

# **INVITATION TO BID**

## **WASTE WATER AND WATER TREATMENT CHEMICALS**

**ITB# FY18-ITB-05**



**CITY OF CHARLOTTE  
NORTH CAROLINA**

**JANUARY 17, 2018**

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

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Date: **January 17, 2018**

Bid Number: **FY18-ITB-05**

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

**WASTE WATER AND WATER TREATMENT CHEMICALS**

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This letter extends an invitation for Response Packets to supply Charlotte Water with Various Wastewater and Water Treatment Chemicals.

Instructions for the preparation and submission are contained in the attached packet. Please read this package carefully as there are other deadlines and/or requirements which are not outlined on this cover page.

Certificate of Analysis (COA) and jar samples of the product(s) are required to be sent and approved prior to submitting a bid for chemicals listed within this ITB. Please refer to Section 3.5 for COA or jar sampling Submission Instructions.

**The City of Charlotte Water Department has determined that it will utilize a Reverse Auction for obtaining pricing for its Water Treatment and Waste Water Treatment Chemicals.** A Reverse Auction allows the City to utilize a 2-step process to obtain pricing from suppliers via a web-based online platform where multiple suppliers are able to submit descending prices, multiple times within a proscribed time period.

In Step 1 of this process, suppliers responding to this ITB will be required to submit their Response Package **WITHOUT PRICING** as outlined in the legal advertisement and within this document on or before March 26, 2018, no later than 2:00 PM EST or on the date specified in any addendum issued related to this ITB. The City will review all supplier Response Packages which are submitted and will determine suppliers who can meet the requirements of this ITB.

In Step 2 of this process, suppliers who are able to meet the requirements of the ITB will be notified by the City that they are eligible to participate in the Reverse Auction event which is the method by which the City will obtain pricing. The City's Reverse Auction provider will then train each approved supplier for the Reverse Auction event which will take place at the date and time specified by the City.

**The single most important change when the City utilizes a Reverse Auction process to obtain pricing for goods and services is that they suppliers submit their Response Packages WITHOUT PRICING. Please note that all other ITB forms and requirements must be met and submitted with the Response Package.**

A non mandatory pre-Bid conference for the purpose of reviewing the ITB and answering questions regarding the solicitation will be held on **February 5, 2018 at 9:30 AM, at 5100 Brookshire Boulevard Charlotte, North Carolina 28216, 2<sup>nd</sup> floor conference room.** You are encouraged to attend and to bring a copy of the ITB with you at that time. If a representative from your company cannot attend in person, a WebEx has been set up for this meeting.

Join WebEx meeting  
Meeting number/access code: 730 656 975  
Meeting password: Chemicals  
Join by phone  
1-650-479-3207 Call-in toll number (US/Canada)  
1-855-244-8681 Call-in toll-free number (US/Canada)

Questions must be submitted no later than February 1, 2018 in writing to Adrienne Lewis, via email, [alewis@charlottenc.gov](mailto:alewis@charlottenc.gov). All questions will be answered via addendum.

**RESPONSE PACKAGE DUE DATE: March 26, 2018, no later than 2:00 PM EST**

**REVERSE AUCTION EVENT DATE: April 9, 2018, starting at 9:00 AM EST**

Any changes to the terms, conditions or specifications stated in this Invitation to Bid will be documented in a written addendum, issued by Charlotte Water and will be posted at the City of Charlotte Contract Opportunity Website:

<http://charlottenc.gov/DoingBusiness/Pages/ContractOpportunities.aspx>

Each Supplier shall acknowledge receipt of all addenda using the space provided on the enclosed Bid Response Form. **Please note: failure to acknowledge receipt of each addendum shall cause Supplier to be considered as nonresponsive and the Response Packet will not be considered.**

Questions should be directed in writing to Adrienne Lewis via email, [alewis@charlottenc.gov](mailto:alewis@charlottenc.gov)

Sincerely,

Adrienne Lewis  
Procurement Commodities and Services Manager

### Checklist for submitting a Bid:

**Step 1-Read the document fully.**

**Step 2 -If you have any questions, send them before the deadline listed in Section 1.8.**

**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 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 Copies on CD or flash drive

**Bid Format** - Bids should be formatted as follows:

- Section 4, Form 1, Bid Submission Form**
- Section 4, Form 2, Addenda Acknowledgment Form**
- Section 4, Form 3, Pricing Sheet**
- Section 4, Form 4, Safety Data Sheet**
- Section 4, Form 5, E-verify Certification**
- Section 4, Form 6, Safety Data**
- Section 4, Form 7, 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 33 of the Sample City Contract in Section 5.

**It is the Company's responsibility to check <http://charlottenc.gov/DoingBusiness/Pages/ContractOpportunities.aspx> for any addenda or changes to this Project. Search for Waste Water and Water Treatment Chemicals to find if any documents or changes have been posted.**

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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:**

- Additional Material:** Any written material provided by the Supplier describing the items bid, to the extent that such material does not conflict with any of the forgoing materials or documents.
- Agreement:** Refers to a contract executed by the City and Company for all or part of the Services covered by this ITB.
- Supplier:** A person or entity that submits a Bid.
- City:** The City of Charlotte, North Carolina.
- Company:** A Supplier 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 Supplier agrees to provide all or part of the Products and Services to the City. A Contract shall include all information included with this ITB, together with all attachments referenced therein.
- Products:** All products that the Supplier agrees to provide to the City as part of its Bid.
- Placeholder Bid:** The opening bid that is submitted online by each supplier in advance of the opening time of the Reverse Auction Event.
- Response Package:** The required forms to be submitted WITHOUT PRICING as Step 1 of the Reverse Auction Process by suppliers in response to the ITB on or before the due date. The City will review all supplier Response Packages submitted.
- Reverse Auction Event:** The date and time certain when qualified suppliers are submitting prices for services or commodities
- Reverse Auction Participants:** Any supplier who has submitted a Response Package and the City has determined is qualified to participate in the Reverse Auction Event.

## Section One Instructions to Bidders

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Reverse Auction Transaction Fee:	Suppliers who are awarded contracts are required to pay a transaction to PGGI pursuant to a fee schedule approved by the City based on the estimated contract value.
Reverse Auction Tutorial Session:	An online training session scheduled and administered by Peralta Garcia Government Innovations that each Reverse Auction Participant must complete prior to the Reverse Auction Event.
Reverse Auction Process:	The utilization of a process that includes 2-steps whereby suppliers submit Response Packages in Step 1 (see above definition) and submit pricing during a Reverse Auction Event in Step 2 (see above definition).
Services:	All services that the Supplier agrees to provide to the City as part of its Bid, including but not limited to installation, 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 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. **How to Prepare Bid Responses:**

All bids shall be prepared as follows:

- (A) Complete the Bid Response Forms provided in Section 4 of this Invitation to Bid. Bid responses must be submitted only on these forms.
- (B) 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.
- (C) 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.

### 1.6. **How to Submit Bid Responses:**

All Bidders shall:



## Section One Instructions to Bidders

- (A) Submit their Bid in a sealed opaque envelope with the following information written on the outside of that envelope:
- (1) The Bidder's company name;
  - (2) The bid number as indicated on the cover letter to this Invitation to Bid; and
  - (3) 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 Invitation to Bid.
- (B) Mail or Deliver one (1) unbound original Response Package signed in ink by a company official authorized to make a legal and binding offer and one (1) electronic copies on CD or flash drive in a searchable PDF format to the address listed below, to be received no later than **March 26, 2018** 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 copy on CD or flash drive must be identical to the unbound original. The CDs and 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.

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:

**Attn: Adrienne Lewis**  
**Charlotte Water Procurement**  
**5100 Brookshire Boulevard**  
**Charlotte, NC 28216**  
**ITB Submission ENCLOSED**  
**ITB#FY18-ITB-05**  
**Waste Water and Water Treatment Chemicals**  
**Name of Supplier**  
**Address of Supplier**

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 Bus submission envelope must be placed inside the brown wood bid box labeled "**Construction and Commodities Only**" which is located on the 2<sup>nd</sup> floor Lobby at 5100 Brookshire Blvd., Charlotte, NC 28216.

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:

- **Bidders shall allow enough time to sign in at the reception desk and obtain a visitor badge in order to access the 2<sup>nd</sup> floor.**
- **No responsibility will be attached to the City for prematurely opening of a Bid that is not properly addressed or identified.**
- **Each Bidder is solely responsible for the timely delivery of their Bid.**
- **Bidders accept all risks of late delivery regardless of fault.**
- **Any Bids received after the date and time specified, regardless of the mode of delivery, shall not be considered.**

(C) 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.

1.7. **Trade Secrets/Confidentiality:**

Upon receipt at Charlotte Water, 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.

1.8. **Questions:**

There are two (2) ways to ask questions about this ITB: (1) submit a question in writing to Adrienne Lewis at the email address listed below; or (2) ask a question at the pre-bid conference. Other than these permitted questions, Service Providers should refrain from contacting 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 provided in writing by the Procurement Officer.**

**Adrienne Lewis**  
**E-mail: [alewis@charlottenc.gov](mailto:alewis@charlottenc.gov)**

## Section One Instructions to Bidders

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Questions should reference the ITB page and topic number. In order for questions to be answered at the pre-bid meeting, they must be submitted by **11:00 AM. EST on February 1, 2018.**

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 <http://charlottenc.gov/DoingBusiness/Pages/ContractOpportunities.aspx>. It is the responsibility of the prospective Bidder to check the website for any addenda issued for this ITB.

A pre-bid conference for the purpose of reviewing the ITB and answering questions regarding the Project, will be held on **February 5, 2017, 9:30 am EST**, 2<sup>nd</sup> floor conference room, 5100 Brookshire Boulevard Charlotte, North Carolina 28213 You are encouraged to attend and to bring a copy of the ITB with you at that time.

### 1.9. **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 Officer 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.

### 1.10. **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.

### 1.11. **Errors in Bids:**

In case of error in extension of prices in the Bid, the unit prices shall govern. In the case where numerical bids are stated both in numbers and in words, the words govern.

### 1.12. **City's Rights and Options:**

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

- 1.12.1 to supplement, amend, substitute or otherwise modify this ITB at any time;
- 1.12.2 to cancel this ITB with or without the substitution of another ITB;
- 1.12.3 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;
- 1.12.4 to issue additional requests for information;
- 1.12.5 to require one or more Bidders to supplement, clarify or provide additional information in order for the City to evaluate the Bids submitted;
- 1.12.6 to conduct investigations with respect to the qualifications and experience of each Bidder;

## Section One Instructions to Bidders

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- 1.12.7 to change the Bid opening date or any other dates relevant to this ITB;
  - 1.12.8 to waive any defect or irregularity in any Bid received;
  - 1.12.9 to reject any or all Bids;
  - 1.12.10 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
  - 1.12.11 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.
- 1.13. **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.
- 1.14. **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.
- 1.15. **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.
- 1.16. **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.
- 1.17. **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.
- 1.18. **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.

**1.19. 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, facility requirements, 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.

**1.20. 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 City of Charlotte 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.

**1.21. Use of Contract by other Public Entities**

Suppliers are advised that the resultant contract(s) may be extended, with the authorization of the Supplier, to other public entities or public agencies or institutions of the United States or Canada to permit their use of the contract at the same prices and/or discounts and terms of the resulting contract.

If any other public entity decides to use the final contract, the Contractor(s) must deal directly with that public body concerning the placement of orders, issuance of purchase orders, contractual disputes, invoicing and payment. The City of Charlotte act only as the "Contracting Agent" for these public entities. Failure to extend a contract to any public entity will have no effect on consideration of your offer.

It is the Contractors responsibility to notify the public entities of the availability of the contract(s).

Other Public Entities desiring to use this contract will need to make their own legal determinations as to whether the use of this contract is consistent with their laws, regulations, and other policies.

Each Public Entity has the option of executing a separate contract with the Contractor(s). Public Entities may add terms and conditions required by statute, ordinances, and regulations, to the extent that they do not conflict with the contracts terms and conditions. If, when preparing such a contract, the general terms and conditions of a public body are unacceptable to the Contractor, the Contractor may withdraw its extension of the award to that Public Entity.

The City of Charlotte and shall not be held liable for any costs or damages incurred by another Public Entity as a result of any award extended to that public entity by the Contractor.

## I. Introduction

The City of Charlotte Water Department has determined that it will utilize a Reverse Auction for obtaining pricing for its Water Treatment and Waste Water Treatment Chemicals. A Reverse Auction allows the City to utilize a 2-step process to obtain pricing from suppliers via a web-based online platform where multiple suppliers are able to submit descending prices, multiple times within a proscribed time period.

In Step 1 of this process, suppliers responding to this ITB will be required to submit their Response Package **WITHOUT PRICING** as outlined in the legal advertisement and within this document on or before March 26, 2018 no later than 2:00 pm EST or on the date specified in any addendum issued related to this ITB. The City will review all supplier Response Packages which are submitted and will determine suppliers who meet the specified requirements of this ITB.

In Step 2 of this process, suppliers who are able to meet the requirements of the ITB will be notified by the City that they are eligible to participate in the Reverse Auction event which is the method by which the City will obtain pricing. The City's Reverse Auction provider, Peralta Garcia Government Innovations, will then train each approved supplier for the Reverse Auction event which will take place at the date and time specified by the City.

**The single most important change when the City utilizes a Reverse Auction process to obtain pricing for goods and services is that they suppliers submit their Response Packages without pricing. Please note that all other ITB forms and requirements must be met and submitted.**

## II. City's Supplier

Peralta Garcia Government Innovations, Inc. ("PGGI") is the Supplier that will manage and host the secure, electronic online sealed bid Reverse Auction process.

## III. Procedures

The City's Procurement Officer has determined that the City will utilize a reverse auction process for obtaining pricing for this ITB. This requires each supplier to submit a Response Package on or before the proscribed due date and to adhere to these procedures. The supplier specifically agrees to participate in the Reverse Auction.

1. Supplier will submit a Response Package **WITHOUT PRICING** to the City by the date and time indicated in the legal advertisement or as outlined in any subsequent addendum. The Reverse Auction Event will take place on a date and time as outlined in this ITB document. The City reserves the right to change the date and time of the Reverse Auction Event as its sole discretion.
2. The City reserves the right to reject a Response Package as non-responsive if a Supplier submits pricing information with their Response Package on the due date.
3. The City will review supplier Response Packages to determine those suppliers that will be eligible to participate in the Reverse Auction Event based on the requirements of the ITB. These eligible and qualified suppliers will be known as the Reverse Auction Participants.
4. The Procurement Officer will provide PGGI with a list of Reverse Auction Participants to be

invited to participate in the Reverse Auction Event. Only those suppliers deemed Reverse Auction Participants will be allowed to participate in the Reverse Auction Event. The City will solely determine the Reverse Auction Participants and they will be notified by the City of this determination.

