

**City of Myrtle Beach
Request for Qualifications
22-R0015**

**Towing, Preservation, Recovery, Removal,
Storage and Impoundment of Motor Vehicles
March 8, 2022**



First in Service

**Issued By:
Purchasing Division
3231 Mr. Joe White Avenue
Myrtle Beach, SC 29577
Phone: 843-918-2170
www.cityofmyrtlebeach.com**



REQUEST FOR QUALIFICATIONS	
RFQ 22-R0015: Towing, Preservation, Recovery, Removal, Storage and Impoundment of Motor Vehicles	
Buyer Contact:	Ann Sowers (843) 918-2172 asowers@cityofmyrtlebeach.com
Question Deadline:	March 14, 2022 at 12:00 Noon (local time) Questions may be e-mailed to the buyer listed above.
Opening Date & Time:	March 28, 2022 at 2:00PM (local time)

No Request for Qualifications (RFQ) will be accepted unless submitted on the forms furnished herein. All pages of the RFQ must be in a sealed envelope and delivered in accordance with these instructions:

- The envelope must be marked with company name, RFQ name, and time/date of RFQ opening.
- RFQ packages shall be delivered to the address listed above. No electronic submissions will be accepted. The City of Myrtle Beach is not responsible for late or misdirected mail.
- Submission must include one (1) original and six (6) copies of RFQ.

If the above criteria are not met, your RFQ may be rejected. RFQs are not subject to public reading.

Offerors are advised that from the date of issue of this RFQ until award of the contract, no contact with City personnel related to this solicitation is permitted. All communications/requests for clarification are to be directed to the buyer listed above.

Offeror to complete this section:

Name of Offeror: _____

Address: _____

Phone Number: _____

E-mail: _____

CITY OF MYRTLE BEACH
REQUEST FOR QUALIFICATIONS (RFQ) 22-R0015

**TOWING, PRESERVATION, RECOVERY, REMOVAL, STORAGE
AND IMPOUNDMENT OF MOTOR VEHICLES**

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End of Section.

2.0 INTENT

- 2.01 Scope of Service.** The intent of this Request for Qualifications (RFQ) is to obtain qualifications from towing firms to establish contracts for the provision of towing, preservation, recovery, removal, storage and impoundment of motor vehicles as requested by the City of Myrtle Beach (hereafter referred to as “City”) and at the request of or on behalf of the owner or operator of an unattended, abandoned, or immobile vehicle, when no specific service provider is requested by such owner or operator (“citizen requested tow.”) The City reserves the right to award multiple contracts as described herein. RFQs will only be accepted from firms who own or lease tow lots located in the City of Myrtle Beach. Respondents to this solicitation shall clearly indicate in their RFQ the type of towing to be provided, see Attachment 1. Tow truck may also be referred to in this document as wrecker.
- 2.02 Requirement.** All submissions must be made on the basis of, and either meet or exceed, the requirement’s contained herein. All Offerors must be able to provide on-call towing services in response to requests from the City of Myrtle Beach. The contractor shall furnish all labor, materials, tools, equipment, supplies, vehicles and trained personnel/supervisors for on-call services and within response time specified.
- 2.03 City Employee Limitations.** No City of Myrtle Beach employee will hold any financial interest of any form in any wrecker service. In addition, no City of Myrtle Beach employee will recommend any wrecker service to the owner or driver of a wrecked or disabled vehicle during the performance of their duties.
- 2.04 Franchise Document:** Offerors are directed to review the attached franchise agreement, Attachment 7, which sets forth the terms and conditions of the franchise to be awarded. The franchise document is an example only and may be amended in Council’s legislative discretion prior to the award. Any such amendment may be accepted or rejected by the proposed franchisee. Service fees will be determined prior to the effective date of the franchise. Offeror, by submitting a RFQ, warrants and represents that he has read and understands the franchise document and understands and agrees to be bound by its terms and conditions and is familiar with the conditions under which the services will be performed.
- 2.05 Invoices/Payments.** The City will accept invoices for City directed tows no more frequently than once per month. Each invoice shall fully detail the related costs and shall specify the status of the particular task or project as of the date of the invoice with regard to the accepted schedule for that task or project. Payment will be made within thirty (30) days after receipt of an invoice acceptable to the City. If, at any time during the contract, the City shall not approve or accept the Contractor’s work product, and agreement cannot be reached between the City and the Contractor to resolve the problem to the City’s satisfaction, the City shall negotiate with the Contractor on a payment for the work completed and usable to the City. Contractor agrees that all invoices are to be billed to the appropriate City entity.

