

B240124CMR
Purchase of Carbon Dioxide- Annual Contract
Airgas USA, LLC

E1 Contract # N/A

AGREEMENT FOR PURCHASE OF CARBON DIOXIDE- ANNUAL CONTRACT

THIS AGREEMENT ("Agreement") is made and entered into by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the "County" and Airgas USA, LLC, a Delaware company authorized to do business in the State of Florida, whose address is 259 N. Radnor-Chester Rd., Suite 100, Radnor, PA 19087, and whose federal tax identification number is 45-3153734, hereinafter referred to as "Vendor."

WITNESSETH

WHEREAS, the County intends to furnish and deliver Carbon Dioxide from the Vendor in connection with "Purchase of Carbon Dioxide- Annual Contract" (the "Purchase"); and,

WHEREAS, the County issued Solicitation No. B240124CMR on January 5th, 2024 (the "Solicitation"); and,

WHEREAS, the County evaluated the responses received and found the Vendor qualified to provide the necessary products and services; and,

WHEREAS, the County posted a Notice of Notice of Intended Decision on February 14, 2024; and,

WHEREAS, the Vendor has reviewed the products and services to be supplied pursuant to this Agreement and is qualified, willing and able to provide all such products and services in accordance with its terms.

NOW, THEREFORE, the County and the Vendor, in consideration of the mutual covenants contained herein, do agree as follows:

I. PRODUCTS AND SERVICES

The Vendor agrees to diligently provide all products and services for the Purchase, a more specific description of the Project Scope of Services is set forth in Sections 1 through 7 of the Scope of Work and Specifications sections of B240124CMR, a photocopy of said sections being attached hereto and incorporated by reference as Exhibit A. Vendor shall comply strictly with all of the terms and conditions of the Solicitation, a copy of which is on file with the County's Department of Procurement Management and is deemed incorporated into this Agreement to the extent that it does not conflict with the remainder of the Agreement.

II. TERM AND DELIVERY

A. This Agreement shall commence immediately upon the effective date and shall continue for on as needed basis for a one (1) year period. Upon mutual written agreement of both parties, the parties may renew the Agreement,

in whole or in part, for a renewal term or terms not to exceed an additional three (3) years total. The increments of renewal shall be at the sole discretion of the County as deemed in its best interest. The effective date shall be March 20th, 2024.

- B. A purchase order must be issued by the County before commencement of any work or purchase of any goods related to this Agreement.

III. COMPENSATION AND PAYMENT

- A. The County shall pay the Vendor in accordance with the terms and conditions of this Agreement for providing all products and services as set forth in Exhibit A, and further described in Exhibit B, Fee Schedule, attached hereto and incorporated herein. Said total amount to be all inclusive of costs necessary to provide all products and services as outlined in this Agreement, and as supported by the Vendor's submittal in response to the Solicitation, a copy of which is on file with the County's Department of Procurement Management and is deemed incorporated into this Agreement.
- B. Notwithstanding the preceding, Vendor shall not make any deliveries or perform any services under this Agreement until receipt of written authorization from the County. Vendor acknowledges and agrees that no minimum order or amount of product or service is guaranteed under this Agreement and County may elect to request no products or services. If the County authorizes delivery of products or performance of services, the County reserves the right to amend, reduce, or cancel the authorization in its sole discretion.
- C. All funds for payment by the County under this Agreement are subject to the availability of an annual appropriation for this purpose by the County. In the event of non-appropriation of funds by the County for the services provided under this Agreement, the County will terminate the contract, without termination charge or other liability, on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the Vendor on thirty (30) days' prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated under this Agreement beyond the date of termination.

IV. METHOD OF PAYMENT

- A. The County shall pay the Vendor in accordance with the Local Government Prompt Payment Act, Section 218.70, Florida Statutes, upon receipt of the Vendor's invoice and written approval of same by the County indicating that the products and services have been provided in conformity with this Agreement.

- B. The Vendor shall submit an invoice for payment to the County on a monthly basis for those specific products and services as described in Exhibit A (and the corresponding fees as described in Exhibit B) that were provided during that invoicing period.
- C. For partial shipments or deliveries, progress payments shall be paid monthly in proportion to the percentage of products and services delivered on those specific line items as approved in writing by the County.

