



Department of Purchasing and Contracting

INSTRUCTIONS FOR NON-COMPETITIVE PURCHASE REQUESTS

The Competitive Bidding Process is the preferred method of purchasing good or services. A waiver of this process must be requested on a case by case basis by completing a Non-Competitive Purchase Request Form in its entirety.

The form must be signed by Department Director of the User Department and submitted to the Director of the Department of Purchasing and Contracting by attachment to the requisition in Oracle.

Justification for the waiver must be provided on the request form. Additional pages may be attached if necessary.

Non-Competitive Purchase Requisitions must have a market/price reasonableness determination.

Emergency Purchase Request

An Emergency Purchase Request is to be used when a User Department seeks goods or services due to an unexpected and urgent request where health and safety or the conservation of public resources is at risk. The request must be completed regardless of the time of the emergency occurrence or dollar amount of the requisition, and must include an explanation as to why the emergency cannot be responded to using the competitive process. Expiration of funds, administrative delay or expiration of a contract or quote is not acceptable criteria for an Emergency Non-Competitive Purchase.

Sole Source Purchase Request

A Sole Source Purchase Request is to be used when a User Department seeks goods or services from the only qualified vendor or supplier that possesses the unique ability or available capacity to provide the requested goods or services. A vendor may be a sole source when the procurement involves proprietary technology, copyright, or patented information, goods or services. Additional justification for a Sole Source Purchase Request may include the requirement to match piece of existing equipment available only from the same source of original equipment or authorized dealer or an upgrade to existing software only available from the producer of the software;

A Sole Source Public Notice Form shall be posted on the County's website for five (5) business days and the results shall be attached to this Sole Source Purchase Request.



Department of Purchasing and Contracting NON-COMPETITIVE PROCUREMENT REQUEST FORM

Requesting Department: Watershed Management
Department Contact Person: Garry V. Kinnemore Telephone: 674 614-4441
Email: gvkinnemore@dekalbcountyga.gov

Requisition Number: 927560 Suggested Supplier: Hach Company
Estimated Amount of Purchase: \$ 1,300,000.00
Detailed Description of the Goods or Services to be purchased: Water quality monitoring equipment parts and services

Emergency (For Emergency Requests, Please check this box and answer **all** questions below.)

1. Date and Time of Emergency Occurrence _____

2. Please state the nature of the emergency posing a risk to public health, welfare, safety or resources:

3. State how the Estimated Amount was determined to be Fair and Reasonable (attach supporting documentation):

Sole Source (Please check box and answer all of the following completely.)

1. Provide an explanation why the product, service or supplier requested is the only method that can satisfy the requirements. Please explain why alternatives are unacceptable. Be specific with regard to specification, features, characteristics, requirements, capabilities and compatibility. (Attach additional documents, if necessary):

Most of Scott Candler's water quality monitoring equipment comes from Hach Company. Their factory-trained service personnel are the only people authorized to perform any repair, start-up service or maintenance on Hach Co. instruments.

2. Will this purchase obligate us to a particular vendor for future purchases? (Either in terms of maintenance that only this vendor will be able to perform and/or if we purchase this item, will we need more "like" items in the future to match this one?) Explain in detail.

Yes, because of the many different parameters and types of analyzers Hach Company does not recognize or authorize any other service organization to perform calibration or repair of their equipment.

3. Explain the impact to the County or Public if this request is not approved.

State of Georgia water quality regulators require our water quality monitoring equipment meet their standards. Failure to approve this requisition may cause us to violate state regulations.

I hereby request that this non-competitive procurement request be approved for the purchase of the above stated work, material, equipment, commodity, or service.

Department Director (Typed/Printed Name) Reginald Wells Signature: Reginald Wells Digitally signed by Reginald Wells Date: 2021.07.07 12:04:55 -0600 Date: 07/07/21

Do Not Write Below – for the Department of Purchasing and Contracting Use Only

Procurement Agent (Typed/Printed Name) Sharice Feagins-Bail Signature: Sharice Feagins-Bail Digitally signed by Sharice Feagins-Bail Date: 2021.08.26 09:42:21 -0400 Date: 08/26/2021

Procurement Manager (Typed/Printed Name) Crystal Creekmore Signature: _____ Date: _____

Approved Not Approved

Signature: _____, Director, Department of Purchasing and Contracting Date: _____
P&C Rev. 9/21/2017

Print Form

(Additional information, attach pages if required):

Public Notice of Proposed Award of Sole Source Procurement

Section A – Description of Proposed Sole Source Procurement

Description of Supplies/Services: Water quality monitoring equipment parts and services

Demonstration of Contractor’s Unique Qualifications: Hach Company factory-trained service personnel are the only authorized representatives to perform any repair, start-up service or maintenance on Hach Company instruments.

