

PURCHASE AGREEMENT FOR NEO WATERFX 300¹

This Purchase Agreement for Neo WaterFX 300 (“Agreement”) is made and entered into as of 08/16/2024 00:24:07 GMT (“Effective Date”) by and between the City of North Las Vegas, a Nevada municipal corporation (“City”) and Neo Water Treatment LLC, a Delaware limited liability company (“Provider”).

RECITALS

WHEREAS, the City desires to purchase Neo WaterFX 300 (“Products”).

WHEREAS, the City desires to purchase the Products from Provider as outlined in this Agreement, and Provider agrees to sell and deliver the Products upon the terms and conditions described in this Agreement.

NOW, THEREFORE, upon good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Provider agree to the following terms, conditions and covenants:

SECTION ONE RESPONSIBILITY OF PROVIDER

1.1. The Provider shall sell the Products to the City at the prices set forth as Option 2 in the Provider’s quote dated July 25, 2024 (“Quote”) attached hereto as Exhibit A.

1.2. The Products shall be new and must meet the technical specifications detailed in the Quote (the “Specifications”). Provider may make changes to the Specifications, provided the changes do not adversely affect the quality of the Products. Provider shall give notice of any changes to the Specifications to the City as soon as reasonably practicable.

1.3. The Provider shall ship the Products to a shipping address in Nevada specified by the City (the “Delivery Location”) F.O.B. Delivery Location as ordered by the City. Provider bears all risk of loss or damage to the Products until delivery of the Products to the Delivery Location. Title to the Products passes to the City only after delivery of the Products at the Delivery Location is complete.

1.4. The Provider shall furnish all user, instruction, or operator manuals for the Products as applicable.

1.5. The Provider shall furnish copies of all standard product warranties, extended warranties, and service and maintenance agreements for the Products from any manufacturer. To the extent possible, the Provider shall transfer or assign such warranties and agreements upon the request of the City.

¹ “**WaterFX**” and “**Neo WaterFX**” are trademarks of Neo Water Treatment, LLC.
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1.6. The Provider shall promptly notify the City any time that the Provider fails to meet the requirements of this Agreement and shall, at its own expense, promptly take all actions to come back into compliance with this Agreement.

1.7. The Provider shall at its own expense comply at all times with all municipal, county, state and federal laws, regulations, rules, codes, ordinances and other applicable legal requirements.

SECTION TWO PAYMENT AND TERM

2.1. The term of this Agreement shall commence on the Effective Date and continue until June 30, 2026 (“Term”). The prices described in Option 2 of the Quote will remain throughout the Term. The City will not order Products from the Provider in an amount exceeding Seven Hundred Fifty-Eight Thousand Dollars and 00/100 (\$758,000) for Fiscal Year 2024/2025, and Seven Hundred Seventy-Five Thousand Dollars and 00/100 (\$775,000.00) for Fiscal Year 2025/2026 as specified in Schedule A below. The total not to exceed amount of this Agreement is One Million, Five Hundred Thirty-Three Thousand Dollars and 00/100 (\$1,533,000.00).

Schedule A	
Fiscal Year:	Amount:
Effective Date - June 30, 2025	\$ 758,000.00
July 1, 2025- June 30, 2026	\$ 775,000.00
TOTAL:	\$ 1,533,000.00

2.2. The prices in Option 2 of the Quote will remain in effect for the Term. No additional compensation shall be paid, and no increase in the time of performance shall be awarded to the Provider without the prior written authorization of the City to proceed with such changes. All prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by City under this Agreement.

2.3. Payment to the Provider shall be made within thirty (30) calendar days after the City receives each invoice from the Provider, provided that such invoice is complete, correct, and undisputed by the City. Upon reconciliation of all errors, corrections, credits, and disputes, payment to the Provider will be paid in full within 30 calendar days. Invoices received without a valid purchase order number will be returned unpaid for reissuance. The Provider shall submit the original invoice via email to:

AccountsPayable@CityofNorthLasVegas.com

SECTION THREE REPRESENTATIONS AND WARRANTIES

3.1. Provider represents and warrants for the benefit of City, in addition to any other representations and warranties made in this Agreement, with the knowledge and expectation of

City's reliance thereon, as follows:

3.1.1. Provider is a duly formed and validly existing Delaware limited liability company and is in good standing pursuant to the laws of the State of Nevada and has the full power, authority and legal right to execute, deliver and perform under this Agreement.

