



TEMPORARY BULK SUPPLY AGREEMENT

Airgas USA, LLC, with offices at 5249 Tampa West Blvd, Tampa, FL 33634 (“Seller”), and The City of Hollywood, with offices at 1621 N 14th Ave, Hollywood, FL 33020 (“Buyer”), for and in consideration of the mutual promises and covenants set forth herein and intending to be legally bound thereby, agree as follows:

1. SUPPLY OF PRODUCT AND EQUIPMENT: Buyer shall buy from Seller, and Seller shall sell to Buyer, Buyer’s total present and future requirements of oxygen (“Product”) delivered by Seller in (“Equipment”), or into equipment owned by Buyer, for a period starting in May (“Effective Date”) at 1621 N 14th Ave, Hollywood, FL 33020 (“Designated Location”).

2. PRICING: Buyer shall pay the following Price(s):

Product	Product Price & U.O.M.	Equipment	Equipment Rental Fee	Equipment In-Charge	Equipment Out-Charge	Labor, Site Survey, Set-up and Removal Charge	Delivery Charge	Hazmat Charge	Mileage – Airgas Technician **
Oxygen	\$2.98/100 SCF	2-15,000G Customer Owned Tanks	N/A	N/A	N/A	N/A	\$200.00	\$65.00	N/A

Anticipated monthly volume: TBD (“Anticipated Volume”)

Seller shall have the right to revise any of the Prices, including Equipment Rental Fees, by written notice to Buyer. Such revision shall be effective fifteen days after written notice is given to Buyer.

3. CHARGES: Buyer shall pay (a) Seller’s itemized charges set forth in this Agreement, including, without limitation, any rider, exhibit or amendment to this Agreement and (b) any surcharges that Seller may assess due to (i) extraordinary, emergency or other unanticipated increases in the cost of manufacturing, purchasing, supplying or distributing Product and/or (ii) Product shortages (collectively, "Charges"). Charges may be amended or others may be added at Seller’s discretion. None of the Charges represents a tax or fee paid to or imposed by any governmental authority, and all of the Charges are retained by Seller. Seller may not have specifically quantified the relationship between such Charges and the actual costs associated with such Charges, which can vary by Product, service, time and place, among other things.

4. BULK SITE REQUIREMENTS; ACCESS: Buyer shall promptly furnish an accessible, secure location (“Site”) for Equipment at the Designated Location to enable suitable delivery and storage of Product(s), including all foundations, bollards, lighting, fences, pipes and other preparation and equipment required for the safe delivery and distribution of Product(s) to and from the Site. Buyer shall also provide at the Site, at Buyer’s cost, all electricity or other utilities, including, if necessary, phone lines, as well as all licenses and permits required in connection with use of the Site. Buyer shall ensure that the Site at all times complies with all applicable laws, codes or regulations for the relevant jurisdiction. Authorized representatives of Buyer, Seller and/or Seller’s representatives shall have access at all times to the Site, but Buyer shall deny access to all others. Buyer shall ensure adequate security, necessary to protect against the altering, repairing, adjusting of or tampering with Equipment by unauthorized individuals. Buyer shall directly pay for all necessary inspections, as may be required by law; and if Seller pays for any such inspections, promptly reimburse Seller for such payment upon receipt of invoice therefor.

5. INSTALLATION: Equipment provided by Seller shall be installed and maintained in good repair and operation by Seller. Buyer may provide its own equipment in which event Seller shall have no obligation to maintain the same. Buyer shall have no ownership interest in the Equipment installed at the Site by Seller and shall keep same free of any and all liens or claims of any kind. Buyer shall be responsible and liable for payment of, or, if Seller makes payment, shall reimburse Seller for, all costs arising out of Site conditions requiring additional labor or other costs. Seller shall not be liable for any delay in installation of any Equipment. Buyer shall maintain adequate fire and extended coverage insurance on the Equipment, with loss payable to Seller. Buyer shall not alter, adjust or repair any Equipment installed by Seller at the Site. Buyer shall be responsible for any loss of, or damage to, such Equipment unless arising as a direct result of Seller’s sole negligence. Except as provided in Section 14, Buyer shall not permit Equipment furnished hereunder to be filled with any product not furnished by Seller. Buyer shall reimburse Seller for labor, parts and materials as the result of any service call made by Seller or Seller’s representative, except for the standard preventative maintenance service as defined by Seller’s standard maintenance guidelines. Upon the expiration or termination of this Agreement, however caused, Seller shall have the unrestricted right to remove Equipment without any liability for non-negligent damages caused by such removal.