5. PGGI will contact each Reverse Auction Participant with a request to schedule the Reverse Auction Participant Tutorial Session. During this Tutorial Session, the Reverse Auction Participant will work with a PGGI trainer to review the Reverse Auction bidding process including how to enter Placeholder Bids, how to enter subsequent lower bids, review of the Reverse Auction layout and other bid processes.
6. The Reverse Auction Event supplier interface will be configured such that each Reverse Auction Participant will only see their price and their rank in relation to first place of all other Reverse Auction Participants. All other Reverse Auction Participants identities will remain anonymous during the Reverse Auction Event.
7. The Reverse Auction Event has an initial fixed duration period as well as extension periods which are established by the City prior to the auction. The Reverse Auction Event may be extended if bids are received within a pre- determined amount of time prior to the end of the fixed duration. The City reserves the right to change Reverse Auction event parameters at any time without notice.
8. During the Reverse Auction Event, PGGI will provide the necessary security, technical and administrative support to ensure a successful reverse auction. Each Reverse Auction Participant will receive contract information with a direct line to the PGGI supplier management team for support during the Reverse Auction Event.
9. The City reserves the right to cancel and not hold the Reverse Auction Event when in the opinion of the Procurement Officer; the best interests of the City would be served.
10. After the conclusion of the Reverse Auction Event, PGGI will provide to the City's Procurement Officer bid tabulations including a bid audit trail that will include a time-stamped log of all prices submitted by Reverse Auction Participants during the auction. The City will also post bid tabulations to the Charlotte Water's vendor's opportunity web site.
11. At the conclusion of the Reverse Auction, the City will evaluate the pricing offered during the Reverse Auction Event and will award contracts accordingly per the conditions outlined in the ITB.

#### **IV. Transaction Fee**

**VPO** (vendor pay option) – The Buyer in this procurement has opted to use a VPO fee structure. Under this model, the awarded supplier agrees to pay PGGI a Transaction Fee, for the term of the contract (including renewals, extensions, interim purchases, or subsequent contract resulting from this bidding event), calculated based on a rate established by Buyer's actual accumulated spend against the contract.

**Awarded Supplier Transaction Fee** – The awarded supplier will be responsible to pay this Transaction Fee ("Transaction Fee") to PGGI for all payments awarded supplier receives from

Buyer, any of Buyer’s political subdivisions, or any other entity (the “Buying Agent”) resulting from this bidding event or subsequent contract.

**Invoice Date** – PGGI will invoice Awarded Supplier following receipt of the Report or on the fifteenth (15) day of the month, whichever comes first.

**Payment Due Date** – Awarded supplier must remit the Transaction Fee within fifteen (15) calendar days of the Invoice Date.

**Per bid** – The terms of this Transaction Fee are associated with this specific procurement, and any subsequent contract. If you participate in other procurements with PGGI, the terms may be different.

**Per term** – The terms of this Transaction Fee renew with each subsequent contract term. Any restrictions, stipulations, or fee caps are limited to a specific contract term. When a contract renews for another term or is extended, these restrictions, stipulations, and / or fee caps reset.

**Per entity** – Transaction Fees for each eligible Buying Agent utilizing the agreement will be established individually, subject to the applicable threshold rate, based on actual accumulated spend against the contract by that Buying Agent.

**Tiered Pricing** – As illustrated in the Rate Table, below, the transaction fee is adjusted throughout the term of the agreement after reaching distinct thresholds of accumulated spend against the contract.

**Conflict of Terms** – In the event that there is any conflict or inconsistency between the terms of the Exhibit B Transaction Fee Schedule, the Supplier Agreement Terms and Conditions, or the terms of the Exhibit A – Rules for Participation, the terms of this Exhibit B – Transaction Fee Schedule shall control and govern the rights and obligations of the Parties.

### Rate Table

To determine the Transaction Fee, the transaction amount is multiplied by the applicable threshold rate. The rate is reduced as accumulated spend thresholds are met.

Threshold Rate	Min. Accumulated Spend	Max. Accumulated Spend
3%	\$0	\$500,000
2%	\$500,001	\$1,000,000
1%	\$1,000,001	-

### Example

Based on the Rate Table, the first \$500,000 of total contract spend would be charged a 3% transaction fee (\$0 - \$500,000). The next \$999,999 spend against the contract would be priced at a 2% rate (\$500,001 - \$1,000,000). All additional spend against the contract beyond \$1,000,001 would be priced at a 1% rate (\$1,000,001 and greater).

Below, please see a hypothetical scenario based on awarded supplier reports following sales for a 12-month contract term beginning January 1, 2018:

Period	2017 Jan	2017 Feb	2017 Mar	2017 Apr
Reported Sales	\$225,000	\$315,000	\$285,000	\$435,000



## Reverse Auction Procedures

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<b>Running Total</b>	\$225,000	\$540,000	\$825,000	\$1,260,000
<b>Rate</b>	3%	3% up to \$500k 2% on \$40k	2%	2% up to \$1M 1% on \$260k
<b>Transaction Fee Due</b>	\$6,750	\$9,050	\$5,700	\$6,100

**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:

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 two (2) years from the date of award.**

**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. Pricing**

Bids shall be submitted as a fixed unit price per item that includes chemical(s), shipping and delivery. No other charges are allowed.

**2.5. 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 and all deliveries 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 at law or in equity.

**2.6. 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 otherwise allowed in the Special Conditions and stated in the Bid. If your Bid includes price increases over the term of the Contract, such increases must be clearly designated on **Form 3** of the Bid Response Package (Pricing Sheet).

**2.7. 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.

**2.8. Acceptance of Products:**

The Products delivered under this Invitation to Bid shall remain the property of the successful Supplier 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 Supplier and return such Products (and any related goods) to the Supplier at the Supplier’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 Supplier. 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.

Charlotte Water will reject chemical shipments that do not have functional pressure gauges on delivery trucks. In addition, Charlotte Water will not incur shipping costs associated with a chemical shipment rejected due to delivery trucks not having functional pressure gauges, damaged hoses or gaskets, and/or improper quick couple connections for transferring chemical from the delivery truck to the storage tower. The Chemical Supplier is responsible for the product and the shipper. The chemical Supplier shall provide a spill plan and contact numbers to Charlotte Water.

Any tractor, trailer, equipment or personnel that are determined by Charlotte Water to be unsafe or untrained, the shipment will be returned to supplier at no cost to Charlotte

Water. All spilled material caused by supplier must be collected by supplier and removed from site for disposal. Washing spilled material with water will not be allowed. Charlotte Water reserves the right to have spilled material removed by contracted spill response and full cost of cleanup will be provided by chemical supplier.

Charlotte Water will reject chemical shipments/delivery that do not adhere to the instructions outlined in this section. In addition, Charlotte Water will not incur shipping costs associated with a chemical shipment rejected due to the chemical Supplier's inability to adhere to the above shipping instructions

**2.9. Inspection at Supplier's Site:**

The City reserves the right to inspect the equipment, plant, store or other facilities of a Supplier 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 Supplier (except that a store may be inspected at any time during regular store hours without notice).

**2.10. Delivery Requirements**

All deliveries are to be FOB Destination to the Charlotte Water facility as specified on the Purchase Order. If shipments are requested by truck, it is understood that the shipper shall provide for delivery with trucking equipment and service satisfactory to the City. 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.

Chemical Specific Shipment days are to arrive as follows:

- Deliveries to Vest and Lee Dukes Water Treatment Plants (WTPs) must occur between Monday through Friday 7:00 A.M and 1:00 P.M. EST
- Deliveries to Franklin WTP for alum and hydrofluorosilicic acid must occur between 2pm to 10pm EST
- Deliveries to Franklin for lime and carbon must occur between 10pm to 6am. EST
- Deliveries to Franklin for chlorine gas and liquid linear phosphate must occur 7am to 2pm EST
- Deliveries of Ferric Chloride for McAlpine WWTP are to arrive within two (2) business days
- Unless otherwise notes, all chemical deliveries must be made within three (3) business days of order placement.
- All shipments to Wastewater Treatment Plants (WWTP) are to arrive Monday through Friday between the hours of 7:00 A.M. and 2:00 P.M. with the exception of McAlpine Creek Wastewater Treatment Plant.
  - Deliveries to McAlpine WWTP must occur between 6:00 A.M and 1:00 P.M, EST
  - Suppliers are requested to provide and mount UN placards on tanks at McAlpine WWTP.

\*Upon request directly to the CLT Water location, weekend deliveries may be allowed at Waste water plants.

**2.11. Special Delivery Specifications**

McAlpine Creek Treatment Plant requires that on a 24-hour notice all deliveries be made as near 6:00 A.M. as possible. No deliveries will be accepted after 1:00 P.M. All tankers must have rear off load capability (no side off load) and that all tankers have self-contained air pressure to blow off chemicals. No use of plant supplied air is permitted.

- Mallard Creek Treatment Plant  
12400 U.S. Highway 29 North  
Charlotte, NC 28262
  
- McDowell Creek Treatment Plant  
5300 Jim Kidd Road  
Huntersville, NC 28078

**2.12. Delivery Locations**

Chemicals are to be delivered to the Charlotte Water locations via F.O.B. Destination. to the following Charlotte Water locations listed for each chemical. The delivery addresses for the Charlotte Water locations are as follows:

- Vest Water Treatment Plant (WTP)  
820 Beatties Ford Road  
Charlotte, NC 28216
  
- Franklin Water Treatment Plant (WTP)  
5200 Brookshire Boulevard  
Charlotte, NC 28216
  
- Irwin Creek Waste Water Treatment Plant (WWTP)  
4900 Dwight Evans Road  
Charlotte, NC 28217
  
- Sugar Creek Waste Water Treatment Plant (WWTP)  
5301 Closeburn Road  
Charlotte, NC 28210
  
- McAlpine Creek Waste Water Treatment Plant (WWTP)  
12701 Lancaster Highway  
Pineville, NC 28134
  
- Lee Dukes Water Treatment (WTP)  
7980 Babe Stillwell Farm Road  
Huntersville, NC 28078
  
- 12-Mile Waste Water Treatment Plant (WWTP)  
8922 Kensington Drive  
Waxhaw, NC 28173

- Crooked Creek Wastewater Treatment Plant (WWTP)  
4015 Sardis Church Road  
Monroe, NC 28112
- Olde Sycamore Package Plant  
1699 Rock Hill Church Road  
Matthews, NC 28112
- Tallwood Package Plant  
4988 Brief Road (Off NCSR1547)  
Union Co., NC
- Grassy Branch Package Plant  
1629 Old fish Road (Off NCSR 1610)  
Union Co., NC 28112
- Ashe Plantation Package Plant  
8637 Quarters Lane (End of Quarters Lane, east of Charlotte)  
Mint Hill, NC 28227
- McDowell Creek Treatment Plant  
5300 Jim Kidd Road  
Huntersville, NC 28078
- Oxford Glen Package Plant  
15346 Bexley Place  
Mint Hill, NC 28227

**2.13. Delivery Security Measures**

In addition to shipping and receiving measures outlined herein, all shipments are required to adhere to the following security measures at all receiving facilities.

- Supplier will email photos with names of the drivers making the deliveries to the receiving facility prior supervisors to the arrival of the shipment; the specific email addresses upon award
- The receiving facility will be notified before the truck leaves the Supplier's terminal, and the name of the driver will be provided for matching purposes upon the arrival of the shipment;
- All trucks will be sealed with security tags and the numbers faxed to the receiving facility after loading has been completed and the truck is ready to depart the terminal;
- The manifests will contain all of the same information along with the serial numbers and tanker numbers; and
- The drivers will have a certificate of analysis for all chemicals upon arrival at the receiving facility.

Charlotte Water will reject chemical shipments that do not comply with delivery requirements and delivery security measures. In addition, Charlotte Water will not incur any costs associated with a chemical shipment rejected due to the chemical vendor's inability to adhere to the above shipping instructions.

2.14. **Preparation of Delivery**

(A) **Special Conditions on Chemicals**

i. **Chlorine Gas**

The Supplier must visit each site prior to first shipment and review facilities SOP for deliveries.

The Supplier must agree to supply and maintain a B-Kit located at the water treatment facilities, for use during emergencies by emergency response personnel.

All cost for emergency responses, damages to Charlotte Water equipment and facilities due to failure of equipment provided will be at the full cost of the supplier.

Deliveries to Franklin for chlorine gas and liquid linear phosphate will be from 7:00 am EST to 2:00 pm EST. Deliveries must be made within three (3) business days of order placement.

ii. **Ferric Chloride**

All deliveries must provide a 24-hour notice and deliveries must be made as near to 8:00 AM EST as possible with no deliveries after 1:00 PM EST. All tankers must have rear off-load capabilities (no side off-load) and all tankers must have self-contained air pressure to blow off chemicals. No pumping of chemicals and no use of plant supplied air will be permitted. Suppliers will fax a photo with the name(s) of the driver(s) making deliveries prior to delivery. Charlotte Water shall be notified before the truck leaves the terminal with the name of the driver in order to match the driver to the photo with his/her ID when he/she arrives. All security items mentioned in shipping instructions must be met. **All deliveries shall be made FOB destination within 2 days to McAlpine WWTP.**

iii. **Ferrous Sulfate (Liquid)**

Ferrous Sulfate shall be shipped in approximately 4,000 gallon lots in tank trucks in which the trailers for transfer are dedicated to ferrous sulfate only. The vessels shall be unloaded by a 2"-3" diameter rubber hose equipped with a 2" quick couple connection by means of a pump, (a pump will not be accepted unless the tank is only used for ferrous sulfate), or a compressor which is mounted on the delivery truck. Drivers are responsible for all PPE associated with offloading. No connection shall be completed until plant staff acknowledges the correct fill connection is being utilized. Hose used for transfer must be dedicated to ferrous sulfate deliveries only and securely capped during transportation. Worn or damaged hoses will not be accepted for use during transfer. The Supplier is responsible for ensuring pressure gauges on delivery trucks are functional prior to delivery and responsible for ensuring delivery trucks discharge at the appropriate pressure.

iv. **Hypochlorite**

The vendor will be responsible to ensure the carrier has the equipment to off-load the product. Charlotte Water will not be responsible for having the equipment to unload the product. Deliveries may be made to any of the five wastewater treatment facilities, the three water treatment facilities, or to other sites as requested by Charlotte Water. Orders may be for bulk, carboys, or totes. Vendor should be prepared to supply product in packaging requested by Charlotte Water officials.

Irwin Creek require totes instead of bulk delivery.

McAlpine Creek, Sugar Creek, & Mallard Creek require bulk delivery

(B) **Marking for chemicals**

It is required that each shipment of material shall carry with it some means of identifications. Each package shall bear a legible marking giving the name of the manufacturer, the brand name, if any, and other markings as required by applicable laws and regulations. When shipped in bulk, this information shall be provided according to applicable regulations.

At the option of the manufacturer, packages may also bear the statement; "This material meets the requirements of ex. AWWA BN501-93, Standard for [Chemical Name]", provided the requirements of this standard are met and the material is not of a different quality as defined in a separate agreement between the supplier and Charlotte Water.

(C) **Special Markings**

Hypochlorites are oxidizing materials generally used by water utilities as a disinfectant. Hypochlorites used for disinfection shall be registered, labeled, and marked as prescribed by the U.S. Federal, Insecticide, Fungicide and Rodenticide Act (FIFRA). Labels should serve as a warning that the material is a strong oxidizing agent and that at contact with heat, acids, organic or combustible materials may cause fire. Shipments shall also bear warning labels as specified by United States Department of Transportation (USDOT) regulations. Each package shall bear a legible statement identifying the active ingredient and content, the net weight of the contents, the name of the manufacturer or distributor, the lot number, and brand name, if any, and other markings as required by applicable laws and regulations. Each package must bear a United States Environmental Protection Agency (USEPA) registration number as well as the USEPA establishment number indicating where the product was manufactured or last repackaged. For calcium hypochlorite tablets, each label shall also show either the weight of each tablet or the number of tablets per unit weight. At the option of the manufacturer, each package may bear the statement: "Guaranteed by (name of manufacturer) to meet the requirements of B300-99, AWWA Standard for Hypochlorite, for (type of hypochlorite contained in the package)".

