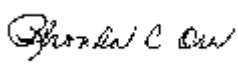

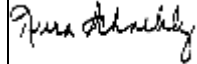



October 1, 2009		<b>AGENDA ITEM</b>		<b>Item 12</b>
<input type="checkbox"/> Ordinance		<input type="checkbox"/> Resolution		<input type="checkbox"/> Budget Resolution
<input checked="" type="checkbox"/> Other				
<b>Department:</b> Financial and Administrative Services <b>File Number:</b> VC-1250879199225-A				
<b>Division:</b> Central Services				
<b>Subject:</b> Interlocal Agreement for the Provision of Municipal Fleet Fueling Services by County of Volusia to Utilities Commission of New Smyrna Beach				
<b>Account Number(s):</b> Fleet Management - Outside Revenue 513-000-0000-6910 for \$260,000.00				
<b>Total Item Budget:</b> \$260,000.00				
<b>Staff Contact(s):</b> George Baker Phone: 386-254-1595 ext. 1850				
<b>Summary/Highlights:</b> Staff requests approval of the attached interlocal agreement with the Utilities Commission, City of New Smyrna Beach, which enables the central services division to continue to provide fleet fueling services for vehicles and equipment owned by the Utilities Commission. This agreement is for one year, October 1, 2009 - September 30, 2010, and continues a business relationship with the commission. This collaborative effort allows the county to buy larger volumes of fuel at a reduced cost, which produces savings for both the county and the customer. Last year this agreement generated \$260,860 in revenue.				
<b>Recommended Motion:</b> Approval.				
Rhonda Orr, Deputy Director Director Financial and Administrative Services   Jeaniene Jennings, Acting Director Purchasing  No Signature Present	<b>OMB</b>    Approved as to Budget Requirements	<b>Legal</b>    Approved as to Form and Legality	Marcy Zimmerman County Manager's Office    Approved Agenda Item For: <b>October 1, 2009</b>	
<b>Council Action:</b>  <input type="checkbox"/> Approved as Recommended <input type="checkbox"/> Approved With Modifications <input type="checkbox"/> Disapproved <input type="checkbox"/> Continued Date:		<b>Modification:</b>		



**INTERLOCAL AGREEMENT  
FOR THE PROVISION OF  
MUNICIPAL FLEET FUELING SERVICES  
BY COUNTY OF VOLUSIA TO  
UTILITIES COMMISSION OF NEW SMYRNA BEACH**

**THIS AGREEMENT** is entered into by and between the County of Volusia, a body corporate and politic and a political subdivision of the State of Florida, with administrative offices at 123 West Indiana Avenue, DeLand, Florida 32720-4612, hereinafter referred to as “**COUNTY**”, and Utilities Commission, City of New Smyrna Beach, with administrative offices at 200 Canal St. New Smyrna Beach, Florida, 32168 hereinafter referred to as “**COMMISSION**”

**RECITALS**

WHEREAS, the COUNTY is authorized by §125.01(1), Florida Statutes, to “enter into agreements with other governmental agencies within or outside the boundaries of the COUNTY for the joint performance, or performance by one unit in behalf of the other, of any of either agency’s authorized functions”; and

WHEREAS, public agencies (including COUNTY and COMMISSION) are authorized by §163.01(14), Florida Statutes, to “enter into contracts for the performance of service functions of [such] public agencies, but *shall not be deemed to authorize the delegation of the constitutional or statutory duties of... COUNTY or COMMISSION officers.*” The parties expressly deny any intent, express or implied, in this Agreement to provide for a delegation by COMMISSION of such constitutional or statutory duties to COUNTY; and

WHEREAS, the foregoing authorization for such agreements is granted to counties and public agencies for the purpose of permitting “local governments to make the *most efficient use* of their powers by enabling them to cooperate with the other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organizations that will accord best with geographic, economic, populations, and other factors influencing the needs and development of local communities.” §163.01(2), Florida Statutes; and

