

Meeting Date: 9/28/2010



Agenda Item # 8A

CITY COUNCIL AGENDA ITEM

Contact Name: Paul Johnson

Department Director: 

Department/Contact # 775-5446

City Manager: 

- Type of Item:
- | | | | |
|--------------------------|--------------------------|-------------------------------------|---------------------|
| <input type="checkbox"/> | Public Hearing | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | Ordinance First Reading | <input checked="" type="checkbox"/> | Discussion & Action |
| <input type="checkbox"/> | Ordinance Second Reading | <input checked="" type="checkbox"/> | Council Approval |

Subject: Bid Award – Fuel Supplier

BACKGROUND: The current agreement with the City’s fuel supplier, Exum Energy, expires on September 30, 2010. We placed an advertisement for bids for Fuel Suppliers on August 14, 2010 with a closing date of September 14, 2010. The bids were based on the “Rack rate” (terminal price) on August 27, 2010 with a “Mark-up”. The significant bid factor is the “Mark-up” rate. We received two bids in response to the advertisement. The bidders were Exum Energy, Inc. (City’s current supplier) and Gentry Oil, LLC. Gentry Oil quoted a “Mark-up” rate of \$0.37 per gallon for all fuel grades and Exum Energy quoted a “Mark-up” of \$0.1376 per gallon for all fuel grades. Note that the “Mark-up” includes all transportation, delivery, and other costs. Additionally, the \$0.1376 “Mark-up” for all fuel grades represents a slight savings to the City. The current agreement allows for a “Mark-up” of \$0.1376 on Unleaded Gasoline and a “Mark-up” of \$0.1489 on Diesel Fuels which results in a reduction of the cost for Diesel of \$0.0113 per gallon.

RECOMMENDATIONS: That City Council authorize the City Manager to enter into an agreement with Exum Energy, Inc. for the supply of Unleaded Gasoline, Diesel #2 and Off-Road Diesel #2 fuels as provided in the bid request.

ATTACHMENTS: Advertisement for Bids, Bid Pricing Sheets (2), Copy of Contract

FINANCIAL IMPACT: The City will realize a slight reduction in the cost of Diesel fuels but there is no significant impact on the planned fuel expenditures.

Reviewed by City Attorney _____

Reviewed by Finance Dept. _____

Reviewed by: _____

1st Discussion Date: 9/28/2010	2nd Discussion Date: date.	Third Discussion Date: date.	Other Dates: date.
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CITY OF ORANGE CITY

Advertisement for Bids

Fuel Supplier

REPLIES DUE: September 14, 2010, AT 2:00 PM

Refer all inquiries to:

Paul Johnson, Public Works Director
City of Orange City
205 East Graves Avenue
Orange City, FL 32763
(386) 775-5446
(386) 775-5448 fax
pjohnson@ourorangepcity.com

ADVERTISEMENT FOR BIDS

CITY OF ORANGE CITY - FUEL SUPPLIER

NOTICE IS HEREBY GIVEN: That sealed bids in duplicate, will be received by the City of Orange City, Florida, at the office of the City Clerk, 229 East Graves Avenue, Orange City, Florida 32763, until 2:00 p.m., September 14, 2010, at which time they will be opened and publicly read aloud in Council Chambers 201 North Holly Avenue, Orange City, Florida. Any bids received after the above time will not be accepted under any circumstances. Any uncertainty regarding the time a bid is received will be resolved against the Bidder.

DESCRIPTION OF WORK: All work for the Project shall be in accordance with the Technical Specifications and the proposed bid will be awarded, if award is made, under one Contract. Bids shall be submitted for furnishing and delivering all materials, including labor, which generally involves:

- Providing fuel for the following fuel types:
 1. Unleaded, 87 Octane
 2. Diesel Fuel, Grade No. 2-D Ultra Low Sulfur
 3. Diesel Fuel, Red Dye, Grade No. 2-D Low Sulfur

BIDDING DOCUMENTS: Available for review starting on Monday, August 16, 2010 at:

City Clerk's Office
229 East Graves Avenue
Orange City, FL 32763
(386) 775-5403

Bids shall be prepared from complete Bidding Documents. Addenda will be sent via registered mail to all holders of complete solicitation Bidding Documents up to seventy-two (72) hours before bid time. Brief addenda may be issued between seventy-two (72) hours and twenty-four (24) hours before Bid time by fax to all holders of complete Bidding Documents.

