
CITY OF OCALA

CITY COUNCIL REPORT

Council Meeting Date: 09/01/20

Subject: Three Years Renewal -Continuing Contract to Rent Small Equipment - Sunbelt

Submitted By: Shay Roberts

Department: Business & Financial Services

STAFF RECOMMENDATION (Motion Ready): Approve Agenda Item (ID # 14978) three-year renewal of continuing contract for citywide small equipment rentals as needed from Sunbelt Rentals, Inc. located in Ocala, Florida

OCALA'S RELEVANT STRATEGIC GOALS: Fiscally Sustainable

PROOF OF PUBLICATION: N/A

BACKGROUND:

Various City departments have periodic equipment deficiencies which cause the immediate need to rent small equipment from local vendors. Renting equipment provides the City with cost savings over purchasing equipment to fill temporary needs, however standard corporate rental agreements do not provide the City with contractual protection from issues arising out of these rentals.

The City drafted an agreement with Sunbelt Rentals, Inc. to provide the contractual protection recommended by the City Attorney. The City is offering any local rental equipment vendor the opportunity to establish a continuing contract with the City, so departments may have a range of different equipment and vendors to choose from as needed.

FINDINGS AND CONCLUSIONS:

The Procurement Department requests permission to enter into agreement with Sunbelt Rentals to provide the City with small equipment rentals on an as needed basis. This continuing contract established an efficient means for City employees to rent small equipment, while contractually protecting the City from clauses and omissions in standard corporate rental agreement terms and conditions.

Additionally, the City will avoid unnecessary costs of having to buy equipment to have on hand for occasional use, when we can rent equipment instead. Staff is requesting a three-year renewal of this contract.

FISCAL IMPACT:

All rental equipment expenditures shall be budgeted and approved by each city department utilizing the contract.

PROCUREMENT REVIEW:

The renewal has been reviewed and approved for compliance with the City's procurement policies

LEGAL REVIEW:

The renewal amendment has been reviewed and approved for form and legality by the Assistant City Attorney, Robert W. Batsel, Jr

ALTERNATIVE:

N/A.

SUPPORT MATERIALS:

Original Contract (PDF)

2020 Contract - Sunbelt Rentals, Inc (PDF)

AGREEMENT TO RENT EQUIPMENT ON AN AS-NEEDED BASIS

THIS AGREEMENT TO RENT EQUIPMENT ON AN AS-NEEDED BASIS ("Agreement") is entered into by and between the **CITY OF OCALA**, a Florida municipal corporation ("City"), and **SUNBELT RENTALS, INC.**, a for-profit corporation duly organized in North Carolina and authorized to do business in the State of Florida (EIN: 58-0415192) ("Vendor").

RECITALS:

WHEREAS, on December 6, 2016, City and Vendor entered into an Agreement to Rent Small Equipment on an As Needed Basis, City of Ocala Contract Number COO/16-010, for a term of three years from December 7, 2016 to December 6, 2019 ("Original Agreement"); and

WHEREAS, City needs certain equipment rentals not easily obtainable, and at times, on an urgent basis in the local vicinity for necessary city operations, repairs, and;

WHEREAS, Sunbelt Rentals, Inc., has a supply of specific rental equipment at its location and is easily accessible to City.

NOW THEREFORE, in consideration of the foregoing recitals, the following mutual covenants and conditions, and other good and valuable consideration, City and Vendor agree as follows:

TERMS OF AGREEMENT:

1. **RECITALS.** City and Vendor hereby represent, warrant, and agree that the Recitals set forth above are true and correct and are incorporated herein by reference.
2. **CONTRACT DOCUMENTS.** The Contract Documents which comprise the entire understanding between City and Vendor shall only include: (a) this Agreement; and (b) those documents listed in this section as Exhibits to this Agreement. Each of these documents are incorporated herein by reference for all purposes.

If there is a conflict between the terms of this Agreement and the Contract Documents, then the terms of this Agreement shall control, amend, and supersede any conflicting terms contained in the remaining Contract Documents.