Section B – To Be Completed by the Department of Purchasing and Contracting

Market Survey Results

Date Public Notice posted on website: August 5, 2021

Date Public Notice closed: August 12, 2021

Review of Offers

Were any offers received (Yes/No): No

Number of offers received: 0

Responders: 0

Purchasing Agent review and recommendation:

This request consists of Hach Company providing water quality monitoring equipment parts and the maintenance and repair services for such parts. The company is the sole source provider and its factory-trained service personnel are the only authorized representatives to perform any repair, start-up service or maintenance on Hach’s equipment without voiding warranties. This request is to provide these services to the Scott Candler, Snapfinger, and Pole Bridge Water Treatment Facilities in DeKalb County.

A sole source CPA No. 1042139 was awarded to the vendor, effective December 13, 2016 – December 31, 2018, in the amount of \$300,000.00 for water monitoring equipment and repair services. The previous CPA No. 1108179 in the amount of \$564,845.88 expired on May 31, 2019. BOC approved a recent request for renewal of annual service agreement for equipment maintenance and for the purchase of lab supplies on August 27, 2019 in the amount of \$900,000.00. This sole source has been assigned Agenda item 2021-3014.

- Law previously approved the terms and conditions. However, Law notated “the business removed the indemnity clause, but left in the limit of liability and the statement that Colorado law applies, which is a risk to the department because they could argue that our sovereign immunity protections do not apply, and that the damages they cause are limited beyond that allowable by Georgia.”
- Caveats were notated to the department.

It is my recommendation to approve the sole source due to DeKalb County's continual use of Hach products, which are maintained, serviced, and repaired by their authorized technicians. DeKalb County has been doing business with Hach Company since 2004. The total amount spent with Hach Company to date is \$3,507,117.30.

Agent Signature

Date

Procurement Manager Signature

Date



Hach Company Instrument Service and Parts

6/25/2021

Dear Customer: DeKalb County
1300 Commerce Drive
Decatur, GA 30030
Attention: Purchasing & Contracting

The instruments you purchased, part of the following family of brands --- **Hach, American Sigma, Anatel, Astro, Great Lakes Instruments, Hydrolab, Lachat, Marsh-McBirney, Orbisphere, OptiQuat, OTT, Polymetron and Radiometer-Analytical** --- were designed to be reliable, durable and easy to operate. Our goal is to design and manufacture instruments that give accurate readings with minimum maintenance requirements.

The **Hach Service Representative** is a highly trained professional that has a thorough, in-depth knowledge of the workings of each manufactured instrument. Our factory-trained service personnel are the **only people authorized** to perform any repair, start-up service or maintenance on these instruments. Because of the many different parameters and types of analyzers, **we do not recognize or authorize any other service organization to perform repair or recalibration on these analyzers.** As an **ISO 9001 certified** company, we maintain the highest standards for quality assurance and NIST traceable test and calibration equipment. Also, unauthorized repairs will result in voiding the instrument's warranty.

All parts used in our instruments meet our specifications and conform to our high standards. Many parts that may be available from a local vendor go through a testing procedure before being available as a Hach authorized part to ensure that they meet the performance tolerances specified for proper instrument performance. Additionally, the use of non-Hach supplied parts will result in voiding the instrument's warranty.

We have service repair centers that can repair and return instruments efficiently and economically. For on-site services we have an extensive field service organization.

Please contact the Hach Company Service Center at 1-800-227-4224 ext.6180, or web site at www.hach.com for additional information.

Sincerely

Stephanie Herman

The Hach Company Service Group



TERMS & CONDITIONS OF SALE FOR HACH COMPANY PRODUCTS AND SERVICES

This document sets forth the Terms & Conditions of Sale for goods manufactured and/or supplied, and services provided, by Hach Company of Loveland, Colorado ("Hach") and sold to the original purchaser thereof ("Buyer"). Unless otherwise specifically stated herein, the term "Hach" includes only Hach Company and none of its affiliates. Unless otherwise specifically stated in a previously-executed written purchase agreement signed by authorized representatives of Hach and Buyer, these Terms & Conditions of Sale establish the rights, obligations and remedies of Hach and Buyer which apply to this offer and any resulting order or contract for the sale of Hach's goods and/or services ("Products").