A request including the name, address and telephone number of the bidder shall be required to obtain a set of Bidding Documents. Anyone obtaining a complete set of Bidding Documents must indicate whether they are a broker, manufacturer, or supplier. Only complete sets of the Bidding Documents will be distributed. Only holders of complete sets of the Bidding Documents will receive addenda.

BID SUBMITTAL: A single bid shall be submitted. The contract will be awarded pursuant to the requirements of applicable state and federal laws and regulations.

Bids shall be enclosed within a sealed envelope, in duplicate, with the words "**Bid for City of Orange City - Fuel Supplier**" and the bidder's name and address shown on the outside thereof. Bids must be received not later than the time set forth herein. The Owner will not be responsible for any lost or late arriving bids sent via the U.S. Postal Service or other delivery services. Mailed bids shall be sent to the attention of "City Clerk".

DEFINITIONS: Terms used in this "Advertisement for Bids" which are defined in the Bidding Documents shall have the meanings assigned to them by the Bidding Documents.

AWARD OF CONTRACT(S): If the Contract is to be awarded, it will be awarded on the basis of the most responsive, responsible, lowest "Total Bid". Additive or deductive alternates will be considered in determining the lowest responsive bidder. The Owner reserves the right to accept any or all additive or deductive alternates at its sole discretion subsequent to award of the Contract.

The Owner reserves the right to waive technicalities or irregularities, to reject any or all bids, and to accept that Bid which is in the best interest of the City.

CITY OF ORANGE CITY, FLORIDA

BY: _____
Deborah J. Renner, CMC
City Clerk

Address: City of Orange City
229 East Graves Avenue
Orange City, Florida 32763

To be published one (1) time in the DAYTONA BEACH NEWS-JOURNAL on August 14, 2010.

Instructions to Bidders

Contents

- 1.01 General Instruction
- 1.02 Terms and Conditions
- 1.03 Who May Bid
- 1.04 Basis for Award
- 1.05 Questions/Contract Manager
- 1.06 Bidder's Representation and Authorization
- 1.07 Performance Qualifications
- 1.08 Execution of Bid
- 1.09 Submittal of Bid
- 1.10 Firm Bids
- 1.11 Clarifications/Revisions
- 1.12 Notice of Award

1.01 **General Instruction:** The bidder shall read all of the solicitation documents and comply with all specified requirements.

1.02 **Terms and Conditions:** All bids are subject to the terms of the following sections of these solicitation documents, which, in case of conflict, shall have the order of precedence listed: technical specifications; instructions to bidders; and general conditions. The City objects to and shall not consider any additional terms or conditions submitted by a bidder, including any appearing in documents attached as part of a bidder's response. In signing and submitting its bid, a bidder agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, shall have no force or effect. Failure to comply with terms and conditions, including those specifying information that must be submitted with a bid, shall be grounds for rejecting a bid.

1.03 **Who May Bid:** Suppliers and dealers of Gasoline and Fuel Oil are invited to respond to this solicitation. By submitting a bid, each bidder certifies that it satisfies the following criteria, in addition to any other specified in the solicitation documents.

- Full-service office with business hours of 8:00 A.M. E.S.T. to 5:00 P.M. E.S.T. weekdays (minimum) and with staff capable of handling inquiries and orders on-location during those business hours (including lunch hour).

1.04 **Basis for Award:** The City intends to make award to one responsive low bidder.

Bidders are solely responsible for submitting the appropriate forms with their bid.

The City reserves the right to reject pricing that is greater than pricing offered to other potential Customers (e.g., city, county, university, or federal contracts). The City reserves the right to accept or reject any and all bids, or separable portions, and to waive any minor irregularity, technicality, or omission if the City determines that doing so will serve the City's best interest.

1.05 Questions/Contract Manager: Bidders shall address any question regarding this solicitation to the Contract Manager, who is identified on the cover sheet of this solicitation package. Questions shall be in writing, shall reference the solicitation number and the bid opening date, and shall be **RECEIVED NO LATER THAN** the time and date reflected on the timeline included on the last page of the cover material of this solicitation package,

1.06 Bidder's Representation and Authorization: In submitting a bid, each bidder understands, represents, and acknowledges the following (if the bidder cannot so certify to any of following, the bidder shall submit with its bid a written explanation of why it cannot do so).