Accompanying the bill of lading for each truck shipment shall be clear identification of the material and warning of potential danger in handling. Marked legibly, the name of the acid, the net weight or volume of the contents, the percent strength of the acid, the name and address of the supplier and/or manufacturer, the lot number, and the brand name if any, and shall bear such other markings as are required by applicable laws. The warning label should include suggestions for immediately rinsing away all acid coming in contact with the skin and the thorough dilution of any accidental spills, including neutralization of the acid with lime.

(D) **Spill Prevention**

Spill Prevention requirements are for all Charlotte Water facilities which include each water treatment and wastewater treatment plant will be followed. All wastewater facilities follow the spill prevention policy in association with the ISO 14001 certification. The City reserves the right to request proof of spill prevention kit from Supplier's delivery staff.



## Section Two Supplier Requirements

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Once arriving at the Charlotte Water facility, the Supplier's delivery staff must immediately report to the Administration Building and sign in. The Supplier's delivery staff shall be escorted to the delivery point by Charlotte Water staff.

Due to security and safety regulations, all of the Supplier's delivery staff shall attend annual mandatory spill prevention and response training at each wastewater treatment facility where the employees will be delivering chemicals. Charlotte Water may provide training to groups of employees or individual employees as they deliver chemicals to the site. The Supplier may schedule training and a delivery during the same trip to the facility, but the Supplier's employee must attend the training prior to unloading the chemical. The Supplier shall give the facility contact at least 24-hours of notice when spill prevention and response training will be needed for an employee. Training will be provided during the allowable delivery times for each facility. Training will be provided by Lead Charlotte Water and Participating Charlotte Water staff.

The Supplier shall use the fill port or system designated by Charlotte Water during the training when inside the facility.

The Supplier shall use a truck route designated by the Lead Public Agency and Participating Public Agency during the training when inside the facility.

In the event of a spill resulting from the Supplier's actions, the Supplier's employee shall perform initial spill response including but not limited to using materials in Charlotte Water owned spill kits to prevent chemicals from injuring Charlotte Water employees and to prevent chemicals from reaching storm drains. It is the responsibility of the Supplier regardless of subcontracting delivery of the chemical to any Charlotte Water locations, in ensuring spill response to the location. The Supplier shall pay any fines levied against Charlotte Water for spills resulting from the Supplier's actions and shall pay any costs incurred for clean-up and emergency response.

The Supplier must have a spill prevention program, including appropriate spill kits on delivery trucks, available and follow the Supplier's procedures in case of a spill. The Supplier awarded the contract must provide a copy of their spill prevention program to Charlotte Water for review. In the event of a spill resulting from the Supplier's actions, the Supplier is responsible for providing all necessary personal protective equipment to their employees. In addition, if there is a spill, the Supplier must notify Charlotte Water Facility Manager immediately. The facility manager will then follow procedures to contain the spill. The Supplier should have the appropriate spill prevention kit available for the chemicals they are delivering.

Charlotte Water will be reimbursed by the Supplier for labor and materials and damages created by the spill.

Suppliers shall follow all Charlotte Water ISO 14001 reporting requirements for wastewater plants as necessary.

### 2.15. **Adherence to Plant Policies**

All Supplier Employees who deliver products to Charlotte Water facilities or are on site for other purposes must adhere to plant policies while on site which include, but not limited to, safety, tobacco free restrictions, no littering, no weapons of any kind (concealed or otherwise), ISO 14001 requirements (wastewater plants) which includes Charlotte Water's environmental policy, and spill prevention awareness training once a

year to the chemical delivery staff at each wastewater treatment facility according to Charlotte Water's spill prevention and storm water requirements.

**2.16. Delivery Company Qualifications**

The Supplier must provide the Plant locations with the following information for the delivery company responsible for delivering the contracted chemical at least 24 in advance of delivery: The delivery company must do the following:

- Meet the personal protection equipment (PPE) requirements outlined on the Safety Data Sheets (SDS) sheet with each delivery;
- Adhere to the all of the requirements outlined in this ITB

**2.17. Supplier Qualifications**

Given the nature of the business conducted by Charlotte Water, during times of high product demand and/or product shortages, all Suppliers must place Charlotte Water in priority status whereby orders placed by Charlotte Water are filled before non-priority orders.

The Supplier will be responsible to ensure the carrier has the equipment to off-load the product. Charlotte Water will not be responsible for having the equipment to unload the product. Deliveries may be made to any of the wastewater treatment facilities, water treatment facilities, or to other sites as requested by Charlotte Water. Orders may be for bulk, carboys, or totes. Supplier should be prepared to supply product in packaging requested by Charlotte Water officials.

Suppliers must supply pricing and subsequent invoices in the unit of measure as presented in this solicitation.

In compliance with Executive Order 10936 from the Attorney General's Office, Charlotte Water is being required to report identical bidding on chemicals.

Suppliers must, at their cost, supply Charlotte Water, at its request, analytical results from analyses of products received by Charlotte Water for contaminants including, but not limited to, arsenic, lead, copper, other heavy metals, or other contaminants regulated in the finished or bi-products created by Charlotte Water. Internal spot checks or products received will also be conducted by Charlotte Water at cost to Charlotte Water. In the event that unacceptable levels of contaminants are found, Charlotte Water reserves the right to terminate the contract or require more frequent analyses until such time as Charlotte Water officials are satisfied that the issues surrounding the presence of the contaminants are resolved.

**2.18. Manufacturer or Dealer Advertisement**

No manufacturer or distributor shall advertise on Products delivered to the City without prior written approval by the City.

**2.19. Subcontracting**

The Supplier may subcontract delivery of chemicals under this solicitation. The Supplier shall provide the name(s) of delivery companies that shall delivery chemicals to any of the WWTP on Form One If the supplier plans to subcontract delivery of the chemical to any Charlotte Water location, the Supplier must provide the name of the delivery company and indicate how the Supplier meets the requirements outlined in Section 2.16 in the Response Packet. In the event the City does consent in writing to a subcontracting

arrangement, Supplier 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 Supplier shall name the City as a third party beneficiary.

**2.20. Liquidated Damages**

The Company acknowledges and agrees that the City may incur costs if the Company fails to meet the certain requirements set forth in the Specifications (including without limitation the opening date requirement, delivery times, inventory levels, accurate invoices and reporting requirements). The Company further acknowledges and agrees that: (a) the City may be damaged by such failures, including loss of goodwill and administrative costs; but that (b) the costs that the City might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Company agrees to pay liquidated damages at the rates set forth in the Specifications. The parties agree that the liquidated damages set forth in the Specifications shall be the City's exclusive remedy for loss of goodwill and administrative costs, attributable to a failure by the Company to meet such delivery times, but shall not be the remedy for the cost to cover or other direct damages.

**2.21. 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.

**2.22. 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;
- (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; and

- (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.

2.23. **Insurance:**

All Bidders must indicate compliance with the Insurance requirements stated in Section 33 of the Contract Terms and Conditions.

## SPECIFICATIONS

### 3.1. **Background and Scope:**

Charlotte Water, a department of the City of Charlotte, utilizes chemicals in its Water Treatment and Waste Water treatment process at all of its plants. Charlotte Water also purchases chemicals for Union County Public Works, (UCPW) in Union County, NC Waste Water Treatment Plants. These plants estimated utilizations are included in the total estimated annual utilization for the purpose of providing annual quantity. It is expected the listed estimated utilization will decrease within the first year of the contract as the Union County locations may enter into a separate agreement.

The Supplier shall provide a full-service, turnkey solution to provide the Products and Services set forth in this Section in a customized and timely manner. This shall include, but not be limited to, providing all Products and Services specified in this ITB. The City makes available to Suppliers information regarding 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 Supplier is required to perform its own due diligence on which to base its pricing. 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 Supplier to rescind its bid or terminate or amend the Contract.

### 3.2. **Product Quality**

Chemicals supplied shall not contain soluble minerals or organic substances in quantities capable of producing deleterious or injurious effect upon public health or water quality. Product shall not contain quantities or concentrations of any metals including but not limited to mercury, zinc, copper, arsenic, cyanide or any other impurity that prevents compliance with NPDES permits or 503 Biosolids regulations or other regulations in place. The National Sanitation Foundation Standard Number 60 and/or 61 will be used as the guideline for acceptability. Analysis as required must be submitted for evaluation of bids prior to award of contract.

### 3.3. **Safety Data Sheets**

A Safety Data Sheet must be included in the Response Packet for each chemical line checked.

A COA and SDS is required for each delivery at all Charlotte Water locations..

### 3.4. **Chemical Certificate of Analysis (COA) & Safety Data Sheet (SDS)**

The COA and SDS sheets must be submitted to the Procurement Officer by 3:00 PM EST February 26, 2018. Any COA submitted after 3:00 EST February 26, 2018 will not be accepted. COAs and SDS must be submitted via email to [alewis@charlottenc.gov](mailto:alewis@charlottenc.gov) with the following:

- Chemical name(s), if more than one
- Company name submitting for review
- Point of Contact information (name, phone number, email address)

Section Three  
Chemical Specifications

<b>Chemical</b>	<b>Review Method</b>
Powdered Activated Carbon	NSF 60/61, AWWA B600-05, and analytical results by request from product analysis by Supplier
Sodium Hydroxide (25%)	NSF 60/61, AWWA B501-08, Aluminum Sulfate AWWA B403-09, and analytical results by request from product analysis by Supplier
Aluminum Sulfate	NSF 60/61, AWWA B403-09, and analytical results by request from product analysis by Supplier
Chlorine Gas	NSF 60/61, AWWA B301-04, and analytical results by request from product analysis by Supplier
Sodium Hypochlorite (12.5%) LTL	NSF 60/61, AWWA B300-99, and analytical results by request from product analysis by Supplier
Fluorosilicic Acid	NSF 60/61, AWWA B703-11, and analytical results by request from product analysis by Supplier
Hydrated Lime	NSF 60/61 and analytical results by request from product analysis by Supplier
Liquid Linear Phosphate	NSF 60/61 and analytical results by request from product analysis by Supplier
Ferrous Sulfate (5%)	NSF 60/61 and analytical results by request from product analysis by Supplier
Sodium Bisulfite (38-42%)	NSF 60/61 and analytical results by request from product analysis by Supplier
Dechlorination Tablets (Sodium Sulfate)	NSF 60/61 and analytical results by request from product analysis by Supplier
Acetic Acid	From a recent lot
Ferric Chloride	AWWA Standard B407-05
Citric Acid	From a recent lot

Sodium Aluminate	From a recent lot
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**3.5. Jar Samples**

Jar samples in the quantity outlined must be submitted to the location indicated below by 3:00 PM EST February 26, 2018. Samples delivered to the incorrect location will not be accepted.

Chemical	Delivery Location	Sample Requirement
<b>Calcium Hydroxide (Lime Slurry)</b>	McDowell WWTP 4901 Neck Road Huntersville, NC 28078  Attention: Darryl DeWitt ITB#FY18-ITB-05, Waste Water & Water Treatment Chemicals Calcium Hydroxide Sample	A representative standard sample of a 1 liter sample of 30% lime solution must be received by February 12, 2018. The City reserves the right to conduct full trials based on results from jar testing. The results of Lime Slurry from McDowell will be utilized for Crooked Creek WWTP, Oxford Glen and Ashe Plantation Package Plants. The Company submitting the samples will be notified via email by March 16, 2018 of the sample results. If a Company does not submit a sample for testing the Company will not be allowed to provide pricing for this chemical.
<b>Ferric Chloride</b>	McAlpine Creek WWTP 12701 Lancaster Highway Pineville, NC 28134  Attention Kim Neely ITB#FY18-ITB-05, Waste Water	A representative standard sample of one (1) gallon must be received by February 26, 2018. Samples need to be shipped with a MSDS and a COA (certificate of analysis). The City will choose the test

Section Three  
Chemical Specifications

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	<p>&amp; Water Treatment Chemicals Ferric Chloride Sample</p>	<p>procedures and subject the submitted samples to laboratory tests in order to determine the most cost effective material. The City will determine if the representative standard sample is acceptable. The Company submitting the samples will be notified via email by March 16, 2018 of the sample results. If a Company does not submit a sample for testing the Company will not be allowed to provide pricing for this chemical. The City reserves the right to ask vendor for additional testing if necessary at the vendor's costs. Mail one sample to the following facility:</p>
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**3.6. Invoices:**

The Company must submit invoices to the plant(s) where delivery was made. Invoices must include the purchase order number, unit price, description, quantity and extended price, and contract number of each purchase. Every invoice must also include the Charlotte Water location that placed the order and submitted to City of Charlotte Accounts Payable per the billing instructions of the subsequent Contract.

**3.7. 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.

**3.8. 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.

**3.9. 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.

**3.10. 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.

**3.11. Reporting:**

A quarterly usage report must be supplied electronically to the Procurement Officer no later than the 10<sup>th</sup> day of the following month. Reports must be designed in such a manner that the information captured on the purchase request shall also be reflected in the monthly report. The report shall clearly identify all items purchased by each department. Each report shall list all items purchased, unit price, quantities and extended price for each item.

## **Powdered Activate Carbon (#1)**

**Requirement:** 1700 tons (estimated quantity), Lignite or wood base (bulk)

**Delivery Method:** The material shall be packed for bulk delivery at two (2) plants, Lee Dukes Water Treatment Plant and Franklin Water Treatment Plant. This material is to be shipped in truckload lots as ordered by Charlotte Water during the life of the contract. Hose used for transfer must be dedicated to powdered activated carbon deliveries and securely capped during transportation. Worn or damaged hoses will not be accepted for use during transfer. A minimum of 20' hose must be provided with delivery. A 2-inch quick couple connection by means of a pump (dedicated to powdered activated carbon use) or a compressor which is mounted on the delivery truck must be utilized for transferring from the delivery truck to receiving tower. Drivers are responsible for all PPE associated with offloading. No connection shall be completed until plant staff acknowledges the correct fill connection is being utilized. Hose used for transfer must be dedicated to activated carbon deliveries only and securely capped during transportation. Worn or damaged hoses will not be accepted for use during transfer. The successful supplier is responsible for ensuring pressure gauges on delivery trucks are functional prior to delivery. The successful supplier is also responsible for ensuring delivery trucks discharge activated carbon at the appropriate pressure.

**Moisture:** The moisture content of the carbon shall not exceed 8% by weight at the time of packing.

**Suspendibility:** The powdered material shall be of such fineness and weight that particles will remain in suspension for the longest possible time.

**Fineness:** The powdered material shall be of such fineness that not less than 99 will pass a No. 100 sieve, not less than 95% shall pass a No. 200 sieve, and not less than 90% shall pass a No. 325 sieve as tested by the wet screen test.

**Activity:** Shipment shall be subjected to inspection before acceptance and shall be rejected if a lot sample has a phenol value or odor removal ability of less than seventy-five percent (75%) of the values set forth in the Supplier's proposal. The Supplier shall state in his bid the average iodine number, which is indicative of the surface area of the product in square meters per gram of material. The minimum iodine number should be not less than 800 mg/g. Molasses numbers should also be noted on the product specifications included with the bid. A Safety Data Sheet must accompany the bid.

The activated carbon will be of a type and quality suitable for use in water supplies, with the property of completely removing objectionable tastes and odors, caused by organic or inorganic taste-producing compounds encountered in either raw or treated water supplies. Such material will be designated as water purification grade of activated carbon and will be supplied in powdered form. The material shall conform to AWWA Specification B600-05. Product must be certified for use in potable water by the National Sanitation Foundation (NSF).

**Special Conditions:** For Dukes Water Treatment Plant, 7980 Babe Stillwell Farm Road, Huntersville, NC, packing and shipping: powdered activated carbon shall be discharged from the carrier to the receiving tank at a max pressure of 5 psi. For Franklin Water Treatment Plant, 5200 Brookshire Blvd., Charlotte, NC, packing and shipping: powdered activated carbon shall be discharged from the carrier to the receiving tank at 5 psi. Shipments must be shipped and received within three (3) business days after ordered.

