: _____

Phone Number: _____

Email Address: _____

It is understood by the Vendor that the City reserves the right to reject any and all Proposals, to make awards on all items or on any items according to the best interest of the City, to waive formalities, technicalities, to recover and re-bid this ITB. Proposal is valid for one hundred and twenty (120) calendar days from the Proposal due date. The signature below certifies that: (a) the Bidder's Bid complies with the requirements of this Invitation to Bid; that the Bidder takes no exception to any terms of the ITB.

NAME OF COMPANY: _____

NAME OF AUTHORIZED PERSONEL (print) : _____

SIGNATURE OF AUTHORIZED PERSONEL: _____

TITLE OF AUTHORIZED PERSONEL: _____

DATE: _____

ADDENDA ACKNOWLEDGEMENT FORM
ITB # 269-2016-CES
CONFINED ENTRY EQUIPMENT

Please acknowledge receipt of all addenda by including this form with your Proposal.

All addenda will be posted to <https://cmucontracts.charmeck.org>

ADDENDUM #:

DATE ADDENDUM:

I certify that this proposal complies with the General and Specific Specifications and conditions issued by the City except as clearly marked in the attached copy.

NAME OF COMPANY: _____

NAME OF AUTHORIZED PERSONEL (print) : _____

SIGNATURE OF AUTHORIZED PERSONEL: _____

TITLE OF AUTHORIZED PERSONEL: _____

DATE: _____

PRICING SHEET
ITB # 269-2016-CES
CONFINED ENTRY EQUIPMENT

The undersigned proposes to furnish the following items in strict conformance to the bid specifications and bid invitation issued by the City of Charlotte for this bid. Any exceptions are clearly marked in the attached copy of bid specifications.

BIDS ARE DUE NO LATER THAN 2:00 PM EST, OCTOBER 6, 2016

Type	Model #	Description	Brand	Estimated Quantity	Unit of Measure (UOM)	Unit Price per UOM	Extended Price
<u>Self Retracting Lifeline</u>	3400926	Seal-Blok SRL with Bracket (50ft)	Sala (DBI/3M)	5	Each		
	3400860	Seal-Blok SRL with Bracket (85ft)	Sala (DBI/3M)	5	Each		
<u>Winch</u>	8102001	Salalift II winch 60ft (1/4 cable) 350lbs	Sala (DBI/3M)	5	Each		
	8518558	Advanced Digital 100 Series Winch 60ft 450LBS	Sala (DBI/3M)	5	Each		
<u>Harness</u>	1112538	Exofit STRATA Construction All Sizes	Sala (DBI/3M)	3	Each		
	1112583	Exofit STRATA Tower climbing All Sizes	Sala (DBI/3M)	3	Each		
	1113130	Exofit Nex Construction All Sizes	Sala (DBI/3M)	3	Each		

Section 5
Required Forms – Form Three

Type	Model #	Description	Brand	Estimated Quantity	Unit of Measure (UOM)	Unit Price per UOM	Extended Price
	1113193	Exofit Nex Tower climbing All Sizes	Sala (DBI/3M)	3	Each	\$	\$
<u>Lanyard</u>	1246011	Lanyard same model both 3 ft. and 6ft	Sala (DBI/3M)	4	Each	\$	\$
	1246193	Double Lanyard for climbing 3ft and 6ft	Sala (DBI/3M)	4	Each	\$	\$
<u>Tripod</u>	8301041	Advanced Tripod, Salalift II Winch and SRL (7ft)	Sala (DBI/3M)	5	Each	\$	\$
	8300030	Advanced Tripod, Salalift II Winch (7ft)	Sala (DBI/3M)	2	Each	\$	\$
	8301043	Advanced Tripod Winch and SRL (9ft)	Sala (DBI/3M)	1	Each	\$	\$
	8003238	Tripod Pulley	Sala (DBI/3M)	10	Each	\$	\$
	8003205	Tripod Pulley	Sala (DBI/3M)	10	Each	\$	\$
	8005048	Tripod Mounting Base	Sala (DBI/3M)	10	Each	\$	\$
<u>Davit systems</u>	8530352	Advanced 4-1 Davit Guard System	Sala (DBI/3M)	2	Each	\$	\$
	8518000	Advanced 5-piece Davit Hoist System	Sala (DBI/3M)	4	Each	\$	\$
	8518040	Advanced 5-piece Davit Hoist System	Sala (DBI/3M)	1	Each	\$	\$
	Largest system 14ft	Advanced 5-piece Davit Hoist System (Large System)	Sala (DBI/3M)	1	Each	\$	\$
	8510140	Advanced Vehicle Hitch Mount Sleeve Davit Base	Sala (DBI/3M)	1	Each	\$	\$