V. ADDITIONAL PURCHASES

- A. No changes to this Agreement or the performance contemplated hereunder shall be made unless the same are in writing and signed by both the Vendor and the County.
- B. If the County requires the Vendor to perform additional services or provide additional product(s) related to this Agreement, then the Vendor shall be entitled to additional compensation based on the Fee Schedule as amended to the extent necessary to accommodate such additional work or product(s). The additional compensation shall be agreed upon before commencement of any additional services or provision of additional product(s) and shall be incorporated into this Agreement by written amendment. The County shall not pay for any additional service, work performed or product provided before a written amendment to this Agreement.

Notwithstanding the preceding, in the event additional services are required as a result of error, omission or negligence of the Vendor, the Vendor shall not be entitled to additional compensation.

VI. LIABILITY OF VENDOR

- A. The Vendor shall save, defend, indemnify and hold harmless the County from and against any and all claims, actions, damages, fees, fines, penalties, defense costs, suits or liabilities which may arise out of any act, neglect, error, omission or default of the Vendor arising out of or in any way connected with the Vendor or subcontractor's performance or failure to perform under the terms of this Agreement.
- B. This section shall survive the termination or expiration of this Agreement.

VII. VENDOR'S INSURANCE

- A. Vendor shall procure and maintain insurance as specified in Exhibit C Insurance Requirements, attached hereto and made a part of this Agreement.

- B. Vendor shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this Agreement, insurance coverage (including endorsements) and limits as described in Exhibit C. These requirements, as well as the County's review or acceptance of insurance maintained by Vendor, are not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Vendor under this Agreement. Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of "B or better." No changes are to be made to these specifications without prior written specific approval by County Risk Management. To the extent multiple insurance coverages and/or County's self-insured retention may apply, any and all insurance coverage purchased by Vendor and its subcontractors identifying the County as an additional named insured shall be primary.

VIII. RESPONSIBILITIES OF THE VENDOR

- A. The Vendor shall be responsible for the quality and functionality of all products supplied and services performed by or at the behest of the Vendor under this Agreement. The Vendor shall, without additional compensation, correct any errors or deficiencies in its products, or if directed by County, supply a comparable replacement product or service.
- B. The Vendor warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Vendor), to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Vendor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.
- C. The Vendor shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- D. Vendor specifically acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:
 - 1) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services required under this Agreement;
 - 2) upon request from the County, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost

provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

- 3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- 4) meet all requirements for retaining public records and transfer, at no cost to the County, all public records in possession of Vendor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology system of the County.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, PRRCustodian@leegov.com; <http://www.leegov.com/publicrecords>.

- E. The Vendor is, and shall be, in the performance of all work, services and activities under this Agreement, an independent contractor. Vendor is not an employee, agent or servant of the County and shall not represent itself as such. All persons engaged in any work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Vendor's sole direction, supervision and control. The Vendor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Vendor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees of the County. The Vendor shall be solely responsible for providing benefits and insurance to its employees.
- F. The Vendor shall comply with the Vendor Background Screening Affidavit attached hereto and incorporated herein as Exhibit D.

IX. OWNERSHIP OF PRODUCTS

It is understood and agreed that all products provided under this Agreement shall become the property of the County upon acceptance by the County.

X. TIMELY DELIVERY OF PRODUCTS AND PERFORMANCE OF SERVICES

- A. The Vendor shall ensure that all of its staff, contractors and suppliers involved in the production or delivery of the products are fully qualified and capable to perform their assigned tasks.
- B. The personnel assigned by the Vendor to perform the services pursuant to this Agreement shall comply with the terms set forth in this Agreement. If the services provided require use of specific key personnel, the personnel shall be agreed to by the County and Vendor. If the Vendor's key personnel have been predetermined and approved, through the Solicitation process or otherwise, any subsequent change or substitution to the personnel must receive the County's written approval before said changes or substitution can become effective.
- C. The Vendor specifically agrees that all products shall be delivered within the time limits as set forth in this Agreement, subject only to delays caused by force majeure, or as otherwise defined herein. "Force majeure" shall be deemed to be any unforeseeable and unavoidable cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the control of the parties.

