

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, AUTHORIZES THE PURCHASE OF MOTOR DIESEL FUEL THROUGH AG PLUS INC. IN AN AMOUNT NOT TO EXCEED \$756,000 (315,000 gals) FOR THE 2020 BUDGET YEAR. THE PARTICIPATION OF SAID CITY IN THE MOTOR FUEL BUDGETING PROGRAM OF THE INDIANA BOND BANK FOR THE 2020 BUDGET YEAR, AND OTHER RELATED MATTERS.

WHEREAS, the City of Fort Wayne, Indiana (the "City") owns and operates a fleet of motor vehicles which motor vehicles are essential to the ability of the City to serve and provide municipal services to the inhabitants of the City, thereby ensuring the safety and well-being of said inhabitants; and

WHEREAS, the Common Council of the City (the "Council"), acting as the legislative body and fiscal body of the City, finds that the availability of diesel motor vehicle fuel, (collectively, "Motor Fuel"), is therefore critical to the City in providing such services; and

WHEREAS, the market-driven volatility of Motor Fuel presents a risk to the Motor Fuel budget of the City, which may require the appropriation of additional funds for the purchase of Motor Fuel should prices increase beyond the amount of funds which have been appropriated for such purpose; and

WHEREAS, current market conditions limit the ability of the City to secure Motor Fuel with qualified suppliers of Motor Fuel in a manner which minimizes the adverse impacts of the volatile Motor Fuel market on the budget for the City; and

WHEREAS, the City has been advised by representatives of the Indiana Bond Bank (the "Bond Bank"), including Crowe LLP and Maverick Energy Consulting, that the Bond Bank has established and continued a Motor Fuel budgeting program (the "Program") pursuant to which "qualified entities", as defined in Indiana Code 5-1.5-1-8,

1 may participate for the purpose of managing and mitigating the volatility of Motor Fuel
2 prices in order to achieve budget stability; and

3 WHEREAS, the Council finds that the City is eligible to participate in the
4 Program for its 2020 budget year; and

5
6 WHEREAS, the Council has been advised by the City's Department of
7 Purchasing that it intends to purchase not to exceed \$756,000 (315,000 gals) of Motor
8 Fuel through its vender Ag Plus Inc. and the Council finds that such expenditure should
9 be approved; and

10 WHEREAS, the Council, having considered the information presented to it finds
11 that (i) participation in the Program will allow the City to manage and mitigate the
12 volatility of Motor Fuel prices in order to achieve stability in the City's Motor Fuel
13 budget for the 2020 budget year, (ii) participation in the Program will enhance the City's
14 ability to continue to operate its motor vehicle fleet in an economical manner to assure
15 the continued provision of municipal services to the inhabitants of the City, and (iii) the
16 purchase of the fuel from Ag Plus Inc. is necessary and appropriate and (iv) the City is
17 authorized to participate in the Program and purchase fuel in amount not exceeding
18 \$756,000 (315,000 gals) through Ag Plus Inc. all pursuant to Indiana Code 5-1.5, 36-1-4
19 and 36-9-6; and

20 WHEREAS, the Bond Bank has caused to be prepared a Qualified Entity
21 Reimbursement Agreement in connection with the Program, attached hereto as Exhibit A
22 and incorporated herein by reference (the "Agreement"), for execution by and between
23 the City and the Bond Bank; and

24 WHEREAS, the Bond Bank intends to enter into agreements substantially the
25 same as the Agreement with other qualified entities in connection with the Program; and

26 WHEREAS, the Agreement has been reviewed by the Council, which has had an
27 opportunity to obtain independent advice and counsel with respect thereto, and has also
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1 had the opportunity to review the Agreement with the Bond Bank and seek explanation
2 of the provisions thereof from the Bond Bank; and

3 WHEREAS, the Agreement sets forth the obligations of the City with respect to
4 its participation in the Program during the term of the Agreement; and
5

6 WHEREAS, based upon the foregoing, the Council finds and determines that the
7 City should participate in the Program for the 2020 budget year, that the Agreement
8 should be approved and that any other actions necessary to be taken to assure the City's
9 participation in the Program for the 2020 budget year should be approved;

10 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF
11 THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:
12

13 Section 1. The findings and determinations set forth in the preambles to this
14 Ordinance are hereby made findings and determinations of the City.

15 Section 2. The City is hereby authorized to enter into the Program with the
16 Bond Bank for the purpose of managing and mitigating the volatility of Motor Fuel
17 prices in order to achieve budget stability for the 2020 budget year.
18

19 Section 3. The City, through its Department of Purchasing, is hereby
20 authorized to purchase not to exceed \$756,000 (315,000 gals) of fuel through the City's
21 vendor Ag Plus Inc.

