

RESOLUTION NO. 175-02

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING RENEWAL OF THE EXISTING TOW SERVICE CONTRACTS, AS AMENDED, BETWEEN THE CITY OF RIVIERA BEACH AND THE FOLLOWING TOW COMPANIES: ALL TIME TOWING, JAMES' TOWING, KAUFF'S TOWING, LYON'S TOWING, LAKE PARK TOWING AND ALL FLORIDA TOWING, HEREINAFTER TOW COMPANIES; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE SAID CONTRACTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Riviera Beach is empowered by Section 323.002, Florida Statutes, to enter into contracts with one or more wrecker operators; and

WHEREAS, pursuant to a request for proposals solicited and accepted in 1998 providing for vehicle towing and storage services to the City and establishing set rates for City dispatched tows and service calls, the City of Riviera Beach by and through its City Council entered into contracts with the following Tow Companies: All Time Towing, James' Towing, Kauff's Towing, Lyon's Towing, Lake Park Towing and All Florida Towing, hereinafter "Tow Companies", which are due to expire; and

WHEREAS, the contracts provide for a renewal option for four (4) additional twelve (12) month periods; and

WHEREAS, the City and the Tow Companies desire to exercise such option; and

WHEREAS, the previously executed contracts failed to address certain issues and the City Council and the Tow Companies now desire to address such issues by amending same for the mutual benefit of all parties.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, FLORIDA, as follows:

Section 1: The City Council approves renewal of the Towing Service contracts, as amended, between the City of Riviera Beach and the Tow Companies.

SECTION 2: The City Council authorizes the Mayor and City Clerk to execute said contracts. The cost of towing class "C" vehicles is significantly more where as Kauffs & Lyons Towing are the only towing companies capable of towing such vehicles. The City has agreed to pay Kauffs and Lyons Towing \$60.00 each tow as full and fair compensation for towing class "C" vehicles only.

SECTION 3: This Resolution shall take effect upon its passage and approval by the City Council.

PASSED and APPROVED this 2ND day of OCTOBER, 2002.

APPROVED:

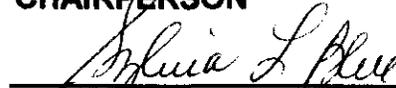


**MICHAEL D. BROWN
MAYOR**



**DAVID G. SCHNYER
CHAIRPERSON**

[MUNICIPAL SEAL]



**SYLVIA L. BLUE
CHAIRPERSON PRO-TEM**

ATTEST:



**DONALD R. WILSON
COUNCILPERSON**



**CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK**



**ELIZABETH "LIZ" WADE
COUNCILPERSON**

**EDWARD RODGERS
COUNCILPERSON**

MOTIONED BY: S. BLUE

SECONDED BY: D. WILSON

D. SCHNYER AYE

S. BLUE AYE

D. WILSON AYE

E. RODGERS AYE

E. WADE AYE

REVIEWED AS TO LEGAL SUFFICIENCY

**CITY ATTORNEY
CITY OF RIVIERA BEACH**

DATE: _____

All Florida Towing
Copy for The City of Riviera Beach

Owner / CEO: Albert Prabetto
1424 10th Street
Lake Park, Florida 33403
(561) 840-9300

TOWING AND STORAGE AGREEMENT

THIS AGREEMENT, made and entered into this 03 day of October 2002, by and between the City of Riviera Beach, a municipality in the State of Florida, herein referred to as the "CITY", and All Florida Towing, [] an individual, [] a partnership, [] a corporation authorized to do business in the State of Florida, hereinafter referred to as the "CONTRACTOR", whose Federal I.D. or Social Security number is _____.

WITNESSETH:

WHEREAS, the CITY issued its Request for Proposals for Towing and Storage Services #01695, and Addendum #1 (collectively, the "RFP") pursuant to state and local law to solicit proposals to provide vehicle towing and storage services for the CITY; and

WHEREAS, the CONTRACTOR responded to the RFP by submitting its bid proposal and agreeing to abide by the CITY'S rate schedule, which Proposal was accepted by the CITY; and

WHEREAS, the CONTRACTOR along with five (5) other Contractors have been selected; and

WHEREAS, the RFP provides for a renewal option for four (4) additional twelve (12) month periods; and

WHEREAS, the CITY and the CONTRACTOR each desire to exercise such option; and

WHEREAS, although the RFP, the Proposal and the Rate Schedule address in some detail the services to be provided, there are certain issues not addressed by these documents which the parties hereto desire to address.

NOW, THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the CITY and the CONTRACTOR hereby covenant and agree as follows:

SCOPE OF AGREEMENT, TERMS AND CONDITIONS

1. The vehicle towing and storage services to be provided to the CITY by the CONTRACTOR shall be on a non-exclusive, rotating basis.

2. It is the CITY'S desire to contract with all firms deemed qualified and responsive by the CITY. A representative of the City of Riviera Beach Police

Department, ("Police Department"), the affected Department, or any authorized representative of the CITY will accept and distribute all tow calls on a rotation basis as more fully set forth in Exhibit "A" attached hereto and incorporated herein by reference.

3. The owner or person in possession of any vehicle which has been involved in an accident or whose vehicle has been incapacitated in any other manner, as well as a detained driver of any vehicle which will not be impounded by the Police Department, shall be given the opportunity to contact a wrecker or tow truck company of his/her own choice if the disabled vehicle does not create a hazardous condition and a reasonable response time can be expected. Said person shall further be given the opportunity of having such vehicle towed to a garage or compound other than that of the CONTRACTOR.

4. When authorized by a representative of the Police Department, the affected Department or any authorized representative of the CITY, CONTRACTOR shall remove vehicles from the streets or other public property lying within the CITY limits and any abandoned, wrecked or junked vehicles on private property declared to be a nuisance when so informed by the CITY.

5. Except as the law may otherwise require, the CONTRACTOR shall not move any vehicles to any location other than that designated by a City Police Officer or other authorized City representative, or owner or person in lawful possession of the vehicle.

6. A tow as used herein is the actual removal of a vehicle. No double charges or second tows are allowed. Extra hook-ups do not constitute another tow charge. No mileage charges are allowed from any point within the CITY limits.

7. The CONTRACTOR agrees to have no markings, lettering or symbols on any vehicle, building or correspondence that indicates or tends to indicate any official relationship between the CONTRACTOR and the CITY.

8. The CITY, vehicle owner, driver, or person lawfully in possession of such vehicle, shall have the right to cancel a request for services at any time, including up to the time of hook-up, without any charge being incurred. The CONTRACTOR agrees that the mere response to a service call scene without other action does not constitute a service for which charges are applicable. However, if the tow is cancelled, CONTRACTOR will retain its position in the rotation.

CONTROLLING PROVISIONS

9. To the extent that there exists a conflict between the RFP, the Proposal, the Rotation Schedule and the Rate Schedule, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

TERM OF AGREEMENT

10. The period of the Agreement shall be one (1) year (12 months), with an option to renew the contract for three (3) additional twelve (12) month periods. The option for renewal will only be exercised upon mutual written agreement and with all original terms, conditions and specifications of the Agreement remaining the same with no deviations.

RESPONSE

11. Calls under this Agreement will be given priority over all other non-emergency calls.

12. CONTRACTOR shall be expected to arrive at the site within twenty (20) minutes of the call. CONTRACTOR assumes all liability in meeting the twenty (20) minute response time including, but not limited to, any and all damages resulting from traffic accidents and motor vehicle infraction fines.

LOCATION

13. CONTRACTOR shall have a Place of Business and Storage Facility located within a five (5) mile radius of the Riviera Beach Police Station, ("Police Station").

CITY VEHICLES, TRAILERS, AND/OR EQUIPMENT

14. CONTRACTOR agrees that it shall provide to the CITY, free of charge, all necessary towing, road service and storage required by the CITY in the operation and maintenance of all CITY vehicles. This includes towing from the CITY garage or the closest qualified commercial maintenance facility selected by the City anywhere in Palm Beach, Broward, Martin and Miami-Dade Counties. CONTRACTOR shall also provide, at no cost to the CITY, "stand-by" wrecker equipment and personnel whenever requested by the Police Department for Special Operations including, but not limited to, "sting operations," traffic checkpoints, or other special events as designated by the Chief of Police or designee.

15. Services related to CITY owned or leased vehicle(s) or trailer(s) should be logged and forwarded by CONTRACTOR on a monthly basis to the CITY's Purchasing Director. All such logs shall identify the vehicle(s) or trailer(s) towed or the service rendered, the location from which it was towed, and the hours and dates applicable to CONTRACTOR'S services with respect to those vehicle(s) or trailer(s). The "service ticket" shall include the signature of the authorized CITY employee approving towing of the CITY vehicle or trailer. CONTRACTOR shall provide such information, until such

time as a form is provided to it by CITY, which then must be completed by CONTRACTOR.

CRIME SCENE, CONFISCATED, SPECIAL "HOLD" STORAGE

16. Vehicles towed for the Police Department that are seized as the result of any Special Operations and/or vehicles which will be held pending forfeiture and/or for other investigative purposes shall be towed by CONTRACTOR at no cost to the CITY.

17. Vehicles which have been marked "HOLD" by the Police Department shall be stored at the compound of the CONTRACTOR for whatever period of time necessary in order to properly process the vehicle and conduct any necessary investigation. Absent a Court Order to the contrary, personnel of the Police Department shall be permitted access to such vehicle at all reasonable times. Such storage charged by CONTRACTOR shall not be billed to the CITY. CONTRACTOR agrees to seek recovery of any and all storage charges from the owner of such vehicle or in the sale of such vehicle as provided for by Sections 713.78 and 715.05, Florida Statutes.

18. Any vehicle towed or stored as a result of the marked "HOLD" relative to a crime scene investigation shall be handled with gloves (i.e. cloth, rubber, or leather) by the wrecker operator.

19. Crime Scene vehicles shall be stored to prevent physical contamination or degradable evidence from deteriorating and shall be stored inside a facility. If inside storage is not available, CONTRACTOR shall surrender the tow and fee to the next tow company in rotation. This requirement shall not prevent CITY from removing the vehicle or trailer and storing it at a CITY-owned or controlled facility or at another tow company's storage compound.

20. If laboratory work on a crime scene vehicle is required and the vehicle must be processed at a location other than CONTRACTOR'S facility, the vehicle shall be transported to the CITY designated location free of charge.

21. Confiscated vehicles or vehicles involved in litigation shall be protected from the elements, preferably at an inside storage facility, as to maintain the vehicle in its condition at the time of towing. This shall not prevent the CITY from removing the vehicle and storing it at a CITY-owned or controlled facility or at another tow company's storage compound.

CODE ENFORCEMENT

22. Vehicles to be towed and stored pursuant to the directive of the City of Riviera Beach's Code Enforcement Department, (hereinafter "Code Enforcement"), shall also be subject to the rotation basis as more fully set forth in Exhibit "A".

23. CONTRACTOR'S failure to perform Code Enforcement tows more than two (2) times during any twelve (12) month period may result in suspension or removal from the CITY'S rotation list. 22. When vehicles, boats or trailers are towed from public property, including right-of-ways, after the appropriate notification, CONTRACTOR has the option of destroying the vehicle or keeping it safe for sale pursuant to Sections 713.78 and 715.05, Florida Statutes. CONTRACTOR shall remove, tow and store all such vehicles, boats, and trailers, at no charge to the CITY. CONTRACTOR hereby agrees to seek payment for such services solely from the owners of such vehicles, boats or trailers or in the sale of such vehicles, boats or trailers as set forth herein.

24. When vehicles, boats or trailers are towed from private property after receiving the appropriate notification, CONTRACTOR must proceed in accordance with the provisions set forth in Sections 713.78 and 715.05, Florida Statutes and store the vehicles, boats, or trailers for a minimum period of thirty-five (35) days, after which time CONTRACTOR has the option to destroy or sell the vehicles, boats or trailers pursuant to Section 713.78, Florida Statutes. Any breach of any statutory provision with respect to such destruction or sale shall constitute a breach of this Agreement and shall be grounds for termination of this Agreement.

25. CONTRACTOR agrees that the CITY shall in no way compensate CONTRACTOR for such removal and/or storage and CONTRACTOR shall look to the vehicle, boat or trailer owner or the remedies as provided by the statutes referenced herein for payment.

COMPENSATION

27. Services performed under this Agreement shall be charged for and compensated in accordance with the Rate Schedule attached hereto as Exhibit "B" and incorporated herein by reference.

28. The CONTRACTOR shall be responsible for the collection of all tow, storage, labor, service and mileage charges and fees. The CITY shall in no way be responsible for the collection or payment of any charge for services rendered by reasons of its having dispatched service in accordance with this Agreement. All such services rendered shall be charged to the owner of the towed or serviced vehicle or other lawful claimant in possession of such vehicle.

29. Storage fees shall be charged at the rates stated in the Rate Schedule for each twenty-four (24) hour period. No storage fee shall be applied until a vehicle is held in excess of twenty-four (24) hours.

30. CONTRACTOR shall prominently post in CONTRACTOR'S storage facilities a list of CONTRACTOR'S charges as set forth in the Rate Schedule. A list of such charges shall be provided to the owner or person lawfully in possession of each vehicle towed. CONTRACTOR shall not charge for any service that exceeds such posted

or listed amount, nor shall CONTRACTOR perform any service that is not delineated on any such posted or listed schedule without giving the owner of the vehicle or person lawfully in possession thereof a written estimate of the amount that will be finally due and payable upon the rendition of the services. No additional charges are allowed unless specified by this Agreement and new charges must be approved through negotiation with the CITY's Director of Purchasing.

31. No charges other than those set forth in the Rate Schedule will be levied against the vehicle owner, whenever the vehicle towing, recovery, or storage is authorized by the CITY, or its agents.

32. A declaration as to the rates between the CONTRACTOR and the CITY will either be made a part of, or permanently attached to the invoice that is presented to the vehicle owner or the owner's representative.

MINIMUM EQUIPMENT REQUIREMENT

33. The CONTRACTOR will be required to have available at all times sufficient equipment to perform all services required on a timely and reasonable basis. All equipment must be housed within a five (5) mile radius of the Police Department. CONTRACTOR must have at least one (1) wrecker capable of towing any CITY Fire Truck, whether loaded or empty. All equipment shall be modern, commercially manufactured or approved by the CITY and in good mechanical condition. All towing vehicles must be owned or leased directly by CONTRACTOR. Subcontracting of towing vehicles will not be allowed. No vehicle of the CONTRACTOR shall be used as an emergency vehicle. All towing vehicles must be equipped with two-way radios with a range extending throughout all of the CITY limits. Such radios shall not be tuned in to any police frequency. CONTRACTOR shall comply with all laws, rules and regulations of any governmental agency having jurisdiction in the premises including, but not limited to, licensing and minimum safety standards. In addition to the aforementioned, CONTRACTOR shall have the following:

Vehicles

- a. Five Class "A" small wreckers of 4-ton capacity.
- b. Two Class "A" slide back (flatbed) carrier of 10,000 Gross Vehicle Weight, ("GVW"). (Note: these may be included as part of the total for (a) above).
- c. One Class "B" large wrecker of 16-ton capacity equipped with twin booms or hydraulic equivalent, air brakes and auxiliary air supply.
- d. One Class "C" large wrecker of 40-ton capacity equipped with twin booms or hydraulic equivalent, air brakes and auxiliary air supply.
- e. One 48' hydraulic, roll back, tilt self-loading trailer, capable of hauling, among other things, the CITY's Fire apparatus.

Communication

a. A business type communications system licensed and approved by the Federal Communications Commission capable of providing reliable communications between the driver and a place of business from anywhere within the city limits. A Citizen's Band (CB) radio or Family Radio Service (FRS) does not meet the requirements of this condition.

Lights

- a. One or more amber colored rotator beam, or strobe lights, mounted on the top of the cab and positioned so that the light is visible from any direction.
- b. Additional amber lights shall be installed to be visible from the front of the tow truck and red lights visible only from the rear of the tow truck.
- c. Top mounted rotor beam or strobe lights WILL NOT be used while responding to a dispatch call unless authorized by the Police Department.
- d. Top mounted rotor beam or strobe lights will be used while at the scene of a dispatch call.

On-board Equipment

- a. Dollies for all vehicles except for class "C" and roll back carriers.
- b. At least one heavy-duty push broom, with a minimum width of 24 inches on each vehicle.
- c. Flood light on each hoist.
- d. Minimum of one square shovel.
- e. Minimum of one fire axe.
- f. One crowbar or pry bar with a minimum length of 30 inches.
- g. A minimum of one 5-pound CO₂, or dry chemical fire extinguisher or equivalent. The extinguisher must be of an approved type and have attached a current marked inspection tag.
- h. One pair of bolt cutters with a minimum of ½ inch opening.
- i. One set of battery jumper cables or a portable heavy-duty jump starting device.
- j. One 4-way lug wrench, or pneumatic tools capable of automotive wheel removal at scene.
- k. One high intensity flashlight.
- l. Five 30 minute fuses (flares), or equivalent in sufficient quantity to burn for 2 ½ hours.
- m. One snatch block for each winch, manufacturers rating to match winch, except for roll back carrier.
- n. Extra towing chain six to eight feet in length with hooks on both ends.
- o. At least six safety cones or triangle reflectors.
- p. Fifty pounds of "Oil Dry" or suitable absorbent material equivalent to handle spills or leaks.
- q. One trash receptacle capable of holding 5 gallons or more.

DRUG FREE WORK PLACE

34. In compliance with Section 287.087, Florida Statutes, CONTRACTOR shall execute and submit with this Agreement the "Drug-Free Workplace Certification" attached hereto as Exhibit "C" and incorporated herein by reference.

ETHICS AND CONDUCT

35. CONTRACTOR hereby agrees to conduct operations under this Agreement in a courteous, orderly, ethical and professional manner. As it is recognized by both parties that this Agreement is sensitive in nature and requires CONTRACTOR and its personnel and employees to work with the public on a daily basis, CONTRACTOR is required to extend common courtesies including, but not limited to:

- a. Expedite release of vehicle in accordance with the terms of this Agreement;
- b. Assist the vehicle or trailer owner in retrieving documents from the vehicle or trailer to establish ownership;
- c. Permit the owner to remove the auto tag and any unattached personal possessions;
- d. Explain fully and politely the reason for the tow and all charges levied;
- e. If a dispute occurs, CONTRACTOR shall attempt to resolve the dispute promptly and politely. If it cannot be resolved satisfactorily, the dispute shall be reported to the CITY Police Chief or designee no later than the next business day.

EMPLOYEES

36. The CONTRACTOR agrees that the owner(s) of the company or the officer(s) of the company (if a corporation) shall be responsible except as otherwise prohibited by law, for the acts of their employees while on duty.

37. The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the CITY.

38. All of the services required hereunder shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized, licensed or permitted under state and local law to perform such services.

39. The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

40. The CONTRACTOR agrees that it is fully responsible to the CITY for the acts and omissions of persons either directly or indirectly employed by the CONTRACTOR. Nothing contained herein shall create any contractual relationship between any such person and the CITY.

41. All of the CONTRACTOR'S personnel, while on City premises, will comply with all CITY requirements governing conduct, safety, and security.

GENERAL OPERATING PROCEDURES

42. CONTRACTOR must be available for immediate response, twenty-four (24) hours per day, seven days a week. Should extenuating circumstances prevent full time availability, the Police Department must be notified immediately.

43. CONTRACTOR is prohibited from "chasing" or "running" to vehicle accident scenes, unless properly authorized by the Police Department. CONTRACTOR agrees that it will not solicit on the scene of an official investigation.

44. Should CONTRACTOR remove any vehicle from any scene of an official investigation without the authorization of the Police Department, CONTRACTOR shall be subject to suspension or removal from the service.

45. Although the CITY established a rotation list, the Police Department reserves the right to disregard any rotation list when in the sole opinion of the Police Department, there is a need for urgency and/or public safety mandates calling another tow company or when superior equipment is required which cannot be furnished by the tow company on top of the rotation list.

46. CONTRACTOR shall tow all vehicles from the scene except when CONTRACTOR is unable to handle all vehicles, in which case a second tow company will be called, or upon request by an Owner.

INDEPENDENT CONTRACTOR RELATIONSHIP

47. The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the CITY shall be that of an Independent Contractor and not as employees or agents of the CITY.

48. The CONTRACTOR does not have the power or authority to bind the CITY in any promise, agreement or representation other than as specifically provided for

in this Agreement.

CONTRACTOR'S LIABILITY

49. The CONTRACTOR'S liability for any towed and/or stored vehicle and all property contained therein shall commence from the time a wrecker is hooked to any vehicle to be towed. The CONTRACTOR and/or the Police Department shall inventory all personal property contained in the vehicle to be towed. Such inventory shall be made in triplicate and shall be signed by the person(s) composing it. One copy shall be given to the owner or the person in possession of the vehicle, and one copy shall be given to the Police Department or other authorized CITY personnel. The CONTRACTOR shall be solely liable and responsible for all personal property in any towed vehicle.

CLEAN UP

50. The CONTRACTOR, when called to the scene of an accident, shall remove and properly dispose of all broken glass, debris and other non-hazardous matter from the street, sidewalk, park or other CITY property. The cost of such normal accident cleanup shall be included in the basic towing rate and no separate charge made to the vehicle owner.

LABOR CHARGES

51. Labor charges shall be included in the basic towing rate and no separate charge made to the vehicle owner. In the event that unusual circumstances arise which require additional labor not contemplated in the provision of services hereunder, the cost of such labor shall be charged to the vehicle owner at the rate set forth in the Rate Schedule.

NON-LIABILITY OF CITY

52. The CITY shall not be responsible or liable in any manner whatsoever for either the collection or payment of any charges for services rendered, including, but not limited to, towing, storage or mileage.

REPORTS, RECORD KEEPING, AND AUDITS

53. The CONTRACTOR shall maintain and have available at all times for inspection by authorized CITY personnel detailed accounting and other records of all services rendered relative to the Agreement.

54. CONTRACTOR, shall each month ten (10) days prior to the last day of the month, provide to the CITY's Purchasing Department two (2) copies of a complete, detailed listing of all vehicles which have been towed and released in the prior thirty (30) day period; a complete, detailed listing of all vehicles which have been impounded or stored for a period of thirty (30) days or longer, such listing to include all vehicles not

claimed within thirty (30) days; and any such other information that the CITY may require.

55. The CONTRACTOR shall provide to the Police Department weekly reports of vehicles and trailers towed pursuant to Police Department directive. Such weekly reports shall contain, to the extent available, the following information:

- a. Name of owner or driver of vehicle, boat or trailer towed;
- b. Model and make of vehicle, boat or trailer;
- c. License plate number;
- d. Vehicle, boat or trailer identification number;
- e. Time, date and location of tow;
- f. Circumstances requiring tow;
- g. Whether or not a "HOLD" was placed on the vehicle by the Police Department;
- h. Time dispatched to scene and time of arrival;
- i. Storage facility where vehicle is stored; and
- j. The date times and name of employee releasing the vehicle.

56. CONTRACTOR shall at all times maintain at its place of business records containing the following information:

- a. A vehicle storage receipt of each vehicle on the premises.
- b. A monthly log of all calls for service by the Police Department.
- c. A notification log indicating the date, time and method of notification to the registered owner of the stored vehicle or trailer.
- d. A daily log setting forth a list of all vehicles towed, as well as information on each vehicle as outlined above.

57. The CITY, from time to time, during normal business hours and with at least two (2) business days prior notice to CONTRACTOR, shall have the right to audit the CONTRACTOR'S books and records at the CITY'S expense with regard to the accounts and services provided to or on behalf of the CITY hereunder to ensure that all aspects of the Agreement are being met. Failure by CONTRACTOR to permit such audit shall be grounds for immediate termination of this Agreement by the CITY.

RELEASE OF VEHICLES AND/OR PERSONAL PROPERTY

58. CONTRACTOR agrees to release any vehicle, which has not been marked "HOLD" by the Police Department provided that proper proof of ownership or right of possession is presented to CONTRACTOR. Any vehicle, including any personal property in such vehicle and all accessories, which has been marked "HOLD" by the Police Department, shall not be released without prior written authority from the Police Department. Should CONTRACTOR release personal property, upon proper proof of ownership or right of possession, the owner or person entitled to possession thereof shall sign a receipt provided by the CONTRACTOR for same.

OWNER NOTIFICATION

59. CONTRACTOR agrees to be responsible for notifying the registered owner or agent of the whereabouts of the vehicle in accordance with Chapter 713, Florida Statutes.

IMPOUNDED VEHICLES

60. Should any owner or person lawfully entitled to possession of an impounded vehicle seek to reclaim the same from CONTRACTOR, CONTRACTOR shall provide such owner or person lawfully entitled to possession with an itemized statement of all charges relating to the impounding of such vehicle.

STORAGE AND OFFICE FACILITIES

61. The CONTRACTOR will maintain an office facility, storage garage and outside storage facilities complying with all provisions of applicable building, zoning and environmental regulations sufficient to store all vehicles towed under this Agreement until such vehicle(s) are claimed by the owner or otherwise disposed of legally.

62. CONTRACTOR'S office and storage facility shall be open and manned seven (7) days per week and twenty-four (24) hours per day and shall be equipped with twenty-four (24) hour on-premises radio-dispatching capabilities.

63. All outside storage facilities shall be enclosed with a solid wall or substantial wire fence not less than six (6) feet in height. The top of such fence or wall, including all gates or doors or roofed open doors, shall be equipped with not less than 12" of barbed wire installed in such manner as to discourage access over the top of such fence or wall. All fences and walls shall be maintained in good repair throughout the term of the Agreement. Damage to such walls or fences shall be repaired within twenty-four (24) hours. All storage areas shall be open twenty-four (24) hours per day, seven days a week, and authorized personnel or CONTRACTOR shall be available during such times to assure that the obligations and service required of CONTRACTOR shall be available and fulfilled. No charges or gate fees are allowed.

64. CONTRACTOR shall be capable of storing up to three (3) vehicles in inside storage and shall maintain one (1) inside storage space which shall comply with the following specifications:

- a. A working area of 9' x 20' per vehicle with at least an eight (8') foot high ceiling;
- b. A paved floor (i.e. concrete, asphalt) that is free from dirt, standing water and vegetation;
- c. An electrical lighting source sufficient to permit processing of a vehicle;
- and
- d. One (1) outside window or a ventilation system.

65. CONTRACTOR'S office facilities shall include a telephone, restroom facilities, and a work area containing a desk, phone, facsimile machine, computer, etc. Such facility shall have the name of the company, the mailing address and the 24-hour phone number clearly visible to all.

66. Vehicles stored in enclosed areas shall be stored under lock and key. The CONTRACTOR shall protect all stored vehicles and any evidence or personal property contained therein from theft and damage in accordance with all reasonable Police Department instructions and directives.

INSPECTION OF PREMISES AND EQUIPMENT

67. Storage facilities and equipment shall be subject to periodic inspections during the term of this Agreement when deemed necessary by the Police Department. Notice of any discrepancies or deficiencies found by the Police Department to be a violation of a specific requirement of this Agreement shall be submitted to the CONTRACTOR in writing, and CONTRACTOR shall remedy the same within ten (10) days of receipt of such notice. Upon failure by the CONTRACTOR to remedy deficiencies, the Agreement may be terminated at the option of the CITY.

68. CONTRACTOR shall permit members of the Police Department and other authorized CITY personnel to inspect CONTRACTOR'S compound, storage facilities, stored vehicles, and all of the CONTRACTOR'S records concerning CONTRACTOR'S duties under the Agreement at all reasonable times whenever, in the opinion of such members of the Police Department or other authorized CITY personnel, it is deemed necessary to do so.

69. CONTRACTOR shall be given at least two (2) business days prior notice of any inspection to be conducted pursuant to this section.

PROTECTION OF VEHICLES AND PERSONAL PROPERTY

70. The CONTRACTOR'S liability for any vehicle towed and all property contained therein will commence once the wrecker is hooked onto the vehicle.

71. The CONTRACTOR shall be solely accountable and liable for damage to the vehicle and any damage or loss to any and all personal property within the vehicle towed and for all vehicle accessories, regardless of the cause of such damage or loss.

72. Personal property situated in vehicles stored by the CONTRACTOR shall not be disposed of to defray any charges for storage or towing of vehicle. All such personal property, not affixed to the vehicle, upon request and without regard to any fees owed by such person, must be returned at once to the owner or person entitled to legal possession thereof upon proof of ownership or right to possession.

BENEFITS FROM REPAIRS

73. The CONTRACTOR shall not benefit directly or indirectly from any motor vehicle repair or painting with respect to vehicles towed by the CONTRACTOR under this contract, unless expressly consented to in writing by the vehicle owner or vehicle owner's authorized representatives. Such writing shall inform the owner or agent that he or she has the right to have the vehicle repaired or painted at a place of his or her choice.

INSURANCE

74. The CONTRACTOR shall obtain and maintain through out the term of this Agreement, at CONTRACTOR'S sole cost and expense, the following policies of insurance according to the minimum limits set forth below. Each policy shall be in the name of the Company and shall include coverage for towing and storage. The CITY shall be named as an additional insured, and all coverage afforded to the CITY shall apply as primary coverage and shall not be affected by any insurance which the CITY may carry in its own name. A copy of such insurance policy or policies, or certificates thereof, will be furnished to the CITY Purchasing Department by the CONTRACTOR.

a. Workman's compensation and employer's liability insurance as required by State Statute and local ordinance.

b. Comprehensive general liability insurance in amounts not less than \$500,000.00 per occurrence for Bodily injury and \$500,000.00 per accident for property damage. Said policy endorsed to include:

1. Legal liability covering perils of fire and explosion, theft of an entire vehicle, riot and civil commotion, vandalism and malicious mischief.

2. Combined single limits automobile liability insurance in an amount not less than \$500,000.00 per occurrence for bodily injury and property damage covering all owned, non-owned and hired vehicles used in connection with the work.

c. Garage keepers legal liability insurance coverage in the minimum amount of \$75,000.00 to protect owners of any and all vehicles, boats and trailers towed or stored by CONTRACTOR pursuant to this Agreement, from any loss or damage to such vehicle, boat or trailer on account of such removal or storage.

INDEMNIFICATION AND HOLD HARMLESS

75. The CONTRACTOR shall indemnify and save harmless and defend the CITY, its agents, servants, and employees from and against any and all claims, liability, losses, and/or cause(s) of action which may arise from any negligent act or omission of the CONTRACTOR, its agents, servants, or employees in the performance of services

under this Agreement.

76. The CONTRACTOR further agrees to indemnify, save harmless and defend the CITY, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the CONTRACTOR not included in the paragraph above and for which the CITY, its agents, servants or employees are alleged to be liable. Nothing contained in this Agreement shall be construed or interpreted as consent by the City to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

77. CONTRACTOR shall pay all claims, losses, liens, fines, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees, and court and/or arbitration costs. These indemnifications shall survive the term of this Agreement or any renewal thereof.

78. The CONTRACTOR shall defend all actions in the name of the CITY, when applicable, however, CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of the CONTRACTOR.

CONTINGENT FEES

79. The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

DISCRIMINATION

80. CONTRACTOR will not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, sex, religion, political affiliation, natural origin or handicap.

COMPLAINTS AGAINST CONTRACTOR

81. CONTRACTOR understands and agrees that any complaints received by the CITY whether such complaints originate from City personnel or private individuals concerning the performance of CONTRACTOR'S duties under this Agreement will be referred to the Police Chief or designee. The failure of CONTRACTOR to follow any reasonable instruction of the Police Chief following the referral of any complaint(s) will be considered a material breach of this Agreement and cause for the termination hereof.

SUSPENSION AND REMOVAL FROM ROTATION LIST

82. If at any time during the term of this contract, including any option terms, the CONTRACTOR is determined to be in violation of any of the terms and conditions of the Agreement, the Police Chief or designee shall have the right to suspend the CONTRACTOR until the violation is resolved to the satisfaction of the CITY. If the violation is not promptly resolved or is of such serious nature that the CITY, in its sole discretion, determines that suspension is not adequate, the CITY reserves the right to terminate for cause. Cause shall be defined but not limited to, number, nature and severity of complaints received against the CONTRACTOR relative to the delivery of the services provided herein or failure to timely respond to calls for service.

83. In the event that the CITY receives three (3) or more complaints within a six (6) month period or six (6) or more complaints within one (1) year against the CONTRACTOR, it shall be grounds for immediate termination of this Agreement.

84. Any violation of the provisions or regulations of this Agreement may result in suspension or removal from the CITY'S rotation list, including, but not limited to, the following:

- a. Failure to possess all licenses and permits required by State Statute or local ordinances.
- b. Failure of the CONTRACTOR to respond to a tow call without a valid reason.
- c. Habitual failure to respond to a tow call properly and within the time prescribed in this Agreement.
- d. Voluntary request by CONTRACTOR to be removed temporarily or permanently from the rotation list.
- e. Storage facilities are in disrepair or lacking the requirements contained herein.
- f. CONTRACTOR knowingly overcharges a customer or fails to charge the agreed upon rates as set forth in the Rate Schedule.

