SODIUM HYDROXIDE 25% PURCHASE AGREEMENT
BETWEEN
THE CITY OF TOLLESON
AND
UNIVAR SOLUTIONS USA LLC

THIS PURCHASE AGREEMENT (this "Agreement") is between the City of Tolleson, an Arizona municipal corporation (the "City") and Univar Solutions USA LLC, an Illinois limited liability company, (the "Vendor"), (collectively, the "parties"), is hereby entered into and shall be effective on the last signature date set forth below (the "Effective Date").

RECITALS

A. The City desires to purchase Sodium Hydroxide 25% (the "Chemical") for use in wastewater treatment.

B. The Vendor submitted a response to the City's Invitation for Bids WW 25-01, offering to supply the Chemical. The Vendor's bid is attached hereto as Exhibit A and incorporated herein by reference.

C. The City desires to enter into an Agreement with the Vendor for the Chemical.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Vendor hereby agree as follows:

1. Term of Agreement.

1.1 Initial Term. This Agreement shall remain in full force and effect for one (1) year from the Effective Date (the "Initial Term"), unless terminated as otherwise provided herein.

1.2 Renewal Terms. After the expiration of the Initial Term, this Agreement shall automatically renew for up to four (4) successive one-year terms (each a "Renewal Term") if (A) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (B) at least 30 days prior to the end of the then-current term of the Agreement, the Vendor requests, in writing, to extend the Agreement for an additional one-year term and (C) the City approves the additional one-year term in writing (including any price adjustments), as evidenced by the City Manager's, or authorized designee's, signature thereon, which approval may be withheld by the City for any reason. The Vendor's failure to seek a renewal of this Agreement shall cause the Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the City may, at its discretion and with the agreement of the awarded Vendor, elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

1.3 Non-Default. By consenting to a Renewal Term in any manner, Vendor shall be deemed to affirmatively assert that (i) the City is not currently in default, nor has been in default at any time prior to the Renewal Term, under any of the terms or conditions of the Agreement and (ii) any and all Vendor claims, known and unknown, relating to the Agreement and existing on or before the commencement date of the Renewal Term are forever waived.

2. Purchase of Chemicals. This is an indefinite quantity and indefinite delivery Agreement for Chemicals. The City does not guarantee any minimum or maximum number of purchases will be made pursuant to this Agreement. Purchases will only be made when the City identifies a need and proper authorization and documentation have been approved. For purchase(s) determined by the City to be appropriate for this Agreement, the Vendor shall provide the specific Chemical to the City in such quantities and configurations as may be agreed upon between the parties, in the form of a written invoice, quote, Chemical order or other form of written agreement describing the Chemical to be delivered (each, a "Chemical Order"). Each Chemical Order shall (i) contain a reference to this Agreement. A Chemical Order submitted without referencing this Agreement will be subject to rejection. Vendor acknowledges and agrees that a Chemical Order containing unauthorized exceptions, conditions, limitations, or provisions in conflict with the terms of this Agreement, other than City's project-specific requirements, is hereby expressly declared void and shall be of no force and effect.

2.1 Inspection; Acceptance. Chemicals are subject to final inspection and acceptance by the City. Chemicals failing to conform to the requirements of this Agreement will be held at the Vendor's risk and may be returned to the Vendor. If so returned, all costs are the responsibility of the Vendor. Upon discovery of non-conforming Chemicals, the City may elect to do any or either of the following by written notice to the Vendor: (i) waive the nonconformance or (ii) bring Chemicals into compliance and withhold the cost of same from any payments due to the Vendor.

2.2 Packing. No extra charges shall be made for packaging or packing Chemical unless authority is expressly incorporated into the Chemical Order. Vendor shall be responsible for safe packing that conforms to the requirement of carrier's tariffs. All shipments must carry the correct quantity, including clear identification of individual components of a multi-part shipment (i.e. 1 of 4, 2 of 4, etc.), product identification, Chemicals Order number, receiving address and product department plainly marked on all packages. Cars or trucks must be loaded to minimum weight requirements to ensure lowest rate unless otherwise specified or shipper will be charged with excess freight that the City is required to pay.

2.3 Deliveries. Time is of the essence. Chemicals and equipment are for delivery not later than 30 days after receipt of a Chemical Order. The City reserves the right to cancel and reject the goods upon default by Vendor in time, rate or manner of delivery. The City also reserves the right to refuse shipments made in advance of the receipt of the Chemical Order. Vendor shall make deliveries inside to the location designated by the City.

