

UTILITIES COMMISSION
City of New Smyrna Beach, Florida
Request for Quotation
20-372

WE HEREBY INVITE YOUR COMPANY TO SUBMIT A FORMAL QUOTATION FOR FUEL TANK MAINTENANCE AND TESTING SERVICES FOR THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA, PER THE ATTACHED SPECIFICATIONS.

SUBMIT COPIES OF YOUR QUOTES BY **MAIL, E-MAIL OR HAND DELIVERING TO:**

Utilities Commission
City of New Smyrna Beach
Attn: Caleb Fisher
Purchasing Agent
(386) 424-3045
cfisher@ucnsb.org

MAILING ADDRESS:
200 Canal Street
New Smyrna Beach, FL 32168

WALK IN DELIVERY ADDRESS:
200 Canal Street
New Smyrna Beach, FL 32168

QUOTATIONS DUE PRIOR TO: Friday April 17, 2020 at 2:30 P.M.

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SCHEDULE

Distribution of the Request for Quotation

April 1, 2019

RFQ Return Deadline by 2:30PM
Location: UCNSB Finance Office
200 Canal St. New Smyrna Beach
FL, 32168

April 17, 2020



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GENERAL INSTRUCTIONS AND CONDITIONS

1. The term **COMMISSION** used herein refers to the Utilities Commission, City of New Smyrna Beach, Florida, or its duly authorized representative.
2. The term **VENDOR** used herein refers to the dealer/manufacturer or business organization submitting a bid to the **COMMISSION** in response to this solicitation.
3. **VENDORS** are expected to examine, when applicable, the drawings, specifications, delivery requirements, performance sites and all instructions to satisfy themselves of conditions affecting cost of performing this contract.
4. No material, labor or facilities will be furnished by the **COMMISSION** unless specifically stated.
5. The **VENDOR** hereby attests that the prices in this offer have been arrived at independently without consultation, communication or agreement with any competitor for the purpose of restricting competition.
6. The **VENDOR** warrants that the prices of the items set forth herein do not exceed the prices charged by the **BIDDER** under a contract with the State of Florida.
7. The **VENDOR** agrees that the supplies and services furnished under this award shall be covered by the most favorable commercial warranties the **BIDDER** gives any customers for comparable quantities of such supplies or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the **COMMISSION** by any other provision of this award.
8. A duly authorized representative of the **COMMISSION** will accomplish inspection and acceptance of the supplies/services purchased herein at the designated delivery point.
9. All invoices resulting from the award of this bid will be paid within 30 days of receipt of invoice or receipt of goods or acceptance of work performed.
10. Carelessness in quoting prices or in preparation of bid otherwise, will not relieve the bidder. Bidders are expected to examine specifications, delivery schedule, extensions, and all terms and conditions in the bid documents. Bids having erasures or corrections must be initialed in ink by the Bidder. In the event of an extension error(s), the unit price will prevail. Written amounts shall take precedence over numerical amounts.
11. **Public Entity Crimes:** UNDER SECTION 287.133(2)(a), FLORIDA STATUTES, A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for Category two for a period of 36 months from the date of being placed on the convicted vendor list.
12. Quotes shall be **addressed and mailed or delivered as specified on page 1.**
13. The **Commission** reserves the right to reject bids containing any additional terms or conditions not specifically requested in the original conditions and specifications.

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14. Failure of the contractor to deliver within the time specified, or within a reasonable time as interpreted by the Purchasing Authority or failure to make replacements of rejected articles as directed, shall permit the Purchasing Authority to purchase on the open market articles of comparable grade to take the place of those rejected or not delivered. On all such purchases, the contractor shall reimburse the **Utilities Commission**, within a reasonable time specified by the Purchasing Authority, for any expenses incurred in excess of the defaulted price. Payments due the contractor by the **Utilities Commission** may be withheld until reimbursement is received.
15. When brand or trade names are used in the bid invitation, it is for the purpose of item identification and to establish standards for quality; style and features. Bids on equivalent items will be considered unless items are noted as no substitutes. Equivalent bids must be accompanied by descriptive literature and/or specifications to receive consideration. Demonstrations and/or samples may be required and shall be at not charge to the Utilities Commission. The **UTILITIES COMMISSION** reserves the right to determine if bid goods are equivalent to specified goods.
16. Awards shall be made as required for the best interest of the **Commission**. The right is reserved to make award(s) by individual items, group of items, all or none, or any combination thereof, with one or more suppliers.
17. **INDEPENDENT CONTRACTORS:** Contractor is an independent contractor, and all persons employed by Contractor in connection herewith shall be its employees and not employees of Commission in any respect.
18. **INSURANCE:** The Contractor shall, at its sole expense, maintain in effect at all times during the performance of the services insurance coverage with limits not less than those set forth below and with insurers and under forms of policies satisfactory to Commission.

<u>Coverage</u>	<u>Minimum Amounts and Limits</u>
(a) Worker's Compensation	Statutory requirements at location of work
Employer's Liability	\$ 100,000 Each occurrence
	\$ 300,000 Disease, aggregate
	\$ 100,000 Disease, each employee
(b) General Liability	\$1,000,000 General Aggregate
	\$1,000,000 Products – Comp Ops Agg
	\$ 500,000 Each Occurrence
	\$ 50,000 Fire Damage
	\$ 5,000 Medical Expense
(c) Automobile Liability (owned, hired and non-owned)	\$1,000,000 Combined Single Limit
Option of Split Limits:	
(1.) Bodily Injury	\$ 500,000 Per Person
	\$1,000,000 Per Accident
(2.) Property Damage	\$ 500,000

Coverage shall apply to the indemnity agreement and shall include the UTILITIES COMMISSION their officers and employees, each as additional insured but only as regards to their liability arising out of Contractor's performance of the work or out of operations performed by others on behalf of Contractor under this Contract. The insurance as afforded to such additional insured shall state that it is primary insurance and shall provide for a severability of interest or cross-liability clause. Prior to commencing performance of any work or site mobilization, Contractor shall furnish Commission with Certificates of Insurance (identifying on the face thereof the Project name and Contract number) as evidence of the above required insurance and such Certificates shall provide for thirty (30) days written notice to Commission prior to cancellation thereof.

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Commission is not maintaining any insurance on behalf of Contractor covering loss or damage to the work or to any other property of Contractor unless otherwise specifically set forth herein.

None of the requirements contained herein as to types, limits and approval of insurance coverage to be maintained by Contractor are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under this contract.

Contractor shall deliver the original Certificate of Insurance and one copy to the agent of the Commission.

Notices, in original and one copy, of cancellation, termination and alternation of such policies shall also be provided to the agent of the Commission.

19. INDEMNIFICATION FOR TORT ACTIONS/LIMITATION OF LIABILITY:

The provisions of Florida Statute 768.28 applicable to the Utilities Commission, City of New Smyrna Beach apply in full to this contract. Any legal actions to recover monetary damages in tort for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the Utilities Commission acting within the scope of his/her office or employment are subject to the limitations specified in this statute.

No officer, employee or agent of the Utilities Commission acting within the scope of his/her employment or function shall be held personally liable in tort or named as a defendant in any action for injury or damage suffered as a result of any act, event or failure to act.

The Utilities Commission shall not be liable in tort for the acts or omissions of an officer, employee or agent committed while acting outside the course and scope of his/her employment. This exclusion includes actions committed in bad faith or with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

To the fullest extent permitted by law, the vendor shall defend, indemnify, and hold harmless the Utilities Commission, its officials, agents, and employees from and against any and all claims, suits, judgments, demands, liabilities, damages, cost and expenses (including attorney's fees) of any kind or nature whatsoever arising directly or indirectly out of or caused in whole or in part by any act or omission of the vendor or its subcontractors (if any), anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable; excepting those acts or omissions arising out of the sole negligence of the Utilities Commission .