A. **Exhibits to Agreement:** The Exhibits to this Agreement are as follows:

Exhibit A: Additional Rental Terms and Conditions (A-1 through A-2)

3. **SCOPE OF SERVICES.** Vendor shall rent equipment to City on an as-needed basis, subject to the terms herein and described in Exhibit A.
4. **TAX EXEMPTION.** City is exempt from all federal excise and state sales taxes (State of Florida Consumer's Certification of Exemption 85-8012621655C-9). The City's Employer Identification

Number is 59-60000392. Vendor shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the City, nor will Vendor be authorized to use City's Tax Exemption Number for securing materials listed herein.

5. **TERM.** The term of this Agreement shall begin on AUGUST 18, 2020 and end on AUGUST 17, 2023.

4. **FORCE MAJEURE.** Neither party shall be liable for delay, damage, or failure in the performance of any obligation under this Agreement if such delay, damage, or failure is due to causes beyond its reasonable control, including without limitation: fire, flood, strikes and labor disputes, acts of war, acts of nature, terrorism, civil unrest, pandemics, acts or delays in acting of the government of the United States or the several states, judicial orders, decrees or restrictions, or any other like reason which is beyond the control of the respective party ("Force Majeure"). The party affected by any event of force majeure shall use reasonable efforts to remedy, remove, or mitigate such event and the effects thereof with all reasonable dispatch.

The party affected by force majeure shall provide the other party with full particulars thereof including, but not limited to, the nature, details, and expected duration thereof, as soon as it becomes aware.

When force majeure circumstances arise, the parties shall negotiate in good faith any modifications of the terms of this Agreement that may be necessary or appropriate in order to arrive at an equitable solution. Vendor performance shall be extended for a number of days equal to the duration of the force majeure. Vendor shall be entitled to an extension of time only and, in no event, shall Vendor be entitled to any increased costs, additional compensation, or damages of any type resulting from such force majeure delays.

Notwithstanding the foregoing, Vendor shall be compensated for a) any and all rental fees incurred and/or b) any damage to or loss of the rental equipment during any such Force Majeure event in which the equipment is in City's care, custody, use or control.

6. **TERMINATION AND DEFAULT.** Either party, upon determination that the other party has failed or refused to perform or is otherwise in breach of any obligation or provision under this Agreement or the Contract Document, may give written notice of default to the defaulting party in the manner specified for the giving of notices herein. Termination of this Agreement by either party for any reason shall have no effect upon the rights or duties accruing to the parties prior to termination.

- A. **Termination by City for Cause.** City shall have the right to terminate this Agreement immediately, in whole or in part, upon the failure of Vendor to carry out any obligation,

term, or condition of this Agreement. City's election to terminate the Agreement for default shall be communicated by providing Vendor written notice of termination in the manner specified for the giving of notices herein. Any notice of termination given to Vendor by City shall be effective immediately, unless otherwise provided therein, upon the occurrence of any one or more of the following events:

- (1) Vendor fails to timely and properly perform any of the services set forth in the specifications of the Agreement;
- (2) Vendor provides equipment that does not meet the specifications of the Agreement;
- (3) Vendor fails to make progress in the performance of the Agreement and/or gives City reason to believe that Vendor cannot or will not perform to the requirements of the Agreement.

B. **Vendor's Opportunity to Cure Default.** City may, in its sole discretion, provide Vendor with an opportunity to cure the violations set forth in City's notice of default to Vendor. Vendor shall commence to cure the violations immediately and shall diligently and continuously prosecute such cure to completion within a reasonable time as determined by City. If the violations are not corrected within the time determined to be reasonable by City or to the reasonable satisfaction of City, City may, without further notice, declare Vendor to be in breach of this Agreement and pursue all remedies available at law or equity, to include termination of this Agreement without further notice.

C. **City's Remedies Upon Vendor Default.** In the event that Vendor fails to cure any default under this Agreement within the time period specified in this section, City may pursue any remedies available at law or equity, including, without limitation, the following:

- (1) City shall be entitled to terminate this Agreement without further notice;
- (2) City shall be entitled to rent equipment from another vendor in accordance with the needs of City;
- (3) City shall be entitled to recover from Vendor all direct damages, actual costs, and attorney's fees arising solely from Vendor's default prior to termination; and
- (4) City shall be entitled to recovery from Vendor any actual excess direct costs by: (i) deduction from any unpaid balances owed to Vendor; or (ii) any other remedy as provided by law.