DISPUTES

85. CONTRACTOR expressly understands and agrees to relinquish any vehicle immediately upon the request of the CITY. Any dispute concerning billing shall be forwarded to the Police Chief or designee for resolution. Such resolution by the Police Chief shall be final and binding upon all parties.

COMPLIANCE WITH LAWS AND ORDINANCES

86. CONTRACTOR shall comply with all applicable State and Federal laws and ordinances of the CITY now in existence or hereafter adopted, so long as the same do

not impair the rights and privileges of CONTRACTOR in and to any contract signed by CONTRACTOR and the CITY as the result of this Agreement.

NON-ASSIGNABILITY

87. This Agreement shall not be assigned, sold or transferred and any such attempt to do so shall render this agreement void.

88. The CITY reserves the right to terminate the Agreement upon any change in ownership whether from the sale of CONTRACTOR'S business or stock or transfer of authorized and issued shares, the issuance of authorized but unissued shares or the issuance of any additional shares authorized by increases in capital stock limitations.

DISPOSAL OF VEHICLES

89. Should CONTRACTOR, as a result of this Agreement, have in its possession any vehicle or personal property for a period in excess of sixty (60) days, and should CONTRACTOR be ordered to relinquish such vehicle or personal property to the Police Department, CONTRACTOR agrees to immediately do so.

AUCTIONS

90. CONTRACTOR shall not auction any vehicle without the written approval of the Chief of Police, or the Chief's representative. All such auctions shall be conducted pursuant to Section 713.78, Florida Statutes.

TERMINATION

91. The CITY or CONTRACTOR may elect to terminate this Agreement upon thirty (30) days written notice to the other party.

NOTICE

92. All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the CITY shall be mailed to:

CLARENCE WILLIAMS, CHIEF OF POLICE

600 W BLUE HERON BLVD

RIVIERA BEACH, FL 33404

and if sent to the CONTRACTOR shall be mailed to:

ALL FLORIDA TOWING

1424 10TH CT
LAKE PARK FL 33403

VENUE

93. This Agreement and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided herein, performance or breach shall be governed and interpreted according to laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County.

REMEDIES

94. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other, or further exercise thereof.

ENFORCEMENT COSTS

95. If any legal action or other proceeding, including but not limited to arbitration and/or mediation, is brought for any dispute, disagreement, or issue of construction, declaration or interpretation arising hereunder whether relating to the Agreement's execution, validity, the obligations provided therein, or performance of this Agreement, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

SEVERABILITY

96. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

PUBLIC ENTITY CRIMES

97. As provided in Sections 287.132-133, Florida Statutes, by entering into

this Agreement or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.

ENTIRETY OF CONTRACTUAL AGREEMENT

98. The CITY and the CONTRACTOR agree that this Agreement and any attachments hereto or other documents as referenced herein sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

HEADINGS

99. The Section and/or Paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

WAIVER

100. Failure of the CITY to enforce or exercise any right(s) under this Agreement shall not be deemed a waiver of CITY'S right to enforce or exercise said right(s) at any time thereafter.

PREPARATION

101. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

MATERIALITY

102. All provisions of the Agreement shall be deemed material, in the event CONTRACTOR fails to comply with any of the provisions contained in this Agreement or attachments hereto, said failure shall be deemed a material breach of this Agreement and CITY may at its option and without notice terminate this Agreement.

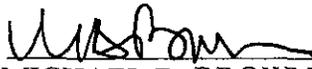
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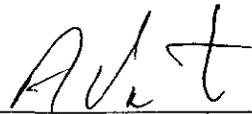
AGREEMENT WITH THE CITY OF RIVIERA BEACH

IN WITNESS WHEREOF, the Parties unto this Agreement have set their hands and seals on the day and date first written above.

CITY OF RIVIERA BEACH

CONTRACTOR

BY: 
MICHAEL D. BROWN
MAYOR

BY: 
NAME: AL PRADETTO
TITLE: OWNER

ATTEST:

BY: 
CARRIE E. WARD, CITY CLERK,
CMC/AAE (SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

BY: _____
CITY ATTORNEY

BY: _____
DEPARTMENT DIRECTOR

DATE: _____

EXHIBIT A

TOW ROTATION LIST PROCEDURE

1. Purpose

The purpose of the tow-rotation list is to have in place a procedure for wrecker call-out on a per incident basis. A tow log will be utilized and maintained by the Police Communication Center, (hereinafter "Center").

2. Procedure

A. Eligible Tow Contractors

ALL TIME TOWING
JAMES TOWING
KAUFF'S TOWING
LYONS TOWING
LAKE PARK TOWING
ALL FLORIDA TOWING

B. Wrecker Response

- i. If a Tow Contractor is unable to respond to a call, the Tow Contractor will be moved to the end of the list, thereby forfeiting that rotation.
- ii. In the event of cancellation or other circumstances where the wrecker is not used and in which the Tow Contractor is not in any way at fault, the City official, agent or employee on the scene requesting the wrecker or tow shall notify the Center upon cancellation of the tow and Tow Contractor shall retain its position in the rotation.
- iii. Should the Center be unable to reach Tow Contractor or Tow Contractor has failed to respond in a reasonable time to a hazardous scene, the next tow company in line will be contacted. The City official, agent or employee shall determine, based on his sole discretion, whether the response time was excessive.

B. **Rotation Tracking**

i. A log will be used by the City to track all vehicle and trailer tows to include rotation wreckers.

ii. The log shall contain the complete vehicle description including VIN number and TAG number when available, the CAD and/or case number assigned, the date and time of the tow, the tow company, and the City official, agent or employee dispatching and/or requesting such tow.

iii. The rotation list shall be maintained in a manual log in which the Tow Contractor at the top of the list shall be given the first opportunity to accept the tow and/or service request.

iv. Specific requests from the vehicle or trailer owner or person lawfully in possession will not be charged against the rotation schedule. The request shall be logged as such by City in the log. If an owner's request cannot be honored for any reason whatsoever, a rotation wrecker will be contacted and so charged on the rotation schedule.

v. In the event the Police Department exercises its option to ignore such rotation list pursuant to Section 45 of the Agreement, such election shall not affect the order of the rotation list and Tow Contractor shall retain its position.

vi. A tow request from the City for City operated vehicle(s), Police Department "Hold" vehicles and Code Enforcement abandoned, wrecked or junked vehicles will not be charged against the Tow Contractor. The Tow Contractor will remain in its tow position until a civilian tow or other type of tow is requested. The request shall be logged as such by the City in the log.

a) **Example:** Center call (A-1) to tow a City vehicle because they are next on the rotation list. (A-1) will tow the vehicle and remain in their original tow position. Immediately there after if another City vehicle needs towing the Tow Contractor (J-2) will be called by Center. They will also remain in their original tow position.

EXHIBIT B

RATE SCHEDULE*

These rates are the only rates that will be charged vehicle owners under this Agreement:

A. TOWING BY ITEM DESCRIPTION

- | | |
|---|--|
| 1) Class A (cars, vans, light trucks under 10,000 GVW) within City limits; | \$48.00 per call |
| 2) Motorcycles within the City limits; | \$40.00 per call |
| 3) Towing outside the City limits for cars, vans, motorcycles, and light trucks $\frac{3}{4}$ and less; | an additional \$3.00 per towed mile from the City limits |
| 4) Class B (vehicles 10,000 to 30,000 GVW) within the City limits; | \$80.00 per call |
| 5) Towing outside the City limits for Class B vehicles; | an additional \$3.50 per towed mile from the City limits |
| 6) Class C vehicles (over 30,000 GVW) within City limits; | \$100.00 per call |
| 7) Class C vehicles outside City limits; | an additional \$4.00 per towed mile from the City limits |
| 8) Additional time at the scene after first hour, per $\frac{1}{2}$ hour thereafter (applied to all vehicles, cars, vans, and trucks under and over $\frac{3}{4}$ ton, for waiting and extra street clean-up. | \$30.00 per half hour |
| 9) Miscellaneous other charges | |

4 X 4/off-road vehicle recovery	\$95.00 for the first hour, and \$30.00 per half hour thereafter
Tarp fee	\$20.00 per call
Lowboy service	\$100.00 per hour
Outside the City limits	an additional \$4.00 per towed mile from City limits
Underwater recovery salvage	\$100.00 for first half hour or part thereof, and \$20.00 for each additional ¼ hour or part thereof.

10) For purposes of this Agreement, when CONTRACTOR is entitled to additional charges based on time spent at the scene, unless otherwise specified, CONTRACTOR shall apportion the charge set forth herein to be consistent with the actual time spent on the scene.

B. STORAGE AND LIEN NOTICE

1) Cars, vans, trucks under ¾ ton	
Outside storage	\$20.00 per day
Inside storage	\$30.00 per day
2) Trucks and vehicles over ¾ ton	
Outside storage	\$25.00 per day
Inside storage	\$30.00 per day
3) Motorcycles	
Outside storage	\$ 5.00 per day
Inside storage	\$10.00 per day
4) Boat and trailer (21 feet and under)	
Outside storage	\$15.00 per day
Inside storage	\$30.00 per day
5) Boat and trailer (over 21 feet)	\$30.00 per day

- 6) Lien notice (after 24 hours of storage) \$30.00 per vehicle

Per Florida Statutes, no storage fee shall be charged to the vehicle owner for a vehicle stored less than six (6) hours.

"Per day" shall be defined as a twenty-four (24) hour period or any part thereof.

C. VEHICLE RECOVERY

The following vehicle recovery fees may be charged to the vehicle owner when the vehicle is overturned, embedded in sand, mud, or water, or requires more than a single hook-up:

- | | |
|--|--|
| 1) Class A and B wrecker on the scene; | \$75.00 per hour and \$25.00 per each half hour after the first hour |
| 2) Extra man (each) on the scene | \$25.00 per hour |

D. ROAD SERVICE

For all trucks, cars, vans and other vehicles under and over $\frac{3}{4}$ ton, a road service fee of \$40.00 per call may be charged to the vehicle owner for services such as assisted start, unlocking a door, delivering gas, tire changes, etc.

* The rates set forth herein shall not apply to any vehicle towed on behalf of the City as more fully set forth in the Agreement to which this Exhibit is attached and made a part thereof.

All Time Towing
Copy for The Contracted Towing Vendor

Owner / CEO: Tony Ott
1145 Old Dixie Hwy
Lake Park, Florida 33403
(561) 842-5544

TOWING AND STORAGE AGREEMENT

THIS AGREEMENT, made and entered into this 03 day of October 2002, by and between the City of Riviera Beach, a municipality in the State of Florida, herein referred to as the "CITY", and All Time Towing, [] an individual, [] a partnership, [] a corporation authorized to do business in the State of Florida, hereinafter referred to as the "CONTRACTOR", whose Federal I.D. or Social Security number is _____.

WITNESSETH:

WHEREAS, the CITY issued its Request for Proposals for Towing and Storage Services #01695, and Addendum #1 (collectively, the "RFP") pursuant to state and local law to solicit proposals to provide vehicle towing and storage services for the CITY; and

WHEREAS, the CONTRACTOR responded to the RFP by submitting its bid proposal and agreeing to abide by the CITY'S rate schedule, which Proposal was accepted by the CITY; and

WHEREAS, the CONTRACTOR along with five (5) other Contractors have been selected; and

WHEREAS, the RFP provides for a renewal option for four (4) additional twelve (12) month periods; and

WHEREAS, the CITY and the CONTRACTOR each desire to exercise such option; and

WHEREAS, although the RFP, the Proposal and the Rate Schedule address in some detail the services to be provided, there are certain issues not addressed by these documents which the parties hereto desire to address.

NOW, THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the CITY and the CONTRACTOR hereby covenant and agree as follows:

SCOPE OF AGREEMENT, TERMS AND CONDITIONS

1. The vehicle towing and storage services to be provided to the CITY by the CONTRACTOR shall be on a non-exclusive, rotating basis.
2. It is the CITY'S desire to contract with all firms deemed qualified and responsive by the CITY. A representative of the City of Riviera Beach Police

Department, ("Police Department"), the affected Department, or any authorized representative of the CITY will accept and distribute all tow calls on a rotation basis as more fully set forth in Exhibit "A" attached hereto and incorporated herein by reference.

3. The owner or person in possession of any vehicle which has been involved in an accident or whose vehicle has been incapacitated in any other manner, as well as a detained driver of any vehicle which will not be impounded by the Police Department, shall be given the opportunity to contact a wrecker or tow truck company of his/her own choice if the disabled vehicle does not create a hazardous condition and a reasonable response time can be expected. Said person shall further be given the opportunity of having such vehicle towed to a garage or compound other than that of the CONTRACTOR.

4. When authorized by a representative of the Police Department, the affected Department or any authorized representative of the CITY, CONTRACTOR shall remove vehicles from the streets or other public property lying within the CITY limits and any abandoned, wrecked or junked vehicles on private property declared to be a nuisance when so informed by the CITY.

5. Except as the law may otherwise require, the CONTRACTOR shall not move any vehicles to any location other than that designated by a City Police Officer or other authorized City representative, or owner or person in lawful possession of the vehicle.

6. A tow as used herein is the actual removal of a vehicle. No double charges or second tows are allowed. Extra hook-ups do not constitute another tow charge. No mileage charges are allowed from any point within the CITY limits.

7. The CONTRACTOR agrees to have no markings, lettering or symbols on any vehicle, building or correspondence that indicates or tends to indicate any official relationship between the CONTRACTOR and the CITY.

8. The CITY, vehicle owner, driver, or person lawfully in possession of such vehicle, shall have the right to cancel a request for services at any time, including up to the time of hook-up, without any charge being incurred. The CONTRACTOR agrees that the mere response to a service call scene without other action does not constitute a service for which charges are applicable. However, if the tow is cancelled, CONTRACTOR will retain its position in the rotation.

CONTROLLING PROVISIONS

9. To the extent that there exists a conflict between the RFP, the Proposal, the Rotation Schedule and the Rate Schedule, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

TERM OF AGREEMENT

10. The period of the Agreement shall be one (1) year (12 months), with an option to renew the contract for three (3) additional twelve (12) month periods. The option for renewal will only be exercised upon mutual written agreement and with all original terms, conditions and specifications of the Agreement remaining the same with no deviations.

RESPONSE

11. Calls under this Agreement will be given priority over all other non-emergency calls.

12. CONTRACTOR shall be expected to arrive at the site within twenty (20) minutes of the call. CONTRACTOR assumes all liability in meeting the twenty (20) minute response time including, but not limited to, any and all damages resulting from traffic accidents and motor vehicle infraction fines.

LOCATION

13. CONTRACTOR shall have a Place of Business and Storage Facility located within a five (5) mile radius of the Riviera Beach Police Station, ("Police Station").

CITY VEHICLES, TRAILERS, AND/OR EQUIPMENT

14. CONTRACTOR agrees that it shall provide to the CITY, free of charge, all necessary towing, road service and storage required by the CITY in the operation and maintenance of all CITY vehicles. This includes towing from the CITY garage or the closest qualified commercial maintenance facility selected by the City anywhere in Palm Beach, Broward, Martin and Miami-Dade Counties. CONTRACTOR shall also provide, at no cost to the CITY, "stand-by" wrecker equipment and personnel whenever requested by the Police Department for Special Operations including, but not limited to, "sting operations," traffic checkpoints, or other special events as designated by the Chief of Police or designee.

15. Services related to CITY owned or leased vehicle(s) or trailer(s) should be logged and forwarded by CONTRACTOR on a monthly basis to the CITY's Purchasing Director. All such logs shall identify the vehicle(s) or trailer(s) towed or the service rendered, the location from which it was towed, and the hours and dates applicable to CONTRACTOR'S services with respect to those vehicle(s) or trailer(s). The "service ticket" shall include the signature of the authorized CITY employee approving towing of the CITY vehicle or trailer. CONTRACTOR shall provide such information, until such

time as a form is provided to it by CITY, which then must be completed by CONTRACTOR.

CRIME SCENE, CONFISCATED, SPECIAL "HOLD" STORAGE

16. Vehicles towed for the Police Department that are seized as the result of any Special Operations and/or vehicles which will be held pending forfeiture and/or for other investigative purposes shall be towed by CONTRACTOR at no cost to the CITY.

17. Vehicles which have been marked "HOLD" by the Police Department shall be stored at the compound of the CONTRACTOR for whatever period of time necessary in order to properly process the vehicle and conduct any necessary investigation. Absent a Court Order to the contrary, personnel of the Police Department shall be permitted access to such vehicle at all reasonable times. Such storage charged by CONTRACTOR shall not be billed to the CITY. CONTRACTOR agrees to seek recovery of any and all storage charges from the owner of such vehicle or in the sale of such vehicle as provided for by Sections 713.78 and 715.05, Florida Statutes.

18. Any vehicle towed or stored as a result of the marked "HOLD" relative to a crime scene investigation shall be handled with gloves (i.e. cloth, rubber, or leather) by the wrecker operator.

19. Crime Scene vehicles shall be stored to prevent physical contamination or degradable evidence from deteriorating and shall be stored inside a facility. If inside storage is not available, CONTRACTOR shall surrender the tow and fee to the next tow company in rotation. This requirement shall not prevent CITY from removing the vehicle or trailer and storing it at a CITY-owned or controlled facility or at another tow company's storage compound.

20. If laboratory work on a crime scene vehicle is required and the vehicle must be processed at a location other than CONTRACTOR'S facility, the vehicle shall be transported to the CITY designated location free of charge.

21. Confiscated vehicles or vehicles involved in litigation shall be protected from the elements, preferably at an inside storage facility, as to maintain the vehicle in its condition at the time of towing. This shall not prevent the CITY from removing the vehicle and storing it at a CITY-owned or controlled facility or at another tow company's storage compound.

CODE ENFORCEMENT

22. Vehicles to be towed and stored pursuant to the directive of the City of Riviera Beach's Code Enforcement Department, (hereinafter "Code Enforcement"), shall also be subject to the rotation basis as more fully set forth in Exhibit "A".

23. CONTRACTOR'S failure to perform Code Enforcement tows more than two (2) times during any twelve (12) month period may result in suspension or removal from the CITY'S rotation list. 22. When vehicles, boats or trailers are towed from public property, including right-of-ways, after the appropriate notification, CONTRACTOR has the option of destroying the vehicle or keeping it safe for sale pursuant to Sections 713.78 and 715.05, Florida Statutes. CONTRACTOR shall remove, tow and store all such vehicles, boats, and trailers, at no charge to the CITY. CONTRACTOR hereby agrees to seek payment for such services solely from the owners of such vehicles, boats or trailers or in the sale of such vehicles, boats or trailers as set forth herein.

24. When vehicles, boats or trailers are towed from private property after receiving the appropriate notification, CONTRACTOR must proceed in accordance with the provisions set forth in Sections 713.78 and 715.05, Florida Statutes and store the vehicles, boats, or trailers for a minimum period of thirty-five (35) days, after which time CONTRACTOR has the option to destroy or sell the vehicles, boats or trailers pursuant to Section 713.78, Florida Statutes. Any breach of any statutory provision with respect to such destruction or sale shall constitute a breach of this Agreement and shall be grounds for termination of this Agreement.

25. CONTRACTOR agrees that the CITY shall in no way compensate CONTRACTOR for such removal and/or storage and CONTRACTOR shall look to the vehicle, boat or trailer owner or the remedies as provided by the statutes referenced herein for payment.

COMPENSATION

27. Services performed under this Agreement shall be charged for and compensated in accordance with the Rate Schedule attached hereto as Exhibit "B" and incorporated herein by reference.

28. The CONTRACTOR shall be responsible for the collection of all tow, storage, labor, service and mileage charges and fees. The CITY shall in no way be responsible for the collection or payment of any charge for services rendered by reasons of its having dispatched service in accordance with this Agreement. All such services rendered shall be charged to the owner of the towed or serviced vehicle or other lawful claimant in possession of such vehicle.

29. Storage fees shall be charged at the rates stated in the Rate Schedule for each twenty-four (24) hour period. No storage fee shall be applied until a vehicle is held in excess of twenty-four (24) hours.

30. CONTRACTOR shall prominently post in CONTRACTOR'S storage facilities a list of CONTRACTOR'S charges as set forth in the Rate Schedule. A list of such charges shall be provided to the owner or person lawfully in possession of each vehicle towed. CONTRACTOR shall not charge for any service that exceeds such posted

or listed amount, nor shall CONTRACTOR perform any service that is not delineated on any such posted or listed schedule without giving the owner of the vehicle or person lawfully in possession thereof a written estimate of the amount that will be finally due and payable upon the rendition of the services. No additional charges are allowed unless specified by this Agreement and new charges must be approved through negotiation with the CITY's Director of Purchasing.

31. No charges other than those set forth in the Rate Schedule will be levied against the vehicle owner, whenever the vehicle towing, recovery, or storage is authorized by the CITY, or its agents.

32. A declaration as to the rates between the CONTRACTOR and the CITY will either be made a part of, or permanently attached to the invoice that is presented to the vehicle owner or the owner's representative.

MINIMUM EQUIPMENT REQUIREMENT

33. The CONTRACTOR will be required to have available at all times sufficient equipment to perform all services required on a timely and reasonable basis. All equipment must be housed within a five (5) mile radius of the Police Department. CONTRACTOR must have at least one (1) wrecker capable of towing any CITY Fire Truck, whether loaded or empty. All equipment shall be modern, commercially manufactured or approved by the CITY and in good mechanical condition. All towing vehicles must be owned or leased directly by CONTRACTOR. Subcontracting of towing vehicles will not be allowed. No vehicle of the CONTRACTOR shall be used as an emergency vehicle. All towing vehicles must be equipped with two-way radios with a range extending throughout all of the CITY limits. Such radios shall not be tuned in to any police frequency. CONTRACTOR shall comply with all laws, rules and regulations of any governmental agency having jurisdiction in the premises including, but not limited to, licensing and minimum safety standards. In addition to the aforementioned, CONTRACTOR shall have the following:

Vehicles

- a. Five Class "A" small wreckers of 4-ton capacity.
- b. Two Class "A" slide back (flatbed) carrier of 10,000 Gross Vehicle Weight, ("GVW"). (Note: these may be included as part of the total for (a) above).
- c. One Class "B" large wrecker of 16-ton capacity equipped with twin booms or hydraulic equivalent, air brakes and auxiliary air supply.
- d. One Class "C" large wrecker of 40-ton capacity equipped with twin booms or hydraulic equivalent, air brakes and auxiliary air supply.
- e. One 48' hydraulic, roll back, tilt self-loading trailer, capable of hauling, among other things, the CITY's Fire apparatus.

Communication

a. A business type communications system licensed and approved by the Federal Communications Commission capable of providing reliable communications between the driver and a place of business from anywhere within the city limits. A Citizen's Band (CB) radio or Family Radio Service (FRS) does not meet the requirements of this condition.

Lights

- a. One or more amber colored rotator beam, or strobe lights, mounted on the top of the cab and positioned so that the light is visible from any direction.
- b. Additional amber lights shall be installed to be visible from the front of the tow truck and red lights visible only from the rear of the tow truck.
- c. Top mounted rotor beam or strobe lights WILL NOT be used while responding to a dispatch call unless authorized by the Police Department.
- d. Top mounted rotor beam or strobe lights will be used while at the scene of a dispatch call.

On-board Equipment

- a. Dollies for all vehicles except for class "C" and roll back carriers.
- b. At least one heavy-duty push broom with a minimum width of 24 inches on each vehicle.
- c. Flood light on each hoist.
- d. Minimum of one square shovel.
- e. Minimum of one fire axe.
- f. One crowbar or pry bar with a minimum length of 30 inches.
- g. A minimum of one 5-pound CO2, or dry chemical fire extinguisher or equivalent. The extinguisher must be of an approved type and have attached a current marked inspection tag.
- h. One pair of bolt cutters with a minimum of ½ inch opening.
- i. One set of battery jumper cables or a portable heavy-duty jump starting device.
- j. One 4-way lug wrench, or pneumatic tools capable of automotive wheel removal at scene.
- k. One high intensity flashlight.
- l. Five 30 minute fuses (flares), or equivalent in sufficient quantity to burn for 2 ½ hours.
- m. One snatch block for each winch, manufacturers rating to match winch, except for roll back carrier.
- n. Extra towing chain six to eight feet in length with hooks on both ends.
- o. At least six safety cones or triangle reflectors.
- p. Fifty pounds of "Oil Dry" or suitable absorbent material equivalent to handle spills or leaks.
- q. One trash receptacle capable of holding 5 gallons or more.

DRUG FREE WORK PLACE

34. In compliance with Section 287.087, Florida Statutes, CONTRACTOR shall execute and submit with this Agreement the "Drug-Free Workplace Certification" attached hereto as Exhibit "C" and incorporated herein by reference.

ETHICS AND CONDUCT

35. CONTRACTOR hereby agrees to conduct operations under this Agreement in a courteous, orderly, ethical and professional manner. As it is recognized by both parties that this Agreement is sensitive in nature and requires CONTRACTOR and its personnel and employees to work with the public on a daily basis, CONTRACTOR is required to extend common courtesies including, but not limited to:

- a. Expedite release of vehicle in accordance with the terms of this Agreement;
- b. Assist the vehicle or trailer owner in retrieving documents from the vehicle or trailer to establish ownership;
- c. Permit the owner to remove the auto tag and any unattached personal possessions;
- d. Explain fully and politely the reason for the tow and all charges levied;
- e. If a dispute occurs, CONTRACTOR shall attempt to resolve the dispute promptly and politely. If it cannot be resolved satisfactorily, the dispute shall be reported to the CITY Police Chief or designee no later than the next business day.

EMPLOYEES

36. The CONTRACTOR agrees that the owner(s) of the company or the officer(s) of the company (if a corporation) shall be responsible except as otherwise prohibited by law, for the acts of their employees while on duty.

37. The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the CITY.

38. All of the services required hereunder shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized, licensed or permitted under state and local law to perform such services.

39. The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

40. The CONTRACTOR agrees that it is fully responsible to the CITY for the acts and omissions of persons either directly or indirectly employed by the CONTRACTOR. Nothing contained herein shall create any contractual relationship between any such person and the CITY.

41. All of the CONTRACTOR'S personnel, while on City premises, will comply with all CITY requirements governing conduct, safety, and security.

GENERAL OPERATING PROCEDURES

42. CONTRACTOR must be available for immediate response, twenty-four (24) hours per day, seven days a week. Should extenuating circumstances prevent full time availability, the Police Department must be notified immediately.

43. CONTRACTOR is prohibited from "chasing" or "running" to vehicle accident scenes, unless properly authorized by the Police Department. CONTRACTOR agrees that it will not solicit on the scene of an official investigation.

44. Should CONTRACTOR remove any vehicle from any scene of an official investigation without the authorization of the Police Department, CONTRACTOR shall be subject to suspension or removal from the service.

45. Although the CITY established a rotation list, the Police Department reserves the right to disregard any rotation list when in the sole opinion of the Police Department, there is a need for urgency and/or public safety mandates calling another tow company or when superior equipment is required which cannot be furnished by the tow company on top of the rotation list.

46. CONTRACTOR shall tow all vehicles from the scene except when CONTRACTOR is unable to handle all vehicles, in which case a second tow company will be called, or upon request by an Owner.

INDEPENDENT CONTRACTOR RELATIONSHIP

47. The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the CITY shall be that of an Independent Contractor and not as employees or agents of the CITY.

48. The CONTRACTOR does not have the power or authority to bind the CITY in any promise, agreement or representation other than as specifically provided for

in this Agreement.

CONTRACTOR'S LIABILITY

49. The CONTRACTOR'S liability for any towed and/or stored vehicle and all property contained therein shall commence from the time a wrecker is hooked to any vehicle to be towed. The CONTRACTOR and/or the Police Department shall inventory all personal property contained in the vehicle to be towed. Such inventory shall be made in triplicate and shall be signed by the person(s) composing it. One copy shall be given to the owner or the person in possession of the vehicle, and one copy shall be given to the Police Department or other authorized CITY personnel. The CONTRACTOR shall be solely liable and responsible for all personal property in any towed vehicle.

CLEAN UP

50. The CONTRACTOR, when called to the scene of an accident, shall remove and properly dispose of all broken glass, debris and other non-hazardous matter from the street, sidewalk, park or other CITY property. The cost of such normal accident cleanup shall be included in the basic towing rate and no separate charge made to the vehicle owner.

LABOR CHARGES

51. Labor charges shall be included in the basic towing rate and no separate charge made to the vehicle owner. In the event that unusual circumstances arise which require additional labor not contemplated in the provision of services hereunder, the cost of such labor shall be charged to the vehicle owner at the rate set forth in the Rate Schedule.

NON-LIABILITY OF CITY

52. The CITY shall not be responsible or liable in any manner whatsoever for either the collection or payment of any charges for services rendered, including, but not limited to, towing, storage or mileage.

REPORTS, RECORD KEEPING, AND AUDITS

53. The CONTRACTOR shall maintain and have available at all times for inspection by authorized CITY personnel detailed accounting and other records of all services rendered relative to the Agreement.

54. CONTRACTOR, shall each month ten (10) days prior to the last day of the month, provide to the CITY's Purchasing Department two (2) copies of a complete, detailed listing of all vehicles which have been towed and released in the prior thirty (30) day period; a complete, detailed listing of all vehicles which have been impounded or stored for a period of thirty (30) days or longer, such listing to include all vehicles not

claimed within thirty (30) days; and any such other information that the CITY may require.

55. The CONTRACTOR shall provide to the Police Department weekly reports of vehicles and trailers towed pursuant to Police Department directive. Such weekly reports shall contain, to the extent available, the following information:

- a. Name of owner or driver of vehicle, boat or trailer towed;
- b. Model and make of vehicle, boat or trailer;
- c. License plate number;
- d. Vehicle, boat or trailer identification number;
- e. Time, date and location of tow;
- f. Circumstances requiring tow;
- g. Whether or not a "HOLD" was placed on the vehicle by the Police Department;
- h. Time dispatched to scene and time of arrival;
- i. Storage facility where vehicle is stored; and
- j. The date times and name of employee releasing the vehicle.

56. CONTRACTOR shall at all times maintain at its place of business records containing the following information:

- a. A vehicle storage receipt of each vehicle on the premises.
- b. A monthly log of all calls for service by the Police Department.
- c. A notification log indicating the date, time and method of notification to the registered owner of the stored vehicle or trailer.
- d. A daily log setting forth a list of all vehicles towed, as well as information on each vehicle as outlined above.

57. The CITY, from time to time, during normal business hours and with at least two (2) business days prior notice to CONTRACTOR, shall have the right to audit the CONTRACTOR'S books and records at the CITY'S expense with regard to the accounts and services provided to or on behalf of the CITY hereunder to ensure that all aspects of the Agreement are being met. Failure by CONTRACTOR to permit such audit shall be grounds for immediate termination of this Agreement by the CITY.

RELEASE OF VEHICLES AND/OR PERSONAL PROPERTY

58. CONTRACTOR agrees to release any vehicle, which has not been marked "HOLD" by the Police Department provided that proper proof of ownership or right of possession is presented to CONTRACTOR. Any vehicle, including any personal property in such vehicle and all accessories, which has been marked "HOLD" by the Police Department, shall not be released without prior written authority from the Police Department. Should CONTRACTOR release personal property, upon proper proof of ownership or right of possession, the owner or person entitled to possession thereof shall sign a receipt provided by the CONTRACTOR for same.

OWNER NOTIFICATION

59. CONTRACTOR agrees to be responsible for notifying the registered owner or agent of the whereabouts of the vehicle in accordance with Chapter 713, Florida Statutes.

IMPOUNDED VEHICLES

60. Should any owner or person lawfully entitled to possession of an impounded vehicle seek to reclaim the same from CONTRACTOR, CONTRACTOR shall provide such owner or person lawfully entitled to possession with an itemized statement of all charges relating to the impounding of such vehicle.

STORAGE AND OFFICE FACILITIES

61. The CONTRACTOR will maintain an office facility, storage garage and outside storage facilities complying with all provisions of applicable building, zoning and environmental regulations sufficient to store all vehicles towed under this Agreement until such vehicle(s) are claimed by the owner or otherwise disposed of legally.

62. CONTRACTOR'S office and storage facility shall be open and manned seven (7) days per week and twenty-four (24) hours per day and shall be equipped with twenty-four (24) hour on-premises radio-dispatching capabilities.

63. All outside storage facilities shall be enclosed with a solid wall or substantial wire fence not less than six (6) feet in height. The top of such fence or wall, including all gates or doors or roofed open doors, shall be equipped with not less than 12" of barbed wire installed in such manner as to discourage access over the top of such fence or wall. All fences and walls shall be maintained in good repair throughout the term of the Agreement. Damage to such walls or fences shall be repaired within twenty-four (24) hours. All storage areas shall be open twenty-four (24) hours per day, seven days a week, and authorized personnel or CONTRACTOR shall be available during such times to assure that the obligations and service required of CONTRACTOR shall be available and fulfilled. No charges or gate fees are allowed.