Provided, however, if the contract between the Utilities Commission and the Contractor is deemed by a court of competent jurisdiction to be a construction contract for purposes of Section 725.06, Florida Statutes, any obligation of the Contractor to defend, indemnify or hold harmless the Utilities Commission, shall be limited to an obligation to indemnify or hold harmless the Utilities Commission, its officers and employees from liability damages, losses, and costs, including but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the contractor and persons employed or utilized by the Contractor in the performance of the contract.

20. WARRANTY AND ACCEPTANCE: All material shall be new and workmanship shall be first class in every respect. The work shall be subject to inspection and acceptance by Commission. Contractor guarantees its work hereunder for a period of 12 months after completion and acceptance of the work unless otherwise set forth herein. In the event Commission discovers defects in material or workmanship at any time before the expiration of the specified warranty period, Contractor shall, upon written notice from Commission, repair or replace at its sole expense any such defects. Commission may perform such repairs or replacements by other reasonable means and Contractor agrees to pay for such corrective measures. Neither acceptance of the work by Commission nor payment shall relieve Contractor from liability under the indemnity clause or any of the guarantees or warranties contained or implied herein.

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21. **LAWS, REGULATIONS, PERMITS AND TAXES:** Contractor shall comply with Commission's jobsite procedures and regulations and with all applicable local, state and federal laws, rules and regulations and shall obtain all permits required for any of the work performed hereunder. Contractor shall procure and pay for all permits and inspections required for any of the work performed hereunder and shall furnish any bonds, security or deposits required to permit performance of the work. Contractor shall, to the extent permissible under applicable law, comply with the jobsite provisions which validly and lawfully apply to work on the specific jobsite being performed under this Contract.
22. **WORK RULES, SECURITY:** For work performed on Commission premises, Contractor shall strictly observe Commission work rules and security requirements. All work shall be carried out during normal Commission working hours unless specifically agreed to in writing by Commission. Contractor shall, at Commission's request remove from site any employee whom Commission deems to be incompetent, dishonest or uncooperative.
23. **CHANGES:** Commission may, at any time, direct in writing additions, deletions or changes to all or any part of the work. If any such change causes an increase or decrease in the cost of or in the time required to perform such work, Contractor shall submit detail information substantiating such claims and an equitable adjustment shall be made to the price or time of performance.
24. **RELEASE AGAINST LIENS OR CLAIMS:** Contractor shall promptly pay all claims of persons or firms furnishing labor, equipment or materials used in performing the work hereunder. Commission may require Contractor to submit satisfactory evidence of payment and releases of all such claims. If there is any evidence of any such unpaid claim, Commission may withhold any payment until Contractor has furnished such evidence of payment and release.
25. **ASSIGNMENT:** Any assignment by Contractor of this Contract or of any rights hereunder or hypothecation thereof in any manner, in whole or in part, by operation of law or otherwise, without the prior written consent of Commission shall be voided.
26. **SAFETY AND FIRE PREVENTION:** Contractor shall at all times conduct all operations under the Contract in a manner to avoid risks of bodily harm to persons, damage to any property and fire. Contractor shall be responsible to take all precautions necessary and continuously inspect all work, materials and equipment to discover, determine and correct any such conditions which may result in any of the aforementioned risks.

27. SUSPENSION OF WORK AND TERMINATION

Utilities Commission May Suspend Work - The Utilities Commission may at any time and without cause suspend the Work or any portion thereof by notice in writing to the Contractor. The Project Manager shall fix the date on which Work shall be resumed and the Contractor will resume the Work on the date so fixed. The Contractor will be allowed an extension of the Contract Time or both, if directly attributable to any suspension. However, no change to the contract price will be allowed on claims for suspended work or delays, whatever the course or reason. Also, during any period of suspension, the Contractor shall take all available measures to mitigate costs such as taking on new work, reassigning resources to other contracts, etc.

Utilities Commission May Terminate for Cause - If the Contractor is adjudged bankrupt or insolvent; if he makes a general assignment for the benefit of his creditors without Utilities Commission approval; if a trustee or receiver is appointed for the Contractor or for any of his property; if he files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if he fails to prosecute and complete the Work in accordance with the established Project Schedule or within the Contract Time allowed; if he repeatedly fails to supply sufficient skilled workers or suitable materials or equipment; if he repeatedly fails to make prompt payment to subcontractors for labor, materials or equipment; if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction; if he disregards the authority of the Project Manager; or if he otherwise substantially violates any provisions of the Contract Documents, then the Utilities Commission may, without prejudice to any other right or remedy and after giving the Contractor and his Surety seven (7) days written notice, terminate the services of the Contractor and take possession of the Work and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and assign the completion of the Work to the Surety, or finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Amount exceeds the direct and indirect cost of completing the Work, including compensation for additional

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professional services, such excess shall be paid to the Contractor. If such cost exceeds such unpaid balance, the Contractor will pay the difference to the Utilities Commission. Such cost incurred by the Utilities Commission will be determined by the Utilities Commission and incorporated in a Change Order.

Where the Contractor's services have been so terminated by the Utilities Commission, said termination shall not affect any rights of the Utilities Commission against the Contractor then existing or which may thereafter accrue. Any retention or payment of moneys by the Utilities Commission due the Contractor will not release the Contractor from liability.

Upon Termination for Cause, the Contractor shall not be entitled to payment for any anticipated supplemental costs, administrative expenses and/or profit for uncompleted Work.

If after notice of termination of the services of the Contractor for cause, it is determined that the Contractor was not in default, the termination shall be deemed to have been for the convenience of the Utilities Commission. In such event the Contractor may recover from the Utilities Commission payment for Work completed and reasonable termination costs as provided in the following paragraph.

Termination for Convenience: Upon seven (7) days written notice to the Contractor and the Surety, or sooner if reasonable under the circumstances, the Utilities Commission may, without cause and without prejudice to any other right or remedy, elect to terminate any part of the Work, or the Contract in whole or in part, as the Utilities Commission may deem appropriate. In any termination for convenience, the Contractor shall be paid for Work completed by the Contractor and subcontractors at the time of termination provided, however, that the payment to the Contractor will exclude any and all anticipated supplemental costs, administrative expenses and profit for uncompleted Work. Upon termination for convenience, the Utilities Commission shall have full power and authority to take possession of the Work, assume any sub-agreements with Subcontractors and suppliers which the Utilities Commission selects, and prosecute the Work to completion by contract or as the Utilities Commission may deem expedient.

28. MAINTENANCE OF RECORDS

The Contractor will keep adequate records and supporting documents applicable to this contract. Said records and documentation will be retained by the Contractor for a minimum of five (5) years from the date of final payment on this Contract. The Utilities Commission and its authorized agents shall have the right to audit, inspect and copy records and documentation as often as the Utilities Commission deems necessary during the period of this contract and a period of five (5) years after completion of contract performance; provided however, such activity shall be conducted only during normal business hours. The Utilities Commission during the period of time defined by the preceding sentence shall also have the right to obtain a copy of and otherwise inspect any audit made at the direction of the Contractor as concerns the aforesaid records and documentation.

29. Conflict of Interest of Officers or Employees of the Contracting Entity/Local Jurisdiction, Members of the Local Governing Body, or Other Elected Officials

No member or employee of the contracting entity/local jurisdiction or its designees or agents; no member of the governing body; and no other public official of the Utilities Commission who exercises any function or responsibility with respect to this contract, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts, the language set forth in this paragraph prohibiting conflict of interest.

