

Goods Purchase Agreement

THIS PURCHASE AGREEMENT ("Agreement") is made as of this 2nd day of August, 2022 ("Effective Date" which is the same date as the last party to execute this Agreement), by and between Pinellas County, a political subdivision of the State of Florida ("County"), and Condy Holdings LLC DBA Carus LLC, located in Peru, Illinois ("Contractor") (individually, "Party," collectively, "Parties").

WITNESSETH:

WHEREAS, the County requested proposals pursuant to Contract No. 21-0694-N-BW to provide their corrosion inhibitor chemical; and

WHEREAS, based upon the County's assessment of Contractor's quote, the County selected the Contractor to provide the Goods as defined herein; and

WHEREAS, Contractor represents that it has the experience and expertise to provided the Goods as set forth in this Agreement.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants, agreements, terms and conditions herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree as follows:

1. The execution of this Agreement is unqualified, unconditional, and subject to and expressly limited by the Terms and Conditions hereon. County and the Contractor are not bound by additional provisions or provisions at variance herewith that may appear in the Contractor's quotation, acknowledgement in force, or any other communication from Contractor to or from County unless such provision is expressly set forth herein.
2. ASSIGNMENT/SUBCONTRACTING - The Contractor must provide the Goods required by this Agreement. No assignment or subcontracting is allowed without prior written consent of the County. In the event of a corporate acquisition and/or merger, the Contractor must provide written notice to the County, within (30) business days of Contractor's notice of such action or upon the occurrence of said action, whichever occurs first. In that event, the County may terminate this Agreement in those instances in which a corporate acquisition and/or merger represents a conflict of interest or contrary to any local, state or federal laws.

3. ORDERS - Within the term of this Agreement, County may place one or more orders for goods at the prices listed on the Price Schedule which is attached hereto as Exhibit A and which is incorporated by reference hereto.
4. DELIVERY/CLAIMS - Prices on the Schedule of Prices are F.O.B. Destination, FREIGHT INCLUDED and unloaded to location(s) within Pinellas County. Actual delivery address(es) will be identified at time of order. Contractor will be responsible for making any and all claims against carriers for missing or damaged items.
5. COMPENSATION - County will pay Contractor upon Contractor's delivery of, and County's acceptance of, the goods required herein, as specified. All payments will only be made based on invoices submitted in accordance with the Local Government Prompt Payment Act, Florida Statutes §§ 218.70, et. seq.
6. TERM OF AGREEMENT AND SPENDING CAP – This Agreement is effective on July 1, 2022 and will continue in effect for a period of **twenty-four (24) months**. Notwithstanding any order(s) placed pursuant to this Agreement, the County may not be held responsible for amounts exceeding the total not to exceed amount of \$658,320.00, with an annual amount not to exceed \$329,160.00 per year, without a written amendment to this Agreement raising such limit signed by the parties.
7. PRICE ADJUSTMENT – Unit prices are adjustable at six (6) months after the date of award, and bi-annually for the twenty-four month term period of this Agreement, in an amount not to exceed the average of the Producer Price Index (PPI) or **50%**, whichever is less, for Producer Price Index (PPI) Series ID: WPU0652, Not Seasonally Adjusted, Base Period: 1982-84=100 for the twelve months prior.

It is the vendor's responsibility to request a pricing adjustment under this provision. For any adjustment to commence annually, the vendor's request for adjustment shall be submitted between 90-120 days prior to bi-annual contract anniversary date, utilizing the available index at the time of request. The vendor adjustment request shall not be in excess of the relevant pricing index change or 50%. If no adjustment request is received from the vendor, the County will consider the vendor has agreed to continue without a pricing adjustment. Any adjustment request received outside of the 90-120 day period above shall not be considered.

The County reserves the right to request a price adjustment for decrease under this provision, the county's request for adjustment shall be submitted between 90 days prior to date that the price adjustment will take place. utilizing the available index at the time of request. The vendor adjustment request shall not be in excess of the relevant Producer Price Index change or 50%. The County adjustment request shall not be in excess of the relevant Producer Price Index change.

8. TERM EXTENSION – The agreement may be extended subject to written notice of agreement via Amendment from the County and the Contractor for three (3) additional twelve (12) month periods beyond the primary contract period pursuant to the same terms and conditions set forth in the Agreement by mutually executing an amendment to this Agreement, as provided herein.

9. TERM EXTENSION PRICE ADJUSTMENT – Each Term extension will allow for a Contractor initiated price adjustment increase, in an amount not to exceed the average of the Producer Price Index (PPI) or 5%, whichever is less, for Producer Price Index (PPI) Series ID: WPU0652, Not Seasonally Adjusted, Base Period: 1982-84=100 for the twelve months prior.

