

Pinellas County
Goods Purchase Agreement

THIS PURCHASE AGREEMENT ("Agreement") is made as of this ____ day of _____, 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 Nalco, an Ecolab Company LLC, 1601 West Diehl Road, Naperville, IL 60563 ("Contractor") (individually, "Party," collectively, "Parties").

WITNESSETH:

WHEREAS, the County requested proposals pursuant to the non-competitive Contract No. 22-0225-N for Nalmet 1689 Water Treatment; 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 the effective date and will continue in effect for a period of sixty (60) 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 one million, four hundred and ninety-eight thousand, five hundred and five dollars and twenty-nine cents (\$1,498,505.29), or the annual not to exceed amount of two hundred and ninety-nine thousand, seven hundred and one dollars and six cents (\$299,701.06) per year, without a written amendment to this Agreement raising such limit signed by the parties.
7. PRICING/PERIOD OF CONTRACT –

Duration of the contract shall be for a period of sixty (60) months. Unit prices are adjustable (increase/decrease) at twelve (12) months after the effective date and there after annually for the life of the contract, in an amount not to exceed the Producer Price Index (PPI) Commodity data for All Commodities, Series Id: WPU00000000, Not Seasonally Adjusted, Item: All commodities, Base Date: 198200 for the twelve months prior or 5%, whichever is less.

*For practical purposes, all prices will be rounded to the nearest penny (\$0.01) per pound.

The data used will be based on the below index:

- PPI: <https://beta.bls.gov/dataViewer/view/timeseries/WPU00000000>

It is the vendor's responsibility to request any pricing adjustment under this provision. Any adjustment requires a sixty (60) day written notice, no more often than annually, utilizing the available index at the time of request. The vendor's adjustment request shall not be in excess of the relevant pricing index change or 5%, whichever is less. If no adjustment request is received from the vendor, the County will assume the vendor has agreed to continue without a pricing

adjustment. Pinellas County will provide a sixty (60) day written notices of decrease, no more often than biannually, based on the above referenced index.

8. TEMPORARY ENERGY SURCHARGE –

This Agreement contains a Temporary Energy Surcharge. The Temporary Energy Surcharge will be determined on the 15th day of each month based on a rolling four (4) week average of business days only of the Brent Crude Oil ICE Futures (LCOC1) price per barrel located on the following website: <https://www.reuters.com/quote/LCOC1>. The four (4) week rolling average is calculated using business days only from the 4 weeks prior to the 15th of the current month. If the 15th falls on the weekend, the prior closest business day will be chosen as a starting point for measurement, with a stopping point of the business day following the previous starting point, effective the first day of the following month. The surcharge percentage will be adjusted monthly, and an Energy Surcharge rate outlined in the table below will be applied at the time of order. Contractor will notify the County of the then current Energy Surcharge rate via email on a monthly basis in the format outlined in **Exhibit B – Energy Surcharge Calculation June Update**. Contractor should list the Energy Surcharge as a separate line item on quotes and invoices.

LCOC1 Cost of Oil/Barrel	\$75-\$99	\$100-\$124	\$125-\$150
Surcharge Rate	+8%	+10%	+12%

In the event the cost of oil per barrel falls below \$75.00, no energy surcharge will be applied to the order.

In the event the cost of oil per barrel exceeds the ranges listed above, Contractor will use the same calculations to provide a new surcharge rate to County, which will be reviewed and approved and then executed mutually through an amendment.

*Business days do not include weekends or holidays observed by Nalco or the County as outlined below:

<http://pinellascounty.org/holiday.htm>

2022 U.S. Holiday Schedule

All U.S. Businesses and Functions

Holiday	2022 Date
New Year's Day (Observed)	Monday, January 3
Memorial Day	Monday, May 30
Independence Day	Monday, July 4
Labor Day	Monday, September 5
Thanksgiving Day	Thursday, November 24
Day After Thanksgiving	Friday, November 25
Christmas Day (Observed)	Monday, December 26

9. Term Extension

The contract may be extended subject to written notice of agreement from the County and the Contractor for an additional 12-month period beyond the primary contract period. The extension shall be exercised only if all terms and conditions remain the same and the County Administrator or Director of Purchasing grants approval.

If the term extension is exercised, Contractor will present County with written notice of any adjusted unit prices sixty (60) days prior to the renewal term. The Contractor's adjustment request shall not be in excess of the relevant pricing index change or 5%, whichever is less. If no adjustment request is received from the Contractor, the County will assume the Contractor has agreed to continue without a pricing adjustment.

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 of 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 forth in this section.

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

Paige Walton
Procurement Analyst Coordinator
727-464-4136
pwalton@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 the 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. ENTIRETY – 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

Nalco, an Ecolab Company

By: The Board of County Commissioners

By:

Signature

Lilton L Moore

Signature

Print Name

Lilton L Moore

Print Name

Title

Director - Sales Operations Municipal

Title

Date

06/23/2022

Date

APPROVED AS TO FORM

By: *Miles Belknap*

Office of the County Attorney

EXHIBIT A
GOODS PRICE SCHEDULE

Item Description	Term	Price Per LB.
Nalmet 1689 Water Treatment Product Code: 1689.61 Package Code: .61 (IBC One Way Tote – Approximate weight 2,600 LBS.)	07/01/2022 thru 06/30/2023	*\$2.33

*The Temporary Surcharge will be applied to each invoice in accordance with Section 8 TEMPORARY ENERGY SURCHARGE. Invoices to County must include a copy of the Brent Crude Oil ICE Futures (LCOC1).

EXHIBIT B

Surcharge Calculation June Update

June Surcharge **10%** Based on **\$108** rolling average

May 13 - Calculation \$108

Product	Brent Crude Oil ICE Futures	LCOC1
Crude Oil Price Measurement	Ecolab will calculate average close prices for the prior 4 weeks	
Measurement Start	The Temporary Energy Surcharge will be determined on the 15th day of each month based on a rolling four (4) week average of business days only of the Brent Crude Oil ICE Futures (LCOC1) price per barrel. The four (4) week rolling average is calculated using business days only from the 4 weeks prior to the 15th of the current month. If the 15th falls on the weekend, the prior closest business day will be chosen as a starting point for measurement, with a stopping point of the business day following the previous starting point, effective the first day of the following month. The surcharge percentage will be adjusted monthly and an Energy Surcharge rate outlined in the table below will be applied at the time of order.	May 13
Measurement End		April 18

Brent Oil Index	\$75-\$99	\$100-\$124	\$125-\$150
Surcharge rate	+8%	+10%	+12%

Brent ICE Daily

Date	Close/Last
5/13/2022	111.55
5/12/2022	107.92
5/11/2022	107.51
5/10/2022	102.46
5/9/2022	105.94
5/6/2022	112.39
5/5/2022	110.9
5/4/2022	110.14
5/3/2022	104.97
5/2/2022	107.58
4/29/2022	109.34
4/28/2022	107.59
4/27/2022	105.32
4/26/2022	104.99
4/25/2022	102.32
4/22/2022	106.65
4/21/2022	108.33
4/20/2022	106.8
4/19/2022	107.25
4/18/2022	113.16
30-day Avg	107.66