1. APPLICABLE TERMS & CONDITIONS: These Terms & Conditions of Sale are contained directly and/or by reference in Hach's offer, order acknowledgment, and invoice documents. The first of the following acts constitutes an acceptance of Hach's offer and not a counteroffer and creates a contract of sale ("Contract") in accordance with these Terms & Conditions: (i) Buyer's issuance of a purchase order document against Hach's offer; (ii) acknowledgement of Buyer's order by Hach; or (iii) commencement of any performance by Hach pursuant to Buyer's order. Provisions contained in Buyer's purchase documents (including electronic commerce interfaces) that materially alter, add to or subtract from the provisions of these Terms & Conditions of Sale are not a part of the Contract.

2. CANCELLATION: Buyer may cancel goods orders subject to fair charges for Hach's expenses including handling, inspection, restocking, freight and invoicing charges as applicable, provided that Buyer returns such goods to Hach at Buyer's expense within 30 days of delivery and in the same condition as received. Buyer may cancel service orders on ninety (90) day's prior written notice and refunds will be prorated based on the duration of the service plan. Inspections and re-instatement fees may apply upon cancellation or expiration of service programs. Seller may cancel all or part of any order prior to delivery without liability if the order includes any Products that Seller determines may not comply with export, safety, local certification, or other applicable compliance requirements.

3. DELIVERY: Delivery will be accomplished FCA Hach's facility located in Ames, Iowa or Loveland, Colorado, United States (Incoterms 2010). Legal title and risk of loss or damage pass to Buyer upon transfer to the first carrier. Hach will use commercially reasonable efforts to deliver the Products ordered herein within the time specified on the face of this Contract or, if no time is specified, within Hach's normal lead-time necessary for Hach to deliver the Products sold hereunder. Upon prior agreement with Buyer and for an additional charge, Hach will deliver the Products on an expedited basis. Standard service delivery hours are 8 am – 5 pm Monday through Friday, excluding holidays.

4. INSPECTION: Buyer will promptly inspect and accept any Products delivered pursuant to this Contract after receipt of such Products. In the event the Products do not conform to any applicable specifications, Buyer will promptly notify Hach of such nonconformance in writing. Hach will have a reasonable opportunity to repair or replace the nonconforming product at its option. Buyer will be deemed to have accepted any Products delivered hereunder and to have waived any such nonconformance in the event such a written notification is not received by Hach within thirty (30) days of delivery.

5. PRICES & ORDER SIZES: All prices are in U.S. dollars and are based on delivery as stated above. Prices do not include any charges for services such as insurance; brokerage fees; sales, use, inventory or excise taxes; import or export duties; special financing fees; VAT, income or royalty taxes imposed outside the U.S.; consular fees; special permits or licenses; or other charges imposed upon the production, sale, distribution, or delivery of Products. Buyer will either pay any and all such charges or provide Hach with acceptable exemption certificates, which obligation survives performance under this Contract. Hach reserves the right to establish minimum order sizes and will advise Buyer accordingly.

6. PAYMENTS: All payments must be made in U.S. dollars. For Internet orders, the purchase price is due at the time and manner set forth at www.hach.com. Invoices for all other orders are due and payable NET 30 DAYS from date of the invoice without regard to delays for inspection or transportation, with payments to be made by check to Hach at the above address or by wire transfer to the account stated on the front of Hach's invoice, or for customers with no established credit, Hach may require cash or credit

