

AGREEMENT
between
THE CITY OF COCONUT CREEK
and
EMERALD TRANSPORTATION CORPORATION
for
FRANCHISE AGREEMENT FOR CITY-WIDE WRECKER TOWING SERVICE
(RFP NO. 08-14-08-10)

THIS AGREEMENT is made and entered into this 1st day of October, 2008 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 principal offices located at 2300 Wiles Road, Pompano Beach, FL 33073 (the "Contractor") for City-Wide Wrecker Towing Service pursuant to RFP No. 08-14-08-10.

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

1) The Contract Documents

The contract documents consist of this Agreement, conditions of the contract (General, Supplementary and other Conditions), drawings, specifications of RFP No. 08-14-08-10, 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.

Legal Notice/Request for Proposal
Section I – General Terms and Conditions
Section II – Special Terms and Conditions
Section III – Instructions to Proposers
Section IV – Detailed Requirements – Scope of Services
Section V – Proposal Package
Attachment "A" – Coconut Creek's Towing Fees
Attachment "B" – Graphic Boundaries Map

2) The Work

The Contractor shall perform all work for the City required by the contract documents and RFP No. 08-14-08-10 set forth below:

- a) Contractor shall furnish all labor, materials, and equipment necessary as indicated in the specifications herein.
- b) Contractor shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. Contractor shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work. Contractor shall at all times have a competent field supervisor on the job site to enforce these policies and procedures at the Contractor's expense.

- c) Contractor 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 Contractor, its employees, agents or subcontractors, if any, with respect to the work and services described herein.

3) Franchise Fee

Proposer shall provide services in accordance with the terms, conditions, and specifications contained in this agreement and RFP No. 08-14-08-10 for the annual franchise fee amount of TWENTY-FIVE THOUSAND Dollars and ZERO cents (\$25,000.00).

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 interest at the highest rate allowed by current *Florida State Statute*. If franchise fees are more than twenty (20) days late, Contractor is subject to suspension or cancellation at the City's sole option.

4) 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 Contractor based upon volume of services provided during the previous twelve (12) month period.

5) Towing Rates

The rates stated in Attachment "A" 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.

6) Contract Term

The initial Contract period shall be for five (5) fiscal years beginning October 1, 2008. The City reserves the right to extend the contract for five (5) additional one (1) year periods for a total contract term of ten (10) years, providing both parties agree to the extension; all the terms, conditions and specifications remain the same; and such extension is approved by the City. Contractor 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. Contract renewal shall be based on satisfactory performance, mutual acceptance, and determination that the Contract is in the best interest of the City.

7) Non-Discrimination

The Contractor agrees that it shall not discriminate against any of its employees or applicants for employment because of their age, handicap, race, color, religion, sex, or national origin, and to abide by all federal and State laws regarding non-discrimination. The Contractor further agrees to insert the foregoing provisions in all subcontracts hereunder except subcontracts for standard commercial supplies or raw materials. Any violation of such provisions shall constitute a material breach of this Agreement.

8) Independent Contractor

Contractor is an independent Contractor under this Agreement. Personal services provided by the Contractor shall be by employees of the Contractor 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 Contractor.

9) Assignment and Subcontracting

Contractor shall not transfer or assign the performance required by this Agreement without the prior consent of the City. This Agreement, or any portion thereof, shall not be subcontracted without the prior written consent of the city.

10) 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.

CONTRACTOR

James M. Jennings, Vice President
Emerald Transportation Corporation
2300 Wiles Road
Pompano Beach, FL 33073
Phone: 954-917-4747
Fax: 954-917-4737
Email: Emetow@bellsouth.net

11) Termination

This Agreement may be terminated by City or Contractor for cause or by the City for convenience, upon thirty (30) days of written notice by the terminating party to the other party for such termination in which event the Contractor shall be paid its compensation for services performed to termination date, including services reasonably related to termination. In the event that the Contractor abandons this Agreement or causes it to be terminated, Contractor shall indemnify the city against loss pertaining to this termination.

Default by Contractor: In addition to all other remedies available to the City, this Agreement shall be subject to cancellation by the City should the Contractor neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by Contractor of written notice of such neglect or failure.