2.06 Selection Committee. A selection committee will be appointed by the City Manager and/or his designee to determine if the Offeror(s) meet the qualification standards. The selection committee will also be responsible for listing the beginning order of contractors on the rotation list.

3.0 INSTRUCTIONS FOR OFFERORS

3.01 Review RFQ. Before submitting a RFQ, read the entire RFQ including the terms and conditions. Failure to read any part of this RFQ will not relieve an Offeror of the contractual obligations.

3.02 Envelope Requirements. All RFQs must be submitted to the Purchasing Division in a sealed envelope. The face of the sealed envelope shall indicate the RFQ number, time, and date of opening and the title of the RFQ. If not listed, your RFQ may be considered non-responsive.

3.03 Signature. All submissions shall be signed in ink by the individual or authorized principals of the firm.

3.04 Attachments. All attachments to the RFQ requiring execution by the Offeror are to be returned with the RFQ.

3.05 Opening Date/Time. RFQs must be received by the Purchasing Division prior to 2:00 p.m., local time on Monday, March 28, 2022. An atomic clock is located in the Purchasing Division. Requests for extensions of this time and date will not be granted, unless deemed to be in the City's best interest. Offerors mailing their RFQs shall allow for sufficient mail time to ensure receipt of their RFQs by the Purchasing Division by the time and date fixed for acceptance of the RFQs. RFQs or unsolicited amendments to RFQs received by the City after the acceptance date and time will not be considered. RFQs will be publicly accepted and logged in at the time and date specified above.

3.06 Submission Options. RFQs may be submitted via one of the following options: US Mail to City of Myrtle Beach, 3231 Mr. Joe White Avenue, Myrtle Beach, SC 29577; or hand delivered, private carrier, or overnight to (UPS/FedEx). Faxed and e-mailed RFQs will not be accepted. The City of Myrtle Beach is not responsible for late or misdirected mail.

3.07 Copies Required. Each Offeror shall submit one (1) original and six (6) copies of their RFQ to the City's Purchasing Division, as indicated on the cover sheet of this RFQ.

3.08 Questions. Questions and inquiries shall be sent by email to tcausey@cityofmyrtlebeach.com, and will be accepted from any and all Offerors. The Purchasing Division is the sole point of contact for this solicitation unless otherwise instructed herein. Unauthorized contact with other City staff regarding the RFQ may result in the disqualification of the Offeror unless approved by the City Manager. Inquiries pertaining to

the RFQ must be in writing and must provide the RFQ number.

- 3.09 Addendum.** Material questions will be answered by email with an addendum provided, however, all questions must be received no later than five (5) calendar days after issuance of the RFQ. It is the responsibility of all Offerors to ensure that they have received all addendums and to include signed copies with their RFQ. Addendums can be downloaded from www.cityofmyrtlebeach.com/vendorregistry website.
- 3.10 Withdrawal of RFQ.** No Offeror who is permitted to withdraw a RFQ shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn RFQ was submitted.
- 3.11 Late Submissions.** Late submissions will not be accepted and will be returned to Offeror unopened. Mailed RFQs will be returned if a return address is provided on the outside of the envelope.
- 3.12 City Reserved Rights.** The City reserves the right to accept or reject all or any part of any RFQ, waive informalities, and award the contract to best serve the interest of the City. Informality shall mean a minor defect or variation of a RFQ from the exact requirements of the RFQ which does not affect the quality, quantity, or delivery schedule for the goods, services or construction being procured. In addition, the City reserves the right to negotiate separately in any manner necessary to serve the best interests of the City. Offerors whose RFQs are not accepted will be notified in writing.
- 3.13 Changes to RFQ.** If there is any deviation from that prescribed in the scope of services, the appropriate line in the scope of services shall be ruled out and the substitution clearly indicated. The City reserves the right to accept or reject any proposed change to the scope.
- 3.14 Solicitation Expense.** The City will not be responsible for any expenses incurred by an Offeror in preparing and submitting a RFQ. All RFQs shall provide a straight-forward, concise delineation of the Offeror's capabilities to satisfy the requirements of this request. Emphasis should be on completeness and clarity of content.
- 3.15 Oral Presentation.** Offerors who submit a RFQ may be required to make an oral presentation of their RFQ or participate in a site visit. If required, the Purchasing Division will schedule the time and location for this presentation.
- 3.16 RFQ Inclusive.** Selected contents of the RFQ submitted by the successful Offeror and this RFQ will become part of any contract awarded as a result of the scope of services contained herein. The successful Offeror or Offerors will be expected to sign a contract with the City.