XI. COMPLIANCE WITH APPLICABLE LAW

This Agreement shall be governed by the laws of the State of Florida. Vendor shall promptly comply with all applicable federal, state, county and municipal laws, ordinances, regulations, and rules relating to the services to be performed hereunder and in effect at the time of performance. Vendor shall conduct no activity or provide any service that is unlawful or offensive.

XII. TERMINATION

- A. The County shall have the right at any time upon thirty (30) days' written notice to the Vendor to terminate this Agreement in whole or in part for any reason whatsoever. In the event of such termination, the County shall be responsible to Vendor only for fees and compensation earned by the Vendor, in accordance with Section III, prior to the effective date of said termination. In no event shall the County be responsible for lost profits of Vendor or any other elements of breach of contract.
- B. After receipt of a notice of termination, except as otherwise directed, the Vendor shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and subcontracts; and settle all outstanding liabilities and claims.

- C. The County's rights under this Agreement shall survive the termination or expiration of this Agreement and are not waived by final payment or acceptance and are in addition to the Vendor's obligations under this Agreement.

XIII. DISPUTE RESOLUTION

- A. In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Lee County, Florida, with the parties sharing equally in the cost of such mediation.
- B. In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.
- C. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists, in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.
- D. This Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.
- E. Unless otherwise agreed in writing, the Vendor shall be required to continue all obligations under this Agreement during the pendency of a claim or dispute including, but not limited to, actual periods of mediation or judicial proceedings.

XIV. VENDOR WARRANTY

- A. All products provided under this Agreement shall be new (unless specifically identified otherwise in Exhibit B) and of the most suitable grade for the purpose intended.
- B. If any product delivered does not meet performance representations or other quality assurance representations as published by manufacturers, producers or distributors of the products or the specifications listed in this Agreement, the Vendor shall pick up the product from the County at no expense to the County. The County reserves the right to reject any or all materials if, in its judgment, the item reflects unsatisfactory workmanship or manufacturing or shipping damage. In such case, the Vendor shall refund to the County any money which has been paid for same.

XV. MISCELLANEOUS

- A. This Agreement constitutes the sole and complete understanding between the parties and supersedes all other contracts between them, whether oral or written, with respect to the subject matter. No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement.
- B. The provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assignees of the parties hereto. A party to this Agreement shall not sell, transfer, assign, license, franchise, restructure, alter, or change its corporate structure or otherwise part with possession or mortgage, charge or encumber any right or obligation under this Agreement without the proposed assignee and/or party restructuring, altering or changing its corporate structure agreeing in writing with the non-assigning party to observe and perform the terms, conditions and restrictions on the part of the assigning party to this Agreement, whether express or implied, as if the proposed assignee and/or party restructuring, altering or changing its corporate structure was an original contracting party to this Agreement. Notwithstanding the foregoing provision, the Vendor may assign its rights if given written authorization by the County and claims for the money due or to become due to the Vendor from the County under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the County. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the County.
- C. The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.
- D. The failure of the County to enforce one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.
- E. The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.
- F. Neither the County's review, approval or acceptance of, nor payment for, the products and services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- G. If the Vendor is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.

- H. When any period of time is referred to by days herein, it shall be computed to exclude the first day and include the last day of such period. When the period of time is fewer than three (3) days, it shall mean business days as defined by Lee County. If the period of time is greater than three (3) days, then it shall mean calendar days. For any period of time greater than seven (7) days, where the deadline falls on a Saturday, Sunday, or Lee County recognized holiday, the deadline will then fall to the next Monday or non-Lee County recognized holiday
- I. Any notices of default or termination shall be sufficient if sent by the parties via email, United States certified mail, postage paid, or via a nationally recognized delivery service, to the addresses listed below:

<u>Vendor's Representative</u>	<u>County's Representative</u>
Name: <u>Katey J. Shartzter</u>	Name: <u>Mary Tucker</u>
Title: <u>Bulk Sales Representative</u>	Title: <u>Procurement Management Director</u>
Address: <u>5249 Tampa West Blvd., Tampa, FL 33634</u>	Address: <u>P.O. Box 398 Fort Myers, FL 33902</u>
Telephone: <u>(484) 523-0402</u>	Telephone: <u>(239) 533-8881</u>
Facsimile: <u>N/A</u>	Facsimile: <u>(239) 485-8383</u>
Email: <u>Katey.shartzter@airgas.com</u>	Email: <u>mtucker@leegov.com</u>