64. CONTRACTOR shall be capable of storing up to three (3) vehicles in inside storage and shall maintain one (1) inside storage space which shall comply with the following specifications:

- a. A working area of 9' x 20' per vehicle with at least an eight (8') foot high ceiling;
- b. A paved floor (i.e. concrete, asphalt) that is free from dirt, standing water and vegetation;
- c. An electrical lighting source sufficient to permit processing of a vehicle; and
- d. One (1) outside window or a ventilation system.

65. CONTRACTOR'S office facilities shall include a telephone, restroom facilities, and a work area containing a desk, phone, facsimile machine, computer, etc. Such facility shall have the name of the company, the mailing address and the 24-hour phone number clearly visible to all.

66. Vehicles stored in enclosed areas shall be stored under lock and key. The CONTRACTOR shall protect all stored vehicles and any evidence or personal property contained therein from theft and damage in accordance with all reasonable Police Department instructions and directives.

INSPECTION OF PREMISES AND EQUIPMENT

67. Storage facilities and equipment shall be subject to periodic inspections during the term of this Agreement when deemed necessary by the Police Department. Notice of any discrepancies or deficiencies found by the Police Department to be a violation of a specific requirement of this Agreement shall be submitted to the CONTRACTOR in writing, and CONTRACTOR shall remedy the same within ten (10) days of receipt of such notice. Upon failure by the CONTRACTOR to remedy deficiencies, the Agreement may be terminated at the option of the CITY.

68. CONTRACTOR shall permit members of the Police Department and other authorized CITY personnel to inspect CONTRACTOR'S compound, storage facilities, stored vehicles, and all of the CONTRACTOR'S records concerning CONTRACTOR'S duties under the Agreement at all reasonable times whenever, in the opinion of such members of the Police Department or other authorized CITY personnel, it is deemed necessary to do so.

69. CONTRACTOR shall be given at least two (2) business days prior notice of any inspection to be conducted pursuant to this section.

PROTECTION OF VEHICLES AND PERSONAL PROPERTY

70. The CONTRACTOR'S liability for any vehicle towed and all property contained therein will commence once the wrecker is hooked onto the vehicle.

71. The CONTRACTOR shall be solely accountable and liable for damage to the vehicle and any damage or loss to any and all personal property within the vehicle towed and for all vehicle accessories, regardless of the cause of such damage or loss.

72. Personal property situated in vehicles stored by the CONTRACTOR shall not be disposed of to defray any charges for storage or towing of vehicle. All such personal property, not affixed to the vehicle, upon request and without regard to any fees owed by such person, must be returned at once to the owner or person entitled to legal possession thereof upon proof of ownership or right to possession.

BENEFITS FROM REPAIRS

73. The CONTRACTOR shall not benefit directly or indirectly from any motor vehicle repair or painting with respect to vehicles towed by the CONTRACTOR under this contract, unless expressly consented to in writing by the vehicle owner or vehicle owner's authorized representatives. Such writing shall inform the owner or agent that he or she has the right to have the vehicle repaired or painted at a place of his or her choice.

INSURANCE

74. The CONTRACTOR shall obtain and maintain through out the term of this Agreement, at CONTRACTOR'S sole cost and expense, the following policies of insurance according to the minimum limits set forth below. Each policy shall be in the name of the Company and shall include coverage for towing and storage. The CITY shall be named as an additional insured, and all coverage afforded to the CITY shall apply as primary coverage and shall not be affected by any insurance which the CITY may carry in its own name. A copy of such insurance policy or policies, or certificates thereof, will be furnished to the CITY Purchasing Department by the CONTRACTOR.

a. Workman's compensation and employer's liability insurance as required by State Statute and local ordinance.

b. Comprehensive general liability insurance in amounts not less than \$500,000.00 per occurrence for Bodily injury and \$500,000.00 per accident for property damage. Said policy endorsed to include:

1. Legal liability covering perils of fire and explosion, theft of an entire vehicle, riot and civil commotion, vandalism and malicious mischief.

2. Combined single limits automobile liability insurance in an amount not less than \$500,000.00 per occurrence for bodily injury and property damage covering all owned, non-owned and hired vehicles used in connection with the work.

c. Garage keepers legal liability insurance coverage in the minimum amount of \$75,000.00 to protect owners of any and all vehicles, boats and trailers towed or stored by CONTRACTOR pursuant to this Agreement, from any loss or damage to such vehicle, boat or trailer on account of such removal or storage.

INDEMNIFICATION AND HOLD HARMLESS

75. The CONTRACTOR shall indemnify and save harmless and defend the CITY, its agents, servants, and employees from and against any and all claims, liability, losses, and/or cause(s) of action which may arise from any negligent act or omission of the CONTRACTOR, its agents, servants, or employees in the performance of services

under this Agreement.

76. The CONTRACTOR further agrees to indemnify, save harmless and defend the CITY, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the CONTRACTOR not included in the paragraph above and for which the CITY, its agents, servants or employees are alleged to be liable. Nothing contained in this Agreement shall be construed or interpreted as consent by the City to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

77. CONTRACTOR shall pay all claims, losses, liens, fines, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees, and court and/or arbitration costs. These indemnifications shall survive the term of this Agreement or any renewal thereof.

78. The CONTRACTOR shall defend all actions in the name of the CITY, when applicable, however, CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of the CONTRACTOR.

CONTINGENT FEES

79. The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

DISCRIMINATION

80. CONTRACTOR will not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, sex, religion, political affiliation, natural origin or handicap.

COMPLAINTS AGAINST CONTRACTOR

81. CONTRACTOR understands and agrees that any complaints received by the CITY whether such complaints originate from City personnel or private individuals concerning the performance of CONTRACTOR'S duties under this Agreement will be referred to the Police Chief or designee. The failure of CONTRACTOR to follow any reasonable instruction of the Police Chief following the referral of any complaint(s) will be considered a material breach of this Agreement and cause for the termination hereof.

SUSPENSION AND REMOVAL FROM ROTATION LIST

82. If at any time during the term of this contract, including any option terms, the CONTRACTOR is determined to be in violation of any of the terms and conditions of the Agreement, the Police Chief or designee shall have the right to suspend the CONTRACTOR until the violation is resolved to the satisfaction of the CITY. If the violation is not promptly resolved or is of such serious nature that the CITY, in its sole discretion, determines that suspension is not adequate, the CITY reserves the right to terminate for cause. Cause shall be defined but not limited to, number, nature and severity of complaints received against the CONTRACTOR relative to the delivery of the services provided herein or failure to timely respond to calls for service.

83. In the event that the CITY receives three (3) or more complaints within a six (6) month period or six (6) or more complaints within one (1) year against the CONTRACTOR, it shall be grounds for immediate termination of this Agreement.

84. Any violation of the provisions or regulations of this Agreement may result in suspension or removal from the CITY'S rotation list, including, but not limited to, the following:

- a. Failure to possess all licenses and permits required by State Statute or local ordinances.
- b. Failure of the CONTRACTOR to respond to a tow call without a valid reason.
- c. Habitual failure to respond to a tow call properly and within the time prescribed in this Agreement.
- d. Voluntary request by CONTRACTOR to be removed temporarily or permanently from the rotation list.
- e. Storage facilities are in disrepair or lacking the requirements contained herein.
- f. CONTRACTOR knowingly overcharges a customer or fails to charge the agreed upon rates as set forth in the Rate Schedule.

DISPUTES

85. CONTRACTOR expressly understands and agrees to relinquish any vehicle immediately upon the request of the CITY. Any dispute concerning billing shall be forwarded to the Police Chief or designee for resolution. Such resolution by the Police Chief shall be final and binding upon all parties.

COMPLIANCE WITH LAWS AND ORDINANCES

86. CONTRACTOR shall comply with all applicable State and Federal laws and ordinances of the CITY now in existence or hereafter adopted, so long as the same do

not impair the rights and privileges of CONTRACTOR in and to any contract signed by CONTRACTOR and the CITY as the result of this Agreement.

NON-ASSIGNABILITY

87. This Agreement shall not be assigned, sold or transferred and any such attempt to do so shall render this agreement void.

88. The CITY reserves the right to terminate the Agreement upon any change in ownership whether from the sale of CONTRACTOR'S business or stock or transfer of authorized and issued shares, the issuance of authorized but unissued shares or the issuance of any additional shares authorized by increases in capital stock limitations.

DISPOSAL OF VEHICLES

89. Should CONTRACTOR, as a result of this Agreement, have in its possession any vehicle or personal property for a period in excess of sixty (60) days, and should CONTRACTOR be ordered to relinquish such vehicle or personal property to the Police Department, CONTRACTOR agrees to immediately do so.

AUCTIONS

90. CONTRACTOR shall not auction any vehicle without the written approval of the Chief of Police, or the Chief's representative. All such auctions shall be conducted pursuant to Section 713.78, Florida Statutes.

TERMINATION

91. The CITY or CONTRACTOR may elect to terminate this Agreement upon thirty (30) days written notice to the other party.

NOTICE

92. All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the CITY shall be mailed to:

CLARENCE WILLIAMS, CHIEF OF POLICE

600 W BLUE HERON BLVD

RIVIERA BEACH, FL 33404

and if sent to the CONTRACTOR shall be mailed to:

All time Towing

1145 OLD DIXIE HWY
LAKE PARK FLA 33403

VENUE

93. This Agreement and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided herein, performance or breach shall be governed and interpreted according to laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County.

REMEDIES

94. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ENFORCEMENT COSTS

95. If any legal action or other proceeding, including but not limited to arbitration and/or mediation, is brought for any dispute, disagreement, or issue of construction, declaration or interpretation arising hereunder whether relating to the Agreement's execution, validity, the obligations provided therein, or performance of this Agreement, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

SEVERABILITY

96. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

PUBLIC ENTITY CRIMES

97. As provided in Sections 287.132-133, Florida Statutes, by entering into

this Agreement or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.

ENTIRETY OF CONTRACTUAL AGREEMENT

98. The CITY and the CONTRACTOR agree that this Agreement and any attachments hereto or other documents as referenced herein sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

HEADINGS

99. The Section and/or Paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

WAIVER

100. Failure of the CITY to enforce or exercise any right(s) under this Agreement shall not be deemed a waiver of CITY'S right to enforce or exercise said right(s) at any time thereafter.

PREPARATION

101. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

MATERIALITY

102. All provisions of the Agreement shall be deemed material, in the event CONTRACTOR fails to comply with any of the provisions contained in this Agreement or attachments hereto, said failure shall be deemed a material breach of this Agreement and CITY may at its option and without notice terminate this Agreement.

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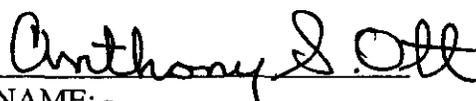
AGREEMENT WITH THE CITY OF RIVIERA BEACH

IN WITNESS WHEREOF, the Parties unto this Agreement have set their hands and seals on the day and date first written above.

CITY OF RIVIERA BEACH

CONTRACTOR

BY: 
MICHAEL D. BROWN
MAYOR

BY: 
NAME: Anthony S. Oll
TITLE: Pres

ATTEST:

BY: 
CARRIE E. WARD, CITY CLERK,
CMC/AAE

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

BY: _____
CITY ATTORNEY

BY: _____
DEPARTMENT DIRECTOR

DATE: _____

James Auto Road Service, Inc.
Copy for The Contracted Towing Vendor

Owner / CEO: James Littles
1044 26th Street
West Palm Beach, Florida 33407
(561) 833-5931

TOWING AND STORAGE AGREEMENT

THIS AGREEMENT, made and entered into this 02 day of October 2002, by and between the City of Riviera Beach, a municipality in the State of Florida, herein referred to as the "CITY", and James Auto Road Service, Inc., [] an individual, [] a partnership, [] a corporation authorized to do business in the State of Florida, hereinafter referred to as the "CONTRACTOR", whose Federal I.D. or Social Security number is _____

WITNESSETH:

WHEREAS, the CITY issued its Request for Proposals for Towing and Storage Services #01695, and Addendum #1 (collectively, the "RFP") pursuant to state and local law to solicit proposals to provide vehicle towing and storage services for the CITY; and

WHEREAS, the CONTRACTOR responded to the RFP by submitting its bid proposal and agreeing to abide by the CITY'S rate schedule, which Proposal was accepted by the CITY; and

WHEREAS, the CONTRACTOR along with five (5) other Contractors have been selected; and

WHEREAS, the RFP provides for a renewal option for four (4) additional twelve (12) month periods; and

WHEREAS, the CITY and the CONTRACTOR each desire to exercise such option; and

WHEREAS, although the RFP, the Proposal and the Rate Schedule address in some detail the services to be provided, there are certain issues not addressed by these documents which the parties hereto desire to address.

NOW, THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the CITY and the CONTRACTOR hereby covenant and agree as follows:

SCOPE OF AGREEMENT, TERMS AND CONDITIONS

1. The vehicle towing and storage services to be provided to the CITY by the CONTRACTOR shall be on a non-exclusive, rotating basis.

2. It is the CITY'S desire to contract with all firms deemed qualified and responsive by the CITY. A representative of the City of Riviera Beach Police

Department, ("Police Department"), the affected Department, or any authorized representative of the CITY will accept and distribute all tow calls on a rotation basis as more fully set forth in Exhibit "A" attached hereto and incorporated herein by reference.

3. The owner or person in possession of any vehicle which has been involved in an accident or whose vehicle has been incapacitated in any other manner, as well as a detained driver of any vehicle which will not be impounded by the Police Department, shall be given the opportunity to contact a wrecker or tow truck company of his/her own choice if the disabled vehicle does not create a hazardous condition and a reasonable response time can be expected. Said person shall further be given the opportunity of having such vehicle towed to a garage or compound other than that of the CONTRACTOR.

4. When authorized by a representative of the Police Department, the affected Department or any authorized representative of the CITY, CONTRACTOR shall remove vehicles from the streets or other public property lying within the CITY limits and any abandoned, wrecked or junked vehicles on private property declared to be a nuisance when so informed by the CITY.

5. Except as the law may otherwise require, the CONTRACTOR shall not move any vehicles to any location other than that designated by a City Police Officer or other authorized City representative, or owner or person in lawful possession of the vehicle.

6. A tow as used herein is the actual removal of a vehicle. No double charges or second tows are allowed. Extra hook-ups do not constitute another tow charge. No mileage charges are allowed from any point within the CITY limits.

7. The CONTRACTOR agrees to have no markings, lettering or symbols on any vehicle, building or correspondence that indicates or tends to indicate any official relationship between the CONTRACTOR and the CITY.

8. The CITY, vehicle owner, driver, or person lawfully in possession of such vehicle, shall have the right to cancel a request for services at any time, including up to the time of hook-up, without any charge being incurred. The CONTRACTOR agrees that the mere response to a service call scene without other action does not constitute a service for which charges are applicable. However, if the tow is cancelled, CONTRACTOR will retain its position in the rotation.

CONTROLLING PROVISIONS

9. To the extent that there exists a conflict between the RFP, the Proposal, the Rotation Schedule and the Rate Schedule, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

TERM OF AGREEMENT

10. The period of the Agreement shall be one (1) year (12 months), with an option to renew the contract for three (3) additional twelve (12) month periods. The option for renewal will only be exercised upon mutual written agreement and with all original terms, conditions and specifications of the Agreement remaining the same with no deviations.

RESPONSE

11. Calls under this Agreement will be given priority over all other non-emergency calls.

12. CONTRACTOR shall be expected to arrive at the site within twenty (20) minutes of the call. CONTRACTOR assumes all liability in meeting the twenty (20) minute response time including, but not limited to, any and all damages resulting from traffic accidents and motor vehicle infraction fines.

LOCATION

13. CONTRACTOR shall have a Place of Business and Storage Facility located within a five (5) mile radius of the Riviera Beach Police Station, ("Police Station").

CITY VEHICLES, TRAILERS, AND/OR EQUIPMENT

14. CONTRACTOR agrees that it shall provide to the CITY, free of charge, all necessary towing, road service and storage required by the CITY in the operation and maintenance of all CITY vehicles. This includes towing from the CITY garage or the closest qualified commercial maintenance facility selected by the City anywhere in Palm Beach, Broward, Martin and Miami-Dade Counties. CONTRACTOR shall also provide, at no cost to the CITY, "stand-by" wrecker equipment and personnel whenever requested by the Police Department for Special Operations including, but not limited to, "sting operations," traffic checkpoints, or other special events as designated by the Chief of Police or designee.

15. Services related to CITY owned or leased vehicle(s) or trailer(s) should be logged and forwarded by CONTRACTOR on a monthly basis to the CITY's Purchasing Director. All such logs shall identify the vehicle(s) or trailer(s) towed or the service rendered, the location from which it was towed, and the hours and dates applicable to CONTRACTOR'S services with respect to those vehicle(s) or trailer(s). The "service ticket" shall include the signature of the authorized CITY employee approving towing of the CITY vehicle or trailer. CONTRACTOR shall provide such information, until such

time as a form is provided to it by CITY, which then must be completed by CONTRACTOR.

CRIME SCENE, CONFISCATED, SPECIAL "HOLD" STORAGE

16. Vehicles towed for the Police Department that are seized as the result of any Special Operations and/or vehicles which will be held pending forfeiture and/or for other investigative purposes shall be towed by CONTRACTOR at no cost to the CITY.

17. Vehicles which have been marked "HOLD" by the Police Department shall be stored at the compound of the CONTRACTOR for whatever period of time necessary in order to properly process the vehicle and conduct any necessary investigation. Absent a Court Order to the contrary, personnel of the Police Department shall be permitted access to such vehicle at all reasonable times. Such storage charged by CONTRACTOR shall not be billed to the CITY. CONTRACTOR agrees to seek recovery of any and all storage charges from the owner of such vehicle or in the sale of such vehicle as provided for by Sections 713.78 and 715.05, Florida Statutes.

18. Any vehicle towed or stored as a result of the marked "HOLD" relative to a crime scene investigation shall be handled with gloves (i.e. cloth, rubber, or leather) by the wrecker operator.

19. Crime Scene vehicles shall be stored to prevent physical contamination or degradable evidence from deteriorating and shall be stored inside a facility. If inside storage is not available, CONTRACTOR shall surrender the tow and fee to the next tow company in rotation. This requirement shall not prevent CITY from removing the vehicle or trailer and storing it at a CITY-owned or controlled facility or at another tow company's storage compound.

20. If laboratory work on a crime scene vehicle is required and the vehicle must be processed at a location other than CONTRACTOR'S facility, the vehicle shall be transported to the CITY designated location free of charge.

21. Confiscated vehicles or vehicles involved in litigation shall be protected from the elements, preferably at an inside storage facility, as to maintain the vehicle in its condition at the time of towing. This shall not prevent the CITY from removing the vehicle and storing it at a CITY-owned or controlled facility or at another tow company's storage compound.

CODE ENFORCEMENT

22. Vehicles to be towed and stored pursuant to the directive of the City of Riviera Beach's Code Enforcement Department, (hereinafter "Code Enforcement"), shall also be subject to the rotation basis as more fully set forth in Exhibit "A".

23. CONTRACTOR'S failure to perform Code Enforcement tows more than two (2) times during any twelve (12) month period may result in suspension or removal from the CITY'S rotation list. 22. When vehicles, boats or trailers are towed from public property, including right-of-ways, after the appropriate notification, CONTRACTOR has the option of destroying the vehicle or keeping it safe for sale pursuant to Sections 713.78 and 715.05, Florida Statutes. CONTRACTOR shall remove, tow and store all such vehicles, boats, and trailers, at no charge to the CITY. CONTRACTOR hereby agrees to seek payment for such services solely from the owners of such vehicles, boats or trailers or in the sale of such vehicles, boats or trailers as set forth herein.

24. When vehicles, boats or trailers are towed from private property after receiving the appropriate notification, CONTRACTOR must proceed in accordance with the provisions set forth in Sections 713.78 and 715.05, Florida Statutes and store the vehicles, boats, or trailers for a minimum period of thirty-five (35) days, after which time CONTRACTOR has the option to destroy or sell the vehicles, boats or trailers pursuant to Section 713.78, Florida Statutes. Any breach of any statutory provision with respect to such destruction or sale shall constitute a breach of this Agreement and shall be grounds for termination of this Agreement.

25. CONTRACTOR agrees that the CITY shall in no way compensate CONTRACTOR for such removal and/or storage and CONTRACTOR shall look to the vehicle, boat or trailer owner or the remedies as provided by the statutes referenced herein for payment.

COMPENSATION

27. Services performed under this Agreement shall be charged for and compensated in accordance with the Rate Schedule attached hereto as Exhibit "B" and incorporated herein by reference.

28. The CONTRACTOR shall be responsible for the collection of all tow, storage, labor, service and mileage charges and fees. The CITY shall in no way be responsible for the collection or payment of any charge for services rendered by reasons of its having dispatched service in accordance with this Agreement. All such services rendered shall be charged to the owner of the towed or serviced vehicle or other lawful claimant in possession of such vehicle.

29. Storage fees shall be charged at the rates stated in the Rate Schedule for each twenty-four (24) hour period. No storage fee shall be applied until a vehicle is held in excess of twenty-four (24) hours.

30. CONTRACTOR shall prominently post in CONTRACTOR'S storage facilities a list of CONTRACTOR'S charges as set forth in the Rate Schedule. A list of such charges shall be provided to the owner or person lawfully in possession of each vehicle towed. CONTRACTOR shall not charge for any service that exceeds such posted

or listed amount, nor shall CONTRACTOR perform any service that is not delineated on any such posted or listed schedule without giving the owner of the vehicle or person lawfully in possession thereof a written estimate of the amount that will be finally due and payable upon the rendition of the services. No additional charges are allowed unless specified by this Agreement and new charges must be approved through negotiation with the CITY's Director of Purchasing.

31. No charges other than those set forth in the Rate Schedule will be levied against the vehicle owner, whenever the vehicle towing, recovery, or storage is authorized by the CITY, or its agents.

32. A declaration as to the rates between the CONTRACTOR and the CITY will either be made a part of, or permanently attached to the invoice that is presented to the vehicle owner or the owner's representative.

MINIMUM EQUIPMENT REQUIREMENT

33. The CONTRACTOR will be required to have available at all times sufficient equipment to perform all services required on a timely and reasonable basis. All equipment must be housed within a five (5) mile radius of the Police Department. CONTRACTOR must have at least one (1) wrecker capable of towing any CITY Fire Truck, whether loaded or empty. All equipment shall be modern, commercially manufactured or approved by the CITY and in good mechanical condition. All towing vehicles must be owned or leased directly by CONTRACTOR. Subcontracting of towing vehicles will not be allowed. No vehicle of the CONTRACTOR shall be used as an emergency vehicle. All towing vehicles must be equipped with two-way radios with a range extending throughout all of the CITY limits. Such radios shall not be tuned in to any police frequency. CONTRACTOR shall comply with all laws, rules and regulations of any governmental agency having jurisdiction in the premises including, but not limited to, licensing and minimum safety standards. In addition to the aforementioned, CONTRACTOR shall have the following:

Vehicles

- a. Five Class "A" small wreckers of 4-ton capacity.
- b. Two Class "A" slide back (flatbed) carrier of 10,000 Gross Vehicle Weight, ("GVW"). (Note: these may be included as part of the total for (a) above).
- c. One Class "B" large wrecker of 16-ton capacity equipped with twin booms or hydraulic equivalent, air brakes and auxiliary air supply.
- d. One Class "C" large wrecker of 40-ton capacity equipped with twin booms or hydraulic equivalent, air brakes and auxiliary air supply.
- e. One 48' hydraulic, roll back, tilt self-loading trailer, capable of hauling, among other things, the CITY's Fire apparatus.

Communication

a. A business type communications system licensed and approved by the Federal Communications Commission capable of providing reliable communications between the driver and a place of business from anywhere within the city limits. A Citizen's Band (CB) radio or Family Radio Service (FRS) does not meet the requirements of this condition.

Lights

- a. One or more amber colored rotator beam, or strobe lights, mounted on the top of the cab and positioned so that the light is visible from any direction.
- b. Additional amber lights shall be installed to be visible from the front of the tow truck and red lights visible only from the rear of the tow truck.
- c. Top mounted rotor beam or strobe lights WILL NOT be used while responding to a dispatch call unless authorized by the Police Department.
- d. Top mounted rotor beam or strobe lights will be used while at the scene of a dispatch call.

On-board Equipment

- a. Dollies for all vehicles except for class "C" and roll back carriers.
- b. At least one heavy-duty push broom with a minimum width of 24 inches on each vehicle.
- c. Flood light on each hoist.
- d. Minimum of one square shovel.
- e. Minimum of one fire axe.
- f. One crowbar or pry bar with a minimum length of 30 inches.
- g. A minimum of one 5-pound CO₂, or dry chemical fire extinguisher or equivalent. The extinguisher must be of an approved type and have attached a current marked inspection tag.
- h. One pair of bolt cutters with a minimum of ½ inch opening.
- i. One set of battery jumper cables or a portable heavy-duty jump starting device.
- j. One 4-way lug wrench, or pneumatic tools capable of automotive wheel removal at scene.
- k. One high intensity flashlight.
- l. Five 30 minute fuses (flares), or equivalent in sufficient quantity to burn for 2 ½ hours.
- m. One snatch block for each winch, manufacturers rating to match winch, except for roll back carrier.
- n. Extra towing chain six to eight feet in length with hooks on both ends.
- o. At least six safety cones or triangle reflectors.
- p. Fifty pounds of "Oil Dry" or suitable absorbent material equivalent to handle spills or leaks.
- q. One trash receptacle capable of holding 5 gallons or more.

DRUG FREE WORK PLACE

34. In compliance with Section 287.087, Florida Statutes, CONTRACTOR shall execute and submit with this Agreement the "Drug-Free Workplace Certification" attached hereto as Exhibit "C" and incorporated herein by reference.

ETHICS AND CONDUCT

35. CONTRACTOR hereby agrees to conduct operations under this Agreement in a courteous, orderly, ethical and professional manner. As it is recognized by both parties that this Agreement is sensitive in nature and requires CONTRACTOR and its personnel and employees to work with the public on a daily basis, CONTRACTOR is required to extend common courtesies including, but not limited to:

- a. Expedite release of vehicle in accordance with the terms of this Agreement;
- b. Assist the vehicle or trailer owner in retrieving documents from the vehicle or trailer to establish ownership;
- c. Permit the owner to remove the auto tag and any unattached personal possessions;
- d. Explain fully and politely the reason for the tow and all charges levied;
- e. If a dispute occurs, CONTRACTOR shall attempt to resolve the dispute promptly and politely. If it cannot be resolved satisfactorily, the dispute shall be reported to the CITY Police Chief or designee no later than the next business day.

EMPLOYEES

36. The CONTRACTOR agrees that the owner(s) of the company or the officer(s) of the company (if a corporation) shall be responsible except as otherwise prohibited by law, for the acts of their employees while on duty.

37. The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the CITY.

38. All of the services required hereunder shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized, licensed or permitted under state and local law to perform such services.

39. The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

40. The CONTRACTOR agrees that it is fully responsible to the CITY for the acts and omissions of persons either directly or indirectly employed by the CONTRACTOR. Nothing contained herein shall create any contractual relationship between any such person and the CITY.

41. All of the CONTRACTOR'S personnel, while on City premises, will comply with all CITY requirements governing conduct, safety, and security.

GENERAL OPERATING PROCEDURES

42. CONTRACTOR must be available for immediate response, twenty-four (24) hours per day, seven days a week. Should extenuating circumstances prevent full time availability, the Police Department must be notified immediately.

43. CONTRACTOR is prohibited from "chasing" or "running" to vehicle accident scenes, unless properly authorized by the Police Department. CONTRACTOR agrees that it will not solicit on the scene of an official investigation.

44. Should CONTRACTOR remove any vehicle from any scene of an official investigation without the authorization of the Police Department, CONTRACTOR shall be subject to suspension or removal from the service.

45. Although the CITY established a rotation list, the Police Department reserves the right to disregard any rotation list when in the sole opinion of the Police Department, there is a need for urgency and/or public safety mandates calling another tow company or when superior equipment is required which cannot be furnished by the tow company on top of the rotation list.

46. CONTRACTOR shall tow all vehicles from the scene except when CONTRACTOR is unable to handle all vehicles, in which case a second tow company will be called, or upon request by an Owner.

INDEPENDENT CONTRACTOR RELATIONSHIP

47. The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the CITY shall be that of an Independent Contractor and not as employees or agents of the CITY.

48. The CONTRACTOR does not have the power or authority to bind the CITY in any promise, agreement or representation other than as specifically provided for

in this Agreement.

CONTRACTOR'S LIABILITY

49. The CONTRACTOR'S liability for any towed and/or stored vehicle and all property contained therein shall commence from the time a wrecker is hooked to any vehicle to be towed. The CONTRACTOR and/or the Police Department shall inventory all personal property contained in the vehicle to be towed. Such inventory shall be made in triplicate and shall be signed by the person(s) composing it. One copy shall be given to the owner or the person in possession of the vehicle, and one copy shall be given to the Police Department or other authorized CITY personnel. The CONTRACTOR shall be solely liable and responsible for all personal property in any towed vehicle.

CLEAN UP

50. The CONTRACTOR, when called to the scene of an accident, shall remove and properly dispose of all broken glass, debris and other non-hazardous matter from the street, sidewalk, park or other CITY property. The cost of such normal accident cleanup shall be included in the basic towing rate and no separate charge made to the vehicle owner.

LABOR CHARGES

51. Labor charges shall be included in the basic towing rate and no separate charge made to the vehicle owner. In the event that unusual circumstances arise which require additional labor not contemplated in the provision of services hereunder, the cost of such labor shall be charged to the vehicle owner at the rate set forth in the Rate Schedule.

NON-LIABILITY OF CITY

52. The CITY shall not be responsible or liable in any manner whatsoever for either the collection or payment of any charges for services rendered, including, but not limited to, towing, storage or mileage.

REPORTS, RECORD KEEPING, AND AUDITS

53. The CONTRACTOR shall maintain and have available at all times for inspection by authorized CITY personnel detailed accounting and other records of all services rendered relative to the Agreement.

54. CONTRACTOR, shall each month ten (10) days prior to the last day of the month, provide to the CITY's Purchasing Department two (2) copies of a complete, detailed listing of all vehicles which have been towed and released in the prior thirty (30) day period; a complete, detailed listing of all vehicles which have been impounded or stored for a period of thirty (30) days or longer, such listing to include all vehicles not

claimed within thirty (30) days; and any such other information that the CITY may require.

55. The CONTRACTOR shall provide to the Police Department weekly reports of vehicles and trailers towed pursuant to Police Department directive. Such weekly reports shall contain, to the extent available, the following information:

- a. Name of owner or driver of vehicle, boat or trailer towed;
- b. Model and make of vehicle, boat or trailer;
- c. License plate number;
- d. Vehicle, boat or trailer identification number;
- e. Time, date and location of tow;
- f. Circumstances requiring tow;
- g. Whether or not a "HOLD" was placed on the vehicle by the Police Department;
- h. Time dispatched to scene and time of arrival;
- i. Storage facility where vehicle is stored; and
- j. The date times and name of employee releasing the vehicle.

56. CONTRACTOR shall at all times maintain at its place of business records containing the following information:

- a. A vehicle storage receipt of each vehicle on the premises.
- b. A monthly log of all calls for service by the Police Department.
- c. A notification log indicating the date, time and method of notification to the registered owner of the stored vehicle or trailer.
- d. A daily log setting forth a list of all vehicles towed, as well as information on each vehicle as outlined above.

57. The CITY, from time to time, during normal business hours and with at least two (2) business days prior notice to CONTRACTOR, shall have the right to audit the CONTRACTOR'S books and records at the CITY'S expense with regard to the accounts and services provided to or on behalf of the CITY hereunder to ensure that all aspects of the Agreement are being met. Failure by CONTRACTOR to permit such audit shall be grounds for immediate termination of this Agreement by the CITY.

RELEASE OF VEHICLES AND/OR PERSONAL PROPERTY

58. CONTRACTOR agrees to release any vehicle, which has not been marked "HOLD" by the Police Department provided that proper proof of ownership or right of possession is presented to CONTRACTOR. Any vehicle, including any personal property in such vehicle and all accessories, which has been marked "HOLD" by the Police Department, shall not be released without prior written authority from the Police Department. Should CONTRACTOR release personal property, upon proper proof of ownership or right of possession, the owner or person entitled to possession thereof shall sign a receipt provided by the CONTRACTOR for same.