3.1.2. The Products are now and shall be at the time of delivery free from any security interest, lien, or other encumbrance.

3.1.3. Provider is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to perform all of its obligations under this Agreement.

3.2. The representations and warranties made by Provider survive the termination or expiration of the Agreement.

SECTION FOUR INSURANCE

Provider shall obtain and maintain, at its expense, the following insurance coverage for all work related to the performance of this Purchase Agreement: commercial general liability insurance, worker's compensation insurance, and employers' liability insurance. While a copy of the Provider's insurance certificate is not immediately required, the City reserves the right to request a copy of the Provider's insurance certificate at any time during the Term of the Agreement. It is the Provider's responsibility to produce the insurance certificate upon the City's request.

SECTION FIVE TERMINATION

Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any material term of this Agreement (other than failure to pay any amounts due under this Agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified to do so; or
- (b) the other party (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) seeks reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts; (iv) makes or seeks to make a general assignment for the benefit of its creditors; or (v) applies for or has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

The City, through its City Manager or her designee may terminate this Agreement at any time for convenience upon notice to the Provider, and the City shall have no liability to the Provider for

such termination except that the City shall pay the Provider for the Products ordered by City up through and including the date of termination, provided that the Provider, within thirty (30) days following the date of the City's termination notice, submits an invoice for such Products in a form reasonably acceptable to the City and such invoice is supplemented by such underlying source documentation as is reasonably requested by the City.

Without affecting any other right or remedy available to it, Provider may terminate this Agreement with immediate effect by giving written notice to the City if the City fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified to make such payment.

SECTION SIX INDEMNIFICATION; LIMITATION OF LIABILITY

Notwithstanding any of the insurance requirements or limits of liability set forth herein, the Provider shall defend, protect, indemnify and hold harmless the City, and its officers, agents and employees, from any liabilities, claims, damages, losses, expenses, proceedings, suits, actions, decrees, judgments, reasonable attorneys' fees, and court costs which the City suffers, and/or its officers, agents or employees suffer, as a result of, or arising out of, any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent acts or omissions of the Provider, its agents, and employees, or anyone employed by any of them, in fulfillment or performance of the material terms, conditions or covenants of this Agreement. This Section 6 shall survive the completion of the Project, if applicable, and the termination or expiration of this Agreement until such time as the applicable statutes of limitation expire.

IN NO EVENT SHALL PROVIDER OR ANY OF ITS REPRESENTATIVES BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. IN NO EVENT SHALL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID AND AMOUNTS ACCRUED BUT NOT YET PAID TO PROVIDER UNDER THIS AGREEMENT IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

SECTION SEVEN NOTICES

7.1. All notices, demands and other instruments required or permitted to be given pursuant to this Agreement shall be in writing and be deemed effective upon delivery in writing if served by email, personal delivery, by overnight courier service, by facsimile or by overnight express mail, or upon posting if sent by registered or certified mail, postage prepaid, return receipt

requested, and addressed as follows:

To City: City of North Las Vegas
Attention: Rosa Moreno / Buyer
2250 Las Vegas Blvd., North, Suite 820
North Las Vegas, NV 89030
Phone: 702-633-2444

To Provider: Neo Water Treatment LLC
Attention: Legal
8101 E Prentice Ave., STE # 525
Greenwood Village, CO 80111
Phone: 303-843-8040
Email: legal@neomaterials.com

7.2. The address to which any notice, demand or other writing may be delivered to any party as above provided may be changed by written notice given by such party as above provided.

SECTION EIGHT SAFETY

8.1. Obligation to Comply with Applicable Safety Rules and Standards. Provider shall ensure that it is familiar with all applicable safety and health standards promulgated by state and federal governmental authorities including, but not limited to, all applicable requirements of the Occupational Safety and Health Act of 1970, including all applicable standards published in 29 C.F.R. parts 1910, and 1926 and applicable occupational safety and health standards promulgated under the state of Nevada. Provider further recognizes that, while Provider is performing any work on behalf the City, under the terms of this Agreement, Provider agrees that it has the sole and exclusive responsibility to assure that its employees and the employees of its subcontractors comply at all times with all applicable safety and health standards as above-described and all applicable City safety and health rules.

