

**PURCHASE AGREEMENT
BY AND BETWEEN
THE CITY OF CARSON AND
WATERLINE TECHNOLOGIES, INC.**

THIS PURCHASE AGREEMENT ("Agreement") is executed this _____ day of July, 2021 ("Effective Date"), by and between the CITY OF CARSON, a California municipal corporation ("City"), and WATERLINE TECHNOLOGIES, INC., a California corporation ("Seller"). City and Contractor may be referred to, sometimes individually or collectively, as "Party" or "Parties."

1. Purchase and Sale of Goods. On and subject to the terms and conditions set forth in this Agreement, Seller agrees to sell and deliver to City and City agrees to purchase and accept from Seller the pool chemicals ("Goods") described herein as specified in Exhibit "A," attached hereto and incorporated herein by this reference, for the total purchase price ("Purchase Price") set forth in Section 3.

2. Description of Goods. The Goods being sold by Seller to City consists of the pool chemicals described in Exhibit "A."

3. Purchase Price. The Purchase Price which City agrees to pay to Seller for purchase and sale of the Goods is Twenty-Four Thousand Dollars and Zero Cents (**\$24,000**) per year, as provided in further detail in Exhibit "A." City will purchase the Goods detailed in Exhibit "A" three (3) times, once per year, as directed by the Contract Officer, with the total Purchase Price for the Goods not to exceed Seventy-Two Thousand Dollars and Zero Cents (**\$72,000**).

4. Term. The term of this Agreement shall expire after City's acceptance of the final delivery of the Goods estimated to occur in 2023 and City's payment therefor following Seller's submission of the requisite invoice.

5. Representations and Warranties of Seller. Seller makes the following representations and warranties to City:

5.1. Authority and Consents. Seller has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement. No approvals or consents of any persons are necessary in connection with Seller's execution, delivery, and performance of this Agreement, except for such as have been obtained on or prior to the date hereof. The execution, delivery, and performance of this Agreement by Seller have been duly authorized by all necessary action on the part of Seller and constitute the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms.

5.2. Title and Operating Condition. Seller has good and marketable title to the Goods. The Goods are free and clear of any restrictions on or conditions to transfer or

assignment, and City will acquire absolute title to the Goods free and clear of mortgages, liens, pledges, charges, encumbrances, equities, claims, covenants, conditions and restrictions except for such as may be created or granted by City. The Goods are in conformity with the manufacturer's specifications, descriptions, representations and warranties. Seller is aware that City is purchasing the Goods for use in City's operations and that City is relying on Seller's warranties that the Goods are fit for this purpose and the ordinary purposes for which the Goods are normally used.

6. Time of Delivery. The date and time of each delivery of the Goods shall be no later than three (3) days following issuance of a Notice to Proceed by City's Contract Officer, or as otherwise requested by the City, during City's business hours which are Monday through Thursday 7:00 am to 3:30 pm. City will provide Seller with a schedule of delivery dates for all sites listed in Section 7 for the peak season. Thereafter, the City off-peak season begins and deliveries will be on an as needed basis, as directed by the Contract Officer.

7. Place of Delivery. The Goods shall be delivered to four locations within the City of Carson, California: Foisia Pool, located at 23410 Catskill Avenue; Carson Pool, located at 21436 Main Street; Dominguez Pool, located at 21330 Santa Fe Avenue; and Hemingway Pool, located at 16605 S. San Pedro Street.

8. Title and Risk of Loss; Payment and Invoicing. Title to and the risk of loss, damage and destruction of the Goods shall remain with the Seller until after inspection and acceptance of the Goods by City, and payment by City of the Purchase Price. Seller shall invoice City in the amount of the Purchase Price for purchase of the Goods, and City shall remit payment by no later than forty-five (45) days after City's acceptance of the Goods.

9. Inspection. After delivery, City shall inspect the Goods within a reasonable time not to exceed thirty (30) days and provide written notice to the Seller specifying any defects or other objections, unless City intends to accept the Goods in whole, in which case no notice will be necessary. Acceptance of the Goods, whether in whole or in part, shall not be deemed a waiver of any defects identified by the City, nor any defects later discovered by the City, and specified to the Seller in writing.

10. No Replacements or Cures. This Agreement calls for strict compliance. Seller expressly agrees that both the Goods tendered and the tender itself will conform fully to the terms and conditions of the Agreement on the original tender. In the event of rejection by City of the whole of the Goods or any part thereof, City may, but is not required to, accept any substitute performance from Seller or engage in subsequent efforts to effect a cure of the original tender by Seller.

11. Insurance Coverages.

11.1 Types of Coverages. Seller shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) **Commercial General Liability Insurance.** A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) **Worker's Compensation Insurance.** A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for Seller against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Seller in the course of carrying out the work or services contemplated in this Agreement.

