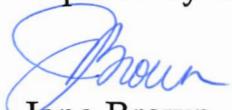


**CITY OF CARO
317 S. STATE STREET
CARO, MI 48723
PHONE: (989) 673-2226
FAX: (989) 673-7310**

NOTICE OF SPECIAL CITY COUNCIL MEETING

PLEASE TAKE NOTICE that there will be a Special City Council Meeting on Thursday, March 23, 2023, at 3:30 p.m. in the Council Chambers, 317 S. State Street, Caro, Michigan, 48723 to discuss the replacement of filter media at the water treatment facility.

This notice is given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and minutes of said meeting will be kept and will be made available as required by said Act.



Jana Brown
Deputy City Clerk
Posted: 03/22/23

March 22, 2023

TO: Jana Brown, Acting City Clerk
REGARDING: Special Council Meeting

Pursuant to Section 6.2 – Charter of the City of Caro, I am asking the Acting City Clerk, Jana Brown, to call for a Special Council meeting to Be set for Thursday, March 23, 2023, at 3:30 p.m.

The purpose of the special meeting is to discuss the replacement of filter media at the water treatment facility.

Karen J. Snider
Karen J. Snider, Mayor

3-22-2023
Date

AGENDA
SPECIAL MEETING OF THE CARO CITY COUNCIL
MARCH 23, 2023 - 3:30 P.M.

CALL TO ORDER

PUBLIC COMMENTS/VISITORS

SPECIAL AGENDA

- 1. Replacement of filter media at the water treatment facility**

ADDITIONAL PUBLIC COMMENT

ADJOURN

CITY OF CARO

CITY MANAGER
SCOTT R. CZASAK
CITY CLERK
RITA PAPP
CITY TREASURER
MICHELE PERRY
CITY ATTORNEY
LAURA GENOVICH

317 South State Street
Caro MI 48723
Phone 989-673-2226
Fax 989-673-7310
Website www.carocity.net

MAYOR
KAREN SNIDER
CITY COUNCIL
EMILY CAMPBELL
BOB ESCHENBACHER
VACANT
PAMELA ISELER
CHARLOTTE KISH
JILL WHITE

MEMORANDUM

TO: Caro City Council
FROM: City Manager Scott R. Czasak
DATE: Wednesday, March 22, 2023
RE: Agenda Item 1 – Replacement of Filter Media at Water Treatment Facility.

Members of the Caro City Council,

As you are aware, approximately 6 months ago the Department of Public Works engaged in a program to have the filter media at the water treatment facility tested in anticipation of possible replacement. Recently, regular water testing has shown a slight increase in levels of arsenic in the water, still below the Michigan Department of Environment, Great Lakes, and Energy rolling average levels for safe consumption, but this creates an acute problem which requires immediate action.

We have a quote from DuBois-Cooper Associates representing Kurita America to replace the filter media and other required components and labor within the next 6 weeks for a cost of \$179,100.00. Out of an abundance of caution and not wanting to delay this work any longer than absolutely necessary, I am asking for Council to authorize me to spend up to \$250,000.00 on this project to cover any contingent fees on disposal of the old media, any cost overruns which may happen, and any other unforeseen circumstances. This will require a budget adjustment, which is included in the proposed motion.

Your option for motions are:

1. Motion to authorize the City Manager to spend up to \$250,000.00 to facilitate replacement of the filter media at the water treatment plant, including accepting the bid from DuBois-Cooper Associates for \$179,100.00 for the initial replacement, and to adjust the FY 2022/2023 budget by increasing account number 592-557-801-000, Contracted Services, by \$250,000.00 and decreasing account number 592-557-999-001, Transfer to Fund Balance, by \$250,000.00.



Quotation

Caro, MI Horizontal Pressure Filter Refurbishment (2 Filters)

Addressee: City of Caro, MI

Quotation #: KATW03212023-1TDS

Quotation Date: 3/21/23

Quotation 7 Days
Expires:

We are represented on this project by:

Joseph Moore, P.E.

