



**Amendment No. 1
of
Contract No. PA170000072
for
AnoxKaldnes™ ANITATM Mox MBBR Pilot Study
between
Kruger Inc.
Dba Veolia Water Technologies, Inc
and the
The City of Austin**

1.0 The Contract is hereby amended as follows: Change name to **Veolia Water Technologies, Inc.** as requested by the Contractor:

| | From | To |
|--|--|---|
| Vendor Name | Kruger Inc. Dba Veolia Water Technologies, Inc. | Veolia Water Technologies, Inc. Dba Kruger |
| Vendor Code (for City use only) | KRU8319814 | ✓ 00000956213 |
| Vendor Federal Tax ID (FEIN) | ██████████ | ██████████ |

2.0 All other terms and conditions of the Contract remain unchanged and in full force and effect.

BY THE SIGNATURE affixed below, this Amendment No. 1 is hereby incorporated into and made a part of the Contract.



Cindy Reyes
Contract Management Specialist III
City of Austin, Purchasing Office

9-13-18

Date



City of Austin

Purchasing Office, Financial Services Department

P.O. Box 1088, Austin, TX 78767

October 10, 2017

Veolia Water Technologies, Inc. dba Kruger

Drew Bostian

Pilot Group Manager

4001 Weston Pkwy

Cary, NC 27513

Drew.bostian@veolia.com

919-653-4572, Cell 336-671-0921

Dear Mr. Bostian:

The Austin City Council approved the execution of a contract with your company for AnoxKaldnes™ ANITA™ Mox MBBR Pilot Study.

| | |
|-----------------------------------|--|
| Responsible Department: | Austin Water |
| Department Contact Person: | John Mitchell |
| Department Contact Email Address: | John.mitchell@austintexas.gov |
| Department Contact Telephone: | 512-972-1951 |
| Project Name: | AnoxKaldnes™ ANITA™ Mox MBBR Pilot Study |
| Contractor Name: | Veolia Water Technologies, Inc. dba Kruger |
| Contract Number: | MA 2200 PA170000072 |
| Contract Period: | 10/11/2017 – 4/10/2018 |
| Dollar Amount | \$91,000 |
| Requisition Number: | RQM 17051600525 |
| Agenda Item Number: | 25 |
| Council Approval Date: | 8/17/17 |

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person.

Sincerely,

Georgia Billela
Procurement Specialist III
City of Austin
Purchasing Office

cc: Judy Musgrove
John Mitchell
Darrell Richmond
Andy Ramirez

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Veolia Water Technologies, Inc. dba Kruger
For
AnoxKaldnes™ ANITA™ Mox MBBR Pilot Study
Contract MA 2200 PA170000072**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Veolia Water Technologies, Inc. dba Kruger ("Contractor"), a Delaware corporation having offices at 4001 Weston Parkway, Cary, NC 27513.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Drew Bostian Phone: 919-653-4572, Cell 336-671-0921, Email Address: drew.bostian@veolia.com. The City's Contract Manager for the engagement shall be John Mitchell, Phone: (512) 972-1951, Email Address: john.mitchell@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described in Exhibit A in strict accordance with the terms, covenants, and conditions of the Contract (including Exhibits) and all applicable Federal, State, and local laws, rules, and regulations.

2.2 **Tasks.** In order to accomplish the work described herein, the Contractor shall perform each of the tasks listed in Exhibit A of Contractors proposal.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated in Exhibit A. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$91,000 for all fees and expenses.

3.2 **Invoices.**

3.2.1 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor.

Invoices shall be mailed to the below address:

| | |
|-----------------------|---|
| | City of Austin |
| Department | Austin Water |
| Attn: | Accounts Payable |
| Address | 625 E. 10 th Street Ste. 400 |
| City, State, Zip Code | Austin, Texas 78701 |

3.2.2 n/a

3.2.3 n/a

3.2.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.3 Payment.

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

3.3.3 The City may withhold any payment otherwise due the Contractor to such extent as may be necessary on account of:

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor, until such time as non-defective or conforming deliverables are delivered by the Contractor;

3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3.3 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.4 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.5 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 Non-Appropriation. The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.5 Reimbursable Expenses. Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Contractor within the Contract amount.