30. Employee Conflict of Interest- It shall be unethical for any Utilities Commission employee to participate directly or indirectly in a procurement contract when the Utilities Commission employee knows that:

(1) The Utilities Commission employee or any member of the Utilities Commission employee's immediate family has a financial interest in the procurement contract; or

(2) any other person, business, or organization with whom the Utilities Commission employee or any member of a Utilities Commission employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

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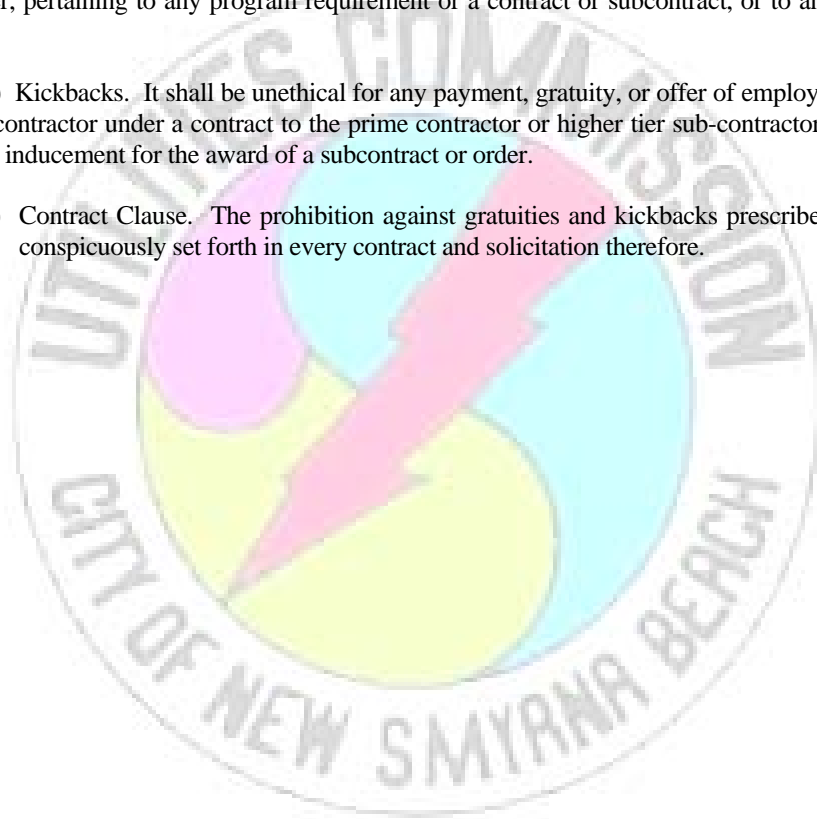
A Utilities Commission employee or any member of a Utilities Commission employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

31. Gratuities and Kickbacks.

(1) **Gratuities.** It shall be unethical for any person to offer, give, or agree to give any Utilities Commission employee or former Utilities Commission employee, or for any Utilities Commission employee or former Utilities Commission employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity Utilities Commission employee. The Commission in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

(2) **Kickbacks.** It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier sub-contractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(3) **Contract Clause.** The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefore.



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REFERENCES

Provide the business names, contact persons and telephone numbers of three (3) references for which the firm has provided the services described in this RFQ. Include relationships with utility and governmental agencies. It is our intent to contact these references during the award process. Award of this contract will be based on price AS WELL AS REFERENCES AND EXPERIENCE.

1. Name of Company: _____
Address: _____

Point of Contact: _____
Phone Number: _____
Dates of Service: _____

Service(s) Provided: _____

2. Name of Company: _____
Address: _____

Point of Contact: _____
Phone Number: _____
Dates of Service: _____

Service(s) Provided: _____

3. Name of Company: _____
Address: _____

Point of Contact: _____
Phone Number: _____
Dates of Service: _____

Service(s) Provided: _____

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VENDOR INFORMATION

In addition to General Conditions, your quote may be disqualified if the following vendor information is not returned with your quote.

Vendor is:

- () Corporation
- () Partnership
- () Sole Proprietorship
- () Other _____(Explain)

Federal Employer Identification
Number or Social Security Number: _____

Do you collect Florida State Sales Tax? ()Yes ()No

Firm Name: _____

Mailing Address: _____

Telephone Number: _____

Facsimile Number: _____

E-mail: _____ Web Address: _____

If vendor is bidding as a manufacturer's representative and the purchase order should be addressed to the manufacturer in care of the bidder, so indicate.

If remittance address is different from the mailing address so indicate below.

Firm Name: _____

Mailing Address: _____

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type.
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

Individual/sole proprietor or single-member LLC C Corporation S Corporation Partnership Trust/estate

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

Other (see instructions) ► _____

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See Instructions. Requester's name and address (optional)

6 City, state, and ZIP code

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									
				-					
OR									
Employer identification number									
				-					

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ►	Date ►
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
 - Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
 - Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
 - Form 1099-S (proceeds from real estate transactions)
 - Form 1099-K (merchant card and third party network transactions)
 - Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
 - Form 1099-C (canceled debt)
 - Form 1099-A (acquisition or abandonment of secured property)
- Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.
- If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

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GENERAL INFORMATION:

The Utilities Commission, City of New Smyrna Beach, Florida ("COMMISSION") is seeking a quote from a Licensed & Insure Contractor, to provide tank maintenance and testing of samples of diesel fuel from seventeen (17) tanks.

Locations will be throughout the UC service area and each must meet the following specifications:

SERVICES REQUIRED:

- 1 QUARTERLY OR AS NEEDED FUEL SAMPLING (LAB OR ON SITE) TO INCLUDE:
*D-1796 – WATER/SEDIMENT
*D-976 – CETANE INDEX
*D-1298 – DENSITY
*D-4868 – HEAT OF COMBUSTION
*D-4294 – SULFUR CONTENT**
- 2 FUEL ADDITIVES WHEN/WHERE NEEDED FOR CETANE BOOST, LUBRICITY, CORROSION INHIBITOR, STABILIZATION.**
- 3 FUEL TANK CLEANING AS NEEDED**
- 4 FUEL POLISHING, FILTRATION ANNUALLY OR AS NEEDED**
- 5 QUARTERLY REPORTING ON FUEL CONDITION AND SERVICES PERFORMED**

LOCATIONS AND TANKS W/ CAPACITY TO BE SERVICED:

- **1000 FIELD STREET:**
 - #1 30,000 gallons * 35' Vertical, Steel, Double Wall**
 - #2 30,000 gallons * 35' Vertical, Steel, Double Wall**
 - #3 30,000 gallons * 35' Vertical, Steel, Double Wall**
 - #11 1,500 gallons * AST, Horizontal, Steel, Double Wall**
 - #13 1,500 gallons * AST, Horizontal, Steel, Double Wall**
- **1151 FIELD STREET: 500 gallons * AST, Horizontal, Steel, Double Wall, Encased in 6+ inches of reinforced concrete. Convault**
- **413 SMITH STREET: 1,500 gallons * AST, Horizontal, Steel, Double Wall, Encased in 6+ inches of reinforced concrete. Del Zotto**
- **4510 STATE ROUTE A1A: 500 gallons * AST, Horizontal, Steel, Double Wall**

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- **728 EAST 3RD AVENUE: 500 gallons * AST, Horizontal, Steel, Double Wall, Encased in 6 inches of reinforced concrete. Convault**

- **1555 WEST CANAL STREET: 2,000 gallons * AST, Horizontal, Steel, Double Wall**

- **200 CANAL STREET: 400 gallons * AST, Horizontal, Steel, Double Wall, Belly Tank**

- **804 WAYNE AVENUE: 400 gallons * AST, Horizontal, Steel, Double Wall, Belly Tank. AM&PS Deltona**

- **2640 PAIGE AVENUE:**
 - #1 1,000 gallons * AST, Horizontal, Steel, Double Wall**
 - #2 5,000 gallons * AST, Vertical, Steel, Double Wall, Encased in 6+ inches of reinforced concrete. Del Zotto**

- **2802 GIBRALTAR BOULEVARD: 500 gallons * AST, Horizontal, Steel, Double Wall, Encased in 6+ inches of reinforced concrete.**

- **3119 STATE ROUTE 44: (WRF) 4,000 gallons * AST, Horizontal, Steel, Double Wall**

- **203 WILLIAMSON BOULEVARD: (HEB) 1,000 gallons * AST, Horizontal, Steel, Double Wall, Encased in 6+ inches of reinforced concrete.**

Contract Terms one (1) Year contract with three (3) additional one-year renewal terms.