OWNER NOTIFICATION

59. CONTRACTOR agrees to be responsible for notifying the registered owner or agent of the whereabouts of the vehicle in accordance with Chapter 713, Florida Statutes.

IMPOUNDED VEHICLES

60. Should any owner or person lawfully entitled to possession of an impounded vehicle seek to reclaim the same from CONTRACTOR, CONTRACTOR shall provide such owner or person lawfully entitled to possession with an itemized statement of all charges relating to the impounding of such vehicle.

STORAGE AND OFFICE FACILITIES

61. The CONTRACTOR will maintain an office facility, storage garage and outside storage facilities complying with all provisions of applicable building, zoning and environmental regulations sufficient to store all vehicles towed under this Agreement until such vehicle(s) are claimed by the owner or otherwise disposed of legally.

62. CONTRACTOR'S office and storage facility shall be open and manned seven (7) days per week and twenty-four (24) hours per day and shall be equipped with twenty-four (24) hour on-premises radio-dispatching capabilities.

63. All outside storage facilities shall be enclosed with a solid wall or substantial wire fence not less than six (6) feet in height. The top of such fence or wall, including all gates or doors or roofed open doors, shall be equipped with not less than 12" of barbed wire installed in such manner as to discourage access over the top of such fence or wall. All fences and walls shall be maintained in good repair throughout the term of the Agreement. Damage to such walls or fences shall be repaired within twenty-four (24) hours. All storage areas shall be open twenty-four (24) hours per day, seven days a week, and authorized personnel or CONTRACTOR shall be available during such times to assure that the obligations and service required of CONTRACTOR shall be available and fulfilled. No charges or gate fees are allowed.

64. CONTRACTOR shall be capable of storing up to three (3) vehicles in inside storage and shall maintain one (1) inside storage space which shall comply with the following specifications:

- a. A working area of 9' x 20' per vehicle with at least an eight (8') foot high ceiling;
- b. A paved floor (i.e. concrete, asphalt) that is free from dirt, standing water and vegetation;
- c. An electrical lighting source sufficient to permit processing of a vehicle; and
- d. One (1) outside window or a ventilation system.

65. CONTRACTOR'S office facilities shall include a telephone, restroom facilities, and a work area containing a desk, phone, facsimile machine, computer, etc. Such facility shall have the name of the company, the mailing address and the 24-hour phone number clearly visible to all.

66. Vehicles stored in enclosed areas shall be stored under lock and key. The CONTRACTOR shall protect all stored vehicles and any evidence or personal property contained therein from theft and damage in accordance with all reasonable Police Department instructions and directives.

INSPECTION OF PREMISES AND EQUIPMENT

67. Storage facilities and equipment shall be subject to periodic inspections during the term of this Agreement when deemed necessary by the Police Department. Notice of any discrepancies or deficiencies found by the Police Department to be a violation of a specific requirement of this Agreement shall be submitted to the CONTRACTOR in writing, and CONTRACTOR shall remedy the same within ten (10) days of receipt of such notice. Upon failure by the CONTRACTOR to remedy deficiencies, the Agreement may be terminated at the option of the CITY.

68. CONTRACTOR shall permit members of the Police Department and other authorized CITY personnel to inspect CONTRACTOR'S compound, storage facilities, stored vehicles, and all of the CONTRACTOR'S records concerning CONTRACTOR'S duties under the Agreement at all reasonable times whenever, in the opinion of such members of the Police Department or other authorized CITY personnel, it is deemed necessary to do so.

69. CONTRACTOR shall be given at least two (2) business days prior notice of any inspection to be conducted pursuant to this section.

PROTECTION OF VEHICLES AND PERSONAL PROPERTY

70. The CONTRACTOR'S liability for any vehicle towed and all property contained therein will commence once the wrecker is hooked onto the vehicle.

71. The CONTRACTOR shall be solely accountable and liable for damage to the vehicle and any damage or loss to any and all personal property within the vehicle towed and for all vehicle accessories, regardless of the cause of such damage or loss.

72. Personal property situated in vehicles stored by the CONTRACTOR shall not be disposed of to defray any charges for storage or towing of vehicle. All such personal property, not affixed to the vehicle, upon request and without regard to any fees owed by such person, must be returned at once to the owner or person entitled to legal possession thereof upon proof of ownership or right to possession.

BENEFITS FROM REPAIRS

73. The CONTRACTOR shall not benefit directly or indirectly from any motor vehicle repair or painting with respect to vehicles towed by the CONTRACTOR under this contract, unless expressly consented to in writing by the vehicle owner or vehicle owner's authorized representatives. Such writing shall inform the owner or agent that he or she has the right to have the vehicle repaired or painted at a place of his or her choice.

INSURANCE

74. The CONTRACTOR shall obtain and maintain through out the term of this Agreement, at CONTRACTOR'S sole cost and expense, the following policies of insurance according to the minimum limits set forth below. Each policy shall be in the name of the Company and shall include coverage for towing and storage. The CITY shall be named as an additional insured, and all coverage afforded to the CITY shall apply as primary coverage and shall not be affected by any insurance which the CITY may carry in its own name. A copy of such insurance policy or policies, or certificates thereof, will be furnished to the CITY Purchasing Department by the CONTRACTOR.

- a. Workman's compensation and employer's liability insurance as required by State Statute and local ordinance.
- b. Comprehensive general liability insurance in amounts not less than \$500,000.00 per occurrence for Bodily injury and \$500,000.00 per accident for property damage. Said policy endorsed to include:
 1. Legal liability covering perils of fire and explosion, theft of an entire vehicle, riot and civil commotion, vandalism and malicious mischief.
 2. Combined single limits automobile liability insurance in an amount not less than \$500,000.00 per occurrence for bodily injury and property damage covering all owned, non-owned and hired vehicles used in connection with the work.
- c. Garage keepers legal liability insurance coverage in the minimum amount of \$75,000.00 to protect owners of any and all vehicles, boats and trailers towed or stored by CONTRACTOR pursuant to this Agreement, from any loss or damage to such vehicle, boat or trailer on account of such removal or storage.

INDEMNIFICATION AND HOLD HARMLESS

75. The CONTRACTOR shall indemnify and save harmless and defend the CITY, its agents, servants, and employees from and against any and all claims, liability, losses, and/or cause(s) of action which may arise from any negligent act or omission of the CONTRACTOR, its agents, servants, or employees in the performance of services

under this Agreement.

76. The CONTRACTOR further agrees to indemnify, save harmless and defend the CITY, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the CONTRACTOR not included in the paragraph above and for which the CITY, its agents, servants or employees are alleged to be liable. Nothing contained in this Agreement shall be construed or interpreted as consent by the City to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

77. CONTRACTOR shall pay all claims, losses, liens, fines, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees, and court and/or arbitration costs. These indemnifications shall survive the term of this Agreement or any renewal thereof.

78. The CONTRACTOR shall defend all actions in the name of the CITY, when applicable, however, CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of the CONTRACTOR.

CONTINGENT FEES

79. The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

DISCRIMINATION

80. CONTRACTOR will not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, sex, religion, political affiliation, natural origin or handicap.

COMPLAINTS AGAINST CONTRACTOR

81. CONTRACTOR understands and agrees that any complaints received by the CITY whether such complaints originate from City personnel or private individuals concerning the performance of CONTRACTOR'S duties under this Agreement will be referred to the Police Chief or designee. The failure of CONTRACTOR to follow any reasonable instruction of the Police Chief following the referral of any complaint(s) will be considered a material breach of this Agreement and cause for the termination hereof.

SUSPENSION AND REMOVAL FROM ROTATION LIST

82. If at any time during the term of this contract, including any option terms, the CONTRACTOR is determined to be in violation of any of the terms and conditions of the Agreement, the Police Chief or designee shall have the right to suspend the CONTRACTOR until the violation is resolved to the satisfaction of the CITY. If the violation is not promptly resolved or is of such serious nature that the CITY, in its sole discretion, determines that suspension is not adequate, the CITY reserves the right to terminate for cause. Cause shall be defined but not limited to, number, nature and severity of complaints received against the CONTRACTOR relative to the delivery of the services provided herein or failure to timely respond to calls for service.

83. In the event that the CITY receives three (3) or more complaints within a six (6) month period or six (6) or more complaints within one (1) year against the CONTRACTOR, it shall be grounds for immediate termination of this Agreement.

84. Any violation of the provisions or regulations of this Agreement may result in suspension or removal from the CITY'S rotation list, including, but not limited to, the following:

- a. Failure to possess all licenses and permits required by State Statute or local ordinances.
- b. Failure of the CONTRACTOR to respond to a tow call without a valid reason.
- c. Habitual failure to respond to a tow call properly and within the time prescribed in this Agreement.
- d. Voluntary request by CONTRACTOR to be removed temporarily or permanently from the rotation list.
- e. Storage facilities are in disrepair or lacking the requirements contained herein.
- f. CONTRACTOR knowingly overcharges a customer or fails to charge the agreed upon rates as set forth in the Rate Schedule.

DISPUTES

85. CONTRACTOR expressly understands and agrees to relinquish any vehicle immediately upon the request of the CITY. Any dispute concerning billing shall be forwarded to the Police Chief or designee for resolution. Such resolution by the Police Chief shall be final and binding upon all parties.

COMPLIANCE WITH LAWS AND ORDINANCES

86. CONTRACTOR shall comply with all applicable State and Federal laws and ordinances of the CITY now in existence or hereafter adopted, so long as the same do

not impair the rights and privileges of CONTRACTOR in and to any contract signed by CONTRACTOR and the CITY as the result of this Agreement.

NON-ASSIGNABILITY

87. This Agreement shall not be assigned, sold or transferred and any such attempt to do so shall render this agreement void.

88. The CITY reserves the right to terminate the Agreement upon any change in ownership whether from the sale of CONTRACTOR'S business or stock or transfer of authorized and issued shares, the issuance of authorized but unissued shares or the issuance of any additional shares authorized by increases in capital stock limitations.

DISPOSAL OF VEHICLES

89. Should CONTRACTOR, as a result of this Agreement, have in its possession any vehicle or personal property for a period in excess of sixty (60) days, and should CONTRACTOR be ordered to relinquish such vehicle or personal property to the Police Department, CONTRACTOR agrees to immediately do so.

AUCTIONS

90. CONTRACTOR shall not auction any vehicle without the written approval of the Chief of Police, or the Chief's representative. All such auctions shall be conducted pursuant to Section 713.78, Florida Statutes.

TERMINATION

91. The CITY or CONTRACTOR may elect to terminate this Agreement upon thirty (30) days written notice to the other party.

NOTICE

92. All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the CITY shall be mailed to:

CLARENCE WILLIAMS, CHIEF OF POLICE

600 W BLUE HERON BLVD

RIVIERA BEACH, FL 33404

and if sent to the CONTRACTOR shall be mailed to:

James Earl Road Service, Inc

1044 26th St
West Palm Beach, FL 33407

VENUE

93. This Agreement and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided herein, performance or breach shall be governed and interpreted according to laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County.

REMEDIES

94. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ENFORCEMENT COSTS

95. If any legal action or other proceeding, including but not limited to arbitration and/or mediation, is brought for any dispute, disagreement, or issue of construction, declaration or interpretation arising hereunder whether relating to the Agreement's execution, validity, the obligations provided therein, or performance of this Agreement, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

SEVERABILITY

96. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

PUBLIC ENTITY CRIMES

97. As provided in Sections 287.132-133, Florida Statutes, by entering into

this Agreement or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.

ENTIRETY OF CONTRACTUAL AGREEMENT

98. The CITY and the CONTRACTOR agree that this Agreement and any attachments hereto or other documents as referenced herein sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

HEADINGS

99. The Section and/or Paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

WAIVER

100. Failure of the CITY to enforce or exercise any right(s) under this Agreement shall not be deemed a waiver of CITY'S right to enforce or exercise said right(s) at any time thereafter.

PREPARATION

101. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

MATERIALITY

102. All provisions of the Agreement shall be deemed material, in the event CONTRACTOR fails to comply with any of the provisions contained in this Agreement or attachments hereto, said failure shall be deemed a material breach of this Agreement and CITY may at its option and without notice terminate this Agreement.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

AGREEMENT WITH THE CITY OF RIVIERA BEACH

IN WITNESS WHEREOF, the Parties unto this Agreement have set their hands and seals on the day and date first written above.

CITY OF RIVIERA BEACH

CONTRACTOR

BY: 
MICHAEL D. BROWN
MAYOR

BY: 
NAME: _____
TITLE: President

ATTEST:

BY: 
CARRIE E. WARD, CITY CLERK,
CMC/AAE (SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

BY: _____
CITY ATTORNEY

BY: _____
DEPARTMENT DIRECTOR

DATE: _____

EXHIBIT A

TOW ROTATION LIST PROCEDURE

1. Purpose

The purpose of the tow-rotation list is to have in place a procedure for wrecker call-out on a per incident basis. A tow log will be utilized and maintained by the Police Communication Center, (hereinafter "Center").

2. Procedure

A. Eligible Tow Contractors

ALL TIME TOWING
JAMES TOWING
KAUFF'S TOWING
LYONS TOWING
LAKE PARK TOWING
ALL FLORIDA TOWING

B. Wrecker Response

- i. If a Tow Contractor is unable to respond to a call, the Tow Contractor will be moved to the end of the list, thereby forfeiting that rotation.
- ii. In the event of cancellation or other circumstances where the wrecker is not used and in which the Tow Contractor is not in any way at fault, the City official, agent or employee on the scene requesting the wrecker or tow shall notify the Center upon cancellation of the tow and Tow Contractor shall retain its position in the rotation.
- iii. Should the Center be unable to reach Tow Contractor or Tow Contractor has failed to respond in a reasonable time to a hazardous scene, the next tow company in line will be contacted. The City official, agent or employee shall determine, based on his sole discretion, whether the response time was excessive.

B. Rotation Tracking

i. A log will be used by the City to track all vehicle and trailer tows to include rotation wreckers.

ii. The log shall contain the complete vehicle description including VIN number and TAG number when available, the CAD and/or case number assigned, the date and time of the tow, the tow company, and the City official, agent or employee dispatching and/or requesting such tow.

iii. The rotation list shall be maintained in a manual log in which the Tow Contractor at the top of the list shall be given the first opportunity to accept the tow and/or service request.

iv. Specific requests from the vehicle or trailer owner or person lawfully in possession will not be charged against the rotation schedule. The request shall be logged as such by City in the log. If an owner's request cannot be honored for any reason whatsoever, a rotation wrecker will be contacted and so charged on the rotation schedule.

v. In the event the Police Department exercises its option to ignore such rotation list pursuant to Section 45 of the Agreement, such election shall not affect the order of the rotation list and Tow Contractor shall retain its position.

vi. A tow request from the City for City operated vehicle(s), Police Department "Hold" vehicles and Code Enforcement abandoned, wrecked or junked vehicles will not be charged against the Tow Contractor. The Tow Contractor will remain in its tow position until a civilian tow or other type of tow is requested. The request shall be logged as such by the City in the log.

a) **Example:** Center call (A-1) to tow a City vehicle because they are next on the rotation list. (A-1) will tow the vehicle and remain in their original tow position. Immediately there after if another City vehicle needs towing the Tow Contractor (J-2) will be called by Center. They will also remain in their original tow position.

EXHIBIT B

RATE SCHEDULE*

These rates are the only rates that will be charged vehicle owners under this Agreement:

A. TOWING BY ITEM DESCRIPTION

- | | |
|---|--|
| 1) Class A (cars, vans, light trucks under 10,000 GVW) within City limits; | \$48.00 per call |
| 2) Motorcycles within the City limits; | \$40.00 per call |
| 3) Towing outside the City limits for cars, vans, motorcycles, and light trucks $\frac{3}{4}$ and less; | an additional \$3.00 per towed mile from the City limits |
| 4) Class B (vehicles 10,000 to 30,000 GVW) within the City limits; | \$80.00 per call |
| 5) Towing outside the City limits for Class B vehicles; | an additional \$3.50 per towed mile from the City limits |
| 6) Class C vehicles (over 30,000 GVW) within City limits; | \$100.00 per call |
| 7) Class C vehicles outside City limits; | an additional \$4.00 per towed mile from the City limits |
| 8) Additional time at the scene after first hour, per $\frac{1}{2}$ hour thereafter (applied to all vehicles, cars, vans, and trucks under and over $\frac{3}{4}$ ton, for waiting and extra street clean-up. | \$30.00 per half hour |
| 9) Miscellaneous other charges | |

4 X 4/off-road vehicle recovery	\$95.00 for the first hour, and \$30.00 per half hour thereafter
Tarp fee	\$20.00 per call
Lowboy service	\$100.00 per hour
Outside the City limits	an additional \$4.00 per towed mile from City limits
Underwater recovery salvage	\$100.00 for first half hour or part thereof, and \$20.00 for each additional ¼ hour or part thereof.

10) For purposes of this Agreement, when CONTRACTOR is entitled to additional charges based on time spent at the scene, unless otherwise specified, CONTRACTOR shall apportion the charge set forth herein to be consistent with the actual time spent on the scene.

B. STORAGE AND LIEN NOTICE

1) Cars, vans, trucks under ¾ ton	
Outside storage	\$20.00 per day
Inside storage	\$30.00 per day
2) Trucks and vehicles over ¾ ton	
Outside storage	\$25.00 per day
Inside storage	\$30.00 per day
3) Motorcycles	
Outside storage	\$ 5.00 per day
Inside storage	\$10.00 per day
4) Boat and trailer (21 feet and under)	
Outside storage	\$15.00 per day
Inside storage	\$30.00 per day
5) Boat and trailer (over 21 feet)	\$30.00 per day

6) Lien notice (after 24 hours of storage)

\$30.00 per vehicle

Per Florida Statutes, no storage fee shall be charged to the vehicle owner for a vehicle stored less than six (6) hours.

"Per day" shall be defined as a twenty-four (24) hour period or any part thereof.

C. VEHICLE RECOVERY

The following vehicle recovery fees may be charged to the vehicle owner when the vehicle is overturned, embedded in sand, mud, or water, or requires more than a single hook-up:

- | | |
|--|--|
| 1) Class A and B wrecker on the scene; | \$75.00 per hour and \$25.00 per each half hour after the first hour |
| 2) Extra man (each) on the scene | \$25.00 per hour |

D. ROAD SERVICE

For all trucks, cars, vans and other vehicles under and over $\frac{3}{4}$ ton, a road service fee of \$40.00 per call may be charged to the vehicle owner for services such as assisted start, unlocking a door, delivering gas, tire changes, etc.

* The rates set forth herein shall not apply to any vehicle towed on behalf of the City as more fully set forth in the Agreement to which this Exhibit is attached and made a part thereof.

TOWING AND STORAGE AGREEMENT

THIS AGREEMENT, made and entered into this 2nd day of October 2002, by and between the City of Riviera Beach, a municipality in the State of Florida, herein referred to as the "CITY", and Kauff's Towing, a corporation authorized to do business in the State of Florida, hereinafter referred to as the "CONTRACTOR", whose Federal I.D. or Social Security number is 59-1371159.

WITNESSETH:

WHEREAS, the CITY issued its Request for Proposals for Towing and Storage Services #01695, and Addendum #1 (collectively, the "RFP") pursuant to state and local law to solicit proposals to provide vehicle towing and storage services for the CITY; and

WHEREAS, the CONTRACTOR responded to the RFP by submitting its bid proposal and agreeing to abide by the CITY'S rate schedule, which Proposal was accepted by the CITY; and

WHEREAS, the CONTRACTOR along with five (5) other Contractors have been selected; and

WHEREAS, the RFP provides for a renewal option for four (4) additional twelve (12) month periods; and

WHEREAS, the CITY and the CONTRACTOR each desire to exercise such option; and

WHEREAS, although the RFP, the Proposal and the Rate Schedule address in some detail the services to be provided, there are certain issues not addressed by these documents which the parties hereto desire to address.

NOW, THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the CITY and the CONTRACTOR hereby covenant and agree as follows:

SCOPE OF AGREEMENT, TERMS AND CONDITIONS

1. The vehicle towing and storage services to be provided to the CITY by the CONTRACTOR shall be on a non-exclusive, rotating basis.

2. It is the CITY'S desire to contract with all firms deemed qualified and responsive by the CITY. A representative of the City of Riviera Beach Police Department, ("Police Department"), the affected Department, or any authorized

Department, ("Police Department"), the affected Department, or any authorized representative of the CITY will accept and distribute all tow calls on a rotation basis as more fully set forth in Exhibit "A" attached hereto and incorporated herein by reference.

3. The owner or person in possession of any vehicle which has been involved in an accident or whose vehicle has been incapacitated in any other manner, as well as a detained driver of any vehicle which will not be impounded by the Police Department, shall be given the opportunity to contact a wrecker or tow truck company of his/her own choice if the disabled vehicle does not create a hazardous condition and a reasonable response time can be expected. Said person shall further be given the opportunity of having such vehicle towed to a garage or compound other than that of the CONTRACTOR.

4. When authorized by a representative of the Police Department, the affected Department or any authorized representative of the CITY, CONTRACTOR shall remove vehicles from the streets or other public property lying within the CITY limits and any abandoned, wrecked or junked vehicles on private property declared to be a nuisance when so informed by the CITY.

5. Except as the law may otherwise require, the CONTRACTOR shall not move any vehicles to any location other than that designated by a City Police Officer or other authorized City representative, or owner or person in lawful possession of the vehicle.

6. A tow as used herein is the actual removal of a vehicle. No double charges or second tows are allowed. Extra hook-ups do not constitute another tow charge. No mileage charges are allowed from any point within the CITY limits.

7. The CONTRACTOR agrees to have no markings, lettering or symbols on any vehicle, building or correspondence that indicates or tends to indicate any official relationship between the CONTRACTOR and the CITY.

8. The CITY, vehicle owner, driver, or person lawfully in possession of such vehicle, shall have the right to cancel a request for services at any time, including up to the time of hook-up, without any charge being incurred. The CONTRACTOR agrees that the mere response to a service call scene without other action does not constitute a service for which charges are applicable. However, if the tow is cancelled, CONTRACTOR will retain its position in the rotation.

CONTROLLING PROVISIONS

9. To the extent that there exists a conflict between the RFP, the Proposal, the Rotation Schedule and the Rate Schedule, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

TERM OF AGREEMENT

10. The period of the Agreement shall be one (1) year (12 months), with an option to renew the contract for three (3) additional twelve (12) month periods. The option for renewal will only be exercised upon mutual written agreement and with all original terms, conditions and specifications of the Agreement remaining the same with no deviations.

RESPONSE

11. Calls under this Agreement will be given priority over all other non-emergency calls.

12. CONTRACTOR shall be expected to arrive at the site within twenty (20) minutes of the call. CONTRACTOR assumes all liability in meeting the twenty (20) minute response time including, but not limited to, any and all damages resulting from traffic accidents and motor vehicle infraction fines.

LOCATION

13. CONTRACTOR shall have a Place of Business and Storage Facility located within a five (5) mile radius of the Riviera Beach Police Station, ("Police Station").

CITY VEHICLES, TRAILERS, AND/OR EQUIPMENT

14. CONTRACTOR agrees that it shall provide to the CITY, free of charge, all necessary towing, road service and storage required by the CITY in the operation and maintenance of all CITY vehicles. This includes towing from the CITY garage or the closest qualified commercial maintenance facility selected by the City anywhere in Palm Beach, Broward, Martin and Miami-Dade Counties. CONTRACTOR shall also provide, at no cost to the CITY, "stand-by" wrecker equipment and personnel whenever requested by the Police Department for Special Operations including, but not limited to, "sting operations," traffic checkpoints, or other special events as designated by the Chief of Police or designee.

15. Services related to CITY owned or leased vehicle(s) or trailer(s) should be logged and forwarded by CONTRACTOR on a monthly basis to the CITY's Purchasing Director. All such logs shall identify the vehicle(s) or trailer(s) towed or the service rendered, the location from which it was towed, and the hours and dates applicable to CONTRACTOR'S services with respect to those vehicle(s) or trailer(s). The "service ticket" shall include the signature of the authorized CITY employee approving towing of the CITY vehicle or trailer. CONTRACTOR shall provide such information, until such

time as a form is provided to it by CITY, which then must be completed by CONTRACTOR.

CRIME SCENE, CONFISCATED, SPECIAL "HOLD" STORAGE

16. Vehicles towed for the Police Department that are seized as the result of any Special Operations and/or vehicles which will be held pending forfeiture and/or for other investigative purposes shall be towed by CONTRACTOR at no cost to the CITY.

17. Vehicles which have been marked "HOLD" by the Police Department shall be stored at the compound of the CONTRACTOR for whatever period of time necessary in order to properly process the vehicle and conduct any necessary investigation. Absent a Court Order to the contrary, personnel of the Police Department shall be permitted access to such vehicle at all reasonable times. Such storage charged by CONTRACTOR shall not be billed to the CITY. CONTRACTOR agrees to seek recovery of any and all storage charges from the owner of such vehicle or in the sale of such vehicle as provided for by Sections 713.78 and 715.05, Florida Statutes.

18. Any vehicle towed or stored as a result of the marked "HOLD" relative to a crime scene investigation shall be handled with gloves (i.e. cloth, rubber, or leather) by the wrecker operator.

19. Crime Scene vehicles shall be stored to prevent physical contamination or degradable evidence from deteriorating and shall be stored inside a facility. If inside storage is not available, CONTRACTOR shall surrender the tow and fee to the next tow company in rotation. This requirement shall not prevent CITY from removing the vehicle or trailer and storing it at a CITY-owned or controlled facility or at another tow company's storage compound.

20. If laboratory work on a crime scene vehicle is required and the vehicle must be processed at a location other than CONTRACTOR'S facility, the vehicle shall be transported to the CITY designated location free of charge.

21. Confiscated vehicles or vehicles involved in litigation shall be protected from the elements, preferably at an inside storage facility, as to maintain the vehicle in its condition at the time of towing. This shall not prevent the CITY from removing the vehicle and storing it at a CITY-owned or controlled facility or at another tow company's storage compound.

CODE ENFORCEMENT

22. Vehicles to be towed and stored pursuant to the directive of the City of Riviera Beach's Code Enforcement Department, (hereinafter "Code Enforcement"), shall also be subject to the rotation basis as more fully set forth in Exhibit "A".

23. CONTRACTOR'S failure to perform Code Enforcement tows more than two (2) times during any twelve (12) month period may result in suspension or removal from the CITY'S rotation list. 22. When vehicles, boats or trailers are towed from public property, including right-of-ways, after the appropriate notification, CONTRACTOR has the option of destroying the vehicle or keeping it safe for sale pursuant to Sections 713.78 and 715.05, Florida Statutes. CONTRACTOR shall remove, tow and store all such vehicles, boats, and trailers, at no charge to the CITY. CONTRACTOR hereby agrees to seek payment for such services solely from the owners of such vehicles, boats or trailers or in the sale of such vehicles, boats or trailers as set forth herein.

24. When vehicles, boats or trailers are towed from private property after receiving the appropriate notification, CONTRACTOR must proceed in accordance with the provisions set forth in Sections 713.78 and 715.05, Florida Statutes and store the vehicles, boats, or trailers for a minimum period of thirty-five (35) days, after which time CONTRACTOR has the option to destroy or sell the vehicles, boats or trailers pursuant to Section 713.78, Florida Statutes. Any breach of any statutory provision with respect to such destruction or sale shall constitute a breach of this Agreement and shall be grounds for termination of this Agreement.

25. CONTRACTOR agrees that the CITY shall in no way compensate CONTRACTOR for such removal and/or storage and CONTRACTOR shall look to the vehicle, boat or trailer owner or the remedies as provided by the statutes referenced herein for payment.

COMPENSATION

27. Services performed under this Agreement shall be charged for and compensated in accordance with the Rate Schedule attached hereto as Exhibit "B" and incorporated herein by reference.

28. The CONTRACTOR shall be responsible for the collection of all tow, storage, labor, service and mileage charges and fees. The CITY shall in no way be responsible for the collection or payment of any charge for services rendered by reasons of its having dispatched service in accordance with this Agreement. All such services rendered shall be charged to the owner of the towed or serviced vehicle or other lawful claimant in possession of such vehicle.

29. Storage fees shall be charged at the rates stated in the Rate Schedule for each twenty-four (24) hour period. No storage fee shall be applied until a vehicle is held in excess of twenty-four (24) hours.

30. CONTRACTOR shall prominently post in CONTRACTOR'S storage facilities a list of CONTRACTOR'S charges as set forth in the Rate Schedule. A list of such charges shall be provided to the owner or person lawfully in possession of each vehicle towed. CONTRACTOR shall not charge for any service that exceeds such posted

or listed amount, nor shall CONTRACTOR perform any service that is not delineated on any such posted or listed schedule without giving the owner of the vehicle or person lawfully in possession thereof a written estimate of the amount that will be finally due and payable upon the rendition of the services. No additional charges are allowed unless specified by this Agreement and new charges must be approved through negotiation with the CITY's Director of Purchasing.

31. No charges other than those set forth in the Rate Schedule will be levied against the vehicle owner, whenever the vehicle towing, recovery, or storage is authorized by the CITY, or its agents.

32. A declaration as to the rates between the CONTRACTOR and the CITY will either be made a part of, or permanently attached to the invoice that is presented to the vehicle owner or the owner's representative.

MINIMUM EQUIPMENT REQUIREMENT

33. The CONTRACTOR will be required to have available at all times sufficient equipment to perform all services required on a timely and reasonable basis. All equipment must be housed within a five (5) mile radius of the Police Department. CONTRACTOR must have at least one (1) wrecker capable of towing any CITY Fire Truck, whether loaded or empty. All equipment shall be modern, commercially manufactured or approved by the CITY and in good mechanical condition. All towing vehicles must be owned or leased directly by CONTRACTOR. Subcontracting of towing vehicles will not be allowed. No vehicle of the CONTRACTOR shall be used as an emergency vehicle. All towing vehicles must be equipped with two-way radios with a range extending throughout all of the CITY limits. Such radios shall not be tuned in to any police frequency. CONTRACTOR shall comply with all laws, rules and regulations of any governmental agency having jurisdiction in the premises including, but not limited to, licensing and minimum safety standards. In addition to the aforementioned, CONTRACTOR shall have the following:

Vehicles

- a. Five Class "A" small wreckers of 4-ton capacity.
- b. Two Class "A" slide back (flatbed) carrier of 10,000 Gross Vehicle Weight, ("GVW"). (Note: these may be included as part of the total for (a) above).
- c. One Class "B" large wrecker of 16-ton capacity equipped with twin booms or hydraulic equivalent, air brakes and auxiliary air supply.
- d. One Class "C" large wrecker of 40-ton capacity equipped with twin booms or hydraulic equivalent, air brakes and auxiliary air supply.
- e. One 48' hydraulic, roll back, tilt self-loading trailer, capable of hauling, among other things, the CITY's Fire apparatus.

Communication

a. A business type communications system licensed and approved by the Federal Communications Commission capable of providing reliable communications between the driver and a place of business from anywhere within the city limits. A Citizen's Band (CB) radio or Family Radio Service (FRS) does not meet the requirements of this condition.

Lights

- a. One or more amber colored rotator beam, or strobe lights, mounted on the top of the cab and positioned so that the light is visible from any direction.
- b. Additional amber lights shall be installed to be visible from the front of the tow truck and red lights visible only from the rear of the tow truck.
- c. Top mounted rotor beam or strobe lights WILL NOT be used while responding to a dispatch call unless authorized by the Police Department.
- d. Top mounted rotor beam or strobe lights will be used while at the scene of a dispatch call.

On-board Equipment

- a. Dollies for all vehicles except for class "C" and roll back carriers.
- b. At least one heavy-duty push broom with a minimum width of 24 inches on each vehicle.
- c. Flood light on each hoist.
- d. Minimum of one square shovel.
- e. Minimum of one fire axe.
- f. One crowbar or pry bar with a minimum length of 30 inches.
- g. A minimum of one 5-pound CO₂, or dry chemical fire extinguisher or equivalent. The extinguisher must be of an approved type and have attached a current marked inspection tag.
- h. One pair of bolt cutters with a minimum of ½ inch opening.
- i. One set of battery jumper cables or a portable heavy-duty jump starting device.
- j. One 4-way lug wrench, or pneumatic tools capable of automotive wheel removal at scene.
- k. One high intensity flashlight.
- l. Five 30 minute fuses (flares), or equivalent in sufficient quantity to burn for 2 ½ hours.
- m. One snatch block for each winch, manufacturers rating to match winch, except for roll back carrier.
- n. Extra towing chain six to eight feet in length with hooks on both ends.
- o. At least six safety cones or triangle reflectors.
- p. Fifty pounds of "Oil Dry" or suitable absorbent material equivalent to handle spills or leaks.
- q. One trash receptacle capable of holding 5 gallons or more.

