

# Modification Summary Sheet

**Contract (PO) Number:** 186478

**Modification Revision Number:** 1

**Specification Number:** 112319A

**Name of Contractor:** Carus Corp.

**City Department:** DWM

**Title of Contract:** Emergency Liquid Phosphate

<u>MOD REQ NUMBER</u>	<u>MOD REASON</u>	<u>DESCRIPTION</u>
444836		EMERGENCY PO 186478 FOR \$1,000,000.00

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**Term of Contract:**

**Start Date:**

**End Date:**

**Procurement Services Contact Person:** THOMAS PASCIAK

*Please refer to the DPS website for Contact information under "Doing Business with the City".*

It has been determined, on behalf of the City of Chicago, with regard to this Contract Amendment/Modification, that the circumstances said to necessitate the change in performance were not reasonably foreseeable at the time the Agreement was signed, or that the change is germane to the original Agreement as signed, or that the change order is in the best interest of the City of Chicago and is authorized by law.

**Vendor Number:** 1061895

**Submission Date:** 4/21/2022

**CONTRACT MODIFICATION (EMERGENCY PROCUREMENT)**

This contract modification ("Modification") is made and entered into effective as of January 1, 2022 ("Effective Date"), by and between the City of Chicago ("City"), a municipal corporation and home rule unit of local government existing under the Constitution of the State of Illinois, acting through its Department of Procurement Services and recommended through the Department of Water Management (Department), and Carus LLC successor in interest to Carus Corp. ("Contractor") (together, the "Parties").

WHEREAS, the Parties entered into a contract dated November 29, 2013, designated by the City as PO 28636 (hereinafter referred to as the "Contract") for the supply of liquid blended phosphate and phosphoric acid (the "Goods"); and

WHEREAS, on December 15, 2021, the Mayor of the City of Chicago declared an operational emergency due to the global supply chain crisis caused by the Covid pandemic that has disrupted the procurement of certain materials and supplies that the City relies on to provide critical services to the residents of the City (the "Emergency") under Mayoral Executive Order 2021-4, later supplemented by ordinance (SO2021-5647); and

WHEREAS, the Contractor represents and warrants that, due to the global supply chain crisis caused by the Covid pandemic, extraordinary shortages have resulted for those specific Goods set out by bid line, below ("Supply Chain Affected Items"), and that Contractor is unable, with the exercise of reasonable diligence, to mitigate the effects of such crisis; and

WHEREAS, that, as a consequence, the Contractor represents that it is legally entitled to relief from performance for the delivery of such items, to which representation the City does not concede; and

WHEREAS, the Using Department has determined that the City's failure to obtain timely deliveries of the Supply Chain Affected Items would cause an emergency threatening the maintenance of public peace and order and the preservation of life and property; and

WHEREAS, the Department of Procurement Services and/or the Using Department have conducted, or caused to be conducted, a market analysis that established, that, unless the City pays the surcharges (the "Emergency Surcharge") contained in this Modification for the Supply Chain Affected Items, it would be unable to receive them on a timely basis; and

WHEREAS, the Chief Procurement Officer has determined that an emergency procurement of the Supply Chain Affected Items at the Emergency Surcharge is necessary to address the disruption in the phosphate market related to the Emergency; and

WHEREAS, the Contractor represents and warrants that the Emergency Surcharge described herein shall be sufficient for it to meet its obligations under the Agreement, and the Contractor recognizes that it shall no longer be entitled to the Emergency Surcharge if the conditions creating the supply chain crisis for the Supply Chain Affected Items have resolved, or if the Contractor, with the exercise of reasonable diligence, should have been able to mitigate the effects of the supply chain crisis for such items;

WHEREAS, the Contractor represents and warrants that the price(s) of the Supply Chain Affected Items, as supplemented by the Emergency Surcharge, are no greater than the prices paid for such

items by other customers of Contractor that purchase the same product, in the same quantities, of the same quality, delivered in the same manner, on the same terms, and without consideration of the services provided in association with the supply of the products; and

WHEREAS, the abovementioned Emergency Surcharge under this emergency procurement will expire and revert to the original pricing contained in PO 28636, subject to any price adjustments set forth in PO 28636, upon the earlier of (1) the expiration of the Emergency as to the Supply Chain Affected Items, as reasonably determined by the Chief Procurement Officer and further subject to the conditions described in this Modification, or (2) the emergency procurement reaching its maximum contract value of \$1,000,000 ("Modification Term"); and

WHEREAS, the Chief Procurement Officer has determined, on behalf of the City, with regard to this Modification, that the circumstances said to necessitate the change in performance were not reasonably foreseeable at the time the Contract was signed, or that the change is germane to the original Contract as signed, or that the change is in the best interest of the City and is authorized by law.