- J. Any change in the County's or the Vendor's Representative will be promptly communicated by the party making the change.
- K. Paragraph headings are for the convenience of the parties and for reference purposes only and shall be given no legal effect.
- L. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:
 - 1. Agreement
 - 2. County's Purchase Order
 - 3. Solicitation
 - 4. Vendor's Submittal in Response to the Solicitation

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last below written.

WITNESS:

Signed By: *Diane Purtel*
Print Name: Diane Purtel

AIRGAS USA, LLC

Signed By: *R. Jay Worley*
Print Name: R. Jay Worley
Title: COO
Date: 02/22/2024

LEE COUNTY

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

DocuSigned by:
Signed By: *Mike Greenwell*
AD51A9A2E8F943C...
Print Name: Mike Greenwell
Title: Chair
Date: 3/22/2024 | 10:49 AM EDT
DocuSigned by:

ATTEST:
CLERK OF THE CIRCUIT COURT

BY: *Chris Jagodzinski*
DEEAC39F178B449...
DEPUTY CLERK



APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

BY: *Amanda L. Swindle*
EG9D5A5504DD473...
OFFICE OF THE COUNTY ATTORNEY

EXHIBIT A
SCOPE OF WORK AND SPECIFICATIONS
SCOPE OF WORK AND SPECIFICATIONS

1. GENERAL SCOPE OF WORK

1.1. The Lee County Board of County Commissioners seeks to contract with a qualified Vendor(s) to furnish and deliver Carbon Dioxide on an as needed basis, for use at Lee County Utilities Facilities. The County uses Carbon Dioxide for pH control of potable drinking water.

2. TECHNICAL SPECIFICATIONS

2.1. All chemicals shall be approved by the National Sanitation Foundation (NSF) as applicable. All products shall be provided exactly as specified. Any variations shall not be accepted.

2.2. Chemicals shall be tested and certified as meeting these specifications and those of the ANSI and AWWA specifications, Drinking Water Treatment Chemicals Health Effects. The Vendor shall inform the County if their NSF Certification has been revoked or lapsed within 24 hours from the time the Vendor receives verbal or written notification. Loss of certification shall constitute sufficient ground for immediate termination of the Agreement.

2.3. The Vendor shall deliver the Carbon Dioxide as a liquefied compressed gas in insulated tank trucks. The Vendor shall transfer the product from its delivery vehicle to the County's specified storage receptacle.

2.4. Carbon Dioxide shall meet the following specifications:

<u>Parameter</u>	<u>Formula</u>	<u>Units</u>	<u>Analysis</u>
Carbon Dioxide Purity	CO ₂	%vol	≥ 99.9
Water Vapor	H ₂ O	ppm vol	≤ 20
Total Volatile Hydrocarbons as Methane	C	ppm vol	≤ 20
Oxygen	O ₂	ppm vol	≤ 30
Carbon Monoxide	CO	ppm vol	≤ 10
Total Sulfur Content (as SO ₂) Excluding Sulfur Dioxide	S	ppm vol	≤ 0.1
Sulfur Dioxide	SO ₂	ppm vol	≤ 1.0
Methanol	CH ₃ OH	ppm vol	≤ 10
Nitric Oxide	NO	ppm vol	≤ 2.5
Nitrogen Dioxide	NO ₂	ppm vol	≤ 25
Acetaldehyde	CH ₃ CHO	ppm vol	≤ 0.2
Ammonia	NH ₃	ppm vol	≤ 2.5
Benzene	C ₆ H ₆	ppm vol	≤ 0.02
Non Volatile Residue	N/A	ppm wt	≤ 10
Non Volatile Organic Residue	N/A	ppm wt	≤ 5

3. DELIVERY REQUIREMENTS

3.1. Vendor's fees/pricing shall be F.O.B destination as directed to the Lee County locations specified herein. Deliveries shall be between the hours of 8:00 AM to 4:00 PM, Monday through Friday, within three (3) calendar days after verbal or electronic receipt of an order from the Lee County Utilities.