card payment in advance of delivery. In the event payments are not made or not made in a timely manner, Hach may, in addition to all other remedies provided at law, either: (a) declare Buyer's performance in breach and terminate this Contract for default; (b) withhold future shipments until delinquent payments are made; (c) deliver future shipments on a cash-with-order or cash-in-advance basis even after the delinquency is cured; (d) charge interest on the delinquency at a rate of 1-1/2% per month or the maximum rate permitted by law, if lower, for each month or part thereof of delinquency in payment plus applicable storage charges and/or inventory carrying charges; (e) repossess the Products for which payment has not been made; (f) recover all costs of collection including reasonable attorney's fees, or (g) combine any of the above rights and remedies as is practicable and permitted by law. Buyer is prohibited from setting off any and all monies owed under this from any other sums, whether liquidated or not, that are or may be due Buyer, which arise out of a different transaction with Hach or any of its affiliates. Should Buyer's financial responsibility become unsatisfactory to Hach in its reasonable discretion, Hach may require cash payment or other security. If Buyer fails to meet these requirements, Hach may treat such failure as reasonable grounds for repudiation of this Contract, in which case reasonable cancellation charges shall be due Hach. Buyer grants Hach a security interest in the Products to secure payment in full, which payment releases the security interest but only if such payments could not be considered an avoidable transfer under the U.S. Bankruptcy Code or other applicable laws. Buyer's insolvency, bankruptcy, assignment for the benefit of creditors, or dissolution or termination of the existence of Buyer, constitutes a default under this Contract and affords Hach all the remedies of a secured party under the U.C.C., as well as the remedies stated above for late payment or non-payment. See 120 for further wire transfer requirements.

7. LIMITED WARRANTY: Hach warrants that Products sold hereunder will be free from defects in material and workmanship and will, when used in accordance with the manufacturer's operating and maintenance instructions, conform to any express written warranty pertaining to the specific goods purchased, which for most Hach instruments is for a period of twelve (12) months from delivery. Hach warrants that services furnished hereunder will be free from defects in workmanship for a period of ninety (90) days from the completion of the services. Parts provided by Hach in the performance of services may be new or refurbished parts functioning equivalent to new parts. Any non-functioning parts that are repaired by Hach shall become the property of Hach. No warranties are extended to consumable items such as, without limitation, reagents, batteries, mercury cells, and light bulbs. All other guarantees, warranties, conditions and representations, either express or implied, whether arising under any statute, law, commercial usage or otherwise, including implied warranties of merchantability and fitness for a particular purpose, are hereby excluded. The sole remedy for Products not meeting this Limited Warranty is replacement, credit or refund of the purchase price. This remedy will not be deemed to have failed of its essential purpose so long as Hach is willing to provide such replacement, credit or refund.

8. INDEMNIFICATION: Indemnification applies to a party and to such party's successors-in-interest, assignees, affiliates, directors, officers, and employees ("Indemnified Parties"). Hach is responsible for and will defend, indemnify and hold harmless the Buyer Indemnified Parties against all losses, claims, expenses or damages which may result from accident, injury, damage, or death due to Hach's breach of the Limited Warranty. Buyer is responsible for and will defend, indemnify and hold harmless the Hach Indemnified Parties against all losses, claims, expenses or damages which may result from accident, injury, damage, or death due to negligence, misuse or misapplication of any goods or services, violations of law, or the breach of any provision of this Contract by the Buyer, its affiliates, or those employed by, controlled by or in privity with them. Buyer's workers' compensation immunity, if any, does not preclude or limit its indemnification obligations.

9. PATENT PROTECTION: Subject to all limitations of liability provided herein, Hach will, with respect to any Products of Hach's design or manufacture, indemnify Buyer from any and all damages and costs as finally determined by a court of competent jurisdiction in any suit for infringement of any U.S. patent (or European patent for Products that Hach sells to Buyer for end use in a member state of the E.U.) that has issued as of the delivery date, solely by reason of the sale or normal use of any Products sold to Buyer hereunder and from reasonable expenses incurred by Buyer in defense of such suit if Hach does not undertake the defense thereof, provided that Buyer promptly notifies



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Hach of such suit and offers Hach either (i) full and exclusive control of the defense of such suit when Products of Hach only are involved, or (ii) the right to participate in the defense of such suit when products other than those of Hach are also involved. Hach's warranty as to use patents only applies to infringement arising solely out of the inherent operation of the Products according to their applications as envisioned by Hach's specifications. In case the Products are in such suit held to constitute infringement and the use of the Products is enjoined, Hach will, at its own expense and at its option, either procure for Buyer the right to continue using such Products or replace them with non-infringing products, or modify them so they become non-infringing, or remove the Products and refund the purchase price (prorated for depreciation) and the transportation costs thereof. The foregoing states the entire liability of Hach for patent infringement by the Products. Further, to the same extent as set forth in Hach's above obligation to Buyer, Buyer agrees to defend, indemnify and hold harmless Hach for patent infringement related to (x) any goods manufactured to the Buyer's design, (y) services provided in accordance with the Buyer's instructions, or (z) Hach's Products when used in combination with any other devices, parts or software not provided by Hach hereunder.