WHEREAS, COMMISSION after evaluation of options for the provision, has made a determination that its will be best served by contracting with COUNTY for provision of such services, which services will be performed by COUNTY personnel; and

WHEREAS, COUNTY certifies that it either currently has, or will employ, a sufficient number of personnel, appropriately qualified to perform the services enumerated therein, and COUNTY is willing to provide such services to COMMISSION;

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties agree as follows:

## **PART I. General Provisions**

1. Legislative Findings/Representations. The foregoing representations and findings are hereby adopted as a material part of this Agreement.

2. Purpose. The purpose of this Agreement is for the COUNTY to provide specified *municipal services* to COMMISSION (hereinafter, the "Contract Services"), at an agreed upon level of services "LOS") as reflected herein.

3. County Departments. COUNTY shall manage the delivery of the Contract Services by allocating service task responsibilities along the organization line of the COUNTY'S Departments (hereinafter, "Departments"), as depicted in PART II hereof. The Director of the applicable Department or their designee) shall be in the COUNTY'S liaison to COMMISSION for purposes of performance, interpretation and implementation of this Agreement.

4. No Pledge of Ad Valorem Taxes. The parties agree that this Agreement does not constitute a general indebtedness of COMMISSION within the meaning of any constitutional statutory, or charter provision or limitation and is expressly agreed by the parties that the COUNTY shall not have the right to require or compel the exercise of ad valorem taxing power of COMMISSION or taxation of any real or personal property therein for payment of any monetary obligations due under the terms of this Agreement. It is further agreed that this Agreement and any funds called for to be paid hereunder shall not constitute a lien upon any real or personal property of COMMISSION or any part thereof, and that the obligation for monetary payments called for to be made hereunder shall be deemed to exist for less than a year at any point in time and shall be entirely subject to the legislative budgetary discretion of COMMISSION and the COUNTY. COMMISSION'S obligation to pay County is limited to the budgeted amount for a fiscal year approved by the COMMISSION for the then current fiscal year of this Agreement and is otherwise limited to legally available non-ad valorem tax revenues.

5. Division of Management Responsibilities. The Contract Services specified in this Agreement reflect the managerial and policy decisions of COMMISSION. Beyond the types of services identified herein, COMMISSION may identify the task within the scope of this Agreement to be performed by COUNTY, and the portion of the recent budget to be allocated thereto, including, but not limited to, the location, and nature of specific projects. The COUNTY shall have responsibility for the operational management of the actual service. In cases where specific professional standards are applicable to the design or performance of such task, the COUNTY'S designated officer in charge ("OIC"), the designee, shall have the authority for decision making within that realm. The relevant COUNTY Department Director or the OIC shall be available on a regular basis to COMMISSION authorized designee to provide consultation and recommendations as contemplated herein.

6. Level of Service (LOS). COUNTY agrees to provide the personnel and equipment at the LOS reflected herein. Should the COMMISSION desire the COUNTY provide services either different in kind, or at a higher level than that contemplated herein, the COMMISSION Manager shall make written request therefore to the County Manager. Any Agreement modification to the LOS shall be reduced to writing and approved by both parties. Any reduction in LOS desired by the COMMISSION shall only be effective at the beginning of a new contract year unless both parties agree otherwise.

7. Personnel Matters. COUNTY shall allocate manpower and equipment for the performance of the Contract Services on an “as needed” basis. This Agreement shall not require any particular County employee to be dedicated fulltime to the Contract Services. All COUNTY personnel assigned to perform Contract services shall remain subject to COUNTY merit rules and regulations for all purposes contemplated merit and cost-of-living raises, annual leave and sick leave and disciplinary actions. Any claim of a disciplinary nature by the COMMISSION regarding a COUNTY employee shall be referred to the Department Director, who shall remain the “appointment authority” for such employee, for all purposes designated under the COUNTY Merit Rules. Such COUNTY employees shall have no right to elect or choose any procedures available to COMMISSION employees.