DRUG FREE WORK PLACE

34. In compliance with Section 287.087, Florida Statutes, CONTRACTOR shall execute and submit with this Agreement the "Drug-Free Workplace Certification" attached hereto as Exhibit "C" and incorporated herein by reference.

ETHICS AND CONDUCT

35. CONTRACTOR hereby agrees to conduct operations under this Agreement in a courteous, orderly, ethical and professional manner. As it is recognized by both parties that this Agreement is sensitive in nature and requires CONTRACTOR and its personnel and employees to work with the public on a daily basis, CONTRACTOR is required to extend common courtesies including, but not limited to:

- a. Expedite release of vehicle in accordance with the terms of this Agreement;
- b. Assist the vehicle or trailer owner in retrieving documents from the vehicle or trailer to establish ownership;
- c. Permit the owner to remove the auto tag and any unattached personal possessions;
- d. Explain fully and politely the reason for the tow and all charges levied;
- e. If a dispute occurs, CONTRACTOR shall attempt to resolve the dispute promptly and politely. If it cannot be resolved satisfactorily, the dispute shall be reported to the CITY Police Chief or designee no later than the next business day.

EMPLOYEES

36. The CONTRACTOR agrees that the owner(s) of the company or the officer(s) of the company (if a corporation) shall be responsible except as otherwise prohibited by law, for the acts of their employees while on duty.

37. The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the CITY.

38. All of the services required hereunder shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized, licensed or permitted under state and local law to perform such services.

39. The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

40. The CONTRACTOR agrees that it is fully responsible to the CITY for the acts and omissions of persons either directly or indirectly employed by the CONTRACTOR. Nothing contained herein shall create any contractual relationship between any such person and the CITY.

41. All of the CONTRACTOR'S personnel, while on City premises, will comply with all CITY requirements governing conduct, safety, and security.

GENERAL OPERATING PROCEDURES

42. CONTRACTOR must be available for immediate response, twenty-four (24) hours per day, seven days a week. Should extenuating circumstances prevent full time availability, the Police Department must be notified immediately.

43. CONTRACTOR is prohibited from "chasing" or "running" to vehicle accident scenes, unless properly authorized by the Police Department. CONTRACTOR agrees that it will not solicit on the scene of an official investigation.

44. Should CONTRACTOR remove any vehicle from any scene of an official investigation without the authorization of the Police Department, CONTRACTOR shall be subject to suspension or removal from the service.

45. Although the CITY established a rotation list, the Police Department reserves the right to disregard any rotation list when in the sole opinion of the Police Department, there is a need for urgency and/or public safety mandates calling another tow company or when superior equipment is required which cannot be furnished by the tow company on top of the rotation list.

46. CONTRACTOR shall tow all vehicles from the scene except when CONTRACTOR is unable to handle all vehicles, in which case a second tow company will be called, or upon request by an Owner.

INDEPENDENT CONTRACTOR RELATIONSHIP

47. The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the CITY shall be that of an Independent Contractor and not as employees or agents of the CITY.

48. The CONTRACTOR does not have the power or authority to bind the CITY in any promise, agreement or representation other than as specifically provided for

in this Agreement.

CONTRACTOR'S LIABILITY

49. The CONTRACTOR'S liability for any towed and/or stored vehicle and all property contained therein shall commence from the time a wrecker is hooked to any vehicle to be towed. The CONTRACTOR and/or the Police Department shall inventory all personal property contained in the vehicle to be towed. Such inventory shall be made in triplicate and shall be signed by the person(s) composing it. One copy shall be given to the owner or the person in possession of the vehicle, and one copy shall be given to the Police Department or other authorized CITY personnel. The CONTRACTOR shall be solely liable and responsible for all personal property in any towed vehicle.

CLEAN UP

50. The CONTRACTOR, when called to the scene of an accident, shall remove and properly dispose of all broken glass, debris and other non-hazardous matter from the street, sidewalk, park or other CITY property. The cost of such normal accident cleanup shall be included in the basic towing rate and no separate charge made to the vehicle owner.

LABOR CHARGES

51. Labor charges shall be included in the basic towing rate and no separate charge made to the vehicle owner. In the event that unusual circumstances arise which require additional labor not contemplated in the provision of services hereunder, the cost of such labor shall be charged to the vehicle owner at the rate set forth in the Rate Schedule.

NON-LIABILITY OF CITY

52. The CITY shall not be responsible or liable in any manner whatsoever for either the collection or payment of any charges for services rendered, including, but not limited to, towing, storage or mileage.

REPORTS, RECORD KEEPING, AND AUDITS

53. The CONTRACTOR shall maintain and have available at all times for inspection by authorized CITY personnel detailed accounting and other records of all services rendered relative to the Agreement.

54. CONTRACTOR, shall each month ten (10) days prior to the last day of the month, provide to the CITY'S Purchasing Department two (2) copies of a complete, detailed listing of all vehicles which have been towed and released in the prior thirty (30) day period; a complete, detailed listing of all vehicles which have been impounded or stored for a period of thirty (30) days or longer, such listing to include all vehicles not

claimed within thirty (30) days; and any such other information that the CITY may require.

55. The CONTRACTOR shall provide to the Police Department weekly reports of vehicles and trailers towed pursuant to Police Department directive. Such weekly reports shall contain, to the extent available, the following information:

- a. Name of owner or driver of vehicle, boat or trailer towed;
- b. Model and make of vehicle, boat or trailer;
- c. License plate number;
- d. Vehicle, boat or trailer identification number;
- e. Time, date and location of tow;
- f. Circumstances requiring tow;
- g. Whether or not a "HOLD" was placed on the vehicle by the Police Department;
- h. Time dispatched to scene and time of arrival;
- i. Storage facility where vehicle is stored; and
- j. The date times and name of employee releasing the vehicle.

56. CONTRACTOR shall at all times maintain at its place of business records containing the following information:

- a. A vehicle storage receipt of each vehicle on the premises.
- b. A monthly log of all calls for service by the Police Department.
- c. A notification log indicating the date, time and method of notification to the registered owner of the stored vehicle or trailer.
- d. A daily log setting forth a list of all vehicles towed, as well as information on each vehicle as outlined above.

57. The CITY, from time to time, during normal business hours and with at least two (2) business days prior notice to CONTRACTOR, shall have the right to audit the CONTRACTOR'S books and records at the CITY'S expense with regard to the accounts and services provided to or on behalf of the CITY hereunder to ensure that all aspects of the Agreement are being met. Failure by CONTRACTOR to permit such audit shall be grounds for immediate termination of this Agreement by the CITY.

RELEASE OF VEHICLES AND/OR PERSONAL PROPERTY

58. CONTRACTOR agrees to release any vehicle, which has not been marked "HOLD" by the Police Department provided that proper proof of ownership or right of possession is presented to CONTRACTOR. Any vehicle, including any personal property in such vehicle and all accessories, which has been marked "HOLD" by the Police Department, shall not be released without prior written authority from the Police Department. Should CONTRACTOR release personal property, upon proper proof of ownership or right of possession, the owner or person entitled to possession thereof shall sign a receipt provided by the CONTRACTOR for same.

OWNER NOTIFICATION

59. CONTRACTOR agrees to be responsible for notifying the registered owner or agent of the whereabouts of the vehicle in accordance with Chapter 713, Florida Statutes.

IMPOUNDED VEHICLES

60. Should any owner or person lawfully entitled to possession of an impounded vehicle seek to reclaim the same from CONTRACTOR, CONTRACTOR shall provide such owner or person lawfully entitled to possession with an itemized statement of all charges relating to the impounding of such vehicle.

STORAGE AND OFFICE FACILITIES

61. The CONTRACTOR will maintain an office facility, storage garage and outside storage facilities complying with all provisions of applicable building, zoning and environmental regulations sufficient to store all vehicles towed under this Agreement until such vehicle(s) are claimed by the owner or otherwise disposed of legally.

62. CONTRACTOR'S office and storage facility shall be open and manned seven (7) days per week and twenty-four (24) hours per day and shall be equipped with twenty-four (24) hour on-premises radio-dispatching capabilities.

63. All outside storage facilities shall be enclosed with a solid wall or substantial wire fence not less than six (6) feet in height. The top of such fence or wall, including all gates or doors or roofed open doors, shall be equipped with not less than 12" of barbed wire installed in such manner as to discourage access over the top of such fence or wall. All fences and walls shall be maintained in good repair throughout the term of the Agreement. Damage to such walls or fences shall be repaired within twenty-four (24) hours. All storage areas shall be open twenty-four (24) hours per day, seven days a week, and authorized personnel or CONTRACTOR shall be available during such times to assure that the obligations and service required of CONTRACTOR shall be available and fulfilled. No charges or gate fees are allowed.

64. CONTRACTOR shall be capable of storing up to three (3) vehicles in inside storage and shall maintain one (1) inside storage space which shall comply with the following specifications:

- a. A working area of 9' x 20' per vehicle with at least an eight (8') foot high ceiling;
- b. A paved floor (i.e. concrete, asphalt) that is free from dirt, standing water and vegetation;
- c. An electrical lighting source sufficient to permit processing of a vehicle; and
- d. One (1) outside window or a ventilation system.

65. CONTRACTOR'S office facilities shall include a telephone, restroom facilities, and a work area containing a desk, phone, facsimile machine, computer, etc. Such facility shall have the name of the company, the mailing address and the 24-hour phone number clearly visible to all.

66. Vehicles stored in enclosed areas shall be stored under lock and key. The CONTRACTOR shall protect all stored vehicles and any evidence or personal property contained therein from theft and damage in accordance with all reasonable Police Department instructions and directives.

INSPECTION OF PREMISES AND EQUIPMENT

67. Storage facilities and equipment shall be subject to periodic inspections during the term of this Agreement when deemed necessary by the Police Department. Notice of any discrepancies or deficiencies found by the Police Department to be a violation of a specific requirement of this Agreement shall be submitted to the CONTRACTOR in writing, and CONTRACTOR shall remedy the same within ten (10) days of receipt of such notice. Upon failure by the CONTRACTOR to remedy deficiencies, the Agreement may be terminated at the option of the CITY.

68. CONTRACTOR shall permit members of the Police Department and other authorized CITY personnel to inspect CONTRACTOR'S compound, storage facilities, stored vehicles, and all of the CONTRACTOR'S records concerning CONTRACTOR'S duties under the Agreement at all reasonable times whenever, in the opinion of such members of the Police Department or other authorized CITY personnel, it is deemed necessary to do so.

69. CONTRACTOR shall be given at least two (2) business days prior notice of any inspection to be conducted pursuant to this section.

PROTECTION OF VEHICLES AND PERSONAL PROPERTY

70. The CONTRACTOR'S liability for any vehicle towed and all property contained therein will commence once the wrecker is hooked onto the vehicle.

71. The CONTRACTOR shall be solely accountable and liable for damage to the vehicle and any damage or loss to any and all personal property within the vehicle towed and for all vehicle accessories, regardless of the cause of such damage or loss.

72. Personal property situated in vehicles stored by the CONTRACTOR shall not be disposed of to defray any charges for storage or towing of vehicle. All such personal property, not affixed to the vehicle, upon request and without regard to any fees owed by such person, must be returned at once to the owner or person entitled to legal possession thereof upon proof of ownership or right to possession.

BENEFITS FROM REPAIRS

73. The CONTRACTOR shall not benefit directly or indirectly from any motor vehicle repair or painting with respect to vehicles towed by the CONTRACTOR under this contract, unless expressly consented to in writing by the vehicle owner or vehicle owner's authorized representatives. Such writing shall inform the owner or agent that he or she has the right to have the vehicle repaired or painted at a place of his or her choice.

INSURANCE

74. The CONTRACTOR shall obtain and maintain through out the term of this Agreement, at CONTRACTOR'S sole cost and expense, the following policies of insurance according to the minimum limits set forth below. Each policy shall be in the name of the Company and shall include coverage for towing and storage. The CITY shall be named as an additional insured, and all coverage afforded to the CITY shall apply as primary coverage and shall not be affected by any insurance which the CITY may carry in its own name. A copy of such insurance policy or policies, or certificates thereof, will be furnished to the CITY Purchasing Department by the CONTRACTOR.

a. Workman's compensation and employer's liability insurance as required by State Statute and local ordinance.

b. Comprehensive general liability insurance in amounts not less than \$500,000.00 per occurrence for Bodily injury and \$500,000.00 per accident for property damage. Said policy endorsed to include:

1. Legal liability covering perils of fire and explosion, theft of an entire vehicle, riot and civil commotion, vandalism and malicious mischief.

2. Combined single limits automobile liability insurance in an amount not less than \$500,000.00 per occurrence for bodily injury and property damage covering all owned, non-owned and hired vehicles used in connection with the work.

c. Garage keepers legal liability insurance coverage in the minimum amount of \$75,000.00 to protect owners of any and all vehicles, boats and trailers towed or stored by CONTRACTOR pursuant to this Agreement, from any loss or damage to such vehicle, boat or trailer on account of such removal or storage.

INDEMNIFICATION AND HOLD HARMLESS

75. The CONTRACTOR shall indemnify and save harmless and defend the CITY, its agents, servants, and employees from and against any and all claims, liability, losses, and/or cause(s) of action which may arise from any negligent act or omission of the CONTRACTOR, its agents, servants, or employees in the performance of services

under this Agreement.

76. The CONTRACTOR further agrees to indemnify, save harmless and defend the CITY, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the CONTRACTOR not included in the paragraph above and for which the CITY, its agents, servants or employees are alleged to be liable. Nothing contained in this Agreement shall be construed or interpreted as consent by the City to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

77. CONTRACTOR shall pay all claims, losses, liens, fines, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees, and court and/or arbitration costs. These indemnifications shall survive the term of this Agreement or any renewal thereof.

78. The CONTRACTOR shall defend all actions in the name of the CITY, when applicable, however, CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of the CONTRACTOR.

CONTINGENT FEES

79. The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

DISCRIMINATION

80. CONTRACTOR will not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, sex, religion, political affiliation, natural origin or handicap.

COMPLAINTS AGAINST CONTRACTOR

81. CONTRACTOR understands and agrees that any complaints received by the CITY whether such complaints originate from City personnel or private individuals concerning the performance of CONTRACTOR'S duties under this Agreement will be referred to the Police Chief or designee. The failure of CONTRACTOR to follow any reasonable instruction of the Police Chief following the referral of any complaint(s) will be considered a material breach of this Agreement and cause for the termination hereof.

SUSPENSION AND REMOVAL FROM ROTATION LIST

82. If at any time during the term of this contract, including any option terms, the CONTRACTOR is determined to be in violation of any of the terms and conditions of the Agreement, the Police Chief or designee shall have the right to suspend the CONTRACTOR until the violation is resolved to the satisfaction of the CITY. If the violation is not promptly resolved or is of such serious nature that the CITY, in its sole discretion, determines that suspension is not adequate, the CITY reserves the right to terminate for cause. Cause shall be defined but not limited to, number, nature and severity of complaints received against the CONTRACTOR relative to the delivery of the services provided herein or failure to timely respond to calls for service.

83. In the event that the CITY receives three (3) or more complaints within a six (6) month period or six (6) or more complaints within one (1) year against the CONTRACTOR, it shall be grounds for immediate termination of this Agreement.

84. Any violation of the provisions or regulations of this Agreement may result in suspension or removal from the CITY'S rotation list, including, but not limited to, the following:

- a. Failure to possess all licenses and permits required by State Statute or local ordinances.
- b. Failure of the CONTRACTOR to respond to a tow call without a valid reason.
- c. Habitual failure to respond to a tow call properly and within the time prescribed in this Agreement.
- d. Voluntary request by CONTRACTOR to be removed temporarily or permanently from the rotation list.
- e. Storage facilities are in disrepair or lacking the requirements contained herein.
- f. CONTRACTOR knowingly overcharges a customer or fails to charge the agreed upon rates as set forth in the Rate Schedule.

DISPUTES

85. CONTRACTOR expressly understands and agrees to relinquish any vehicle immediately upon the request of the CITY. Any dispute concerning billing shall be forwarded to the Police Chief or designee for resolution. Such resolution by the Police Chief shall be final and binding upon all parties.

COMPLIANCE WITH LAWS AND ORDINANCES

86. CONTRACTOR shall comply with all applicable State and Federal laws and ordinances of the CITY now in existence or hereafter adopted, so long as the same do

86. CONTRACTOR shall comply with all applicable State and Federal laws and ordinances of the CITY now in existence or hereafter adopted, so long as the same do not impair the rights and privileges of CONTRACTOR in and to any contract signed by CONTRACTOR and the CITY as the result of this Agreement.

NON-ASSIGNABILITY

87. This Agreement shall not be assigned, sold or transferred and any such attempt to do so shall render this agreement void.

88. The CITY reserves the right to terminate the Agreement upon any change in ownership whether from the sale of CONTRACTOR'S business or stock or transfer of authorized and issued shares, the issuance of authorized but unissued shares or the issuance of any additional shares authorized by increases in capital stock limitations.

DISPOSAL OF VEHICLES

89. Should CONTRACTOR, as a result of this Agreement, have in its possession any vehicle or personal property for a period in excess of sixty (60) days, and should CONTRACTOR be ordered to relinquish such vehicle or personal property to the Police Department, CONTRACTOR agrees to immediately do so.

AUCTIONS

90. CONTRACTOR shall not auction any vehicle without the written approval of the Chief of Police, or the Chief's representative. All such auctions shall be conducted pursuant to Section 713.78, Florida Statutes.

TERMINATION

91. The CITY or CONTRACTOR may elect to terminate this Agreement upon thirty (30) days written notice to the other party.

NOTICE

92. All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the CITY shall be mailed to:

Clarence D. Williams, III Chief of Police

600 West Blue Heron Blvd

Riviera Beach, FL 33404

and if sent to the CONTRACTOR shall be mailed to:

Kauff's Towing

1440 53rd Street

Mangonia Park, FL 33407

VENUE

93. This Agreement and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided herein, performance or breach shall be governed and interpreted according to laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County.

REMEDIES

94. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ENFORCEMENT COSTS

95. If any legal action or other proceeding, including but not limited to arbitration and/or mediation, is brought for any dispute, disagreement, or issue of construction, declaration or interpretation arising hereunder whether relating to the Agreement's execution, validity, the obligations provided therein, or performance of this Agreement, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

SEVERABILITY

96. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

PUBLIC ENTITY CRIMES

this Agreement or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.

ENTIRETY OF CONTRACTUAL AGREEMENT

98. The CITY and the CONTRACTOR agree that this Agreement and any attachments hereto or other documents as referenced herein sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

HEADINGS

99. The Section and/or Paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

WAIVER

100. Failure of the CITY to enforce or exercise any right(s) under this Agreement shall not be deemed a waiver of CITY'S right to enforce or exercise said right(s) at any time thereafter.

PREPARATION

101. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

MATERIALITY

102. All provisions of the Agreement shall be deemed material, in the event CONTRACTOR fails to comply with any of the provisions contained in this Agreement or attachments hereto, said failure shall be deemed a material breach of this Agreement and CITY may at its option and without notice terminate this Agreement.

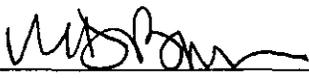
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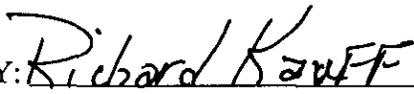
AGREEMENT WITH THE CITY OF RIVIERA BEACH

IN WITNESS WHEREOF, the Parties unto this Agreement have set their hands and seals on the day and date first written above.

CITY OF RIVIERA BEACH

CONTRACTOR

BY: 
MICHAEL D. BROWN
MAYOR

BY: 
NAME: Terminal
TITLE: Manager.
RICHARD KAUFF
TERMINAL MANAGER

ATTEST:

BY: 
CARRIE E. WARD, CITY CLERK,
CMC/AAE

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

BY: _____
CITY ATTORNEY

BY: _____
DEPARTMENT DIRECTOR

DATE: _____

EXHIBIT A

TOW ROTATION LIST PROCEDURE

1. Purpose

The purpose of the tow-rotation list is to have in place a procedure for wrecker call-out on a per incident basis. A tow log will be utilized and maintained by the Police Communication Center, (hereinafter "Center").

2. Procedure

A. Eligible Tow Contractors

ALL TIME TOWING
JAMES TOWING
KAUFF'S TOWING
LYONS TOWING
LAKE PARK TOWING
ALL FLORIDA TOWING

B. Wrecker Response

- i. If a Tow Contractor is unable to respond to a call, the Tow Contractor will be moved to the end of the list, thereby forfeiting that rotation.
- ii. In the event of cancellation or other circumstances where the wrecker is not used and in which the Tow Contractor is not in any way at fault, the City official, agent or employee on the scene requesting the wrecker or tow shall notify the Center upon cancellation of the tow and Tow Contractor shall retain its position in the rotation.
- iii. Should the Center be unable to reach Tow Contractor or Tow Contractor has failed to respond in a reasonable time to a hazardous scene, the next tow company in line will be contacted. The City official, agent or employee shall determine, based on his sole discretion, whether the response time was excessive.

B. Rotation Tracking

i. A log will be used by the City to track all vehicle and trailer tows to include rotation wreckers.

ii. The log shall contain the complete vehicle description including VIN number and TAG number when available, the CAD and/or case number assigned, the date and time of the tow, the tow company, and the City official, agent or employee dispatching and/or requesting such tow.

iii. The rotation list shall be maintained in a manual log in which the Tow Contractor at the top of the list shall be given the first opportunity to accept the tow and/or service request.

iv. Specific requests from the vehicle or trailer owner or person lawfully in possession will not be charged against the rotation schedule. The request shall be logged as such by City in the log. If an owner's request cannot be honored for any reason whatsoever, a rotation wrecker will be contacted and so charged on the rotation schedule.

v. In the event the Police Department exercises its option to ignore such rotation list pursuant to Section 45 of the Agreement, such election shall not affect the order of the rotation list and Tow Contractor shall retain its position.

vi. A tow request from the City for City operated vehicle(s), Police Department "Hold" vehicles and Code Enforcement abandoned, wrecked or junked vehicles will not be charged against the Tow Contractor. The Tow Contractor will remain in its tow position until a civilian tow or other type of tow is requested. The request shall be logged as such by the City in the log.

a) **Example:** Center call (A-1) to tow a City vehicle because they are next on the rotation list. (A-1) will tow the vehicle and remain in their original tow position. Immediately there after if another City vehicle needs towing the Tow Contractor (J-2) will be called by Center. They will also remain in their original tow position.

EXHIBIT B

RATE SCHEDULE*

These rates are the only rates that will be charged vehicle owners under this Agreement:

A. TOWING BY ITEM DESCRIPTION

- | | |
|---|--|
| 1) Class A (cars, vans, light trucks under 10,000 GVW) within City limits; | \$48.00 per call |
| 2) Motorcycles within the City limits; | \$40.00 per call |
| 3) Towing outside the City limits for cars, vans, motorcycles, and light trucks $\frac{3}{4}$ and less; | an additional \$3.00 per towed mile from the City limits |
| 4) Class B (vehicles 10,000 to 30,000 GVW) within the City limits; | \$80.00 per call |
| 5) Towing outside the City limits for Class B vehicles; | an additional \$3.50 per towed mile from the City limits |
| 6) Class C vehicles (over 30,000 GVW) within City limits; | \$100.00 per call |
| 7) Class C vehicles outside City limits; | an additional \$4.00 per towed mile from the City limits |
| 8) Additional time at the scene after first hour, per $\frac{1}{2}$ hour thereafter (applied to all vehicles, cars, vans, and trucks under and over $\frac{3}{4}$ ton, for waiting and extra street clean-up. | \$30.00 per half hour |
| 9) Miscellaneous other charges | |

4 X 4/off-road vehicle recovery	\$95.00 for the first hour, and \$30.00 per half hour thereafter
Tarp fee	\$20.00 per call
Lowboy service	\$100.00 per hour
Outside the City limits	an additional \$4.00 per towed mile from City limits
Underwater recovery salvage	\$100.00 for first half hour or part thereof, and \$20.00 for each additional ¼ hour or part thereof.

- 10) For purposes of this Agreement, when CONTRACTOR is entitled to additional charges based on time spent at the scene, unless otherwise specified, CONTRACTOR shall apportion the charge set forth herein to be consistent with the actual time spent on the scene.

B. STORAGE AND LIEN NOTICE

1) Cars, vans, trucks under ¾ ton	
Outside storage	\$20.00 per day
Inside storage	\$30.00 per day
2) Trucks and vehicles over ¾ ton	
Outside storage	\$25.00 per day
Inside storage	\$30.00 per day
3) Motorcycles	
Outside storage	\$ 5.00 per day
Inside storage	\$10.00 per day
4) Boat and trailer (21 feet and under)	
Outside storage	\$15.00 per day
Inside storage	\$30.00 per day
5) Boat and trailer (over 21 feet)	\$30.00 per day

- 6) Lien notice (after 24 hours of storage) \$30.00 per vehicle

Per Florida Statutes, no storage fee shall be charged to the vehicle owner for a vehicle stored less than six (6) hours.

"Per day" shall be defined as a twenty-four (24) hour period or any part thereof.

C. VEHICLE RECOVERY

The following vehicle recovery fees may be charged to the vehicle owner when the vehicle is overturned, embedded in sand, mud, or water, or requires more than a single hook-up:

- | | |
|--|--|
| 1) Class A and B wrecker on the scene; | \$75.00 per hour and \$25.00 per each half hour after the first hour |
| 2) Extra man (each) on the scene | \$25.00 per hour |

D. ROAD SERVICE

For all trucks, cars, vans and other vehicles under and over $\frac{3}{4}$ ton, a road service fee of \$40.00 per call may be charged to the vehicle owner for services such as assisted start, unlocking a door, delivering gas, tire changes, etc.

* The rates set forth herein shall not apply to any vehicle towed on behalf of the City as more fully set forth in the Agreement to which this Exhibit is attached and made a part thereof.

Lyon's Towing
Copy for The City of Riviera Beach

Owner / CEO: Allan Gold
1107 Old Dixie Hwy
Lake Park, Florida 33403
(561) 842-3450

TOWING AND STORAGE AGREEMENT

THIS AGREEMENT, made and entered into this 2nd day of October 2002, by and between the City of Riviera Beach, a municipality in the State of Florida, herein referred to as the "CITY", and Lyon's Towing, a corporation authorized to do business in the State of Florida, hereinafter referred to as the "CONTRACTOR", whose Federal I.D. or Social Security number is 65-0935924

W I T N E S S E T H :

WHEREAS, the CITY issued its Request for Proposals for Towing and Storage Services #01695, and Addendum #1 (collectively, the "RFP") pursuant to state and local law to solicit proposals to provide vehicle towing and storage services for the CITY; and

WHEREAS, the CONTRACTOR responded to the RFP by submitting its bid proposal and agreeing to abide by the CITY'S rate schedule, which Proposal was accepted by the CITY; and

WHEREAS, the CONTRACTOR along with five (5) other Contractors have been selected; and

WHEREAS, the RFP provides for a renewal option for four (4) additional twelve (12) month periods; and

WHEREAS, the CITY and the CONTRACTOR each desire to exercise such option; and

WHEREAS, although the RFP, the Proposal and the Rate Schedule address in some detail the services to be provided, there are certain issues not addressed by these documents which the parties hereto desire to address.

NOW, THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the CITY and the CONTRACTOR hereby covenant and agree as follows:

SCOPE OF AGREEMENT, TERMS AND CONDITIONS

1. The vehicle towing and storage services to be provided to the CITY by the CONTRACTOR shall be on a non-exclusive, rotating basis.
2. It is the CITY'S desire to contract with all firms deemed qualified and responsive by the CITY. A representative of the City of Riviera Beach Police Department, ("Police Department"), the affected Department, or any authorized

Department, ("Police Department"), the affected Department, or any authorized representative of the CITY will accept and distribute all tow calls on a rotation basis as more fully set forth in Exhibit "A" attached hereto and incorporated herein by reference.

3. The owner or person in possession of any vehicle which has been involved in an accident or whose vehicle has been incapacitated in any other manner, as well as a detained driver of any vehicle which will not be impounded by the Police Department, shall be given the opportunity to contact a wrecker or tow truck company of his/her own choice if the disabled vehicle does not create a hazardous condition and a reasonable response time can be expected. Said person shall further be given the opportunity of having such vehicle towed to a garage or compound other than that of the CONTRACTOR.

4. When authorized by a representative of the Police Department, the affected Department or any authorized representative of the CITY, CONTRACTOR shall remove vehicles from the streets or other public property lying within the CITY limits and any abandoned, wrecked or junked vehicles on private property declared to be a nuisance when so informed by the CITY.

5. Except as the law may otherwise require, the CONTRACTOR shall not move any vehicles to any location other than that designated by a City Police Officer or other authorized City representative, or owner or person in lawful possession of the vehicle.

6. A tow as used herein is the actual removal of a vehicle. No double charges or second tows are allowed. Extra hook-ups do not constitute another tow charge. No mileage charges are allowed from any point within the CITY limits.

7. The CONTRACTOR agrees to have no markings, lettering or symbols on any vehicle, building or correspondence that indicates or tends to indicate any official relationship between the CONTRACTOR and the CITY.

8. The CITY, vehicle owner, driver, or person lawfully in possession of such vehicle, shall have the right to cancel a request for services at any time, including up to the time of hook-up, without any charge being incurred. The CONTRACTOR agrees that the mere response to a service call scene without other action does not constitute a service for which charges are applicable. However, if the tow is cancelled, CONTRACTOR will retain its position in the rotation.

CONTROLLING PROVISIONS

9. To the extent that there exists a conflict between the RFP, the Proposal, the Rotation Schedule and the Rate Schedule, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

TERM OF AGREEMENT

10. The period of the Agreement shall be one (1) year (12 months), with an option to renew the contract for three (3) additional twelve (12) month periods. The option for renewal will only be exercised upon mutual written agreement and with all original terms, conditions and specifications of the Agreement remaining the same with no deviations.

RESPONSE

11. Calls under this Agreement will be given priority over all other non-emergency calls.

12. CONTRACTOR shall be expected to arrive at the site within twenty (20) minutes of the call. CONTRACTOR assumes all liability in meeting the twenty (20) minute response time including, but not limited to, any and all damages resulting from traffic accidents and motor vehicle infraction fines.

LOCATION

13. CONTRACTOR shall have a Place of Business and Storage Facility located within a five (5) mile radius of the Riviera Beach Police Station, ("Police Station").

CITY VEHICLES, TRAILERS, AND/OR EQUIPMENT

14. CONTRACTOR agrees that it shall provide to the CITY, free of charge, all necessary towing, road service and storage required by the CITY in the operation and maintenance of all CITY vehicles. This includes towing from the CITY garage or the closest qualified commercial maintenance facility selected by the City anywhere in Palm Beach, Broward, Martin and Miami-Dade Counties. CONTRACTOR shall also provide, at no cost to the CITY, "stand-by" wrecker equipment and personnel whenever requested by the Police Department for Special Operations including, but not limited to, "sting operations," traffic checkpoints, or other special events as designated by the Chief of Police or designee.

15. Services related to CITY owned or leased vehicle(s) or trailer(s) should be logged and forwarded by CONTRACTOR on a monthly basis to the CITY's Purchasing Director. All such logs shall identify the vehicle(s) or trailer(s) towed or the service rendered, the location from which it was towed, and the hours and dates applicable to CONTRACTOR'S services with respect to those vehicle(s) or trailer(s). The "service ticket" shall include the signature of the authorized CITY employee approving towing of the CITY vehicle or trailer. CONTRACTOR shall provide such information, until such

time as a form is provided to it by CITY, which then must be completed by CONTRACTOR.

CRIME SCENE, CONFISCATED, SPECIAL "HOLD" STORAGE

16. Vehicles towed for the Police Department that are seized as the result of any Special Operations and/or vehicles which will be held pending forfeiture and/or for other investigative purposes shall be towed by CONTRACTOR at no cost to the CITY.

17. Vehicles which have been marked "HOLD" by the Police Department shall be stored at the compound of the CONTRACTOR for whatever period of time necessary in order to properly process the vehicle and conduct any necessary investigation. Absent a Court Order to the contrary, personnel of the Police Department shall be permitted access to such vehicle at all reasonable times. Such storage charged by CONTRACTOR shall not be billed to the CITY. CONTRACTOR agrees to seek recovery of any and all storage charges from the owner of such vehicle or in the sale of such vehicle as provided for by Sections 713.78 and 715.05, Florida Statutes.

18. Any vehicle towed or stored as a result of the marked "HOLD" relative to a crime scene investigation shall be handled with gloves (i.e. cloth, rubber, or leather) by the wrecker operator.

19. Crime Scene vehicles shall be stored to prevent physical contamination or degradable evidence from deteriorating and shall be stored inside a facility. If inside storage is not available, CONTRACTOR shall surrender the tow and fee to the next tow company in rotation. This requirement shall not prevent CITY from removing the vehicle or trailer and storing it at a CITY-owned or controlled facility or at another tow company's storage compound.