- 3.17 **Certificate of Insurance.** Offerors shall include with their RFQ a copy of their current Certificate of Insurance that illustrates the current level of coverage the Offeror carries. The certificate can be a current file copy.

4.0 QUALIFICATION CRITERIA FOR ROTATION LIST

- 4.01 **Safety Equipment.** All tow trucks shall have appropriate safety equipment, fire extinguishers, warning devices, flash lights and all other equipment necessary to protect the motoring public and be equipped with amber flashing lights visible in all directions for a distance of five hundred (500) feet in normal sunlight. Such equipment shall be maintained in good working order. All authorized amber flashing lights shall be activated when circumstances are such that the vehicle(s) being transported create a potentially hazardous condition for other motorists.
- 4.02 **Tools.** The following tools and supplies shall be available on each tow truck: 20-25 lbs. of oil absorbent “stay dry”; one (1) heavy duty street broom; one (1) shovel; dollies; scotch blocks; snatch block; screwdriver; minor hand tools; three (3) inch chain grade 70; cables and chains for inclement weather; tools for vehicle maintenance; all weather wheels; 1A 10 BC fire extinguisher; lock picking tools; two (2) amber revolving or flashing lights; one (1) air tank if no brakes (rollback exempt); and vest/garment to meet current federal standards.
- 4.03 **Driver Safety and Identification.** Each tow truck operator shall wear a uniform that displays the contractor’s name, and the driver’s name. Personnel providing services shall be identified by a company issued picture identification card, which shall be laminated and displayed on the employee’s uniform during all service hours. In addition, each tow truck shall have appropriate signage to identify the contractor. Tow truck operators shall wear reflective traffic safety vests while performing recovery operations.
- 4.04 **Wrecker Signage.** Each towing service on the rotation list must place a sign on the driver and front passenger door of each of its tow trucks indicating the company name, address, and telephone number of the tow truck to which it is assigned. This sign shall be painted on the doors of the tow truck or otherwise permanently affixed to the doors. The letters of the sign must be no less than two inches high. If the tow truck is registered in a name other than that of the towing service, the owner's name must also appear on the doors in letters no less than one inch high. All lettering on tow trucks shall be plainly visible and shall be in a color that contrasts to that of the tow truck.
- 4.05 **Business Location Signage.** Each towing service on the rotation list must place a sign on the exterior of its business location clearly visible indication the company name, telephone number, and business hours.
- 4.06 **Towing Log.** Each tow truck owned by any towing service on a rotation list shall be equipped with a towing log. The towing log shall be maintained by the towing service and shall accurately reflect all towing done by the towing service at the request of the City of Myrtle Beach. The City shall design the tow truck log format, see Attachment 3. Each towing service owner shall be responsible for

producing this towing log upon request by an authorized City inspector.