2.4 Quantity. The quantity of goods ordered must not be exceeded or reduced without the City's permission, in writing, except in conformity with acknowledged industry tolerances. The City reserves the right to adjust the quantities as necessary to meet its needs.

2.5 Freight. Unless otherwise agreed to in writing, all delivery terms are FOB Destination and are to be prepaid. All other freight charges are to be prepaid and charged on the invoice. If a cash discount is not permitted on freight charges, then specific notation of this must be shown on the invoice. Vendor shall retain title and control of the goods until they are delivered and the City has accepted delivery. All risk of transportation and all related charges shall be the responsibility of the Vendor. All claims for visible or concealed damage shall be filed by the Vendor. The City will notify the Vendor promptly of any damages to the goods and shall assist the Vendor in arranging for inspection. Vendor must be notified of any damage within 30 days of delivery.

2.6 Shipment Under Reservation Prohibited. Vendor is not authorized to ship goods under reservation, and no tender of a bill of lading will operate as a tender of the goods. The City shall only be obligated to pay for goods actually received, unless prior payment has been specifically approved, in writing prior to shipment, by the City Procurement Officer or authorized designee.

2.7 Federal Tax Exemption. As a political subdivision of the State of Arizona, the City is exempt from federal excise tax.

2.8 Waiver. Waiver by the City of a condition in any shipment shall not be considered a waiver of: (A) any other provisions of this Agreement or (B) that condition for subsequent shipments.

2.9 Cancellation. The City reserves the right to cancel any Chemical Order within a reasonable period of time after issuance. Should a Chemical Order be canceled, the City agrees to reimburse the Vendor but only for actual and documentable costs incurred by the Vendor due to and after issuance of the Chemical Order. The City will not reimburse the Vendor for any costs incurred after receipt of the City notice of cancellation, or for lost profits, shipment of product prior to issuance of Chemical Order or for anything not expressly permitted pursuant to this Agreement.

3. Compensation. The City shall pay the Vendor for the Initial Term, $1.3662 per Gallon of Sodium Hydroxide (25%). The annual aggregate amount is not to exceed $200,000.00 per year.

4. Payments. The City shall pay the Vendor monthly, based upon acceptance and delivery of Chemicals, and upon submission and approval of invoices. Each invoice shall (i) contain a reference to this Agreement and (ii) document and itemize all Chemicals delivered and accepted to date. The invoice statement shall include a record of Chemicals delivered in sufficient detail to justify payment. Additionally, invoices submitted without referencing this Agreement will be subject to rejection and may be returned.

5. Price Warranty. Vendor shall notify and give the City the benefit of any price reductions before actual time of shipment. However, if the City authorizes shipment prior to the specified shipment date, the City shall have the advantage of any price reduction prior to the specified shipment date.

6. Quality Warranty. The standard manufacturer's warranty will apply to the goods purchased under this Agreement. In addition, Vendor expressly warrants that all goods furnished under this Agreement shall conform to the specifications, appropriate standards, and shall be new and free from defects in chemical or workmanship. Vendor warrants that all such goods shall conform to any statements made on the cylinders or labels or advertisements for such goods and that any goods will be adequately contained, packaged, marked and labeled. Vendor warrants that all goods furnished hereunder will be merchantable, and will be safe and appropriate for the purpose which goods of that kind are normally used. If Vendor knows or has reason to know the particular purpose for which City intends to use the goods, Vendor warrants that goods furnished will conform in all respect to samples. Inspection, testing, acceptance or use of the goods furnished hereunder shall not affect the Vendor's obligation under this warranty, and such warranties shall survive inspection, testing, acceptance and use. Vendor's warranty shall run to City, its successors, and assigns. Vendor shall comply with all quality standards set forth in Article III of IFB 25-01.

7. Indemnification. To the fullest extent permitted by law, Vendor further agrees to indemnify and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the delivery of goods in the performance of this Agreement, including, but not limited to claims or demands arising from (A) accidents occurring on the premises of the City, whether or not caused by the negligence of the Vendor, its agents or employees, or the negligence other than the sole negligence of the City, its agents or employees or that of any other person, firm or entity, (B) claims and demands on account of infringement, or alleged infringement, of any patent, copyright, trademark, trade name, or any other intellectual property right in conjunction with the manufacture or use of any product purchased under this Agreement and, upon written request, Vendor will defend at its own cost and expense any legal action or suit against the City involving any such alleged infringement, and will pay and satisfy any and all judgments or decrees rendered in any such legal actions or suits and (C) damages to persons or property resulting from defects in chemical or workmanship.