20. If laboratory work on a crime scene vehicle is required and the vehicle must be processed at a location other than CONTRACTOR'S facility, the vehicle shall be transported to the CITY designated location free of charge.

21. Confiscated vehicles or vehicles involved in litigation shall be protected from the elements, preferably at an inside storage facility, as to maintain the vehicle in its condition at the time of towing. This shall not prevent the CITY from removing the vehicle and storing it at a CITY-owned or controlled facility or at another tow company's storage compound.

CODE ENFORCEMENT

22. Vehicles to be towed and stored pursuant to the directive of the City of Riviera Beach's Code Enforcement Department, (hereinafter "Code Enforcement"), shall also be subject to the rotation basis as more fully set forth in Exhibit "A".

23. CONTRACTOR'S failure to perform Code Enforcement tows more than two (2) times during any twelve (12) month period may result in suspension or removal from the CITY'S rotation list. 22. When vehicles, boats or trailers are towed from public property, including right-of-ways, after the appropriate notification, CONTRACTOR has the option of destroying the vehicle or keeping it safe for sale pursuant to Sections 713.78 and 715.05, Florida Statutes. CONTRACTOR shall remove, tow and store all such vehicles, boats, and trailers, at no charge to the CITY. CONTRACTOR hereby agrees to seek payment for such services solely from the owners of such vehicles, boats or trailers or in the sale of such vehicles, boats or trailers as set forth herein.

24. When vehicles, boats or trailers are towed from private property after receiving the appropriate notification, CONTRACTOR must proceed in accordance with the provisions set forth in Sections 713.78 and 715.05, Florida Statutes and store the vehicles, boats, or trailers for a minimum period of thirty-five (35) days, after which time CONTRACTOR has the option to destroy or sell the vehicles, boats or trailers pursuant to Section 713.78, Florida Statutes. Any breach of any statutory provision with respect to such destruction or sale shall constitute a breach of this Agreement and shall be grounds for termination of this Agreement.

25. CONTRACTOR agrees that the CITY shall in no way compensate CONTRACTOR for such removal and/or storage and CONTRACTOR shall look to the vehicle, boat or trailer owner or the remedies as provided by the statutes referenced herein for payment.

COMPENSATION

27. Services performed under this Agreement shall be charged for and compensated in accordance with the Rate Schedule attached hereto as Exhibit "B" and incorporated herein by reference.

28. The CONTRACTOR shall be responsible for the collection of all tow, storage, labor, service and mileage charges and fees. The CITY shall in no way be responsible for the collection or payment of any charge for services rendered by reasons of its having dispatched service in accordance with this Agreement. All such services rendered shall be charged to the owner of the towed or serviced vehicle or other lawful claimant in possession of such vehicle.

29. Storage fees shall be charged at the rates stated in the Rate Schedule for each twenty-four (24) hour period. No storage fee shall be applied until a vehicle is held in excess of twenty-four (24) hours.

30. CONTRACTOR shall prominently post in CONTRACTOR'S storage facilities a list of CONTRACTOR'S charges as set forth in the Rate Schedule. A list of such charges shall be provided to the owner or person lawfully in possession of each vehicle towed. CONTRACTOR shall not charge for any service that exceeds such posted

or listed amount, nor shall CONTRACTOR perform any service that is not delineated on any such posted or listed schedule without giving the owner of the vehicle or person lawfully in possession thereof a written estimate of the amount that will be finally due and payable upon the rendition of the services. No additional charges are allowed unless specified by this Agreement and new charges must be approved through negotiation with the CITY's Director of Purchasing.

31. No charges other than those set forth in the Rate Schedule will be levied against the vehicle owner, whenever the vehicle towing, recovery, or storage is authorized by the CITY, or its agents.

32. A declaration as to the rates between the CONTRACTOR and the CITY will either be made a part of, or permanently attached to the invoice that is presented to the vehicle owner or the owner's representative.

MINIMUM EQUIPMENT REQUIREMENT

33. The CONTRACTOR will be required to have available at all times sufficient equipment to perform all services required on a timely and reasonable basis. All equipment must be housed within a five (5) mile radius of the Police Department. CONTRACTOR must have at least one (1) wrecker capable of towing any CITY Fire Truck, whether loaded or empty. All equipment shall be modern, commercially manufactured or approved by the CITY and in good mechanical condition. All towing vehicles must be owned or leased directly by CONTRACTOR. Subcontracting of towing vehicles will not be allowed. No vehicle of the CONTRACTOR shall be used as an emergency vehicle. All towing vehicles must be equipped with two-way radios with a range extending throughout all of the CITY limits. Such radios shall not be tuned in to any police frequency. CONTRACTOR shall comply with all laws, rules and regulations of any governmental agency having jurisdiction in the premises including, but not limited to, licensing and minimum safety standards. In addition to the aforementioned, CONTRACTOR shall have the following:

Vehicles

- a. Five Class "A" small wreckers of 4-ton capacity.
- b. Two Class "A" slide back (flatbed) carrier of 10,000 Gross Vehicle Weight, ("GVW"). (Note: these may be included as part of the total for (a) above).
- c. One Class "B" large wrecker of 16-ton capacity equipped with twin booms or hydraulic equivalent, air brakes and auxiliary air supply.
- d. One Class "C" large wrecker of 40-ton capacity equipped with twin booms or hydraulic equivalent, air brakes and auxiliary air supply.
- e. One 48' hydraulic, roll back, tilt self-loading trailer, capable of hauling, among other things, the CITY's Fire apparatus.

Communication

a. A business type communications system licensed and approved by the Federal Communications Commission capable of providing reliable communications between the driver and a place of business from anywhere within the city limits. A Citizen's Band (CB) radio or Family Radio Service (FRS) does not meet the requirements of this condition.

Lights

- a. One or more amber colored rotator beam, or strobe lights, mounted on the top of the cab and positioned so that the light is visible from any direction.
- b. Additional amber lights shall be installed to be visible from the front of the tow truck and red lights visible only from the rear of the tow truck.
- c. Top mounted rotor beam or strobe lights WILL NOT be used while responding to a dispatch call unless authorized by the Police Department.
- d. Top mounted rotor beam or strobe lights will be used while at the scene of a dispatch call.

On-board Equipment

- a. Dollies for all vehicles except for class "C" and roll back carriers.
- b. At least one heavy-duty push broom, with a minimum width of 24 inches on each vehicle.
- c. Flood light on each hoist.
- d. Minimum of one square shovel.
- e. Minimum of one fire axe.
- f. One crowbar or pry bar with a minimum length of 30 inches.
- g. A minimum of one 5-pound CO2, or dry chemical fire extinguisher or equivalent. The extinguisher must be of an approved type and have attached a current marked inspection tag.
- h. One pair of bolt cutters with a minimum of ½ inch opening.
- i. One set of battery jumper cables or a portable heavy-duty jump starting device.
- j. One 4-way lug wrench, or pneumatic tools capable of automotive wheel removal at scene.
- k. One high intensity flashlight.
- l. Five 30 minute fuses (flares), or equivalent in sufficient quantity to burn for 2 ½ hours.
- m. One snatch block for each winch, manufacturers rating to match winch, except for roll back carrier.
- n. Extra towing chain six to eight feet in length with hooks on both ends.
- o. At least six safety cones or triangle reflectors.
- p. Fifty pounds of "Oil Dry" or suitable absorbent material equivalent to handle spills or leaks.
- q. One trash receptacle capable of holding 5 gallons or more.

DRUG FREE WORK PLACE

34. In compliance with Section 287.087, Florida Statutes, CONTRACTOR shall execute and submit with this Agreement the "Drug-Free Workplace Certification" attached hereto as Exhibit "C" and incorporated herein by reference.

ETHICS AND CONDUCT

35. CONTRACTOR hereby agrees to conduct operations under this Agreement in a courteous, orderly, ethical and professional manner. As it is recognized by both parties that this Agreement is sensitive in nature and requires CONTRACTOR and its personnel and employees to work with the public on a daily basis, CONTRACTOR is required to extend common courtesies including, but not limited to:

- a. Expedite release of vehicle in accordance with the terms of this Agreement;
- b. Assist the vehicle or trailer owner in retrieving documents from the vehicle or trailer to establish ownership;
- c. Permit the owner to remove the auto tag and any unattached personal possessions;
- d. Explain fully and politely the reason for the tow and all charges levied;
- e. If a dispute occurs, CONTRACTOR shall attempt to resolve the dispute promptly and politely. If it cannot be resolved satisfactorily, the dispute shall be reported to the CITY Police Chief or designee no later than the next business day.

EMPLOYEES

36. The CONTRACTOR agrees that the owner(s) of the company or the officer(s) of the company (if a corporation) shall be responsible except as otherwise prohibited by law, for the acts of their employees while on duty.

37. The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the CITY.

38. All of the services required hereunder shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized, licensed or permitted under state and local law to perform such services.

39. The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

40. The CONTRACTOR agrees that it is fully responsible to the CITY for the acts and omissions of persons either directly or indirectly employed by the CONTRACTOR. Nothing contained herein shall create any contractual relationship between any such person and the CITY.

41. All of the CONTRACTOR'S personnel, while on City premises, will comply with all CITY requirements governing conduct, safety, and security.

GENERAL OPERATING PROCEDURES

42. CONTRACTOR must be available for immediate response, twenty-four (24) hours per day, seven days a week. Should extenuating circumstances prevent full time availability, the Police Department must be notified immediately.

43. CONTRACTOR is prohibited from "chasing" or "running" to vehicle accident scenes, unless properly authorized by the Police Department. CONTRACTOR agrees that it will not solicit on the scene of an official investigation.

44. Should CONTRACTOR remove any vehicle from any scene of an official investigation without the authorization of the Police Department, CONTRACTOR shall be subject to suspension or removal from the service.

45. Although the CITY established a rotation list, the Police Department reserves the right to disregard any rotation list when in the sole opinion of the Police Department, there is a need for urgency and/or public safety mandates calling another tow company or when superior equipment is required which cannot be furnished by the tow company on top of the rotation list.

46. CONTRACTOR shall tow all vehicles from the scene except when CONTRACTOR is unable to handle all vehicles, in which case a second tow company will be called, or upon request by an Owner.

INDEPENDENT CONTRACTOR RELATIONSHIP

47. The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the CITY shall be that of an Independent Contractor and not as employees or agents of the CITY.

48. The CONTRACTOR does not have the power or authority to bind the CITY in any promise, agreement or representation other than as specifically provided for

in this Agreement.

CONTRACTOR'S LIABILITY

49. The CONTRACTOR'S liability for any towed and/or stored vehicle and all property contained therein shall commence from the time a wrecker is hooked to any vehicle to be towed. The CONTRACTOR and/or the Police Department shall inventory all personal property contained in the vehicle to be towed. Such inventory shall be made in triplicate and shall be signed by the person(s) composing it. One copy shall be given to the owner or the person in possession of the vehicle, and one copy shall be given to the Police Department or other authorized CITY personnel. The CONTRACTOR shall be solely liable and responsible for all personal property in any towed vehicle.

CLEAN UP

50. The CONTRACTOR, when called to the scene of an accident, shall remove and properly dispose of all broken glass, debris and other non-hazardous matter from the street, sidewalk, park or other CITY property. The cost of such normal accident cleanup shall be included in the basic towing rate and no separate charge made to the vehicle owner.

LABOR CHARGES

51. Labor charges shall be included in the basic towing rate and no separate charge made to the vehicle owner. In the event that unusual circumstances arise which require additional labor not contemplated in the provision of services hereunder, the cost of such labor shall be charged to the vehicle owner at the rate set forth in the Rate Schedule.

NON-LIABILITY OF CITY

52. The CITY shall not be responsible or liable in any manner whatsoever for either the collection or payment of any charges for services rendered, including, but not limited to, towing, storage or mileage.

REPORTS, RECORD KEEPING, AND AUDITS

53. The CONTRACTOR shall maintain and have available at all times for inspection by authorized CITY personnel detailed accounting and other records of all services rendered relative to the Agreement.

54. CONTRACTOR, shall each month ten (10) days prior to the last day of the month, provide to the CITY's Purchasing Department two (2) copies of a complete, detailed listing of all vehicles which have been towed and released in the prior thirty (30) day period; a complete, detailed listing of all vehicles which have been impounded or stored for a period of thirty (30) days or longer, such listing to include all vehicles not

claimed within thirty (30) days; and any such other information that the CITY may require.

55. The CONTRACTOR shall provide to the Police Department weekly reports of vehicles and trailers towed pursuant to Police Department directive. Such weekly reports shall contain, to the extent available, the following information:

- a. Name of owner or driver of vehicle, boat or trailer towed;
- b. Model and make of vehicle, boat or trailer;
- c. License plate number;
- d. Vehicle, boat or trailer identification number;
- e. Time, date and location of tow;
- f. Circumstances requiring tow;
- g. Whether or not a "HOLD" was placed on the vehicle by the Police Department;
- h. Time dispatched to scene and time of arrival;
- i. Storage facility where vehicle is stored; and
- j. The date times and name of employee releasing the vehicle.

56. CONTRACTOR shall at all times maintain at its place of business records containing the following information:

- a. A vehicle storage receipt of each vehicle on the premises.
- b. A monthly log of all calls for service by the Police Department.
- c. A notification log indicating the date, time and method of notification to the registered owner of the stored vehicle or trailer.
- d. A daily log setting forth a list of all vehicles towed, as well as information on each vehicle as outlined above.

57. The CITY, from time to time, during normal business hours and with at least two (2) business days prior notice to CONTRACTOR, shall have the right to audit the CONTRACTOR'S books and records at the CITY'S expense with regard to the accounts and services provided to or on behalf of the CITY hereunder to ensure that all aspects of the Agreement are being met. Failure by CONTRACTOR to permit such audit shall be grounds for immediate termination of this Agreement by the CITY.

RELEASE OF VEHICLES AND/OR PERSONAL PROPERTY

58. CONTRACTOR agrees to release any vehicle, which has not been marked "HOLD" by the Police Department provided that proper proof of ownership or right of possession is presented to CONTRACTOR. Any vehicle, including any personal property in such vehicle and all accessories, which has been marked "HOLD" by the Police Department, shall not be released without prior written authority from the Police Department. Should CONTRACTOR release personal property, upon proper proof of ownership or right of possession, the owner or person entitled to possession thereof shall sign a receipt provided by the CONTRACTOR for same.

OWNER NOTIFICATION

59. CONTRACTOR agrees to be responsible for notifying the registered owner or agent of the whereabouts of the vehicle in accordance with Chapter 713, Florida Statutes.

IMPOUNDED VEHICLES

60. Should any owner or person lawfully entitled to possession of an impounded vehicle seek to reclaim the same from CONTRACTOR, CONTRACTOR shall provide such owner or person lawfully entitled to possession with an itemized statement of all charges relating to the impounding of such vehicle.

STORAGE AND OFFICE FACILITIES

61. The CONTRACTOR will maintain an office facility, storage garage and outside storage facilities complying with all provisions of applicable building, zoning and environmental regulations sufficient to store all vehicles towed under this Agreement until such vehicle(s) are claimed by the owner or otherwise disposed of legally.

62. CONTRACTOR'S office and storage facility shall be open and manned seven (7) days per week and twenty-four (24) hours per day and shall be equipped with twenty-four (24) hour on-premises radio-dispatching capabilities.

63. All outside storage facilities shall be enclosed with a solid wall or substantial wire fence not less than six (6) feet in height. The top of such fence or wall, including all gates or doors or roofed open doors, shall be equipped with not less than 12" of barbed wire installed in such manner as to discourage access over the top of such fence or wall. All fences and walls shall be maintained in good repair throughout the term of the Agreement. Damage to such walls or fences shall be repaired within twenty-four (24) hours. All storage areas shall be open twenty-four (24) hours per day, seven days a week, and authorized personnel or CONTRACTOR shall be available during such times to assure that the obligations and service required of CONTRACTOR shall be available and fulfilled. No charges or gate fees are allowed.

64. CONTRACTOR shall be capable of storing up to three (3) vehicles in inside storage and shall maintain one (1) inside storage space which shall comply with the following specifications:

- a. A working area of 9' x 20' per vehicle with at least an eight (8') foot high ceiling;
- b. A paved floor (i.e. concrete, asphalt) that is free from dirt, standing water and vegetation;
- c. An electrical lighting source sufficient to permit processing of a vehicle; and
- d. One (1) outside window or a ventilation system.

65. CONTRACTOR'S office facilities shall include a telephone, restroom facilities, and a work area containing a desk, phone, facsimile machine, computer, etc. Such facility shall have the name of the company, the mailing address and the 24-hour phone number clearly visible to all.

66. Vehicles stored in enclosed areas shall be stored under lock and key. The CONTRACTOR shall protect all stored vehicles and any evidence or personal property contained therein from theft and damage in accordance with all reasonable Police Department instructions and directives.

INSPECTION OF PREMISES AND EQUIPMENT

67. Storage facilities and equipment shall be subject to periodic inspections during the term of this Agreement when deemed necessary by the Police Department. Notice of any discrepancies or deficiencies found by the Police Department to be a violation of a specific requirement of this Agreement shall be submitted to the CONTRACTOR in writing, and CONTRACTOR shall remedy the same within ten (10) days of receipt of such notice. Upon failure by the CONTRACTOR to remedy deficiencies, the Agreement may be terminated at the option of the CITY.

68. CONTRACTOR shall permit members of the Police Department and other authorized CITY personnel to inspect CONTRACTOR'S compound, storage facilities, stored vehicles, and all of the CONTRACTOR'S records concerning CONTRACTOR'S duties under the Agreement at all reasonable times whenever, in the opinion of such members of the Police Department or other authorized CITY personnel, it is deemed necessary to do so.

69. CONTRACTOR shall be given at least two (2) business days prior notice of any inspection to be conducted pursuant to this section.

PROTECTION OF VEHICLES AND PERSONAL PROPERTY

70. The CONTRACTOR'S liability for any vehicle towed and all property contained therein will commence once the wrecker is hooked onto the vehicle.

71. The CONTRACTOR shall be solely accountable and liable for damage to the vehicle and any damage or loss to any and all personal property within the vehicle towed and for all vehicle accessories, regardless of the cause of such damage or loss.

72. Personal property situated in vehicles stored by the CONTRACTOR shall not be disposed of to defray any charges for storage or towing of vehicle. All such personal property, not affixed to the vehicle, upon request and without regard to any fees owed by such person, must be returned at once to the owner or person entitled to legal possession thereof upon proof of ownership or right to possession.

BENEFITS FROM REPAIRS

73. The CONTRACTOR shall not benefit directly or indirectly from any motor vehicle repair or painting with respect to vehicles towed by the CONTRACTOR under this contract, unless expressly consented to in writing by the vehicle owner or vehicle owner's authorized representatives. Such writing shall inform the owner or agent that he or she has the right to have the vehicle repaired or painted at a place of his or her choice.

INSURANCE

74. The CONTRACTOR shall obtain and maintain through out the term of this Agreement, at CONTRACTOR'S sole cost and expense, the following policies of insurance according to the minimum limits set forth below. Each policy shall be in the name of the Company and shall include coverage for towing and storage. The CITY shall be named as an additional insured, and all coverage afforded to the CITY shall apply as primary coverage and shall not be affected by any insurance which the CITY may carry in its own name. A copy of such insurance policy or policies, or certificates thereof, will be furnished to the CITY Purchasing Department by the CONTRACTOR.

a. Workman's compensation and employer's liability insurance as required by State Statute and local ordinance.

b. Comprehensive general liability insurance in amounts not less than \$500,000.00 per occurrence for Bodily injury and \$500,000.00 per accident for property damage. Said policy endorsed to include:

1. Legal liability covering perils of fire and explosion, theft of an entire vehicle, riot and civil commotion, vandalism and malicious mischief.

2. Combined single limits automobile liability insurance in an amount not less than \$500,000.00 per occurrence for bodily injury and property damage covering all owned, non-owned and hired vehicles used in connection with the work.

c. Garage keepers legal liability insurance coverage in the minimum amount of \$75,000.00 to protect owners of any and all vehicles, boats and trailers towed or stored by CONTRACTOR pursuant to this Agreement, from any loss or damage to such vehicle, boat or trailer on account of such removal or storage.

INDEMNIFICATION AND HOLD HARMLESS

75. The CONTRACTOR shall indemnify and save harmless and defend the CITY, its agents, servants, and employees from and against any and all claims, liability, losses, and/or cause(s) of action which may arise from any negligent act or omission of the CONTRACTOR, its agents, servants, or employees in the performance of services

under this Agreement.

76. The CONTRACTOR further agrees to indemnify, save harmless and defend the CITY, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the CONTRACTOR not included in the paragraph above and for which the CITY, its agents, servants or employees are alleged to be liable. Nothing contained in this Agreement shall be construed or interpreted as consent by the City to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

77. CONTRACTOR shall pay all claims, losses, liens, fines, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees, and court and/or arbitration costs. These indemnifications shall survive the term of this Agreement or any renewal thereof.

78. The CONTRACTOR shall defend all actions in the name of the CITY, when applicable, however, CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of the CONTRACTOR.

CONTINGENT FEES

79. The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

DISCRIMINATION

80. CONTRACTOR will not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, sex, religion, political affiliation, natural origin or handicap.

COMPLAINTS AGAINST CONTRACTOR

81. CONTRACTOR understands and agrees that any complaints received by the CITY whether such complaints originate from City personnel or private individuals concerning the performance of CONTRACTOR'S duties under this Agreement will be referred to the Police Chief or designee. The failure of CONTRACTOR to follow any reasonable instruction of the Police Chief following the referral of any complaint(s) will be considered a material breach of this Agreement and cause for the termination hereof.

SUSPENSION AND REMOVAL FROM ROTATION LIST

82. If at any time during the term of this contract, including any option terms, the CONTRACTOR is determined to be in violation of any of the terms and conditions of the Agreement, the Police Chief or designee shall have the right to suspend the CONTRACTOR until the violation is resolved to the satisfaction of the CITY. If the violation is not promptly resolved or is of such serious nature that the CITY, in its sole discretion, determines that suspension is not adequate, the CITY reserves the right to terminate for cause. Cause shall be defined but not limited to, number, nature and severity of complaints received against the CONTRACTOR relative to the delivery of the services provided herein or failure to timely respond to calls for service.

83. In the event that the CITY receives three (3) or more complaints within a six (6) month period or six (6) or more complaints within one (1) year against the CONTRACTOR, it shall be grounds for immediate termination of this Agreement.

84. Any violation of the provisions or regulations of this Agreement may result in suspension or removal from the CITY'S rotation list, including, but not limited to, the following:

- a. Failure to possess all licenses and permits required by State Statute or local ordinances.
- b. Failure of the CONTRACTOR to respond to a tow call without a valid reason.
- c. Habitual failure to respond to a tow call properly and within the time prescribed in this Agreement.
- d. Voluntary request by CONTRACTOR to be removed temporarily or permanently from the rotation list.
- e. Storage facilities are in disrepair or lacking the requirements contained herein.
- f. CONTRACTOR knowingly overcharges a customer or fails to charge the agreed upon rates as set forth in the Rate Schedule.

DISPUTES

85. CONTRACTOR expressly understands and agrees to relinquish any vehicle immediately upon the request of the CITY. Any dispute concerning billing shall be forwarded to the Police Chief or designee for resolution. Such resolution by the Police Chief shall be final and binding upon all parties.

COMPLIANCE WITH LAWS AND ORDINANCES

86. CONTRACTOR shall comply with all applicable State and Federal laws and ordinances of the CITY now in existence or hereafter adopted, so long as the same do

86. CONTRACTOR shall comply with all applicable State and Federal laws and ordinances of the CITY now in existence or hereafter adopted, so long as the same do not impair the rights and privileges of CONTRACTOR in and to any contract signed by CONTRACTOR and the CITY as the result of this Agreement.

NON-ASSIGNABILITY

87. This Agreement shall not be assigned, sold or transferred and any such attempt to do so shall render this agreement void.

88. The CITY reserves the right to terminate the Agreement upon any change in ownership whether from the sale of CONTRACTOR'S business or stock or transfer of authorized and issued shares, the issuance of authorized but unissued shares or the issuance of any additional shares authorized by increases in capital stock limitations.

DISPOSAL OF VEHICLES

89. Should CONTRACTOR, as a result of this Agreement, have in its possession any vehicle or personal property for a period in excess of sixty (60) days, and should CONTRACTOR be ordered to relinquish such vehicle or personal property to the Police Department, CONTRACTOR agrees to immediately do so.

AUCTIONS

90. CONTRACTOR shall not auction any vehicle without the written approval of the Chief of Police, or the Chief's representative. All such auctions shall be conducted pursuant to Section 713.78, Florida Statutes.

TERMINATION

91. The CITY or CONTRACTOR may elect to terminate this Agreement upon thirty (30) days written notice to the other party.

NOTICE

92. All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the CITY shall be mailed to:

Clarence D. Williams, III Chief of Police

600 West Blue Heron Blvd

Riviera Beach, FL 33404

and if sent to the CONTRACTOR shall be mailed to:

Lyon's Towing

1107 Old Dixie Hwy.

Lake Park, FL 33403

VENUE

93. This Agreement and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided herein, performance or breach shall be governed and interpreted according to laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County.

REMEDIES

94. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ENFORCEMENT COSTS

95. If any legal action or other proceeding, including but not limited to arbitration and/or mediation, is brought for any dispute, disagreement, or issue of construction, declaration or interpretation arising hereunder whether relating to the Agreement's execution, validity, the obligations provided therein, or performance of this Agreement, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

SEVERABILITY

96. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

PUBLIC ENTITY CRIMES

this Agreement or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.

ENTIRETY OF CONTRACTUAL AGREEMENT

98. The CITY and the CONTRACTOR agree that this Agreement and any attachments hereto or other documents as referenced herein sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

HEADINGS

99. The Section and/or Paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

WAIVER

100. Failure of the CITY to enforce or exercise any right(s) under this Agreement shall not be deemed a waiver of CITY'S right to enforce or exercise said right(s) at any time thereafter.

PREPARATION

101. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

MATERIALITY

102. All provisions of the Agreement shall be deemed material, in the event CONTRACTOR fails to comply with any of the provisions contained in this Agreement or attachments hereto, said failure shall be deemed a material breach of this Agreement and CITY may at its option and without notice terminate this Agreement.

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AGREEMENT WITH THE CITY OF RIVIERA BEACH

IN WITNESS WHEREOF, the Parties unto this Agreement have set their hands and seals on the day and date first written above.

CITY OF RIVIERA BEACH

CONTRACTOR

BY: 
MICHAEL D. BROWN
MAYOR

BY: 
NAME: Allan Gold
TITLE: V.P.
ALLAN GOLD
VICE PRESIDENT

ATTEST:

BY: 
CARRIE E. WARD, CITY CLERK,
CMC/AAE (SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

BY: _____
CITY ATTORNEY

BY: _____
DEPARTMENT DIRECTOR

DATE: _____

EXHIBIT A

TOW ROTATION LIST PROCEDURE

1. Purpose

The purpose of the tow-rotation list is to have in place a procedure for wrecker call-out on a per incident basis. A tow log will be utilized and maintained by the Police Communication Center, (hereinafter "Center").

2. Procedure

A. Eligible Tow Contractors

ALL TIME TOWING
JAMES TOWING
KAUFF'S TOWING
LYONS TOWING
LAKE PARK TOWING
ALL FLORIDA TOWING

B. Wrecker Response

- i. If a Tow Contractor is unable to respond to a call, the Tow Contractor will be moved to the end of the list, thereby forfeiting that rotation.
- ii. In the event of cancellation or other circumstances where the wrecker is not used and in which the Tow Contractor is not in any way at fault, the City official, agent or employee on the scene requesting the wrecker or tow shall notify the Center upon cancellation of the tow and Tow Contractor shall retain its position in the rotation.
- iii. Should the Center be unable to reach Tow Contractor or Tow Contractor has failed to respond in a reasonable time to a hazardous scene, the next tow company in line will be contacted. The City official, agent or employee shall determine, based on his sole discretion, whether the response time was excessive.

B. **Rotation Tracking**

i. A log will be used by the City to track all vehicle and trailer tows to include rotation wreckers.

ii. The log shall contain the complete vehicle description including VIN number and TAG number when available, the CAD and/or case number assigned, the date and time of the tow, the tow company, and the City official, agent or employee dispatching and/or requesting such tow.

iii. The rotation list shall be maintained in a manual log in which the Tow Contractor at the top of the list shall be given the first opportunity to accept the tow and/or service request.

iv. Specific requests from the vehicle or trailer owner or person lawfully in possession will not be charged against the rotation schedule. The request shall be logged as such by City in the log. If an owner's request cannot be honored for any reason whatsoever, a rotation wrecker will be contacted and so charged on the rotation schedule.

v. In the event the Police Department exercises its option to ignore such rotation list pursuant to Section 45 of the Agreement, such election shall not affect the order of the rotation list and Tow Contractor shall retain its position.

vi. A tow request from the City for City operated vehicle(s), Police Department "Hold" vehicles and Code Enforcement abandoned, wrecked or junked vehicles will not be charged against the Tow Contractor. The Tow Contractor will remain in its tow position until a civilian tow or other type of tow is requested. The request shall be logged as such by the City in the log.

a) **Example:** Center call (A-1) to tow a City vehicle because they are next on the rotation list. (A-1) will tow the vehicle and remain in their original tow position. Immediately there after if another City vehicle needs towing the Tow Contractor (J-2) will be called by Center. They will also remain in their original tow position.

EXHIBIT B

RATE SCHEDULE*

These rates are the only rates that will be charged vehicle owners under this Agreement:

A. TOWING BY ITEM DESCRIPTION

- | | |
|---|--|
| 1) Class A (cars, vans, light trucks under 10,000 GVW) within City limits; | \$48.00 per call |
| 2) Motorcycles within the City limits; | \$40.00 per call |
| 3) Towing outside the City limits for cars, vans, motorcycles, and light trucks $\frac{3}{4}$ and less; | an additional \$3.00 per towed mile from the City limits |
| 4) Class B (vehicles 10,000 to 30,000 GVW) within the City limits; | \$80.00 per call |
| 5) Towing outside the City limits for Class B vehicles; | an additional \$3.50 per towed mile from the City limits |
| 6) Class C vehicles (over 30,000 GVW) within City limits; | \$100.00 per call |
| 7) Class C vehicles outside City limits; | an additional \$4.00 per towed mile from the City limits |
| 8) Additional time at the scene after first hour, per $\frac{1}{2}$ hour thereafter (applied to all vehicles, cars, vans, and trucks under and over $\frac{3}{4}$ ton, for waiting and extra street clean-up. | \$30.00 per half hour |
| 9) Miscellaneous other charges | |

4 X 4/off-road vehicle recovery	\$95.00 for the first hour, and \$30.00 per half hour thereafter
Tarp fee	\$20.00 per call
Lowboy service	\$100.00 per hour
Outside the City limits	an additional \$4.00 per towed mile from City limits
Underwater recovery salvage	\$100.00 for first half hour or part thereof, and \$20.00 for each additional ¼ hour or part thereof.

10) For purposes of this Agreement, when CONTRACTOR is entitled to additional charges based on time spent at the scene, unless otherwise specified, CONTRACTOR shall apportion the charge set forth herein to be consistent with the actual time spent on the scene.

B. STORAGE AND LIEN NOTICE

1) Cars, vans, trucks under ¾ ton	
Outside storage	\$20.00 per day
Inside storage	\$30.00 per day
2) Trucks and vehicles over ¾ ton	
Outside storage	\$25.00 per day
Inside storage	\$30.00 per day
3) Motorcycles	
Outside storage	\$ 5.00 per day
Inside storage	\$10.00 per day
4) Boat and trailer (21 feet and under)	
Outside storage	\$15.00 per day
Inside storage	\$30.00 per day
5) Boat and trailer (over 21 feet)	\$30.00 per day

6) Lien notice (after 24 hours of storage)

\$30.00 per vehicle

Per Florida Statutes, no storage fee shall be charged to the vehicle owner for a vehicle stored less than six (6) hours.

"Per day" shall be defined as a twenty-four (24) hour period or any part thereof.

C. VEHICLE RECOVERY

The following vehicle recovery fees may be charged to the vehicle owner when the vehicle is overturned, embedded in sand, mud, or water, or requires more than a single hook-up:

- | | |
|--|--|
| 1) Class A and B wrecker on the scene; | \$75.00 per hour and \$25.00 per each half hour after the first hour |
| 2) Extra man (each) on the scene | \$25.00 per hour |

D. ROAD SERVICE

For all trucks, cars, vans and other vehicles under and over $\frac{3}{4}$ ton, a road service fee of \$40.00 per call may be charged to the vehicle owner for services such as assisted start, unlocking a door, delivering gas, tire changes, etc.