**Utilization Location(s):** Franklin, Lee S. Dukes Water Treatment Plants

**Delivery Locations:** Franklin, Lee S. Dukes Water Treatment Plants

## Aluminum Sulfate (Liquid Alum) (#2)

**Requirement:** 11,122 TON (estimated quantity) dry basis. Product must be certified for use in potable water by the National Sanitation Foundation (NSF). This utilization includes anticipated increase in FY20 (July 2019) at Irwin Creek estimated quantity of 5,000 tons. Depending on the construction of a new Aluminum Sulfate Feed System at Sugar Creek WWTP, the estimated quantity may increase by estimated 180,000 gallons in FY20.

**Delivery Method:** The liquid alum shall be shipped in approximately 4,000 gallon lots in specially equipped tank trucks, which are unloaded by a two-inch rubber hose equipped with a 2-inch quick couple connection by means of a pump (dedicated to alum use) or a compressor which is mounted on the delivery truck. Hose used for transfer must be dedicated to aluminum sulfate deliveries and securely capped during transportation. Worn or damaged hoses will not be accepted for use during transfer. A minimum of 20 foot hose must be provided with delivery. A 2-inch quick couple connection by means of a pump (dedicated to aluminum sulfate use) or a compressor which is mounted on the delivery truck must be utilized for transferring from the delivery truck to alum storage tanks at the receiving facility. Drivers are responsible for all PPE associated with offloading. No connection shall be completed until plant staff acknowledges the correct fill connection is being utilized. Hose used for transfer must be dedicated to aluminum sulfate deliveries only and securely capped during transportation. Worn or damaged hoses will not be accepted for use during transfer. The successful supplier is responsible for ensuring pressure gauges on delivery trucks are functional prior to delivery. Successful supplier is also responsible for ensuring delivery trucks discharge at the appropriate pressure.

**Content of Alumina:** The liquid alum shall contain between 8.20-8.30%  $Al_2O_3$ . A Safety Data Sheet must accompany the bid.

The content of alumina shall be determined at the time of delivery by a hydrometer allowing for a temperature correction of 60 degrees F-**only required at Water Treatment Plants.**

The material shall fully meet the AWWA Standard B403-09.

The liquid aluminum sulfate shall contain less than 0.2% of water insoluble matter.

Total %  $Al_2O_3$  (by weight), Free %  $Al_2O_3$  (by weight),  $Fe_2O_3$ % (soluble by weight) and % insoluble (by weight) are requested on COA.

**Utilization Location(s):** Franklin, Lee S. Dukes & Vest Water Treatment Plants, McDowell WWTP, **Anticipated in July 2019 (FY20): Irwin WWTP, Sugar Creek WWTP**

**Delivery Locations:** Franklin, Lee S. Dukes & Vest Water Treatment Plants, McDowell WWTP, **Anticipated in July 2019 (FY20): Irwin WWTP, Sugar Creek WWTP**

### Hydrated Lime (Chemical Bulk) (#3)

**Requirement:** 5,000 tons (estimated quantity)

**Delivery method:** Bulk loads delivered in 18 to 20 ton lots in specially equipped tank trucks which are fitted for pneumatic delivery of the material into the storage bins at the Franklin Plant, 5200 Brookshire Boulevard, Charlotte, NC, Lee Dukes Water Treatment, 7980 Babe Stillwell Farm Road, Huntersville, NC., and Vest Treatment Plant, 820 Beatties Ford Road, Charlotte, NC.

The material shall yield a minimum of 93.0 percent available calcium hydroxide and 70.4 percent available calcium oxide plus or minus 1.5%.

The material should be certified as suitable for contact with or the treatment of drinking water in accordance with NSF/ANSI 60.

The material shall contain no more than one-half of one percent (0.5%) insoluble siliceous residue and not more than one percent (1%) combined iron and aluminum oxides ( $R_2O_3$ ) and not more than one percent (1%) magnesium oxide (MgO).

The materials shall be of suitable grade for use in dry feeding machines. It shall be of such fineness that at least 98% shall pass a woven sieve having 200 meshes per linear inch and at least 90% shall pass a woven sieve having 325 meshes per linear inch.

A 2-inch quick couple connection by means of a pump (dedicated to lime use) or a compressor which is mounted on the delivery truck must be utilized for transferring from the delivery truck to lime storage towers at the receiving facility. Drivers are responsible for all PPE associated with offloading. No connection shall be completed until plant staff acknowledges the correct fill connection is being utilized. Hose used for transfer must be dedicated to lime deliveries only and securely capped during transportation. A minimum of 20 foot hose must be provided with delivery. Worn or damaged hoses will not be accepted for use during transfer. The Supplier is responsible for ensuring pressure gauges on delivery trucks are functional prior to delivery. The Supplier is also responsible for ensuring delivery trucks discharge at the appropriate pressure.

**Special Conditions:** Lime shall be discharged from the carrier to the receiving tower at water treatment facilities at a pressure range of 5-10 psi. **Delivery must be received within three (3) business days after ordered.**

**Utilization Location(s):** Franklin, Lee S. Dukes & Vest WTPs

**Delivery Locations:** Franklin, Lee S. Dukes & Vest WTPs

### **Sodium Hypochlorite (LTL)-15 gallon totes (#4)**

**Requirement:** 4,500 gallons (estimated quantity)

**Delivery method:** Irwin and McDowell only 15 gallon totes/carboys and/or 300 gallon totes. LTL for all other locations

Sodium hypochlorite solution shall be a clear liquid containing not more than 0.15 percent insoluble matter by weight.

Sodium hypochlorite shall contain not less than 125-g/L available chlorine, (12.5 trade percent).

**Impurities:** The hypochlorite supplied under this standard shall contain no soluble materials or organic substances in quantities capable of producing deleterious or injurious or injurious effects on the health of those consuming water that has been treated properly with the hypochlorite.

**Utilization Location(s):** WWTPs: Irwin Creek, Crooked Creek, McDowell Creek

**Delivery Locations:** WWTPs: Irwin Creek, Crooked Creek, McDowell Creek

Supplier shall provide totes when order is placed.

### **Sodium Hypochlorite 12.5% (LTL) (#5)**

**Requirement:** 98,000 gallons (estimated quantity)

**Delivery Method:** Less than Load

**Physical Requirements:** Color should be clear yellow or greenish; liquid free of suspended matter. These will be full tanker loads.

**Chemical Specification:** Available Chlorine Volume should be 14.5% maximum; NaOCl should be 12.5% minimum; Excess Caustic weight should be between .25-.80% maximum. Product should meet the requirements of NSF-Standard 60 for Drinking Water. Product shall not contain quantities or concentrations of any metals, including, but not limited to, mercury, zinc, copper or cyanide, or any other impurity that would cause the Wastewater Treatment facility to fail to meet NPDES permit requirements or 503 Bio-solids regulations.

**Utilization Location(s):** Sugar Creek, Mallard Creek WWTP

**Delivery Location:** Sugar Creek, Mallard Creek WWTP

### **Sodium Hypochlorite 12.5% (full tanker load) (#6)**

**Requirement:** 1,348,000 gallons (estimated quantity)

**Delivery Method:** Full tanker load

**Physical Requirements:** Color should be clear yellow or greenish; liquid free of suspended matter. These will be full tanker loads.

**Chemical Specification:** Available Chlorine Volume should be 14.5% maximum; NaOCl should be 12.5% minimum; Excess Caustic weight should be between .25-.80% maximum. Product should meet the requirements of NSF-Standard 60 for Drinking Water. Product shall not contain quantities or concentrations of any metals, including, but not limited to, mercury, zinc, copper or cyanide, or any other impurity that would cause the Wastewater Treatment facility to fail to meet NPDES permit requirements or 503 Bio-solids regulations.

**Delivery Requirements:** The Sodium Hypochlorite shall be shipped in approximately 4,000 gallon lots in specially equipped tank trucks, which are unloaded by a two-inch rubber hose equipped with a 2-inch quick couple connection by means of a pump or a compressor which is mounted on the delivery truck. Hose used for transfer must be securely capped during transportation. Worn or damage hoses will not be accepted for use during transfer. A minimum of two 20 foot hoses must be provided with delivery. Drivers are responsible for all PPE associated with offloading. The Supplier is responsible for ensuring pressure gauges on delivery trucks are functional prior to delivery. Supplier is also responsible for ensuring delivery trucks discharge at the appropriate pressure.

**Utilization Location(s):** 12 Mile, McAlpine Creek WWTP

**Delivery Location:** 12 Mile, McAlpine Creek WWTP



### **Sodium Hypochlorite 12.5% (LTL) (#7)**

**Requirement:** 6000 gallons (estimated quantity)

**Delivery Method:** 15 gallon totes/carboys. The Supplier will be responsible to ensure the carrier has the equipment to off-load the product. Charlotte Water will not be responsible for having the equipment to unload the product. Orders may be for bulk, carboys, or totes. Supplier shall be prepared to supply product in packaging requested by Charlotte Water officials.

Any tractor, trailer, equipment or personnel that are determined by Charlotte Water to be unsafe or untrained, the shipment will be returned to supplier at no cost to Charlotte Water. All spilled material caused by supplier must be collected by supplier and removed from site for disposal. Washing spilled material with water will not be allowed. Charlotte Water reserves the right to have spilled material removed by contracted spill response and full cost of cleanup will be provided by the Chemical Vendor.

Sodium hypochlorite solution shall be a clear liquid containing not more than 0.15 percent insoluble matter by weight.

Sodium hypochlorite shall contain not less than 125-g/L available chlorine, (12.5 trade percent). A Safety Data Sheet must accompany the bid.

**Impurities:** The hypochlorite supplied under this standard shall contain no soluble materials or organic substances in quantities capable of producing deleterious or injurious or injurious effects on the health of those consuming water that has been treated properly with the hypochlorite.

**Utilization Location:** Franklin Water Treatment Plant

**Delivery Location:** Franklin Water Treatment Plant

### **Sodium Bisulfite-LTL (#8)**

**Requirement:** 10,250 gallons (estimated quantity)

**Delivery Method:** Packaged in 250 gal totes. The Supplier shall be responsible to ensure the carrier has the equipment to off-load the product. Charlotte Water will not be responsible for having the equipment to unload the product. Orders may be for bulk, carboys, or totes. Occasional (approx. 4-5 times/year) totes will be ordered by Franklin and Lee Dukes WTPs. Delivery must be done by truck equipped with a lift-gate. The Supplier shall be prepared to supply product in packaging requested by Charlotte Water officials.

**Physical Requirements:** The sodium bisulfite shall be water white to light yellow in appearance with a pH of 3.5 – 5.0 at 15.6° (60° F).

The sodium bisulfite solution shall not contain less than 38-40% available NaHSO<sub>3</sub> (sodium bisulfite) by weight with a specific gravity (water=1) of 1.31-1.33 at 15.6° C (60° F). A Safety Data Sheet must accompany the bid.

Product contain no soluble material or organic substances in quantities capable of producing deleterious effects on the health of those consuming water that has been treated properly with the sodium bisulfite.

**Utilization Location(s):** Franklin & Lee S. Dukes WTPs

**Delivery Locations:** Franklin & Lee S. Dukes WTPs

### **Sodium Bisulfite-Full Tanker Load (#9)**

**Requirements:** 389,754 gallons (estimated quantity)

**Delivery requirements:** Full tanker loads

Physical Requirements: The sodium bisulfite shall be water white to light yellow in appearance with a pH of 3.5 – 5.0 at 15.6° (60° F).

The sodium bisulfite solution shall not contain less than 38-40% available NaHSO<sub>3</sub> (sodium bisulfite) by weight with a specific gravity (water=1) of 1.31-1.33 at 15.6° C (60° F).

Product shall not contain quantities or concentrations of any metals, including, but not limited to, mercury, zinc, copper or cyanide, or any other impurity that would cause the Wastewater Treatment facility to fail to meet NPDES permit requirements or 503 Bio-solids regulations.

**Utilization Location(s):** McAlpine WWTP

**Delivery Locations:** McAlpine WWTP

**Sodium Hydroxide (Caustic Soda)- ANDI/AWWA B501-08 (18-25% )  
LTL (#10)**

**Requirement:** 4,000 gallons (Estimated Quantity)

**Delivery Method:** Packaged in 55 gal drums and/or 250 gal totes to be designated by the water treatment receiving facility. The Supplier shall be responsible to ensure the carrier has the equipment to off-load the product. Charlotte Water will not be responsible for having the equipment to unload the product. Orders may be for carboys, or totes. Delivery must be done by truck equipped with a lift-gate. The Supplier should be prepared to supply product in packaging requested by Charlotte Water officials.

**Physical Requirements:** Sodium hydroxide is a compound that is commonly produced in the electrolytic manufacture of chlorine. In the anhydrous form, it is a white to slightly off-white opaque or translucent solid that rapidly absorbs moisture from the atmosphere. Liquid sodium hydroxide is a solution of anhydrous sodium hydroxide and water.

**Chemical Specifications:** Anhydrous sodium hydroxide. Anhydrous sodium hydroxide supplied under this standard shall contain a minimum of 74.4 percent total alkali as Na<sub>2</sub>O, 96.0 percent sodium hydroxide as NaOH, and not more than 2 percent carbonate as Na<sub>2</sub>CO<sub>3</sub>. Liquid sodium hydroxide supplied under this standard shall contain approximately 25 percent sodium hydroxide (NaOH). Specific gravity of 1.28 and a pH of 14.0. A Safety Data Sheet must accompany the bid.

**Impurities:** The sodium hydroxide supplied according to this standard shall contain no soluble material or organic substances in quantities capable of producing deleterious or injurious effects on the health of those consuming water that has been treated properly with the sodium hydroxide.

**Utilization Location(s):** Vest Water Treatment

**Delivery Locations:** Vest Water Treatment

## **Sodium Hydroxide (Caustic Soda) (#11)**

**Requirement:** 272,194 gallons (Estimated Quantity)

**Delivery Requirements:** Full tanker load for McAlpine WWTP only; 4000 gallon lots for 12-Mile WWTP

**Physical Requirements:** Appearance should be clear with a sweet pungent odor and free of suspended matter. The solution should be completely soluble in water. Full loads

**Chemical Specifications:** Liquid sodium hydroxide supplied under this standard shall contain approximately 25 percent sodium hydroxide (NaOH). A Safety Data Sheet must accompany the bid.

**Impurities:** Product shall not contain quantities or concentrations of any metals, including, but not limited to mercury, zinc, copper or cyanide, or any other impurity that would cause the Wastewater Treatment facility to fail to meet NPDES permit requirements or 503 Bio-solids regulations.

**Delivery Requirements:** The Sodium Hydroxide shall be shipped in approximately 4,000 gallon lots in specially equipped tank trucks, which are unloaded by a two-inch rubber hose equipped with a 2-inch quick couple connection by means of a pump or a compressor which is mounted on the delivery truck. Hose used for transfer must be securely capped during transportation. Worn or damage hoses will not be accepted for use during transfer. A minimum of two 20 foot hoses must be provided with delivery. Drivers are responsible for all PPE associated with offloading. The Supplier is responsible for ensuring pressure gauges on delivery trucks are functional prior to delivery. Supplier is also responsible for ensuring delivery trucks discharge at the appropriate pressure.