6. DELIVERIES: (a) Site(s) shall be accessible for delivery twenty-four hours per day, seven days a week. (b) Deliveries made during a strike or other labor disturbance affecting Buyer shall be at Seller’s sole option. If Seller does deliver during a strike or labor disturbance, then, notwithstanding anything to the contrary contained in this Agreement, Buyer assumes the entire risk and agrees to indemnify Seller from and against all costs, damages and losses arising out of any such delivery. (c) Seller may refuse to deliver Products to Designated Location if Seller reasonably believes that such Designated Location or Buyer’s use of the Product is unsafe or violates any applicable law or regulation, and Seller shall not be liable for such refusal to deliver. (d) Title and risk of loss of the Products shall pass to Buyer upon delivery into the storage vessel. (e) Buyer shall monitor Product levels and give Seller reasonable, advance notice of changes in Buyer’s Product volume requirements and/or patterns of use. (f) Seller may, at its sole option, but is not obligated to, make any delivery of less than seventy-five percent of the capacity of the storage vessel.

7. PRODUCT; BUYER'S RESPONSIBILITIES: With respect to delivery of Product, Buyer will (a) determine the suitability, compatibility, and proper use of Product supplied by Seller; (b) monitor the inventory of the storage vessel at each Designated Location, and (c) instruct its employees and agents to comply, and at all times Buyer shall comply, with all applicable federal, state and local statutes, regulations and laws, including without limitation any applicable anti-corruption/bribery laws and laws regarding the safe handling, transportation, purchase and use of the Products and all relevant reporting obligations under the Emergency Planning and Community Right-To-Know Act, the Occupational Safety and Health Act, and applicable regulations thereunder, and the Foreign Corrupt Practices Act of 1977, as well as any applicable licenses and consents required by such statutes, regulations, laws and regulations, which licenses and consents shall be obtained by Buyer. Products are sold on the condition that they be handled, used and disposed of in conformance with recognized industry and professional standards, including those related to the protection of human health and the environment. Buyer acknowledges that there are hazards associated with the use of the Products, that it understands such hazards, and that it is the responsibility of Buyer to warn and protect all those exposed to such hazards. It is Buyer's responsibility to ensure that: (i) the use and/or installation of the Products complies with all applicable laws, codes or regulations for the relevant jurisdiction; (ii) the Products are safe for the intended use; and (iii) the Products are handled in a safe and professional manner. Buyer shall have the sole responsibility for determining the suitability of any of Seller's Products for the use contemplated by Buyer. After delivery of Products to Buyer pursuant to this Agreement, Buyer assumes all risk and liability arising out of the presence, storage, transport or use of the Products. Buyer warrants that Product purchased under this Agreement shall be for Buyer's own use in Buyer's own business and that no Product purchased hereunder will be sold or supplied to any person, firm or corporation other than a subsidiary or affiliate of Buyer.

8. INVOICES; PAYMENT TERMS: Buyer shall make payment in full by cash, check, wire transfer or CTX formatted ACH by the thirtieth day following the date of invoice. Continued open account credit is subject to Seller's assessment of Buyer's financial condition and ability to pay. In the event Buyer fails to make any payment when and as due, Seller may, at Seller's option, exercise any one or more of the following (in addition to any other remedies available to Seller): (a) cease all Product deliveries; (b) require Buyer, as a condition of receiving deliveries, to prepay for such deliveries and pay past due amounts as specified by Seller; (c) collect from Buyer on any delinquent balance interest at the rate of one and one-half percent per month or, if less, the maximum rate permitted by law; and/or (d) remove any Equipment, cylinders and/or other containers provided by Seller and terminate, in whole or in part, this Agreement. All claims of Buyer relating to the invoicing of any Product delivered by Seller shall be made in writing within thirty (30) days of receipt of invoice. Failure to give such written notice shall constitute a waiver of all claims in respect thereto. Buyer shall receive no credit or refund for Product delivered but not used.

9. TAXES: Prices are exclusive of any amount of federal, state and/or local excise, sales, use, property, retailer's occupation, gross receipts or similar taxes which may be imposed upon this transaction. Buyer shall pay all such taxes, including taxes on any Equipment, except Seller's income tax, either directly to the relevant taxing authority or as collected by Seller. In the event that Buyer claims exemption, full or partial, from such taxes, a properly completed exemption certificate with a list of the applicable exempt purchases, which will be acceptable to the appropriate taxing authorities, must be provided to Seller. Buyer will provide the applicable exemption certificate for each Buyer Location. Should such certificate(s) be found invalid, Buyer agrees to bear the burden of any interest and penalties assessed.