DuBois-Cooper Associates | 905 Penniman Ave. |

Plymouth, MI 48170

t: 734-455-6700, ext 3 | f: 734-455-6711 |

c: 313-920-7064 | e: jmoore@duboiscooper.com



www.duboiscooper.com

Kurita America Contact:

Tyler Skarolid

6600 94th Ave. North

Minneapolis, MN 55445

USA

763-280-1425

t.skarolid@kurita-water.com

ABOUT KURITA AMERICA

Kurita America is a designer and manufacturer with 70 years of experience in providing customized water and wastewater systems to municipal and industrial customers with more than 2300 installations. Engineering cost-effective solutions for the most challenging surface water and ground water problems.

Key packaged solutions	Service packages and parts
<ul style="list-style-type: none">ClarificationMembrane systemsFiltrationIon ExchangeMetals removal <ul style="list-style-type: none">Kurita America Aftermarket Service and Sales is continually offering new products and services to extend equipment life, reduce water and energy usage, and replace end of life equipment. <ul style="list-style-type: none">RefurbishmentsTurn-key services matching original specificationsSimul-Wash™ – simultaneous air & water backwash systemBLEU™ – low profile SS dual underdrainUni-Cast™ Underdrain – pour in place <ul style="list-style-type: none">Media Replacement and AnalysisTurn-key removal and installationInventoried anthracite, Sand, garnet, gravel and greensand <ul style="list-style-type: none">PartsFull line of OEM partsChemical feed equipmentValves and valve rebuild parts <ul style="list-style-type: none">Automation and ControlsFactory remote support and monitoringSCADA compliant and controlAllen Bradley control upgrades, PLC & HMI and obsolete replacementCompliance reporting and trendingCustom functional modification for ease of use like screens, tablets, PCsSecurity – firmware, smart switch	<ul style="list-style-type: none">Service packages and parts <ul style="list-style-type: none">Filter media replacementOriginal equipment manufacturer partsFull array of water related partsTroubleshootingUpgrades and refurbishment <ul style="list-style-type: none">Site-based servicesUnderdrain nozzles and replacementSystem enhancementsDesign-Build-Operate-Maintain solutions for industrial water/wastewater facilities <ul style="list-style-type: none">Disinfection services and media treatment servicesMeets AWWA and NSF standards <ul style="list-style-type: none">Stocked sealing and control componentsAerator packing materials



Scope of Work

Kurita America has been requested to provide a quotation for the necessary internal components and labor associated to refurbish (2) 10' diameter horizontal pressure filters at the Caro, MI Water Treatment Plant. Both filters were originally designed and supplied by Tonka water in 2005 (Tonka Water Job #05180).

Project timeline is to have the material shipped in 6 weeks after the receipt of purchase.

Key benefits of Kurita America for the Project

- Kurita America provided the original equipment and has the expertise to make key recommendations.
- Field Service Technicians with extensive equipment knowledge for start-up after repair.
- Certified contractors to perform removal and install of Kurita America equipment.
- Plant operation will run according to Kurita America Engineering design.

Products Provided

Filter Media

- Kurita America is to provide new filter media. Media is to consist of exact replacement of the previously approved and installed filter media in accordance with AWWA B100-2016 specifications for filter material.
- 15" layer of support gravel and torpedo sand
- 30" layer of IMAR Filter Media (U.C. < 1.65)
- All materials are to be shipped in one or half cubic foot bags and palletized.
- 650 Proprietary Tonka Water Underdrain Nozzles
- 12 - 14" x 18" Elliptical Manway gaskets.
- (12) Sidewall media retaining strainers with exterior 1/2" sample taps
- Freight to the jobsite is included.

Airwash Grids

- Kurita America to provide new proprietary Tonka Water header/lateral PVC airwash grids for each of the refurbished filter cells. The new airwash grid will be installed in the filter cells once support gravels have been loaded.