- 4.07 Professional Behavior.** Tow truck operators must display professional behavior when conducting business at the request of the City of Myrtle Beach.
- 4.08 Rotation List Renewal.** A rotation list will be furnished to each towing service at the time of contract signing and will be in effect for the duration of the contract.
- 4.09 Towing Location and Hours.** A tow truck rotation list will be prepared for each category of towing service. A towing service requesting to be on the rotation list for the city must physically have a city business license ninety (90) days prior to issue date. The towing company shall provide services, notwithstanding any provision of state law releasing a company of any obligation beyond normal business hours, to the City and the public twenty-four (24) hours per day, seven (7) days per week. The company shall respond to a request for the release of any motor vehicle from its service facility within thirty (30) minutes. The vehicle towed must be towed to the property location owned by the towing service. In the event of an inoperable vehicle, the owner or operator may request that the vehicle be towed to another location within the City limits. Storage lots are not considered as a separate business. There will only be one telephone number for one towing service at any one address on rotation. A towing service must immediately notify the City upon change of address or telephone number.
- 4.10 Separate Towing Lists.** Separate rotation lists will be maintained for each category of tow trucks. When the services of a categorized tow truck are needed and when the owner or driver of the vehicle to be towed has no preference as to which towing service he/she desires, a tow truck will be called from the appropriate tow truck rotation list. The investigating officer will use his/her discretionary authority to deny request for specific towing service whenever the request will delay the timely restoration of safe traffic movement.
- 4.11 Tow Truck Size.** The towing service must have a tow truck of sufficient size and strength to handle the job. The City will have the right not to call a towing service that, in its opinion, fails to meet this qualification for a specific job. Under these conditions, the towing service not called will remain on the top of the rotation list.
- 4.12 Authorized Response.** Tow trucks shall respond upon the request of an authorized employee of the City of Myrtle Beach.
- 4.13 Changes in Rotation List.** Towing services will be called from the rotation lists in the order in which they appear on the lists. If a particular towing service is unavailable when called, it will be passed over and moved to the bottom of the list. The next towing service on the list will be called to the scene.
- 4.14 Release of Vehicles and Property.** Towing services shall be located within the City to respond to rotation calls on a twenty-four (24) hour, seven (7) days a week basis. The towing service location shall have an agent present during business hours and, at the request of the owner of the towed vehicle or his designee, the towing service must immediately release personal items such as medicines,

medical equipment, keys, clothing, child restraint systems, and perishable items.

The towing service shall also be available for the release of the towed vehicle to the vehicle owner or vehicle owner's designee within thirty (30) minutes, including nights and weekends. Upon release of the vehicle, the towing service shall provide an itemized statement of all charges. If the vehicle owner is not available to sign a release, the towing service must release the vehicle to the owner's insurer or to the owner's designee.

- 4.15 Personal Contents.** The Contractor is responsible for the vehicle and contents from the tow. Personal contents shall not be removed from the vehicle by the contractor. The contractor shall release all personal contents to the owner/driver regardless of whether the owner/driver has paid the appropriate towing fees. The contractor shall not withhold personal content pending payment of towing and storage fees.
- 4.16 Registered Owner Contact.** The Contractor shall promptly notify the registered owner of the vehicle regarding the towing of their vehicle, any personal property left in the vehicle, and any fees owed to the Contractor. The Contractor shall send written notice to the registered owner at the address provided (or as provided on the registration card) within 48 hours of the tow. The Contractor shall also make telephone contact with the owner/driver within forty-eight (48) hours of the tow if a telephone number is provided.
- 4.17 Disputes.** Should there be a dispute between the vehicle owner or the vehicle owner's designee and the towing service regarding any storage fees or charges, the vehicle owner or the vehicle owner's designee must provide the towing service and the City of Myrtle Beach Police Department written notification of the dispute. Any dispute is with the owner of the vehicle and the towing service. All complaints will be investigated as per City ordinance. If deemed to be a civil offense by the investigating officer, then either party may pursue civil remedies in resolution of the dispute.
- 4.18 Non-Response of Towing Service.** When a towing service or tow truck driver is unable to answer a call, the City shall be promptly notified of the reason for the unavailability. A towing service or driver cannot refuse a call without prior notification of unavailability or without just cause.
- 4.19 Investigating Officer Authority.** If the owner or driver of a vehicle is incapacitated or unavailable, the investigating officer at the scene will make a determination of the owner or driver's preference of a towing service. The investigating officer will use his/her discretionary authority to deny request for a specific towing service whenever the request will impair the timely restoration of safe traffic movement. In the event the owner or driver of the vehicle does not have a preference or preference cannot be determined, the investigating officer will utilize a tow truck from the rotation list. The towing service responding to such call shall provide the vehicle operator with a card containing the towing service name, address, telephone number and business hours.