22 Section 4. The Agreement, is hereby approved by the Council so that the City
23 may participate in the Program. The Mayor of the City is hereby authorized and directed
24 to execute and deliver, and the Controller of the City is hereby authorized and directed to
25 attest, the Agreement, and to approve any such changes in form or substance thereto
26 which are consistent with the terms of this Resolution, such changes to be conclusively
27 evidenced by its execution. The Mayor, Clerk and Controller of the City, and any officer
28 of the Board, are hereby further authorized and directed to take such other actions or
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deliver such other certificates as are necessary or desirable in connection with the City's participation in the Program and the other documents needed for the City's participation in the Program as they deem necessary or desirable in connection therewith.

Section 5. The obligations of the City under the Agreement shall be payable from and shall not exceed the amount appropriated by the City for Motor Fuel for the 2020 budget year. The Controller is hereby authorized and directed to make any payments necessary to the Bond Bank pursuant to the terms of the Agreement from funds budgeted by the City for Motor Fuel for the 2020 budget year.

Section 6. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

Section 7. This Ordinance shall be in full force and effect from and after its passage by the Council and approval by the Mayor of the City as required by law.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney



Flex Price Fuel Contract

This agreement entered into on this **10th day of October 2019**, by and between Ag Plus Inc. (seller) and **Fort Wayne Fleet** (buyer) of 1705 Lafayette St., Fort Wayne, In., shall be binding for the length of the contract and subject to the laws of Indiana.

The buyer agrees to purchase from seller **225,000 gallons of Premium ULS On-Road Diesel Fuel at a base price of _____ per gallon. (22,500 gallons a month for 10 consecutive months).** Price does not include any applicable taxes.

Fuel will be purchased in accordance to the following terms and conditions;

- 1) Seller agrees to make available the product in such reasonable quantities and at such reasonable times as requested by the buyer. Buyer shall comply with all requirements of federal, state and local regulations with regard to storing and dispensing motor fuel. Buyer shall indemnify seller and hold it harmless for penalty, loss, liability, or expense in connection with buyer's obligations.
- 2) All products delivered by Seller and sold to Buyer pursuant to this Agreement shall conform to the quality specifications mutually agreed upon by the parties for such products which are commercially acceptable.
- 3) Buyer agrees to take delivery of all contract gallons between **March 1, 2020 and December 31, 2020.**
- 4) Contract gallons are not transferable to any other entity without sellers' written consent.
- 5) **All products contracted for delivery by the Buyer must be taken within the designated delivery time. Products not taken shall be forfeited. In addition, the buyer will be invoiced the difference between the contract price and the first 5 day average price for the month following the contract period on all undelivered gallons. If the contract price is lower of the two, no charge will apply and no refund will be granted.**
- 6) All contracts will be considered executed when placed verbally with an authorized agent of Ag Plus. A confirmation of the verbal agreement will be sent by mail, email or fax. Confirmations are required to be returned within 10 days of the agreement date.
- 7) Full contract value becomes immediately due in the event the buyers account becomes 60 days past due. Nothing contained in this agreement shall excuse buyer from paying seller, when due, any amounts payable under this agreement.
- 8) If there is a breach of this agreement, the parties hereby agree that all reasonable cost of collections and attorney fees may be added to the amount owed including finance charge at the usual a customary rate.
- 9) Either party's failure to perform under the terms and conditions of this Agreement, in whole or in part, will not be deemed a breach or a default hereunder or give rise to any liability of either party to the other if such failure is attributable to any act of God, riot, public enemy, fire, explosion, flood, war, sabotage, accident, actions by governmental authority, or other conditions beyond the reasonable control of the other party.
- 10) Any modification of this agreement or additional obligations assumed by either party shall be binding only if evidenced in writing signed by each party or authorized representative of each party. This agreement constitutes the entire agreement of the parties and supersedes any prior written or oral agreements between the parties with respect to this matter.
- 11) Buyer enters this fixed contract and the risk associated with it at their own discretion.
- 12) Diesel fuel will be invoiced an additional **\$.07** cents per gallon during winter months for cold flow additive.
- 13) An electronic copy of this agreement with signatures shall be considered an original.