(c) **Automotive Insurance.** A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than either (i) bodily injury liability limits of \$100,000 per person and \$300,000 per occurrence and property damage liability limits of \$150,000 per occurrence or (ii) combined single limit liability of \$1,000,000. Said policy shall include coverage for owned, non-owned, leased, hired cars, and any other automobile.

(d) **Subcontractors.** Seller shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

(e) **Broader Coverages and Higher Limits.** Notwithstanding anything else herein to the contrary, if Seller maintains broader coverages and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverages and/or higher limits maintained by Seller.

11.2 General Insurance Requirements. All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents may apply in excess of, and not contribute with Seller's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. The insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, Seller shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the Contract Officer. No work or services under this Agreement shall commence until Seller has provided the City with Certificates of Insurance, additional insured endorsement forms or

appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsements to all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City. The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City's Risk Manager or other designee of the City due to unique circumstances.

12. Indemnification. Seller agrees to defend, indemnify, protect and hold harmless the City, its officers, officials, employees, agents and volunteers from and against any and all claims, demands, losses, damages, costs and liability of any kind or nature (including reasonable attorney's fees) which the City, its officers, officials, employees, agents or volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property (i) arising out of or from the Goods or delivery of the Goods, and (ii) to the extent arising from (a) Seller's negligent acts, omissions or willful misconduct, (b) Seller's ownership or possession of the Goods during any period ending on or prior to the Effective Date, (c) Seller's replacement of the Goods or any part thereof pursuant to this Agreement, and (d) Seller's breach of any of its representations, warranties or covenants under this Agreement.

13. Remedies. The remedies and rights conferred on the City by this Agreement are in addition to and cumulative with all other remedies and rights accorded the City under law or equity. Without limiting the generality of the foregoing, Seller agrees that if there is any defect in the Goods, as determined in City's sole and absolute discretion, and upon written notice thereof given to Seller, Seller shall replace the defective Goods without delay or cost to the City. In the event of Seller's failure to replace the Goods within ten (10) calendar days after being notified of such defects, City is hereby authorized to contract with another party for the purchase of replacement of Goods, and Seller shall reimburse City for all such costs immediately upon demand.

14. Survival of Representations and Warranties. All representations, warranties, covenants and agreements of the Parties contained in this Agreement shall survive the execution, delivery and performance of this Agreement.

15. Assignment. This Agreement may not be assigned by Seller without the express written consent of City. This Agreement shall be binding on, and shall inure to the benefit of, the Parties to it and their respective heirs, legal representatives, successors and assigns. All Goods manufacturer's warranties shall be assigned to and turned over to the City.

16. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the Parties that all other provisions of this Agreement be construed to remain fully valid, enforceable, and binding on the Parties.

17. Entire Agreement: Modification: Waiver. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and thereof and supersedes all prior and contemporaneous agreements, representations and understandings of the Parties, whether oral or written. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the Parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

18. Contract Officer. Modesto Bolanos, Facilities Maintenance Supervisor, or such person as may be designated by the City Manager is hereby designated as being the representative of the City authorized to act on its behalf with respect to this Agreement and to make all decisions in connection therewith ("Contract Officer").

19. Notices. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the Party to whom notice is to be given, or on the third day after mailing if mailed to the Party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and properly addressed as follows:

To Seller at: Waterline Technologies, Inc.
620 North Santiago St
Santa Ana, CA 92701.
Attn: Kirk Buttermore, CEO

To City at: City of Carson
701 East Carson Street
Carson, CA 90745
Attn: City Manager

Any Party may change its address for purposes of this paragraph by giving the other Party written notice of the new address in the manner set forth above.

20. Effects of Headings. The subject headings of the sections and subsections of this Agreement are included for convenience only and shall not affect or be considered in the construction or interpretation of any of its provisions.

21. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile and electronic signatures shall be deemed the same as original signatures.

22. Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California as applied to contracts that are executed and performed entirely in California.

23. Termination. City may terminate this Agreement for any reason whatsoever, prior to delivery of the Goods and City's payment of the Purchase Price therefor as set forth herein.

24. Venue. All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Los Angeles County, California.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties to this Agreement have duly executed in on the day and year first above written.

CITY:

CITY OF CARSON, a municipal corporation

Lula Davis-Holmes, Mayor

ATTEST:

John W. Carroll, Sr.
Chief Deputy City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
01007.0006/728163.3

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- INDIVIDUAL
- CORPORATE OFFICER
- _____
- TITLE(S)

- PARTNER(S) LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER _____
- _____

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

[rjl]

SELLER:

WATERLINE TECHNOLOGIES, INC.