3.6 Final Payment and Close-Out.

3.6.1 The making and acceptance of final payment will constitute:

3.6.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations.

3.6.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall be in effect for an initial term of six (6) months or until the earliest of when the deliverables set forth in the Scope of Work are complete or the City terminates the Contract

4.1.1 Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).

4.1.2 Prices are firm for the six (6) months.

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within specified reasonable time after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance" paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, diligently proceeds to cure such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance:** The following insurance requirements apply.

5.1.1 **General Requirements.**

5.1.1.1 The Contractor shall carry insurance in the types and amounts indicated below for the duration of the Contract, which shall include items owned by the City in the care, custody and control of the Contractor prior to and during construction and warranty period.

5.1.1.2 The Contractor shall complete and forward a Certificate of Insurance to the City before the Contract is executed as verification of coverage required below. The Contractor shall not commence Work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.3 The Contractor's insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better, except for hazardous material insurance which shall be written by companies with A.M. Best ratings of A- or better.

5.1.1.4 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin
Purchasing Office
P. O. Box 1088
Austin, Texas 78767

5.1.1.5 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.6 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall be at least as broad as the primary coverage.

5.1.1.7 In the event of a litigated claim in which the City is an additional insured, the City shall be entitled, upon request, at an agreed upon location, and without expense, to review redacted copies of policies and endorsements thereto.

5.1.1.8 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor. All such adjustments shall be made in writing as an addendum to this Contract.

5.1.1.9 The Contractor shall not cause any insurance to be canceled without replacement nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.10 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All uncollateralized deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.11 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The bodily injury and property damage per occurrence are \$1,000,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries), and \$2,000,000 general aggregate. The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract.

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Explosion, Collapse and Underground(X, C & U) coverage.

5.1.2.1.4 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.5 Waiver of Subrogation, Endorsement CG 2404, or reasonable equivalent coverage.

5.1.2.1.6 Thirty (30) calendar day Notice of Cancellation, Endorsement CG 0205, or reasonable equivalent coverage.

5.1.2.1.7 The City of Austin listed as an additional insured, Endorsement CG 2010, or reasonable equivalent coverage.

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a combined single limit of \$1,000,000 per accident for bodily injury and property damage.. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or reasonable equivalent coverage.

5.1.2.2.2 Thirty (30) calendar day Notice of Cancellation, Endorsement CA0244, or reasonable equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or reasonable equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The Contractor shall assure compliance with this Statute by submitting two (2) copies of a standard certificate of coverage (e.g. ACORD form) to Owner's Representative as acceptable proof of coverage. The Certificate of Insurance, must be presented as evidence of coverage for the Contractor. Workers' Compensation Insurance coverage written by the Texas Workers Compensation Fund is acceptable to the City. The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City. The policy limits for Employer's Liability are \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 Waiver of Subrogation, Form WC420304, or reasonable equivalent coverage.

5.1.2.3.2 Thirty (30) calendar day Notice of Cancellation, Form WC420601, or equivalent coverage.

5.1.2.4 **Professional Liability Insurance.** For Work which requires professional engineering or professional interpretation and report services to meet the requirements of the Contract, the Contractor responsible for performing the professional services shall provide Professional Liability Insurance with a limit of \$500,000 per claim and in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed with respect to all professional services provided in due course of the Work of this Contract.

5.1.2.5 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and reasonable approval.

5.2 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.2.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.3 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

5.4 **Acceptance of Incomplete or Non-Conforming Deliverables.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so upon mutual agreement with Contractor.

5.5 **Delays.**

5.4.1 The City may delay scheduled delivery or other due dates by advance written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.5.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.6 **Ownership and Use Of Deliverables.** See Exhibit A.

5.7 **Rights to Proposal and Contractual Material.** See Exhibit A. Determination of the public nature of the material submitted by the Contractor to the City is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.8 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES

6.1 **Warranty – Price.** See Exhibit A.

SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other observable condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract.