Removal and installation Services-Both Plants

- Kurita America is to provide a high velocity high vacuum industrial vacuum truck operation for the removal of existing media from the vessels. Once collected in the vacuum truck, the media will be taken to a designated area onsite assigned by the owner (City of Caro) and disposed of. Media will be left on site.
- Kurita America offers an entire crew for the removal of the existing damaged media and the installation of the new media and graded gravels.
- Filter media will be installed in strict accordance with AWWA B100-2016 specifications for filtering material. All personnel involved in media installation are qualified under the confined space entry program. All personnel have received specified training according to OSHA25-SCFR 1910.120 including, but not limited to, confined space entry and rescue, fall arrest and lockout/tag out procedures and other specified training. Before entry into any confined space, the air will be monitored for appropriate oxygen and LEL levels. Upon completion of an air test, confined space entry permits will be filled out by the supervisor and posted near the entry point. An individual will be present at all times at the entry point.
- **Please note: If media has become solidified and/or calcified and cannot be lifted by a high velocity vacuum truck, additional labor and charges will apply.**

Limits of Scope

- Filter disinfection is required placing the system back into service. Saturating chemical and disinfection chemicals not included in this quote. Chemicals needs to be onsite prior to service visit/start-up.
- System will require additional backwashing to remove chemical treatments.
- Kurita will need to be informed of any personnel protection equipment required and if any additional requirements are needed to enter the facility (i.e. Plant Safety requirements).

Start-up Services

Kurita America's Service Technician will be on site for two days once the filter refurbishment has been completed. Our service technician will assist with all startup activities and ensure proper operation and backwashing.



Pricing

Pricing Table	
Filter Media, Support Gravels, Airwash Grids, Underdrain Nozzles & Labor to Refurbish Two Horizontal Pressure Filters:	\$172,100.00
Kurita America Service Technician – start-up service, 1 trip	\$7,000.00
TOTAL (USD)	\$179,100.00

Kurita bases this proposal on the invoice schedule as shown below:

- 40% Upon Shipment of Materials
- 50% Upon Services
- 10% Upon Startup

Delivery:

1. Shipment of equipment will be made in approximately 6 weeks after receipt of Purchase Order.
2. This quote is valid for 30 days.

The attached CONDITIONS OF SALE AND WARRANTIES that are incorporated herein.

For your convenience, this sheet may be used as your order for this equipment.

Items Ordered	
P.O. Number	
Total Net Price	
Firm Name and Address	
By (Print)	
Signature	
Date	

Kurita America Inc.

Purchase orders should be addressed to:
Kurita America Inc.
6600 94th Ave. North
Minneapolis, MN 55445

We do not include the following:

1. Mechanical or electrical installation.





2. Unloading or rigging. The contractor must provide a suitable access to the jobsite.
3. On-site storage or protection of equipment.
4. Pipe, valves or fittings other than those specifically described herein.
5. Pipe supports or hangers.
6. Motor starters, motor controls, disconnects, or any other electrical equipment other than those specifically described herein.
7. Electrical wiring or conduit.
8. Chemical feed tubing, conduit piping, hangers or supports.
9. Pumps or pumping equipment other than those specifically described herein.
10. Concrete, concrete grout or rebar.
11. Disinfection or disinfection / start-up chemicals.
12. Pneumatic tubing or conduit.
13. Control panel wall mounting material or hardware.
14. Anchor bolts or anchoring calculations, unless specifically described herein.
15. Any items not specifically described in this proposal.
16. Seismic design considerations of equipment unless otherwise noted.

Notes:

Equipment is quoted f.o.b. factory with full freight allowed to the jobsite.

Our proposal does not include any sales or use taxes.

Travel expenses included.

When ordering please include a signed copy of your Sales Tax Exemption certificate.

City to provide a forklift during media installation.

City to disinfect filter prior to start-up service – procedure provided by Kurita America.