8. Termination; Cancellation.

8.1 For City's Convenience. This Agreement is for the convenience of the City and, as such, may be terminated without cause after receipt by Vendor of written notice by the City. Upon termination for convenience, Vendor shall be paid for all undisputed services performed to the termination date.

8.2 For Cause. If either party fails to perform any obligation pursuant to this Agreement and such party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within 30 days, then the defaulting party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (A) provides written notice to the non-defaulting party and (B) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 days. In the event of such termination for cause, payment shall be made by the City to the Vendor for the undisputed portion of its fee due as of the termination date.

8.3 Conflict of Interest. This Agreement is subject to the provisions of A.R.S. § 38-511. The City may cancel this Agreement without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee of any other party to this Agreement in any capacity or a Vendor to any other party of this Agreement with respect to the subject matter of this Agreement.

8.4 Gratuities. The City may, by written notice to the Vendor, cancel this Agreement if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Vendor or any agent or representative of the Vendor to any officer, agent or employee of the City for the purpose of securing this Agreement. In the event this Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Vendor an amount equal to 150% of the gratuity.

8.5 Agreement Subject to Appropriation. This Agreement is subject to the provisions of ARIZ. CONST. ART. IX, § 5 and A.R.S. § 42-17106. The provisions of this Agreement for payment of funds by the City shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The City shall be the sole judge and authority in determining the availability of funds under this Agreement and the City shall keep the Vendor fully informed as to the availability of funds for this Agreement. The obligation of the City to make any payment pursuant to this Agreement is a current expense of the City, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the City. If the City Council fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the City and the Vendor shall be relieved of any subsequent obligation under this Agreement.

9. Miscellaneous.

9.1 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

9.2 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Vendor.

9.3 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement will promptly be physically amended to make such insertion or correction.

9.4 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of this Agreement which may remain in effect without the invalid provision or application.

9.5 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

9.6 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City’s acceptance of and payment for services, shall not release the Vendor from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

9.7 Attorneys’ Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

9.8 Liens. All chemicals or services shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.

9.9 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Vendor any amounts Vendor owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The City may offset from any money due to the Vendor any amounts Vendor owes to the City for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

9.10 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City:	City of Tolleson 9055 West Van Buren Street Tolleson, Arizona 85353 Attn: Crystal Zamora, City Clerk
With copy to:	Pierce Coleman PLLC 17851 North 85th Street, Suite 175 Scottsdale, Arizona 85255 Attn: Justin S. Pierce, City Attorney
If to Vendor:	Univar Solutions USA LLC 3075 Highland Parkway, Suite 200 Downers Grove, Illinois 60515 Attn: Jennifer Perras

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

9.11 Israel. Vendor certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott" of goods and services from Israel, as that term is defined in A.R.S. § 35-393.

9.12 China. Pursuant to and in compliance with A.R.S. § 35-394, Vendor hereby agrees and certifies that it does not currently, and agrees for the duration of this Agreement that Vendor will not, use: (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (3) any vendors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. Vendor also hereby agrees to indemnify and hold harmless the City, its officials, employees, and agents from any claims or causes of action relating to the City's action based upon reliance upon this representation, including the payment of all costs and attorney fees incurred by the City in defending such as action.

9.13 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, the Proposal, any City-approved invoices, and the RFP, the documents shall govern in the order listed herein.

9.14 Non-Exclusive Agreement. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods and services from another source when necessary.

9.15 Disengagement. In the event the Agreement is terminated by either party, Vendor agrees to confer back to the City all of its data, in usable and normalized format, within 30 days of notice of termination. There shall be no charge for the return of City data to the City.

9.16 Survival. The obligations of Vendor under this Section shall survive the termination of the Agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year last set forth below.

"**City**"

CITY OF TOLLESON,
an Arizona municipal corporation

___________________________________ ______________________________
Reyes Medrano, Jr., City Manager Date

ATTEST:

____
Crystal Zamora, City Clerk

APPROVED AS TO FORM:

____
Justin S. Pierce, City Attorney

"**Vendor**"

UNIVAR SOLUTIONS USA LLC,
an Illinois limited liability company

By:_____________________________________
Name: _________________________________
Title: ___________________________________

EXHIBIT A
TO
PURCHASE AGREEMENT
BETWEEN
THE CITY OF TOLLESON
AND
UNIVAR SOLUTIONS USA LLC

Vendor's Bid

See following pages.