D. **Termination for Convenience.** City reserves the right to terminate this Agreement in whole or in part at any time for the convenience of City without penalty or recourse. The City shall

provide written notice of the termination. Upon receipt of the notice, Vendor shall immediately discontinue all services as directed in the notice, and minimize all further costs to City including, but not limited to, the placing of any and all orders for materials, facilities, or supplies, in connection with its performance under this Agreement. Vendor shall be entitled to receive compensation solely for: (1) the actual cost of equipment rental provided in conformity with this Agreement; and/or (2) such other costs incurred by Vendor as permitted under this Agreement and approved by City.

7. **PERFORMANCE EVALUATION.** At the end of the contract, City may evaluate Vendor's performance. Any such evaluation will become public record.
8. **NOTICE REGARDING FAILURE TO FULFILL AGREEMENT.** Any vendor who enters into an Agreement with the City of Ocala and fails to complete the contract term, due to no fault caused by City or any contractor or subcontractor under City's control, shall be subject to future bidding suspension for a period of one (1) year and bid debarment for a period of up to three (3) years for serious contract failures.
9. **VENDOR REPRESENTATIONS.** Vendor expressly represents that:
 - A. Vendor has read and is fully familiar with all the terms and conditions of this Agreement, the Contract Documents attached hereto, and other related data and acknowledges that they are sufficient in scope and detail to indicate and convey understanding of all terms and conditions of the services to be performed by Vendor under this Agreement.
 - B. Vendor has disclosed, in writing, all known conflicts, errors, inconsistencies, discrepancies, or omissions discovered by Vendor in the Contract Documents, and that the City's written resolution of same is acceptable to Vendor.
 - C. Vendor is familiar with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement whatsoever.
 - D. To the best of its knowledge, neither Vendor, its parent corporations, subsidiaries, members, shareholders, partners, officers, directors or executives, nor any of its affiliates, Vendors, suppliers, subcontractors, or consultants under this Agreement have been placed on the convicted vendor list following a conviction of a public entity crime. Vendor understands that a "public entity crime" as defined in section 287.133(1)(g), Florida Statutes, is "a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States..." Vendor further understands that any person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity

crime (1) may not submit a bid, proposal, or reply on a contract: (a) to provide any goods or services to a public entity; (b) for the construction or repair of a public building or public work; or (c) for leases of real property to a public entity; (2) may not be awarded or perform work as a Vendor, supplier, subcontractor, or consultant under a contract with any public entity; and (3) may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

10. **VENDOR RESPONSIBILITIES.** Except as otherwise specifically provided for in this Agreement, the following provisions are the responsibility of the Vendor:
 - A. Vendor shall comply with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement, and be responsible for all costs associated with same.
 - B. Vendor shall continue its performance under this Agreement during the pendency of any dispute or disagreement arising out of or relating to this Agreement, except as Vendor and City may otherwise agree in writing.
11. **NO EXCLUSIVITY.** It is expressly understood and agreed by the parties that this is not an exclusive agreement. Nothing in this Agreement shall be construed as creating any exclusive arrangement with Vendor or as prohibit City from either acquiring similar, equal, or like goods and/or services or from executing additional contracts with other entities or sources.
12. **GENERAL LIABILITY INSURANCE.** Vendor shall procure and maintain, for the life of this Agreement, commercial general liability insurance with minimum coverage limits not less than:
 - A. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit for bodily injury, property damage, and personal and advertising injury; and
 - B. City, a political subdivision of the State of Florida, and its officials, employees, and volunteers shall be covered as an additional insured with a CG 20 26 04 13 or its equivalent Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage regarding liability arising out of activities performed by or on behalf of Vendor. The coverage shall contain no special limitation on the scope of protection afforded to City, its officials, employees, or volunteers.
13. **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY.** Vendor shall procure and maintain, for the life of this Agreement, Workers' Compensation insurance and employer's liability insurance in amounts required by applicable statutes. Vendor shall ensure any and all subcontractors have coverage as required by applicable statutes. Vendor is not required to

name City as an additional insured under the policies, but a subrogation waiver endorsement is required. Exceptions and exemptions may be allowed by City's HR/Risk Director, so long as they are in accordance with Florida Statute.