City to provide a dumpster for pallets and bag removal.

The attached Kurita America standard Terms and Conditions are incorporated by reference into this quotation, will be a part of any binding agreement between you and Kurita America and cannot be modified by you whether by the terms of your purchase order or otherwise, except to the extent expressly accepted by Kurita America in writing. You agree to abide by the terms of Section 1 ("General"), Section 3 ("Quotations") and Section 17 ("Confidential Information") of the Kurita America standard terms and conditions with respect to the information contained in this quotation and any other information provided to you by Kurita America, regardless of whether you submit an order or whether you and Kurita America enter into a binding agreement regarding the purchase of the products described herein.

Please note that a copy of the contractor's payment and performance bond is required to be forwarded to us as a part of normal credit approval procedures.

Kurita America requires partial payments based on shipped material and purchaser's account being current prior to scheduling a field technician for equipment start-up.

Kurita America will provide field services as outlined above in this quotation. Kurita America's field service rate is \$1200.00 per day plus travel and per diem expenses. If Kurita America's field service personnel arrive on-site after a schedule is established and the project is not ready for the intended services to be performed, Kurita America will invoice for additional days, if required. If the time required is greater than listed in this quotation, Kurita America will invoice purchaser at the above field service rate plus travel and per diem expenses.



Conditions of Sale and Warranties

1. Exclusive Terms and Conditions

Together with any other terms the parties agree to in writing, these terms and conditions of sale form the exclusive terms ("Agreement") whereby Buyer agrees to purchase, and Seller agrees to sell goods and provide advice, instruction and other services in connection with the sale of those goods ("Services"). Notwithstanding any provisions communicated in any way by Buyer to Seller prior to this agreement including any terms contained in any request for quote by Buyer, Buyer agrees that this agreement will control the relationship by accepting goods and services from Seller, even if Buyer sends to Seller other terms and conditions to which Seller may not respond.

2. Buyer Obligations

Seller will not control the actual operation of either Buyer's systems or goods at the site, and unless otherwise specifically agreed in writing, installation of goods shall be the responsibility of Buyer. Goods and services provided hereunder are based upon the information Buyer makes available to Seller, and Seller reserves the right to utilize the most compact and feasible design compatible with sound engineering practices, and to make changes in details of design, construction and arrangement of goods unless precluded by limitations (including, but not limited to actual space and feed water/substance quality specifications) specified by Buyer in writing at the time an order is placed. If no such limitations are specified, Seller shall not be held responsible for incompatibility of the goods and services due to changes in feed water/substance quality specifications or site conditions nor for incompatibility with actual space or design limitations, which were not initially disclosed by Buyer and become apparent at a later date. For services to be accurate and goods to work as intended, Buyer must fulfill the following obligations ("Obligations"): (a) provide Seller complete and accurate information and data relevant to the scope of work to be provided, such as information related to Buyer's site conditions, systems, related equipment and processes, feed water or other substances to be treated or measured with the Goods, including any hidden, unapparent, or changing conditions that may affect the effectiveness of the Goods; (b) operate all related systems and the goods within the agreed to control parameters or, if none, within industry customary operating conditions; (c) maintain all related systems and Goods in good operating condition and repair; and (d) maintain and handle goods in a proper and safe manner. If Buyer's fails to fulfill the foregoing obligations, Seller shall be relieved of any obligations with respect to warranties or any other commitments made to Buyer in writing, and Seller shall have no liability for any loss, damage or injury which Buyer may sustain or for which Buyer may be liable.