3.2. Emergency deliveries shall be within twenty-four (24) hours from time Lee County Utilities places an order. An emergency delivery shall be defined as a delivery which is necessary in order to prevent the County from running

out of chemicals listed in the scope in less than twenty-four (24) hours. The County shall endeavor to minimize the number of emergency deliveries.

- 3.3. The County reserves the right to refuse a delivery if that delivery is not in the proper timeframe, if Vendor has improper equipment to offload the delivery, if Vendor is taking improper safety precautions, and/or if the Vendor has malfunctioning equipment.
- 3.4. Vendor must provide a Certificate of Analysis with each delivery, that includes the chemical analysis listed in the Technical Specifications. County may reject delivery if a delivery ticket is not provided at time of delivery.
- 3.5. The County reserves the right to add or delete delivery sites at its discretion, at any time, during the term of the Agreement.
- 3.6. The Vendor's delivery driver shall present a photo I.D. upon delivery. The I.D. shall show that the driver is an employee of either the trucking company or the Vendor. All personnel making deliveries shall wear the appropriate Personal Protective Equipment (PPE) as required by the Safety Data Sheet (SDS) and/or Occupational Safety and Health Administration (OSHA).
- 3.7. The Vendor shall be responsible for any spills from the failure of its and its subcontractor's delivery equipment or from the failure of attendant delivery personnel in the proper performance of their duties.
- 3.8. Proper performance shall require attendant delivery personnel(s) constant inspection and observation of unloading operations and knowledgeable response to problems or emergencies, which would most commonly be expected to occur.
- 3.9. The County reserves the right to refuse any and all deliveries made with equipment that is poorly maintained.
- 3.10. The tanks or trailers shall be clean and free of residue that may contaminate the Vendor's product or impede the unloading process. The Vendor shall verify the cleanliness of the transporting equipment before loading. The County may reject a load if the equipment is not properly cleaned.
- 3.11. All appurtenant valves, pumps, and discharge hoses used for the delivery of the listed chemicals shall be supplied by the Vendor and shall be clean and free from contaminating material.
- 3.12. The Vendor shall furnish the County an approved, leak-free connection device between the trailer and the County's intake receptacle.
- 3.13. The Vendor shall observe the entire filling operation at each delivery site and shall immediately report any spills caused during the filling operations. The Vendor shall take immediate and appropriate actions to clean up any spilled chemical.
 - 3.13.1. If the spill is not cleaned up, the County shall hire a certified hazardous material handling company to clean up the spill, and the cost of such service shall be charged to the Vendor and deducted from the amount due to the Vendor for products.
 - 3.13.2. If the County's unloading equipment such as pipe, valves, level indication and alarms should fail, and the spillage is not the fault of the Vendor or its subcontractor, the Vendor shall be relieved of clean-up of the spill.

4. DELIVERY LOCATIONS

Corkscrew Water Treatment Plant (WTP)	16101 Alico Road, Ft. Myers, FL 33913	Plant Phone:	(239) 267-8228
		Plant Fax:	(239) 267-8268
		Contact/Cell:	Nick Horvath (239) 292-7831

North Lee County Water Treatment Plant (WTP)	18250 Durance Road, North Fort Myers, FL 33917	Plant Phone:	(239) 567-2181
		Plant Fax:	(239) 567-2184
		Contact:	Craig Bell (239) 896-5109

5. ESTIMATED DELIVERY AMOUNTS & ANNUAL USAGE

- 5.1. Corkscrew WTP- Estimated order volume: 7-20 tons per delivery. The capacities of the on-site Carbon Dioxide storage tanks are 26 tons and 60 tons. Both tanks are owned by the County.
- 5.2. North RO WTP- Estimated order volume: 7-20 tons per delivery. The capacity of the on-site Carbon Dioxide storage tanks is 50 tons. There are two (2) tanks that are owned by the County.
- 5.3. The tanks at Corkscrew WTP and North RO WTP are NOT connected. The tanks will need to be filled separately.
- 5.4. The estimated annual usage for Corkscrew WTP is 500 tons, and the estimated annual usage for the North RO WTP is 450 tons. These amounts shall not be considered a minimum order and/or a work guarantee.