**Utilization Location(s):** 12-Mile, McAlpine Creek WWTPs

**Delivery Location:** 12-mile, McAlpine Creek WWTPs

## Fluorosilicic Acid (#12)

**Requirement:** 1,300 tons (estimated quantity); Product must be certified for use in potable water by the National Sanitation Foundation (NSF).

**Delivery Method:** The fluorosilicic acid shall be shipped in approximately 4,000 gallon lots in specially equipped tank trucks, which are unloaded by a two-inch rubber hose equipped with a 2-inch quick couple connection by means of a pump (dedicated to fluorosilicic acid use) or a compressor which is mounted on the delivery truck. Hose used for transfer must be dedicated to fluorosilicic acid deliveries and securely capped during transportation. Worn or damaged hoses will not be accepted for use during transfer. A minimum of 20 foot hose must be provided with delivery. A 2-inch quick couple connection by means of a pump (dedicated to fluorosilicic acid use) or a compressor which is mounted on the delivery truck must be utilized for transferring from the delivery truck to fluoride storage tanks at the receiving facility. Drivers are responsible for all PPE associated with offloading. No connection shall be completed until plant staff acknowledges the correct fill connection is being utilized. Hose used for transfer must be dedicated to fluoride deliveries only and securely capped during transportation. Worn or damaged hoses will not be accepted for use during transfer. The Supplier is responsible for ensuring pressure gauges on delivery trucks are functional prior to delivery. Supplier is also responsible for ensuring delivery trucks discharge at the appropriate pressure.

**Physical Requirements:** The fluorosilicic acid supplied under this standard shall be clean and free of visible suspended matter. The fluorosilicic acid supplied under this standard shall be water white to amber. Amber shall be determined as material with a maximum of 200 color units in accordance with method 2120B, visual comparison method.

**Chemical Specifications:** The fluorosilicic acid shall contain between 23-30% fluorosilicic acid by weight unless specified otherwise by the Lead Public Agency and Participating Public Agency. The AWWA standard is B703-11.

**Impurities-General:** The fluorosilicic acid supplied under this standard shall contain no mineral or organic substances in quantities capable of producing deleterious or injurious effects on health of those consuming water that has been properly treated with fluorosilicic acid.

**Hydrofluoric acid content:** The fluorosilicic acid supplied under this standard shall contain a maximum of 1% hydrofluoric acid.

**Special Conditions:** For Vest Water Treatment Plant, 820 Beatties Ford Road, Charlotte, NC, packing and shipping: Fluorosilicic acids shall be shipped in **4,000 to 4,500 gallon** lots in specially equipped tank trucks which are unloaded by a 2"-3" rubber hose equipped with a 2" quick couple connection by means of a pump or compressor which is mounted on the delivery truck. **Shipments must be shipped and received within three (3) business days after ordered.**

**Utilization Location(s):** Vest, Franklin, Lee S. Dukes WTPs

**Delivery Locations:** Vest, Franklin, Lee S. Dukes WTPs

### Chlorine Gas (#13)

**Requirement:** 1300 tons (Estimated quantity). Product must be certified for use in potable water by the National Sanitation Foundation (NSF) and comply with AWWA Standard B301-04.

**Delivery Method:** The chlorine shall be shipped in clean, undamaged with no dents, well-painted cylinders, each of one-ton capacity.

**Chemical Specifications:** Material shall be pure chlorine gas entirely free of foreign substances for use in the sterilization of Charlotte Water's water supply. Damaged containers will be returned to the chemical vendor at no expense to Charlotte Water. A Safety Data Sheet must accompany the bid. A certificate of analysis **must be supplied** upon arrival at the receiving facility.

Container must be date stamped showing they have been hydrostatic tested within the past five (5) years. Container tare weights must be clearly stamped on the tanks and safety bonnets in place at time of delivery. The container valve must not exceed 40 ft/lbs of torque. If valve fails to open at 40 ft/lbs of torque the vendor will be responsible at no cost to Charlotte Water for removing the container. Chlorine containers must be accompanied with a certificate of analysis upon delivery that matches the lot being delivered. The Supplier is required to respond to leaks within two (2) hours of notification. Charlotte Water staff will only attempt to adjust the packing nut if that is where the leak is occurring. If unsuccessful the Charlotte Water will not be liable for any costs incurred due to a leaking cylinder.

A minimum of 24 full containers will be maintained in inventory at all times at Franklin Water Treatment Plant, 12 full containers will be maintained at Vest Water Treatment Plant, and 12 full containers will be maintained at Lee Dukes Water Treatment Plant.

Container valves must be rebuilt after each use and records must be provided to Charlotte Water upon request.

**Miscellaneous:** The Supplier must visit each site prior to first shipment and review facilities SOP for deliveries.

The Supplier shall supply and maintain a B-Kit located at the water treatment facilities, for use during emergencies by emergency response personnel.

All cost for emergency responses, damages to Charlotte Water equipment and facilities due to failure of equipment provided will be at the full cost of the supplier

**Utilization Location(s):** Vest, Franklin, Lee S. Dukes WTPs

**Delivery Locations:** Vest, Franklin, Lee S. Dukes WTPs

## Calcium Hydroxide (Lime Slurry) (#14)

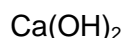
### Must have qualified through Calcium Hydroxide Trials

**Requirements:** 651,469 gallons (estimated quantity). Delivered concentration of 30% dilution at 22%.

**Delivery Method:** Approximately 4,000-5,000 gallons bulk tanker loads. Tankers shall be equipped with the Cal-Clean system for no spillage in off-loading.

### Chemical Specifications:

#### CALCIUM HYDROXIDE SLURRY



#### CHEMICAL ANALYSIS:

Calcium Hydroxide % by weight  
Inert Ingredients, % by weight  
pH of saturated solution

#### SPECIFICATIONS:

30.0 min aqueous suspension  
70.0 max.  
12.4 @ 25C

#### PHYSICAL PROPERTIES:

Appearance and odor	White suspension and odorless
Solubility in water	0.1gm/100gms
Specific Gravity	1.19 – 1.23 g/ml

*Must meet ANSI/NSF standard 60 certified and AWWA standards and approved for potable water*

#### EXPLANATIONS:

- The Supplier shall certify no quicklime is used in the slurry manufacturing process and only finely ground air-classified hydrated lime for preparation of the slurry product.
- The slurry solids will have 99% or higher passing 100 mesh screen.
- Slurry product must be ANSI/NSF Standard 60 certified. Delivery tankers shall be solely used for shipping slurry and equipped with a system to avoid spillage during the off-loading.
- Delivery driver shall be responsible for adding correct amount of dilution water and request inspection by the on-site operator.
- The supplier will guarantee the function of the installed CAL~FLO<sup>®</sup> system from storage tank sediment and clogged feed lines at its own expense with the prior listed



specifications, since generic slurries may have larger particles that can interrupt chemical feeding.

- With regards to supplemental alkalinity, the Supplier will offer technical advisement at no charge to the Utility concerning chemical feeding, equipment operation, and repairs.

**Utilization Location:** McDowell Creek WWTP

**Delivery Locations:** McDowell Creek WWTP

### Calcium Hydroxide (Lime Slurry)-Diluted (#15)

**Requirements:** 82,610 gallons- (estimated quantity). Delivered concentration of 30%. No dilution at Crooked Creek; dilution at Tallwood.

**Delivery Method:** Crooked Creek- full load; Package plants will be ordered in minimum of 500 gallons and delivered to the package plants. Supplier will be notified of exact order and volume for each location on the Purchase Order

**Chemical Specifications:**

**CALCIUM HYDROXIDE SLURRY**



**CHEMICAL ANALYSIS:**

Calcium Hydroxide % by weight  
Inert Ingredients, % by weight  
pH of saturated solution  
Concentration of MgO % by weight  
Concentration of SiO<sub>2</sub> % by weight

**SPECIFICATIONS:**

30.0 min aqueous suspension  
70.0 max.  
12.4 @ 25C  
< 3 %  
< 0.5 %

**PHYSICAL PROPERTIES:**

Appearance and odor  
Solubility in water  
Specific Gravity

White suspension and odorless  
0.1gm/100gms  
1.19 – 1.23 g/ml

**ADDITIONAL INFORMATION:**

- The Supplier shall certify no quicklime is used in the slurry manufacturing process and only finely ground air-classified hydrated lime for preparation of the slurry product.
- The slurry solids will have 99% or higher passing 100 mesh screen.
- Slurry product must be ANSI/NSF Standard 60 certified. Delivery tankers shall be solely used for shipping slurry and equipped with a system to avoid spillage during the off-loading.

- With regards to supplemental alkalinity, the Supplier will offer technical advisement at no charge to Charlotte Water concerning chemical feeding, equipment operation, and repairs.

**Supplier must supply Crooked Creek WWTP with a temporary chemical feed system.** The system will be located at Crooked Creek WWTP for a minimum, 12-24 month period. Pricing for the chemical feed system shall be provided on line 16A with the Response Packets.

The Temporary Chemical Feed System must include the following:

1. Minimum of 6,000 gallon up to 10,000 gallon maximum size tank specified for the storage and distribution of lime slurry
2. VFD Control peristaltic pump, able to pump lime slurry at a rate between 0.15 gallons a minute to 0.35 gallons per minute. The pump may be able to function outside of this range, but must include this range at a minimum.
3. Mixers must be included inside the tanks for the continuous mixing of the lime slurry.
4. A visible liquid level indicator on the outside of the tank.
5. Double walled tank is preferable but not required. Please indicate if single wall tank-spill containment is provided by the Supplier.
6. The tanks will be set up and used during winter months (December –April); System must be winterized to prevent freezing.
7. An automatic water flushing system to flush the lime slurry feed lines with water will be needed. The water and connection to water will be furnished by Charlotte Water.
8. All hook ups for the unloading of the lime slurry into the tank(s) will be supplied by the vendor, the slurry will be delivered by a tanker truck that has hoses for the off- loading of the slurry.

**Utilization Location(s):** Crooked Creek WWTP, 12-mile, Package Plants: Olde Sycamore, Grassy Branch, Ashe Plantation, Oxford Glen, Tallwood

**Delivery Location(s):** Crooked Creek WWTP, 12-mile Package Plants: Olde Sycamore, Grassy Branch, Ashe Plantation, Oxford Glen, Tallwood

### **Acetic Acid (#16)**

**Requirement:** 566,610 gallons-estimated quantity; 20% Acetic Acid technical.

**Delivery Method:** Delivered in Bulk. The acetic acid shall be shipped in approximately 5,000 gallon lots in specially equipped tank trucks, which are unloaded by a two-inch rubber hose equipped with a 2.5-inch quick couple connection by means of a pump (dedicated to acetic acid use) or a compressor which is mounted on the delivery truck. Hose used for transfer must be dedicated to acetic acid deliveries and securely capped during transportation. Worn or damaged hoses will not be accepted for use during transfer. A minimum of 20 foot hose must be provided with delivery. No connection shall be completed until plant staff acknowledges the correct fill connection is being utilized. Hose used for transfer must be dedicated to aluminum sulfate deliveries only and securely capped during transportation. Worn or damaged hoses will not be accepted for use during transfer. The Supplier is responsible for ensuring pressure gauges on delivery trucks are functional prior to delivery. Supplier is also responsible for ensuring delivery trucks discharge at the appropriate pressure.

**Chemical Specifications:** Product must be of technical grade and must be clear and colorless to practically colorless liquid. Assay range must be between 19% and 23%. Color (APHA) must not exceed 30. Iron must not exceed 0.001%.

A COA and SDS is required on all deliveries

**Delivery Locations:** McDowell Creek WWTP

**Utilization Locations:** McDowell Creek WWTP

### Liquid Linear Phosphate (#17)

**Requirements:** 16,000 gallons (estimated quantity)

**Delivery Method:** Packaged in 55 gal drums and/or 250 gal totes to be designated by the receiving facility.

**Chemical Specifications:** Product must be certified for use in potable water by the National Sanitation Foundation (NSF), approved for use in potable water supplies by the US Environmental Protection Agency, and comply with the USDA Guide Requirements for use in a public water supply. Appropriate certification letters must accompany the bid. Product must be non-toxic to humans by meeting the RMCL's (Recommended Maximum Contaminant Level) as listed in the water chemical code. Must also have a pH range between five and seven (6.8 as a 1% solution) and not have injurious effect on water department personnel or end user. Safety Data Sheets must accompany the bid.

Product must sequester iron and manganese over a temperature range from 5° to 100° C and have a shelf life in excess of two (2) years.

Supplier must have reliable transportation for deliveries and deliveries must be performed within 3 days of order or on the date requested by Charlotte Water at the time of order. Delivery must be done by truck equipped with a lift-gate. The vendor will be responsible to ensure the carrier has the equipment to off-load the product at each receiving facility.

Product must function as a corrosion inhibitor without the presence of zinc.

Product must not increase bacteria colony counts in the distribution system. Product must also not increase system chlorine demand on maintenance dosage.

Product and supplier must have a successful history of use in municipalities of a similar size for a period of at least five (5) years. Three (3) references must accompany the bid for verification of product performance, delivery and technical support, as Exhibit F.

Form:	Liquid
Weight:	Minimum 11.4 lbs. per gallon
Shelf Life:	In excess of 2 years
Phosphate Content (as PO4):	36%
Polyphosphate Content (as PO4):	27%
Orthophosphate Content (asPO4):	9%

**Delivery Locations:** Franklin, Vest, Lee S. Dukes WTP

**Utilization Locations:** Franklin, Vest, Lee S. Dukes WTP

## Ferric Chloride (#18)

**Requirements:** 2,067,532 gallons

**Delivery Method:** Full tanker load

Product shall not contain any other impurity that may cause a failure to meet NPDES permit requirements or 503 biosolids regulations. The product shall be NSF certified drinking water grade. Furthermore, the product shall meet the standards set forth in the AWWA Standard B407-05. Chemical Specifications shall meet the requirements shown in **Table 1** below:

Charlotte Water also wishes to match the ferric chloride concentration of their current product in order to minimize impacts to existing storage and feed equipment with respect to chemical compatibility and ability of existing equipment to reliably pump at new, reduced flow-rates. Therefore, a **Bid Alternate** will be considered, consisting of a diluted liquid ferric chloride product. Chemical Specifications shall meet the requirements shown in **Table 2** below.

<b>Table 1: Ferric Chloride Chemical Specifications (PRIMARY)</b>	
<b><u>Parameter</u></b>	<b><u>Value</u></b>
FeCL3	37 – 42%
Free HCL / (Free Acid)	<1.0%
pH	<1.0
Specific Gravity	1.38 – 1.49
Viscosity	12.1 centipoises @ 40% sol.
Crystallization	37% FeCL3 (-15 <sup>o</sup> F); 40% FeCL3 (10 <sup>o</sup> F)
<b>Maximum Metals Concentration (mg/Kg)</b>	
Aluminum	540
Arsenic	7
Barium	2
Beryllium	N/D
Cadmium	0.05
Chromium	89
Copper	225
Antimony	N/D
Mercury	0.17
Magnesium	100
Manganese	750
Molybdenum	26
Silver	0.33
Nickel	47
Titanium	15
Lead	20

Section Four  
- Chemical Descriptions

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Selenium	75
Zinc	55
Vanadium	8
Sulfur	N/D
Thallium	4
N/D = Not Detect	

**Delivery location:** McAlpine WWTP, McDowell WWTP, Irwin Creek WWTP

**Utilization location:** McAlpine WWTP, McDowell WWTP, Irwin Creek WWTP

### **Citric Acid (#19)**

**Requirement:** 1,200 gallons (estimated quantity)

Product shall be 25% Concentration

**Delivery Method:** Product shall be packaged and delivered in totes of approximately 250 gallons each

A COA and SDS required on all deliveries

**Delivery Location:** McDowell WWTP

**Utilization Location:** McDowell WWTP

### **Dechlorination Tablets description needed (#20)**

**(Ascorbic Acid based or 35 & 92% sodium sulfite based).**

Requirements: **5,000 lbs** (estimated quantity)

Delivery Method: Packaged in 50 +/- lb buckets

Delivery Location: Frankin WTP

Utilization Locations: Lee S. Dukes, Franklin WTP, Vest WTP



## **Ferrous Sulfate (#21)**

**Requirement:** 300,000 gallons (estimated quantity); liquid

**Delivery Method:** Ferrous Sulfate shall be delivered in approximately 4,000 gallon lots in tank trucks in which the trailers for transfer are dedicated to ferrous sulfate only. The vessels shall be unloaded by a 2"-3" diameter rubber hose equipped with a 2" quick couple connection by means of a pump, (a pump will not be accepted unless the tank is only used for ferrous sulfate), or a compressor which is mounted on the delivery truck. Drivers are responsible for all PPE associated with offloading. No connection shall be completed until plant staff acknowledges the correct fill connection is being utilized. Hose used for transfer must be dedicated to ferrous sulfate deliveries only and securely capped during transportation. Worn or damaged hoses will not be accepted for use during transfer. The successful supplier is responsible for ensuring pressure gauges on delivery trucks are functional prior to delivery and responsible for ensuring delivery trucks discharge at the appropriate pressure.

