

AGREEMENT
between
THE CITY OF COCONUT CREEK
And
EMERALD TRANSPORTATION CORPORATION
for
FRANCHISE AGREEMENT FOR CITY WIDE WRECKER TOWING SERVICE
RFP NO. 07-11-18-09

THIS AGREEMENT is made and entered into this _____ day of _____, 2018 by and between the City of Coconut Creek, a municipal corporation, with principal offices located at 4800 West Copans Road, Coconut Creek, FL 33063 (the "City") and Emerald Transportation Corporation, a Florida corporation with offices located at 4000 North Powerline Road, Pompano Beach, FL 33073 (the "Vendor") to provide City Wide Wrecker Towing Services pursuant to RFP No. 07-11-18-09.

Now therefore, in consideration of the mutual covenants hereinafter set forth, the City and Vendor agree as follows:

1) The Contract Documents

The contract documents consist of this Agreement, conditions of the contract of RFP No. 07-11-18-09, all addenda issued prior to, and all modifications issued after execution of this Agreement. These contract documents form the Agreement, and all are as fully a part of the Agreement if attached to this Agreement or repeated therein.

2) The Work

The Vendor shall perform all work for the City required by the contract documents and as set forth below:

- a) Vendor shall furnish all labor, materials, and equipment necessary as indicated in the specifications herein.
- b) Vendor shall be responsible for recovering and or towing inoperable City owned or leased vehicles and equipment that are located within the Tri-County Area to any location within Broward County at no charge to the City. In addition, Vendor shall provide tire changes and vehicle jump-starts, at no charge to the City.
- c) Vendor shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. Vendor shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work. Vendor shall at all times have a competent supervisor on the job site to enforce these policies and procedures at the Vendor's expense.
- d) Vendor shall provide the City with seventy-two (72) hours written notice prior to the beginning of work under this Agreement and prior to any schedule change with the exception of changes caused by inclement weather.
- e) Vendor shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to

the Vendor, its employees, agents or subcontractors, if any, with respect to the work and services described herein.

3) Towing Rates

The rates stated in Attachment "A", Coconut Creek's Towing Fees, are based upon rates charged by Broward County. Shall Broward County rates be amended, the City of Coconut Creek reserves the right to also amend rates herein.

4) Franchise Fee

Vendor shall provide services in accordance with the terms, conditions and specifications contained in this Agreement and RFP No. 07-11-18-09 for the annual franchise fee amount of FORTY-FIVE THOUSAND Dollars and ZERO cents (\$45,000.00).

Annual franchise fees shall be payable by four (4) equal quarterly payments, in advance, and shall be due on the first business day of the contract quarter. If franchise fees are ten (10) days late, a charge of fifty dollars (\$50.00) shall be applied in addition to interests at the highest rate allowed by current Florida State Statute. If franchise fees are more than twenty (20) days late, Vendor is subject to suspension or cancellation at the City's sole option.

5) Franchise Fee Adjustment

Franchise fees paid to the City shall be increased each year of the contract by a minimum of five percent (5%) from the previous year's fee. The actual increase shall be negotiated between the City and Vendor based upon volume of services provided during the previous twelve (12) month period.

6) Contract Term

The initial Agreement period shall be for five (5) years: Beginning on October 1, 2018 through September 30, 2023.

7) Contract Extension

The City reserves the right to extend the Agreement for five (5) additional one (1) year periods, providing both parties agree to the extension; all the terms, conditions and specifications remain the same; and such extension is approved by the City in writing. Vendor shall give written notice to the City not less than ninety (90) days prior to renewal date of any adjustment in the initial Contract amount. Agreement renewal shall be based on satisfactory performance, mutual acceptance, and determination that the Contract is in the best interest of the City.

In the event services are scheduled to end because of the expiration of this contract, the Vendor shall continue the service upon the request of the Contract Administrator. The extension period shall not extend for more than ninety (90) days beyond the expiration date of the existing contract. The Vendor shall be compensated for the service at the rate(s) in effect when the City invokes this extension clause.

8) Conditions for Emergency/Hurricane or Disaster

It is hereby made a part of this agreement that before, during and after a public emergency, disaster, hurricane, flood or other substantial loss that the City of Coconut Creek shall require a "first priority" basis for goods and services. It is vital and imperative that the majority of citizens are protected from any emergency situation which threatens public safety and health, as determined by the City Manager. Awarded Vendor/Contractor agrees to rent/sell/lease all goods and services to the City or other governmental entities, as opposed to a private citizen or corporation, on a first priority basis. The City expects to pay a fair and reasonable price for all products/services in the event of a disaster, emergency or hurricane. Awarded

Vendor/Contractor shall furnish a twenty-four (24) hour telephone number in the event of such an emergency.