Section 5
Required Forms – Form Three

Type	Model #	Description	Brand	Estimated Quantity	Unit of Measure (UOM)	Unit Price per UOM	Extended Price
	8512829	Extension for Vehicle Mount	Sala (DBI/3M)	1	Each	\$	\$
	8511401	Extension for Vehicle Mount	Sala (DBI/3M)	1	Each	\$	\$
	8516190	Floor Mount Sleeve Davit Base	Sala (DBI/3M)	3	Each	\$	\$
	8510633	Advanced Manhole Collar Base All Sizes	Sala (DBI/3M)	1	Each	\$	\$
	8516691	Advanced Portable Fall Arrest Post	Sala (DBI/3M)	1	Each	\$	\$
	8518001	Adjustable offset Mast Arm	Sala (DBI/3M)	3	Each	\$	\$
	8518006	Adjustable offset Mast Arm	Sala (DBI/3M)	3	Each	\$	\$
	8518509	Small Mast Extension	Sala (DBI/3M)	2	Each	\$	\$
	8518002	Medium Mast Extension	Sala (DBI/3M)	2	Each	\$	\$
	8518003	Large Mast Extension	Sala (DBI/3M)	2	Each	\$	\$
<u>Cable Ties</u>	6160030	Straights and Curved LAD Safe X2 Cable Sleeve	Sala (DBI/3M)	2	Each	\$	\$
		LAD Safety Cable Sleeves	Sala (DBI/3M)	2	Each	\$	\$
<u>Chair</u>	1001190	Bosun Chair	Sala (DBI/3M)	4	Each	\$	\$
<u>Blower</u>	9504-50	Allegro Industries High Output Centrifugal fan	Allegro	2	Each	\$	\$
	9520-50M	Allegro Industries High Output Centrifugal fan System	Allegro	2	Each	\$	\$

Section 5
Required Forms – Form Three

Type	Model #	Description	Brand	Estimated Quantity	Unit of Measure (UOM)	Unit Price per UOM	Extended Price
	9520-43M	12" Plastic Blower System with MVP	Allegro	2	Each	\$	\$
	9516	Explosion Proof high power blower 16"	Allegro	1	Each	\$	\$
	9533-15, 9533, 9533-25	8" Plastic Blower AC.	Allegro	2	Each	\$	\$
	9533-20	Swing Arm Blower system.	Allegro	1	Each	\$	\$
	9505-50	Gas powered Ventilation Blower	Allegro	2	Each	\$	\$
	9500-06, 9500-15, 9500-25	(All lengths and Diameters)	Allegro	10	Each	\$	\$
		Carrying Cases	Allegro	10	Each	\$	\$
	9525-50EX	20" Explosion-Proof High Output Blower	Allegro	1	Each	\$	\$
						\$	\$
					TOTAL PRICE:	\$	\$
		Equipment Training			Each	\$	
		Special Equipment			Discount Pricing	%	N/A
		Rental Pricing			Flat Fee	\$	N/A

Section 5
Required Forms – Form Three

Total Bid Price must include all equipment, labor, delivery, service, training, and all other costs associated with this project. No additional cost will be allowed.

The undersigned hereby certifies the Bidder has read the terms of this bid document, including the sample contract (Section 6) and is authorized to bind the firm to the information herein set forth.