3. Payment and Prices

Unless otherwise specified in writing in section 10 of this proposal document, payment is due net thirty (30) days from the date of Seller's invoice. If Seller shall have any doubt at any time as to Buyer's ability to pay, Seller may decline to make deliveries except on receipt of satisfactory security. The prices quoted herein do not include taxes. Buyer shall be directly responsible, and reimburse Seller, for the gross amount of any present or future sales, use, excise, value-added, or other similar tax applicable to the price, sale of delivery of any products or services furnished hereunder. Buyer shall furnish Seller with evidence of exemption acceptable to the taxing authorities if applicable. [For multi-year agreements, pricing stated shall remain firm for 12 months, after which Seller shall be entitled to adjust pricing upward on an annual basis according to the designated formula used by Seller in Buyer's country and which shall be notified to Buyer.] Unless otherwise specified, all prices are ExWorks Seller's facility. Buyer agrees to reimburse Seller for collection costs, including 2% interest per month, should Buyer fail to timely pay. Buyer shall have no rights to any setoffs of any nature relating to any payments due under the agreement.

4. Payment for Excessive Usage; Lost and Damaged Goods

If payment for goods is based on some factor other than the actual amount of goods delivered (e.g., payment is for a fixed amount, or based on usage or production), then Buyer agrees to pay for all Goods (a) consumed as a result of Buyer's failure to comply with obligations as set forth in Section 2; or (b) lost or damaged after delivery to Buyer. Buyer shall provide Seller all information necessary to calculate amounts due and enable Seller to audit those records.

5. Deliveries

Unless stated otherwise in the proposal, Seller shall deliver all products to Buyer EXW Seller's facility, place of manufacture, or warehouse, according to INCOTERMS 2000. Shipment dates, if applicable, noted in this proposal represent Seller's best estimate of probable delivery time considering conditions known at the time this Proposal was prepared. Upon acceptance of Buyer's purchase order or, where specified in the purchase order, upon receipt of Buyer's notification to proceed with fabrication of equipment that satisfies Seller's requirements for meeting the delivery schedule, Seller shall commence fabrication of equipment. The place of delivery specified therein shall be firm and fixed, provided that Buyer may notify Seller no later than 45 days prior to the scheduled shipment date of the products of an alternate point of delivery. Provided the parties agree a variation to take into account any additional





cost [or delay] incurred by Seller in implementing this change, the alternate place of delivery shall become the agreed place of delivery for all purposes under this agreement.

6. Consigned Goods

Buyer shall bear all risk of loss and damage to all consigned goods in Buyer's possession or control, notwithstanding Buyer's exercise of reasonable care. Seller shall have the right to enter Buyer's premises at all reasonable times to inspect such Goods and related records. Upon request, Buyer agrees to return such goods to Seller pursuant to Seller's shipping instructions.

7. Limited Warranties

Seller warrants that the goods shall conform to published specifications and shall be free from defects in material and workmanship when at all times operated in accordance with Seller's written instructions; and that the services will be performed with the degree of skill which can reasonably be expected from a seller engaged in a comparable business and providing comparable services under comparable circumstances. Unless otherwise provided in any warranty schedule that may be attached hereto, the foregoing warranties are valid: (a) for chemicals and services, for 6 months from their date of delivery or the provision of Services; (b) for consumables, including filters and membranes, 12 months from their date of delivery, (c) for goods other than chemicals and consumables, the earlier of, 15 months from receipt, or 12 months from start-up/first use. Unless expressly agreed in a "performance warranty document" signed between the parties on a separate basis, there is no performance warranty on goods and services or warranty on process results. For goods not manufactured by Seller, the warranty shall be the manufacturer's transferable warranty only. Any claim for breach of these warranties must be promptly notified in writing or the claim will be void. Seller's sole responsibility and Buyer's exclusive remedy arising out of or relating to the goods or services or any breach of these warranties is limited to, at Seller's option: (a) replacement of non-conforming goods or refund of purchase price of the non-conforming Goods; and (b) re-performance of the services at issue, or a refund of the amount paid for the Services at issue. No allowance will be made for repairs or alterations made by Buyer without Seller's written consent or approval. Goods may not be returned to Seller without Seller's written permission. Seller will provide Buyer with a "return material authorization" number to use for returned goods. Buyer, as the original purchaser, is not entitled to extend or transfer this warranty to any other party. The foregoing warranties are in lieu of and exclude all other warranties, statutory, express or implied, including any warranty of merchantability or of fitness for a particular purpose.