- The bidder is not currently under suspension or debarment by the State or any other governmental authority.
- To the best of the knowledge of the person signing the bid, the bidder, its affiliates, subsidiaries, directors, officers, and employee are not currently under investigation by any governmental authority and have not in the last ten (10) years been convicted or found liable for any act prohibited by law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.
- The bid is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.
- The bid prices and amounts have been arrived at independently and without consultation, communication, or agreement with any other bidder or potential bidder; neither the prices nor amounts, actual or approximate, have been disclosed to any bidder or potential bidder, and they will not be disclosed before bid opening.
- Neither the bidder nor any person associated with it in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or position involving the administration of federal funds:
 - Has within the preceding three years been convicted of or had a civil judgment rendered against them or is presently indicted for or otherwise criminally or civilly charged for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
 - Has within a three-year period preceding this certification had one or more federal, state, or local government contracts terminated for cause or default.
- The product offered by the bidder will conform to the specifications without exception.
- The bidder has read and understands the Contract terms and conditions, and the bid is made in conformance with those terms and conditions.

- If an award is made to the bidder, the bidder agrees that it intends to be legally bound to the Contract that is formed with the City.
 - The bidder has made a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting the bid, and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in the bid.
 - The bidder shall indemnify, defend, and hold harmless the City and its employees against any cost, damage, or expense that may be incurred or be caused by any error in the bidder's preparation of its bid.
 - All information provided by, and representations made by, the bidders are material and important and will be relied upon by the City in awarding the Contract. Any misstatement shall be treated as fraudulent concealment of the true facts relating to submission of the bid.
- 1.07 Performance Qualifications:** The City reserves the right to investigate or inspect at any time whether the product, qualifications, or facilities offered by bidder meet the Contract requirements. Bidder shall at all times during the Contract term remain responsive and responsible. Bidder must be prepared to present evidence of experience, ability, and financial standing, as well as a statement as to plant, machinery, and capacity of the bidder for the production, distribution, and servicing of the product bid.
- 1.08 Execution of Bid:** Each bid shall be in the form included with these solicitation documents and manually signed by an authorized representative of the bidder. Bids shall be typed or printed in permanent ink. Any correction or alteration shall be in ink and initialed.
- 1.09 Submittal of Bid:** Submit the original bid and one copy in a sealed envelope. DO NOT INCLUDE MORE THAN ONE BID PER ENVELOPE. The face of the envelope shall indicate BID FOR FUEL SUPPLIER and date and time of the bid opening. Bids not submitted on the form included with these solicitation documents shall be rejected. Each bidder is responsible for ensuring that its bid is delivered at the proper time and to the proper place. The City shall not consider late bids. **BIDS MUST BE RECEIVED AT the City Clerk's Office, 229 East Graves Avenue, Orange City, Florida, AT OR BEFORE 2:00 P.M. ON TUESDAY, SEPTEMBER 14, 2010.**
- 1.10 Firm Bids:** The City will make award within Thirty (30) days after the date of bid opening, during which period bids shall remain firm and shall not be withdrawn.
- 1.11 Clarifications/Revisions:** Before award, the City reserves the right to seek clarifications, to request bid revisions, and to request any information deemed necessary for proper evaluation of bids from all bidders deemed eligible for Contract award. Failure to provide requested information may result in rejection of the bid.
- 1.12 Notice of Award:** The City shall issue a notice of award, if any, to the successful bidder.