It is the vendor's responsibility to request any price increase adjustment under this provision. The vendor's request for adjustment should be submitted at time of the extension request from the County, utilizing the available index at the time of request. The vendor adjustment request should not be in excess of the relevant pricing index change or 5%. If no adjustment request is received from the vendor, the County will assume the vendor has agreed that the extension term may be exercised without pricing adjustment. Any adjustment request received after the commencement of a new extension period may not be considered.

The County reserves the right to request a price adjustment for decrease under this provision, the county's request for adjustment shall be submitted at time of the extension request from the County, utilizing the available index at the time of request. The County adjustment request shall not be in excess of the relevant Producer Price Index change or 5%.

10. INVOICING – Written invoice(s) must be submitted to:

Finance Division Accounts Payable
Board of County Commissioners Pinellas County
PO Box 2438
Clearwater, FL 33757
727-464-8389
FinanceAccountsPay@MyPinellasClerk.org

Each invoice must include, at a minimum, the Contractor's name, contact information and the Purchase Order number.

11. DISCOUNTS - Delay in receiving an invoice, invoicing for materials shipped ahead of specified schedule, or invoices rendered with errors or omissions will be considered just cause for County to withhold payment without losing discount privileges. Discount privilege will apply from date of scheduled delivery, the date or receipt of goods, or the date of approved invoice, whichever is later.
12. NAME CHANGES - The Contractor is responsible for immediately notifying the County of any company name change, which would cause invoicing to change from the name used at the time of the original Agreement.
13. COMPLIANCE WITH APPLICABLE LAWS - Contractor certifies that all of the products to be furnished hereunder will be manufactured or supplied by Contractor in accordance with all applicable provisions of State, Local and Federal laws, as of the date that the goods are supplied.

14. CHOICE OF LAW: The laws of the State of Florida apply to this Agreement and any and all purchases made hereunder. Contractors must comply with all local, state, and federal directives, orders and laws including, but not limited to, Equal Employment Opportunity (EEO), Minority Business Enterprise (MBE), and OSHA.
15. FISCAL NON-FUNDING- In the event that sufficient budgeted funds are not available for a new fiscal period, the County will notify the Contractor of such occurrence and this Agreement will terminate on the last day of the then current County fiscal period (Oct. 1 – Sept. 30) without penalty or expense to the County.
16. INDEMNITY PROVISION - Contractor agrees to indemnify, pay the cost of defense, including attorney's fees, and hold harmless the County, its officers, employees and agents from all damages, suits, actions or claims, including reasonable attorney's fees incurred by the County, of any character brought on account of any injuries or damages received or sustained by any person, persons, or property, or in any way relating to or arising from the Agreement; or on account of any act or omission, neglect or misconduct of Contractor; or by, or on account of, any claim or amounts recovered under the Workers' Compensation Law; or of any other laws, regulations, ordinance, order or decree; or arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon; or for any violation of requirements of the Americans with Disabilities Act of 1990, as may be amended, and all rules and regulations issued pursuant thereto (collectively the "ADA") except when such injury, damage, or violation was caused by the sole negligence of the County.

17. INDEPENDENT CONTRACTOR STATUS AND COMPLIANCE WITH THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 - The Contractor is and will remain an independent contractor and is neither agent, employee, partner, nor joint venture of the County. Contractor acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 located at 8 U.S.C. 1324 et. seq., and regulations thereto, as either may be amended from time to time. Failure to comply with the above provisions is considered a material breach and is grounds for immediate termination of the agreement, at the discretion of the County.

18. E-VERIFY

The Contractor and Subcontractor must register with and use the E-verify system in accordance with Florida Statute 448.095. A Contractor and Subcontractor may not enter into a contract with the County unless each party registers with and uses the E-verify system.

If a Contractor enters a contract with a Subcontractor, the Subcontractor must provide the Contractor with an affidavit stating that the Subcontractor does not employ, contract with, or subcontract with unauthorized aliens. The Contractor must maintain a copy of the affidavit for the duration of the contract.

If the County, Contractor, or Subcontractor has a good faith belief that a person or entity with which it is contracting has knowingly violated Florida Statute 448.09(1) shall immediately terminate the contract with the person or entity.

If the County has a good faith belief that a Subcontractor knowingly violated this provision, but the Contractor otherwise complied with this provision, the County will notify the Contractor and order that the Contractor immediately terminate the contract with the Subcontractor.

A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged to Section 448.095(2)(d), Florida Statute. Contractor acknowledges upon termination of this agreement by the County for violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor acknowledges that Contractor is liable for any additional costs incurred by the County as a result of termination of any contract for a violation of this section.

Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in this section, requiring the subcontracts to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any Subcontractor or Lower Tier Subcontractor with the clause set for in this section.

