
CITY OF OCALA

CITY COUNCIL REPORT

Council Meeting Date: 11/18/14

Subject: Continuing Contract to Rent Small Equipment- Sunbelt

Submitted By: Tiffany Kimball

Department: Business & Financial Services

STAFF RECOMMENDATION (Motion Ready): Approve Agenda Item (ID # 7560) continuing contract for citywide small equipment rentals as needed from Sunbelt Rentals Inc., located in Ocala, Florida.

OCALA'S RELEVANT STRATEGIC GOALS: Fiscally Sustainable, Necessary Administrative Process, Operational Excellence, Quality of Place

PROOF OF PUBLICATION:

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 rental agreements do not provide the City with contractual protection from issues arising out of these rentals. The City has drafted the attached agreement with Sunbelt Rentals, Inc. to provide the contractual protection recommended by the City Attorney. The City is currently reaching out to any local rental equipment vendor who would like to establish a continuing contract with the City, so that departments have a range of different equipment and vendors to choose from as needed.

FINDINGS:

The Procurement Department is requesting permission to enter into an agreement with Sunbelt Rentals to provide the City with small equipment rentals on an as needed basis. This two (2) year continuing contract establishes 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. The Procurement Department is working to establish multiple rental equipment contracts with local vendors for ease of use and maximum operational efficiency.

CONCLUSIONS:

The agreement with Sunbelt Rentals, Inc. will provide City departments with a readily available source for a quick method to rent equipment and give contractual protection when necessary for the City. 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.

FISCAL IMPACT:

All expenditures for this contract shall be budgeted and approved by each City department utilizing the contract.

LEGAL REVIEW: The contract has been reviewed and approved for form and legality by the City Attorney, Patrick G. Gilligan.

ALTERNATIVE:

Do not approve, and incur delays for renting equipment while separate agreements are reviewed and approved for each rental.

SUPPORT MATERIALS:

2014 SUNBELT RENTALS - FINAL - Executed (PDF)

AGREEMENT TO RENT SMALL EQUIPMENT ON AN AS NEEDED BASIS

THIS AGREEMENT is entered into this 1st day of October, 2014, by and between the **CITY OF OCALA**, a Florida municipal corporation ("City") and **SUNBELT RENTALS, INC.**, a North Carolina Corporation, registered as a Florida Foreign Corporation, (EIN#58-0415192) ("Vendor").

WHEREAS:

- A. The City of Ocala needs certain equipment rentals not easily obtainable, and at times, on an urgent basis in the City of Ocala local vicinity for necessary city operations, repairs, and;
- B. Sunbelt Rentals Inc., has a supply of specific rental equipment at its location and is easily accessible to City of Ocala.

NOW THEREFORE, in consideration of the matters set forth above (which are incorporated herein by reference), the parties hereto agree as follows:

1. **Services.** Vendor will rent equipment to City on an as needed basis.
2. **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.
3. **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; (c) 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); (d) 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 (e) 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 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).

4. **Item Failure.** Vendor agrees to make the items operable within four (4) days of receiving a services call, or provide City with a like item if available or adjust the rental charges.
5. **Term.** The term of this Agreement shall begin on October 1, 2014 and end on September 30, 2016.
6. **Indemnity.** Vendor shall indemnify City and its elected officials, and employees against, and hold City and its elected officials, and employees harmless from, all damages, claims, losses, costs, and expenses, including attorneys' fees, which City or its elected officials or employees may sustain, or which may be asserted against City or its elected officials or employees, arising out of the activities contemplated by this Agreement, but only to the extent of Vendor's negligence including, without limitation, harm or personal injury to said indemnitees during the term of this Agreement, but only to the extent of Vendor's negligence.
7. **Insurance Requirements.** Throughout the period of this Agreement, Vendor shall insure, at his own expense, against claims resulting from Vendor's services relating to this Agreement for personal injury, loss of life, and property damage under a policy of general liability insurance, with limits of at least \$1,000,000 on an occurrence form or its equivalent. The Vendor shall maintain Worker's Compensation insurance. All such policies shall be issued by insurers of recognized responsibility satisfactory to City.

Vendor shall provide the City with certificates of insurance issued by a company authorized to do business in the State of Florida and with an A.M. Best rating of at least a B+, and evidencing that Vendor has obtained the insurance coverages required hereunder.

Such certificates shall: list "City of Ocala, a Florida municipal corporation," as an additional insured; provide that the City shall receive at least 30 days' notice before the insurance agreement may be cancelled for non-payment or otherwise. Such certificate shall be delivered to City of Ocala, 110 SE Watula Ave, Ocala, Florida 34471, Attention: Director of Procurement. These insurance requirements do not relieve or limit the liability of Vendor. The City does not represent that these types or amounts of insurance are sufficient or adequate to protect the City's interests or liabilities, but are merely minimums.

8. **Relationship of parties.** Neither this Agreement, nor any term, provision, payment or right hereunder shall in any way or for any purpose constitute or cause City to become or be deemed a partner of Vendor in the conduct of its business, or otherwise, or to cause City to become or be deemed a joint adventurer or a member of a joint enterprise with Vendor, as City is and shall remain an independent contractor by reason of this Agreement.

