

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
MARCH 18, 2014 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Agreement with Dave’s Welding Service for Frozen Water Service Assistance	✓ Resolution Ordinance Motion Discussion Only	Nan Newlon, P.E. Director of Public Works

SYNOPSIS

A resolution has been prepared requesting authorization to enter into an agreement with Dave’s Welding Service of Darien, IL up to an amount of \$80,000 for assistance with frozen water services.

STRATEGIC PLAN ALIGNMENT

The goals for 2011-2018 identified *Top Quality Infrastructure*.

FISCAL IMPACT

Sufficient funds are available in the Water Fund for this work.

RECOMMENDATION

Approval on the March 18, 2014 consent agenda.

BACKGROUND

The Village owns and maintains the infrastructure for the public water system. The system includes, among other things, the watermains and the public water services. Public water services are the sections of pipe that connect the watermain to the privately owned water service lines serving private properties. The public water services and private water service lines are connected by a shut-off valve known as a buffalo box. The water services are susceptible to freezing in cold temperatures.

The Village uses a vendor to thaw the frozen public services by applying an electrical current through the service to warm the pipe. This is more cost-effective than excavating, thawing and insulating the pipes. In a typical winter, this occurs fewer than five times, typically a low-cost item of less than \$10,000 annually. The Village has historically used Dave’s Welding Services to provide this service.

Due to the prolonged and extreme temperatures this winter there have been 35 frozen public water services to date this winter. Staff directed Dave’s Welding to thaw all services under the Village Manager’s emergency spending authority in Section 2.21 of the Municipal Code. To date \$46,615 has been spent on this service.

Because the cost of the service exceeds \$15,000, Village Council approval is necessary to enter into an agreement with Dave’s Welding Services. The contract term will begin retroactively to 1/1/14 and end 3/31/15 in an amount not to exceed \$80,000.

ATTACHMENTS

- Resolution
- Contract
- Sole Source Memo

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN
AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE
AND DAVE’S WELDING**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Agreement (the “Agreement”), between the Village of Downers Grove (the “Village”) and Dave’s Welding (the “Contractor”), to provide services and equipment to thaw frozen water pipes, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

AGREEMENT

This Agreement is made this ____ day of March, 2014 by and between Dave's Welding ("Contractor") and the Village of Downers Grove, Illinois, an Illinois municipal corporation with offices at 801 Burlington Avenue, Downers Grove, Illinois 60515, ("Village").

WHEREAS, the Village wishes to retain the services of the Contractor to thaw frozen water service pipes; and

WHEREAS, the Contractor is willing to perform these services for compensation and in accordance with the terms and conditions described in this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits that will result to the parties in carrying out the terms of this Agreement, it is agreed as follows:

I. Scope of Services

Upon request of the Village the Contractor shall provide the services and equipment to thaw frozen water service pipes leading from the water main to the meter with the use of electrical current generated by a portable welder.

II. Term of Agreement

The term of this Agreement shall begin retroactively to January 1, 2014 (to include services already performed by the Contractor on an emergency basis) and shall end on March 31, 2015.

III. Compensation

A. Basic Fees:

Fees for these services shall be based on hourly charges of \$75.00 per service call plus \$185.00 per hour per technician, with a not-to-exceed amount of \$80,000.00.

B. Prompt Payment Act:

The Contractor shall prepare invoices that contain a reference number, the billing period, house addresses, and numbers of hours billed for each address. The Village will comply with the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq., in that any bill approved for payment must be paid or the payment issued to the Contractor within 60 days of receipt of a proper bill or invoice.

IV. General Terms and Conditions

A. Relationship Between the Contractor and the Village

The relationship between the Village and the Contractor is that of a buyer and seller of products and services and it is understood that the parties have not entered into any joint venture or partnership with the other.

B. Sexual Harassment

Contractor shall comply with the Illinois Human Rights Act.

C. Drug Free Work Place

Contractor, as a party to a public contract, agrees that it will provide a drug free workplace.

D. Non-Discrimination

Contractor, its employees and subconsultants, agree not to commit unlawful discrimination and agree to comply with applicable provisions of the Illinois Human Rights Act, the Public Works Employment Discrimination Act, the U.S. Civil Rights Act and Section 504 of the Federal Rehabilitation Act, and rules applicable to each. The equal opportunity clause of the Department of Human Rights rules is specifically incorporated herein.

E. Campaign Disclosure Certificate

The Contractor shall comply with the Campaign Disclosure Certificate attached hereto and incorporated herein by reference as Exhibit A.

F. Patriot Act Compliance

The Contractor represents and warrants to the Village that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. The Contractor further represents and warrants to the Village that the Contractor and its principals, shareholders, members, partners, or affiliates, as applicable are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. The Contractor hereby agrees to defend, indemnify and hold harmless the Village, and its elected or appointed officers, employees, agents, representatives, engineers and attorneys, from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorney's fees and costs) arising from or related to any breach of the foregoing representations and warranties.

G. Cooperation with FOIA Compliance

Contractor acknowledges that the Freedom of Information Act may apply to public records in possession of the Contractor. Contractor shall cooperate with the Village in its efforts to comply with the Freedom of Information Act. 5 ILCS 140/1 et.seq.

H. Standard of Care

Services performed by Contractor under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. If the Contractor fails to meet the foregoing standard, Contractor will perform at its own cost, and without reimbursement from the Village, the professional services necessary to correct errors and omissions caused by Consultant's failure to comply with the above standard.