**Chemical Specifications:** The material shall yield a minimum of 5.5 percent, by weight, of total soluble iron with 0.6% by weight, of free sulfuric acid. For material with higher total soluble iron content the free sulfuric acid may be proportionally higher. Must meet or exceed AWWA Standard B402-12 and meet the provisions of NSF/ANSI 60. A Safety Data Sheet must accompany the bid.

**Chemical Requirements:** The material shall contain no more than 0.9%, by weight, of insoluble matter.

The material shall contain no soluble inorganic or organic substances in concentrations capable of producing deleterious or injurious effects on the health of those consuming water treated with the material

The chemical must be delivered to the receiving facility at a temperature of less than 120 degrees Fahrenheit.

**Delivery Location:** Lee S. Dukes Water Treatment Plant

**Utilization Location:** Lee S. Dukes Water Treatment Plant

### **Sodium Aluminate 31%-45% (#22)**

**Requirement:** 31,000 gallons/ (estimated quantity)

**Delivery Method:** The Sodium Aluminate shall be shipped in approximately 4,000 gallon lots in specially equipped tank trucks, which are unloaded by a two-inch rubber hose equipped with a 2-inch quick couple connection by means of a pump or a compressor which is mounted on the delivery truck. Hose used for transfer must be securely capped during transportation. Worn or damage hoses will not be accepted for use during transfer. A minimum of two 20 foot hoses must be provided with delivery. Drivers are responsible for all PPE associated with offloading. The Supplier is responsible for ensuring pressure gauges on delivery trucks are functional prior to delivery. Supplier is also responsible for ensuring delivery trucks discharge at the appropriate pressure.

**Physical Requirements:** Clear, viscous liquid with a pH of <14. Solution should be free of suspended matter.

**Specification:** An inorganic salt at 31% - 45 % sodium aluminate, 3% - 7% sodium oxide and 52% - 66% water.

**Impurities:** Product shall not contain quantities or concentrations of any metals, including, but not limited to mercury, zinc, copper or cyanide, or any other impurity that would cause the Wastewater Treatment facility to fail to meet NPDES permit requirements or 503 Bio-solids regulations.

**Utilization Location(s):** 12 Mile WWTP

**Delivery Locations:** 12 Mile WWTP

**BID SUBMISSION FORM  
ITB # FY18-ITB-05**

**WASTE WATER AND WATER TREATMENT CHEMICALS**

**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: \_\_\_\_\_

Name of delivery company \_\_\_\_\_

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 1.6)
- 3. Bid/Bid package contains all of the Bid/Bid Response Package Forms:

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**ADDENDA ACKNOWLEDGEMENT FORM**

**ITB # FY18-ITB-05  
WASTE WATER AND WATER TREATMENT CHEMICALS**

**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.

Addenda acknowledgement. Please contact the Procurement Officer listed below to verify the number of addenda issued:

**Adrienne Lewis**

[alewis@charlottenc.gov](mailto:alewis@charlottenc.gov)

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

\_\_\_\_\_

**PRICING SHEET  
ITB # FY18-ITB-05  
DEPARTMENT WIDE WATER TREATMENT AND WASTE WATER TREATMENT CHEMICALS**

The undersigned proposes to provide pricing and furnish the following chemicals in strict conformance to the specifications and bid invitation issued by the City of Charlotte for this bid. Company must indicate the chemical(s) providing a Response Packet for and will provide pricing for via Reverse Auction.

**RESPONSE PACKETS ARE DUE March 26, 2018, NO LATER THAN 2:00 EST**

**REVERSE AUCTION WILL BE HELD ON April 9, 2018**

<u>Items</u>	<u>Description</u>	<u>Estiamated Quantity</u>	<u>Unit of Measure</u>	<u>Delivery Method</u>	<u>Pricing</u>	<u>Company will bid this item VIA REVERSE AUCTION (check all that apply)</u>	<u>Plant Location</u>
1.	Powdered Activated Carbon	1700	Tons	Bulk-Full tanker	Via Reverse Auction	<input type="checkbox"/>	Franklin, Vest, Lee S. Dukes Water Treatment Plant
2.	Aluminum Sulfate (Liquid Alum)	11,122	Tons	4,000 gallon lots	Via Reverse Auction	<input type="checkbox"/>	Franklin, Vest, Lee S. Dukes Water Treatment Plant
3.	Hydrated Lime	5,000	Tons	Bulk	Via Reverse Auction	<input type="checkbox"/>	Franklin, Vest, Lee S. Dukes Water Treatment Plant
4.	Sodium Hypochlorite (LTL)	4,500	Gallons	15 gallon totes/ Carboys; Less than Load	Via Reverse Auction	<input type="checkbox"/>	WWTP:Irwin Creek, Crooked Creek, McDowell Creek
5.	Sodium Hypochlorite	98,000	Gallons	Less Than	Via	<input type="checkbox"/>	Mallard Creek, Sugar

Section 4 Required Forms  
Form Three

	(LTL)			Load	Reverse Auction		Creek WWTPs
6.	Sodium Hypochlorite 12.5%	1,348,000	Gallons	Full tanker (bulk)	Via Reverse Auction	<input type="checkbox"/>	12 Mile, McAlpine Creek WWTP
7.	Sodium Hypochlorite 12.5%	6,000	Gallons	15 gallon totes/ carboys	Via Reverse Auction	<input type="checkbox"/>	Franklin Water Treatment Plant
8.	Sodium Bisulfite (LTL)	10,250	Gallons	250 gallon totes	Via Reverse Auction	<input type="checkbox"/>	Franklin, Vest, Lee S. Dukes Water Treatment Plant
9.	Sodium Bisulfite	389,754	Gallons	Full tanker load	Via Reverse Auction	<input type="checkbox"/>	McAlpine Creek
10.	Sodium Hydroxide (LTL) (Caustic Soda 18-25%)	4,000	Gallons	55 gallon drums and/or 250 gallon totes	Via Reverse Auction	<input type="checkbox"/>	Vest WTP
11.	Sodium Hydroxide (Caustic Soda 25%)	48,000	Gallons	Full tanker load @McAlpine only	Via Reverse Auction	<input type="checkbox"/>	12-Mile, McAlpine Creek WWTP
12.	Fluorosilicic Acid	1,300	Tons	4,000 gallon bulk tanker loads	Via Reverse Auction	<input type="checkbox"/>	Franklin, Vest, Lee S. Dukes Water Treatment Plant
13.	Chlorine Gas	1,300	Tons	Truck load in 1 ton containers	Via Reverse Auction	<input type="checkbox"/>	Franklin, Vest, Lee S. Dukes Water Treatment Plant
14.	Lime Slurry-delivered at 30% concentration; diluted to 22%	651,469	Gallons	4,000 – 5,000 gallon bulk tanker loads	Via Reverse Auction	<input type="checkbox"/>	McDowell Creek WWTP
15.	Lime Slurry-	82,610	Gallons	6,000 –	Via	<input type="checkbox"/>	Crooked Creek,

Section 4 Required Forms  
Form Three

	delivered at 30% dilution			10,000 gallon bulk tanker loads	Reverse Auction		Tallwood WWTP
15 A.	Temporary Chemical Feed System at Crooked Creek WWTP	1	Each	N/A		<input type="checkbox"/>	Crooked Creek WWTP
16.	Acetic Acid 20%	566,610	Gallons	Bulk	Via Reverse Auction	<input type="checkbox"/>	McDowell Creek WWTP
17.	Liquid Linear Phosphate	16,000	Gallons	55 gal drums and/or 250 gal totes	Via Reverse Auction	<input type="checkbox"/>	Franklin, Vest, Lee S. Dukes Water Treatment Plant
18.	Ferric Chloride 37-42%	2,067,532	Gallons	Full tanker load	Via Reverse Auction	<input type="checkbox"/>	McAlpine Creek, McDowell Creek WWTP
19.	Citric Acid 25%	1,200	Gallons	250 gallon totes	Via Reverse Auction	<input type="checkbox"/>	McDowell Creek WWTP
20.	Dechlorination Tablets	2,400	Pounds	50 +/- lb buckets	Via Reverse Auction	<input type="checkbox"/>	Franklin WTP
21.	Ferrous Sulfate	300,000	Gallons	4,000 gallon lots	Via Reverse Auction	<input type="checkbox"/>	Dukes WTP
22.	Sodium Aluminate 31-45%	96,000	Gallons	4,000 gallon bulk tanker loads	Via Reverse Auction	<input type="checkbox"/>	12-Mile WWTP

**Total Bid Price Via Reserve Auction must include all chemicals, labor, delivery, and all other costs associated. No additional cost will be allowed.**

The undersigned hereby certifies the Supplier has read the terms of this bid document, terms and conditions of the Reverse Auction, PGGI Contract Terms and Conditions including the Contract Requirements and agrees to comply with these documents and is authorized to bind the firm to the information herein set forth.

Date: \_\_\_\_\_  
\_\_\_\_\_ Legal Name of Firm

BY: \_\_\_\_\_  
Name Title of Person Signing (please print)



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**NON-DISCRIMINATION PROVISION**

**PROJECT: WASTE WATER AND WATER TREATMENT CHEMICALS**

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 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: \_\_\_\_\_

**Section 6**  
**Required Forms – Form Five**

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**E-VERIFY CERTIFICATION**

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, 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: \_\_\_\_\_

**SAFETY ASSESSMENT FORM**



**Contractor Safety Assessment**

<b>1. Organization Information:</b>		
Company Name: _____		
On-Site Representative: _____	Phone #: _____	
Email: _____		
Safety Representative: _____	Phone #: _____	
Email: _____		
<b>2. Safety-Program Documentation:</b>		
	Yes	N/A
• Does your company have a written safety and health program that is available upon request?	_____	_____
• Are your employees current on all applicable safety-related training?	_____	_____
• Provide copies of your OSHA annual summary (Form 300A) for the past 3 years.	_____	_____
• Provide copies of any OSHA citations or violations for the past 3 years.	_____	_____
• Provide your company's NAICS* code.	_____	
	Year	DART Rate**
• What is your company's DART incidence rate for the past 3 years?	_____	_____
	_____	_____
	_____	_____
• What is your industry's DART incidence rate for the past 3 years?	_____	_____
	_____	_____
	_____	_____
<p>*NAICS - North American Industrial Classification System – If you need assistance with this information, please refer to the Bureau of Labor Statistics (BLS) website at <a href="http://www.bls.gov">www.bls.gov</a> or contact a safety consultant.</p> <p>**DART Rate – If one of your past three-year DART incidence rate exceeded the industry standard, please attach an explanation as to why. As well your company DART incidence rate for the past five years.</p>		
<b>3. Insurance-Coverage Documentation:</b>		
	Yes	N/A
• A copy of your workers' compensation certificate of insurance	_____	_____
• A copy of your commercial general liability certificate of insurance	_____	_____
• A copy of your automobile liability certificate of insurance	_____	_____
• A copy of your professional liability certificate of insurance for errors and omissions	_____	_____
• A copy of your fidelity or performance bond	_____	_____
<p>Based on the scope of the project, insurance documentation must be submitted. Please refer to the insurance requirements on page 2 &amp; 3 of this form for the City's insurance requirements.</p>		
<b>4. Sign and date the form:</b>		
Authorized Signature: _____	Date: _____	
Print Name: _____		

**REFERENCES**

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:	

Section 5  
Contract Terms and Conditions

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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 26<sup>th</sup> day of July, 2018 (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 FY18-ITB-05) dated **January 16, 2018** 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 # FY18-ITB-05 on April 9, 2018. 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 June 25, 2018 to Company to provide **Waste Water and Water Treatment Chemicals** 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 via Reverse Auction

Exhibit B: Specifications

Exhibit C: 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 all Exhibits 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. 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 **INSERT NAME OF PRODUCTS / TITLE OF BID HERE** 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** years from the Effective Date.
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, delivery, transportation, and facilities, 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 the 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 c. The company shall not be entitled to charge the city any prices, fees or other amounts that are not listed in exhibit a.
8. **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:

Option 1 – E-mail one copy of each invoice to [cocap@charlottenc.gov](mailto:cocap@charlottenc.gov) . Company shall not mail invoices that have been sent via e-mail.

Option 2 – Mail one copy of each invoice to:

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

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. Invoices must include state and local sales tax.

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 \_\_\_\_\_, 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.
- 43.14 **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

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.

43.16 **DELIVERY TIME:** Delivery specifications outlined in Exhibit B supercede this section. 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.

43.17 **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.

43.18 **DESIGN AND/OR MANUFACTURER REQUIREMENT:** All Products and Services shall meet the Specifications set forth in Exhibit B of the **Contract**.

43.19 **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. Specifications outlined in Exhibit B supercede this section. 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.** Specifications outlined in Exhibit B supercede this section. 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.** Specifications outlined in Exhibit B supercede this section. 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. **LIQUIDATED DAMAGES:** The Company acknowledges and agrees that the City may incur costs if the Company fails to meet the certain requirements set forth in the Specifications (including, delivery times, inventory levels). The Company further acknowledges and agrees that: (a) the City may be damaged by such failures, including loss of goodwill and administrative costs; but that (b) the costs that the City might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Note that liquidated damages will not be included in all contracts; they really are intended to compensate the City for difficult-to-quantify damages such as lost staff time, productivity, etc.
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 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.
- 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 successful Bidder for any damages arising from delay, whether caused by the City or not.
31. **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.
32. **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.
33. **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) Pollution Legal Liability- Insurance of not less than \$2,000,000 per occurrence or claim, including third party bodily injury, third party property damage-including loss of use, natural resources damages, cleanup coverage for pollution migration, and legal defense costs
- (D) 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.

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 Form, 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 (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 Company and/or subcontractor providing such insurance.

**34. COMMERCIAL NON-DISCRIMINATION.**

As a condition of entering into this Contract, 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 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 Contract and may result in termination of this Contract, 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 in a format specified by 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 days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Company has used on City contracts in the past five years, including the total dollar amount paid by the 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 the 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, disqualification of the Company from participating in City contracts and other sanctions.

**35. 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.

**36. 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.

37. **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.