8.2. Safety Equipment. Provider will supply all of its employees and subcontractors with the appropriate Safety equipment required for performing functions at the City facilities.

SECTION NINE MISCELLANEOUS

9.1. Nevada and City Law. The laws of the State of Nevada and the North Las Vegas Municipal Code shall govern the validity, construction, performance and effect of this Agreement, without regard to conflicts of law. The parties to this Agreement consent to the jurisdiction of any court of competent jurisdiction in Clark County, Nevada to adjudicate any dispute related to this Agreement or actions to enforce or interpret the terms of this Agreement.

9.2. Assignment. Any attempt to assign this Agreement by the Provider without the prior written consent of the City shall be void.

9.3. Non-Waiver. The failure to enforce or the delay in enforcement of any provision of this Agreement by a party shall in no way be construed to be a waiver of such provision or right unless such party expressly waives such provision or right in writing.

9.4. Partial Invalidity. If any term of this Agreement should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions not held invalid, void or unenforceable, shall continue in full force and effect.

9.5. Controlling Agreement. To the extent any of the terms or provisions in the Quote conflict with this Agreement, the terms and provisions of this Agreement shall govern and control. Any additional, different or conflicting terms or provisions contained in Provider's Quote, the City's purchase orders or any other written or oral communication from either party shall not be binding in any way on the other party, whether or not such terms would materially alter this Agreement, and the other party hereby objects thereto.

9.6. Attorneys' Fees. In the event any action is commenced by either party against the other in connection with this Agreement, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees, as determined by the court, including without limitation, fees for the services of the City Attorney's Office. This Section 9.6 shall survive the completion of this Agreement until the applicable statutes of limitation expire.

9.7. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior representations, agreements and understandings of the parties. No addition to or modification of this Agreement shall be binding unless executed in writing by the parties hereto.

9.8. Shipping. The Products are to be packaged in a manner that assures they are protected against deterioration and contamination. All shipments are to meet applicable D.O.T. Regulations. Serial numbers noted on the packing slip must match the serial number of the actual goods shipped. Incorrect or questionable documentation of serial numbers may result in shipment rejection. Shipments so rejected due to Provider error will be returned solely at Provider's cost.

9.9. Inspection. An authorized representative of the City will inspect the Products at time of delivery. If the Products fail to conform to the Specifications, the Products may be rejected and the Provider will, in its sole discretion, (i) replace such nonconforming Products with conforming Products, or (ii) credit or refund the Price for such nonconforming Products. Payment and/or commencement of a discount period will not be made until such action is taken, and the Products are re-inspected and accepted.

9.10. Further Assurances. The Provider shall execute and deliver all such documents and perform such acts as are reasonably requested by the City to complete its obligations under this Agreement.

9.11. Effect of Agreement Termination. In the event this Agreement is terminated, all rights and obligations of the parties hereunder shall cease, other than indemnity obligations and matters that by their terms survive the termination hereof.

9.12. Fiscal Funding Out. The City reasonably believes that sufficient funds can be obtained to make all payments during the term of this Agreement. Pursuant to NRS Chapter 354, if the City does not allocate funds to continue the function performed by the Provider under this Agreement, this Agreement will be terminated when appropriated funds expire.

9.13. Public Record. Pursuant to NRS 239.010 and other applicable legal authority, each and every document provided to the City may be a “Public Record” open to inspection and copying by any person, except for those documents otherwise declared by law to be confidential. The City shall not be liable in any way to the Provider for the disclosure of any public record required to be disclosed by law, including but not limited to documents provided to the City by the Provider. Notwithstanding the forgoing, the City shall safeguard the confidentiality of Provider’s non-public, confidential or proprietary information, including but not limited to, pricing information. The City may disclose Confidential Information of Provider only to the extent that such disclosure is required by law or by the order or a court of similar judicial or administrative body, provided that the City notifies Provider of such required disclosure promptly and in writing and cooperates with Provider, at Provider’s reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure. This section 8.13 shall survive the expiration or early termination of the Agreement.

9.14. Electronic Signatures. For purposes of this Agreement, the use of facsimile, email or other electronic medium shall have the same force and effect as original signatures.

