

**AGREEMENT FOR THE SUPPLY OF
WELL 31 WATER TREATMENT FACILITY - FILTER EQUIPMENT
PROJECT #11650.F**

THIS AGREEMENT FOR EQUIPMENT / SUPPLIES PROCUREMENT is made this 6th day of December, 2022, and entered into by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho, hereinafter referred to as "CITY", 33 East Broadway Avenue, Meridian, Idaho 83642, and KURITA AMERICA, INC. dba TONKA WATER, hereinafter referred to as "SUPPLIER", whose business address is 6600 94th Ave. North, Minneapolis, MN 55445.

INTRODUCTION

Whereas, the City has a need for WELL 31 FILTER EQUIPMENT; and

WHEREAS, the SUPPLIER is specially trained, experienced and competent to provide and has agreed to provide such equipment;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties agree as follows:

TERMS AND CONDITIONS

1. Equipment / Supply Specifications & Requirements:

1.1 SUPPLIER shall supply the equipment, supplies and services to the City upon execution of this Agreement and receipt of the City's written notice to proceed, all items, and comply in all respects, as specified in the Request for Proposals titled "Well 31 Water Treatment Facility - Filter Equipment Procurement" and suppliers proposal dated June 5, 2022, which by this reference are incorporated herein, together with all addendums issued.

1.2 The SUPPLIER shall provide all equipment and services under this Agreement consistent with the requirements and standards established by applicable federal, state and city laws, ordinances, regulations and resolutions and the UCC. The SUPPLIER represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and that are in effect at the time of performance of this Agreement.

2. Consideration

2.1 The SUPPLIER shall be compensated on a Fixed Price basis as provided in Attachment B "Payment Schedule" attached hereto and by reference made a part hereof, for the Not-To-Exceed amount of \$532,200.00.

2.2 The SUPPLIER shall provide the City with a detailed invoice upon delivery of all equipment and supplies, which the City will pay within 30 days of receipt of a correct invoice and approval by the City Project Manager. The City will not withhold any Federal or State income taxes or Social Security Tax from any payment made by City to SUPPLIER under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of SUPPLIER.

2.3 Except as expressly provided in this Agreement, SUPPLIER shall not be entitled to receive from the City any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement., including , but not limited to, meals, lodging, transportation, drawings, renderings or mockups. Specifically, SUPPLIER shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, paid holidays or other paid leaves of absence of any type or kind whatsoever.

3. Term:

3.1 This agreement shall become effective upon execution by both parties, and shall expire upon (a) completion of the agreed upon work, or (b) unless sooner terminated as provided below or unless some other method or time of termination is listed in Attachment A.

3.2 Should SUPPLIER default in the performance of this Agreement or materially breach any of its provisions, City, at City's option, may terminate this Agreement by giving written notification to SUPPLIER.

3.3 Should City fail to pay SUPPLIER all or any part of the compensation set forth in Attachment B of this Agreement on the date due, SUPPLIER, at the SUPPLIER's option, may terminate this Agreement if the failure is not remedied by the City within thirty (30) days from the date payment is due.

4. Termination:

If, through any cause, SUPPLIER, its officers, employees, or agents fails to fulfill in a timely and proper manner its obligations under this Agreement, violates any of the covenants, agreements, or stipulations of this Agreement, falsifies any record or document required to be prepared under

this agreement, engages in fraud, dishonesty, or any other act of misconduct in the performance of this contract, or if the City Council determines that termination of this Agreement is in the best interest of CITY, the CITY shall thereupon have the right to terminate this Agreement by giving written notice to SUPPLIER of such termination and specifying the effective date thereof at least fifteen (15) days before the effective date of such termination.

Notwithstanding the above, SUPPLIER shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of this Agreement by SUPPLIER, and the CITY may withhold any payments to SUPPLIER for the purposes of set-off until such time as the exact amount of damages due the CITY from SUPPLIER is determined. This provision shall survive the termination of this agreement and shall not relieve SUPPLIER of its liability to the CITY for damages.

5. Independent SUPPLIER:

5.1 In all matters pertaining to this agreement, SUPPLIER shall be acting as an independent SUPPLIER, and neither SUPPLIER nor any officer, employee or agent of SUPPLIER will be deemed an employee of CITY. Except as expressly provided in Attachment A, SUPPLIER has no authority or responsibility to exercise any rights or power vested in the City and therefore has no authority to bind or incur any obligation on behalf of the City. The selection and designation of the personnel of the CITY in the performance of this agreement shall be made by the CITY.