9) Post Disaster Relief Services

Vendor shall be authorized to provide all necessary post disaster relief service required by the City, and as directed by the City Manager, or designee, at Vendor's rates as provided in Attachment "A". Vendor shall keep detailed reports, records, and invoices of all post disaster relief services provided, and shall provide them in a form and format necessary for the City to be eligible to receive FEMA reimbursement for same.

10) Independent Contractor

Vendor is an independent Contractor under this Agreement. Personal services provided by the Vendor shall be by employees of the Vendor and subject to supervision by the Contractor, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of the Vendor.

11) Assignment and Subcontracting

No assignment of this Agreement or any right occurring under this Agreement shall be made, in whole or in part, by the Contractor without the express written consent of the City Commission which consent shall not be unreasonably withheld. In the event of any assignment, the assignee shall assume the rights, duties and responsibilities of the Contractor.

12) Notice

Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the following addresses.

CITY

City Manager
City of Coconut Creek
4800 West Copans Road
Coconut Creek, FL 33063
With a copy to the City Attorney at the same address.

VENDOR

James M. Jennings, President
Emerald Transportation Corporation
4000 North Powerline Road
Pompano Beach, FL 33073
Phone: 954-917-4747
Fax: 954-917-4737
Email: jim@emeraldtowing.com

13) Agreement Subject to Funding

This Agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Coconut Creek in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

14) Venue

The parties waive the privilege of venue and agree that all litigation between them in the state

courts shall take place exclusively in the Seventeenth Judicial Circuit in and for Broward County, Florida and that all litigation between them in the federal courts shall take place exclusively in the Southern District in and for the State of Florida.

15) Signatory Authority

The Vendor shall provide the City with copies of requisite documentation evidencing that the signatory for Vendor has the authority to enter into this Agreement.

16) Severability; Waiver of Provisions

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

17) Merger; Amendment

This Agreement constitutes the entire Agreement between the Vendor and the City, and negotiations and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the Vendor and the City.

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IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature. CITY OF COCONUT CREEK, through its City Manager or designee and Emerald Transportation Corporation, signing by and through James M. Jennings, President, duly authorized to execute same.

CITY OF COCONUT CREEK

ATTEST:

Mary C. Blasi, City Manager Date

Leslie Wallace May Date
City Clerk

Approved as to form and legal sufficiency:

Terrill C. Pyburn, City Attorney Date

VENDOR

ATTEST:

Company Name

(Corporate Secretary)

Signature of President/Owner Date

Type/Print Name of Corporate Secy.

Type/Print Name of President/Owner

(CORPORATE SEAL)

CORPORATE ACKNOWLEDGEMENT

STATE OF FLORIDA:

:SS

COUNTY OF _____:

I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared _____, of _____ a _____ Corporation, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal this _____ day of _____, 2018.

Signature of Notary Public
State of Florida at Large

Print, Type or Stamp
Name of Notary Public

- Personally known to me or
- Produced Identification

Type of I.D. Produced

- DID take an oath, or
- DID NOT take an oath.

ATTACHMENT A

**COCONUT CREEK'S TOWING FEES
TOWING FEES FOR NON CONSENT TOWS (I.P. TOWING)**

CATEGORIES AND MAXIMUM FEES FOR RECOVERY, TOWING, REMOVINGS, STORING OR IMMOBILIZATION OF VEHICLES ON PRIVATE PROPERTY

Regulation Established

The fees established below are the maximum dollar amounts that business enterprises are authorized to charge as fees to vehicle owners for recovering, towing, removing, or storing vehicles, which are taken into possession of business enterprises, or for the immobilization of vehicles. The definitions in the Towing and Immobilization Company Regulating Ordinance shall be applicable to this regulation.

I. Categories and Fees

- a. Maximum fees for recovering (vehicle not towed), towing, removing, or storing vehicles with a gross vehicle weight rating of less than 10,000 lbs. removed from private property (applicable to Class A tows, without regard to the classification of the towing vehicle; for Class B and C tows from private property, see fees listed in subsection b.):

1. Towing	\$123.87
2. Recovery (vehicle not towed) recovered from lakes, canals and other situations not normal for standard tows	\$50.00
3. Storing (after six (6) hours)	\$24.78 Per twenty-four (24) hours
4. Administration (after 24 hours)	\$30.97 Plus all actual costs incurred in obtaining ownership information and providing notice*

- b. Maximum fees for towing, removing, or storing vehicles with a gross vehicle weight rating of **less than 10,000 lbs.** without regard to the classification of the towing vehicle, removed from other than private property, including tows directly by law enforcement or other municipal agencies.

1. Class A: Towed vehicle gross vehicle rating less than 10,000 lbs.

(a) Towing:	
(1) First 15 minutes	\$134.19
(2) Each additional thirty (30) minutes, or fraction thereof	\$ 56.77
(b) Storage (outdoor), per day	\$ 24.78
(c) Storage (indoor), per day	\$ 30.97
(d) Administration (after 24 hours)	\$ 30.97 Plus all actual costs incurred in obtaining ownership information and providing notice*

2. **Class B:** Vehicle in tow has a gross vehicle weight rating of 10,000 lbs. but less than 15,000 lbs.