- 4.20 Response Time.** A towing service shall respond to a city directed tow, under normal conditions, in a timely manner not to exceed thirty (30) minutes. Failure to respond in a timely manner may result in a second rotation tow truck being requested. If the second tow truck is requested before the arrival of the first rotation tow truck, the initially requested tow truck will forfeit the call and will immediately leave the collision/incident scene, and be moved to the bottom of the rotation list.
- 4.21 Response Class.** A towing service may respond with a tow truck of a higher class than requested. However, towing service is limited to the rates of the requested classification.
- 4.22 Clean Up.** It shall be the responsibility of the towing service to perform a general clean-up of the accident area before leaving the scene of any accident. This responsibility requires the towing service to remove all debris such as broken glass, liquids, and materials from an accident area by sweeping up such debris and removing this material from the scene in a garbage can-type container on each tow truck. All tow trucks shall be equipped with brooms, shovels, commercial absorbent and all other equipment necessary to fulfill this responsibility.
- 4.23 Personal Property.** Each towing service shall be responsible for securing personal property in a vehicle at an accident scene. The towing service shall be responsible for preserving personal property in a vehicle towed from an accident scene.
- 4.24 Vehicle Storage.** The towing service shall maintain the towed vehicle in a safe storage area in a manner that would prohibit further damage and ensure protection of personal property. This may be a locked building or a secured fenced-in area where the stored vehicles and other property will not be accessible to the public. Towing services may charge a daily storage fee, commencing twelve (12) hours after the vehicle is towed to the storage area, and every twenty-four (24) hours thereafter, until the vehicle owner or vehicle owner's designee offers or attempts to pick up the vehicle and offers to pay the towing service's legitimately accrued charges.
- 4.25 Storage Facility Requirements.** Outside storage facilities must be sufficiently lighted, fenced, and locked for protection of vehicles and property. Fencing around storage facilities must be of adequate size to discourage theft of vehicles and property stored within, and may not be less than six (6) feet in height. Inside storage, covers, tarpaulins, or other devices must be available for protection of vehicles or personal property.
- 4.26 Towing Service Assistance.** A towing service may secure assistance from another towing service on the approved rotation list when necessary to complete the recovery; however, this does not permit towing services to accept a rotation call and dispatch the call to secondary towing services. Only one bill is to be submitted to the owner or operator for the work performed.

- 4.27 Payment from Vehicle Owners.** Tow trucks on the rotation list must have the ability to accept payment, at a minimum, in cash, money order, check issued by an insurance company, valid debit card, or valid major credit card or charge card.

5.0 WRECKER CLASSIFICATION

- 5.01 Class A Light-Duty Wrecker.** Class A Wreckers, for towing vehicles weighing seven thousand (7,000) pounds or less, (passenger cars, pickup truck, motorcycles, small trailers, and similar vehicles) shall meet the following minimum requirements:

A. Conventional Wrecker:

1. Minimum gross vehicle weight rating (GVWR) of not less than ten thousand (10,000) pounds.
2. Individual boom capacity of not less than eight thousand (8,000) pounds as rated by the manufacturer.
3. Individual PTO or hydraulic power winch capacity of not less than eight thousand (8,000) pounds as rated by the manufacturer with at least one hundred (100) feet of three-eighths (3/8) inch cable drum.
4. A manufactured wheel-lift with a retracting lifting capacity of not less than three thousand five hundred (3,500) pounds as rated by the manufacturer, with safety chains.
5. Come-A-Longs, chains, or other similar devices shall not be used as substitutes for winch and cable.
6. Dual rear wheels.
7. Additional safety equipment as specified by the RFQ.