14. MISCELLANEOUS INSURANCE PROVISIONS.

- A. Insurance Requirements. These insurance requirements shall not relieve or limit the liability of Vendor. City does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect Vendor's interests or liabilities, but are merely minimums. No insurance is provided by the City under this contract to cover Vendor. **No rentals shall be commenced under this contract until the required Certificate(s) of Insurance have been provided.** Equipment rentals shall not continue after expiration (or cancellation) of the Certificates of Insurance and shall not resume until new Certificate(s) of Insurance have been provided. Insurance written on a "Claims Made" form is not acceptable without consultation with City of Ocala Risk Management.
- B. Deductibles. Vendor's deductibles/self-insured retentions shall be disclosed to the City and may be disapproved by City. Vendor is responsible for the amount of any deductible or self-insured retention. City understands that Vendor maintains a \$1,500,000 SIR which will be indicated on its Certificate of Insurance.
- C. Certificates of Insurance. Vendor shall provide a Certificate of insurance, issued by an agency authorized to do business in the State of Florida and with an A.M. Best rating* of at least an A, showing the "City of Ocala" as an Additional Insured. Shown on the certificate at the certificate holder should be: **City of Ocala, Contracting Department, Third Floor, 110 SE Watula Avenue, Ocala, FL 34471.** Renewal certificates must also be forwarded to the Contracting Department prior to the policy expiration. **TEN (10)** days written notice must be provided to the City in the event of cancellation in accordance with Florida's statutes.

*Non-rated insurers must be pre-approved by the City Risk Manager.
- D. Failure to Maintain Coverage. In the event Vendor fails to disclose each applicable deductible/self-insured retention or obtain or maintain in full force and effect any insurance coverage required to be obtained by Vendor under this Agreement, Vendor shall be considered to be in default of this Agreement.
- E. Severability of Interests. Vendor shall arrange for its liability insurance to include General Liability, Business Automobile Liability, and Excess/Umbrella Insurance, or to be endorsed to include a severability of interests/cross liability provision so that the "City of Ocala" (where

named as an additional insured) will be treated as if a separate policy were in existence, but without increasing the policy limits.

15. **NON-DISCRIMINATORY EMPLOYMENT PRACTICES.** During the performance of the contract, the Vendor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, sexual orientation, gender identity, marital or domestic partner status, familial status, or veteran status and shall take affirmative action to ensure that an employee or applicant is afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.
16. **INDEPENDENT CONTRACTOR STATUS.** Vendor acknowledges and agrees that under this Agreement, Vendor and any agent or employee of Vendor shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which it performs the services required under this Agreement. Neither vendor nor its agents or employees shall represent or hold themselves out to be employees of City at any time. Neither Vendor nor its agents or employees shall have employee status with City. Nothing in this Agreement shall constitute or be construed to create any intent on the part of either party to create an agency relationship, partnership, employer-employee relationship, joint venture relationship, or any other relationship which would allow City to exercise control or discretion over the manner or methods employed by Vendor in its performance of its obligations under this Agreement.
17. **ACCESS TO FACILITIES.** City shall provide Vendor with access to all City facilities as is reasonably necessary for Vendor to perform its obligations under this Agreement.
18. **ASSIGNMENT.** Neither party may assign its rights or obligations under this Agreement to any third party without the prior express approval of the other party, which shall not be unreasonably withheld.
19. **PUBLIC RECORDS.** Vendor shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, Vendor shall:
 - A. Keep and maintain public records required by the public agency to perform the service.
 - B. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Vendor does not transfer the records to the public agency.
- D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of Vendor or keep and maintain public records required by the public agency to perform the service. If Vendor transfers all public records to the public agency upon completion of the contract, Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Vendor keeps and maintains public records upon completion of the contract, Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK; 352-629-8266; E-mail: clerk@ocalafl.org; City Hall, 110 SE Watula Avenue, Ocala, FL 34471.