NAME OF COMPANY: _____

NAME OF AUTHORIZED PERSONEL (print) : _____

SIGNATURE OF AUTHORIZED PERSONEL: _____

TITLE OF AUTHORIZED PERSONEL: _____

DATE: _____

Section 5
Required Forms – Form Four

Non-Discrimination Provision
ITB#269-2017-CES
CONFINED ENTRY EQUIPMENT

All requests for bids or Bids issued for City contracts shall include a certification to be completed by the Supplier or Proposer in substantially the following form. The undersigned Supplier or Proposer hereby certifies and agrees that the following information is correct:

1. In preparing it's the enclosed bid or Bid, the Supplier or Proposer has considered all bids and 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, supplier or commercial customer on the basis of race, ethnicity, gender, age, religion, national origin, 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 or Bid submitted with this certification, and terminate any contract awarded based on such bid or Bid It shall also constitute a violation of the City's Commercial Non-Discrimination Ordinance and shall subject the Supplier or Proposer 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 Supplier or Proposer 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 or 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 Supplier or Proposer to any remedies that are allowed thereunder.
5. As part of its bid or Bid, the Supplier or Proposer shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against Supplier or Proposer in a legal or administrative proceeding alleging that Supplier or Proposer discriminated against its subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that complaint, including any remedial action taken.
6. As a condition of submitting a bid or Bid to the City, the Supplier 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: _____
NAME OF AUTHORIZED PERSONEL: (PRINT) _____
SIGNATURE OF AUTHORIZED PERSONEL: _____
TITLE OF AUTHORIZED PERSONEL: _____

E-VERIFY CERTIFICATION
ITB#269-2017-CES
CONFINED ENTRY EQUIPMENT

This E-Verify Certification is provided to the City of Charlotte (the “City”) by the company signing below (“Company”) as a prerequisite to the City considering Company for award of a City contract (the “Contract”).

1. Company understands that:
 - a. E-Verify is the federal program operated by the United States Department of Homeland Security and other federal agencies to enable employers to verify the work authorization of employees pursuant to federal law, as modified from time to time.

 - b. Article 2 of Chapter 64 of the North Carolina General Statutes requires employers that transact business in this state and employ 25 or more employees in this state to: (i) verify the work authorization of employees who will be performing work in North Carolina through E-Verify; and (ii) maintain records of such verification (the “E-Verify Requirements”).

 - c. North Carolina General Statute 160A-20.1(b) prohibits the City from entering into contracts unless the contractor and all subcontractors comply with the E-Verify Requirements.

2. As a condition of being considered for the Contract, the awarded Company certifies that:
 - a. If Company has 25 or more employees working in North Carolina (whether now or at any time during the term of the Contract), Company will comply with the E-Verify Requirements in verifying the work authorization of Company employees working in North Carolina; and

 - b. Regardless of how many employees Company has working in North Carolina; Company will take appropriate steps to ensure that each subcontractor performing work on the Contract that has 25 or more employees working in North Carolina will comply with the E-Verify Requirements.

3. Company acknowledges that the City will be relying on this Certification in entering into the Contract, and that the City may incur expenses and damages if the City enters into the Contract with Company and Company or any subcontractor fails to comply with the E-Verify Requirements. Company agrees to indemnify and save the City harmless from and against all losses, damages, costs, expenses (including reasonable attorney’s fees) obligations, duties, fines and penalties (collectively “Losses”) arising directly or indirectly from violation of the E-Verify Requirements by Company or any of its subcontractors, including without limitation any Losses incurred as a result of the Contract being deemed void.

NAME OF COMPANY: _____
NAME OF AUTHORIZED PERSONEL: (PRINT) _____
SIGNATURE OF AUTHORIZED PERSONEL: _____
TITLE OF AUTHORIZED PERSONEL: _____
DATE: _____

REFERENCES
ITB#269-2017-CES
CONFINED ENTRY EQUIPMENT

Provide an organization name, address, contact name, and contact telephone number for at least three (3) customers of comparable size and scope of service that your Company has been under contract with to provide **Confined Entry Safety Products** for during the past five (5) years.

Reference 1	
Company Name	
Contact Name	
Phone Number	
Reference 2	
Company Name	
Contact Name	
Phone Number	
Reference 3	
Company Name	
Contact Name	
Phone Number	
Reference 4	
Company Name	
Contact Name	
Phone Number	
Reference 5	
Company Name	
Contact Name	
Phone Number	

Contract Requirements

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.