10. **TRADEMARKS AND OTHER LABELS:** Buyer agrees not to remove or alter any indicia of manufacturing origin or patent numbers contained on or within the Products, including without limitation the serial numbers or trademarks on nameplates or cast, molded or machined components.

11. **SOFTWARE AND DATA.** All licenses to Hach's separately-provided software products are subject to the separate software license agreement(s) accompanying the software media and/or included as an Appendix to these Terms & Conditions of Sale. Except to the extent such express licenses conflict with the remainder of this paragraph, the following also applies relative to Hach's software: Hach grants Buyer only a personal, non-exclusive license to access and use the software provided by Hach with Products purchased hereunder solely as necessary for Buyer to enjoy the benefit of the Products. A portion of the software may contain or consist of open source software, which Buyer may use under the terms and conditions of the specific license under which the open source software is distributed. Buyer agrees that it will be bound by all such license agreements. Title to software remains with the applicable licensor(s). In connection with Buyer's use of Products, Hach may obtain, receive, or collect data or information, including data produced by the Products. In such cases, Buyer grants Hach a non-exclusive, worldwide, royalty-free, perpetual, non-revocable license to use, compile, distribute, display, store, process, reproduce, or create derivative works of such data, or to aggregate such data for use in an anonymous manner, solely to facilitate marketing, sales and R&D activities of Hach and its affiliates.

12. **PROPRIETARY INFORMATION; PRIVACY:** "Proprietary Information" means any information, technical data or know-how in whatever form, whether documented, contained in machine readable or physical components, mask works or artwork, or otherwise, which Hach considers proprietary, including but not limited to service and maintenance manuals. Buyer and its customers, employees and agents will keep confidential all such Proprietary Information obtained directly or indirectly from Hach and will not transfer or disclose it without Hach's prior written consent, or use it for the manufacture, procurement, servicing or calibration of Products or any similar products, or cause such products to be manufactured, serviced or calibrated by or procured from any other source, or reproduce or otherwise appropriate it. All such Proprietary Information remains Hach's property. No right or license is granted to Buyer or its customers, employees or agents, expressly or by implication, with respect to the Proprietary Information or any patent right or other proprietary right of Hach, except for the limited use licenses implied by law. Hach will manage Customer's information and personal data in accordance with its Privacy Policy, located at <http://www.hach.com/privacypolicy>.

13. **CHANGES AND ADDITIONAL CHARGES:** Hach reserves the right to make design changes or improvements to any products of the same general class as Products being delivered hereunder without liability or obligation to incorporate such changes or improvements to Products ordered by Buyer unless agreed upon in writing before the Products' delivery date. Services which must be performed as a result of any of the following conditions are subject to additional charges for labor, travel and parts: (a) equipment alterations not authorized in writing by Hach; (b) damage resulting from improper use or handling, accident, neglect, power surge, or operation in an environment or manner in which the instrument is not designed to operate or

is not in accordance with Hach's operating manuals; (c) the use of parts or accessories not provided by Hach; (d) damage resulting from acts of war, terrorism or nature; (e) services outside standard business hours; (f) site prework not complete per proposal; or (g) any repairs required to ensure equipment meets manufacturer's specifications upon activation of a service agreement.

14. **SITE ACCESS / PREPARATION / WORKER SAFETY / ENVIRONMENTAL COMPLIANCE:** In connection with services provided by Hach, Buyer agrees to permit prompt access to equipment. Buyer assumes full responsibility to back-up or otherwise protect its data against loss, damage or destruction before services are performed. Buyer is the operator and in full control of its premises, including those areas where Hach employees or contractors are performing service, repair and maintenance activities. Buyer will ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of services. Buyer is the generator of any resulting wastes, including without limitation hazardous wastes. Buyer is solely responsible to arrange for the disposal of any wastes at its own expense. Buyer will, at its own expense, provide Hach employees and contractors working on Buyer's premises with all information and training required under applicable safety compliance regulations and Buyer's policies. If the instrument to be serviced is in a Confined Space, as that term is defined under OSHA regulations, Buyer is solely responsible to make it available to be serviced in an unconfined space. Hach service technicians will not work in Confined Spaces. In the event that a Buyer requires Hach employees or contractors to attend safety or compliance training programs provided by Buyer, Buyer will pay Hach the standard hourly rate and expense reimbursement for such training attended. The attendance at or completion of such training does not create or expand any warranty or obligation of Hach and does not serve to alter, amend, limit or supersede any part of this Contract.