38. **DRUG-FREE WORKPLACE.** The City is a drug-free workplace employer. The Company hereby certifies that it has or it will within thirty (30) days after execution of this Contract:

38.1 Notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substance is prohibited in the workplace and specifying actions that will be taken for violations of such prohibition;

38.2 Establish a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the Company's policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations;

38.3 Notify each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlines in (a) above, and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;

38.4 Impose a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by an employee convicted of a drug crime;

38.5 Make a good faith effort to continue to maintain a drug-free workplace for employees; and

38.6 Require any party to which it subcontracts any portion of the work under the contract to comply with the provisions of this Section.

A false certification or the failure to comply with the above drug-free workplace requirements during the performance of this Contract shall be ground for suspension, termination or debarment.

39. **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

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Contract Terms and Conditions

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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:

<b>For The Company:</b>	<b>For The City:</b>
	Adrienne Lewis
	Charlotte Water Procurement Unit
	5100 Brookshire Boulevard
	Charlotte, NC 28216
	Phone: 704-391-5116
	Fax: 704-632-8512
	E-mail: <a href="mailto:alewis@charlottenc.gov">alewis@charlottenc.gov</a>
<b>With Copy To:</b>	<b>With Copy To:</b>
	Thomas Powers
	Senior Assistant City Attorney
	600 East Fourth Street
	Charlotte, NC 28202
	Phone: 704-336-5877
	Fax: 704-336-8854
	E-mail: <a href="mailto:tpowers@ci.charlotte.nc.us">tpowers@ci.charlotte.nc.us</a>

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.

40. **SUBCONTRACTING:** The Company may subcontract delivery of Waste Water and Water Treatment chemicals. The Company shall not subcontract any other service and/or chemical awarded 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.
41. **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:

- A. could not have been prevented by reasonable precaution;
- B. cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and



- C. 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.

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.

#### **42. CONFIDENTIALITY.**

42.1 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:

- 42.1.1. 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.
- 42.1.2. Information of the City or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."
- 42.1.3. Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.
- 42.1.4. 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.
- 42.1.5. Citizen or employee social security numbers collected by the City.
- 42.1.6. 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.

- 42.1.7. Local tax records of the City that contains information about a taxpayer's income or receipts.
- 42.1.8. Any attorney / client privileged information disclosed by either party.
- 42.1.9. 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.
- 42.1.10. The name or address of individual home owners who, based on their income, have received a rehabilitation grant to repair their home.
- 42.1.11. Building plans of city-owned buildings or structures, as well as any detailed security plans.
- 42.1.12. Billing information of customers compiled and maintained in connection with the City providing utility services.
- 42.1.13. Other information that is exempt from disclosure under the North Carolina public records laws.

Categories 42.1.3 through 42.1.13 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.

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

- 42.2.1 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.
- 42.2.2 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.

- 42.2.3 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.
  - 42.2.4 Company shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.
  - 42.2.5 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.
  - 42.2.6 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.
  - 42.2.7 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.
  - 42.2.8 Company shall restrict employee access to the Confidential Information to those employees having a need to know for purposes of their jobs.
  - 42.2.9 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.
- 42.3 EXCEPTIONS. The City agrees that Company shall have no obligation with respect to any Confidential Information that the Company can establish:
- 42.3.1 Was already known to Company prior to being disclosed by the City;
  - 42.3.2 Was or becomes publicly known through no wrongful act of Company;
  - 42.3.3 Was rightfully obtained by Company from a third party without similar restriction and without breach hereof;
  - 42.3.4 Was used or disclosed by Company with the prior written authorization of the City;
  - 42.3.5 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;

42.3.6 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.

**43. MISCELLANEOUS**

- 43.1 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
- 43.2 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.
- 43.3 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.
- 43.4 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.
- 43.5 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.
- 43.6 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.

- 43.7 **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.
- 43.8 **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.
- 43.9 **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.
- 43.10 **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.
- 43.11 **TAXES.** The Company shall pay all applicable federal, state and local taxes which may be chargeable against the Products and/or Services.
- 43.12 **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:

Section 3	“Term”
Section 4.3	“Employment Taxes and Employee Benefits”
Section 13	“General Warranties”
Section 14	“Additional Representations and Warranties”
Section 22	“Guarantee”
Section 28	“Other Remedies”
Section 29	“Termination”
Section 32	“Indemnification”
Section 33	“Insurance”
Section 39	“Notices”
Section 42	“Confidentiality”
Section 43	“Miscellaneous”

- 44.1 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.
- 44.2 E-VERIFY. Company shall 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.
- 44.3 IRAN DIVESTMENT ACT. 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; (ii) it will not take any action causing it to appear on any such list during the term of this Contract; and (iii) it will not utilize any subcontractor that is identified on any such list to provide goods or services hereunder.

*[Signature Page Follows]*

**EXHIBIT A- PERALTA GARCIA GOVERNMENT  
INNOVATIONS (“PGGI”) SUPPLIER  
AGREEMENT TERMS AND CONDITIONS**

PERALTA GARCIA GOVERNMENT INNOVATIONS (“PGGI”) does not verify or validate any buyer information provided or representations made by users on the Solution, and makes no warranty of any kind to you concerning any buyer offerings using the Solution. You acknowledge PGGI, its employees, agents and partners make no warranty of any kind, either express or implied, regarding the quality, accuracy or validity of any data and information available on the Solution, or residing or passing through its network, other than information and data that is provided directly to you from PGGI. You further acknowledge any agreement entered into by you as the supplier of goods or services from a participating buyer is an agreement solely with such buyer, and PGGI is in no way a party to or responsible for the performance of such agreement. Therefore:

1. PGGI DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, RELATING TO ANY TRANSACTION ENTERED INTO BETWEEN A PARTICIPATING PERSON OR ENTITY AND A SUPPLIER, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR INTENDED USE, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS; AND
2. PGGI FURTHER DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, CONCERNING INFORMATION SUPPLIED, OR REPRESENTATIONS MADE, BY ANY BUYER, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OR REPRESENTATION RELATING TO PRODUCT SUITABILITY, SPECIFICATIONS, OR REQUESTED AVAILABILITY, OR THE TRUTHFULNESS OR ACCURACY OF ANY OTHER INFORMATION OR REPRESENTATION MADE OR SUPPLIED BY A BUYER OR ANY OTHER SUPPLIER INVOLVED IN THIS AGREEMENT.

BY YOUR SIGNATURE IN THE INVITATION

TO BID FORM 3 OF SECTION 4 REQUIRED FORMS, AND BY SUBSEQUENTLY USING THE SOLUTION, YOU AGREE TO COMPLY WITH ALL TERMS AND CONDITIONS SET FORTH BELOW AND WITH ALL INSTRUCTIONS FOR USE POSTED ON THE SOLUTION.

READ THESE TERMS AND CONDITIONS (“TERMS AND CONDITIONS”) CAREFULLY BEFORE SIGNING FORM 3. BY SIGNING FORM 3, YOU WILL BE PERMITTED TO UTILIZE THE PERALTA GARCIA GOVERNMENT INNOVATIONS (“PGGI”) INTERNET-BASED STRATEGIC SOURCING SOLUTION (“SOLUTION”) FOR THE PURPOSE OF PARTICIPATING IN THIS ONE-TIME, ON-LINE REVERSE AUCTION EVENT. YOU WILL BE ALLOWED TO RECEIVE REQUESTS FOR INFORMATION AND QUOTATIONS AND TO SUBMIT BIDS AND PROPOSALS NECESSARY IN PARTICIPATING IN THE REVERSE AUCTION EVENT. SHOULD YOU CHOOSE NOT TO SIGN FORM 3 AND RETURN IT, YOU WILL BE DENIED ACCESS TO THE SOLUTION AND THE REVERSE AUCTION EVENT.

**1. Utilization.** You are granted a one-time, non-transferable, non-exclusive right to access the Solution through the PGGI website by the use of a password(s) and/or access code(s) for the purpose of participating in a specific electronic online bid auction event. Any subsequent rights to access the Solution will require you to accept a new “Supplier Agreement Terms and Conditions”. PGGI reserves the right to terminate your access to the Solution or any of its services at any time, if PGGI shall determine, in its sole discretion, that you have violated any term(s) of this Agreement with respect to your access to and use of the Solution. In the event of such termination, PGGI shall notify you immediately.

**2. Responsibilities of the Parties.** Subject to the terms and conditions of this Agreement, PGGI will make available to you electronic access and use of the Solution for you to

**EXHIBIT A- PERALTA GARCIA GOVERNMENT  
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participate in a one-time, online bidding event. PGGI will also provide such other assistance in the way of customer support and service as are set forth below. It is solely your responsibility when using the Solution to comply with all applicable local, state and federal statutes, ordinances, regulations, and policies governing the sales of goods or services by your company. PGGI shall have no responsibility for ensuring sales of goods or services using the Solution will comply with such laws, ordinances, regulations, or policies. The Supplier, in using the system, has the responsibility for the sale including, but not limited to, the following:

- Accepting the terms and conditions of this agreement as contained in the Bid Package not less than 3 business days in advance of a scheduled event
- Selecting appropriate procurement opportunities to participate
- Preparing and assuring the completeness of any bids, quotes or proposals
- Submitting any bids, quotes or proposals electronically within the buyer established deadlines
- Maintaining with the Buyer, the security and the integrity of the bid procurement process
- Participating in any Pre-bid Conference(s) and telephonic tutorial for suppliers prior to an electronic event
- Compliance with all applicable legal requirements
- Establishing and adhering to the terms and conditions of buyer contracts
- Assuring proper authorization to enter into a contract and the proper administration of any resulting contract

As a supplier, you also acknowledge that PGGI’s responsibilities are, but not limited to, the following:

- Clarifying bidding processes and timelines
- Hosting telephone tutorials with all suppliers on utilization of the electronic bid process
- Participating in any Pre-bid Conference(s)

- Conducting the electronic bid event and providing help desk support during the event
- Publishing appropriate results to the users and obtaining feedback from participants

**3. Conduit Services Only.** The Solution provides only an Internet conduit through which the following may take place: (a) you may communicate the availability of your goods and services to potential buyers, (b) potential buyers may communicate their procurement needs to you and (c) you may respond to requests for quotations, bids or proposals in online bidding events. You will be entitled only to respond to requests of potential buyers for quotations, bids or proposals if you have accepted the terms and conditions of the Supplier Agreement. PGGI makes no representation of any kind concerning the reputation, reliability or any other matter concerning participating buyers. PGGI recommends you conduct your own inquiries concerning the qualifications and reputation of buyers, and you must look only to the buyers with whom you choose to transact business for performance of any agreements with them.

**4. Buyer Representations and Warranties.** PGGI does not verify the information supplied or representations made by buyers on the Solution and makes no warranty of any kind to you concerning any buyer using the Solution. PGGI recommends you look solely to the buyer with respect to any buyer-related information, representations and warranties.

**5. Coded Access.** Participation in the online bid event is available only to persons and entities who have read and agreed to the terms of this Agreement and who have been assigned access code(s) and/or password(s). You agree not to divulge your access codes or passwords to any other person or entity. PGGI is not responsible for such unauthorized use of the Solution.

**6. Availability and Operation of the Solution.** While every effort will be made to keep the Solution operating during all scheduled hours of



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operation, no guarantee of uninterrupted operation can be given. You agree the services provided on the Solution are provided as is and that neither you nor your business will have any claim against PGGI as a result of any non-availability of the Solution at a particular time or times or any failure of the Solution to operate as intended.

**7. Sole Remedy.** If you are dissatisfied with the functionality of this Solution or the services PGGI provides, your sole remedy is to cease using the Solution. YOU AGREE THAT YOU HAVE, AND WILL HAVE, NO CLAIM OR RIGHT OF ACTION OF ANY KIND AGAINST PGGI RELATED TO YOUR USE OF THE SOLUTION.

**8. Virus.** You hereby agree PGGI will not be liable for any harm that may be caused by the inadvertent or deliberate transmission of any malicious computer software, or such other computer program transmitted through its website from a third party.

**9. Information You Provide.** You agree any information you provide about yourself or your agents when registering to use the Solution is accurate, current and complete and you will maintain and update that information to ensure that it remains as such. If PGGI suffers any claim or incurs any liability as a result of information entered into the Solution by users of your account, you and your business will indemnify PGGI against such claim or liability including costs and attorneys fees incurred in defending against it.

**10. Security.** PGGI uses industry-standard security measures to safeguard any information you may provide to us on our website. You, your organization and/or your agents have the responsibility to manage your internal security by safeguarding passwords and establishing your own internal security procedures, to assure the proper use of the Solution. In the event of any compromise in the security of the Solution, you agree to immediately report the

same to PGGI and a new password will be assigned for your use. PGGI does not and cannot guarantee that information will remain secure.

**11. Fees.** The design, maintenance and operation of the Solution requires substantial costs and investment by PGGI. Thus, a transaction fee (“Transaction Fee”) based on the total final purchase price stated upon award will be charged to the awarded supplier. The Transaction Fee for specific products and services for each event shall be owed by you and your company upon the execution of each awarded sale resulting from your submission of any request for quotations through this Solution. You hereby acknowledge that once you have viewed or received a request for quotation through or as a result of the Solution, and submitted an initial quotation of which a sale has ultimately been consummated as a result thereof, whether or not consummated through the Solution or other forms of bids or negotiations, you are obligated to pay the Transaction Fee to PGGI if you are the awarded supplier. Said Fee will be assessed to the awarded supplier as follows.

**Awarded Supplier Reporting and Payment Terms and Conditions:** The Awarded Supplier will be responsible to pay the Transaction Fee of as specified in Exhibit B – Transaction Fee Schedule to PGGI for all payments received from the Buyer, any of its political subdivisions or any other entity (the “Buying Agent”) resulting from this bidding event or subsequent contract.

Upon notification of award from the Buyer, the Awarded Supplier is required to provide ACH, credit card account payment information, or invoice billing details (“Preferred Transaction Fee Payment Method”) to PGGI. Awarded Suppliers paying via credit card will be charged an additional credit card processing fee of 3% of the Transaction Fee. PGGI will charge the Awarded Supplier via the Preferred Transaction Fee Payment Method based on the terms below:

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**Term Purchases:** For Term or ongoing purchases, Awarded Supplier is required to enter into the Solution all Buying Agent payments received (the “Payment” or “Payments”) and details of the items, quantities and prices associated with those Payment(s) received, within ten (10) days of the end of each month. If Awarded Supplier fails to enter Buying Agent payment information by the tenth (10) day of the month, PGGI will charge to Supplier’s Preferred Transaction Fee Payment Method an amount equal to one month of the overall contract value estimated by the Buying Agent, multiplied by the Transaction Fee percentage. The Transaction Fee will be charged to your Preferred Transaction Fee Payment Method on the fifteenth (15) day of each month.

**Audit Right:** The Buying Agent and PGGI reserve the right to audit the accuracy of the Transaction Fees. Audits shall be conducted during regular business hours, upon not less than fifteen (15) business day’s prior written notice, and in such a manner as not to unreasonably interfere with the Awarded Supplier’s normal business activities. Transaction Fees will be due immediately for any errors or omissions disclosed by any such audit. If, as a result of any such audit, Transaction Fees are determined to have been underpaid by more than five percent (5%) for the period audited, Awarded Supplier shall pay for the costs of such audit.

**12. Disclosures.** You acknowledge by using the Solution, you agree to provide PGGI accurate and complete information regarding (a) any agreement entered into by you with a participating buyer through or as a result of any online bidding event conducted through the Solution; (b) the final price agreed upon between you and the participating buyer with respect to the product or service sold to such buyer, and (c) the date payment (whether a payment in full or a partial or installment payment) is delivered to you by any buyer pursuant to any agreement entered into by you

with a participating buyer through or as a result of any online bidding event conducted through the Solution. You understand and acknowledge you are to provide this information to PGGI immediately upon becoming aware of such information and PGGI relies upon your delivery of such information for the calculation and payment of its fees as set forth in Section 11.