This Contract (the "Contract") is entered into as of this 14th day of November, 2014 (the "Effective Date"), by and between (insert Company name), a corporation doing business in North Carolina (the "Company"), and the City of Charlotte, a political subdivision of the State of North Carolina (the "City").

Statement of Background and Intent

- A. The City issued An Invitation to Bid (ITB #269-2017-CES) dated September 16, 2016 requesting bids from qualified firms to provide the City with Confined Entry Safety Products 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 #269-2017-CES on (October 6, 2016). 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 November 14, 2016, 2016 to Company to provide Confined Entry Safety Products 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**

Exhibit B: **Terms and Conditions (Section 2 of the ITB and all addenda)**

Exhibit C: **Special Conditions (Section 3 of the ITB and all addenda)**

Exhibit D: **Specifications (Section 4 of the ITB and all addenda)**

Exhibit E: **Bid Response Forms**

Each reference to the 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 G 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 G 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 G 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.

Contract Requirements

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 Confined Entry Safety Products 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 Agreement will be for one year (1) from the Effective Date with an option to renew for two (2) additional one-year terms. This Contract may be extended only by a written amendment to the contract signed by both parties.

4. AGREEMENT TO PROVIDE PRODUCTS AND SERVICES.

The Company shall provide the Products and Services in accordance with the terms and conditions set forth in this Contract and the attached Exhibits. Except as set forth on **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.

5. 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. The Company shall not be entitled to charge the City any prices, fees or other amounts that are not listed in **Exhibit A**.

6. 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 mail all invoices to:

City of Charlotte Accounts Payable
PO Box 37979
Charlotte, NC 28237-7979
Attn: Charlotte Water

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. Invoices must include state and local sales tax.

7. GENERAL WARRANTIES.

Company represents and warrants that:

- 7.1 It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of North Carolina, and is qualified to do business in North Carolina;

Contract Requirements

- 7.2 It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;
- 7.3 The execution, delivery, and performance of this Contract have been duly authorized by Company;
- 7.4 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;
- 7.5 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
- 7.6 The Company shall not violate any agreement with any third party by entering into or performing this Contract.

8. ADDITIONAL REPRESENTATIONS AND WARRANTIES.

Company represents warrants and covenants that:

- 8.1. The Products and Services shall comply with all requirements set forth in this Contract, including but not limited to the attached Exhibits;
- 8.2. 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;
- 8.3. 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
- 8.4. The Company shall comply in all material respects with all applicable federal, state and local laws, regulations and guidelines in providing the Products and the Services, and shall obtain all necessary permits and licenses.

9. TERMINATION.

9.1 *TERMINATION WITHOUT CAUSE.* The City may terminate this Contract at any time without cause by giving sixty (60) days written notice to the Company. The Company may terminate this Contract at any time without cause by giving one hundred and eighty (180) days written notice to the City.

9.2 *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):

9.2.1 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

9.2.2 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.

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9.3 *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.

9.4 *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.

9.5 *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.

9.6 *AUTHORITY TO TERMINATE.* The City Manager or their designee is authorized to terminate this Contract on behalf of the City.

10. 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:

- a. Working with the City to jointly develop a mutually agreed upon transition services plan to facilitate the termination of the Services; and
- b. Notifying all affected vendors and subcontractors of the Company of transition activities;
- c. Performing the transition service plan activities;
- d. Answering questions regarding the products and services on an as-needed basis; and
- e. Providing such other reasonable services needed to effectuate an orderly transition to a new system.

11. 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.

Contract Requirements

12. NON-DISCRIMINATION. The City has adopted a Commercial Non-Discrimination Ordinance that is set forth in Section 2, Article V of the Charlotte City Code, and is available for review on the City's website (the "Non-Discrimination Policy"). As a condition of entering into this agreement, the Company represents and warrants that it will fully 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. As part of such compliance, the Company shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age, marital status, familial status, sexual orientation, gender identity, gender expression, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors or suppliers in connection with a City contract or contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The Company understands and agrees that a violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the Company from participating in City contracts or other sanctions.

As a condition of entering into this Contract, the Company agrees to: (a) promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract; and (b) if requested, provide to the City within sixty (60) days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Company has used on City contracts in the past five (5) years, including the total dollar amount paid by Company on each subcontract or supply contract. The Company further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Non-Discrimination Policy, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such Policy.