NOW, THEREFORE, the Parties agree as follows:

1. The above recitals are expressly incorporated into this Modification.
2. Effective January 1, 2022 and until expiration or termination of the Emergency Surcharges, as described in this Modification, pricing under PO 28636 is increased by the amount of the Emergency Surcharges for the Supply Chain Affected Items as follows:

Line Number – PO 28636	Description	Price under PO 28636	Price under this emergency procurement
1	Corrosion Control Services – Blended Phosphates	\$4.15	\$8.35
2	Phosphoric Acid – Orthophosphoric Totes	\$3.11	\$6.26
3	Phosphoric Acid – Orthophosphoric in Bulk	\$2.56	\$5.15

3. Expiration of Emergency Surcharges. On a monthly basis during this emergency procurement, the Contractor shall provide the Department of Procurement Services and the Using Department with an affidavit establishing that (i) the supply chain crisis continues to affect the Supply Chain Affected Items and continues to require the payment of the Emergency Surcharge described herein, and (ii) the Contractor has not been able to mitigate the effects of such supply chain crisis through the exercise of due diligence. The Contractor shall attach to this affidavit such documentation as reasonably required by the Chief Procurement Officer and the Using Department to substantiate the affidavit. If the affidavit is not received or is incomplete in the reasonable discretion of the City, the Emergency Surcharge shall expire, and Contractor thereafter shall be obligated to deliver the Supply Chain Affected Items at the original price in the Agreement, with no surcharge.
4. Furthermore, if the City independently verifies, apart from the affidavit, that the supply chain crisis no longer affects the Supply Chain Affected Item prices, or if the City determines that

- the information in the affidavit does not support the Emergency Surcharge, the City shall notify the Contractor, and the Contractor thereafter shall be obligated to deliver the Supply Chain Affected Items at the original Agreement price.
5. The PPI metric and methodology described in Section 6.10.1, "Price Adjustment (PPI)," of PO 28636, shall not apply to the Emergency Surcharge.
  6. The Emergency Surcharges apply to any orders for Supply Chain Affected Items placed by City and delivered to City after the Effective Date while the Emergency Surcharges are in effect and prior to their expiration or termination pursuant to the terms of this Modification.
  7. If the prices Contractor charges to any other customer that purchases the same product, in the same quantities, of the same quality, delivered in the same manner, on the same terms, and without consideration of the services provided in association with the supply of the products, for the Supply Chain Affected Items is less than the Emergency Surcharges under this Modification, the Contractor shall notify the City and the Emergency Surcharges shall be adjusted and this Modification deemed amended, without further action by the Parties, to give the City the benefit of such lower prices.
  8. If any facts to which Contractor represents or certifies in connection with this Modification, including any affidavits that the Contractor submits in connection with this Modification, are found to be materially incorrect with respect to the payment of Emergency Surcharges, in addition to any other remedies available to the City at law or in equity or pursuant to the terms of the Contract, the Contractor's rights to any Emergency Surcharges shall be deemed to be void as to those Emergency Surcharges, and Contractor must immediately refund to the City the sum of Emergency Surcharges paid to the Contractor based upon such facts.
  9. Execution of this Modification by Contractor is duly authorized by Contractor, and the signature(s) of each person signing on behalf of the Contractor have been made with complete and full authority to commit the Contractor to all terms and conditions of this Modification, including each and every representation, certification, and warranty contained herein, or as may be required by the terms and conditions hereof.
  10. The Contractor must execute an online Economic Disclosure Statement (EDS) Certificate of Filing and provide an Insurance Certificate of Coverage demonstrating that Contractor maintains the insurance coverage and requirements set forth in the Contract, both of which are attached to this Modification as Exhibit 1 and Exhibit 2, respectively, and are incorporated herein by reference.
  11. All other terms and conditions of the Contract, except as herein or previously modified, shall remain unchanged and remain in full force and effect.

*Signature Page Follows*

Signature Page for Modification

**Modification Number:** 444836  
**Vendor Name:** Carus Corp.

Carus Corp. (n/k/a Carus LLC)  
(Contractor)

By: Andrew Johnston A. Johnston 3/24/2022  
Its: President and CEO

Attest: Amy Berggren

State of: Illinois

County of: LaSalle

This instrument was acknowledged before me on this 24th day of March, 2022 by Andrew Johnston as President and CEO of Carus LLC.

Amy Berggren (Seal)  
Notary Public Signature



Commission Expires: 1-9-2024

**CITY OF CHICAGO**

Lori E. Dempert  3/29/2022  
Mayor Date

Reshma Soni  3/28/2022  
Comptroller Date

[Signature]  3/29/2022  
Chief Procurement Officer Date

[Signature]





CERTIFICATE OF FILING FOR  
CITY OF CHICAGO ECONOMIC DISCLOSURE STATEMENT

EDS Number: 166083  
Certificate Printed on: 09/20/2021

Date of This Filing:09/20/2021 07:30 AM  
Original Filing Date:09/20/2021 07:30 AM

Disclosing Party: Carus LLC  
Filed by: Ms. Samantha Pumo

Title:Bid Specialist

Matter: Contract 28636 Modification  
Phosphate & Phosphoric Acid  
Applicant: Carus LLC  
Specification #:  
Contract #: 28636

The Economic Disclosure Statement referenced above has been electronically filed with the City. Please provide a copy of this Certificate of Filing to your city contact with other required documents pertaining to the Matter. For additional guidance as to when to provide this Certificate and other required documents, please follow instructions provided to you about the Matter or consult with your City contact.

A copy of the EDS may be viewed and printed by visiting <https://webapps1.chicago.gov/eds> and entering the EDS number into the EDS Search. Prior to contract award, the filing is accessible online only to the disclosing party and the City, but is still subject to the Illinois Freedom of Information Act. The filing is visible online to the public after contract award.