Technical Specifications

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- 2.01 Definitions
 - 2.02 Deliverables
 - 2.03 Scope of Work
 - 2.04 Delivery of Fuel
 - 2.05 Fault and Responsibility
 - 2.06 Measurements
 - 2.07 Fuel Availability
 - 2.08 Conventional Gasoline
 - 2.09 Minimum Delivery
 - 2.10 Prices
 - 2.11 Markup
 - 2.12 Invoicing and Payment
 - 2.13 Maintenance
 - 2.14 Taxes
 - 2.15 Fuel Permits
 - 2.16 Specifications
 - 2.17 Bid Pricing
- 2.01 **Definitions:** The Parties agree that capitalized terms shall have the meaning ascribed below:
- “**Fuel**” shall mean any Fuel product obtained through this Contract. Fuel product shall include all grades of unleaded gasoline and fuel oil to be delivered to Customer facilities as defined in section 2.10.
- “**Markup**” shall mean the Contractor’s price to cover all costs associated with providing Fuel to State and Customer facilities as more particularly detailed in section 2.11. Markup will mean both positive and negative numbers. Markups may differ based on where the Fuel is obtained according to the Fuel terminals and actual type of Fuel ordered. Markup for Fuel shall be on a price per gallon basis. The Contractor shall assess no other fees associated with the delivery of Fuel except as more particularly detailed in section 2.13.
- “**Tank Wagon Delivery**” shall mean a delivery by a tank wagon truck with a minimum delivery of 100 gallons up to 4,000 gallons. “Pump-off” will be required.
- “**Rack Rate**” shall mean the cost of Fuel to the supplier at the terminal. A copy of the suppliers invoice must accompany the City’s invoice.
- 2.02 **Deliverables:** The Contractor shall deliver the following product, as more particularly detailed in sections 2.03 to 2.17 Unleaded Gasoline and Diesel Fuel.
- 2.03 **Scope of Work:** This Contract is to provide Fuel for the City of Orange City, Florida. The City seeks to improve the quality and efficiency of services delivered, improve Customer services and reduce cost. The Contractor must efficiently provide Fuel to meet the requirements of the Customer.

Bidder/Contractor must meet the following requirements:

- Fuel costs will be determined based on the Rack Rate from the terminal used to service the Customer's facility. Price is more particularly detailed in section 2.11.
- Markups will be established for each type of Fuel. Markup for Fuel shall be based on a price per gallon basis.
- Fuel costs shall exclude any taxes and/or fees that the Customer is exempt from paying. All Fuel costs will include the Rack Rate, the Contractor's Markup and all applicable taxes and/or associated fees allowed.
- A copy of the Rack Rate from the terminal shall be sent with the Customer's invoice. The invoice price shall reflect the actual date of delivery.

2.04 Delivery of Fuel: Fuel is to be delivered to the Customer's tank(s) within 24 hours after telephone notification is received unless specified otherwise by the Customer. This time will be agreed upon by the Customer and the Contractor. The City requires that vehicles equipped with meters make delivery. Customer may be subject to a service charge if request is for same day delivery. This charge is listed in section 2.13.

2.05 Fault And Responsibility: The party at fault will be responsible for all direct costs incurred to correct a problem. Problems may include but not limited to misorders by Customer, Fuel spills, delivering wrong Fuel to Customer by Contractor, cross-fueling by Contractor at Customer's facility, etc.

2.06 Measurements: Customary measurements appearing in these specifications are not intended to preclude bids for commodities with metric measurements.

2.07 Fuel Availability

Availability of Product: If there are Fuel restrictions, shortages and/or allocations placed on suppliers of Fuel product by either terminals, suppliers and/or the government (local, state, and/or federal) for any reason, then at the City's discretion, price may be adjusted as determined by the City. Contractors will have to provide adequate proof of the situation to have the price adjusted. The time period for these adjustments will be determined by the City based on the situation. If governmental allocations are declared, then Contractors are to deliver Fuel to Customers at the same percentage as allocated.

2.08 Conventional Gasoline: Unleaded, 87 octane rating meeting the specifications of the State of Florida, Department of Agriculture and Consumer Services with minimum octane rating of: $R + M/2 = 87$. Detergent type, not to exceed 15% ethanol.

Diesel Fuel: Must be suitable for use in Diesel engines and free from water and foreign matter. Must meet or exceed State of Florida. Department of Agriculture and Consumer Services specifications.

2.09 Minimum Delivery:

For Contractors that utilize their own transports to make delivery, the minimum delivery on this Contract shall be 100 gallons for a Tank Wagon Delivery for gasoline and fuel oil.

- **Gasoline and Fuel Oil**

- Tank Wagon Delivery – Freight charges will be included in the Tank Wagon Delivery Markup. Pump-Off to be included.

2.10 Prices: Prices shall be submitted on Customer invoices as follows:

- Fuel Cost shall be determined by the date on which delivery of Fuel is made. Fuel cost shall include:
 - Gasoline and Fuel Oil: Prices will be calculated using the following information:
 - Rack Rate price
 - Contractor's Markup as determined by the Price Sheet
 - All applicable Fuel taxes and/or associated fees.
 - All applicable delivery and/or service charges as allowed.

The Customer and the Contractor agree that the Contractor is prohibited from negotiating or billing in a manner that exceeds the stated prices included in the Contract. The Contractor agrees that the price charged to the Customer shall be subject to audit, and the Contractor shall make any and all records supporting the invoiced prices available for inspection, upon written request by the Customer.