7.2 **Workforce.**

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify, defend, and hold the City harmless from and against all third party claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets;

7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.4.3 any significant termination or addition of provider contracts;

7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.4.6 reorganization, reduction and/or relocation in key personnel;

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

7.5 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.6 **Indemnity.** See Exhibit A.

7.7 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted, to the extent not otherwise protected by any applicable privacy or confidentiality laws. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.8 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Georgia Billela, Procurement Specialist
III

P O Box 1088

Austin, TX 78767

To the Contractor:

Veolia Water Technologies, Inc. dba Kruger

ATTN: Drew Bostian, Contract Manager

4001 Weston Pkwy

Cary, NC 27513

7.9 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which is conspicuously designated as "confidential") (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information. Contractor's confidentiality obligations under this Section shall expire (5) years after expiration or termination of the Contract.

7.10 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.11 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.12 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.13 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.14 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.15 **Assignment-Delegation.** The Contract shall be binding upon and inure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.16 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.17 **Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.18 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.19 **Dispute Resolution.**

7.19.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.19.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.20 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.21 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.22 **Holidays.** The following holidays are observed by the City:

| <u>Holiday</u> | <u>Date Observed</u> |
|------------------------------------|-----------------------------|
| New Year's Day | January 1 |
| Martin Luther King, Jr.'s Birthday | Third Monday in January |
| President's Day | Third Monday in February |
| Memorial Day | Last Monday in May |
| Independence Day | July 4 |
| Labor Day | First Monday in September |
| Veteran's Day | November 11 |
| Thanksgiving Day | Fourth Thursday in November |
| Friday after Thanksgiving | Friday after Thanksgiving |
| Christmas Eve | December 24 |
| Christmas Day | December 25 |

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.23 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the indemnity and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.24 **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.25 **Incorporation of Documents.** Section 0100, **Standard Purchase Definitions**, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:
https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

7.26 **Exhibit A.** See Exhibit A, attached hereto, which includes terms and conditions made a part of this Contract. The terms and conditions of Exhibit A shall take precedence in the event of ambiguity or conflict with other terms that are a part of the Contract. For the avoidance of doubt, the provisions in Exhibit A regarding pricing/monthly billing, confidentiality and ownership of results and intellectual property rights, warranty, indemnity, limitation of liability, and exclusion of consequential and indirect damages shall not be superseded by any other provision herein.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

VEOLIA WATER TECHNOLOGIES, INC.
DBA KRUGER

CITY OF AUSTIN

By: Leigh A. Joyce
Signature

By: G. Billela
Signature

Name: Leigh A. Joyce
Printed Name

Name: Georgia Billela
Printed Name

Title: CFO, Kruger

Title: Procurement Specialist III

Date: 10-4-17

Date: 10/10/17

List of Exhibits

Exhibit A Kruger Proposal dated February 27, 2017
Exhibit B Non Discrimination Certification, Section 0800

EXHIBIT A



February 27, 2017

John Mitchell, P.E.
Facility Engineer
Hornsby Bend BMP
City of Austin
2210 South FM 973
Austin, TX 78725
Phone: (512) 972-1951

Re: AnoxKaldnes™ ANITA™ Mox MBBR Pilot Study Proposal

Dear Mr. Mitchell,

Kruger is pleased to offer the following pilot proposal for the AnoxKaldnes ANITA Mox MBBR deammonification process.

This proposal summarizes the pilot equipment, set-up requirements, and scope of supply for an ANITA Mox MBBR pilot unit. The pilot consists of separate skid mounted tanks and control panel that will be connected onsite. Kruger requires the client provide the access to the BFP filtrate source and access to the site to install, startup, and dismantle the pilot unit. Kruger proposes to provide engineering staff to advise facility staff for a minimum of four weeks during pilot assembly and startup, three weeks of onsite support for robustness testing and three days at the end of the pilot to assist in dismantling the pilot unit, along with remote process support for the duration of the study. Cost breakdown details can be found in the budgetary pricing in the attachment below and on page 12.