B. Rollback Wrecker:

1. Minimum gross vehicle weight rating (GVWR) of not less than eleven thousand (11,000) pounds
2. Must have at least an eight thousand (8,000) pound winch as rated by manufacturer with at least fifty (50) feet of three-eighths (3/8) inch cable or larger.
3. Come-A-Longs, chains, or other similar devices shall not be used as substitutes for winch and cable.
4. Additional safety equipment as specified by the RFQ.

- 5.02 Class B Medium Duty Wrecker.** Class B Wreckers, for towing vehicles weighing between seven thousand one (7,001) and seventeen thousand (17,000) pounds or multiple vehicles weighing seven thousand (7,000) pounds respectively (medium-sized trucks, road tractors/trailers and similar vehicles), shall meet the following requirements:

- A. The tow truck chassis shall have a minimum gross vehicle weight rating (GVWR) of not less than twenty-two thousand (22,000) pounds.
- B. Must have at least a twelve-ton (12) boom assembly as rated by the manufacturer.
- C. Two winches, each of ten thousand (10,000) pound capacity of more as rated by the manufacturer.
- D. A manufactured wheel-lift with a retracting lifting capacity of not less than six thousand five hundred (6,500) pounds as rated by the

manufacturer, with safety chains.

- E. Come-A-Longs, chains, or other similar devices shall not be used as substitutes for winch and cable.
- F. Additional safety equipment as specified by the RFQ.

5.03 Class C and Above Heavy Duty Wrecker. Class C and above Wreckers, for towing vehicles in excess of seventeen thousand (17,000) pounds (large trucks, road tractor/trailers and similar vehicles), shall meet the following minimum requirements.

- A. Truck chassis having a minimum gross vehicle weight rating (GVWR) of not less than forty-six thousand (46,000) pounds.
- B. Tandem axles or cab to axle length of not less than one hundred two (102) inches.
- C. A single or double boom with a capacity of not less than fifty thousand (50,000) pounds as rated by the manufacturer.
- D. A single winch with a capacity of fifty thousand (50,000) pounds as rated by the manufacturer or an individual power winch capacity of not less than twenty-five thousand (25,000) pounds as rated by the manufacturer and a total rating with both winches of fifty thousand (50,000) pounds.
- E. A manufactured wheel-lift with a retracting lifting capacity of not less than twelve thousand (12,000) pounds as rated by the manufacturer, with safety chains.
- F. One hundred fifty (150) feet of five-eighths (5/8) inch cable or larger, plus fifty feet (50) of five-eighths (5/8) inch drop cable.
- G. Airbrakes constructed so as to lock wheels automatically upon failure.
- H. Light and air brake hookups.
- I. Come-A-Longs, chains, or other similar devices shall not be used as substitutes for winch and cable.
- J. Additional safety equipment as specified by the RFQ.

5.04 Price Schedule. The Contractor shall only charge the rates as established in Attachment 2.

5.05 Itemized Bills and Documentation. Contractor shall provide itemized bills with standardized fees based on contract terms. The Contractor shall attach a copy of the fee schedule to each tow bill as well as keep a copy in the Contractor's office and make it available to citizens.

5.06 Records of Fees. Itemized records of fees charged must be kept for a minimum of three (3) years beyond the duration of contract.

5.07 Certifications and Licensure. Tow truck drivers shall maintain a valid South Carolina Driver's License.

5.08 Towed Vehicle Report Form. The Contractor shall fill out and return a Towed Vehicle Report Form (Attachment 3) to the City of Myrtle Beach for every tow conducted under this contract. The form shall be clearly filled out and legible. The City reserves the right to require the contractor to resubmit any forms that are not

completed legible. The form may be filled out and submitted either via fax or email.

- 5.09 Applicable Regulations.** The Contractor shall abide by all laws, rules, and regulations regarding notification, storage, liens, and sales of vehicles related to towing.

6.0 TERMS AND CONDITIONS

- 6.01 Term.** The Contract period shall be for a period of five (5) years beginning on July 1, 2022 and ending on June 30, 2027.