Quotes are due on or before Friday April 17, 2020 2:30pm

Quotes can be faxed to 386-424-2748 or email to cfisher@ucnsb.org

Thank you

Caleb Fisher
Procurement Supervisor

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The COMMISSION reserves the right to waive informalities in any bid, to reject any and all bids in whole or part, with or without cause, and/or accept the bids or portions thereof that in its judgment will be for the best interest of the COMMISSION.

VENDOR NAME _____

Spec No.	Description	Unit	Qty	Unit Price
1	Fuel Sampling and Testing Per Tank	EA	17	\$
2	Fuel Additive Treatment 30,000 Gallon Tank	EA	3	\$
2	Fuel Additive Treatment 5,000 Gallon Tank	EA	1	\$
2	Fuel Additive Treatment 4,000 Gallon Tank	EA	1	\$
2	Fuel Additive Treatment 2,000 Gallon Tank	EA	1	\$
2	Fuel Additive Treatment 1,500 Gallon Tank	EA	3	\$
2	Fuel Additive Treatment 1,000 Gallon Tank	EA	2	\$
2	Fuel Additive Treatment 500 Gallon Tank	EA	4	\$
2	Fuel Additive Treatment 400 Gallon Tank	EA	2	\$
3	Fuel Tank Cleaning 30,000 Gallon Tank	EA	3	\$
3	Fuel Tank Cleaning 5,000 Gallon Tank	EA	1	\$
3	Fuel Tank Cleaning 4,000 Gallon Tank	EA	1	\$
3	Fuel Tank Cleaning 2,000 Gallon Tank	EA	1	\$
3	Fuel Tank Cleaning 1,500 Gallon Tank	EA	3	\$
3	Fuel Tank Cleaning 1,000 Gallon Tank	EA	2	\$
3	Fuel Tank Cleaning 500 Gallon Tank	EA	4	\$
3	Fuel Tank Cleaning 400 Gallon Tank	EA	2	\$

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Spec No.	Description	Unit	Qty	Unit Price
4	Fuel Polishing/Filtration 30,000 Gallon Tank	EA	3	\$
4	Fuel Polishing/Filtration 5,000 Gallon Tank	EA	1	\$
4	Fuel Polishing/Filtration 4,000 Gallon Tank	EA	1	\$
4	Fuel Polishing/Filtration 2,000 Gallon Tank	EA	1	\$
4	Fuel Polishing/Filtration 1,500 Gallon Tank	EA	3	\$
4	Fuel Polishing/Filtration 1,000 Gallon Tank	EA	2	\$
4	Fuel Polishing/Filtration 500 Gallon Tank	EA	4	\$
4	Fuel Polishing/Filtration 400 Gallon Tank	EA	2	\$
5	Fuel Condition and Service Reporting Per Tank	EA	17	\$

The Utilities Commission reserves the right to waive informalities in any quotation, to reject any and all quotations in whole or in part, with or without cause, and/or accept the quotations or portions thereof that in its judgment will be in the best interest of the Utilities Commission. The quotation shall be valid for award within sixty (60) days from the date of opening unless specified otherwise.

Submitted By:
Name of Company: _____ Please Print

Name & Title: _____ Please Print

Signature: _____

Telephone No. _____ **Facsimile No.** _____

E-Mail: _____

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AGREEMENT FOR FUEL TESTING AND TANK MAINTENANCE SERVICES

THIS AGREEMENT FOR CONTINUING PROFESSIONAL SERVICES (“AGREEMENT”) is made and entered into this _____ day of _____, 20____, by and between the **UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA**, (hereafter "**COMMISSION**"), located at 200 Canal Street, New Smyrna Beach, Florida 32168, and _____, (hereafter "**SERVICE PROVIDER**"), located at _____.

RECITALS

1. The **COMMISSION** was created by special act of the Florida Legislature as a political subdivision of the State of Florida with certain powers, authorities, and duties related to the provision of water, wastewater, reclaimed water, and electric utility services, including the authority to enter into contracts .
2. The **COMMISSION** wishes to obtain **Fuel Testing & Tank Maintenance** services.
3. The **SERVICE PROVIDER** is willing to provide such services.

ACCORDINGLY, for and in consideration of the Recitals hereof, the mutual undertakings and agreements herein contained and assumed, and other good and valuable consideration the receipt and sufficiency of which are acknowledged by the Parties, the Parties hereby covenant and agree as follows:

SECTION 1. RECITALS. The above Recitals are true and correct and form a material part of this Agreement.

SECTION 2. TERM. This Agreement is to be become effective upon execution by both parties. The initial term shall be for **ONE**(1) year(s). Additionally, the parties agree that this Agreement may be renewed beyond the initial term, up to **Three** (3) additional one year periods upon mutual agreement in writing. Either party may elect to terminate the Agreement by giving written notice prior to **THIRTY DAYS (30)**.

SECTION 3. DESCRIPTION OF SERVICES. **SERVICE PROVIDER** agrees to perform **Fuel Testing & Tank Maintenance** services as specified in Exhibit “A” attached to and incorporated into this Agreement.

SECTION 4. CHANGES IN THE SCOPE OF WORK.

4.1 COMMISSION may make changes in the services at any time by giving written notice to **SERVICE PROVIDER**. If such changes increase, decrease or eliminate any amount of work, **COMMISSION** and **SERVICE PROVIDER** will negotiate any change in total cost or schedule modifications. If **COMMISSION** approves, **COMMISSION** shall amend the Scope of Services to reflect the modifications; and **SERVICE PROVIDER** shall

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be compensated for said services in accordance with the terms of Section 5 herein. All change orders shall be in writing and executed by both **COMMISSION'S** designated representative and the **SERVICE PROVIDER**.

4.2 All of **COMMISSION'S** said Scope of Services and amendments thereto shall be performed in strict accordance with the terms of this Agreement insofar as they are applicable.

SECTION 5. SCHEDULE AND PERIOD OF PERFORMANCE.

5.1 **SERVICE PROVIDER** shall perform its services in conformance with the agreed upon schedule. **SERVICE PROVIDER** shall complete all of said services in a timely manner and will keep **COMMISSION** apprised of the status of work on a monthly basis. Should **SERVICE PROVIDER** fall behind the agreed-upon schedule, it shall employ such resources so as to comply with the agreed-upon schedule.

5.2 No extension for completion of services shall be granted to **SERVICE PROVIDER** without **COMMISSION'S** prior written consent, except as provided in Sections 4.1 and 22.1 herein.

SECTION 6. COMPENSATION FOR SERVICES. **COMMISSION** agrees to compensate **SERVICE PROVIDER** for services properly performed at the **Per Unit** rates of (Insert Tab Sheet Here)

SECTION 7. PAYMENT; INVOICES.