The proposed testing period for the pilot study is to be determined and availability begins in April 2017. Please sign page 2 and 13 of the proposal and return the attached agreement along with the Customer's Sales Tax Exemption Certificate (if applicable) to reserve the pilot unit and schedule the testing period. If you have any questions on this package, or other requirements for preparation, please do not hesitate to contact our Regional Sales Manager, Tony Freed (229) 516-0570, or myself.

Sincerely,

A handwritten signature in black ink that reads 'Drew Bostian'.

Drew Bostian
Pilot Group Manager, Kruger
VEOLIA WATER TECHNOLOGIES

office : +1 919 653-4572 / cell : +1 336 671-0921 / fax : +1 919 677-0082
Kruger / 4001 Weston Pkwy / Cary, NC 27513 / USA
drew.bostian@veolia.com



DEMONSTRATION TEST AGREEMENT

THIS DEMONSTRATION TEST AGREEMENT (this "Agreement") is made as of the 27th day of February 2017, by and between Veolia Water Technologies, Inc., (dba KRUGER) and the City of Austin, Texas ("CUSTOMER").

1. KRUGER has submitted to the CUSTOMER a Technical Proposal, dated February 27, 2017 (the "Proposal", a copy of which is appended hereto as Attachment A and incorporated herein by reference) concerning the use of the mobile AnoxKaldnes™ ANITA™ Mox MBBR Process Pilot Unit (the "Unit") at the Hornsby Bend Biosolids Management Plant in Austin, Texas (the "Facility"), and CUSTOMER desires to accept the Proposal on the terms and conditions herein set forth.
2. KRUGER shall at all times maintain ownership of the Unit, but shall make the Unit available at the Facility for approximately a twenty-eight (28) week period, mutually acceptable to KRUGER and the Customer, for the completion of a demonstration test (the "Demonstration") as described in the Proposal. The Customer shall provide, at its sole cost and expense, the personnel, services and other support items necessary to complete the Demonstration, as described in the Proposal. In consideration for making the Unit available for the Demonstration, the Customer shall pay to KRUGER the sums set forth in the Proposal.
3. KRUGER'S provision of the Unit for completion of the Demonstration shall be subject to all of the terms and conditions set forth in Attachment B hereto, each of which are incorporated by reference as if fully set forth herein. The provisions of Attachment B shall survive the expiration or earlier termination of this Agreement. Initially capitalized words and phrases used in Attachment B without definition shall have the meanings ascribed to such words and phrases in this Agreement.
4. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall be deemed to be one and the same instrument. Any written notice or other written information to be communicated pursuant to or in connection with this Agreement shall be delivered by reputable overnight courier or certified mail, return receipt requested, to the addresses appearing on the signature page of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute and deliver this Agreement as of the day and year first above written.

Facility Legal Name

Veolia Water Technologies d/b/a
KRUGER

By: _____

By: Lyle A. Joyce

Print Name: _____

Print Name: Lyle A. Joyce

Title: _____

Title: CFO, Kruger

Address: _____

Address: 4001 Weston Parkway
Cary, NC 27513

Veolia Water Technologies, Inc. dba Kruger
4001 Weston Parkway • Cary, NC 27513 USA
Tel: 919-677-8310 • Fax: 919-677-0082
www.veoliawatertech.com



EXHIBIT B
City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 4 day of October, 2017

CONTRACTOR
Authorized
Signature

Title

Veolia Water Technologies,
Inc. dba Kruger
[Signature]
Kruger CFO



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: _____ DEPT: AWU
TO: Purchasing Officer or Designee FROM: _____
BUYER: _____ PHONE: _____

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)

- ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
- ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
- ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
- ☐ a procurement for personal, professional, or planning services
- ☐ a procurement for work that is performed and paid for by the day as the work progresses
- ☐ a purchase of land or right-of-way
- ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for

equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits

- ☐ a purchase of rare books, papers, and other library materials for a public library
- ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
- ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391
- services performed by blind or severely disabled persons
- goods purchased by a municipality for subsequent retail sale by the municipality
- electricity
- advertising, other than legal notices
- Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

4. Please attach any documentation that supports this exemption. See attached letter from Veolia.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

A Preliminary Engineering Study was conducted to review the process treatments for the Hornsby Bend Biosolids Management Plant byproduct side stream flow. The side stream flow is byproduct of the anaerobic digestion process utilized by the plant. The side stream flow has high loadings of ammonia. The Study reviewed the available treatment processes for high ammonia side stream flow. Austin Water reviewed the available technologies and determined that the best suited patented process was the Anita™ Mox deammonification technology by Veolia Water Technologies, Inc. (d.b.a. Kruger).

