

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
8/16/2016

SUBJECT:	SUBMITTED BY:
Agreement for Supply of Oxygen Tanks	James Jackson Fire Chief

SYNOPSIS

A resolution has been prepared to authorize a 5-year agreement with United States Cylinder Gas for the supply of oxygen and nitrous gas including the use and exchange of cylinders in an amount not to exceed \$7,885 per year.

STRATEGIC PLAN ALIGNMENT

The goals for 2015-2017 include *Exceptional Municipal Services* and *Top Quality Infrastructure*.

FISCAL IMPACT

The FY16 budget includes \$12,000 in the General Fund for medical gases.

RECOMMENDATION

Approval on the August 16, 2016 consent agenda.

BACKGROUND

The Village currently owns and maintains its oxygen cylinders used in delivering emergency medical services. Oxygen itself is supplied through an outside vendor and department members fill cylinders through Village maintained fill system.

Under the proposed agreement, United States Cylinder Gas will provide cylinders filled with oxygen and nitrous on an as needed basis. The cylinders would always meet the most current testing and safety standards. This agreement would eliminate the risk presented from filling oxygen bottles as well as costs associated with replacement, required testing and maintenance of fill stations and bottles. This is estimated to not exceed \$7,885.00 per year and will be adjusted based on usage.

The lifespan of oxygen bottles are limited to 15 years. The age of the current bottle inventory will necessitate the purchase of all new equipment in the near future. United States Cylinder Gas has proposed to provide a credit of \$901.00 for the current inventory of bottles.

ATTACHMENTS

Resolution
Agreement

RESOLUTION NO. _____**A RESOLUTION AUTHORIZING EXECUTION OF AN
AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE
AND UNITED STATES CYLINDER GAS**

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 United States Cylinder Gas (the "Supplier"), for compressed and liquid gases, 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 5th day of August, 2016 by and between United States Cylinder Gas ("Supplier") at 11618 Mayfield, Alsip, Illinois 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 Supplier to provide compressed gases and liquid gases ("the Product") for the Fire Department; and

WHEREAS, the Supplier is willing to provide the Product 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

Supplier shall provide the Product for the Fire Department as described in the Product and Equipment Rider attached hereto and incorporated herein as Exhibit "B".

II. Term of Agreement

The term of the contract shall begin on the date of the first delivery to the Fire Department and terminate on the fifth (5th) anniversary thereafter (in 2021), but may be extended by mutual agreement of both parties, providing such agreement shall be made in writing and providing such agreement complies with Village purchasing policies and the availability of funds.

III. Compensation

A. Basic Fees:

Fees for these individual products shall be as listed on the attached Exhibit B.

B. Supplier Invoices:

The Supplier shall prepare after each delivery a product invoice complete with supporting documentation and once a month an invoice for cylinder rent.

C. Prompt Payment Act:

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 Supplier within 60 days of receipt of a proper bill or invoice. If payment is not issued to the Supplier within this 60 day period, an interest penalty of

1.0% of any amount approved and unpaid shall be added for each month or fraction thereof after the end of this 30 day period, until final payment is made.

The Village shall review in a timely manner each bill or invoice after its receipt. If the Village determines that the bill or invoice contains a defect making it unable to process the payment request, the Village shall notify the Supplier requesting payment as soon as possible after discovering the defect pursuant to rules promulgated under 50 ILCS 505/1 et seq. The notice shall identify the defect and any additional information necessary to correct the defect.

IV. General Terms and Conditions

A. Relationship Between the Supplier and the Village

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

B. Equal Employment Opportunity

During the performance of this Agreement, the Supplier agrees that it will not discriminate against any employee or applicant for employment because of race, color religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.

C. Sexual Harassment

Supplier, as a party to a public contract, affirms that it has a sexual harassment policy.

D. Drug Free Work Place

Supplier, as party to a public contract, certifies and agrees that it will provide a drug free workplace and that it has a drug free workplace policy.

E. Non-Discrimination

Supplier and its employees 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.

The Americans with Disabilities Act (42 U.S.C. 12101) and the regulations

thereunder (28 CFR 35.130)(ADA) prohibit discrimination against persons with disabilities by the State, whether directly or through contractual arrangements, in the provision of any aid, benefit or service. As a condition of receiving this Agreement, the undersigned vendor certifies that services, programs and activities provided under this Agreement are and will continue to be in compliance with the ADA.

F. Campaign Disclosure Certificate

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

G. Patriot Act Compliance

The Supplier 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 Supplier further represents and warrants to the Village that the Supplier 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 Supplier 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.

H. Cooperation with FOIA Compliance

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

I. Copyright or Patent Infringement

The Supplier agrees to indemnify, defend, and hold harmless the Village against any suit, claim, or proceeding brought against the Village for alleged use of any equipment, systems, or services provided by the Supplier that constitutes a misuse of any proprietary or trade secret information or an infringement of any patent or copyright.

J. Delivery

1. Supplier hereby affirms and states that the prices listed on Exhibit B are the unit

- and total costs for the delivery of item(s) to their designated locations ready for use.
2. Supplier shall deliver to the Village, within 48 hours after the Village's request, as necessary to supply the Village per estimated usage indicated on Exhibit B.
 3. The Village will pay Supplier any special expenses incurred if, at the Village's request, Supplier must deliver less than 75% of storage unit capacity, or if the Village requests delivery with less than 48 hours' notice.
 4. The village will comply with all relevant reporting under the Right to Know Act of 1986, 42 USC Sections 11001-11049 (EPCRA), resulting from the presence of the Product supplied under this Agreement.