2.11 Markup: The Markup shall be noted on the Price Sheet as follows:

- Discount Markup – A Discount Markup shall be noted as a negative number, using either a minus sign “-.xx” or enclosed within parentheses “(.xx)”, i.e. “-.01” or “(.01)”.
- Markup – All other prices will be construed as a positive number for the Markup.

The Markup or Discount Markup may include the Contractor's profit and any other costs the Contractor wishes to include. **Prices shall be per gallon for the Markup or Discount Markup.**

2.12 Invoicing and Payment: The Contractor agrees to be paid upon submission of invoices to the Customer for Fuel purchased as defined in section 2.11 of this solicitation document. Invoices shall be submitted to the Customer for each delivery made. The Contractor shall submit invoices for Fuel in sufficient detail for a proper preaudit and postaudit thereof. The Customer agrees that payments to the Contractor will be made in accordance with section 215.422 of the Florida Statutes, and chapter 55 of the Florida Statutes.

A copy of the Rack Rate shall accompany all invoices to verify prices.

2.13 Maintenance: The Customer shall maintain all tanks and dispensing equipment associated with their facility in good working order for the duration of the Contract.

2.14 Taxes: Invoice Fuel prices are not to include any State of Florida and/or Federal taxes from which the Customer is exempt. .

2.15 Fuel Permits: The Customer will be responsible for all facility required permits pertaining to Fuel storage and handling in accordance with all local, state and federal laws.

2.16 **Specifications:** The Contractor will provide gasoline, and fuel oil per the following specifications:

Gasoline:

- **Unleaded, 87 Octane**

Gasoline, unleaded, antiknock (octane) index minimum 87 (RON + MON)/2, maximum allowable lead 0.05 gram per gallon, per A.S.T.M. specification D4814, complying with state of Florida gasoline inspection laws. To be delivered as ordered via tank wagon, minimum delivery 100 gallons..

Fuel Oil:

- **Diesel Fuel, Grade No. 2-D Ultra Low Sulfur Fuel (REV 13 OCT 06)**

Oil, diesel fuel, grade no. 2-D ultra low sulfur fuel (.0015 mass % sulfur, 40 centane min.), for use in over the road diesel engine, per A.S.T.M. specification D975, complying with Florida Department of Agriculture and Consumer Services standards. To be delivered as ordered via tank wagon, minimum delivery 500 gallons.

- **Diesel Fuel, Red Dye, Grade No. 2-D Low Sulfur Fuel**

405-120-270-0010 Oil, diesel fuel, red dye, grade no. 2-D low sulfur fuel (.05 mass % sulfur, 40 centane min.), for use in off the road diesel engine, per A.S.T.M. specification D975, complying with Florida Department of Agriculture and Consumer Services standards. To be delivered as ordered via tank wagon, minimum delivery 100 gallons.

2.17 BID PRICING

The City of Orange City is seeking bids for the purchase of quality fuels for over-the-road and off-road use. Bids will be accepted for the following items as outlined below:

- A. Gasoline, unleaded, 87 octane rating – approximately 60,000 gallons per year
- B. Diesel fuel, #2 Ultra Low Sulfur – approximately 12,000 gallons per year
- C. Diesel fuel, Red Dye #2 Ultra Low Sulfur – approximately 3000 gallons per year
 - 1. Unleaded gasoline meeting the specifications of the State of Florida Department of Agriculture and Consumer Services, with a minimum octane rating of: $R + M/2 = 87$ Detergent type, not to exceed 15% ethanol.
 - 2. Over-the-road Diesel Fuel,, suitable for use in diesel engines and free from water and foreign matter. Must meet or exceed State of Florida, Department of Agriculture and Consumer Services specifications.
 - 3. Off-road Diesel Fuel, suitable for use in diesel engines and free from water and foreign matter. Must meet or exceed State of Florida, Department of Agriculture and Consumer Services specifications.

All fuel shall be delivered by metered Tank Wagon truck.

<u>FUEL TYPE</u>	<u>RACK RATE</u>	<u>MARK UP</u>	<u>TOTAL</u>
Unleaded 87 Octane Gasoline	_____	_____	_____
Low Sulfur Diesel #2	_____	_____	_____
Off-Road Diesel #2	_____	_____	_____

NOTE: For Purposes for this bid, “Rack Rate” price on August 27, 2010 shall be used.