(a) Towing	\$180.64
(b) Storage, per day	\$ 44.39 Per twenty-four (24) hours
(c) Flatbed	\$201.29
(d) Administration (after 24 hours)	\$ 30.40 Plus all actual costs incurred in obtaining ownership information and providing notice*
(e) Labor (per hour-per person)	\$180.64

3. **Class C:** Vehicle in tow has a gross vehicle weight rating of 15,000 lbs. but less than 30,000 lbs.

(a) Towing	\$309.67
(b) Storage, per day	\$ 51.61
(c) Flatbed	\$332.38
(d) Administration (after 24 hours)	\$ 30.97 Plus all actual costs incurred in obtaining ownership information and providing notice*
(e) Labor (per hour-per person)	\$309.67

4. **Class D:** Vehicle in tow has a gross vehicle weight rating greater than 30,000 lbs.

(a) Towing (first 30 minutes)	\$412.90
(b) Storage, per day	\$ 51.61
(c) Flatbed-Lowboy	\$332.38
(d) Administration (after 24 hours)	\$ 30.97 Plus all actual costs incurred in obtaining ownership information and providing notice*
(e) Labor (per ¼ hour, per person or truck)	\$103.22

*Applicable only when company providing service must actually perform research to determine ownership of and notification to vehicle owner, lien holders or insurance companies. Written documentation of the effort to ascertain ownership of the vehicle must be in the form of a TAVIS report or similar documentation and be made available for inspection by the City upon request. Costs shall mean actual fees charged by the State of Florida for obtaining ownership information and shall include the cost of actual postage fees, advertising fees (if more than a single vehicle is advertised in the same advertisement the cost of the advertisement shall be prorated per vehicle), and title search for out-of-state vehicles. Proof of all costs incurred by company must be made available for inspection by the City upon request.

5. **Miscellaneous charges applicable to Class A, B, C, and D above:**

(a) Road Service (vehicle not towed)	
(1) Class A	\$41.29
(2) Class B	\$57.80
(3) Class C	\$74.84
(4) Class D	\$74.84
(b) Divers (submerged vehicle, per hour-per person)	\$100.00 plus cost per hour** (portal-to-portal)

**Only when performed by a certified/professional diver with the written documentation of costs incurred and only after the use of the diver has the prior approval by the investigating law enforcement agency/officer.

c. Winch Recovery (Vehicle not towed and all times are for time actually on the scene).

(1) Class "A" Vehicle:

A. First 30 minutes	\$103.22
B. Each additional 30 minutes	\$51.61

(2) Class "B" Vehicle:

A. First 30 minutes per truck	\$180.64
B. Each additional 30 minutes	\$90.32

(3) Class "C" Vehicle:

A. First 30 minutes per truck	\$309.67
B. Each additional 30 minutes	\$154.84

(4) Class "D" Vehicle:

A. First 30 minutes per truck	\$412.90
B. Each additional 30 minutes	\$206.45

d. Immobilization (Booting) \$67.10 per vehicle

II. Recovery

Pursuant to Section 715.07(2) (a), 3. Florida Statutes, the vehicle shall be disconnected from the towing apparatus upon the payment of not more than one-half of the rate for towing service. For all classifications of vehicle recovery, where the vehicle is released at the scene, the maximum fee for the category of recovery shall be one-half of the applicable towing rates established by the vehicle's maximum gross vehicle weight rate under Item # 1, Categories and Fees. The category of recovery is hereby established and defined as follows: to take possession of a vehicle and its contents and to exercise control and supervision over the vehicle. This category is established to provide for those occasions where the vehicle owner arrives at the towing scene before towing and removal, or in the case of a non-consensual tow, where the recovery is directed by law or municipal enforcement.

III. Storage

Pursuant to Section 713.78 (2), Florida Statutes, no storage fee shall be charged if the vehicle removed is stored for less than six (6) hours. Vehicle storage begins at the time the vehicle arrives at the storage facility and charges are based on each day which shall mean each consecutive twenty-four hour period from the time of arrival. The category of Storage for Vehicles Removed at the request of an authorized agent, property owner or law enforcement officer, derived from the Ordinance definition of "store", is hereby established and defined as follows: To place and to leave a vehicle towed at the direction of an agent authorized to make the direction to a site where the towing company, or a person on the initiation of the towing company, exercises control and supervision over the vehicle.

IV. Exclusive Fees

The amount of fees and the fee categories established by this Part shall be exclusive fees. In other words, there shall be no other fees or categories of service that business enterprises, may demand and collect from vehicle owners.

V. Towing Rates

The rates herein are based upon rates charge by Broward County. Shall Broward County rates be amended, the City of Coconut Creek reserves the right to also amend rates herein.