- 20. **AUDIT.** Vendor shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General, the City's Internal or External auditors or by any other Florida official with proper authority.
- 21. **PUBLICITY.** Vendor shall not use City's name, logo, seal or other likeness in any press release, marketing materials, or other public announcement without City's prior written approval.
- 22. **E-VERIFY.** In accordance with Executive Order 11-116, Vendor shall utilize the U.S. Agency of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. Vendor shall also require all subcontractors performing services under this Agreement to utilize the E-Verify system for any employees they may hire during the term of this Agreement.

23. **CONFLICT OF INTEREST.** Vendor must have disclosed with the submission of their bid, the name of any officer, director, or agent who may be employed by City. Vendor must disclose the name of any City employee who owns, directly or indirectly, any interest in Vendor or any affiliated business entity. Any additional conflicts of interest that may occur during the contract term must be disclosed to the City of Ocala Procurement Department.
24. **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.
25. **SEVERABILITY OF ILLEGAL PROVISIONS.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
26. **INDEMNITY.** Vendor shall indemnify City and its elected officials, employees and volunteers against, and hold City and its elected officials, employees and volunteers harmless from, all third-party damages, claims, losses, costs, and expenses, including reasonable attorneys' fees, which City or its elected officials, employees or volunteers may sustain, or which may be asserted against City or its elected officials, employees or volunteers, arising out of the activities contemplated by this Agreement including, without limitation, harm or personal injury to third persons during the term of this Agreement to the extent attributable to the actions of Vendor, its agents, and employees, but only to the extent of Vendor's negligence.
27. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing herein is intended to waive sovereign immunity by the City to which sovereign immunity may be applicable, or of any rights or limits of liability existing under Florida Statute § 768.28. This term shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.
28. **NOTICES.** All notices, certifications or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid,

return receipt requested. Notices can be concurrently delivered by e-mail. All notices shall be addressed to the respective parties as follows:

If to Vendor: Sunbelt Rentals, Inc.
Attn: Contract Team
2341 Deerfield Drive
Fort Mill, South Carolina 29715
Phone: 800-508-4762 Fax: 803-578-6877
E-mail: contractteam@sunbeltrentals.com

If to City of Ocala: Tiffany Kimball, Contracting Officer
110 SE Watula Avenue, 3rd Floor
Ocala, Florida 34471
Phone: 352-629-8366 Fax: 352-690-2025
E-mail: tkimball@ocalafl.org

Copy to: Patrick G. Gilligan, Esquire
Gilligan, Gooding, Batsel, Anderson & Phelan, P.A.
1531 SE 36th Avenue
Ocala, Florida 34471
Phone: 352-867-7707 Fax: 352-867-0237
E-mail: pgilligan@ocalalaw.com

29. **ATTORNEYS' FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges reasonably billed by the attorney to the prevailing party.

30. **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR

RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

31. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.
32. **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.
33. **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all whom shall be bound by the provisions hereof.
34. **MUTUALITY OF NEGOTIATION.** Vendor and City acknowledge that this Agreement is a result of negotiations between Vendor and City, and the Agreement shall not be construed in favor of, or against, either party because of that party having been more involved in the drafting of the Agreement.
35. **SECTION HEADINGS.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.

36. **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or because of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.
37. **AMENDMENT.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both parties to this Agreement.
38. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
39. **ELECTRONIC SIGNATURE(S).** Vendor, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this Agreement. Further, a duplicate or copy of the Agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original Agreement for all purposes.
40. **ENTIRE AGREEMENT.** This Agreement, including exhibits, (if any) constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
41. **LEGAL AUTHORITY.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE TO FOLLOW.

IN WITNESS WHEREOF, the parties have executed this Agreement on 09 / 22 / 2020.