10. WARRANTY: Seller warrants that, at the time of delivery, all gas Products furnished hereunder will comply with Compressed Gas Association (CGA) guidelines. Any other Products sold by Seller will conform to Seller's or manufacturer's standard specifications. Seller warrants that the services shall be performed in a good and workmanlike manner. **SELLER SPECIFICALLY DISCLAIMS ANY OTHER EXPRESS OR IMPLIED STANDARDS, GUARANTEES, OR WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT AND ANY WARRANTIES THAT MAY BE ALLEGED TO ARISE AS A RESULT OF CUSTOM OR USAGE. SELLER MAKES NO WARRANTIES OF ANY KIND FOR ANY TECHNICAL ADVICE PROVIDED BY SELLER TO BUYER AND ASSUMES NO OBLIGATION OR LIABILITY FOR ANY SUCH TECHNICAL ADVICE WITH REFERENCE TO THE USE OF PRODUCTS OR RESULTS WHICH MAY BE OBTAINED THEREFROM, AND ALL SUCH ADVICE IF GIVEN AND ACCEPTED IS AT BUYER'S SOLE RISK.**

11. REMEDIES; LIMITATION OF LIABILITY: NEITHER SELLER NOR SELLER'S SUPPLIERS OF PRODUCTS ("SELLER'S SUPPLIERS") SHALL BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL AND/OR PUNITIVE DAMAGES. SELLER'S SOLE LIABILITY AND BUYER'S SOLE REMEDY FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES RESULTING FROM PRODUCTS, DELIVERY OF NON-CONFORMING PRODUCTS, SELLER'S FAILURE TO DELIVER SUCH PRODUCTS, INSTALLATION OR MAINTENANCE OF EQUIPMENT, EQUIPMENT MANUFACTURED BY SELLER, OR SERVICES PROVIDED BY SELLER SHALL BE LIMITED TO, AT SELLER'S OPTION, THE REFUND OF THE PURCHASE PRICE OR REPLACEMENT OF THE PRODUCT OR SERVICE IN QUESTION. THE LIMITATIONS CONTAINED IN THIS SECTION SHALL APPLY REGARDLESS OF WHETHER THE CLAIM FOR DAMAGES IS BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT OR OTHERWISE, AND SHALL APPLY EVEN WHERE SUCH DAMAGES ARE CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE, GROSS NEGLIGENCE OR ACTS AND OMISSIONS OF THE PARTY CLAIMING DAMAGES OR THE PARTY FROM WHOM DAMAGES ARE SOUGHT. ALL CLAIMS BY BUYER HAVING ANYTHING TO DO WITH THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE MADE IN WRITING WITHIN NINETY FIVE DAYS AFTER THE EVENT GIVING RISE TO SUCH CLAIM AND FAILURE OF BUYER TO GIVE SUCH NOTICE SHALL CONSTITUTE A COMPLETE WAIVER BY BUYER OF ANY SUCH CLAIMS AND DEFENSE FOR SELLER AGAINST ANY SUCH CLAIMS. AS USED IN THIS SECTION, THE TERM "BUYER" AND "SELLER" SHALL INCLUDE NOT ONLY THE PARTY TO THIS AGREEMENT BUT ALSO ALL OF ITS AFFILIATES. THE PROVISIONS GOVERNING REMEDIES, LIMITATIONS OF LIABILITY AND INDEMNITY SET FORTH IN THIS AGREEMENT SHALL SURVIVE EXPIRATION, TERMINATION, OR CANCELLATION OF THIS AGREEMENT.

12. INDEMNITY: Buyer solely assumes all risk of loss, damages or destruction, to property, use, business, profits, or injuries to persons, whether direct, indirect, consequential, special or incidental, caused by negligence or otherwise, arising out of the delivery, storage, vaporization, presence or use of the Product or out of the maintenance of equipment therefor (including Equipment). If there is any injury (including death), loss or damage to the person or property of any third party (including employees of either party), ~~then~~ subject to the statutory limitations set forth in Section 768.28, Florida Statutes, Buyer agrees to indemnify, defend and hold Seller harmless against all forms of liability, causes of action, claims or demands for losses or damages caused by Buyer's performance required herein. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes

13. INSURANCE: Buyer, at its sole expense, shall obtain and maintain insurance against loss or damage to Equipment located at Buyer's locations in amounts acceptable to Seller. Buyer agrees to pay Seller on demand for all loss of or destruction to any Equipment at the then current replacement cost thereof or, in the case of damage permitting repair, the actual cost incurred by Seller for such repairs, and for the cost of necessary transportation.