V. Insurance and Indemnification of the Village

A. Insurance

The Contractor shall be required to obtain, from a company or companies lawfully authorized to do business in the jurisdiction in which the project is located, such general liability insurance which, at a minimum, will protect the Contractor from the types of claims set forth below which may arise out of or result from the Consultant's operations under this Contract and for which the Contractor may legally liable:

Claims under workers compensation, disability benefit and other similar employee benefit acts which are applicable to the operation to be performed;

Claims for damages resulting from bodily injury, occupational sickness or disease, or death of the Consultant's employees;

Claims for damages resulting from bodily injury, sickness or disease, or death of any person other than the Consultant's employees;

Claims for damages insured by the usual personal injury liability coverage which are sustained: (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Consultant, or (2) by another person;

Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

Claims for damages as a result of professional or any other type of negligent action by the Contractor or failure to properly perform services under the scope of the agreement between the Contractor and the Village.

The Contractor shall demonstrate having insurance coverage for a minimum of \$2 million for professional liability (errors and omissions). As evidence of said coverages, Contractor shall provide the Village with certificates of insurance naming the Village of

Downers Grove as an additional insured and include a provision for cancellation only upon at least 30 days prior notice to the Village.

B. Indemnification

The Contractor will indemnify and hold harmless the Village and its officers, employees and agents from any and all liability, losses or damages the Village may suffer as a result of claims, demands, suits, actions or proceedings of any kind or nature in any way resulting from or arising out of negligent action on the part of the Contractor under this Agreement. This indemnification does not apply to liability caused by the Village's own negligence.

VI. Miscellaneous Provisions

A. Termination

In the event of the Contractor's nonperformance, breach of the terms of the Agreement, or for any other reason, including that sufficient funds to complete this Agreement are not appropriated by the Village, the Agreement may be canceled, in whole or in part, upon the Village's written notice to the Consultant. The Village will pay the Consultant's costs actually incurred as of the date of receipt of notice of termination.

B. Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of Illinois. Venue is proper only in the County of DuPage.

C. Amendment

This Agreement will not be subject to amendment unless made in writing and signed by all parties.

D. Severability of Invalid Provisions

If any provisions of this Agreement are held to contravene or be invalid under the laws of any state, country or jurisdiction, contravention will not invalidate the entire Agreement, but it will be construed as if not containing the invalid provision and the rights or obligations of the parties will be construed and enforced accordingly.

E. Assignment

The Contractor will not assign or subcontract any portion of this Agreement, unless the Village agrees to the assignment or subcontract in writing. Any assignment will not relieve the Contractor from its obligations or change the terms of this Agreement.

F. Village Ordinances

The Contractor will strictly comply with all ordinances of the Village of Downers Grove and laws of the State of Illinois.

Exhibit A
Campaign Disclosure Certificate

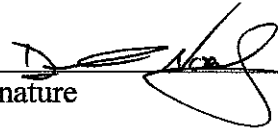
The Campaign Disclosure Certificate is required pursuant to the Village of Downers Grove Council Policy on Ethical Standards and is applicable to those campaign contributions made to any member of the Village Council.

Said Campaign Disclosure Certificate requires any individual or entity bidding to disclose campaign contributions, as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4), made to current members of the Village Council within the five (5) year period preceding the date of the bid or proposal release.

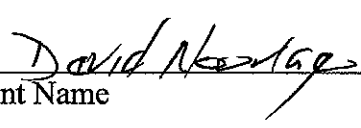
By signing this Agreement, Contractor agrees to refrain from making any campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to any Village Council member and any challengers seeking to serve as a member of the Downers Grove Village Council.

Under penalty of perjury, I declare:

Contractor has not contributed to any elected Village position within the last five (5) years.



Signature



Print Name

Contractor has contributed a campaign contribution to a current member of the Village Council within the last five (5) years.

Print the following information:

Name of Contributor: _____
(company or individual)

To whom contribution was made: _____

Year contribution made: _____ Amount: \$ _____

Signature

Print Name

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated above.

Dave's Welding

By: 

Title: president

Date: 3/11/2014

Village of Downers Grove

By: _____

Title: _____

Date: _____



**Memorandum
Public Works Department
Village of Downers Grove**

DATE: January 9, 2014
TO: Judy Buttny, Finance Director
Naneil Newlon, P.E., Director of Public Works *NN*
FROM: David Bird, Water Manager
CC: Stan Balicki, Asst. Director Public Works - Operations
RE: Sole Source Request

PURPOSE

In order to comply with the Village Purchasing Procedures, dated November 6, 2001 and specifically to Section VI. Sole Source Contracts and in accordance with Section IV. E-Approval Process and F-Approval Limits, Public Works is requesting your approval of Dave's Welding Service of Darien as a Sole Source Supplier to the Village.

BACKGROUND

The 2013-2014 winter season has had numerous and continuous days of below freezing temperatures. This anomaly has caused water service to freeze between the water main and the buffalo box. In order to release the blockage and resume residential service the connection (pipe) under the street and parkway needs to be thawed. Dave's Welding was the only company in the immediate area; this is done via electrical current and welding equipment which eliminates any digging of the street or parkway to release the blockage. They provide this service to not only Downers Grove but surrounding communities that are experiencing the same issue. The charge per occurrence is \$75.00 service call plus \$185.00/hr per technician. Number of hours vary from one to twelve per occurrence.

I concur with this recommendation

Judy Buttny

Judy Buttny, Finance Director