8. Term. This Agreement shall take effect on the October 1, 2009, and shall terminate on September 30, 2010, unless renewed or otherwise terminated as set forth in this section and Section 9 respectively. The parties may, by mutual agreement, renew this Agreement upon the same or modified terms. Should the COMMISSION desire to renew this Agreement, it shall make application in writing therefore, to COUNTY no later than February 1 of that contract year.

9. Termination. Either party may terminate this Agreement without cause or further liability to the other, upon written notice to the party representative specified in Section 10, given no less than 180 days prior to the requested termination date. Such notice shall be the date the receipt therefore is signed by an official or authorized representative of the other party.

10. Notice. Notice as required to be given in this Agreement shall be provided to the following persons:

**a. COUNTY:**

County of Volusia  
123 W. Indiana Avenue  
DeLand, FL 32720-4612  
Attention: County Manager

**b. COMMISSION:**

Utilities Commission  
City of New Smyrna Beach, Florida  
P.O. Box 100  
New Smyrna Beach, FL 32170-0100  
Attn: Materials Manager

Copy to: Fleet Management Director  
1270 Indian Lake Road  
Daytona Beach, FL 32124

11. Third Parties. In no event shall any of the terms of this Agreement confer upon any third person, corporation, or entity other than the parties hereto any right or cause of action for damages claimed against any of the parties to this Agreement arising from the performance of the obligations and responsibilities of the parties herein or for any other reason.

12. Dispute Resolution. Any disputes concerning non-performance, or other aspects of this Agreement for which either party initiates litigation to enforce its rights hereunder, shall be subject to the provisions of Chapter 164, Florida Statutes, “Florida Governmental Conflict Resolution Act.”

13. Severability. If any provision of this Agreement is found to be unconstitutional, illegal, or otherwise unenforceable by judgment of a court of competent jurisdiction, such

judgment shall not invalidate the remainder of this Agreement, unless such judgment renders the purpose or performance of this Agreement no longer practical for either party.

## **PART II. Services and Billing**

### **1. Services**

- a. Except as provided in subsection (b) hereof, the COUNTY through its Fleet Management Division, shall provide the facilities, personnel, and supplies necessary and desirable to perform Fleet-refueling services to vehicles and equipment owned by COMMISSION.
- b. In the event of an emergency, the County cannot guarantee provision of the goods and services described in paragraphs (a) above, and COMMISSION shall make provision for these goods and services during such an event. The provision of fuel shall be subject to availability as described hereafter. Volusia County has a fuel rationing plan in place for times of emergency. An emergency is defined as any circumstance where the fuel supply will experience an interruption. Partial rationing is referred to as **Mission Essential**. Full rationing is referred to as **Mission Critical**. Notification of emergencies will be accomplished through the Emergency Operations Center (EOC), through the County's intranet system ENN, and by phone or e-mail as appropriate. During times of emergency vehicles from outside agencies may be locked out of the County fuel system. When the fuel supply returns to normal levels as determined by the COUNTY, all restrictions will be lifted from the county pumps.
- c. Attached hereto and incorporated by reference are Attachment 1 Fleet Management Services Options and Schedule of Charges.

### **2. Billing**

All direct costs will be accounted for by vehicle identification.

Billing shall be done monthly using the FMS in-house computer system. Bills are to be itemized and sent to:

**Utilities Commission  
City of New Smyrna Beach  
P.O. Box 100  
New Smyrna Beach, FL 32170-0100**

COMMISSION shall pay the COUNTY for services within thirty (30) days of receipt by COMMISSION of COUNTY invoice for services. Payment and penalties including interest shall be made in compliance with Florida Statutes Chapter 218 and the Volusia County Code of Ordinances and the Purchasing Procedures Manual.