14. EXCUSE OF PERFORMANCE: Seller shall not be liable for failure to perform if prevented by circumstances beyond its reasonable control. If Seller is unable to supply Products to Buyer, then Buyer may obtain replacement products from other sources and place them in the Equipment (if any) for that period of time during which Seller is unable to supply Buyer. This right is subject to Seller's prior written consent, which shall not be unreasonably withheld. During this period Buyer shall ensure that Equipment is not damaged and shall compensate Seller if any damages occur and hold Seller harmless for damage or injury.

15. ALLOCATION: If sufficient Product is not available from Seller's normal source of supply for any reason, Seller may allocate Product among its own requirements and its customers. Seller will make reasonable efforts to obtain additional Product from other sources, provided Buyer shall pay all additional costs associated with such Product. Allocation in regard to this Section will completely satisfy and discharge Seller's supply obligations and Seller will, therefore, not be deemed to be in breach of such obligations.

16. GOVERNING LAW; DISPUTE RESOLUTION; CLASS ACTION AND TRIAL BY JURY WAIVER: This Agreement shall be governed by and construed in accordance with the substantive law of the State of Florida, without regard to its conflict of laws principles. Prior to either party filing a lawsuit, except to prevent the running of any applicable statute of limitations, all disputes and claims regarding this Agreement shall be submitted to non-binding mediation. If the parties cannot agree on a mediator, one will be selected pursuant to American Arbitration Association rules. **BOTH PARTIES HERETO HEREBY WAIVE ALL RIGHT OR ENTITLEMENT TO TRIAL BY JURY IN CONNECTION WITH ANY DISPUTE THAT ARISES OUT OF OR RELATES IN ANY WAY HERETO OR TO PRODUCT SUPPLIED HEREUNDER. ANY CLAIM MUST BE BROUGHT IN THE RESPECTIVE PARTY'S INDIVIDUAL CAPACITY.**

17. NOTICES: Unless otherwise provided herein, all notices shall be in writing, addressed to the intended recipient at the address on the first page hereof or such other address as the recipient may provide, and given via the following methods: hand delivered, sent by overnight courier providing proof of delivery, or sent by email to an address provided by the recipient for such purpose, and shall be deemed to have been given on the date such notice is hand delivered or sent, as applicable. Notices of excuse of performance, allocation, adjustments to Prices or Charges (including the establishment of any surcharges) provided hereunder may also be sent by U.S. mail and shall be deemed to have been given two business days after being deposited with the U.S. Postal Service.

18. MISCELLANEOUS: (a) Buyer represents that Buyer is contractually free to enter into this Agreement and to perform hereunder. Buyer shall indemnify and defend Seller against all damages Seller may suffer that arise out of or relate to any actual or alleged breach of the foregoing representation. (b) The invalidity or unenforceability of any provision of this Agreement under the laws of any state in which this Agreement is in effect shall not affect the validity or enforceability of any other provision of this Agreement. (c) Buyer shall not require waiver or release of any personal right or execution of any document that conflicts with this Agreement or provides for additional obligations of the parties from Seller's employees, subcontractors or representatives in connection with Seller's entry onto the premises of Buyer and Buyer agrees that no such release, waiver or document shall be binding, if executed by Seller's employee, subcontractor or representative. (d) The waiver by either party of any of its rights under this Agreement shall not be construed as constituting a precedent. (e) Buyer must receive Seller's consent to assign this Agreement. This Agreement shall inure to the benefit of Seller and Buyer and their respective permitted successors and assigns. (f) To the extent permitted by law, this Agreement and materials marked "Confidential" will be kept confidential by Buyer. (g) Buyer represents and warrants that this Agreement has been duly and validly authorized, executed, and delivered. (h) This Agreement may be executed in counterparts, each of which shall be an original and both of which taken together shall constitute the same instrument. Transmission by facsimile, email or other form of electronic transmission of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart and legal, valid and binding execution by such party. (i) As a part of the consideration for this Agreement, the applicable provisions of Section 11 (Remedies; Limitation of Liability) shall extend to and be enforceable by and for the benefit of Seller's Suppliers. (j) This Agreement with any riders, exhibits and/or amendments represents the entire agreement between Seller and Buyer in relation to the sale of Products. Amendments to this Agreement shall be in writing and no acceptance by Seller of any purchase order, acknowledgment, or other document specifying different and/or additional terms or conditions shall be effective.

The City of Hollywood (Buyer)

AIRGAS USA, LLC (Seller)

Accepted By: _____

Submitted By: _____

Printed Name: _____

Accepted By: _____

Title: Authorized Representative Date: _____

Printed Name: _____

Title: _____

Date: _____

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