* The rates set forth herein shall not apply to any vehicle towed on behalf of the City as more fully set forth in the Agreement to which this Exhibit is attached and made a part thereof.

Lake Park Towing, Inc.
Copy for The Contracted Towing Vendor

Owner / CEO: Bryan Cuthbert
803 13th Street
Lake Park, Florida 33403
(561) 844-4416

TOWING AND STORAGE AGREEMENT

THIS AGREEMENT, made and entered into this 03 day of October 2002, by and between the City of Riviera Beach, a municipality in the State of Florida, herein referred to as the "CITY", and Lake Park Towing, Inc. [] an individual, [] a partnership, [] a corporation authorized to do business in the State of Florida, hereinafter referred to as the "CONTRACTOR", whose Federal I.D. or Social Security number is _____.

WITNESSETH:

WHEREAS, the CITY issued its Request for Proposals for Towing and Storage Services #01695, and Addendum #1 (collectively, the "RFP") pursuant to state and local law to solicit proposals to provide vehicle towing and storage services for the CITY; and

WHEREAS, the CONTRACTOR responded to the RFP by submitting its bid proposal and agreeing to abide by the CITY'S rate schedule, which Proposal was accepted by the CITY; and

WHEREAS, the CONTRACTOR along with five (5) other Contractors have been selected; and

WHEREAS, the RFP provides for a renewal option for four (4) additional twelve (12) month periods; and

WHEREAS, the CITY and the CONTRACTOR each desire to exercise such option; and

WHEREAS, although the RFP, the Proposal and the Rate Schedule address in some detail the services to be provided, there are certain issues not addressed by these documents which the parties hereto desire to address.

NOW, THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the CITY and the CONTRACTOR hereby covenant and agree as follows:

SCOPE OF AGREEMENT, TERMS AND CONDITIONS

1. The vehicle towing and storage services to be provided to the CITY by the CONTRACTOR shall be on a non-exclusive, rotating basis.

2. It is the CITY'S desire to contract with all firms deemed qualified and responsive by the CITY. A representative of the City of Riviera Beach Police

Department, ("Police Department"), the affected Department, or any authorized representative of the CITY will accept and distribute all tow calls on a rotation basis as more fully set forth in Exhibit "A" attached hereto and incorporated herein by reference.

3. The owner or person in possession of any vehicle which has been involved in an accident or whose vehicle has been incapacitated in any other manner, as well as a detained driver of any vehicle which will not be impounded by the Police Department, shall be given the opportunity to contact a wrecker or tow truck company of his/her own choice if the disabled vehicle does not create a hazardous condition and a reasonable response time can be expected. Said person shall further be given the opportunity of having such vehicle towed to a garage or compound other than that of the CONTRACTOR.

4. When authorized by a representative of the Police Department, the affected Department or any authorized representative of the CITY, CONTRACTOR shall remove vehicles from the streets or other public property lying within the CITY limits and any abandoned, wrecked or junked vehicles on private property declared to be a nuisance when so informed by the CITY.

5. Except as the law may otherwise require, the CONTRACTOR shall not move any vehicles to any location other than that designated by a City Police Officer or other authorized City representative, or owner or person in lawful possession of the vehicle.

6. A tow as used herein is the actual removal of a vehicle. No double charges or second tows are allowed. Extra hook-ups do not constitute another tow charge. No mileage charges are allowed from any point within the CITY limits.

7. The CONTRACTOR agrees to have no markings, lettering or symbols on any vehicle, building or correspondence that indicates or tends to indicate any official relationship between the CONTRACTOR and the CITY.

8. The CITY, vehicle owner, driver, or person lawfully in possession of such vehicle, shall have the right to cancel a request for services at any time, including up to the time of hook-up, without any charge being incurred. The CONTRACTOR agrees that the mere response to a service call scene without other action does not constitute a service for which charges are applicable. However, if the tow is cancelled, CONTRACTOR will retain its position in the rotation.

CONTROLLING PROVISIONS

9. To the extent that there exists a conflict between the RFP, the Proposal, the Rotation Schedule and the Rate Schedule, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

TERM OF AGREEMENT

10. The period of the Agreement shall be one (1) year (12 months), with an option to renew the contract for three (3) additional twelve (12) month periods. The option for renewal will only be exercised upon mutual written agreement and with all original terms, conditions and specifications of the Agreement remaining the same with no deviations.

RESPONSE

11. Calls under this Agreement will be given priority over all other non-emergency calls.

12. CONTRACTOR shall be expected to arrive at the site within twenty (20) minutes of the call. CONTRACTOR assumes all liability in meeting the twenty (20) minute response time including, but not limited to, any and all damages resulting from traffic accidents and motor vehicle infraction fines.

LOCATION

13. CONTRACTOR shall have a Place of Business and Storage Facility located within a five (5) mile radius of the Riviera Beach Police Station, ("Police Station").

CITY VEHICLES, TRAILERS, AND/OR EQUIPMENT

14. CONTRACTOR agrees that it shall provide to the CITY, free of charge, all necessary towing, road service and storage required by the CITY in the operation and maintenance of all CITY vehicles. This includes towing from the CITY garage or the closest qualified commercial maintenance facility selected by the City anywhere in Palm Beach, Broward, Martin and Miami-Dade Counties. CONTRACTOR shall also provide, at no cost to the CITY, "stand-by" wrecker equipment and personnel whenever requested by the Police Department for Special Operations including, but not limited to, "sting operations," traffic checkpoints, or other special events as designated by the Chief of Police or designee.

15. Services related to CITY owned or leased vehicle(s) or trailer(s) should be logged and forwarded by CONTRACTOR on a monthly basis to the CITY's Purchasing Director. All such logs shall identify the vehicle(s) or trailer(s) towed or the service rendered, the location from which it was towed, and the hours and dates applicable to CONTRACTOR'S services with respect to those vehicle(s) or trailer(s). The "service ticket" shall include the signature of the authorized CITY employee approving towing of the CITY vehicle or trailer. CONTRACTOR shall provide such information, until such

time as a form is provided to it by CITY, which then must be completed by CONTRACTOR.

CRIME SCENE, CONFISCATED, SPECIAL "HOLD" STORAGE

16. Vehicles towed for the Police Department that are seized as the result of any Special Operations and/or vehicles which will be held pending forfeiture and/or for other investigative purposes shall be towed by CONTRACTOR at no cost to the CITY.

17. Vehicles which have been marked "HOLD" by the Police Department shall be stored at the compound of the CONTRACTOR for whatever period of time necessary in order to properly process the vehicle and conduct any necessary investigation. Absent a Court Order to the contrary, personnel of the Police Department shall be permitted access to such vehicle at all reasonable times. Such storage charged by CONTRACTOR shall not be billed to the CITY. CONTRACTOR agrees to seek recovery of any and all storage charges from the owner of such vehicle or in the sale of such vehicle as provided for by Sections 713.78 and 715.05, Florida Statutes.

18. Any vehicle towed or stored as a result of the marked "HOLD" relative to a crime scene investigation shall be handled with gloves (i.e. cloth, rubber, or leather) by the wrecker operator.

19. Crime Scene vehicles shall be stored to prevent physical contamination or degradable evidence from deteriorating and shall be stored inside a facility. If inside storage is not available, CONTRACTOR shall surrender the tow and fee to the next tow company in rotation. This requirement shall not prevent CITY from removing the vehicle or trailer and storing it at a CITY-owned or controlled facility or at another tow company's storage compound.

20. If laboratory work on a crime scene vehicle is required and the vehicle must be processed at a location other than CONTRACTOR'S facility, the vehicle shall be transported to the CITY designated location free of charge.

21. Confiscated vehicles or vehicles involved in litigation shall be protected from the elements, preferably at an inside storage facility, as to maintain the vehicle in its condition at the time of towing. This shall not prevent the CITY from removing the vehicle and storing it at a CITY-owned or controlled facility or at another tow company's storage compound.

CODE ENFORCEMENT

22. Vehicles to be towed and stored pursuant to the directive of the City of Riviera Beach's Code Enforcement Department, (hereinafter "Code Enforcement"), shall also be subject to the rotation basis as more fully set forth in Exhibit "A".

23. CONTRACTOR'S failure to perform Code Enforcement tows more than two (2) times during any twelve (12) month period may result in suspension or removal from the CITY'S rotation list. 22. When vehicles, boats or trailers are towed from public property, including right-of-ways, after the appropriate notification, CONTRACTOR has the option of destroying the vehicle or keeping it safe for sale pursuant to Sections 713.78 and 715.05, Florida Statutes. CONTRACTOR shall remove, tow and store all such vehicles, boats, and trailers, at no charge to the CITY. CONTRACTOR hereby agrees to seek payment for such services solely from the owners of such vehicles, boats or trailers or in the sale of such vehicles, boats or trailers as set forth herein.

24. When vehicles, boats or trailers are towed from private property after receiving the appropriate notification, CONTRACTOR must proceed in accordance with the provisions set forth in Sections 713.78 and 715.05, Florida Statutes and store the vehicles, boats, or trailers for a minimum period of thirty-five (35) days, after which time CONTRACTOR has the option to destroy or sell the vehicles, boats or trailers pursuant to Section 713.78, Florida Statutes. Any breach of any statutory provision with respect to such destruction or sale shall constitute a breach of this Agreement and shall be grounds for termination of this Agreement.

25. CONTRACTOR agrees that the CITY shall in no way compensate CONTRACTOR for such removal and/or storage and CONTRACTOR shall look to the vehicle, boat or trailer owner or the remedies as provided by the statutes referenced herein for payment.

COMPENSATION

27. Services performed under this Agreement shall be charged for and compensated in accordance with the Rate Schedule attached hereto as Exhibit "B" and incorporated herein by reference.

28. The CONTRACTOR shall be responsible for the collection of all tow, storage, labor, service and mileage charges and fees. The CITY shall in no way be responsible for the collection or payment of any charge for services rendered by reasons of its having dispatched service in accordance with this Agreement. All such services rendered shall be charged to the owner of the towed or serviced vehicle or other lawful claimant in possession of such vehicle.

29. Storage fees shall be charged at the rates stated in the Rate Schedule for each twenty-four (24) hour period. No storage fee shall be applied until a vehicle is held in excess of twenty-four (24) hours.

30. CONTRACTOR shall prominently post in CONTRACTOR'S storage facilities a list of CONTRACTOR'S charges as set forth in the Rate Schedule. A list of such charges shall be provided to the owner or person lawfully in possession of each vehicle towed. CONTRACTOR shall not charge for any service that exceeds such posted

or listed amount, nor shall CONTRACTOR perform any service that is not delineated on any such posted or listed schedule without giving the owner of the vehicle or person lawfully in possession thereof a written estimate of the amount that will be finally due and payable upon the rendition of the services. No additional charges are allowed unless specified by this Agreement and new charges must be approved through negotiation with the CITY's Director of Purchasing.

31. No charges other than those set forth in the Rate Schedule will be levied against the vehicle owner, whenever the vehicle towing, recovery, or storage is authorized by the CITY, or its agents.

32. A declaration as to the rates between the CONTRACTOR and the CITY will either be made a part of, or permanently attached to the invoice that is presented to the vehicle owner or the owner's representative.

MINIMUM EQUIPMENT REQUIREMENT

33. The CONTRACTOR will be required to have available at all times sufficient equipment to perform all services required on a timely and reasonable basis. All equipment must be housed within a five (5) mile radius of the Police Department. CONTRACTOR must have at least one (1) wrecker capable of towing any CITY Fire Truck, whether loaded or empty. All equipment shall be modern, commercially manufactured or approved by the CITY and in good mechanical condition. All towing vehicles must be owned or leased directly by CONTRACTOR. Subcontracting of towing vehicles will not be allowed. No vehicle of the CONTRACTOR shall be used as an emergency vehicle. All towing vehicles must be equipped with two-way radios with a range extending throughout all of the CITY limits. Such radios shall not be tuned in to any police frequency. CONTRACTOR shall comply with all laws, rules and regulations of any governmental agency having jurisdiction in the premises including, but not limited to, licensing and minimum safety standards. In addition to the aforementioned, CONTRACTOR shall have the following:

Vehicles

- a. Five Class "A" small wreckers of 4-ton capacity.
- b. Two Class "A" slide back (flatbed) carrier of 10,000 Gross Vehicle Weight, ("GVW"). (Note: these may be included as part of the total for (a) above).
- c. One Class "B" large wrecker of 16-ton capacity equipped with twin booms or hydraulic equivalent, air brakes and auxiliary air supply.
- d. One Class "C" large wrecker of 40-ton capacity equipped with twin booms or hydraulic equivalent, air brakes and auxiliary air supply.
- e. One 48' hydraulic, roll back, tilt self-loading trailer, capable of hauling, among other things, the CITY's Fire apparatus.

Communication

a. A business type communications system licensed and approved by the Federal Communications Commission capable of providing reliable communications between the driver and a place of business from anywhere within the city limits. A Citizen's Band (CB) radio or Family Radio Service (FRS) does not meet the requirements of this condition.

Lights

- a. One or more amber colored rotator beam, or strobe lights, mounted on the top of the cab and positioned so that the light is visible from any direction.
- b. Additional amber lights shall be installed to be visible from the front of the tow truck and red lights visible only from the rear of the tow truck.
- c. Top mounted rotor beam or strobe lights WILL NOT be used while responding to a dispatch call unless authorized by the Police Department.
- d. Top mounted rotor beam or strobe lights will be used while at the scene of a dispatch call.

On-board Equipment

- a. Dollies for all vehicles except for class "C" and roll back carriers.
- b. At least one heavy-duty push broom with a minimum width of 24 inches on each vehicle.
- c. Flood light on each hoist.
- d. Minimum of one square shovel.
- e. Minimum of one fire axe.
- f. One crowbar or pry bar with a minimum length of 30 inches.
- g. A minimum of one 5-pound CO2, or dry chemical fire extinguisher or equivalent. The extinguisher must be of an approved type and have attached a current marked inspection tag.
- h. One pair of bolt cutters with a minimum of ½ inch opening.
- i. One set of battery jumper cables or a portable heavy-duty jump starting device.
- j. One 4-way lug wrench, or pneumatic tools capable of automotive wheel removal at scene.
- k. One high intensity flashlight.
- l. Five 30 minute fuses (flares), or equivalent in sufficient quantity to burn for 2 ½ hours.
- m. One snatch block for each winch, manufacturers rating to match winch, except for roll back carrier.
- n. Extra towing chain six to eight feet in length with hooks on both ends.
- o. At least six safety cones or triangle reflectors.
- p. Fifty pounds of "Oil Dry" or suitable absorbent material equivalent to handle spills or leaks.
- q. One trash receptacle capable of holding 5 gallons or more.

DRUG FREE WORK PLACE

34. In compliance with Section 287.087, Florida Statutes, CONTRACTOR shall execute and submit with this Agreement the "Drug-Free Workplace Certification" attached hereto as Exhibit "C" and incorporated herein by reference.

ETHICS AND CONDUCT

35. CONTRACTOR hereby agrees to conduct operations under this Agreement in a courteous, orderly, ethical and professional manner. As it is recognized by both parties that this Agreement is sensitive in nature and requires CONTRACTOR and its personnel and employees to work with the public on a daily basis, CONTRACTOR is required to extend common courtesies including, but not limited to:

- a. Expedite release of vehicle in accordance with the terms of this Agreement;
- b. Assist the vehicle or trailer owner in retrieving documents from the vehicle or trailer to establish ownership;
- c. Permit the owner to remove the auto tag and any unattached personal possessions;
- d. Explain fully and politely the reason for the tow and all charges levied;
- e. If a dispute occurs, CONTRACTOR shall attempt to resolve the dispute promptly and politely. If it cannot be resolved satisfactorily, the dispute shall be reported to the CITY Police Chief or designee no later than the next business day.

EMPLOYEES

36. The CONTRACTOR agrees that the owner(s) of the company or the officer(s) of the company (if a corporation) shall be responsible except as otherwise prohibited by law, for the acts of their employees while on duty.

37. The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the CITY.

38. All of the services required hereunder shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized, licensed or permitted under state and local law to perform such services.

39. The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

40. The CONTRACTOR agrees that it is fully responsible to the CITY for the acts and omissions of persons either directly or indirectly employed by the CONTRACTOR. Nothing contained herein shall create any contractual relationship between any such person and the CITY.

41. All of the CONTRACTOR'S personnel, while on City premises, will comply with all CITY requirements governing conduct, safety, and security.

GENERAL OPERATING PROCEDURES

42. CONTRACTOR must be available for immediate response, twenty-four (24) hours per day, seven days a week. Should extenuating circumstances prevent full time availability, the Police Department must be notified immediately.

43. CONTRACTOR is prohibited from "chasing" or "running" to vehicle accident scenes, unless properly authorized by the Police Department. CONTRACTOR agrees that it will not solicit on the scene of an official investigation.

44. Should CONTRACTOR remove any vehicle from any scene of an official investigation without the authorization of the Police Department, CONTRACTOR shall be subject to suspension or removal from the service.

45. Although the CITY established a rotation list, the Police Department reserves the right to disregard any rotation list when in the sole opinion of the Police Department, there is a need for urgency and/or public safety mandates calling another tow company or when superior equipment is required which cannot be furnished by the tow company on top of the rotation list.

46. CONTRACTOR shall tow all vehicles from the scene except when CONTRACTOR is unable to handle all vehicles, in which case a second tow company will be called, or upon request by an Owner.

INDEPENDENT CONTRACTOR RELATIONSHIP

47. The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the CITY shall be that of an Independent Contractor and not as employees or agents of the CITY.

48. The CONTRACTOR does not have the power or authority to bind the CITY in any promise, agreement or representation other than as specifically provided for

in this Agreement.

CONTRACTOR'S LIABILITY

49. The CONTRACTOR'S liability for any towed and/or stored vehicle and all property contained therein shall commence from the time a wrecker is hooked to any vehicle to be towed. The CONTRACTOR and/or the Police Department shall inventory all personal property contained in the vehicle to be towed. Such inventory shall be made in triplicate and shall be signed by the person(s) composing it. One copy shall be given to the owner or the person in possession of the vehicle, and one copy shall be given to the Police Department or other authorized CITY personnel. The CONTRACTOR shall be solely liable and responsible for all personal property in any towed vehicle.

CLEAN UP

50. The CONTRACTOR, when called to the scene of an accident, shall remove and properly dispose of all broken glass, debris and other non-hazardous matter from the street, sidewalk, park or other CITY property. The cost of such normal accident cleanup shall be included in the basic towing rate and no separate charge made to the vehicle owner.

LABOR CHARGES

51. Labor charges shall be included in the basic towing rate and no separate charge made to the vehicle owner. In the event that unusual circumstances arise which require additional labor not contemplated in the provision of services hereunder, the cost of such labor shall be charged to the vehicle owner at the rate set forth in the Rate Schedule.

NON-LIABILITY OF CITY

52. The CITY shall not be responsible or liable in any manner whatsoever for either the collection or payment of any charges for services rendered, including, but not limited to, towing, storage or mileage.

REPORTS, RECORD KEEPING, AND AUDITS

53. The CONTRACTOR shall maintain and have available at all times for inspection by authorized CITY personnel detailed accounting and other records of all services rendered relative to the Agreement.

54. CONTRACTOR, shall each month ten (10) days prior to the last day of the month, provide to the CITY's Purchasing Department two (2) copies of a complete, detailed listing of all vehicles which have been towed and released in the prior thirty (30) day period; a complete, detailed listing of all vehicles which have been impounded or stored for a period of thirty (30) days or longer, such listing to include all vehicles not

claimed within thirty (30) days; and any such other information that the CITY may require.

55. The CONTRACTOR shall provide to the Police Department weekly reports of vehicles and trailers towed pursuant to Police Department directive. Such weekly reports shall contain, to the extent available, the following information:

- a. Name of owner or driver of vehicle, boat or trailer towed;
- b. Model and make of vehicle, boat or trailer;
- c. License plate number;
- d. Vehicle, boat or trailer identification number;
- e. Time, date and location of tow;
- f. Circumstances requiring tow;
- g. Whether or not a "HOLD" was placed on the vehicle by the Police Department;
- h. Time dispatched to scene and time of arrival;
- i. Storage facility where vehicle is stored; and
- j. The date times and name of employee releasing the vehicle.

56. CONTRACTOR shall at all times maintain at its place of business records containing the following information:

- a. A vehicle storage receipt of each vehicle on the premises.
- b. A monthly log of all calls for service by the Police Department.
- c. A notification log indicating the date, time and method of notification to the registered owner of the stored vehicle or trailer.
- d. A daily log setting forth a list of all vehicles towed, as well as information on each vehicle as outlined above.

57. The CITY, from time to time, during normal business hours and with at least two (2) business days prior notice to CONTRACTOR, shall have the right to audit the CONTRACTOR'S books and records at the CITY'S expense with regard to the accounts and services provided to or on behalf of the CITY hereunder to ensure that all aspects of the Agreement are being met. Failure by CONTRACTOR to permit such audit shall be grounds for immediate termination of this Agreement by the CITY.

RELEASE OF VEHICLES AND/OR PERSONAL PROPERTY

58. CONTRACTOR agrees to release any vehicle, which has not been marked "HOLD" by the Police Department provided that proper proof of ownership or right of possession is presented to CONTRACTOR. Any vehicle, including any personal property in such vehicle and all accessories, which has been marked "HOLD" by the Police Department, shall not be released without prior written authority from the Police Department. Should CONTRACTOR release personal property, upon proper proof of ownership or right of possession, the owner or person entitled to possession thereof shall sign a receipt provided by the CONTRACTOR for same.

OWNER NOTIFICATION

59. CONTRACTOR agrees to be responsible for notifying the registered owner or agent of the whereabouts of the vehicle in accordance with Chapter 713, Florida Statutes.

IMPOUNDED VEHICLES

60. Should any owner or person lawfully entitled to possession of an impounded vehicle seek to reclaim the same from CONTRACTOR, CONTRACTOR shall provide such owner or person lawfully entitled to possession with an itemized statement of all charges relating to the impounding of such vehicle.

STORAGE AND OFFICE FACILITIES

61. The CONTRACTOR will maintain an office facility, storage garage and outside storage facilities complying with all provisions of applicable building, zoning and environmental regulations sufficient to store all vehicles towed under this Agreement until such vehicle(s) are claimed by the owner or otherwise disposed of legally.

62. CONTRACTOR'S office and storage facility shall be open and manned seven (7) days per week and twenty-four (24) hours per day and shall be equipped with twenty-four (24) hour on-premises radio-dispatching capabilities.

63. All outside storage facilities shall be enclosed with a solid wall or substantial wire fence not less than six (6) feet in height. The top of such fence or wall, including all gates or doors or roofed open doors, shall be equipped with not less than 12" of barbed wire installed in such manner as to discourage access over the top of such fence or wall. All fences and walls shall be maintained in good repair throughout the term of the Agreement. Damage to such walls or fences shall be repaired within twenty-four (24) hours. All storage areas shall be open twenty-four (24) hours per day, seven days a week, and authorized personnel or CONTRACTOR shall be available during such times to assure that the obligations and service required of CONTRACTOR shall be available and fulfilled. No charges or gate fees are allowed.

64. CONTRACTOR shall be capable of storing up to three (3) vehicles in inside storage and shall maintain one (1) inside storage space which shall comply with the following specifications:

- a. A working area of 9' x 20' per vehicle with at least an eight (8') foot high ceiling;
- b. A paved floor (i.e. concrete, asphalt) that is free from dirt, standing water and vegetation;
- c. An electrical lighting source sufficient to permit processing of a vehicle; and
- d. One (1) outside window or a ventilation system.

65. CONTRACTOR'S office facilities shall include a telephone, restroom facilities, and a work area containing a desk, phone, facsimile machine, computer, etc. Such facility shall have the name of the company, the mailing address and the 24-hour phone number clearly visible to all.

66. Vehicles stored in enclosed areas shall be stored under lock and key. The CONTRACTOR shall protect all stored vehicles and any evidence or personal property contained therein from theft and damage in accordance with all reasonable Police Department instructions and directives.

INSPECTION OF PREMISES AND EQUIPMENT

67. Storage facilities and equipment shall be subject to periodic inspections during the term of this Agreement when deemed necessary by the Police Department. Notice of any discrepancies or deficiencies found by the Police Department to be a violation of a specific requirement of this Agreement shall be submitted to the CONTRACTOR in writing, and CONTRACTOR shall remedy the same within ten (10) days of receipt of such notice. Upon failure by the CONTRACTOR to remedy deficiencies, the Agreement may be terminated at the option of the CITY.

68. CONTRACTOR shall permit members of the Police Department and other authorized CITY personnel to inspect CONTRACTOR'S compound, storage facilities, stored vehicles, and all of the CONTRACTOR'S records concerning CONTRACTOR'S duties under the Agreement at all reasonable times whenever, in the opinion of such members of the Police Department or other authorized CITY personnel, it is deemed necessary to do so.

69. CONTRACTOR shall be given at least two (2) business days prior notice of any inspection to be conducted pursuant to this section.

PROTECTION OF VEHICLES AND PERSONAL PROPERTY

70. The CONTRACTOR'S liability for any vehicle towed and all property contained therein will commence once the wrecker is hooked onto the vehicle.

71. The CONTRACTOR shall be solely accountable and liable for damage to the vehicle and any damage or loss to any and all personal property within the vehicle towed and for all vehicle accessories, regardless of the cause of such damage or loss.

72. Personal property situated in vehicles stored by the CONTRACTOR shall not be disposed of to defray any charges for storage or towing of vehicle. All such personal property, not affixed to the vehicle, upon request and without regard to any fees owed by such person, must be returned at once to the owner or person entitled to legal possession thereof upon proof of ownership or right to possession.

BENEFITS FROM REPAIRS

73. The CONTRACTOR shall not benefit directly or indirectly from any motor vehicle repair or painting with respect to vehicles towed by the CONTRACTOR under this contract, unless expressly consented to in writing by the vehicle owner or vehicle owner's authorized representatives. Such writing shall inform the owner or agent that he or she has the right to have the vehicle repaired or painted at a place of his or her choice.

INSURANCE

74. The CONTRACTOR shall obtain and maintain through out the term of this Agreement, at CONTRACTOR'S sole cost and expense, the following policies of insurance according to the minimum limits set forth below. Each policy shall be in the name of the Company and shall include coverage for towing and storage. The CITY shall be named as an additional insured, and all coverage afforded to the CITY shall apply as primary coverage and shall not be affected by any insurance which the CITY may carry in its own name. A copy of such insurance policy or policies, or certificates thereof, will be furnished to the CITY Purchasing Department by the CONTRACTOR.

a. Workman's compensation and employer's liability insurance as required by State Statute and local ordinance.

b. Comprehensive general liability insurance in amounts not less than \$500,000.00 per occurrence for Bodily injury and \$500,000.00 per accident for property damage. Said policy endorsed to include:

1. Legal liability covering perils of fire and explosion, theft of an entire vehicle, riot and civil commotion, vandalism and malicious mischief.

2. Combined single limits automobile liability insurance in an amount not less than \$500,000.00 per occurrence for bodily injury and property damage covering all owned, non-owned and hired vehicles used in connection with the work.

c. Garage keepers legal liability insurance coverage in the minimum amount of \$75,000.00 to protect owners of any and all vehicles, boats and trailers towed or stored by CONTRACTOR pursuant to this Agreement, from any loss or damage to such vehicle, boat or trailer on account of such removal or storage.

INDEMNIFICATION AND HOLD HARMLESS

75. The CONTRACTOR shall indemnify and save harmless and defend the CITY, its agents, servants, and employees from and against any and all claims, liability, losses, and/or cause(s) of action which may arise from any negligent act or omission of the CONTRACTOR, its agents, servants, or employees in the performance of services

under this Agreement.

76. The CONTRACTOR further agrees to indemnify, save harmless and defend the CITY, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the CONTRACTOR not included in the paragraph above and for which the CITY, its agents, servants or employees are alleged to be liable. Nothing contained in this Agreement shall be construed or interpreted as consent by the City to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

77. CONTRACTOR shall pay all claims, losses, liens, fines, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees, and court and/or arbitration costs. These indemnifications shall survive the term of this Agreement or any renewal thereof.

78. The CONTRACTOR shall defend all actions in the name of the CITY, when applicable, however, CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of the CONTRACTOR.

CONTINGENT FEES

79. The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

DISCRIMINATION

80. CONTRACTOR will not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, sex, religion, political affiliation, natural origin or handicap.

COMPLAINTS AGAINST CONTRACTOR

81. CONTRACTOR understands and agrees that any complaints received by the CITY whether such complaints originate from City personnel or private individuals concerning the performance of CONTRACTOR'S duties under this Agreement will be referred to the Police Chief or designee. The failure of CONTRACTOR to follow any reasonable instruction of the Police Chief following the referral of any complaint(s) will be considered a material breach of this Agreement and cause for the termination hereof.

SUSPENSION AND REMOVAL FROM ROTATION LIST

82. If at any time during the term of this contract, including any option terms, the CONTRACTOR is determined to be in violation of any of the terms and conditions of the Agreement, the Police Chief or designee shall have the right to suspend the CONTRACTOR until the violation is resolved to the satisfaction of the CITY. If the violation is not promptly resolved or is of such serious nature that the CITY, in its sole discretion, determines that suspension is not adequate, the CITY reserves the right to terminate for cause. Cause shall be defined but not limited to, number, nature and severity of complaints received against the CONTRACTOR relative to the delivery of the services provided herein or failure to timely respond to calls for service.

83. In the event that the CITY receives three (3) or more complaints within a six (6) month period or six (6) or more complaints within one (1) year against the CONTRACTOR, it shall be grounds for immediate termination of this Agreement.

84. Any violation of the provisions or regulations of this Agreement may result in suspension or removal from the CITY'S rotation list, including, but not limited to, the following:

- a. Failure to possess all licenses and permits required by State Statute or local ordinances.
- b. Failure of the CONTRACTOR to respond to a tow call without a valid reason.
- c. Habitual failure to respond to a tow call properly and within the time prescribed in this Agreement.
- d. Voluntary request by CONTRACTOR to be removed temporarily or permanently from the rotation list.
- e. Storage facilities are in disrepair or lacking the requirements contained herein.
- f. CONTRACTOR knowingly overcharges a customer or fails to charge the agreed upon rates as set forth in the Rate Schedule.

DISPUTES

85. CONTRACTOR expressly understands and agrees to relinquish any vehicle immediately upon the request of the CITY. Any dispute concerning billing shall be forwarded to the Police Chief or designee for resolution. Such resolution by the Police Chief shall be final and binding upon all parties.

COMPLIANCE WITH LAWS AND ORDINANCES

86. CONTRACTOR shall comply with all applicable State and Federal laws and ordinances of the CITY now in existence or hereafter adopted, so long as the same do

not impair the rights and privileges of CONTRACTOR in and to any contract signed by CONTRACTOR and the CITY as the result of this Agreement.

NON-ASSIGNABILITY

87. This Agreement shall not be assigned, sold or transferred and any such attempt to do so shall render this agreement void.

88. The CITY reserves the right to terminate the Agreement upon any change in ownership whether from the sale of CONTRACTOR'S business or stock or transfer of authorized and issued shares, the issuance of authorized but unissued shares or the issuance of any additional shares authorized by increases in capital stock limitations.

DISPOSAL OF VEHICLES

89. Should CONTRACTOR, as a result of this Agreement, have in its possession any vehicle or personal property for a period in excess of sixty (60) days, and should CONTRACTOR be ordered to relinquish such vehicle or personal property to the Police Department, CONTRACTOR agrees to immediately do so.

AUCTIONS

90. CONTRACTOR shall not auction any vehicle without the written approval of the Chief of Police, or the Chief's representative. All such auctions shall be conducted pursuant to Section 713.78, Florida Statutes.

TERMINATION

91. The CITY or CONTRACTOR may elect to terminate this Agreement upon thirty (30) days written notice to the other party.

NOTICE

92. All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the CITY shall be mailed to:

CLARENCE WILLIAMS, CHIEF OF POLICE

600 W BLUE HERON BLVD

RIVIERA BEACH, FL 33404

and if sent to the CONTRACTOR shall be mailed to:

LARK PARK TOWING INC

803 13th STREET
LAKE PARK FL 33403

VENUE

93. This Agreement and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided herein, performance or breach shall be governed and interpreted according to laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County.

REMEDIES

94. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ENFORCEMENT COSTS

95. If any legal action or other proceeding, including but not limited to arbitration and/or mediation, is brought for any dispute, disagreement, or issue of construction, declaration or interpretation arising hereunder whether relating to the Agreement's execution, validity, the obligations provided therein, or performance of this Agreement, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

SEVERABILITY

96. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

PUBLIC ENTITY CRIMES

97. As provided in Sections 287.132-133, Florida Statutes, by entering into

this Agreement or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.