### **PART III. Miscellaneous**

1. Hold Harmless and Insurance. Each participating party expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of any party beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and liability of any party for damages shall not exceed the statutory limits of liability, regardless of the number or nature of any claim which may arise including but not limited to a claim sounding in tort, equity or contract. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against any party, which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

1.1 To the extent permitted by law COMMISSION shall indemnify and hold harmless the COUNTY for the negligent acts or omissions of COMMISSION its elected officials, appointed officials, officers, members, employees, agents, or assignees, Should COMMISSION and the COUNTY be found to be joint tort feasons on a given claim, then each will bear the expense (to the extent they are not covered by insurance) for its respective share of attorney's fees, costs, and damages, if any, to the claimant.

1.2 Notwithstanding anything set forth in this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the County beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and any liability of the County for damages shall not exceed the statutory limits of liability, regardless of the number or nature of any claim which may arise including but not limited to a claim sounding in tort, equity or contract. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the County and/or its agents, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

2. Insurance. The COMMISSION shall provide and maintain at all times during the term of the Agreement, without cost or expense to the County of Volusia, either an adequate self-insurance fund or policies of insurance, or both which insures the COMMISSION against any and all claims , demands or causes of action whatsoever, for injuries received or damage to property relating acts or omissions of the COMMISSION which arise under the terms and provisions of the Agreement or which are in any way related thereto.

2.1 Coverage whether by self-insurance, commercial insurance or a combination thereof shall include:

2.1.1 Commercial General Liability in the minimum amount of ONE MILLION (\$1,000,000) DOLLARS;

2.1.2 Business Automobile Liability Insurance in the minimum amount of ONE HUNDRED THOUSAND (\$100,000) DOLLARS per person. THREE HUNDRED THOUSAND (\$300,000) DOLLARS per occurrence, bodily injury and property damage liability; and

- 2.1.3 Pollution Liability insurance in the amount of ONE MILLION (\$1,000,000) DOLLARS.
- 2.2 The COMMISSION shall secure and maintain at its sole cost and expense all Workers' Compensation insurance required by Florida law, for all employees or contracted workers who are allowed to obtain services under this Agreement.
- 2.3 If any COMMISSION contract worker is allowed to obtain fuel or other services under this Agreement, the COMMISSION shall require each contract worker or worker's employer to obtain a policy or policies with coverages that conform with the above mentioned requirements and to provide the COMMISSION with a copy of a current certificate of insurance.
- 2.4 Each liability policy shall state that the policy cannot be canceled or materially changed without first giving (30) days prior notice thereof in writing to the County.
- 2.5 The COMMISSION shall provide a copy to the County of each certificate of insurance or self-insurance providing the coverage required by the Agreement. Each such certificate of insurance or self-insurance for coverages shall be furnished by the COMMISSION to the County at the following address: Risk Management Suite 250, 230 N. Woodland Blvd, DeLand, Florida 32721-4613, attention: Christina Lifvendahl, Risk Manager, or her successor.
- Each certificate shall be dated and show:
- 2.5.1 The name of the insured, the specified job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.
- 2.5.2 The County of Volusia, Florida as additional named insured on each liability policy.
- 2.6 The County shall be exempt from, and in no way liable for, any sums of money which represent a deductible or self-insured retention in any insurance policy. The payment of deductible or self-insured retention shall be the sole responsibility of the COMMISSION and/or contractor responsible for the coverage.
- 2.7 If any policy as required is written on a claims-made basis, the COMMISSION warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Agreement, and that continuous coverage will be maintained during the Term of the Agreement and for a period of two (2) years thereafter.
- 2.8 No fuel or services will be provided until each certificate of insurance or self-insurance is filed with the County.
- 2.9 Failure of the COMMISSION to provide the insurance coverages described above, and keep on file with the County at all times a current certificate of



insurance for each policy required hereunder shall be a material breach of the Agreement.