9.15. Federal Funding. Provider certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, in receipt of a notice of proposed debarment or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

9.16. Boycott of Israel. Pursuant to NRS 332.065(4), Provider certifies that the Provider is not currently engaged in a boycott of Israel, and Provider agrees not to engage in a boycott of Israel during the Term.

9.17. Intellectual Property. The City acknowledges and agrees that: (i) Provider (or its licensors) will retain all intellectual property rights used to create, embodied in, used in, and otherwise relating to the Products; and (ii) the City shall not acquire any ownership interest in any of Provider's intellectual property rights under this Agreement.

9.18. Force Majeure. Neither party shall be liable to the other party, nor be deemed to have defaulted or breached this Agreement for any delay or failure in performing its obligations under this Agreement (except for any obligations of the City to make payments to Provider hereunder) to the extent that such failure or delay is caused by a Force Majeure Event. A “**Force Majeure Event**” means any event beyond a party’s reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including acts of god, acts of the public enemy, insurrections, riots, fires, explosions, floods, strikes, lockouts, labor


disputes, failure of energy sources or transport network, war, acts of terrorism, civil commotion, breakdowns of or malicious damage to plants, mines, equipment or facilities, economic or other shutdown of plant or mine facilities, delays in transportation, shortages of labor or material, court or commission orders, or legal impediments or prohibitions, orders or acts of civil or military authority, geological faults or other geologic conditions, mining conditions, nuclear, chemical, or biological contamination. Anything herein contained to the contrary notwithstanding, Provider may in its sole discretion, but shall not be required to, make up all or a portion of any deficiencies in deliveries hereunder caused by any Force Majeure Event.

IN WITNESS WHEREOF, the City and the Provider have caused this Agreement to be executed as of the day and year first above written.

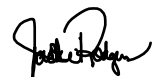
City of North Las Vegas,
a Nevada municipal corporation

Neo Water Treatment LLC,
a Delaware limited liability company

By: 
Micaela Rustia Moore, City Manager

By: 
Title: Business Manager
Name: Jason Hock

Attest:

By: 
Jackie Rodgers, City Clerk

Approved as to Form:

By: 
Andy Moore, Acting City Attorney

Exhibit A

Quote

Please see attached page(s).