6. SAFETY

- 6.1. Vendor shall conform to any and all State and Federal Regulations pertaining to Occupational Safety and Health regarding chemicals, and to assist the County in doing so pursuant to Chapter 442 F.S.
- 6.2. The Vendor's truck shall be marked with proper placards and equipped to safely handle and unload product and products.

7. TRAINING

- 7.1. The Vendor shall provide, at no additional cost to the County, two 4-hour training sessions each year that meet the Federal and State safety and Right-to-Know training requirements. The education and instruction of the County's operations personnel shall be by a qualified instructor, familiar with the safe handling practices associated with the chemical being discussed. Failure to provide this service shall be considered a default of the Agreement.
- 7.2. The training session shall be held in one central location in Lee County which will be determined by the County. The Vendor shall be responsible for travel, lodging, meals, and training material costs.

End of Scope of Work and Specifications Section

SPECIAL CONDITIONS

These are conditions that are in relation to this solicitation only and have not been included in the County's Standard Terms and Conditions or the Scope of Work.

1. TERM

- 1.1. The Vendor shall be responsible for furnishing and delivering to the Lee County requesting Department(s) the commodity or services on an "as needed basis" for one (1) year period. Upon mutual written agreement of both parties, the parties may renew the Agreement, in whole or in part, for a renewal term or terms for up to three (1) one-year term. The increments of renewal shall be at the sole discretion of the County as deemed in its best interest.

2. BASIS OF AWARD

- 2.1. The basis of award shall be determined by the lowest Project Total Bid of the most responsive, responsible, and qualified Vendor meeting all bid specifications.
- 2.2. It is the County's intent to award to a Primary, Secondary, and Tertiary Vendor. When awards are made to multiple Vendors, the County reserves the right to assign a status of Primary, Secondary, and or Tertiary, as applicable. The Primary Vendor shall be the first contact. If the Primary Vendor is unable to fulfill the need or meet the timeline required, the Secondary followed by Tertiary Vendor, shall be the next order of contact. Additionally, the order of the award can be changed, due to deficiency or non-compliant performance.

3. LOCAL PREFERENCE

- 3.1. The Lee County Local Vendor Preference shall be included as part of the award process for this project. As such, Lee County at its sole discretion may choose to award a preference to any qualified Local Vendor.

4. ADDITIONAL SUBMITTALS/DOCUMENTATION

- 4.1. Vendor is requested to provide with bid submittals the items listed below. The County reserves the right to request additional documentation of clarification at any point prior to award and during the term of Agreement, inclusive of any renewals. Failure to provide requested documentation in a timely manner, at the sole discretion of the County, may deem Vendor non-responsive and ineligible for award, renewal, or continuation of services.
 - 4.1.1. Spill response policy and procedures.
 - 4.1.2. A product data sheet as written proof of conformance, as required per technical specifications.
 - 4.1.3. Current Safety Data Sheet (SDS).
 - 4.1.4. Primary contact number, name and 24/7 emergency number.
 - 4.1.5. Affidavit of compliance with ANSI and AWWA B510-18 (or most current standards at the time of bid).
 - 4.1.6. Written proof of approval by the National Sanitation Foundation as applicable.
 - 4.1.7. Third party laboratory analysis or QC Certification of Acceptance for all Chemicals listed herein.
 - 4.1.8. List of all depot locations for product and alternate sites in the event of a disaster that closes down the primary depot.

5. PRICE INCREASE

- 5.1. The Vendor may submit a request for a price increase for the County's consideration in the event of significant industry wide market changes. The County may negotiate justified adjustments in price, if in its sole judgment, the County considers such adjustments to be in their best interest. Any request for price increase must be submitted to the County with supporting documentation justifying price increase request. The County reserves the right to approve or reject, at its sole discretion, any request for Price Increase.
- 5.2. Unit pricing is expected to remain fixed for the term of the contract unless a price increase or modification is authorized by mutual written agreement between the County and the Vendor.

