

## CONTRACT FOR the Purchase of an ANITA Mox MBBR system for the South Durham WRF

This contract is dated, made, and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the City of Durham ("City") and I. Kruger Inc. ("Contractor"), a corporation organized and existing under the laws of North Carolina;

Sec. 1. Background and Purpose. The system supplied by Contractor utilizes the ANITA Mox MBBR process, which is a continuous flow-through, non-clogging bio-film reactor containing media with a high specific surface area.

Sec. 2. Product Description and Delivery. The Contractor shall furnish all labor, services, equipment and all other items and facilities necessary to supply and deliver the equipment items as detailed in its Scope of Supply, attached hereto as Exhibit A. In this purchase contract, the term "goods" includes "goods" as that term is used in the Uniform Commercial Code (N. C. version), apparatus, materials, supplies, and equipment.

Sec. 3. Standard Purchase Contract Terms.

- (a) THE CITY OF DURHAM IS NOT RESPONSIBLE FOR GOODS DELIVERED OR SERVICES PERFORMED WITHOUT AUTHORITY OF ITS WRITTEN CONTRACT.
- (b) Do not overship or substitute. Ship exactly as contracted. The City reserves the right to reject and return at shipper's expense any and all goods delivered which do not conform to our description or specification. All goods received subject to inspection and acceptance by the City of Durham.
- (c) All shipping charges must be FULLY PREPAID TO POINT OF DELIVERY, unless otherwise arranged for and expressly stated on this contract.
- (d) Include itemized packing slips with all shipments or deliveries. Show name of DEPARTMENT of the City for which delivery is intended.
- (e) If there is any part of this contract you cannot fill promptly or within the time specified, notify the Department of Water Management at once. In case of unreasonable delay in delivery or delivery of goods inferior to those specified, or in case of any other default of the vendor, the Department of Water Management shall have the right at its option to cancel this contract in whole or in part, and vendor responsible for the EXCESS COST, EXPENSE AND DAMAGES occasioned thereby.
- (f) The workmanship, quantities or qualities of goods delivered or services performed which are to be paid for hereunder shall be to the satisfaction of the City and before final acceptance by the City all matters of dispute must be adjusted to the mutual satisfaction of the City and the vendor. Determinations and decisions, in case any questions shall arise, shall constitute a condition precedent to the right of the vendor to receive any money thereof, until the matter in question is settled.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract including Exhibit A, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, and services, necessary to supply and deliver the equipment items as detailed in its Scope of Supply, attached hereto as Exhibit A.

Sec. 5. Contractor's Billings to City. Compensation. The Contractor shall send invoices to the City on the following basis for the amounts to be paid pursuant to this contract: as described in Exhibit A. Each invoice shall document, to the reasonable satisfaction of the City: such information as may be reasonably requested by the City. Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice, and no retention shall be withheld from any invoice submitted by Contractor to City.

The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

Sec. 6. Insurance. See Exhibit A for Evidence of Insurance.

Sec. 7. Exhibits. The following exhibits are made a part of this contract:

Exhibit A: Contractor's Scope of Supply dated 12/05/2012 containing 68 page(s).

In case of conflict between Exhibit A and the text of this contract excluding the exhibit, the text of Exhibit A shall control.

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Sec. 8. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:

Donald F. Greeley, Department Director  
Department of Water Management  
City of Durham  
101 City Hall Plaza  
Durham, NC 27701-3329  
The fax number is (919)560-4479  
Email:  
Don.greeley@durhamnc.gov

To the Contractor:

I. Kruger Inc.  
Attn: Brian Frewerd  
401 Harrison Oaks Blvd, Suite 100  
Cary, NC 27513  
The fax number is 919-677-0082.  
Email: brian.frewerd@veoliawater.com

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 9. Indemnification. Warranties and Indemnification. In addition to other warranties made in this transaction, Seller represents and warrants that all of the goods furnished under this purchase contract, the process by which those goods are made, and their use will not infringe any patent, trademark, or other rights of any other person, firm, or corporation, and Seller shall defend, indemnify, and hold harmless City and its officers, officials, agents, contractors, and employees from and against any and all claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines, penalties, royalties, settlements, and expenses (including interest and reasonable attorney's fees assessed as part of any such item) arising out of any (i) actual or alleged infringement of any such patent, trademark, or other rights, or (ii) (except to the extent that the personal injury, death, or property damage is caused solely by negligent or intentional acts or omissions of the City) personal injury, death, or property damage allegedly caused by or resulting from the delivery to the City of, or the manufacture, construction, design, formulation, development of standards, preparation, processing, assembly, testing, listing, certifying, warning, instructing, marketing, selling, advertising, packaging, or labeling of any goods furnished to the City under this purchase contract. Without reducing City's rights under this section, Seller, in case of an actual or threatened claim, may at Seller's option and expense procure for City the right to continue using the goods furnished under this purchase contract. (The preceding sentence does not pertain to part "(ii)" of the first sentence of this section.)

See Also Exhibit A, Section 2, Item 7 for additional warranty terms.

Sec. 10. Miscellaneous

(a) Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a

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judgment entered in actions heard pursuant to this subsection.

(b) Waiver. No action or failure to act by either party shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(e) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(f) EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase contract for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

See Exhibit A for other terms and conditions that are a part of this contract, including but not limited to Items 4, 6, 8, and 10 of Section 2.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

ACCEPTED AND AGREED:

ATTEST:

CITY OF DURHAM

By: \_\_\_\_\_

Preaudit Certification, if necessary:

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I. Krüger Inc.

By: \_\_\_\_\_

Mike Gutshall

Title of officer: \_\_\_\_\_

President

(Affix corporate seal.)

State of \_\_\_\_\_

ACKNOWLEDGMENT BY CORPORATION

County of \_\_\_\_\_

I, a notary public in and for the aforesaid county and state, certify that

\_\_\_\_\_ personally appeared before me this day and stated that he or she is (~~strike through the inapplicable:~~) chairperson/ president/ chief executive officer/ vice-president/ assistant vice-president/ treasurer/ chief financial officer of I. Kruger Inc a corporation, and that by authority duly given and as the act of the corporation, he or she signed the foregoing contract or agreement with the City of Durham and the

corporate seal was affixed thereto. This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My commission expires:

\_\_\_\_\_  
Notary Public