You acknowledge and agree the buyers conducting online bidding events through the Solution may be governmental or quasi-governmental entities, and that, prior to entering into any binding agreement with you for the purchase of any product or service, such buyers may be required to comply with numerous state and local laws, regulations and ordinances with respect to the procurement of goods and services by governmental entities. You acknowledge and agree such compliance by participating buyers may involve public notice, public hearings, counsel meetings, and other lengthy processes.

**13. Privacy Policy.** You hereby acknowledge PGGI has the right to monitor the Solution electronically from time to time and to disclose any information as necessary to satisfy any law, regulation or other government request, to operate its service properly, or to protect itself or its users. PGGI reserves the right to refuse to post or to remove any information or materials, in whole or in part, that, in its sole discretion, are unacceptable or in violation of this Agreement.

The information we receive depends on what you do when visiting the Solution. If you visit the Solution to read or download information, we collect and store only the following information about you: the name of the domain and host through which you access the Internet (for example, aol.com if you are connecting from an America Online account), and the date and time you access the Solution. We use this information to measure the number of visitors to different sections of the Solution, so that we can make the Solution more useful to our visitors. If you actively participate in using or providing any

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of the services offered through the Solution, we collect and store the personally identifiable information needed to facilitate this participation (typically your name, company name, mailing address, email address).

If you wish to use a link to another website or to do business with another user of the Solution, you may be asked by the other user to provide certain confidential information. You agree not to hold PGGI responsible for any loss or damage of any sort incurred as a result of any such disclosure to another user through the Solution. We do not control the collection or use of this information, and make no representations about the privacy policies of other sites.

**14. Reselling or Transfer.** You agree not to resell or transfer your right to use the Solution to anyone, and you will not allow your access code or password to be used by any other company or unauthorized person.

**15. Access to Internet.** You agree that in order to use the Solution you must: (a) provide your own access to the Internet, and (b) provide all equipment necessary for you to make the connection to the Internet. PGGI is not responsible for the speed, reliability and/or quality of your connectivity to the Internet.

**16. Interference with Others.** You agree not to use the Solution in a manner that would restrict or inhibit any other party’s use of such services.

**17. Links to Other Sites.** This Solution may link you to other sites on the Internet. These links are provided for your convenience but the sites to which the links connect are not under PGGI’s control. You understand and agree that the linking of the system to other sites does not mean that these sites are endorsed by PGGI, and PGGI is not responsible for the legality, accuracy or any other aspect of the operation or content of any sites to which links are provided.

**18. Copyright – How you May Use the Content of the Solution.** The content of this Solution (the “Content”) is protected by intellectual property laws of both the United States and foreign jurisdictions. You may download, use, and copy the materials found on the Solution for your internal business use only, provided that all copies that you make of the material must bear any copyright, trademark, or other proprietary notice located on the Solution which pertains to the material being copied. This material is not for republication, except as authorized in this paragraph. You are not being granted a license under any copyright, trademark, patent, or other intellectual property right in the material or the services, processes, or technology described therein. All such rights are retained by PGGI and/or any third-party owner of such rights. You may not sell or modify the Content or reproduce, display, publicly perform, distribute, or otherwise use the Content in any way for any public or commercial purpose. The use of the Content on any other website or in a networked computer environment for any purpose is prohibited. None of the Content, including any software, may be reverse engineered, disassembled, decompiled, reproduced, transcribed, stored in a retrieval system, translated into any language or computer language, retransmitted in any form or by any means, resold, or redistributed without the prior written consent of PGGI, except as described herein. Nothing in this paragraph prohibits you from printing, using or reproducing any records or reports of your transactions using the Solution.

**19. Framed Links.** You may not create framed links to the Solution without express written permission from PGGI.

**20. Modification.** PGGI, in its sole discretion, has the right to modify this Agreement at any time. Any modification is effective upon either posting notice of such modification on PGGI’s website or upon notice by certified mail. Your continued use of the Solution following notice of any modification to this Agreement shall be

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conclusively deemed an acceptance of all such modifications.

**21. Non-Circumvention.** You agree you will not, directly or indirectly, take any action with the Buyer or any other Suppliers involved in this specific event which circumvents or attempts to circumvent the intent or purpose of this Agreement. Further, you agree that once (1) you have agreed to the terms and conditions contained herein and 2) electronically viewed or received a specific request for quotations from a buyer through the Solution, you will not, directly or indirectly, enter into any agreement related to such specific request for quotations with such buyer outside the Solution or in any manner such as paper or verbal bids which would result in your failure to pay to PGGI the fee set out in Section 11 hereof. You agree to maintain confidentiality between the Buyer, your company and its representatives and PGGI regarding the submission of quotations and subsequent pricing before and during the auction event.

**22. Governing Law.** This Agreement and the rights of the parties to this Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio, without regard to or application of its conflict of laws principles.

**23. Partial Enforceability.** If any provision of this Agreement, or the application of any provision to any person, entity or circumstance shall be held invalid, illegal or unenforceable, then the remainder of this Agreement, or the application of that provision to persons, entities or circumstances other than those with respect to which it is held invalid, illegal or unenforceable, shall not be affected thereby.

**24. Entire Agreement.** This Agreement represents the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous written or oral agreements, negotiations, correspondence, undertakings and

communications between such parties representing such subject matter.

**25. No Consequential Damages.** Except as prohibited by law, each party hereto waives any right it may have to claim or recover any special, exemplary, punitive or consequential (including business interruption), or any damages other than, or in addition to, actual damages.

**26. Headings.** The headings in this Agreement have been included solely for ease of reference and shall not be considered in the interpretation or construction of this Agreement.

**Exhibit A – Rules for Participation**

- I understand the bid configuration parameters as they are displayed in the section above, entitled, “Online Electronic Bid Event Configuration.”
- I acknowledge that I have received and fully understand the training and I am capable of bidding in the online event. If someone else is designated by me to bid in this event, I take responsibility for that bidder’s capabilities, will notify PGGI, and I acknowledge that this Agreement will apply to the designated bidder.
- I understand that I should not attempt to troubleshoot any **technical problems** on my own, especially problems I am experiencing in the bid event and that I should call PGGI IMMEDIATELY at 855-405-2253.
- I understand that if I encounter any **difficulties in placing a bid** that I am to contact PGGI via phone immediately and that, if necessary, PGGI will assist me in placing a bid. I understand that adequate time must be provided to PGGI to assist me and agree that PGGI is not liable if I am unable to place a bid for any reason before the online bid closes.
- I understand that the **official bid clock** is maintained by PGGI’s server and due to Internet connection speeds the bid clock on my computer may vary.

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AGREEMENT TERMS AND CONDITIONS**

For this reason, it is important that I submit my bid with ample time remaining in the bid event to prevent late bids from being rejected due to the lag in connection speeds and clock times. Ultimately, PGGI’s server is the bid clock and by following instructions in this document, I will minimize the possibility that my intended bid will not be accepted.

- I understand that in some cases, an electronic bid **might be re-opened** if technical issues prevented a bidder or bidders from placing bids and those issues were brought to PGGI’s attention immediately. I acknowledge that a re-opening decision will be at the discretion of PGGI and the Buyer. Due to the possibility of a re-opening, I understand that I should remain logged on and attentive to the PGGI Auctions site until a broadcast message announces the bid has officially closed.
- I understand that PGGI is under **no obligation to re-open** a bid for a bidder to place a bid for any reason, particularly if a bidder does not contact PGGI immediately after attempting to place a rejected bid.
- I understand that the Buyer has the **right to reject any and all bids** and that possessing the low bid does not necessarily guarantee that the low bidder will be awarded.
- I understand that I should review all **Bid Package** files/documents uploaded to the Bid Manager Event or provided by the Bid Manager
- I understand that if I do not place a **test bid** in the training electronic bid (using the same machine I will use for the live auction), PGGI will not provide assistance, including placing bids on my behalf (proxy bidding) should I experience technical problems before or during the auction.
- I understand that PGGI recommends I make the following **precautions** to avoid any technical issues during the Electronic Bid Event:

- I should arrange for another computer to act as a **backup** in case something happens to my computer during the auction. I should log into <http://ra.eauctionservices.com/> prior to the live auction and place test bids in the training auction using this backup computer to make sure it will function properly in case it needs to be used as a back up during the bid event.
- I should make sure no **other programs** are running during the auction to prevent my computer from running slowly and not getting my bid submitted in time.

I understand that **important changes** to the configuration of the Electronic Bid Event or terms of the bid may be made after this communication is sent and that I must review all Bid Manager messages, emails, calls, and bid notices on site broadcast messages sent from PGGI and the Buyer carefully and diligently

**EXHIBIT A- PERALTA GARCIA  
GOVERNMENT INNOVATIONS  
("PGGI") SUPPLIER AGREEMENT  
TERMS AND CONDITIONS**

**Exhibit A – Rules for Participation**

- I understand the bid configuration parameters as they are displayed in the section above, entitled, "Online Electronic Bid Event Configuration."
- I acknowledge that I have received and fully understand the training and I am capable of bidding in the online event. If someone else is designated by me to bid in this event, I take responsibility for that bidder's capabilities, will notify PGGI, and I acknowledge that this Agreement will apply to the designated bidder.
- I understand that I should not attempt to troubleshoot any **technical problems** on my own, especially problems I am experiencing in the bid event and that I should call PGGI IMMEDIATELY at 855-405-2253.
- I understand that if I encounter any **difficulties in placing a bid** that I am to contact PGGI via phone immediately and that, if necessary, PGGI will assist me in placing a bid. I understand that adequate time must be provided to PGGI to assist me and agree that PGGI is not liable if I am unable to place a bid for any reason before the online bid closes.
- I understand that the **official bid clock** is maintained by PGGI's server and due to Internet connection speeds the bid clock on my computer may vary. For this reason, it is important that I submit my bid with ample time remaining in the bid event to prevent late bids from being rejected due to the lag in connection speeds and clock times. Ultimately, PGGI's server is the bid clock and by following instructions in this document, I will minimize the possibility that my intended bid will not be accepted.
- I understand that in some cases, an electronic bid **might be re-opened** if technical issues prevented a bidder or bidders from placing bids and those issues were brought to PGGI's attention immediately. I acknowledge that a re-opening decision will be at the discretion of PGGI and the Buyer. Due to the possibility of a re-opening, I understand that I should remain logged on and attentive to the PGGI Auctions site until a broadcast message announces the bid has officially closed.
- I understand that PGGI is under **no obligation to re-open** a bid for a bidder to place a bid for any reason, particularly if a bidder does not contact PGGI immediately after attempting to place a rejected bid.
- I understand that the Buyer has the **right to reject any and all bids** and that possessing the low bid does not necessarily guarantee that the low bidder will be awarded.
- I understand that I should review all **Bid Package** files/documents uploaded to the Bid Manager Event or provided by the Bid Manager
- I understand that if I do not place a **test bid** in the training electronic bid (using the same machine I will use for the live auction), PGGI will not provide assistance, including placing bids on my behalf (proxy bidding) should I experience technical problems before or during the auction.
- I understand that PGGI recommends I make the following **precautions** to avoid any technical issues during the Electronic Bid Event:
  - I should arrange for another computer to act as a **backup** in case something happens to my computer during the auction. I should log into <http://ra.eauctionservices.com/> prior to the live auction and place test bids in the training auction using this backup computer to make sure it will function properly in case it needs to be used as a back up during the bid event.
  - I should make sure no **other programs** are running during the auction to prevent my computer from running slowly and not getting my bid submitted in time.
- I understand that **important changes** to the configuration of the Electronic Bid Event or terms of the bid may be made after this communication is sent and that I must review all Bid Manager messages, emails, calls, and bid notices on site broadcast messages sent from PGGI and the Buyer carefully and diligently.

**EXHIBIT B- PERALTA GARCIA  
GOVERNMENT INNOVATIONS  
TRANSACTION FEE SCHEDULE**

**VPO** (vendor pay option) – The Buyer in this procurement has opted to use a VPO fee structure. Under this model, the awarded supplier agrees to pay PGGI a Transaction Fee, for the term of the contract (including renewals, extensions, interim purchases, or subsequent contract resulting from this bidding event), calculated based on a rate established by Buyer's actual accumulated spend against the contract.

**Awarded Supplier Transaction Fee** – The awarded supplier will be responsible to pay this Transaction Fee ("Transaction Fee") to PGGI for all payments awarded supplier receives from Buyer, any of Buyer's political subdivisions, or any other entity (the "Buying Agent") resulting from this bidding event or subsequent contract.

**Invoice Date** – PGGI will invoice Awarded Supplier following receipt of the Report or on the fifteenth (15) day of the month, whichever comes first.

**Payment Due Date** – Awarded supplier must remit the Transaction Fee within fifteen (15) calendar days of the Invoice Date.

**Per bid** – The terms of this Transaction Fee are associated with this specific procurement, and any subsequent contract. If you participate in other procurements with PGGI, the terms may be different.

**Per term** – The terms of this Transaction Fee renew with each subsequent contract term. Any restrictions, stipulations, or fee caps are limited to a specific contract term. When a contract renews for another term or is extended, these restrictions, stipulations, and / or fee caps reset.

**Per entity** – Transaction Fees for each eligible Buying Agent utilizing the agreement will be established individually, subject to the applicable threshold rate, based on actual accumulated spend against the contract by that Buying Agent.

**Tiered Pricing** – As illustrated in the Rate Table, below, the transaction fee is adjusted throughout the term of the agreement after reaching distinct thresholds of accumulated spend against the contract.

**Conflict of Terms** – In the event that there is any conflict or inconsistency between the terms of the Exhibit B Transaction Fee Schedule, the Supplier Agreement Terms and Conditions, or the terms of the Exhibit A – Rules for Participation, the terms of this Exhibit B – Transaction Fee Schedule shall control and govern the rights and obligations of the Parties.

**Rate Table**

To determine the Transaction Fee, the transaction amount is multiplied by the applicable threshold rate. The rate is reduced as accumulated spend thresholds are met.

**EXHIBIT B- PERALTA GARCIA  
GOVERNMENT INNOVATIONS  
TRANSACTION FEE SCHEDULE**

<b>Threshold Rate</b>	<b>Min. Accumulated Spend</b>	<b>Max. Accumulated Spend</b>
<b>3%</b>	\$0	\$500,000
<b>2%</b>	\$500,001	\$1,000,000
<b>1%</b>	\$1,000,001	-

**Example**

Based on the Rate Table, the first \$500,000 of total contract spend would be charged a 3% transaction fee (\$0 - \$500,000). The next \$999,999 spend against the contract would be priced at a 2% rate (\$500,001 - \$1,000,000). All additional spend against the contract beyond \$1,000,001 would be priced at a 1% rate (\$1,000,001 and greater).

Below, please see a hypothetical scenario based on awarded supplier reports following sales for a 12-month contract term beginning January 1, 2017:

<b>Period</b>	<b>2017 Jan</b>	<b>2017 Feb</b>	<b>2017 Mar</b>	<b>2017 Apr</b>
<b>Reported Sales</b>	\$225,000	\$315,000	\$285,000	\$435,000
<b>Running Total</b>	\$225,000	\$540,000	\$825,000	\$1,260,000
<b>Rate</b>	3%	3% up to \$500k 2% on \$40k	2%	2% up to \$1M 1% on \$260k
<b>Transaction Fee Due</b>	\$6,750	\$9,050	\$5,700	\$6,100