8. Use of Equipment, Tanks, and Containers

Tanks and SBC's owned by Seller shall be used only for the storage of goods approved by Seller and, at Seller's request, shall be returned to Seller within thirty (30) days.

9. Compliance with Laws; Permits

Buyer is responsible for compliance with all laws and regulations applicable to the storage, use, handling, installation, maintenance, removal, registration and labeling of all goods from and after Buyer's receipt of the goods, as well as for the proper management and disposal of all wastes and residues (including containers) resulting from Buyer's use of the Goods. Buyer agrees to ensure that all Goods and Services provided to Buyer for export are exported only in compliance with applicable export control laws and regulations. Permits and licenses of a permanent nature, or which are required to operate apparatus or equipment or to use the Goods, shall be procured by Buyer at Buyer's sole expense.

10. Installation

For equipment purchase if applicable, installation costs of the equipment and materials supplied shall be the responsibility of the Buyer, unless otherwise provided within the Seller's proposal. Otherwise, unless stipulated in the Seller's proposal, Buyer agrees to pay for start-up supervision and operator instruction, at the Seller's prevailing rate per day. Buyer also agrees to pay reasonable expenses for transportation room and board for Seller's personnel. Standard terms of sale include two sets of operating instructions. If additional sets are required, they are available at an additional charge. Upon receipt of request for additional sets, a price quotation will be forwarded.

11. Differing Site Conditions And Hazardous Materials

In the event that Seller encounters any Hazardous Materials (shall mean toxic substances, hazardous substances, pollutants, contaminants, regulated wastes, or hazardous wastes as such terms may be defined or classified in any law, statute, directive, ordinance or regulations promulgated by any applicable governmental entity) at the Buyer's site, other than Hazardous Materials introduced by Seller or that are otherwise the express responsibility of Seller under this Agreement, Buyer shall immediately take whatever precautions are required to legally eliminate such hazardous conditions so that the Seller's work under this Agreement may safely proceed.



12. Emergencies

In the event an emergency condition should occur where the protection of either the plant equipment, employees at site, or the surrounding community are threatened, Seller may procure the required and necessary equipment, personnel, or subcontract support. Seller must provide immediate notice to Buyer regarding the emergency and then provide a report after reviewing the events and itemizing all expenditures. Buyer will reimburse Seller for all emergency related expenses.

13. Excusable Delay/Non-Performance

Seller shall not be liable nor in breach or default of its obligations under this Agreement to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond the reasonable control of Seller, including, but not limited to: acts of God, fire, terrorism, war (declared or undeclared) epidemics, material shortages, insurrection, act (or omissions) of Buyer or Buyer's suppliers or agents, any act (or omission) by any governmental authority, strikes, labor disputes, transportation shortages, or vendor non-performance. The delivery or performance date shall be extended for a period equal to the time lost by reason of delay or non-performance, plus such additional time as may be necessary to overcome the effect of the delay or non-performance. If Seller is delayed by any acts (or omissions) of Buyer, or by the prerequisite work of Buyer's other contractors or suppliers, Seller shall be entitled to an equitable price and performance adjustment as applicable.

14. Confidentiality and Intellectual Property

Both parties agree to keep confidential the other party's proprietary non-public information, if any, which may be acquired in connection with this Agreement. Buyer will not, without Seller's advance written consent, subject Goods to testing, analysis, or any type of reverse engineering. Seller retains all intellectual property rights including copyright which it has in all drawings and data or other deliverables supplied or developed under this Agreement, subject to Buyer's right to use such drawings and data for its own use without additional cost. Buyer acknowledges that Seller is in the business of selling the Goods subject to this Agreement and agrees that it will not file patent applications on the Goods, or processes and methods of using the Goods, without Sellers express written permission. Buyer further agrees that in any event any such patents will not be asserted against Seller or its customers based upon purchase and use of such Goods. Buyer shall be fully liable for any infringement of patent rights of third parties arising out of the products supplied hereunder where the construction, and other characteristics of such products including modification of the Goods and Services, is prescribed to the Seller, or completed independently, by