5.2 SUPPLIER, its agents, officers, and employees are and at all times during the term of this Agreement shall represent and conduct themselves as independent SUPPLIERS and not as employees of the City.

5.3 SUPPLIER shall determine the method, details and means of performing the work and services to be provided by SUPPLIER under this Agreement. SUPPLIER shall be responsible to City only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to City's control with respect to the physical action or activities of SUPPLIER in fulfillment of this Agreement. If in the performance of this Agreement any third persons are employed by SUPPLIER, such persons shall be entirely and exclusively under the direction and supervision and control of the SUPPLIER.

6. Indemnification and Insurance:

a. SUPPLIER shall indemnify and save and hold harmless CITY from and for any and all losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses and other costs including

litigation costs and attorney's fees, arising out of, resulting from, or in connection with the performance of this Agreement by the SUPPLIER, its servants, agents, officers, employees, guests, and business invitees, and not caused by or arising out of the tortious conduct of CITY or its employees. SUPPLIER shall maintain, and specifically agrees that it will maintain, throughout the term of this Agreement, liability insurance, in which the CITY shall be named an additional insured in the minimum amounts as follow: General Liability One Million Dollars (\$1,000,000) per incident or occurrence, Professional Liability One Million Dollars (\$1,000,000) per incident or occurrence, Automobile Liability Insurance One Million Dollars (\$1,000,000) per incident or occurrence and Workers' Compensation Insurance, in the statutory limits as required by law.. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless CITY; and if CITY becomes liable for an amount in excess of the insurance limits, herein provided, SUPPLIER covenants and agrees to indemnify and save and hold harmless CITY from and for all such losses, claims, actions, or judgments for damages or injury to persons or property and other costs, including litigation costs and attorneys' fees, arising out of, resulting from , or in connection with the performance of this Agreement by the SUPPLIER or SUPPLIER's officers, employs, agents, representatives or sub-SUPPLIERS and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including use of. SUPPLIER shall provide CITY with a Certificate of Insurance, or other proof of insurance evidencing SUPPLIER'S compliance with the requirements of this paragraph and file such proof of insurance with the CITY at least ten (10) days prior to the date SUPPLIER begins performance of it's obligations under this Agreement. In the event the insurance minimums are changed, SUPPLIER shall immediately submit proof of compliance with the changed limits. Evidence of all insurance shall be submitted to the City Purchasing Agent with a copy to Meridian City Accounting, 33 East Broadway Avenue, Meridian, Idaho 83642.

6.2 Any deductibles, self-insured retention, or named insureds must be declared in writing and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds; or the SUPPLIER shall provide a bond, cash or letter of credit guaranteeing payment of losses and related investigations, claim administration and defense expenses.

6.3 To the extent of the indemnity in this contract, SUPPLIER's Insurance coverage shall be primary insurance regarding the City's elected officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City or the City's elected officers, officials, employees and volunteers shall be excess of the SUPPLIER's insurance

and shall not contribute with SUPPLIER's insurance except as to the extent of City's negligence.

b. The SUPPLIER's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.4 All insurance coverages for Suppliers subs shall be subject to all of the insurance and indemnity requirements stated herein.

6.5 The limits of insurance described herein shall not limit the liability of the Supplier and Supplier's agents, representatives, employees or subcontractors.

6.6 The limits of insurance described herein shall not limit the liability of the Contractor and Contractor's agents, representatives, employees or subcontractors.

7. **Bonds:** Payment and Performance Bonds are required.
8. **Warranty:** In addition to any warranty required in the specifications, all equipment, coatings, valves, controls, and other components provided under this agreement shall be guaranteed for two (2) years against defects in workmanship and materials from the notice of acceptance.
9. **Notices:** Any and all notices required to be given by either of the parties hereto, unless otherwise stated in this agreement, shall be in writing and be deemed communicated when mailed in the United States mail, certified, return receipt requested, addressed as follows:

City of Meridian
Procurement Manager
33 E. Broadway Avenue
Meridian, Idaho 83642
Ph. (208) 489-0417
Email: kwatts@meridiancity.org

Kurita America, Inc.
Attn: Alan Schneider
6600 94th Ave. North
Minneapolis, MN 55445
Ph. 866-663-7633
Cell. 612-708-6517
e-mail: a.schneider@kurita-water.com

Either party may change their address for the purpose of this paragraph by giving written notice of such change to the other in the manner herein provided.