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Veolia Water Technologies, Inc. (d.b.a. Kruger) which will cost approximately \$ 91,000.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification

Charles Cilano 03-30-2017
Originator Date

Approved
Certification

Don M 4/3/2017
Department Director or designee Date

K?' 4/7/17
Assistant City Manager / General Manager Date
or designee (if applicable)

Purchasing Review
(if applicable)

Abel 4/14/17
Buyer Date Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee Date

02/26/2013



November 1, 2016

John Mitchell, P.E.
Facility Engineer, Hornsby Bend BMP
City of Austin Water
2210 South FM 973
Austin, TX 78701

Re: ANITA™ Mox Technology
Kruger Project No: 5700643601

Dear Mr. Mitchell:

Kruger is pleased to offer our ANITA™ Mox deammonification technology for the treatment of the high ammonia strength sidestream at the City of Austin's Hornsby Bend facility. The ANITA Mox process was developed and is owned by Veolia Water Technologies (Veolia). Veolia and its subsidiaries are the sole providers of the ANITA Mox technology. (Kruger is a wholly-owned Veolia subsidiary.)

ANITA Mox offers a number of unique features and benefits that are not available in any other deammonification process:

- ANITA Mox is based on the AnoxKaldnes™ Moving Bed Biofilm Reactor (MBBR) platform. The deammonification biomass develops on Veolia's patented and proven high specific surface area AnoxKaldnes plastic carrier media that are mixed within the reactor. (Refer to US Patent No. 6,126,829.)
- Veolia has patented and patent-pending aeration control algorithm to provide continuous aeration control in the ANITA Mox reactors for optimization of ammonia removal and energy usage. (Refer to US Patent No. 8,956,540)
- The plastic carriers are retained within the ANITA Mox reactor by means of media retention screens, which allow passage of treated centrate out of the reactor. This media retention system is highly effective at keeping the active anammox biomass in the reactor, greatly reducing the risk of biomass loss. The very slow growth rate of anammox bacteria necessitates a robust system for maintaining a sufficient and active population within the reactors.
- Because the biomass resides on the MBBR carrier media, there is no need for solids separation or biomass inventory management with the ANITA Mox system. ANITA Mox MBBR is the only anammox process on the market that does not require biomass separation or biomass separation devices in the process, a fact that allows the system to be the most robust in terms of variable or high influent solids and high influent polymer concentrations.
- Veolia is the only company that has biofarms for providing deammonification-seeded carriers for faster process startup.
- Veolia is the only company in the US offering a deammonification process operating on an MBBR platform.
- Veolia is the only company with US based engineers experienced in the commissioning and operation of ANITA Mox systems. In fact, Kruger has twelve (12) current staff members (process engineers, I&C, field techs, etc.) who have participated in six (6) ANITA™ Mox pilots in North America. For full-scale systems, we have twenty-three (23) staff members who have participated in the design and startup of six (6) ANITA™

Kruger Inc
4001 Weston Parkway
Car, NC 27513 USA
Tel 919-577-8310 • Fax 919-577-0032
Web site: www.krugerusa.com





Mox systems in the US and Europe. Our quantity and level of support is substantial – and is further backed up by process experts in France and Sweden.

If you have any questions or require clarification on our offering, please contact Kruger's Regional Manager, Tony Freed (229-516-0570; tony.freed@veolia.com) or me.

Regards,
Kruger Inc.

A handwritten signature in cursive script that reads "Michele Kline".