the Buyer or agent(s). Buyer shall fully defend and indemnify the Seller in case of such claim(s). Any software Seller owns and provides pursuant to this Agreement shall remain Seller's property. Seller provides to Buyer a limited, non-exclusive and terminable license to such software for the term of this Agreement. Buyer agrees not to copy, sub-license, translate, transfer, reverse engineer, or decode the software. Unless otherwise expressly agreed by Seller, this license shall terminate and the software shall be returned to Seller upon termination of this Agreement, or the material breach of the terms in this section.

15. Limitation on Liability

To the extent permitted by law, the total liability of the Seller for all claims arising out of or relating to the performance or breach of this Agreement or use of any Goods or Services shall not exceed the annual contract value of this Agreement. Seller shall not be liable for any advice, instruction, assistance or any services that are not required under this Agreement or for which Seller does not charge Buyer. In no event will either party be liable to the other for lost profits or revenues, cost of capital or replacement or increased operating costs, lost or decreased production, claims of Buyer's customers for such damages or any similar or comparable damages, or for any incidental, special, consequential or indirect damages of any type or kind, irrespective of whether arising from actual or alleged breach of warranty, indemnification, product liability or strict liability, or any other legal theory. If Buyer is supplying Seller's Goods or Services to a third party, Buyer shall require the third party to agree to be bound by this clause. If Buyer does not obtain this agreement for Seller's benefit for any reason, Buyer shall indemnify and hold Seller harmless from all liability arising out of claims made by the third party in excess of the limitations and exclusion of this clause.

16. Conflicts; Survival, Assignment

If there is any conflict between this Agreement and any written proposal or quotation provided by Seller, then the terms and conditions set forth in the proposal or quotation shall prevail. If any term or condition of this Agreement or any accompanying terms and conditions are held invalid or illegal, then such terms and conditions shall be reformed to be made legal or valid, or deleted, but the remaining terms and conditions shall remain in full force and effect, and the Agreement shall be interpreted and implemented in a manner which best fulfills our intended agreement. This Agreement may only be assigned by Seller to any affiliate.

17. Termination and Cancellation

This Agreement and any performance pursuant to it may be terminated or suspended by either party if the other party (a) is the subject of bankruptcy or insolvency proceedings;



or (b) defaults in its material obligations under this Agreement, and such default is not cured within thirty (30) days. Upon the termination of this Agreement: (a) Buyer agrees to pay for all Goods in Buyer's possession or for which title has passed to Buyer, at current prices or at such other prices as have been agreed to in writing; and (b) all amounts owing, if any, for the equipment or tanks relating to those Goods shall immediately become due and shall be paid within thirty (30) days of receipt of an invoice. In the event of cancellation of an order by Buyer, a cancellation charge will be made against the Buyer, in proportion to the work completed by Seller, or obligated against the order, plus any cancellation charges assessed against Seller by Seller's suppliers.

18. Governing Law and Dispute Resolution

This Agreement shall be governed by the substantive laws of the State of Minnesota. The UN Convention on the International Sale of Goods shall not apply. In the event of a dispute concerning this Agreement, the complaining party shall notify the other party in writing thereof. Management level representatives of both parties shall meet at an agreed location to attempt to resolve the dispute in good faith. Should the dispute not be resolved within thirty (30) days after such notice, the complaining party shall seek remedies exclusively through arbitration. The seat of arbitration shall be the federal district court in Minneapolis, MN, and the rules of the arbitration will be the Commercial Arbitration Rules of the American Arbitration Association, which are incorporated by reference into this clause.