7.1 Invoices for **SERVICE PROVIDER'S** services shall be submitted to the **COMMISSION** at monthly intervals for services rendered during the previous period. Each invoice shall delineate the period in which the services were rendered; shall include a summary of the progress to date as a percentage of the major phases of the work. Each invoice shall be certified as correct by a duly authorized representative of **SERVICE PROVIDER**. The bill[s] shall identify the services completed and the amount charged.

7.2 **COMMISSION** or its authorized representative shall have the right, at all reasonable times, at its own expense, to inspect and audit the books and records of **SERVICE PROVIDER** insofar as they pertain to the direct charges payable by **COMMISSION** under this Agreement and such audit is performed within three (3) years after the expiration of this Agreement. The composition of fixed rates will not be subject to audit.

7.3 All invoices shall be due and payable thirty (30) days from receipt thereof by **COMMISSION**, subject to **COMMISSION'S** right to contest, in good faith, all or any part of the charges set forth therein. Payment of invoices shall not be unreasonably withheld by **COMMISSION**, but the **COMMISSION** reserves the right to reject any statement which fails to adequately describe the services rendered by **SERVICE**

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PROVIDER. Upon written notice to **SERVICE PROVIDER**, payment may be withheld, in whole or in part, for **SERVICE PROVIDER'S** failure to comply with a term, condition or requirement of this Agreement. **SERVICE PROVIDER** will help effect resolution and transmit a revised invoice as necessary. Thereafter, the withheld amount(s) shall be paid upon **SERVICE PROVIDER'S** satisfactory demonstration of compliance to the **COMMISSION**. Amounts not questioned by **COMMISSION** shall be promptly paid to **SERVICE PROVIDER** in accordance with the above payment procedures.

SECTION 8. RIGHT TO INSPECTION. **COMMISSION** or its affiliates shall at all times have the right to review or observe the services performed by **SERVICE PROVIDER**. No inspection, review, or observation shall relieve **SERVICE PROVIDER** of its responsibility under this Agreement.

SECTION 9. COMMERCIAL WARRANTY. The **SERVICE PROVIDER** agrees that the supplies and services furnished under this award shall be covered by the most favorable commercial warranties the **SERVICE PROVIDER** gives any customers for comparable quantities of such supplies or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the **COMMISSION** by any other provision of this award.

SECTION 10. INSPECTION AND ACCEPTANCE. A duly authorized representative of **COMMISSION** will accomplish inspection and acceptance of the supplies/services purchased herein at the designated delivery point.

SECTION 10. SAFETY. To the extent the **COMMISSION'S** safety standards do not violate other County, State or Federal standards, **SERVICE PROVIDER** agrees to comply with **COMMISSION'S** safety standards while on the property of the **COMMISSION**. **SERVICE PROVIDER** shall have full responsibility and assume all liability for the safety and supervision of its employees while performing services provided hereunder.

SECTION 11. INSURANCE.

11.1 SERVICE PROVIDER shall maintain in force during the term of this Agreement, at its own expense, public liability insurance and other insurance coverage as set forth in Exhibit "B" which is hereby made a part of this Agreement.

11.2 SERVICE PROVIDER and **COMMISSION** waive all rights against each other and their respective directors, officers, partners, commissioners, officials, agents, subcontractors, **SERVICE PROVIDERS**, and employees for damages covered by any type of property insurance during and after the completion of the services. A similar provision shall be incorporated into all construction contractual arrangements entered into by **COMMISSION** and shall protect **COMMISSION** and **SERVICE PROVIDER** to the

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same extent. All project contractors shall be required to include **COMMISSION** and **SERVICE PROVIDER** as additional insureds on their general liability insurance policies.

SECTION 12. STANDARDS OF CONDUCT; COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS.

12.1 The **SERVICE PROVIDER** warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the **SERVICE PROVIDER** to solicit or secure this Agreement, and that he has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the **SERVICE PROVIDER** any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.

12.2 The **SERVICE PROVIDER** covenants that it or any of its employees presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any manner or degree with performance of services hereunder.

12.3 The **SERVICE PROVIDER** agrees that it and its employees shall be bound by the Standards of Conduct provided in Section 112.313, Florida Statutes, as it relates to services performed under this Agreement, which standards will by reference be made a part of this Agreement as though set forth in full. The **SERVICE PROVIDER** agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the services performed.

12.4 The **SERVICE PROVIDER** shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.

12.5 The **SERVICE PROVIDER** warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the **SERVICE PROVIDER** to solicit or secure this agreement and that he has not paid or agreed to pay any person, company, corporations, individual, or firm, other than a bona fide employee working solely for the **SERVICE PROVIDER** any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this agreement.

12.6 **SERVICE PROVIDER** is subject to the provisions of Section 287.133(2)(a), Florida Statutes, on Public Entity Crimes.

SECTION 13. SERVICE PROVIDER'S REPRESENTATIONS. On behalf of its employees, agents, servants and contractors, **SERVICE PROVIDER** represents and warrants to the **COMMISSION** each of the following:

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13.1 SERVICE PROVIDER represents that the services provided hereunder shall conform to all requirements of this Agreement; shall be consistent with recognized and sound consulting practices and procedures; and shall conform to the professional standards of care, skill, and diligence appropriate to the nature of the services rendered.

13.2 SERVICE PROVIDER represents that the personnel furnishing such services shall be qualified and competent to perform the services assigned to them and that such guidance given by and the recommendations and performance of such personnel shall reflect their best personal knowledge and judgment.

13.3 SERVICE PROVIDER represents that if **SERVICE PROVIDER**, through its negligent acts, errors, or omissions, causes any injury to **COMMISSION** or causes any physical damage to, or destruction of, any of **COMMISSION's** property during the term of this Agreement, it shall be liable for said injuries and/or damages, including reasonable attorney fees and costs incurred as a result therefrom.

13.4 SERVICE PROVIDER represents that none of **SERVICE PROVIDER's** principals or the immediate family of **SERVICE PROVIDER's** principals has a compensation arrangement of any kind with City. For purposes of this subsection, the term "immediate family" shall include a spouse, natural or adoptive parent, child or sibling, stepparent, stepchild, stepbrother or stepsister, father-in-law, mother-in-law, grandparent, grandchild or spouse of a grandparent or grandchild. For purposes of this subsection, compensation shall be defined as any type of remuneration directly or indirectly, overtly or covertly, paid in cash or in kind.

13.5 SERVICE PROVIDER represents that it is not undergoing any type of audit by a public or private, state or regulatory body or auditing entity.

13.6 SERVICE PROVIDER represents that it and its principals have not engaged in, and during the term of this Agreement agree not to engage in, any activities prohibited under the federal anti-kickback laws (42 U.S.C. 1320a-7, 1320a-7a, 1320a-7b), the regulations promulgated pursuant to such federal statutes, related state or local statutes or regulations, or rules of professional conduct.

13.7 Should **SERVICE PROVIDER** breach the representations set forth above, **COMMISSION** shall have such remedies as are set forth in this Agreement. To the extent an applicable remedy is not provided herein, both Parties shall have all such remedies as allowed under the laws of the State of Florida. Additionally, without limiting the generality of the foregoing, if prior to the expiration of two (2) years from the date **SERVICE PROVIDER** completes its services hereunder, **SERVICE PROVIDER'S** services are negligent or erroneous and **COMMISSION** notifies **SERVICE PROVIDER** in writing that a negligent error or omission has been discovered in **SERVICE PROVIDER'S** services, **SERVICE PROVIDER** shall correctly perform such negligent services at no additional cost to **COMMISSION** and within a reasonable time period.