The Company agrees to provide to the City from time to time on the City's request, payment affidavits detailing the amounts paid by Company to subcontractors and suppliers in connection with this Contract within a certain period of time. Such affidavits shall be in the format specified by the City from time to time.

The Company understands and agrees that violation of this Commercial Non-Discrimination provision shall be considered a material breach of this Contract and may result in contract termination or disqualification of the Company from participating in City contracts and other sanctions.

Contract Requirements

13. 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.

14. 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.

15. 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:
	Adrienne Lewis
	Charlotte Water Procurement
	5100 Brookshire Boulevard
	Charlotte, NC 28216
	Phone: 704-391-5116
	Fax: 704-632-8512
	E-mail: alewis@charlottenc.gov
With Copy To:	With Copy To:
	Jude Starrett
	Senior Assistant City Attorney
	600 East Fourth Street
	Charlotte, NC 28202
	Phone: 704-336-5801
	Fax: 704-336-8335
	E-mail: jwhite@ci.charlotte.nc.us

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.

16. MISCELLANEOUS

16.1 ENTIRE AGREEMENT. This Contract, including all Exhibits and Attachments constitute the

Contract Requirements

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 forgoing, 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

16.2 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 Key Business Executive, the City Manager, or an Assistant City Manager; depending on the amount. Some increases may also require approval by City Council.

16.3 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.

16.4 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 16.8** constitutes an assignment.

16.5 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.

16.6 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 forgoing, 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.

16.7 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.

16.8 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

Contract Requirements

ownership of voting securities, by contract or otherwise.

16.9 NO BRIBERY. The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or attempted to bribe an officer or employee of the City in connection with this Contract.

16.10 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 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.

16.11 TAXES. The Company shall pay all applicable federal, state and local taxes which may be chargeable against the performance of the Services.

16.12 Iran Divestment Act. Company warrants and certifies that as of the Effective Date, Company is not identified on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 143-6A-4. The person signing this Contract certifies that he or she is authorized by Company to make the foregoing certification. Company further agrees that it will not utilize on this Contract any subcontractor that is identified on the Final Divestment List.

17. 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.

Section 6

Contract Requirements

IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Agreement to be executed on the date first written above.

ATTESTED: COMPANY NAME
BY: _____ BY: _____
TITLE: _____ TITLE: _____
DATE: _____ DATE: _____

ATTESTED: CITY OF CHARLOTTE
BY: _____ BY: _____
TITLE: _____ TITLE: _____
DATE: _____ DATE: _____

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

**CITY OF CHARLOTTE
FINANCE DEPARTMENT**

BY: N/A – purchase orders will be issued as needed
(signature)

APPROVED AS TO INSURANCE REQUIREMENTS:

BY: _____

Smoke-Free Government Grounds and Tobacco-Free Parks

A Mecklenburg County Initiative to Improve Health

As of March 18, 2015:



All government owned buildings, vehicles and property (grounds) are **smoke-free** in Mecklenburg County, the City of Charlotte, the CATS transit system and in the towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill and Pineville. This is a Mecklenburg County Board of Health Rule.



All Mecklenburg County owned parks, greenways and park property are **tobacco-free**. Exceptions include the county golf courses and some regional parks. This is a Mecklenburg County Ordinance.

Smoke-free is defined as no smoking or combustible products such as cigarettes, cigars, cigarillos or pipes.

Tobacco-free is defined as no tobacco product use including smoking products, smokeless tobacco (dip, snuff) and electronic cigarettes or vaping products.

Benefits of Tobacco-Free Environments:

- Protects people from secondhand smoke exposure
- Supports and encourages people to quit smoking or using tobacco products
- Provides positive role modeling to youth which can keep kids from starting
- Reduces tobacco litter and fire hazard
- Reduces overall smoking/tobacco use rates

Reducing tobacco use will prevent chronic disease, improve our community's health and save money in health care costs.



For more information, go to www.tobaccofreemeck.org or call Mecklenburg County Health Department at 980-314-9064
For tobacco awareness education and news, follow TobaccoFreeMeck on Twitter and Facebook

ATTACHMENT A CHARLOTTE WATER LOCATIONS