15. **LIMITATIONS ON USE:** Buyer will not use any Products for any purpose other than those identified in Hach's catalogs and literature as intended uses. Unless Hach has advised the Buyer in writing, in no event will Buyer use any Products in drugs, food additives, food or cosmetics, or medical applications for humans or animals. In no event will Buyer use in any application any Product that requires FDA 510(k) clearance unless and only to the extent the Product has such clearance. Buyer will not sell, transfer, export or re-export any Hach Products or technology for use in activities which involve the design, development, production, use or stockpiling of nuclear, chemical or biological weapons or missiles, nor use Hach Products or technology in any facility which engages in activities relating to such weapons. Unless the "ship-to" address is in California, U.S.A., the Products are not intended for sale in California and may lack markings required by California Proposition 65; accordingly, unless Buyer has ordered Products specifying a California ship-to address, Buyer will not sell or deliver any Hach Products for use in California. Any warranty granted by Hach is void if any goods covered by such warranty are used for any purpose not permitted hereunder.

16. **EXPORT AND IMPORT LICENSES AND COMPLIANCE WITH LAWS:** Unless otherwise specified in this Contract, Buyer is responsible for obtaining any required export or import licenses. Buyer will comply with all laws and regulations applicable to the installation or use of all Products, including applicable import and export control laws and regulations of the U.S., E.U. and any other country having proper jurisdiction, and will obtain all necessary export licenses in connection with any subsequent export, re-export, transfer and use of all Products and technology delivered hereunder. Buyer will comply with all local, national, and other laws of all jurisdictions globally relating to anti-corruption, bribery, extortion, kickbacks, or similar matters which are applicable to Buyer's business activities in connection with this Contract, including but not limited to the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"). Buyer agrees that no payment of money or provision of anything of value will be offered, promised, paid or transferred, directly or indirectly, by any person or entity, to any government official, government employee, or employee of any company owned in part by a government, political party, political party official, or candidate for any government office or political party office to induce such organizations or persons to use their authority or influence to obtain or retain an improper business advantage for Buyer or for Hach, or which otherwise constitute or have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining business or any improper advantage, with respect to any of Buyer's activities related to this Contract. Hach asks Buyer to "Speak Up!" if aware of any violation of law,

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regulation or our Standards of Conduct ("SOC") in relation to this Contract. See <http://danaher.com/integrity-and-compliance> and www.danaherintegrity.com for a copy of the SOC and for access to our Helpline portal.

17. **RELATIONSHIP OF PARTIES:** Buyer is not an agent or representative of Hach and will not present itself as such under any circumstances unless and to the extent it has been formally screened by Hach's compliance department and received a separate duly-authorized letter from Hach setting forth the scope and limitations of such authorization.

18. **FORCE MAJEURE:** Hach is excused from performance of its obligations under this Contract to the extent caused by acts or omissions that are beyond its control of, including but not limited to Government embargoes, blockages, seizures or freeze of assets, delays or refusals to grant an export or import license or the suspension or revocation thereof, or any other acts of any Government; fires, floods, severe weather conditions, or any other acts of God; quarantines; labor strikes or lockouts; riots; strife; insurrections; civil disobedience or acts of criminals or terrorists; war; material shortages or delays in deliveries to Hach by third parties. In the event of the existence of any force majeure circumstances, the period of time for delivery, payment terms and payments under any letters of credit will be extended for a period of time equal to the period of delay. If the force majeure circumstances extend for six months, Hach may, at its option, terminate this Contract without penalty and without being deemed in default or in breach thereof.

19. **NON ASSIGNMENT AND WAIVER:** Buyer will not transfer or assign this Contract or any rights or interests hereunder without Hach's prior written consent. Failure of either party to insist upon strict performance of any provision of this Contract, or to exercise any right or privilege contained herein, or the waiver of any breach of the terms or conditions of this Contract will not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same will continue and remain in force and effect as if no waiver had occurred.