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SECTION 14. GUARANTEE AGAINST INFRINGEMENT. SERVICE PROVIDER guarantees that all services provided under this Agreement shall be free from claims of patent, copyright, and trademark infringement. **SERVICE PROVIDER** shall indemnify, hold harmless, and defend **COMMISSION**, its officers, directors, employees, agents, assigns, and servants from and against any and all liability, including expenses, legal or otherwise, for actual or alleged infringement of any patent, copyright, or trademark resulting from the use of any goods, services, or other item delivered under this Agreement.

SECTION 15. INDEMNIFICATION. SERVICE PROVIDER shall defend, indemnify, and hold harmless the **COMMISSION**, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with **SERVICE PROVIDER'S** negligent performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from Agreements between the **SERVICE PROVIDER** and third parties made pursuant to this Agreement. **SERVICE PROVIDER** shall reimburse the **COMMISSION** for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with **SERVICE PROVIDER'S** performance or non-performance of this Agreement. This section shall be interpreted and construed in a manner to comply with any applicable Florida Statutes, including without limitation Sections 725.06 and 725.08, Fla. Stat., if applicable. The provisions of this section shall survive termination of this Agreement. Ten dollars (\$10) of the payments made by the **COMMISSION** constitute separate, distinct, and independent consideration for the granting of this indemnification, the receipt and sufficiency of which is voluntary and knowingly acknowledged by the **SERVICE PROVIDER**.

SECTION 16. AUDIT; PUBLIC RECORDS RETENTION; DOCUMENTS; OWNERSHIP.

16.1 Upon **COMMISSION'S** or its designated Project Leader's request, at any time during the term of this Agreement or upon completion or termination of this Agreement, **SERVICE PROVIDER** shall provide **COMMISSION** or its designated Project Leader with a copy of all documents prepared by **SERVICE PROVIDER** under this Agreement. Documents shall be original and PDF versions.

16.2 The parties acknowledge that the **COMMISSION** is a part of the government of the City of New Smyrna Beach, Florida, and subject to the Florida Public Records Law. **SERVICE PROVIDER** has been advised the **COMMISSION** that all its activities are subject to the Public Records Law (Chapter 119, Florida Statutes) and the Sunshine Law (Section 286.011, Florida Statutes), and agrees to maintain all records necessary to comply with the requirement of such laws, and for the proper supervision of the services performed pursuant to this Agreement. **SERVICE PROVIDER** agrees to comply with all **COMMISSION** policies and procedures in observing the requirement of said laws. **SERVICE PROVIDER** shall allow public access to all documents, papers,

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letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by the **SERVICE PROVIDER** in conjunction with this **AGREEMENT**. Specifically, the **SERVICE PROVIDER** must:

(1) Keep and maintain public records that ordinarily and necessarily would be required by the **COMMISSION** in order to perform the services being performed by the **SERVICE PROVIDER**.

(2) Provide the public with access to public records on the same terms and conditions that the **COMMISSION** would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(4) Meet all requirements for retaining public records and transfer, at no cost, to the **COMMISSION** all public records in possession of the **SERVICE PROVIDER** upon termination of the **AGREEMENT** and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the **COMMISSION** in a format that is compatible with the information technology systems of the **COMMISSION**.

The **SERVICE PROVIDER** shall promptly provide the **COMMISSION** with a copy of any request to inspect or copy public records in possession of the **SERVICE PROVIDER** and shall promptly provide the **COMMISSION** a copy of the **SERVICE PROVIDER'S** response to each such request. Failure to grant such public access will be grounds for immediate termination of this **AGREEMENT** by the **COMMISSION**.

16.3 COMMISSION shall have the right to audit the books, records and accounts of **SERVICE PROVIDER** that are related to the performance of Services pursuant to this Agreement. **SERVICE PROVIDER** shall keep such books, records and accounts as may be necessary in order to record complete and correct entries related to this Agreement. **SERVICE PROVIDER** shall preserve and make available, at reasonable times for examination and audit by **COMMISSION**, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or if the Florida Public Records Act is not applicable for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by **COMMISSION** to be applicable to **SERVICE PROVIDER'S** records, **SERVICE PROVIDER** shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by **SERVICE PROVIDER**. Any incomplete or incorrect entry in such books, records and accounts shall be a basis for **COMMISSION**

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disallowance and/or recovery of any payment upon such entry. The **SERVICE PROVIDER** shall retain all records relating to this Agreement for five years after the **COMMISSION** makes final payment and all other pending matters are closed.

16.4 Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of **COMMISSION**. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by **SERVICE PROVIDER**, whether finished or unfinished, shall become the property of **COMMISSION** and shall be delivered by **SERVICE PROVIDER** to the **COMMISSION** within seven (7) days of termination of this Agreement by either party. Any compensation due to **SERVICE PROVIDER** may be withheld until all documents are received as provided herein.

SECTION 17. ASSIGNMENT

17.1 **SERVICE PROVIDER** shall not assign or subcontract this Agreement or any rights or any monies due or to become due hereunder without the prior, written consent of **COMMISSION**. All requirements to be observed by the **SERVICE PROVIDER** shall be observed by all subcontractors.

17.2 If upon receiving written approval from **COMMISSION**, any part of this Agreement is subcontracted by **SERVICE PROVIDER**, **SERVICE PROVIDER** shall be fully responsible to **COMMISSION** for all acts and/or omissions performed by the subcontractor as if no subcontract had been made.

17.3 If **COMMISSION** determines that any subcontractor is not performing in accordance with this Agreement, **COMMISSION** shall so notify **SERVICE PROVIDER** who shall take immediate steps to cancel the subcontract, or correct the deficiency. **COMMISSION** shall also be given permission to communicate directly to the subcontractor, which communication shall not constitute interference with contractor/subcontractor relationship, provided that **COMMISSION** notifies **SERVICE PROVIDER** in writing of said communication.

17.4 If any part of this Agreement is subcontracted by **SERVICE PROVIDER** prior to commencement of any work by the subcontractor, **SERVICE PROVIDER** shall require the subcontractor to provide **COMMISSION** with insurance coverage as set forth by Section 11 and Exhibit "B".

SECTION 18. INDEPENDENT CONTRACTOR. The parties intend that an independent contractor relationship will be created by this Agreement. It is understood that **COMMISSION** does not agree to use **SERVICE PROVIDER** exclusively. It is further understood that **SERVICE PROVIDER** is free to contract for similar services to be performed for others while under contract with **COMMISSION**. The parties expressly acknowledge that **SERVICE PROVIDER** is an independent SERVICE PROVIDER, and nothing contained in this Agreement will be deemed or construed to create a partnership or joint venture between **COMMISSION** and **SERVICE PROVIDER** or any other

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relationship between the parties. Additionally, nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship, or to allow **COMMISSION**, or its agents, representative, or employees, to exercise control or direction over the manner or method by which **SERVICE PROVIDER** performs any services which are the subject of this Agreement.

SECTION 19. AUTHORIZATION. **SERVICE PROVIDER** shall not, without authorization first being given by **COMMISSION**: a) Use or pledge money or credit of the **COMMISSION**, except in the usual and regular course of business and on account of or for the benefit of the **COMMISSION**; b) Release or discharge any debt due to **COMMISSION** without receiving the full amount thereof; c) Commit any act causing seizure or attachment of the **COMMISSION'S** property; or d) Cause **COMMISSION** to become a guarantor, surety, or endorser, or give any note which obligates the **COMMISSION**.

SECTION 20. TAXES. **SERVICE PROVIDER** shall assume full responsibility for payment of all federal, state, and local taxes or contributions imposed or required under unemployment insurance, Social Security, and income tax laws, with respect to **SERVICE PROVIDER'S** performance of this Agreement.