ENTIRETY OF CONTRACTUAL AGREEMENT

98. The CITY and the CONTRACTOR agree that this Agreement and any attachments hereto or other documents as referenced herein sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

HEADINGS

99. The Section and/or Paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

WAIVER

100. Failure of the CITY to enforce or exercise any right(s) under this Agreement shall not be deemed a waiver of CITY'S right to enforce or exercise said right(s) at any time thereafter.

PREPARATION

101. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

MATERIALITY

102. All provisions of the Agreement shall be deemed material, in the event CONTRACTOR fails to comply with any of the provisions contained in this Agreement or attachments hereto, said failure shall be deemed a material breach of this Agreement and CITY may at its option and without notice terminate this Agreement.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

AGREEMENT WITH THE CITY OF RIVIERA BEACH

IN WITNESS WHEREOF, the Parties unto this Agreement have set their hands and seals on the day and date first written above.

CITY OF RIVIERA BEACH

CONTRACTOR

BY: 
MICHAEL D. BROWN
MAYOR

BY: 
NAME: BRYAN CUTBENT
TITLE: PRESIDENT

ATTEST:

BY: 
CARRIE E. WARD, CITY CLERK,
CMC/AAE

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

BY: _____
CITY ATTORNEY

BY: _____
DEPARTMENT DIRECTOR

DATE: _____

EXHIBIT A

TOW ROTATION LIST PROCEDURE

1. Purpose

The purpose of the tow-rotation list is to have in place a procedure for wrecker call-out on a per incident basis. A tow log will be utilized and maintained by the Police Communication Center, (hereinafter "Center").

2. Procedure

A. Eligible Tow Contractors

ALL TIME TOWING
JAMES TOWING
KAUFF'S TOWING
LYONS TOWING
LAKE PARK TOWING
ALL FLORIDA TOWING

B. Wrecker Response

- i. If a Tow Contractor is unable to respond to a call, the Tow Contractor will be moved to the end of the list, thereby forfeiting that rotation.
- ii. In the event of cancellation or other circumstances where the wrecker is not used and in which the Tow Contractor is not in any way at fault, the City official, agent or employee on the scene requesting the wrecker or tow shall notify the Center upon cancellation of the tow and Tow Contractor shall retain its position in the rotation.
- iii. Should the Center be unable to reach Tow Contractor or Tow Contractor has failed to respond in a reasonable time to a hazardous scene, the next tow company in line will be contacted. The City official, agent or employee shall determine, based on his sole discretion, whether the response time was excessive.

B. Rotation Tracking

i. A log will be used by the City to track all vehicle and trailer tows to include rotation wreckers.

ii. The log shall contain the complete vehicle description including VIN number and TAG number when available, the CAD and/or case number assigned, the date and time of the tow, the tow company, and the City official, agent or employee dispatching and/or requesting such tow.

iii. The rotation list shall be maintained in a manual log in which the Tow Contractor at the top of the list shall be given the first opportunity to accept the tow and/or service request.

iv. Specific requests from the vehicle or trailer owner or person lawfully in possession will not be charged against the rotation schedule. The request shall be logged as such by City in the log. If an owner's request cannot be honored for any reason whatsoever, a rotation wrecker will be contacted and so charged on the rotation schedule.

v. In the event the Police Department exercises its option to ignore such rotation list pursuant to Section 45 of the Agreement, such election shall not affect the order of the rotation list and Tow Contractor shall retain its position.

vi. A tow request from the City for City operated vehicle(s), Police Department "Hold" vehicles and Code Enforcement abandoned, wrecked or junked vehicles will not be charged against the Tow Contractor. The Tow Contractor will remain in its tow position until a civilian tow or other type of tow is requested. The request shall be logged as such by the City in the log.

a) **Example:** Center call (A-1) to tow a City vehicle because they are next on the rotation list. (A-1) will tow the vehicle and remain in their original tow position. Immediately there after if another City vehicle needs towing the Tow Contractor (J-2) will be called by Center. They will also remain in their original tow position.

EXHIBIT B

RATE SCHEDULE*

These rates are the only rates that will be charged vehicle owners under this Agreement:

A. TOWING BY ITEM DESCRIPTION

- | | |
|---|--|
| 1) Class A (cars, vans, light trucks under 10,000 GVW) within City limits; | \$48.00 per call |
| 2) Motorcycles within the City limits; | \$40.00 per call |
| 3) Towing outside the City limits for cars, vans, motorcycles, and light trucks $\frac{3}{4}$ and less; | an additional \$3.00 per towed mile from the City limits |
| 4) Class B (vehicles 10,000 to 30,000 GVW) within the City limits; | \$80.00 per call |
| 5) Towing outside the City limits for Class B vehicles; | an additional \$3.50 per towed mile from the City limits |
| 6) Class C vehicles (over 30,000 GVW) within City limits; | \$100.00 per call |
| 7) Class C vehicles outside City limits; | an additional \$4.00 per towed mile from the City limits |
| 8) Additional time at the scene after first hour, per $\frac{1}{2}$ hour thereafter (applied to all vehicles, cars, vans, and trucks under and over $\frac{3}{4}$ ton, for waiting and extra street clean-up. | \$30.00 per half hour |
| 9) Miscellaneous other charges | |

4 X 4/off-road vehicle recovery	\$95.00 for the first hour, and \$30.00 per half hour thereafter
Tarp fee	\$20.00 per call
Lowboy service	\$100.00 per hour
Outside the City limits	an additional \$4.00 per towed mile from City limits
Underwater recovery salvage	\$100.00 for first half hour or part thereof, and \$20.00 for each additional ¼ hour or part thereof.

10) For purposes of this Agreement, when CONTRACTOR is entitled to additional charges based on time spent at the scene, unless otherwise specified, CONTRACTOR shall apportion the charge set forth herein to be consistent with the actual time spent on the scene.

B. STORAGE AND LIEN NOTICE

1) Cars, vans, trucks under ¾ ton	
Outside storage	\$20.00 per day
Inside storage	\$30.00 per day
2) Trucks and vehicles over ¾ ton	
Outside storage	\$25.00 per day
Inside storage	\$30.00 per day
3) Motorcycles	
Outside storage	\$ 5.00 per day
Inside storage	\$10.00 per day
4) Boat and trailer (21 feet and under)	
Outside storage	\$15.00 per day
Inside storage	\$30.00 per day
5) Boat and trailer (over 21 feet)	\$30.00 per day

6) Lien notice (after 24 hours of storage)

\$30.00 per vehicle

Per Florida Statutes, no storage fee shall be charged to the vehicle owner for a vehicle stored less than six (6) hours.

"Per day" shall be defined as a twenty-four (24) hour period or any part thereof.

C. VEHICLE RECOVERY

The following vehicle recovery fees may be charged to the vehicle owner when the vehicle is overturned, embedded in sand, mud, or water, or requires more than a single hook-up:

- | | |
|--|--|
| 1) Class A and B wrecker on the scene; | \$75.00 per hour and \$25.00 per each half hour after the first hour |
| 2) Extra man (each) on the scene | \$25.00 per hour |

D. ROAD SERVICE

For all trucks, cars, vans and other vehicles under and over $\frac{3}{4}$ ton, a road service fee of \$40.00 per call may be charged to the vehicle owner for services such as assisted start, unlocking a door, delivering gas, tire changes, etc.

* The rates set forth herein shall not apply to any vehicle towed on behalf of the City as more fully set forth in the Agreement to which this Exhibit is attached and made a part thereof.

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1. Purpose

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- | | |
|--|--|
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* The rates set forth herein shall not apply to any vehicle towed on behalf of the City as more fully set forth in the Agreement to which this Exhibit is attached and made a part thereof.

RESOLUTION NO. 176-02

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE PROPOSED CONTRACT AWARD WITH ENVIRONMENTAL PIPELINE REHABILITATION, INC., FOR THE INSTALLATION OF A 20-INCH DIAMETER POTABLE WATER TRANSMISSION LINE CONNECTION, IN THE AMOUNT OF \$321,880.00; AND AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO PAY THIS AMOUNT FROM ACCOUNT NO. 407-1437-5350-4616.

WHEREAS, via Resolution No. 123-02, dated July 17, 2002, the City of Riviera Beach City Council approved the lowest responsive bid proposal by Environmental Pipeline Rehabilitation, Inc., for the installation of a 20-inch diameter Potable Water Transmission Line connection to boost the water pressure in the western area of the City; and

WHEREAS, the proposed contract will be awarded to Environmental Pipeline Rehabilitation, Inc. in the amount of \$321,880.00. Environmental Pipeline Rehabilitation, Inc., met the City's requirement of 15% participation in the Minority Business Enterprises (M/WBE) to participate in and perform projects financed with City funds.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

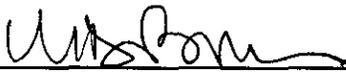
Section 1: That the Mayor and City Clerk are hereby authorized to execute a contract between Environmental Pipeline Rehabilitation, Inc. and the City of Riviera Beach, in the amount of \$321,880.00, for the installation of a 20-inch diameter Potable Water connection, a copy of said contract is attached.

Section 2: That the Mayor and Finance Director are authorized to make payment for same under Account No. 407-1437-5350-4616.

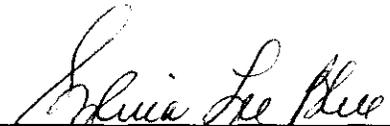
Section 3: That the City Manager is authorized to approve Change Orders in the amount not to exceed ten percent (10%) of the contract amount.

Section 4: This Resolution shall take effect upon its passage and approval by the City Council.

APPROVED:


MICHAEL D. BROWN,
MAYOR


DAVID G. SCHNYER,
CHAIRPERSON

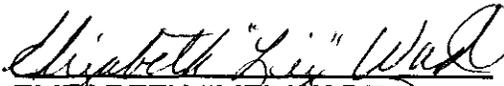

SYLVIA LEE BLUE,
CHAIR PRO-TEM

(MUNICIPAL SEAL)


DONALD R. WILSON

ATTEST:

CARRIE E. WARD, CMC/AE
CITY CLERK


ELIZABETH "LIZ" WADE


EDWARD RODGERS
COUNCIL MEMBERS

MOTIONED BY: S. BLUE

SECONDED BY: D. WILSON

D. SCHNYER AYE

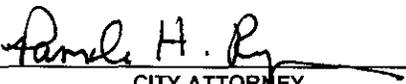
S. BLUE AYE

D. WILSON AYE

E. WADE AYE

E. RODGERS AYE

REVIEWED AS TO LEGAL SUFFICIENCY


PAMELA H. PY
CITY ATTORNEY
CITY OF RIVIERA BEACH

DATE: 9/25/02

**CITY OF RIVIERA BEACH
CONTRACT FOR CONSTRUCTION**

This Contract is made as of the _____ day of _____, 2002 by and between the CITY OF RIVIERA BEACH, a Political Subdivision of the State of Florida, by and through its City Council, hereinafter referred to as the CITY, and Environmental Pipeline Rehabilitation, Inc.
[] an individual, [] a partnership, a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONTRACTOR, whose Federal I.D. or Social Security number is 58-2422440.

In consideration of the mutual promises contained herein, the CITY and the CONTRACTOR agree as follows:

ARTICLE 1 - SERVICES

The CONTRACTOR'S responsibility under this Contract is to provide construction services for Structural Improvements and 20-inch Water Transmission Line Connection, Bid No. 05402, RCT Project No. 00556-3, as set forth in the Contract Specifications and the Plans.

The CITY'S representative/liason during the performance of this Contract shall be Albert Valdivia, Assistant Utilities Director, telephone no. 845-4185.

ARTICLE 2 - SCHEDULE

- A. Time of Completion - Construction work must begin within ten (10) calendar days from the date of receipt of official notice to proceed and shall be carried on at a rate to insure its full completion within one hundred twenty (120) calendar days from the date of official notice to proceed, the rate of progress and time of completion being essential conditions of this agreement.
- B. Deduction for not completing on time - If the contract work is not fully complete according to the terms of this Contract within the limits herein stipulated, the CONTRACTOR shall pay the CITY, not as a penalty, but as liquidated damages, a sum equal to two hundred fifty dollars (\$250) for each day elapsing between expiration of such time limit and the date of full completion, providing, however, that the time limits herein stated are subject to extension without payment of damages, as provided in section 17, herein.
- C. Reports - Reports and other items shall be delivered or completed in accordance with the Contract Specifications and the Plans for Structural Improvements and 20-inch Water Transmission Line Connection, Bid No. 05402, RCT Project No. 00556-3.

ARTICLE 3 - PAYMENTS TO CONTRACTOR

- A. Generally - The CITY agrees to compensate the CONTRACTOR in accordance with the Contract Specifications and the Plans for Structural Improvements and 20-inch Water Transmission Line Connection, Bid No. 05402, RCT Project No. 00556-3. The total and cumulative amount of this contract shall not

CFC-1

exceed the amount of funds annually budgeted for these services. The CITY shall not reimburse the CONTRACTOR for any travel costs incurred as a direct result of the CONTRACTOR providing deliverables to the CITY in pursuance of the scope of work contained in the Contract Specifications and the Plans for Structural Improvements and 20-inch Water Transmission Line Connection, Bid No. 05402, RCT Project No. 00556-3.

- B. Progress Invoices - No later than the 25th day of every month, the CONTRACTOR shall prepare and submit, on a form approved by the CITY'S representative, a detailed estimate and invoice which has been completed from the start of the job up to and including the last day of the preceding month, together with such supporting evidence of the expenditures as required by this Contract.
- C. Progress Payments - Invoices received from the CONTRACTOR pursuant to this Contract will be reviewed and approved by the CITY representative, indicating that services have been rendered in conformity with the Contract and then will be sent to the Finance Department for payment. The CITY will pay to the CONTRACTOR ninety percent (90%) of the value based on the CONTRACTOR'S estimate and invoice, as approved by the CITY representative. Invoices will normally be paid within thirty (30) days following the CITY representative's approval.
- D. Payment of Expenses - All requests for payment of expenses eligible for reimbursement under the terms of this Contract shall include copies of said receipts, invoices, or other documentation acceptable to the CITY OF RIVIERA BEACH Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the scope of work described in this Contract. Long distance telephone calls shall identify the person(s) called, purpose of call, time and costs. Mileage charges shall identify the destination, number of miles, rate, and purpose of travel. Duplication charges shall describe the documents, purpose of duplicating, and rate charged. Any travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Contract will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.
- E. Final Invoice - In order for both parties herein to close their books and records, the CONTRACTOR will clearly state "final invoice" on the CONTRACTOR'S final/last billing to the CITY. This certifies that all services have been properly performed and all charges and costs have been invoiced to the CITY. Full payment of the CONTRACTOR'S final invoice plus retainage from prior invoices will be made upon satisfactory completion of all final punch list items. CITY COUNCIL must approve payment of the final invoice, and the CONTRACTOR shall allow sixty (60) to ninety (90) days for receipt of final payment. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CONTRACTOR and the City shall have no obligations for any other costs or expenses thereafter.

ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Contract by the CONTRACTOR shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the CONTRACTOR'S most favored customer for the same or substantially similar service.

CFC-2

The said rates and costs shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete or non current wage rates or due to inaccurate representations of fees paid to outside contractors. The CITY shall exercise its rights under this Article 4 within three (3) years following final payment.

ARTICLE 5 - TERMINATION

This Contract may be canceled by the CONTRACTOR upon thirty (30) days' prior written notice to the CITY'S representative in the event of substantial failure by the CITY to perform in accordance with the terms of this Contract through no fault of the CONTRACTOR. It may also be terminated, in whole or in part, by the CITY, with or without cause, immediately upon written notice to the CONTRACTOR. Unless the CONTRACTOR is in breach of this Contract, the CONTRACTOR shall be paid for services rendered to the CITY'S satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the CITY the CONTRACTOR shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the CITY.
- D. Continue and complete all parts of the work that have not been terminated.

ARTICLE 6 - PERSONNEL

The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the CITY.

All of the services required hereunder shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONTRACTOR'S key personnel must be made known to the CITY'S representative and written approval must be granted by the CITY'S representative before said change or substitution can become effective.

The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in their respective field.

The CONTRACTOR agrees that that it is fully responsible to the CITY for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the CONTRACTOR. Nothing contained herein shall create any contractual relationship between any subcontractor and the CITY.

All of the CONTRACTOR'S personnel (and all Subcontractors) while on City premises will comply with all City requirements governing conduct, safety and security.

ARTICLE 7 - SUBCONTRACTING

The CITY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities and approve all qualifications of any subcontractor in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONTRACTOR is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONTRACTOR shall promptly do so, subject to acceptance of the new subcontractor by the CITY.

ARTICLE 8 - M/WBE PARTICIPATION

M/WBE shall have the opportunity to participate in this project. Proposers are hereby informed that the City of Riviera Beach has established a goal of a minimum of 15% participation of M/WBE. A good faith effort will be made to hire M/WBE.

In keeping with the City's policy, the CONTRACTOR further agrees to hire other minority sub-contractors to work on this project.

In accordance with the City of Riviera Beach M/WBE Ordinance #2412, as amended, the CONTRACTOR agrees to the M/WBE participation for this contract and agrees to abide by all provisions of the M/WBE Ordinance and understands that failure to comply with any of the requirements will be considered a breach of contract.

The CONTRACTOR incorporates Schedule 1 (Participation of M/WBE Contractors) and Schedule 2 (Letter of Intent) attached hereto and made a part hereof, the names, addresses, scope of work, dollar value of the M/WBE participation on Schedule 1 agreeing to perform the contract at the listed dollar value.

The CONTRACTOR agrees to maintain all relevant records and information necessary to document compliance with Ordinance #2412, as amended, and will allow the City to inspect such records.

ARTICLE 9 - FEDERAL AND STATE TAX

The CITY is exempt from payment of Florida State Sales and Use Taxes. The CITY will sign an exemption certificate submitted by the CONTRACTOR. The CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the CITY, nor is the CONTRACTOR authorized to use the CITY'S Tax Exemption Number in securing such materials.

CONTRACTOR shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Contract.

ARTICLE 10 - AVAILABILITY OF FUNDS

The CITY'S performance and obligation to pay under this contract is contingent upon an annual appropriation for its purpose by the CITY OF RIVIERA BEACH CITY COUNCIL.

ARTICLE 11 - INSURANCE

- A. Prior to execution of this Contract by the CITY the CONTRACTOR shall provide certificates evidencing insurance coverages as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the CONTRACTOR has obtained insurance of the type, amount, and classification as required for strict compliance with this ARTICLE and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the CITY'S representative. Compliance with the foregoing requirements shall not relieve the CONTRACTOR of its liability and obligations under this Contract.
- B. The CONTRACTOR shall maintain during the term of this Contract, standard Professional Liability Insurance in the minimum amount of \$1,000,000.00 per occurrence.
- C. The CONTRACTOR shall maintain, during the life of this Contract, commercial general liability, including contractual liability insurance in the amount of \$500,000 per occurrence to protect the CONTRACTOR from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the CONTRACTOR or by anyone directly employed by or contracting with the CONTRACTOR.
- D. The CONTRACTOR shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$500,000 combined single limit for bodily injury and property damages liability to protect the CONTRACTOR from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.
- E. The CONTRACTOR shall maintain, during the life of this Contract, adequate Workers' Compensation Insurance and Employer's Liability Insurance in at least such amounts as are required by law for all of its employees per Florida Statute 440.02.
- F. All insurance, other than Professional Liability and Workers' Compensation, to be maintained by the CONTRACTOR shall specifically include the CITY as an "Additional Insured."

ARTICLE 12 - INDEMNIFICATION

The CONTRACTOR shall indemnify and save harmless and defend the CITY, its agents, servants, and employees from and against any and all claims, liability, losses, and/or causes of action which may arise from any negligent act or omission of the CONTRACTOR, its agents, servants, or employees in the performance of services under this Contract.

The CONTRACTOR further agrees to indemnify, save harmless and defend the CITY, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the CONTRACTOR not included in the paragraph above and for which the CITY, its agents, servants or employees are alleged to be liable. Nothing contained in this provision shall be construed or interpreted as consent by the City to be sued, nor as a waiver of *sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.*

CONTRACTOR shall pay all claims, losses, liens, fines, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees, and court and/or arbitration costs. These indemnifications shall survive the term of this Agreement or any renewal thereof.

The CONTRACTOR shall defend all actions in the name of the CITY, when applicable, however, CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of the CONTRACTOR.

ARTICLE 13 - SUCCESSORS AND ASSIGNS

The CITY and the CONTRACTOR each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the CITY nor the CONTRACTOR shall assign, sublet, convey or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the CITY which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the CITY and the CONTRACTOR.

ARTICLE 14 - VENUE

This Contract and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided therein, performance or breach shall be governed and interpreted according to laws of the State of Florida. Any and all action arising from and/or relating to the Contract will be held in Palm Beach County, Florida.

ARTICLE 15-REMEDIES

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter

...ing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, remedy hereunder shall preclude any other or further exercise thereof.

ARTICLE 16 - CONFLICT OF INTEREST

The CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Florida Statutes 112.311. The CONTRACTOR further represents that no person having any such conflicting interest shall be employed for said performance.

The CONTRACTOR shall promptly notify the CITY'S representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONTRACTOR'S judgement or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONTRACTOR may undertake and request an opinion of the CITY as to whether the association, interest or circumstance would, in the opinion of the CITY, constitute a conflict of interest if entered into by the CONTRACTOR. The CITY agrees to notify the CONTRACTOR of its opinion by certified mail within thirty (30) days of receipt of notification by the CONTRACTOR. If, in the opinion of the CITY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONTRACTOR, the CITY shall so state in the notification and the CONTRACTOR shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the CITY by the CONTRACTOR under the terms of this Contract.

ARTICLE 17 - DELAYS AND EXTENSION OF TIME

The CONTRACTOR shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONTRACTOR or its subcontractors and without their fault or negligence. Such causes include, but are not limited to: acts of God; natural or public health emergencies; labor disputes; freight embargoes; and abnormally severe and unusual weather conditions.

Upon the CONTRACTOR'S request, the CITY shall consider the facts and extent of any failure to perform the work and, if the CONTRACTOR'S failure to perform was without it or its subcontractors fault or negligence, as determined by the City, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly; subject to the CITY'S rights to change, terminate, or stop any or all of the work at any time.

If the CONTRACTOR is delayed at any time in the process of the work by any act or neglect of the CITY or its employees, or by any other contractor employed by the CITY, or by changes ordered by the CITY or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the CONTRACTOR'S control, or by delay authorized by the Engineer pending negotiation or by any cause which the Engineer shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the CITY may decide. No extension shall be made for a delay occurring more than seven (7) days before a claim therefore is made in writing to the Engineer. In the case of continuing cause of delay, only one (1) claim is necessary.

If no schedule or other agreement sets forth the dates by which the drawing(s) shall be furnished, then no claims for

ay shall be allowed because of failure to furnish such drawing(s), until two (2) weeks after demand for the drawings and not then unless said claim is reasonable.

This article does not exclude the recovery of damages for delay by either party under other provisions in the Contract.

ARTICLE 18 - ARREARS

The CONTRACTOR shall not pledge the CITY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 19 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CONTRACTOR shall deliver to the CITY'S representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the CITY under this Contract.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the CITY or at its expense will be kept confidential by the CONTRACTOR and will not be disclosed to any other party, directly or indirectly, without the CITY'S prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the CITY'S expense shall be and remain the CITY'S property and may be reproduced and reused at the discretion of the CITY.

The CITY and the CONTRACTOR shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

ARTICLE 20 - INDEPENDENT CONTRACTOR RELATIONSHIP

The CONTRACTOR is, and shall be, in the performance of all work, services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the CITY shall be that of an Independent Contractor and not as employees or agents of the CITY.

CONTRACTOR does not have the power or authority to bind the CITY in any promise, agreement or representation other than as specifically provided for in this agreement.

ARTICLE 21 - CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 22 - ACCESS AND AUDITS

The CONTRACTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion of this Contract. The CITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONTRACTOR'S place of business.

ARTICLE 23 - NONDISCRIMINATION

CONTRACTOR will not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, marital status or handicap.

ARTICLE 24 - ENFORCEMENT COSTS

If any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

ARTICLE 25 - AUTHORITY TO PRACTICE

The CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the CITY'S representative upon request.

The CONTRACTOR shall be solely responsible for obtaining and complying with all necessary permits, approvals and authorizations required for any work done pursuant to this Contract from any federal, state, regional, county, or city agency.

ARTICLE 26 - SEVERABILITY

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provisions, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 27 - PUBLIC ENTITY CRIMES

As provided in Sections 287.132-133, Florida Statutes, by entering into this Contract or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and contractors who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 28 - MODIFICATIONS OF WORK

The CITY reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONTRACTOR of the CITY'S notification of a contemplated change, the CONTRACTOR shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the CITY of any estimated change in the completion date, and (3) advise the CITY if the contemplated change shall effect the CONTRACTOR'S ability to meet the completion dates or schedules of this Contract.

If the CITY so instructs in writing, the CONTRACTOR shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the CITY'S decision to proceed with the change.

If the CITY elects to make the change, the CITY shall initiate a Contract Amendment and the CONTRACTOR shall not commence work on any such change until such written amendment is signed by the CONTRACTOR and approved and executed by the City Council for the CITY OF RIVIERA BEACH.

ARTICLE 29 - NOTICE

All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the CITY shall be mailed to:

Albert Valdivia, Assistant Utilities Director
600 W. Blue Heron Blvd.
Riviera Beach, FL 33404

CFC-10

and if sent to the CONTRACTOR shall be mailed to:

P.O. Box 225

RT. 1 CR 60

Hoboken, GA 31542

ARTICLE 30 - ENTIRETY OF CONTRACTUAL AGREEMENT

The CITY and the CONTRACTOR agree that this Contract and any attachments hereto or other documents as referenced herein sets forth the entire agreement between the parties, that there are no promises or understandings other than those stated herein, and this Contract supersedes all prior oral and written agreements between the parties hereto with respect to the subject matter hereof. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 28 - Modifications of Work.

ARTICLE 31 - SPECIAL CONDITIONS

All materials and supplies provided by CONTRACTOR shall be in accordance with the specifications and plans approved by the CITY.

The CONTRACTOR shall furnish bonds and maintain said bonds throughout the duration of the project as provided for in Florida Statutes section 255.01 Et. Seq., covering the faithful performance of the Contract and payment of all obligations arising thereunder. The bonds shall be secured by the CONTRACTOR from a surety company licensed in the State of Florida with an "A-" rating or better in management and a "10" rating or better in strength as rated by Best's Key Rating Guide published by Alfred M. Best Company, Oldwick, New Jersey 08858.

The CONTRACTOR shall be required to provide Surety Bonds in the amount of one hundred percent (100%) of the Contract amount. The required premiums shall be paid for by the CONTRACTOR.

In addition to the above-minimum qualifications, the surety company must meet at least one of the following additional qualifications:

1. The surety company shall hold a current certificate or authority as acceptably surety of federal bonds in accordance with the United States Department of Treasury Circular 570, Current Revision. The surety company shall provide the CITY with satisfactory evidence that such excess risk has been protected in an acceptable manner.
2. The surety company shall have at least the following minimum ratings in the latest revision of Best's Key Rating Guide: Best's Policy Holders Ratings -A- (minimum); Best Financial Category - Class 1.
3. For projects that do not exceed \$500,000.00, the CITY will accept bonds in accordance with Florida Statute

CFC-11

ARTICLE 32 – INSPECTION OF WORK

The CITY'S representative or the CITY'S Engineer shall at all times have access to work wherever it is in preparation or progress; and the CONTRACTOR shall provide proper facilities for such access and for inspection.

If the specifications, the Engineer's instructions, laws, ordinances or any public authority requires any work to be specially tested or approved, the CONTRACTOR shall give the Engineer timely notice of its readiness for inspection. Inspections by the Engineer shall be made promptly and where practicable, at the source of supply. If any work should be covered up without approval or consent of the Engineer, it must, if required by the Engineer, be uncovered for examination, at the CONTRACTOR'S expense.

ARTICLE 33– WARRANTY/GUARANTY

All materials and equipment to be furnished and/or installed by the CONTRACTOR under this contract as it relates to the construction of Structural Improvements and 20-inch Water Transmission Line Connection, Bid No. 05402, RCT Project No. 00556-3 shall be guaranteed by the Manufacturer for the time period described in the Contract Specifications and shall be a minimum of one (1) year from the date of final acceptance thereof against defective materials, design and workmanship. The CONTRACTOR shall also guarantee all of its work for a period of one (1) year. Upon receipt of notice from the CITY of failure of any part covered under such warranty/guaranty period, the affected part, parts, or materials shall be replaced promptly with new parts or materials by the CONTRACTOR or Manufacturer at no expense to the CITY. In the event the CONTRACTOR fails to make the necessary repairs or replacement within 30 days after notification by the CITY, the CITY may accomplish the work at the expense of the CONTRACTOR.

The CONTRACTOR shall provide the CITY with a written warranty of its work and with a copy of the manufacturer's warranty as it relates to the materials and parts provided under this Contract.

ARTICLE 34 – PROTECTION OF WORK AND PROPERTY

The CONTRACTOR shall continuously maintain adequate protection of all work from damage, and shall protect such work and the CITY'S property from injury or loss arising during the term of the Contract. Except for any such damage, injury, or loss which may be directly due to errors caused by the CITY or employees of the CITY, the CONTRACTOR shall adequately protect adjacent property, as provided by the law, and shall provide guard fences, lights, and any other necessary materials to carry out such protection.

Until acceptance of the work by the CITY, the CITY'S property shall be under the charge and care of the CONTRACTOR and the CONTRACTOR shall take every necessary precaution against injury or damage to the work by the action of elements or from any other cause whatsoever, and the CONTRACTOR shall repair, restore and make good, without additional charge any work occasioned by any of the above causes before its completion and acceptance by the CITY.

ARTICLE 35 - TIME

Time is of the essence in all respects under this agreement.

ARTICLE 36 - TERMINOLOGY AND CAPTIONS

All pronouns, singular, plural, masculine, feminine or neuter, shall mean and include the person, entity, firm or corporation to which they relate as the context may require. Wherever the context may require, the singular shall mean and include the plural and the plural shall mean and include the singular. The term "Contract" as used herein, as well as the terms "herein", "hereof", "hereunder", "hereinafter" and the like mean this Contract in its entirety and all exhibits, amendments and addenda attached hereto and made a part hereof. The captions and paragraph headings are for reference and convenience only and do not enter into or become a part of the context of this Contract, nor shall such headings affect the meaning or interpretation of this Contract.

ARTICLE 37 - WAIVER

Failure of the CITY to enforce or exercise any right(s) under this Contract shall not be deemed a waiver of CITY'S right to enforce or exercise said right(s) at any time thereafter.

ARTICLE 38 - PREPARATION

This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

ARTICLE 39 - MATERIALITY

All provisions of the Contract shall be deemed material, in the event CONTRACTOR fails to comply with any of the provisions contained in this Contract or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Contract and CITY may at its option and without notice terminate this Contract.

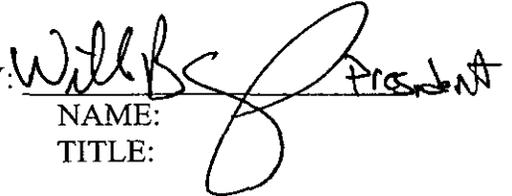
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IN WITNESS WHEREOF, the City Council of the CITY OF RIVIERA BEACH, Florida has made and executed this Contract on behalf of the CITY, and CONTRACTOR has hereunto set its hand the day and year above written.

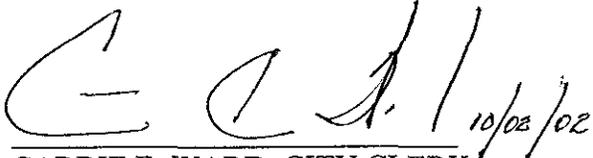
CITY OF RIVIERA BEACH

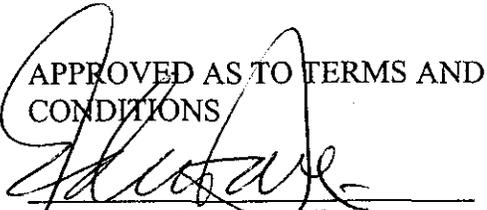
CONTRACTOR

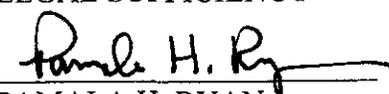
BY: 
MICHAEL D. BROWN,
MAYOR

BY: 
NAME: _____
TITLE: _____

ATTEST:

BY:  10/02/02
CARRIE E. WARD, CITY CLERK,
CMC/AAE

APPROVED AS TO TERMS AND
CONDITIONS
BY: 
DEPARTMENT HEAD

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY
BY: 
PAMALA H. RYAN,
CITY ATTORNEY

Date: 9/25/02