2.10 The COMMISSION shall give prompt written notice to the County of all known losses, damages, or injuries to any person or to property of the County or third persons that may be in any way related to the Agreement or for which a claim might be made against the County. The COMMISSION shall promptly report to the County any such claims or potential claims which are known by the COMMISSION, whether related to matters insured or uninsured.

2.11 This section shall survive the expiration or termination of this Agreement.

3. Authorized Users/Vehicles. COMMISSION shall provide an initial list of vehicles and users authorized to use fuel services with key holder assignment and provide written updates to this list in the same format as they occur and before any new user or vehicle will be recognized for fuel service at the fueling facilities.

4. Fuel Keys. COMMISSION shall report a lost Fleet Management fuel key need to be reported immediately to Fleet Management to help to prevent unauthorized fuel usage. Any fuel dispensed with a lost key will be charged to COMMISSION which shall be required to pay for the same.

5. Entire Agreement. This Agreement reflects the full and complete understanding of the parties and may be modified or amended only by a document in writing executed by all the parties, with the same formalities as this Agreement.

**IN WITNESS WHEREOF**, the parties to this Agreement have caused the same to be signed by their duly authorized representatives this \_\_\_\_ day of \_\_\_\_\_, 2009.

**UTILITIES COMMISSION,  
City of New Smyrna Beach, FL**

By: \_\_\_\_\_  
Robert J. Rodi, General Manager/CEO

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

**COUNTY OF VOLUSIA, a political  
subdivision of the State of Florida**

By: \_\_\_\_\_  
Frank T. Bruno Jr., County Chair

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
James T. Dinneen, County Manager

## ATTACHMENT 1

### FLEET MAINTENANCE SERVICES OPTIONS SCHEDULE OF CHARGES

FMS available to COMMISSION are as follows:

#### I. FUELING SERVICES

- A-1. Maintenance of fuel inventories and operations of fuel facilities for in-house fueling of vehicles/equipment.
- A-2. Issuance of vehicle identification and employee identification keys for easy processing and security of in-house fueling.

#### *Financial and Information Services*

- B-1. Monthly billing report including utilization data by vehicle identification
- B-2. Annual utilization report.

#### *Extra Charge Services*

- C-1. Replacement of lost or stolen fuel keys \$10.00 each.
- C-2. Damage to COUNTY fuel station facility or equipment. Cost of repair.

#### II. FLEET MANAGEMENT FUELING FACILITIES

Deland R&B- 2560 W. State Road Highway 44, DeLand, FL  
New Smyrna Beach R&B - 530 Old North Dixie Highway, New Smyrna Beach, FL  
Osteen R&B - 200 N. State Road Highway 415, Osteen, FL  
Daytona Beach ComCenter - 1270 Indian Lake Road, Daytona Beach, FL  
Daytona Beach Landfill - 1990 Tomoka Farms Road, Daytona Beach, FL  
Holly Hill R&B - 455 Walker St., Holly Hill, FL  
Transfer Station – 261 DeLand Crossings Blvd. DeLand, FL

#### III. HOURS OF OPERATION AND KEY PHONE NUMBERS

All fueling locations are open 24 hours a day, except Deland Road and Bridge and the Tomoka Landfill.

Deland Road and Bridge:	7:30 am – 6:00 pm
Tomoka Landfill:	7:30 am - 5:30 pm weekdays, 7:30 am – 2:30 pm weekends

#### IV. CHARGING FOR SERVICES

##### Direct Rates for Service Method

All direct costs will be accounted for by vehicle identification. Fuel rates are current County cost at the time of fuel consumption by COMMISSION, plus sixteen (16¢) cents per gallon, unleaded and twenty (20¢) per gallon, diesel. Special Service rates for special services shall be negotiated at the time of the request done in accordance with Part I, Sections 6 and 7 of the Agreement. See also C-1 and C-2 for extra charge services. Any labor provided shall be at the then current rate. All rates are current and may be modified yearly or upon renewal of this agreement.