By: 

Name: Kirk Buttermore
Title: President

By: 

Name: Kimberly LaVoie
Title: CFO

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

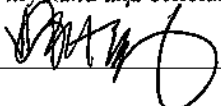
STATE OF CALIFORNIA

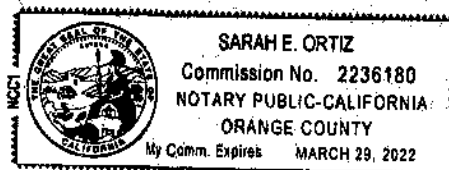
COUNTY OF LOS ANGELES

On July 15, 2021 before me, Sarah E. Ortiz, personally appeared KIRK BUTTERMORE, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: 



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

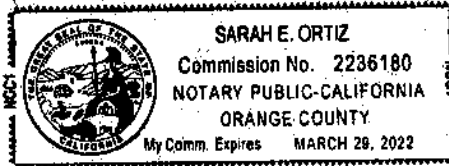
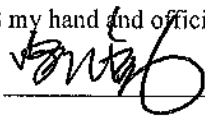
COUNTY OF LOS ANGELES

On July 15, 2021 before me, SARAH E. ORTIZ, personally appeared KATHY LAVOIE, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____



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DESCRIPTION OF ATTACHED DOCUMENT

INDIVIDUAL
 CORPORATE OFFICER
_____ TITLE(S)

_____ TITLE OR TYPE OF DOCUMENT

PARTNER(S) LIMITED
 GENERAL

_____ NUMBER OF PAGES

ATTORNEY-IN-FACT
 TRUSTEE(S)
 GUARDIAN/CONSERVATOR
 OTHER _____

_____ DATE OF DOCUMENT

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT A

DESCRIPTION OF GOODS AND PRICING

UN 1791, HYPOCHLORITE SOLUTION, 8, PG III, (SODIUM HYPOCHLORITE) and UN 1789 HYDROCHLORIC ACID, 8, PG II, RQ – STRAIGHT on an as needed basis per facility, as detailed below.

Chlorine tablets and/or 50 pound bags of sodium bicarbonate on an as needed basis per facility, as detailed below.

TABLE A:

Item No.	Description	Price Per Gallon	Per Delivery Charge for Hazardous Materials	Department of Pesticide Regulation Assessment Fee
1	UN 1791, HYPOCHLORITE SOLUTION, 8, PG III, (SODIUM HYPOCHLORITE), RQ	\$ \$1.27	\$ \$0.00	\$ \$0.00
2	UN 1789, HYDROCHLORIC ACID, 8, PG II, RQ, STRAIGHT	\$ \$2.47	\$ \$0.00	\$ \$0.00
TOTAL COST		\$ \$3.74	\$	\$

Prices include sales tax @ 9.5 %

TABLE B:

Item No.	Description	Price Per Individual Gallon
3	UN 1791, HYPOCHLORITE SOLUTION, 8, PG III, (SODIUM HYPOCHLORITE), RQ	\$ \$1.27
4	UN 1789, HYDROCHLORIC ACID, 8, PG II, RQ - STRAIGHT	\$ \$2.47
TOTAL COST		\$ \$3.74

Prices include sales tax @ 9.5 %

TABLE C:

Item No.	Description	Price Per 50 Pound Bag
5	Pool Grade Sodium Bicarbonate	\$ \$18.35

Prices include sales tax @ 9.5 %

- A.** Foisia Pool is located at 23410 Catskill Ave. and is comprised of:
1. (1) 500 gallon tanks for Liquid Chlorine (Sodium Hypochlorite) 1-inch male Camlock Hose Fitting.
 2. (1) 350 gallon tank for Muriatic Acid (Straight) 1-inch male Camlock Hose Fitting
- B.** Carson Pool is located at 21436 Main St. and is comprised of:
1. (1) 500 gallon tanks for Liquid Chlorine (Sodium Hypochlorite) 1-inch male Camlock Hose Fitting
 2. (1) 350 gallon tank for Muriatic Acid (Straight) 1-inch male Camlock Hose Fitting
- C.** Dominguez Pool is located at 21330 Santa Fe Ave and is comprised of:
1. (1) 500 gallon tanks for Liquid Chlorine (Sodium Hypochlorite) 1 inch male Camlock Hose Fitting
 2. (1) 350 gallon tank for Muriatic Acid (Straight) 1 inch male Camlock Hose Fitting
- D.** Hemingway Pool is located at 16605 S. San Pedro St. and is comprised of:
1. (1) 500 gallon tanks for Liquid Chlorine (Sodium Hypochlorite) 1 inch male Camlock Hose Fitting
 2. (1) 350 gallon tank for Muriatic Acid (Straight) 1 inch male Camlock Hose Fitting