20. **WIRE TRANSFERS:** Buyer and Hach both recognize that there is a risk of wire fraud when individuals impersonating a business demand immediate payment under new wire transfer instructions. To avoid this risk, Buyer must verbally confirm any new or changed wire transfer instructions by calling Hach at +1-970-663-1377 and speaking with Hach's Credit Manager before transferring any monies using the new wire instructions. Both parties agree that they will not institute wire transfer instruction changes and require immediate payment under the new instructions but will instead provide a ten (10) day grace period to verify any wire transfer instruction changes before any outstanding payments are due using the new instructions.

21. **LIMITATION OF LIABILITY:** None of the Hach Indemnified Parties will be liable to Buyer under any circumstances for any special, treble, incidental or consequential damages, including without limitation, damage to or loss of property other than for the Products purchased hereunder; damages incurred in installation, repair or replacement; lost profits, revenue or opportunity; loss of use; losses resulting from or related to downtime of the products or inaccurate measurements or reporting; the cost of substitute products; or claims of Buyer's customers for such damages, howsoever caused, and whether based on warranty, contract, and/or tort (including negligence, strict liability or otherwise). The total liability of the Hach Indemnified Parties arising out of the performance or nonperformance hereunder or Hach's obligations in connection with the design, manufacture, sale, delivery, and/or use of Products will in no circumstance exceed in the aggregate a sum equal to twice the amount actually paid to Hach for Products delivered hereunder.

22. **APPLICABLE LAW AND DISPUTE RESOLUTION:** The construction, interpretation and performance hereof and all transactions hereunder shall be governed by the laws of the State of Colorado, without regard to its principles or laws regarding conflicts of laws. If any provision of this Contract violates any Federal, State or local statutes or regulations of any countries having jurisdiction of this transaction, or is illegal for any reason, said provision shall be self-deleting without affecting the validity of the remaining provisions. Unless otherwise specifically agreed upon in writing between Hach and Buyer, any dispute relating to this Contract which is not resolved by the parties shall be adjudicated in order of preference by a court of competent jurisdiction (i) in the State of Colorado, U.S.A. if Buyer has minimum contacts with Colorado and the U.S., (ii) elsewhere in the U.S. if Buyer has minimum contacts with the

U.S. but not Colorado, or (iii) in a neutral location if Buyer does not have minimum contacts with the United States.

23. **ENTIRE AGREEMENT & MODIFICATION:** These Terms & Conditions of Sale constitute the entire agreement between the parties and supersede any prior agreements or representations, whether oral or written. No change to or modification of these Terms & Conditions shall be binding upon Hach unless in a written instrument specifically referencing that it is amending these Terms & Conditions of Sale and signed by an authorized representative of Hach. Hach rejects any additional or inconsistent Terms & Conditions of Sale offered by Buyer at any time, whether or not such terms or conditions materially alter the Terms & Conditions herein and irrespective of Hach's acceptance of Buyer's order for the described goods and services.

24. **APPENDICES:** If checked, the following Appendices are attached hereto and incorporated by reference into these Terms & Conditions of Sale:

CLAROS SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT

* * *

June 25, 2021

DeKalb County
1300 Commerce Drive
Decatur, GA 30030
Attention: Purchasing & Contracting

Re: Project and Service Quote and Sole Source Letter
June 2021-December 2024

Dear Sir/Madam:

Thank you for the opportunity help DeKalb county with the annual requirements for the supply of water quality instrumentation, software, and services. The purpose of this quote is to provide pricing for the procurement of process analyzers, laboratory equipment and supplies for all the water and wastewater facilities of DeKalb County GA. Discounts are based off list price at the time items are requested. Quantities specified are based on estimates of future needs outlined below:

Item	Estimated Annual Spend	Discount- from Hach list price
Lab and Field Chemistries/Reagents	\$50,000	7%
Replacement Lab Equipment	\$20,000	7%
Replacement Process Instrumentation	\$50,000	7%
Instrumentation Services	\$145,000	5%
Customized analytical solutions	\$100,000	7%
Process Optimization Software and Services DW & WW sites	\$70,000	5%

Thank you for the opportunity to submit this proposal to continue our partnership for water quality initiatives.

Best Regards,

Kathleen Boyer
Regional Sales Manager
Hach Company

&

Chris Bunch
Divisional Sales Manager
Hach Company