Bidders Name: _____

Bidders Address _____

Authorized Signature _____

General Conditions

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- 3.01 Definitions
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- 3.37 Modification of Terms
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- 3.39 Execution in Counterparts
- 3.40 Severability

3.01 Definitions:

The term “**bid**” means the offer extended to the Department in response to this solicitation. The forms to accompany the bid are included in section 4.0 of these solicitation documents.

“**City**” means the City of Orange City.

“**Contract**” means the legally enforceable agreement, if any, that results from this solicitation. The parties to the Contract will be the City and Contractor. The Contract shall be reduced to writing substantially in the form included in section 4.0 of these solicitation documents.

“**Contract Manager**” means the City’s Public Works Director or designee who is primarily responsible for administration of the Contract. The Contract Manager is identified in the Instructions to Bidders. The City may appoint a different Contract Manager, which shall not constitute an amendment to the Contract, by sending notice to Contractor. Any communication to the City by Contractors or contract administrators, shall be addressed to the Contract Manager.

“**Contractor**” means a successful bidder, which, along with the City, will enter into the Contract.

“**Customer**” means the City of Orange City that will order products directly from the Contractor under the Contract. By ordering products under the Contract, the Customer agrees to its terms. Customers are not, however, parties to the Contract.

“**Product**” means any deliverable under the Contract, which may include commodities, services, technology or software.

“**Purchase Order**” means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, or other authorized means).

3.02 Eligible Customers: Section 287.056 of the Florida Statutes governs agencies’ use of the Contract.

3.03 Best Pricing Offer: During the Contract term, if the Contractor sells substantially the same or a small quantity of a product outside the Contract, but upon the same or similar terms of the Contract, at a lower price, then at the discretion of the City the price under the Contract shall be immediately reduced to the lower price.

3.04 Americans With Disabilities Act: Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.

3.05 Purchase Orders: A Contractor shall not deliver or furnish products until the Customer transmits a purchase order. All purchase orders shall bear the Contract number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference the Contract terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor’s order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer.

3.06 Inspection at Contractor’s Site: The City reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor or prospective Contractor (bidder) to assess conformity with Contract

requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.

- 3.07 Safety Standards:** All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate City inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.
- 3.08 Literature:** Upon request, the Contractor shall furnish Customer literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.
- 3.09 Transportation and Delivery:** Prices shall include all charges for packing, handling, freight, distribution, and delivery.
- 3.13 Taxes:** The City does not pay Federal excise or sales taxes on direct purchases
- 3.16 Compliance with Laws:** The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, Chapter 287 of the Florida Statutes and Chapter 60A-1 of the Florida Administrative Code govern the Contract. By way of further non-exhaustive example, the Contractor shall comply with section 247A(e) of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of such laws shall be grounds for Contract termination.
- 3.17 Lobbying and Integrity:** Pursuant to section 216.347 of the Florida Statutes, the Contractor may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency. In addition, the Contractor shall not, in connection with this or any other agreement with the City, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any City employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the City's Contract Manager, or other authorized City official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer

of (1) three years after the expiration of the Contract. The Contractor agrees to reimburse the City for the reasonable costs of investigation incurred by the Contract Manager or other authorized City official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the City which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

- 3.18 Indemnification:** The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the City and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors; provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the City.

Further, the Contractor shall fully indemnify, defend, and hold harmless the City from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right; provided, however, that the foregoing obligation shall not apply to the Customer's misuse or modification of Contractor's products or a Customer's operation or use of Contractor's products in a manner not contemplated by the Contract or the purchase order. If any product is the subject of an infringement suit or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Customer the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the Contractor shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The Customer shall not be liable for any royalties.

The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the Customer giving the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the Customer in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.

Except as specified in the foregoing portions of this section, for all other claims against the Contractor under any individual purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the purchase order, or two times the charges rendered by the Contractor under the purchase order. Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party

shall be liable for lost profits, lost revenue, or lost institutional operating savings. The Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The City may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the City.