ATTEST:

CITY OF OCALA

Angel B. Jacobs

Angel B. Jacobs
City Clerk

Jay A Musleh

Jay A. Musleh
City Council President

Approved as to form and legality:

SUNBELT RENTALS, INC.

/s/ Robert W. Batsel, Jr.

Robert W. Batsel, Jr.
Assistant City Attorney

Kimberly Quirk

By: Kimberly Quirk
(Printed Name)

Title: Contract Manager
(Authorized Representative)



ACCEPTED BY CITY COUNCIL

September 1, 2020

DATE

OFFICE OF THE CITY CLERK

qe.

ADDITIONAL RENTAL TERMS AND CONDITIONS

The following Rental Terms and Conditions are hereby incorporated into the Agreement:

Services. Vendor shall rent equipment to City on an as-needed basis.

Physical condition of Rental Items. City acknowledges that prior to each use City will reasonably visually inspect the equipment each time for any defects and to confirm that the Equipment is in good condition, includes readable decals and operating and safety manuals and is suitable for City's intended use. City will return the equipment in the same condition as accepted upon delivery except for the normal wear and tear associated with the use of such equipment.

City Use. City agrees that Vendor has no control over the manner in which the Equipment is operated during the rental period by City or any third party that City implicitly or explicitly permits. City warrants that: (a) City shall immediately notify Vendor if the Equipment is lost, damaged, stolen, malfunctioning, defects are discovered, or if an incident or accident occurs; (b) only authorized individuals shall use and operate the Equipment ("authorized individuals" being those who are familiar with and properly trained to use the Vehicles and who are not under the influence of drugs or alcohol or otherwise impaired); (c) the Equipment shall be used in a careful manner, in compliance with all operation and safety manuals and other instructions provided on, in or with the Equipment and all Federal, State and local laws and licenses, including but not limited to, OSHA, as revised; and (d) the Equipment shall be kept in a secure location. City shall not (a) alter, or cover up any numbering, lettering, decals, or insignia on the Equipment or remove any operation or safety manuals; (b) move the Equipment from the Location set forth on the Purchase Order without Vendor's written consent; (c) intentionally damage the Equipment; or (d) use the Equipment in a negligent, reckless, illegal, unauthorized or abusive manner or in any publication (print, audiovisual, or electronic), nor (e) allow the use of the Equipment by any unauthorized individual (City acknowledging that the Equipment may be dangerous if used improperly or by untrained parties).

Item Failure. Vendor agrees to make the items operable within four (4) days of receiving a service call, provide City with a like item if available, or adjust the rental charges.

Rental Period. The term of each rental of Equipment, which commences when the Equipment is delivered to City and continues until the Equipment is returned to Vendor's location during normal business hours; or called off rent by City to Vendor and City is given a pickup ticket number as a record of the date and time of call off. City remains responsible for the care, custody and control of the equipment until Vendor takes possession upon pickup.

City Maintenance. City shall perform routine maintenance on the Equipment, including routine inspections and maintenance of fuel and oil levels, grease, filters, cooling system, water, batteries, cutting edges, and cleaning in accordance with the manufacturer's specifications. All other maintenance or repairs may only be performed by Vendor upon City's request a service call. "Ordinary Wear and Tear" means normal deterioration considered reasonable in the equipment rental industry for one shift use.

Return of Vehicles. At the end of the Rental Period, the Equipment shall be returned to Vendor in the same condition they were received, less Ordinary Wear and Tear. The Rental Period for the Equipment shall not terminate and rental charges shall continue to accrue until Vendor confirms that the Equipment are returned in the condition required herein. If Vendor delivered the Equipment to City, City shall notify Vendor that the Equipment is ready to be picked up at the Location and obtain a "pick-up" number from Vendor evidencing such call ("Pick Up Number"), which Pick Up Number City should keep for its records as proof of such call; provided City remains liable for any loss of or damage to the Equipment until Vendor confirms that the Equipment is returned to the Store in the condition required herein. No pickups occur on Sundays and Saturday pickups are dependent on specific Vendor store location hours. If City picked up the Equipment, City shall return Equipment to the same Vendor store location during that store's normal business hours. Any loss of or damage to the Equipment resulting from a return other than as set forth above shall be City's sole responsibility. If the Equipment is not returned by the end of the estimated Rental Period, City agrees to pay the applicable rental rate for the Equipment through the end of the actual Rental Period and shall risk any other penalties or liabilities that may be imposed under applicable law.