K. Equipment

1. At all time, Suppler shall retain title to the equipment specified in Exhibit B.
2. Supplier shall retain the right to remove all equipment at the termination of the Agreement.
3. The Village will provide a suitable site for installation of US Gas equipment, to include a foundation, security, and any necessary utilities.
4. The Village will pay the remaining facility fee costs, as specified in Exhibit B, if the equipment is removed prior to the end of the Initial Term. Thereafter, the Village will pay the cost of removal of US Gas equipment if termination occurs prior to the expiration of any successive term.
5. Risk of loss of Cylinders shall pass to the Village upon delivery. Supplier will not be responsible for connecting any Cylinder to the Village's distribution system. The Village will not permit the refilling of Cylinders by any third party with any substance, whether gas, liquid or solid. The Village will return all Cylinders to Supplier in a non-contaminated condition with valves closed. The Village will pay Supplier for any loss or damage caused by the Village to Cylinders beyond normal wear and tear and for any cleanup of Cylinders returned in a contaminated condition. The Village shall, from time to time, at the request of Supplier, submit to an accounting of Cylinders delivered to the Village which have not been returned and shall permit Supplier to enter its premises to verify such an accounting. By paying the amount specified for Cylinder rent on the invoices provided to the Village by Supplier, the Village shall be deemed to agree that the number of Cylinders specified in such invoice are in the Village's possession as of the close of business on the date specified in such invoice. In the event that the Village possesses any Cylinder after termination of this Agreement, Supplier may enter the Village's location and remove any Cylinders. The Village will promptly remove any liens and claims against Cylinders due to their location at the Village's Location or possession by the Village. The Village hereby authorizes Supplier to file a UCC-1 Financing Statement in order to reflect Supplier's ownership of Cylinders and will provide Supplier with any assistance necessary to make such filing

L. Warranty

Supplier warrants that the Product delivered hereunder shall conform to Supplier's

standard specifications.

V. Insurance and Indemnification of the Village

A. Insurance

The Supplier 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 Supplier from the types of claims set forth below which may arise out of or result from the Supplier's operations under this Contract and for which the Supplier 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 Supplier's employees;

Claims for damages resulting from bodily injury, sickness or disease, or death of any person other than the Supplier'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 Supplier, 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 product liability;

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

As evidence of said coverages, Supplier 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 Supplier 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 Supplier 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 Supplier's nonperformance, breach of the terms of the Agreement, 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 Supplier. The Village will pay the Supplier's costs actually incurred as of the date of receipt of notice of termination. Upon termination, the Supplier will deliver all documents and products of whatever kind, and their reproducible originals related to the project, which have been produced to the date of the 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. Successors and Assigns

The terms of this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided, however, that neither party will assign this Agreement in whole or in part without the prior written approval of the other.

D. Waiver of Contract Breach

The waiver by one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof will be limited to the particular instance and will not operate or be deemed to waive any future breaches of this Agreement and will not be construed to be a waiver of any provision except for the particular instance.

E. Amendment

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

F. 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.

G. Assignment

The Supplier 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 Supplier from its obligations or change the terms of this Agreement.

H. Notice

Any notice will be in writing and will be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party at the party's place of business. Notices shall be addressed to designated representatives of both parties as follows:

**Village Manager
Village of Downers Grove
801 Burlington Ave.
Downers Grove, IL 60515**

United States Cylinder Gas
11618 Mayfield
Alsip, IL 60803

I. Use of Village's Name

The Supplier is specifically denied the right of using in any form or medium the name of the Village for public advertising unless express permission is granted by the Village.

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

United States Cylinder Gas

By: 

Title: GENERAL MANAGER

Date: 8/05/2016

Village of Downers Grove

By: _____

Title: _____

Date: _____

Product and Equipment Rider

This Rider is made an integral part of and is incorporated into the Product Supply Agreement in effect between US Gas and: Downers Grove Fire Department ("Purchaser"), having a Reference Date of May 20, 2016.

US Gas and Purchaser hereby agree:

1. **Designated Location** means: All Locations
2. **Initial Term** begins August 5, 2016, and continues for a period of five (5) years following the date of the first delivery at the Designated Location under this Rider.
3. **Product** means Compressed Gases & Liquid Gases.
4. **Prices:**

Description	Size	Unit Price
Oxygen, compressed, USP	D/396 liters*	\$5.00/cyl
Oxygen, compressed, USP	M/3540 liters	\$6.00/cyl
Nitrous Oxide, USP	A/190 liters	\$15.00/cyl
Monthly End Cylinder Rent**	Cylinders on hand at end of month	
	M size cylinders	\$3.95/cyl/month
	D oxygen & A nitrous oxide cylinders	\$3.75/cyl/month

*Trade value for D size oxygen cylinders will be \$17.00 each in product credit. This credit can be applied to any product invoice, but cannot be used for credit on rental invoices.

**Rental of cylinders from US Gas means that US Gas will be responsible for the routine maintenance and hydro-testing of those cylinders rented from US Gas.

Name of Purchaser _____

US Gas

JOHN MCCURRIE

Purchaser's Signature _____

US Gas' Signature

JH

Title _____

Title

GENERAL MANAGER

Date _____

Date

8/05/2016

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, Supplier 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:

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



Signature



Print Name

- Supplier 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