6. TAXABLE CHEMICALS

- 6.1. If applicable, according to Internal Revenue Code Section 4661, Imposition of Tax, Lee County will pay those taxes for which it is obligated, or it will provide a Certificate of Exemption furnished by the Department of Revenue. All bidders should include in their bids, all sales or use taxes, which they will pay when making purchases of material or sub-contractor's services.
- 6.2. If taxable chemicals are applicable, Vendor shall provide backup documentation with invoice to support paid tax requirements by Lee County in accordance with the Internal Revenue Code 4661.

End of Special Conditions Section

**EXHIBIT B
FEE SCHEDULE**

The Vendor is the secondary vendor for the line items listed below. The County shall contact the primary vendor first for orders. If the primary vendor is unable to fulfill the need or meet the timeline required, the County may contact the secondary vendor. Products are to be charged in accordance with the unit prices provided below.

<i>Carbon Dioxide Annual Contract</i>			<i>Airgas USA, LLC</i>
<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>UNIT PRICE</u>
1	Carbon Dioxide	TON	\$560.00

EXHIBIT C INSURANCE REQUIREMENTS



Lee County Insurance Requirements

Minimum Insurance Requirements: *Risk Management in no way represents that the insurance required is sufficient or adequate to protect the vendors' interest or liabilities. The following are the required minimums the vendor must maintain throughout the duration of this contract. The County reserves the right to request additional documentation regarding insurance provided*

- a. **Commercial General Liability** - Coverage shall apply to premises and/or operations, products and completed operations, independent contractors, contractual liability exposures with minimum limits of:

\$1,000,000 per occurrence
\$2,000,000 general aggregate
\$1,000,000 products and completed operations
\$1,000,000 personal and advertising injury

- b. **Business Auto Liability** - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$1,000,000 combined single limit (CSL); or
\$500,000 bodily injury per person
\$1,000,000 bodily injury per accident
\$500,000 property damage per accident

- c. **Workers' Compensation** - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers Compensation exemptions may be accepted with written proof of the State of Florida's approval of such exemption. Employers' liability will have minimum limits of:

\$500,000 per accident
\$500,000 disease limit
\$500,000 disease - policy limit

****The required minimum limit of liability shown in a. and b. may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."***

Revised 12/02/2022 - Page 1 of 2



Lee County Insurance Requirements

Verification of Coverage:

1. Coverage shall be in place prior to the commencement of any work and throughout the duration of the contract. A certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:

a. **Under the Description of Operations, the following must read as listed:**

"Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials are automatic additional insureds and includes an automatic waiver of subrogation with regard to general liability. The certificate holder is an additional insured on a primary and noncontributory basis with regards to general liability."

b. **The certificate holder must read as follows:**

Lee County, a political subdivision and Charter County of the State of Florida
P.O. Box 398
Fort Myers, Florida 33902

Special Requirements:

1. An appropriate "Indemnification" clause shall be made a provision of the contract.
2. It is the responsibility of the general contractor to ensure that all subcontractors comply with all insurance requirements.

EXHIBIT D
VENDOR BACKGROUND SCREENING AFFIDAVIT



**VENDOR BACKGROUND
SCREENING AFFIDAVIT**

Florida Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the Vendor who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law.

The Vendor is responsible for ensuring that such required background screenings are conducted in accordance with Florida Statutes Chapter 435. Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by Lee County at any time during such five (5) year period.

Under penalty of perjury, I declare that I have read and understand the requirements stated above, and that all required background screenings shall be conducted in accordance with this affidavit. I further understand that there may be additional local, state, and federal regulations that may require background screening, and that the Vendor will be solely responsible for complying with such legal requirements. Furthermore, the Vendor shall indemnify and hold Lee County harmless from any and all claims or actions resulting from failure to comply with this affidavit.

Date: 02/22/2024

[Handwritten Signature]
Signature

STATE OF Ohio
COUNTY OF Cuyahoga

COO
Name/Title

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this 22 day of February, 2024, by the above-named person and in their stated capacity, and is either personally known to me or who has produced the following type of identification: personally known.
Type of Identification

[Stamp/seal required]

[Handwritten Signature]
Signature, Notary Public



DIANE PUNTEL
Notary Public, State of Ohio
My Commission Expires:
December 6, 2025