- 3.19 Suspension of Work:** The City may in its sole discretion suspend any or all activities under the Contract, at any time, when in the best interests of the City to do so. The City shall provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the City shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract. Suspension of work shall not entitle the Contractor to any additional compensation.
- 3.20 Termination for Convenience:** The City, by written notice to the Contractor, may terminate the Contract in whole or in part when the City determines in its sole discretion that it is in the City's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.
- 3.21 Termination for Cause:** The City may terminate the Contract if the Contractor fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), Florida Administrative Code, governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City. The rights and remedies of the City in this clause are in addition to any other rights and remedies provided by law or under the Contract.
- 3.22 Force Majeure, Notice of Delay, and No Damages for Delay:** The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing

that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Customer or City for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the City determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the Customer, in which case the City may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customer with respect to products subjected to allocation, and/or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

- 3.23 Equitable Adjustment:** The City may, in its sole discretion, make an equitable adjustment in the Contract terms and/or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.
- 3.24 Scope Changes:** The City may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The City may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the City may solicit separate bids to satisfy them.
- 3.25 Renewal:** Subject to Chapter 287 of the Florida Statutes, and upon mutual agreement, the City and the Contractor may renew the Contract, in whole or in part. Any renewal shall be in writing and signed by both parties.
- 3.26 Advertising:** The Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the City, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the City as a reference, or otherwise linking the Contractor's name and either a description of

the Contract or the name of the City in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

- 3.27 **Assignment:** The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract.
- 3.28 **Dispute Resolution:** Any dispute concerning performance of the Contract shall be decided by the Contract Manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision of the Contract Manager shall be final and conclusive unless within ten (10) days from the date of receipt, the Contractor files with the City a petition for administrative hearing. The City's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes.
- 3.29 **Employees, Subcontractors, and Agents:** All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Customer. The City may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The City may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The City may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.
- 3.30 **Security and Confidentiality:** The Contractor shall comply fully with all security procedures of the Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the Customer. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.
- 3.31 **Independent Contractor Status of Contractor:** The Contractor, together with its agents, distributors, resellers, subcontractors, officers and employees, shall have and always retain under the Contract the legal status of an independent contractor, and in no manner shall they be deemed employees of the Customer or deemed to be entitled to any benefits associated with such employment. During the term of the Contract, Contractor shall maintain at its sole expense those benefits to which its employees would otherwise be entitled to by law, including health benefits, and all necessary insurance for its employees, including workers' compensation, disability, and unemployment insurance, and provide Customer with certification of such insurance upon request. The Contractor

remains responsible for all applicable federal, state, and local taxes, and all FICA contributions.

- 3.32 Insurance Requirements:** During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract, which, as a minimum, shall be: workers' compensation and employer's liability insurance per Florida statutory limits (currently \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate) covering all employees engaged in any Contract work; commercial general liability coverage on an occurrence basis in the minimum amount of \$500,000 (defense cost shall be in excess of the limit of liability), naming the City as an additional insured; and automobile liability insurance covering all vehicles, owned or otherwise, used in the Contract work, with minimum combined limits of \$500,000, including hired and non-owned liability, and \$5,000 medical payment. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of the Contract. Upon request, the Contractor shall provide certificate of insurance. The Contract shall not limit the types of insurance Contractor may desire to obtain or be required to obtain by law. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized to write policies in Florida.
- 3.33 Service:** If a Customer is unable to obtain service/warranty within the time specified, or if difficulties are encountered in obtaining service from the Contractor's designated service location, the Customer shall notify the individual designated on the Contractor's ordering instruction sheet, who shall then arrange and coordinate service by an alternate service dealer at no additional cost to the Customer.
- 3.34 Warranty of Authority:** Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.
- 3.35 Warranty of Ability to Perform:** The Contractor shall return with these bid documents proof of a Certificate of Status from the Secretary of State, Division of Corporations, demonstrating that the Contractor is in good standing and legally authorized to transact business in Florida. The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Department in writing if its ability to perform is compromised in any manner during the term of the Contract.
- 3.36 Notice:** All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery. Notices to the City shall be delivered to the Contract Manager identified in the Instructions to Bidders. Notices to the Contractor shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.
- 3.37 Modification of Terms:** The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions by Customer under the Contract. The Contract may only be modified or amended upon mutual written

agreement of the City and the Contractor. No oral agreements or representations shall be valid or binding upon the City or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Customer unless authorized by the City or specified in the notice of award. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, “shrink wrap” terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor’s order or fiscal forms or other documents forwarded by the Contractor for payment. A Customer’s acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

- 3.38 Waiver:** The delay or failure by the City to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the City’s right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
- 3.39 Execution in Counterparts:** The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 3.40 Severability:** If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable, and all other provisions shall remain in full force and effect.