12) 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.

- 13) **Venue**
This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this agreement is situated in Broward County, Florida.
- 14) **Signatory Authority**
The Contractor shall provide the City with copies of requisite documentation evidencing that the signatory for Contractor has the authority to enter into this Agreement.
- 15) **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.
- 16) **Merger; Amendment**
This Agreement constitutes the entire Agreement between the Contractor 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 Contractor and the City.

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature. CITY OF COCONUT CREEK, through its Mayor and _____ EMERALD TRANSPORTATION CORP. (Name of party with whom Agreement is made), signing by and through its President (President, Owner, CEO, etc.) duly authorized to execute same.

CITY OF COCONUT CREEK

ATTEST:

Barbara S. Price 10/15/08
Barbara S. Price, MMC
City Clerk
Date

Rebecca A. Tooley 10/15/08
Rebecca A. Tooley, Mayor
Date

Approved as to form and legal sufficiency:

Paul Stuart 10/15/08
Paul Stuart, City Attorney
NANCY A. COUSINS
Date

CONTRACTOR

ATTEST:

Marie Jennings
(Corporate Secretary)

Marie Jennings
Type/Print Name of Corporate Secy.

EMERALD TRANSPORTATION CORP.
Company Name

James Jenny 10/9/08
Signature of President/Owner
Date

JAMES JENNY
Type/Print Name of President/Owner

(CORPORATE SEAL)

CORPORATE ACKNOWLEDGEMENT

STATE OF FLORIDA:

:SS

COUNTY OF BROWARD

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 JAMES JEWINGS, of EMERALD TRANSPORTATION Corp 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 9th day of October, 2008.

NOTARY PUBLIC-STATE OF FLORIDA
Christine Marie Dale
Commission # DD768045
Expires: APR. 08, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

Christine Marie Dale

Signature of Notary Public
State of Florida at Large

Christine Marie Dale

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	\$100.00
2. Recovery (vehicle not towed)	\$50.00
3. Storing (after six (6) hours)	\$24.00
4. Administration (after 24 hours)	\$30.00 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	\$105.00
(2) Each additional thirty (30) minutes, or fraction thereof	\$ 55.00 \$ 24.00
(b) Storage (outdoor), per day	\$ 30.00
(c) Storage (indoor), per day	
(d) Administration (after 24 hours)	\$ 30.00 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	\$175.00
(b) Storage, per day	\$ 43.00
(c) Flatbed	\$195.00
(d) Administration (after 24 hours)	\$ 30.00 Plus all actual costs incurred in obtaining ownership information and providing notice*
(e) Labor (per hour-per person)	\$175.00

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

(a) Towing	\$300.00
(b) Storage, per day	\$ 50.00
(c) Flatbed	\$322.00
(d) Administration (after 24 hours)	\$ 30.00 Plus all actual costs incurred in obtaining ownership information and providing notice*
(e) Labor (per hour-per person)	\$300.00

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

(a) Towing (first 30 minutes)	\$400.00
(b) Storage, per day	\$ 50.00
(c) Flatbed-Lowboy	\$322.00
(d) Administration (after 24 hours)	\$ 30.00 Plus all actual costs incurred in obtaining ownership information and providing notice*
(e) Labor (per ¼ hour, per person or truck)	\$100.00

*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	\$40.00
(2) Class B	\$56.00
(3) Class C	\$72.50
(4) Class D	\$72.50
(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	\$100.00
B. Each additional 30 minutes	\$50.00

(2) **Class "B" Vehicle:**

A. First 30 minutes per truck	\$175.00
B. Each additional 30 minutes	\$87.50

(3) **Class "C" Vehicle:**

A. First 30 minutes per truck	\$300.00
B. Each additional 30 minutes	\$150.00

(4) **Class "D" Vehicle:**

A. First 30 minutes per truck	\$400.00
B. Each additional 30 minutes	\$200.00

d. **Immobilization** (Booting). Twenty-Five Dollars (\$25.00) per vehicle is hereby fixed as the maximum fee for each immobilization (booting) for any 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.