Michele Kline
VP of Product Delivery
Office: 919-677-8310
Direct: 919-653-4593
Email: michele.kline@veolia.com
Cc: CT, DH, AJF, Project File – Kruger
Joju Abraham – Global WET



GOAL DETERMINATION REQUEST FORM

| | | | |
|--|------------------------|--------------------------------|-------------------------|
| Buyer Name/Phone | Georgia Billela/4-2939 | PM Name/Phone | John Mitchell/2-1951 |
| Sponsor/User Dept. | Austin Water/2200 | Sponsor Name/Phone | Darrell Richmond/2-0313 |
| Solicitation No | N/A. 118988 | Project Name | Ammonia Pilot |
| Contract Amount | 105,000 | Ad Date (if applicable) | N/A |
| Procurement Type | | | |
| <input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> IFB – IDIQ <input type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Critical Business Need <input checked="" type="checkbox"/> Sole Source* <input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – JOC <input type="checkbox"/> PS – Project Specific <input type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement <input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification | | | |
| Provide Project Description** | | | |
| Sole source purchase due to patented process (Anita™ Mox deammonification technology for the reduction of high strength ammonia) | | | |
| Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No. | | | |
| None this is a pilot program | | | |
| List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable) | | | |
| 96896. | | | |
| Georgia Billela | | 6/15/2017 | |
| Buyer Confirmation | | Date | |

* Sole Source must include Certificate of Exemption

**Project Description not required for Sole Source

| | | | |
|--|-------------------------|-----------------------------------|-----------|
| FOR SMBR USE ONLY | | | |
| Date Received | 6/15/2017 | Date Assigned to BDC | 6/15/2017 |
| In accordance with Chapter 2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination: | | | |
| <input type="checkbox"/> Goals | % MBE | % WBE | |
| <input type="checkbox"/> Subgoals | % African American | % Hispanic | |
| | % Asian/Native American | % WBE | |
| <input checked="" type="checkbox"/> Exempt from MBE/WBE Procurement Program | | <input type="checkbox"/> No Goals | |

GOAL DETERMINATION REQUEST FORM

This determination is based upon the following:

- | | |
|--|--|
| <input type="checkbox"/> Insufficient availability of M/WBEs | <input type="checkbox"/> No availability of M/WBEs |
| <input type="checkbox"/> Insufficient subcontracting opportunities | <input type="checkbox"/> No subcontracting opportunities |
| <input type="checkbox"/> Sufficient availability of M/WBEs | <input type="checkbox"/> Sufficient subcontracting opportunities |
| <input checked="" type="checkbox"/> Sole Source | <input type="checkbox"/> Other |

If Other was selected, provide reasoning:

MBE/WBE/DBE Availability

N/A

Subcontracting Opportunities Identified

N/A

SMBR Staff

Signature/ Date

SMBR Director or Designee

Date

6-20-17

Returned to/ Date:

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2017-268148

Date Filed:
10/03/2017

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Veolia Water Technologies, Inc.
Cary, NC United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Austin

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

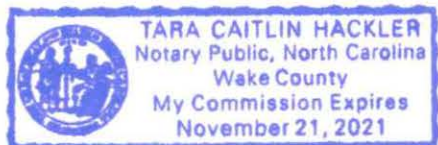
MA 2200 PA170000072
AnoxKaldnes ANITA Mox MBBR Pilot Study

| 4 | Name of Interested Party | City, State, Country (place of business) | Nature of interest (check applicable) | |
|---|--------------------------|--|--|--------------|
| | | | Controlling | Intermediary |
| | Brown, James | Plainfield, IL United States | X | |
| | Andersen, Klaus | Cary, NC United States | X | |
| | Carlier, Geoffroy | Paris Ile-de-France France | X | |
| | Nogrette, Jean-Francois | Paris Ile-de-France France | X | |
| | WASCO LLC | Indianapolis, IN United States | X | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

5 Check only if there is NO Interested Party. ☐

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



AFFIX NOTARY STAMP / SEAL ABOVE

Leigh A. Joye Assistant Secretary
Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said Assistant Sec'y Leigh Joye, this the 04 day of October, 2017, to certify which, witness my hand and seal of office.

Tara Caitlin Hackler Tara Caitlin Hackler Notary Public
Signature of officer administering oath Printed name of officer administering oath Title of officer administering oath