SECTION 21. DEFAULT. If, during the term of this Agreement, **SERVICE PROVIDER** shall be in default of any provision of this Agreement, **COMMISSION** may suspend its payment or performance hereunder until such delinquency or default has been corrected; provided, however, that no suspension shall be effective unless and until **COMMISSION** gives notice of the default to **SERVICE PROVIDER** with at least ten (10) days to cure such default.

SECTION 22. TERMINATION. Notwithstanding any other provision of this Agreement, **COMMISSION** may, upon fifteen (15) days written notice to **SERVICE PROVIDER**, terminate this Agreement if: (a) **SERVICE PROVIDER** is adjudged to be bankrupt; (b) **SERVICE PROVIDER** makes a general assignment for the benefit of its creditors; (c) **SERVICE PROVIDER** fails to comply with any of the conditions or provisions of this Agreement; or (d) **SERVICE PROVIDER** is experiencing a labor dispute which threatens to have a substantial, adverse impact upon performance of this Agreement, without prejudice to any other right or remedy **COMMISSION** may have under this Agreement; or (e) when deemed by the **COMMISSION** (in its sole discretion) is in the best interest of the **COMMISSION**. In the event of such termination, **COMMISSION** shall be liable only for the payment of all unpaid charges, determined in accordance with the provisions of this Agreement, for work properly performed prior to the effective date of termination.

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SECTION 23. FORCE MAJEURE. Any delay or failure of either party in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God; fire; flood; windstorm; explosion; riot; war; sabotage; strikes; extraordinary breakdown or damage to **COMMISSION's** generating plants, their equipment, or facilities; court injunction or order; federal and/or state law or regulation; order by any regulatory agency; or cause or causes beyond the control of the party affected; provided that prompt notice of such delay is given by such party to the other and each of the parties hereunto shall be diligent in attempting to remove such cause or causes.

SECTION 24. NOTICE. Any notices required to be given by the terms of this Agreement shall be delivered by hand or mailed, postage prepaid, to:

For SERVICE PROVIDER:

For COMMISSION:

Utilities Commission, City of New Smyrna Beach, Florida
Attention: Materials Manager
P.O. Box 100
New Smyrna Beach, FL 32170-0100
(386) 427-1361

SECTION 25. GOVERNING LAW. This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of Florida.

SECTION 26. SEVERABILITY. In the event any portion of part of this Agreement is deemed invalid, against public policy, void, or otherwise unenforceable by a court of competent jurisdiction, the parties shall negotiate an equitable adjustment in the affected provision of this Agreement. The validity and enforceability of the remaining parts thereof shall otherwise be fully enforceable.

SECTION 27. WAIVER AND ELECTION OF REMEDIES.

27.1 Waiver by **COMMISSION** of any term, condition, or provision of this Agreement shall not be considered a waiver of any term, condition, or provision in the future.

27.2 No waiver, consent, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party hereto.

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27.3 Notwithstanding any other provision of this Agreement, the provisions of Sections 14, 15 and 16 shall survive the termination or expiration of this Agreement.

SECTION 28. THIRD PARTY RIGHTS. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than **COMMISSION** and **SERVICE PROVIDER**.

SECTION 29. LIMITATION OF LIABILITY. To the fullest extent permitted by law, **SERVICE PROVIDER'S** total liability for any and all claims, losses, damages and expenses resulting in any way from this Agreement shall not exceed the total compensation received by **SERVICE PROVIDER** under the applicable Scope of Services notwithstanding the fault, tort (including negligence), strict liability or other basis of legal liability of the **SERVICE PROVIDER** and shall extend to its officers, directors, employees, licensors, agents, subcontractors, vendors and related entities.

SECTION 30. CONSEQUENTIAL DAMAGES. Notwithstanding any provision in this Agreement to the contrary, and to the fullest extent permitted by law, **SERVICE PROVIDER** shall not be liable to **COMMISSION** for loss of profits, revenue, use, opportunity, and goodwill; cost of substitute facilities, goods, and services; cost of capital; and increased operating costs.

SECTION 31. ENTIRE AGREEMENT. This Agreement, including Exhibits "A" and "B" constitutes the entire agreement between **COMMISSION** and **SERVICE PROVIDER** with respect to the services specified and all previous representations relative thereto, either written or oral, are hereby annulled and superseded.

SECTION 32. JOINT PREPARATION. Preparation of this Agreement has been a joint effort of **COMMISSION** and **SERVICE PROVIDER** and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

COMMISSION:

SERVICE PROVIDER:

UTILITIES COMMISSION, CITY OF
NEW SMYRNA BEACH, FLORIDA

By: _____

By: _____

Director of Finance/CFO

Its: _____

ATTEST: _____

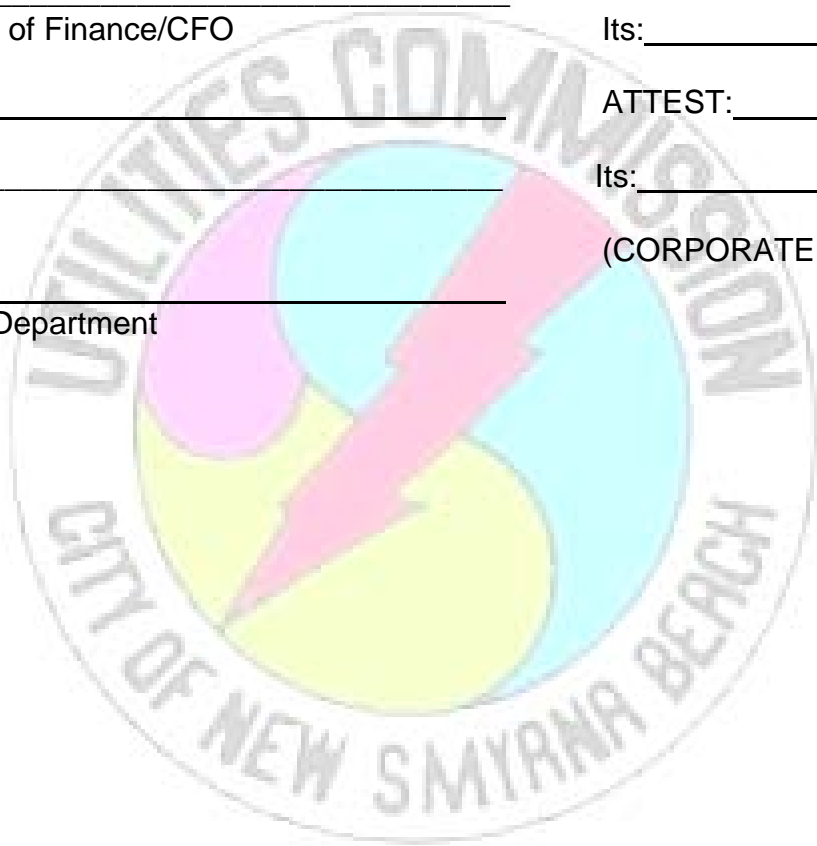
ATTEST: _____

By: _____

Its: _____

(CORPORATE SEAL)

Director of Department



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EXHIBIT "A": SCOPE OF WORK

The Utilities Commission, City of New Smyrna Beach, Florida ("COMMISSION") is seeking a quote from a Licensed & Insure Contractor, to provide tank maintenance and testing of samples of diesel fuel from seventeen (17) tanks.