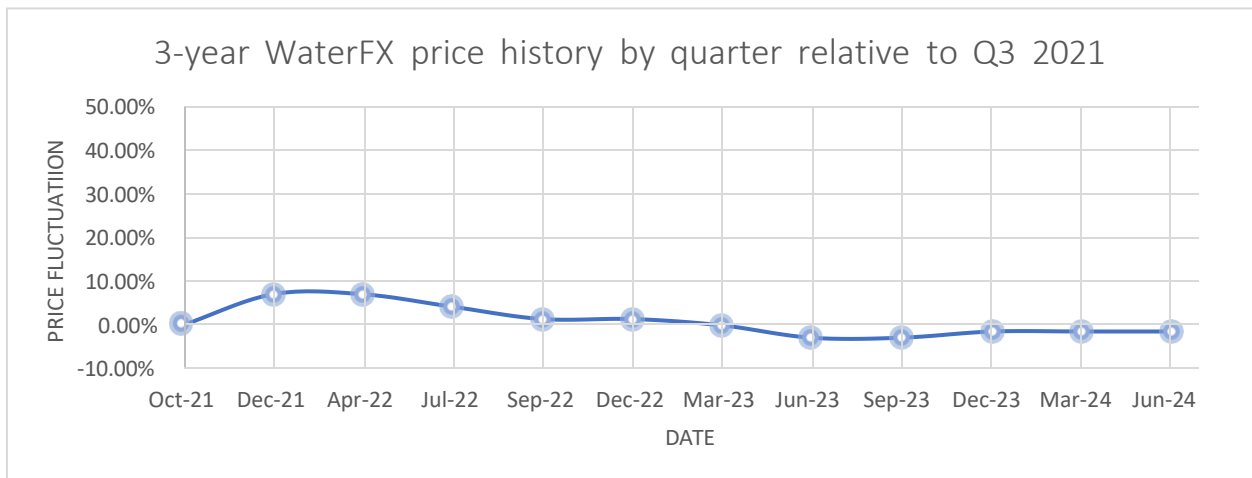
July 25, 2024

City of North Las Vegas
2580 Betty Lane

Alan Wolfley
Bryce Burrell
Eric Bauer
April Di Giovanni

Neo WaterFX¹ 300 Fixed Price Offer

As we have previously discussed, the variable costs of materials, manufacturing, and transportation of WaterFX 300 coagulant solution makes a long-term fixed price for bulk product form difficult to predict. In previous years, Neo has absorbed most minor fluctuations in its costs in order to keep pricing reasonably stable. The figure below shows a 3-year price history for WaterFX; there was a temporary price increase of 8-12% due to supply chain congestion worldwide in the end of 2021 and throughout 2022, but as supply chain congestion eased, WaterFX price stabilized in the normal historical price channel.



Neo Water Treatment appreciates your business and the relationship we have developed. In recognition of the challenges that pricing volatility can cause our customers with respect to budgeting, we have developed an alternate pricing model to help mitigate the impact. Essentially, we are giving you the option to either continue with the existing model, which will include quarterly price adjustments based on market conditions, or to

¹ "WaterFX" and "Neo WaterFX" are trademarks of Neo Water Treatment, LLC.



enter into a fixed-price arrangement over the next 8 calendar quarters (through the end of Q2, 2026) on the conditions set forth below².

Option 1 – Current Model: Quarterly Price Adjustments

If you elect this option, then the price of WaterFX 300 solution in bulk will adjust to \$ 0.76 per pound (plus freight) beginning on July 1, 2024. Future quarterly price adjustments will reflect the then-current market conditions. (While we cannot predict our costs beyond the current quarter, we expect ocean freight costs to remain elevated through the 2nd half of 2024 and then begin to moderate in the 1st half of 2025.) Under this option, you may purchase whatever volume of WaterFX 300 solution you require (subject to availability).

Option 2 – New Model: Fixed Price

If you elect this option, then the price of WaterFX 300 solution in bulk will adjust to \$0.78 per pound (plus freight) beginning on July 1, 2024 and remain at that level through the next eight calendar quarters (through June, 2026). For Q3 2026 (and thereafter), the price will be adjusted quarterly based on then-current market conditions, or a new fixed price agreement can be made for a similar pre-determined period. Under this option, you may purchase whatever volume of WaterFX 300 solution you require (subject to availability).

Adjustment of fixed price model

The contract fixed price above shall be subject to quarterly adjustment, with a minimum of 30-days notice, in the event of the following contingencies:

1. If trans-pacific freight costs exceed \$9,000 per individual shipment for more than 3 consecutive months.
 - For every \$1,000 increase beyond the stated \$9,000 3-month average freight cost, the WaterFX solution price will increase \$0.01 per solution lbs.
2. If the average combined price of 99% pure cerium-oxide and 99% pure lanthanum-oxide rare-earth market prices exceeds \$1.10 per kg on the Asian Metals price index for more than 3 consecutive months.
 - For every \$0.10 increase in the combined average market price beyond \$1.10/kg, WaterFX solution pricing will increase \$0.01 per solution lbs.
3. These two adjustment factors are independent and can both apply at the same or different times.

² All sales, whether under Option 1 or Option 2, will be subject to Neo's standard sales terms and conditions, which can be found at <https://www.neomaterials.com/products/#T-C>



If you have any questions about these two options, then please contact me. Otherwise, please indicate your agreement to these terms by identifying below which option you are choosing and returning a copy of this letter signed by your duly authorized representative.

If you do not return a signed letter by September 1th, 2024, then you will be deemed to have elected **Option 1** and the price of \$0.76 /pound will apply to bulk orders of WaterFX 300 solution placed in Q3 2024.

Greg Page
Business Development Manager
Western United States
Neo Water Treatment



(Place an "X" on the line adjacent to the option you are choosing and sign below)

☐ **Option 1** – Quarterly Price Adjustments

☒ **Option 2** – Fixed Price through July 1, 2026

Customer hereby elects the pricing option indicated above and agrees to the terms of such option, as set forth in the foregoing offer letter.

Customer:


By: 

Name: Micaela Rustia Moore

Title: City Manager

Date: 08/16/2024 00:52:15 GMT

Attest:

By: 
Jackie Rodgers, City Clerk

Approved as to Form:

By: 
Andy Moore, Acting City Attorney