2.17 BID PRICING

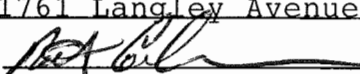
The City of Orange City is seeking bids for the purchase of quality fuels for over-the-road and off-road use. Bids will be accepted for the following items as outlined below:

- A. Gasoline, unleaded, 87 octane rating – approximately 60,000 gallons per year
- B. Diesel fuel, #2 Ultra Low Sulfur – approximately 12,000 gallons per year
- C. Diesel fuel, Red Dye #2 Ultra Low Sulfur – approximately 3000 gallons per year
 - 1. Unleaded gasoline meeting the specifications of the State of Florida Department of Agriculture and Consumer Services, with a minimum octane rating of: R + M/2 = 87 Detergent type, not to exceed 15% ethanol.
 - 2. Over-the-road Diesel Fuel, suitable for use in diesel engines and free from water and foreign matter. Must meet or exceed State of Florida, Department of Agriculture and Consumer Services specifications.
 - 3. Off-road Diesel Fuel, suitable for use in diesel engines and free from water and foreign matter. Must meet or exceed State of Florida, Department of Agriculture and Consumer Services specifications.

All fuel shall be delivered by metered Tank Wagon truck.

<u>FUEL TYPE</u>	<u>RACK RATE</u>	<u>MARK UP</u>	<u>TOTAL</u>
Contains No Ethanol Unleaded 87 Octane Gasoline	<u>1.9492</u>	<u>.37</u>	<u>2.319</u>
Contains 10% Ethanol Unleaded 87 Octane	<u>1.9335</u>	<u>.37</u>	<u>2.304</u>
Low Sulfur Diesel #2	<u>2.1500</u>	<u>.37</u>	<u>2.520</u>
Off-Road Diesel #2	<u>2.1550</u>	<u>.37</u>	<u>2.525</u>

NOTE: For Purposes for this bid, "Rack Rate" price on August 27, 2010 shall be used.

Bidders Name: Gentry Oil, LLC
 Bidders Address 1761 Langley Avenue, DeLand, FL 32724
 Authorized Signature 

2.17 BID PRICING

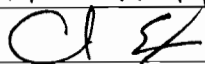
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All fuel shall be delivered by metered Tank Wagon truck.

<u>FUEL TYPE</u>	<u>RACK RATE</u>	<u>MARK UP</u>	<u>TOTAL</u>
Unleaded 87 Octane Gasoline	<u>1.9535</u>	<u>.1376</u>	<u>2.0911</u>
Low Sulfur Diesel #2	<u>2.125</u>	<u>.1376</u>	<u>2.2626</u>
Off-Road Diesel #2	<u>2.130</u>	<u>.1376</u>	<u>2.2676</u>

NOTE: For Purposes for this bid, "Rack Rate" price on August 27, 2010 shall be used.

Bidders Name: Exum Energy, Inc.
 Bidders Address 2179 S.R. 44, New Smyrna Bch., FL 32168
 Authorized Signature 

2.17 BID PRICING

The City of Orange City is seeking bids for the purchase of quality fuels for over-the-road and off-road use. Bids will be accepted for the following items as outlined below:

- A. Gasoline, unleaded, 87 octane rating – approximately 60,000 gallons per year
- B. Diesel fuel, #2 Ultra Low Sulfur – approximately 12,000 gallons per year
- C. Diesel fuel, Red Dye #2 Ultra Low Sulfur – approximately 3000 gallons per year
 - 1. Unleaded gasoline meeting the specifications of the State of Florida Department of Agriculture and Consumer Services, with a minimum octane rating of: $R + M/2 = 87$ Detergent type, not to exceed 15% ethanol.
 - 2. Over-the-road Diesel Fuel,, suitable for use in diesel engines and free from water and foreign matter. Must meet or exceed State of Florida, Department of Agriculture and Consumer Services specifications.
 - 3. Off-road Diesel Fuel, suitable for use in diesel engines and free from water and foreign matter. Must meet or exceed State of Florida, Department of Agriculture and Consumer Services specifications.

All fuel shall be delivered by metered Tank Wagon truck.

<u>FUEL TYPE</u>	<u>RACK RATE</u>	<u>MARK UP</u>	<u>TOTAL</u>
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