Locations will be throughout the UC service area and each must meet the following specifications:

SERVICES REQUIRED:

- 6 QUARTERLY OR AS NEEDED FUEL SAMPLING (LAB OR ON SITE) TO INCLUDE:
*D-1796 – WATER/SEDIMENT
*D-976 – CETANE INDEX
*D-1298 – DENSITY
*D-4868 – HEAT OF COMBUSTION
*D-4294 – SULFUR CONTENT**
- 7 FUEL ADDITIVES WHEN/WHERE NEEDED FOR CETANE BOOST, LUBRICITY, CORROSION INHIBITOR, STABILIZATION.**
- 8 FUEL TANK CLEANING AS NEEDED**
- 9 FUEL POLISHING, FILTRATION ANNUALLY OR AS NEEDED**
- 10 QUARTERLY REPORTING ON FUEL CONDITION AND SERVICES PERFORMED**

LOCATIONS AND TANKS W/ CAPACITY TO BE SERVICED:

- **1000 FIELD STREET:**
 - #1 30,000 gallons * 35' Vertical, Steel, Double Wall**
 - #2 30,000 gallons * 35' Vertical, Steel, Double Wall**
 - #3 30,000 gallons * 35' Vertical, Steel, Double Wall**
 - #11 1,500 gallons * AST, Horizontal, Steel, Double Wall**
 - #13 1,500 gallons * AST, Horizontal, Steel, Double Wall**
- **1151 FIELD STREET: 500 gallons * AST, Horizontal, Steel, Double Wall, Encased in 6+ inches of reinforced concrete. Convault**
- **413 SMITH STREET: 1,500 gallons * AST, Horizontal, Steel, Double Wall, Encased in 6+ inches of reinforced concrete. Del Zotto**
- **4510 STATE ROUTE A1A: 500 gallons * AST, Horizontal, Steel, Double Wall**

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- **728 EAST 3RD AVENUE: 500 gallons * AST, Horizontal, Steel, Double Wall, Encased in 6 inches of reinforced concrete. Convault**

- **1555 WEST CANAL STREET: 2,000 gallons * AST, Horizontal, Steel, Double Wall**

- **200 CANAL STREET: 400 gallons * AST, Horizontal, Steel, Double Wall, Belly Tank**

- **804 WAYNE AVENUE: 400 gallons * AST, Horizontal, Steel, Double Wall, Belly Tank. AM&PS Deltona**

- **2640 PAIGE AVENUE:**
 - #1 1,000 gallons * AST, Horizontal, Steel, Double Wall**
 - #2 5,000 gallons * AST, Vertical, Steel, Double Wall, Encased in 6+ inches of reinforced concrete. Del Zotto**

- **2802 GIBRALTAR BOULEVARD: 500 gallons * AST, Horizontal, Steel, Double Wall, Encased in 6+ inches of reinforced concrete.**

- **3119 STATE ROUTE 44: (WRF) 4,000 gallons * AST, Horizontal, Steel, Double Wall**

- **203 WILLIAMSON BOULEVARD: (HEB) 1,000 gallons * AST, Horizontal, Steel, Double Wall, Encased in 6+ inches of reinforced concrete.**

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EXHIBIT "B": INSURANCE REQUIREMENTS

I. INSURANCE: Except as otherwise specified in this contract, the **SERVICE PROVIDER** and its subcontractors of any tier will be required at their own expense to maintain in effect at all times during the performance of the work insurance coverage with limits set forth below with insurers and under forms of policies satisfactory to the **COMMISSION**. It shall be the responsibility of the **SERVICE PROVIDER** and its subcontractors to maintain adequate insurance coverage and to assure that subcontractors are adequately insured at all times. Failure of the **SERVICE PROVIDER** and its subcontractors to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation.

The **SERVICE PROVIDER** and its subcontractors shall furnish to the **COMMISSION** such Certificates of Insurance or endorsements required by the provisions set forth herein, which Certificates of Insurance shall name the **COMMISSION** as Additional Insured. All Certificates of Insurance must be provided by an acceptable insurance carrier to the **COMMISSION** and that the carrier should have no less rating than A - X by A.M. Best and Company. **COMMISSION** reserves the right to accept or decline carrier providing coverage.

II. CERTIFICATES OF INSURANCE: At the time of the execution of this contract and each subcontract, but in any event, prior to commencing work, the **SERVICE PROVIDER** and its subcontractors shall furnish the **COMMISSION** with Certificates of Insurance as evidence that the policies providing the required coverages and limits of insurance are in full force and effect. The Certificates shall provide that any company issuing an insurance policy for the work under this contract shall provide not less than thirty (30) days' advance notice to the **COMMISSION** in writing of cancellation, non-renewal, or material change in the policy of insurance. In addition, the **SERVICE PROVIDER** shall immediately provide written notice to the **COMMISSION** upon receipt of notice of cancellation of an insurance policy or a decision to terminate or alter any insurance policy. All Certificates of Insurance shall clearly state that all applicable requirements have been satisfied including certification that the Comprehensive General Liability policies are of the "occurrence form". Certificates of Insurance for **SERVICE PROVIDER** and subcontractor-furnished insurance and notices of any cancellations, terminations, or alterations of such policies shall be mailed to the **COMMISSION's** office, ATTN: Materials Manager, at P.O. Box 100, New Smyrna Beach, Florida 32170-0100.

III. ADDITIONAL INSURED: All insurance coverages (except Workers' Compensation and Professional Liability) furnished under this contract shall include the **SERVICE PROVIDER**, the **COMMISSION** and its commissioners, officials, directors, officers, agents, and employees as Additional Insured's with respect to the activities of the **SERVICE PROVIDER** and its subcontractors.

These policies shall contain a "cross-liability" or "severability of interest" clause or endorsement. Notwithstanding any other provisions of these policies, the insurance afforded shall apply separately to each insured, named insured, or Additional Insured with

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respect to any claim, suit, or judgment made or brought by or for any other insured, named insured, or Additional Insured as though a separate policy had been issued to each, except the insurer's liability shall not be increased beyond the amount or amounts for which the insurer would have been liable had only one insured been named.

IV. WAIVER OF SUBROGATION: The **SERVICE PROVIDER** and its subcontractors shall require their insurance carrier, with respect to all insurance policies, to waive all rights of subrogation against the **COMMISSION**, its commissioners, officials, directors, officers, agents, and employees.

V. COMPREHENSIVE GENERAL LIABILITY: This insurance shall be an occurrence-type policy written in comprehensive form and shall protect the **SERVICE PROVIDER** and its subcontractors and the Additional Insured's against all claims arising from bodily injury, sickness, disease, or death of any person other than the **SERVICE PROVIDER'S** employees or damage to property of the **COMMISSION** or others arising out of the act or omission of the **SERVICE PROVIDER** or its subcontractors or their agents, employees, or subcontractors. This policy shall include protection against claims insured by usual Personal Injury Liability coverage and an endorsement (Protective Liability) to insure the contractual liability assumed by the **SERVICE PROVIDER** and its subcontractors under the Section entitled "Indemnification," as well as Completed Operations, Products Liability, Contractual Liability, Broad Form Property Coverage, Premises/Operations, and Independent Contractors.

Combined Single Limit: \$1,000,000 per claim and annual aggregate of \$2,000,000.

VI. COMPREHENSIVE AUTOMOBILE LIABILITY: This insurance shall be written in the comprehensive form and shall protect the **SERVICE PROVIDER** and its subcontractors and the Additional Insured's against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. The liability shall not be less than:

Combined Single Limit: \$1,000,000 per claim and annual aggregate of \$2,000,000.

VII. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY: The insurance shall protect the **SERVICE PROVIDER** and its subcontractors against all claims under applicable state workers' compensation laws. The insured shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of workers' compensation laws. This policy shall include an all-states endorsement. The liability limits shall not be less than:

Workers' Compensation: Statutory

Employers' Liability: \$100,000 each accident;
\$500,000 disease policy limit;
and

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\$100,000 disease, each employee.

VIII. PROFESSIONAL LIABILITY: Professional Liability insurance shall be provided in an amount of \$100,000.