9. **Attorney Fees:** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a Court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.
10. **Time is of the Essence:** The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of, and a default under, this Agreement by the party so failing to perform.
11. **Assignment:** It is expressly agreed and understood by the parties hereto, that SUPPLIER shall not have the right to assign, transfer, hypothecate or sell any of its rights under this Agreement except upon the prior express written consent of CITY.
12. **Discrimination Prohibited:** In performing the Work required herein, SUPPLIER shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any person on the basis of race, color, religion, sex, national origin or ancestry, age or disability.
13. **Reports and Information:**
 - 13.1 At such times and in such forms as the CITY may require, there shall be furnished to the CITY such statements, records, reports, data and information as the CITY may request pertaining to matters covered by this Agreement.
 - 13.2 SUPPLIER shall maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this or Agreement. This includes any handwriting, typewriting, printing, photo static, photographic and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.
14. **Audits and Inspections:** At any time during normal business hours and as often as the CITY may deem necessary, there shall be made available to the CITY for examination all of SUPPLIER'S records with respect to all matters covered by this Agreement. SUPPLIER shall permit the CITY to

audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

15. **Publication, Reproduction and Use of Material:** No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The CITY shall have unrestricted authority to publish, disclose and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.
16. **Compliance with Laws:** In performing the scope of work required hereunder, SUPPLIER shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments.
17. **Changes:** The CITY may, from time to time, request changes in the Scope of Work to be performed hereunder. Such changes, including any increase or decrease in the amount of SUPPLIER'S compensation, which are mutually agreed upon by and between the CITY and SUPPLIER, shall be incorporated in written amendments which shall be executed with the same formalities as this Agreement.
18. **Construction and Severability:** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.
19. **Waiver of Default:** Waiver of default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided above.
20. **Advice of Attorney:** Each party warrants and represents that in executing this Agreement. It has received independent legal advice from its attorney's or the opportunity to seek such advice.
21. **Entire Agreement:** This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.
22. **Order of Precedence:** The order or precedence shall be the contract agreement, the Invitation for Bid document, then the winning bidders submitted bid document.

- 23. **Applicable Law:** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho, and the ordinances of the City of Meridian.
- 24. **Approval Required:** This Agreement shall not become effective or binding until approved by the City of Meridian.

CITY OF MERIDIAN

**KURITA AMERICA, INC.
dba TONKA WATER**

BY: _____
Keith Watts, Procurement Manager

BY: Nathan Bach
Nathan Bach
Executive VP of Engineering & Equipment

Dated: _____

Dated: 11/22/22

MS
11/22/22

Approved by City Council: _____

CITY PROJECT MANAGER
Tyson Glock

Attachment A

SCOPE OF WORK

REFER TO REQUEST FOR PROPOSALS PW-2250-11650.F ALL ADDENDUMS, ATTACHMENTS, AND EXHIBITS included in the Request for Proposals Package and written proposal by SUPPLIER dated October 3, 2022 are by this reference made a part hereof.

- The project consists of constructing an Iron and Manganese Filter to remove excess levels of the constituents from supply water before entering the distribution system.

See Document Titled "4 – Specifications Well 31 Procurement" on Bonfire portal.

- **** The following change was agreed to during negotiations:**

From: Alan SCHNEIDER <a.schneider@kurita-water.com>

Sent: Thursday, July 28, 2022 2:41 PM

To: Kyle Radek <kradek@meridiancity.org>

Cc: Keith Watts <kwatts@meridiancity.org>; Tyson Glock <tglock@meridiancity.org>

Subject: Re: [EXT]Question on current RFP for Well 31 Treatment Equipment

External Sender - Please use caution with links or attachments.

Hi Kyle

Apologies that we hadn't seen this question.

We will provide this tank with 150 test pressure and 116 PSI ASME code working pressure at no additional cost.

Please let me know of any additional questions.

Thanks!

Attachment B

MILESTONE / PAYMENT SCHEDULE

A. Total and complete compensation for this Agreement shall not exceed **\$532,200.00**.

| MILESTONE DATES/PRICING SCHEDULE | | | |
|---|--|--|----------------------------|
| | DESCRIPTION | DATE (Dependent on Council Approval) | AMOUNT |
| 1. | Substantial Completion – Equipment Delivered to Site | 480 days from contract execution | \$478,980.00 |
| 2. | Final Completion – Equipment Installed, Inspected, Startup | 510 days from contract execution | \$53,220.00 |
| CONTRACT TOTAL..... | | | <u>\$532,200.00</u> |