Buyer (Printed)/ Title

Seller: Ag Plus
440 Mourey St.
New Haven, IN 46774

CITY OF FORT WAYNE, INDIANA

A&P PLUS

(Vendor Name)

VENDOR DISCLOSURE STATEMENT RELATING TO:

1. **FINANCIAL INTERESTS;**
2. **POTENTIAL CONFLICTS OF INTEREST;**
3. **CURRENT AND PENDING CONTRACTS OR PROCUREMENTS**

Vendors desiring to enter into certain contracts with the City of Fort Wayne, Indiana (the "City") shall disclose their financial interests, potential conflicts of interest and current and pending contract or procurement information as set forth below.

The following disclosures by Vendors are required for all contracts with annual payments by the City in the amount of \$50,000 or more. Vendors shall disclose their financial interests, potential conflicts of interest and other contract and procurement information identified in Sections 1, 2 and 3 below as a prerequisite for consideration for a contract awarded by the City. This Disclosure Statement must be completed and submitted together with the Vendor's contract, bid, proposal or offer.

A publicly traded entity may submit its current 10K disclosure filing in satisfaction of the disclosure requirements set forth in Sections 1 and 2 below.

Section 1: Disclosure of Financial Interest in Vendor

- a. If any individuals have either of the following financial interests in Vendor (or its parent), please check all that apply and provide their names and addresses (attach additional pages as necessary):

(i) Equity ownership exceeding 5% ☐

(ii) Distributable income share exceeding 5% ☐

(iii) Not Applicable (If N/A, go to Section 2) ☒

Name: _____ Name: _____

Address: _____ Address: _____

- b. For each individual listed in Section 1a. show his/her type of equity ownership:

sole proprietorship ☐ stock ☐

partnership interest ☐ units (LLC) ☐

other (explain) _____

- c. For each individual listed in Section 1a. show the percentage of ownership interest in Vendor (or its parent):
ownership interest:

Name: _____ %

Name: _____ %

Section 2: Disclosure of Potential Conflicts of Interest (not applicable for vendors who file a 10K)

For each individual listed in Section 1a, check "Yes" or "No" to indicate which, if any, of the following potential conflict of interest relationships apply. If "Yes", please describe using space under applicable subsection (attach additional pages as necessary):

- a. City employment, currently or in the previous 3 years, including contractual employment for services:
Yes _____ No ☒

- b. City employment of "Member of Immediate Family" (defined herein as: Spouse, Child, Step Child, Parent or Step Parent, Father-in-law or Mother-in-law, Brother or Sister, Step Brother or Step Sister, Half Brother or Half Sister, Brother-in-law or Sister-in-law, Son-in-law or Daughter-in-law, Grandparent or Step Grandparent, Grandparent or Step Grandparent of Spouse, Grandchild)
Including contractual employment for services in the previous 3 years:
Yes _____ No ☒

- c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years: Yes _____ No ☒

Section 3: DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION

- a. Does Vendor have current contracts (including leases) with the City? Yes ☒ No _____

If "Yes", identify each current contract with descriptive information including purchase order or contract reference number, contract date and City contact below (attach additional pages as necessary).

FOR WAYNE FLEET - FUEL CONTRACT DATED 11-1-2018
270,000 GALLONS OF ON-ROAD DIESEL 1-1-2019 TO 12-31-2019

- b. Does Vendor have pending contracts (including leases), bids, proposals, or other pending procurement relationship with the City? Yes _____ No ☒

If "Yes", identify each pending matter with descriptive information including bid or project number, contract date and City contact using space below (attach additional pages as necessary).

- c. Does vendor have any existing employees that are also employed by the City of Fort Wayne?

Yes _____ No ☒

If "Yes", provide the employee's name, current position held at vendor, and employment payment terms (hourly, salaried, commissioned, etc.).

Name / Position / Payment Terms:

Name / Position / Payment Terms:

Name / Position / Payment Terms:

- d. Does vendor's representative, agent, broker, dealer or distributor (if applicable) have any existing employees that are also employed by the City of Fort Wayne? For each instance, please provide the name of the representative, agent, broker, dealer or distributor; the name of the City employee, and the payment terms (hourly, salaried, commissioned, etc.).