City Insurance. The City of Ocala is a self-insured public entity pursuant to City Council Resolution 92-84 up to the limits of liability set forth in Florida Statute §768.28. The self-insurance program includes Workers' Compensation, General and Automobile Liability coverage for all liabilities or damages which is City of Ocala is found legally liable. This self-insurance program is administered through the Human Resources and Risk Management office of the City. City

shall maintain, at its own expense, property insurance against loss by all risks to the Equipment, in the amount of \$250,000 insured value for any rented, borrowed, or leased equipment with a deductible of \$25,000. City shall provide Vendor with certificates of insurance evidencing the coverages required above prior to any rental and any time upon Vendor's request. The insurance required herein does not relieve City of its responsibilities, indemnification or other obligations herein, or for which it may be liable by law or otherwise.

City Responsibility. After an incident or accident involving Equipment, City shall (a) immediately notify Vendor and the police, if necessary; (b) secure and maintain the Equipment and the surrounding premises in the condition existing at the time of such Incident, until Vendor or its agents investigate; (c) immediately after receipt submit to Vendor copies of all police or other third party reports and notify Vendor of any other reports.

THE PARTIES EXPRESSLY AND IRREVOCABLY AGREE THAT EACH WAIVES THEIR RIGHT TO RECOVER CONSEQUENTIAL AND PUNITIVE DAMAGES AND LOST PROFITS IN ANY ACTION OR PROCEEDING BROUGHT BY OR THROUGH SUCH PARTY ARISING UNDER OR RELATED TO THIS AGREEMENT. THIS WAIVER SHALL BE ENFORCEABLE IN ANY ACTION OR PROCEEDING WITHOUT REGARD TO APPLICABLE CHOICE OR LAW OR OTHER LEGAL PRINCIPLES.

City Liability. DURING THE RENTAL PERIOD, CITY ASSUMES THOSE RISKS ASSOCIATED WITH THE POSSESSION, CUSTODY AND OPERATION OF AND FULL RESPONSIBILITY FOR, THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, DEATH, RENTAL CHARGES, LOSSES, DAMAGES AND DESTRUCTION, INCLUDING CITY'S TRANSPORT, LOADING AND UNLOADING OF THE EQUIPMENT THAT IS ATTRIBUTABLE TO CITY, ITS EMPLOYEES OR AGENTS, BUT NOT THAT OF VENDOR.

TITLE	For Signature: Agreement to Rent Equipment on an As-Needed...
FILE NAME	2020 Contract - Sunbelt Rentals v2.pdf
DOCUMENT ID	f66d62a85f45e467df64ed84baa7520e6ea73c96
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Completed

Document History



SENT

09 / 16 / 2020

10:09:28 UTC-5

Sent for signature to Sunbelt Rentals, Inc.
(contractteam@sunbeltrentals.com), Robert W. Batsel, Jr.
(rbatsel@ocalalaw.com), Jay A. Musleh (jmusleh@ocalafl.org)
and Angel B. Jacobs (ajacobs@ocalafl.org) from
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VIEWED

09 / 16 / 2020

15:44:14 UTC-5

Viewed by Sunbelt Rentals, Inc.
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SIGNED

09 / 16 / 2020

15:48:21 UTC-5

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VIEWED

09 / 22 / 2020

11:54:55 UTC-5

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TITLE	For Signature: Agreement to Rent Equipment on an As-Needed...
FILE NAME	2020 Contract - Sunbelt Rentals v2.pdf
DOCUMENT ID	f66d62a85f45e467df64ed84baa7520e6ea73c96
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09 / 22 / 2020
11:56:13 UTC-5

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09 / 22 / 2020
13:51:51 UTC-5

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15:19:55 UTC-5

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The document has been completed.