19. NOTICES TO PINELLAS COUNTY - Any notices or inquiries relative to Purchase Order should be directed to:

Bryant Jasper-Williams

Procurement Analyst Coordinator

727-464-4123

brwilliams@pinellascounty.org

20. INSPECTION – In County’s sole discretion, goods rejected due to inferior quality or workmanship will be returned to Contractor at Contractor’s expense and are not to be replaced except upon receipt of written instructions from County.

21. MATERIAL QUALITY - All goods and materials purchased and delivered pursuant to this Agreement will be of first quality and not damaged and/or factory seconds. Any materials damaged or not in first quality condition upon receipt must be exchanged within twenty-four (24) hours of notice to the Contractor at no charge to County.

22. MATERIAL SAFETY DATA - In accordance with OSHA Hazardous Communications Standards, it is the Contractor seller's duty to advise if a product is a toxic substance and to provide a Material Safety Data Sheet at time of delivery.

23. NON-EXCLUSIVE AGREEMENT - Award of this Agreement imposes no obligation on the County to utilize the Contractor for all goods of this type, which may develop during the agreement period. This is not an exclusive agreement. County specifically reserves the right to concurrently contract for similar goods if it deems such action to be in the County's best interest. In the case of multiple-term agreements, this provision applies separately to each term.

24. PURCHASE ORDER NUMBER - Each order will contain the Purchase Order Number applicable to this Agreement, and such Purchase Order Number must appear on all packing slips, invoices and all correspondence relating to the Order. County will not be responsible for goods delivered without a Purchase Order Number.

25. REMEDIES - County and Contractor will have all remedies afforded by applicable law.

26. RIGHT TO AUDIT - The Contractor must retain records relating to this agreement for a period of at least three (3) years after final payment is made. All records must be kept in such a way as will permit their inspection pursuant to Chapter 119, Florida Statutes. In addition, County reserves the right to audit such records pursuant to Pinellas County Code, §2-187.

27. SEVERABILITY - If any section, subsection, sentence, clause, phrase, or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent Jurisdiction, such portion must be deemed separate, distinct, and independent provision, and such holding will not affect the validity of the remaining portion thereof.

28. TAX EXEMPTION – County is immune from taxation. The Florida State Sales Tax Exemption Number for Pinellas County is 85-8013287050C-7 Federal Excise Tax Exemption Number is 59-6000800.

29. TAXES - Payments to County are subject to applicable Florida taxes.

30. TERMINATION - County reserves the right to terminate this agreement, without cause by giving thirty (30) days prior written notice to the Contractor of the intention to terminate or with cause if at any time the Contractor fails to fulfill or abide by any of the terms or conditions specified.

Failure of the Contractor to comply with any of the provisions of this Agreement is considered a material breach of Agreement and is cause for immediate termination of the Agreement at the sole discretion of County.

In addition to all other legal remedies available to the County, the County reserves the right to terminate and obtain from another source any services which have not been provided within the period of time stated in the proposal, or if no such time is stated, within a reasonable period of time from the date of request, as determined by the County.

31. VARIATION IN QUANTITY - County assumes no liability for goods or materials produced, processed or shipped in excess of the amounts ordered pursuant to the terms of this Agreement.

32. WARRANTY - Seller warrants that the goods are of first quality and as described in Prices Schedule. All manufacturer, producer or seller warranties offered to any other purchaser are expressly available and applicable to County.

33. ENTIRE AGREEMENT- This Agreement constitutes the entire Agreement between the Parties and supersedes all prior negotiations, representations or agreements either oral or written.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on the day and year as written.

PINELLAS COUNTY, a political subdivision of the
State of Florida

Condy Holdings LLC DBA Carus LLC

Name of Firm

By: Charlie Justice
Signature

Charlie Justice
Print Name

Chairman
Title

August 2, 2022.
Date

ATTEST: KEN BURKE, CLERK

By: Keiah Townsend

APPROVED AS TO FORM
By: Keiah Townsend
Office of the County Attorney



By: M. Chrissy Crockett
Signature

M. Chrissy Crockett
Print Name

SR VP, CFO
Title

July 11, 2022
Date

EXHIBIT A
GOODS PRICE SCHEDULE

VENDOR NAME	CORROSION INHIBITOR FULL PRODUCT NAME/PART #	GALLONS OF PRODUCT PER MG OF WATER	X	CORROSION INHIBITOR PRICE PER GALLON	=	COST OF TREATMENT PER MG	EST. ANNUAL QTY	Cost Per Year (G X J)
Carus LLC	AQUA MAG® 9500 Blended Phosphate	2.17		\$9.43		\$20.4631	40,000	\$ 377,200.00