Company / Name / Payment Terms:

N/A

Company / Name / Payment Terms:

Section 4: CERTIFICATION OF DISCLOSURES

In connection with the disclosures contained in Sections 1, 2 and 3 Vendor hereby certifies that, except as described in attached Schedule A:

- a. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, been debarred, suspended, proposed for debarment declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. No officer or director of Vendor (or its parent) or individual listed in Section 1a. is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offense;
- c. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, had one or more public transactions (federal, state or local) terminated for cause or default;
- d. No officer or director of Vendor (or its parent) or individual listed in Section 1a. has, within the five (5) year period preceding the date of this Disclosure Statement, been convicted, adjudged guilty, or found liable in any criminal or civil action instituted by the City, the federal or state government or any other unit of local government; and
- e. Neither Vendor, nor its parent, nor any affiliated entity of Vendor, or any of their respective officers, directors, or individuals listed in Section 1a. is barred from contracting with any unit of any federal, state or local government as a result of engaging in or being convicted of: (i) bid-rigging; (ii) bid-rotating; or (iii) any similar federal or state offense that contains the same

elements as the offense of bid-rigging or bid-rotating

- f. Pursuant to IC 5-22-16.5, Vendor hereby certifies they do NOT provide \$20 million dollars or more in goods or services to the energy sector of Iran. Vendor also certifies it is not a financial institution that extends \$20 million dollars or more in credit that will provide goods or services to the energy sector of Iran or extends \$20 million dollars or more in credit to a person identified on the list as a person engaging in investment activities in Iran.

The disclosures contained Sections 1, 2 and 3 and the foregoing Certifications are submitted by

AG PLUS
(Name of Vendor)

440 MOUREY ST. NEW HAVEN, IN. 46774

Address

() 260-749-5139

Telephone

CJORGENSEN@AGPLUS.INC.COM

E-Mail Address

The individual authorized to sign on behalf of Vendor represents that he/she: (a) is fully informed regarding the matters pertaining to Vendor and its business; (b) has adequate knowledge to make the above representations and disclosures concerning Vendor; and (c) certifies that the foregoing representations and disclosures are true and accurate to the best of his/her knowledge and belief.

Name (Printed)

CHARLES R. JORGENSEN

Title

AG PLUS ENERGY DIVISION MANAGER

Signature

Charles R. Jorgensen

Date

1-2-2019

NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM WITH YOUR DOCUMENTATION MAY RESULT IN YOUR CONTRACT, OFFER, BID OR PROPOSAL BEING DISQUALIFIED FROM CONSIDERATION.

COUNCIL DIGEST SHEET

Enclosed with this introduction form is a tab sheet and related material from the vendor(s) who submitted bid(s). Purchasing Department is providing this information to Council as an overview of this award.

RFPs, BIDS, OTHER PROJECTS

Bid/RFP#/Name of Project	2020 Bulk Diesel
Awarded To	AG Plus
Amount	Not to exceed \$756,000 (plus applicable taxes) for 315,000 gallons
Conflict of interest on file?	☒ Yes ☐ No
Number of Registrants	
Number of Bidders	NA
Required Attachments	Dept Memo

EXTENSIONS

Date Last Bid Out	FWCS led bid
# Extensions Granted To Date	

SPECIAL PROCUREMENT

Contract #/ID (State, Federal, Piggyback--Authority)	
Sole Source/ Compatibility Justification	Unique opportunity for savings IC 5-22-10-5

BID CRITERIA *(Take Buy Indiana requirements into consideration.)*

Most Responsible, Responsive Lowest	☐ Yes ☐ No <i>If no, explain below</i>
If not lowest, explain	

COUNCIL DIGEST SHEET

COST COMPARISON

<i>Increase/decrease amount from prior years For annual purchase (if available).</i>	2019 rate is \$2.38/gal. (plus applicable taxes)
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DESCRIPTION OF PROJECT / NEED

<i>Identify need for project & describe project; attach supporting documents as necessary.</i>	Supply of bulk diesel fuel for 2020 budget year
	Approval of this not to exceed budget amount will secure the 2020 budget

REQUEST FOR PRIOR APPROVAL

<i>Provide justification if prior approval is being requested.</i>	Seeking Council approval for a contract price not to exceed \$2.40 (plus taxes) per gallon of 315,000 gallons of diesel. Purchasing is expecting to contract at a more favorable rate upon Council final approval.

FUNDING SOURCE

<i>Account Information.</i>	Fleet Maintenance budget line

Memo

To: City Council
From: Larry Campbell, Fleet Director
CC: Purchasing
Date: October 2019
Re: Purchase of bulk diesel from AG Plus

Council,

We request approval of a contract with AG Plus for a volume of 315,000 gallons for 2020 at a base price **not to exceed** \$2.40 per gallon (plus taxes and winter blend surcharge) and a total contract price **not to exceed** \$756,000. We expect to be able to lock this diesel at a lower price pending final passage of this Ordinance. This contract is for bulk tank delivery only at Fleet Services.

The City Public Works Director /Purchasing Director/Controller will continue to monitor pricing.

Thank you Larry Campbell