9. **Termination.** If either party defaults in the performance of this Agreement or materially breaches any of its provisions, the non-defaulting party may, at its option, terminate this Agreement by giving 10 days written notification thereof to the other party. Termination of this Agreement shall have no effect upon the rights of the parties that accrued prior to termination.

10. **Remedies.** If any Event of Default occurs, the Parties shall have the right, at the option of the non-defaulting Party, to pursue all remedies available at law or equity, including the termination of this Agreement and all rights of the defaulting Party hereunder. Notwithstanding the termination of the Agreement, the defaulting Party shall remain liable to the non-defaulting Party for all claims for damages, costs or attorneys' fees arising prior to such termination.

11. **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, addressed to the respective parties as follows:

If to: Sunbelt Rentals Inc
2341 Deerfield Drive
Fort Mill, SC 29708
Attn: Contract Team
E-Mail: contratteam@sunbeltrentals.com
Phone: 1-800-508-4762
Fax: 803-578-6877

If to: City of Ocala
Tiffany Kimball, Director of Contracts
110 SE Watula Ave, 3rd FL
Ocala, Florida 34471
E-Mail: tkimball@ocalafl.org
Ph. 352 629-8366
FAX 352 690-2025

Copy to: Patrick G. Gilligan, Esquire
Gilligan, Gooding & Franjola, P.A.
1531 S.E. 36th Ave.
Ocala, Florida 34471
Ph. 352-867-7707
Fax 352-867-0237

12. **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 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 billed by the attorney to the prevailing party.

13. **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.

14. **Assignment.** This Agreement shall not be assigned by either party without the prior written consent of the other party.

15. **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.

16. **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.

17. **Governing Law.** This Agreement is and shall be deemed to be a contract entered into 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.

18. **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 or the right to bring an action or proceeding in any other court. Service of any court paper may be affected 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.

19. **Public Entity Crimes.** Vendor on its behalf and its affiliates agrees and affirms that it has not been placed on the convicted vendor list following a conviction of a public entity crime

as provided for in Section 287.133 (2)(a), Florida Statutes, which states that a person or affiliate who has been placed on the convicted vendor list following a conviction for 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 conduction or repair of a public building or public work, may not submit bids on leases or 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.

20. **Rights of Third Parties.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason 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.

21. **Amendment.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both of the parties to this Agreement.

22. **No Construction against Drafting Party.** Both parties to this Agreement have contributed to the drafting of this contract and hence it shall not be construed against either party by the courts when attempting to interpret its provisions.

23. **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.

24. **Section Headings.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.

25. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

26. **Force Majeure.** Neither party shall be responsible for damages due to any delays caused by Force Majeure or other events beyond the control of the party and which could not reasonably have been anticipated or prevented. For purposes of this Agreement, Force Majeure includes, but is not limited to, adverse weather conditions, floods, epidemics, war, riot, lockouts, and other industrial disturbances; unknown site conditions, accidents, sabotage, fire loss of or failure to obtain permits, unavailability of labor, materials, fuel, or services; court orders; acts of God; acts, orders, laws, or regulations of the Government of the United States or the several states, or any foreign country, or any governmental agency. In the event that Force Majeure occurs, the parties shall mutually agree on the terms and conditions upon which services may continue.

27. **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. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to make objection. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

28. **Contract Documents.** The contract documents that comprise the entire Agreement between the City and Vendor are made a part hereof, and are listed as exhibits. There are no contract documents other than those listed below. If there is a conflict in terms between this Agreement and the contract documents, then the terms of this Agreement will control over the terms of the contract documents listed below.

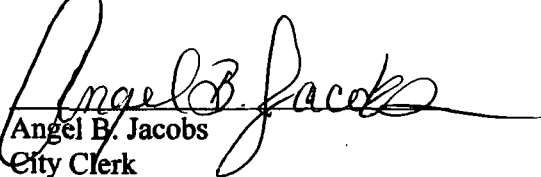
Exhibits:

A. Additional Rental Terms and Conditions


29. **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.

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


ATTEST:


Angel B. Jacobs
City Clerk


CITY OF OCALA


By: 
John M. McLeod Jay A. Musleh
City Council President Pro Tem

Approved as to form and legality:


Patrick G. Gilligan
City Attorney

SUNBELT RENTALS, INC

By:  SVP, sales
Vice-President or higher 10/28/14

ACCEPTED BY CITY COUNCIL

DATE
OFFICE OF THE CITY CLERK

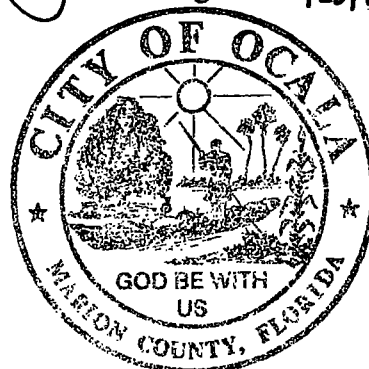


Exhibit A**1. Additional Rental Terms and Conditions.** The following Rental Terms and Conditions are hereby incorporated into the City's Contract for the rental of small equipment:

- 1.1. **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 a 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 Sunbelt takes possession upon pickup.
- 1.2. **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.
- 1.3. **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.

- 1.4. 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.**
- 1.5. 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.**