- 6.02 Delays and Delivery Failures.** Time is of the essence. The Contractor must keep City advised at all times of status of parties' agreement. If delay is foreseen (i.e. tow trucks are broken down, etc.), the Contractor shall give immediate written notice within two (2) hours to the City. Should the Contractor fail to deliver the proper item(s)/service(s) at the time and place(s) contracted for, or within a reasonable period of time thereafter as agreed to, or should the Contractor fail to make a timely replacement of rejected items/services when so required, the City may purchase items/services of comparable quality and quantity in the open market to replace the undelivered or rejected items/services. The Contractor shall reimburse the City for all costs in excess of the agreement price when purchases are made in the open market; or, in the event that there is a balance that is owed to the Contractor from prior transactions, an amount equal to the additional expense incurred by the City as a result of the Contractor's nonperformance shall be deducted from the balance as payment.

- 6.03 Business License Requirement.** All firms or individuals located or doing business in the City of Myrtle Beach are required to have a current city business license ninety (90) days prior to issue date of this RFQ.

- 6.04 Payment of Taxes.** All Contractors located or owning property in the City shall assure that all real and personal property taxes are paid. The City may verify payment of all real and personal property taxes by the Contractor prior to the award of any Contract or Contract renewal.

- 6.05 Insurance.** The Contractor shall be responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, see Attachment 5.

- 6.06 Hold Harmless.** The Contractor shall, indemnify, defend, and hold harmless the City from loss from all suits, actions, or claims of any kind brought as a consequence of any negligent act or omission by the Contractor. The Contractor agrees that this clause shall include claims involving infringement of patent or copyright. For purposes of this paragraph, "City" and "Contractor" includes their employees, officials, agents, and representatives. "Contractor"

also includes subcontractors and suppliers to the Contractor. The word “defend” means to provide legal counsel for the City or to reimburse the City for its attorneys’ fees and costs related to the claim. This section shall survive the contract. The City is prohibited from indemnifying Contractor and/or any other third parties.

- 6.07 Safety.** All Contractors and subcontractors performing services for the City are required to and shall comply with all Occupational Safety and Health Administration (OSHA), state and county safety and occupational health standards and any other applicable rules and regulations. Also, all Contractors and subcontractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this contract.
- 6.08 Permits.** It shall be the responsibility of the Contractor to comply with the City ordinances by securing any necessary permits.
- 6.09 Drug-Free Workplace.** During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor’s employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor’s workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or behalf of the Contractor that the Contractor maintains a drug-free workplace. For the purposes of this section, “drug-free workplace” means a site for the performance of work done in connection with a specific contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the contract.
- 6.10 Substitutions.** No substitutions, additions or cancellations, including those of key personnel, are permitted after contract award without written approval by the Purchasing Division. Where specific employees are proposed by the Contractor for the work, those employees shall perform the work as long as those employees work for the Contractor, either as employees or subcontractors, unless the City agrees to a substitution. Requests for substitutions will be reviewed by the City and approval may be given by the City at its sole discretion.
- 6.11 Workmanship and Inspection.** All work under this contract shall be performed in a skillful and workmanlike manner. The Contractor and its employees shall be professional and courteous at all times. The City reserves the right to require immediate removal of any Contractor employee from City service it deems unfit for service for any reason, not contrary to law. This right is non-negotiable and the Contractor agrees to this condition by accepting this agreement. The City shall have the right to inspect, review, and audit, at the

towing service's facility, during normal business hours, upon seventy-two (72) hours' notice to the towing service, all records, whether in printed or electronic form, which pertain to the towing service's performance of its obligations under this agreement, and all related business activity. The towing service shall not deny access to any records on the basis of a claim by the towing service that such records contain proprietary information. The towing service acknowledges that all records related to this agreement shall be considered public records subject to the provisions of the South Carolina Freedom of Information Act. Any inspection by the City does not relieve the Contractor of any responsibility in meeting the agreement requirements.

- 6.12 Assignment.** The agreement may not be assigned in whole or in part without the prior written consent of the Purchasing Division. The rights and obligations of the Contractor are personal and may be performed only by the Contractor. Any purported assignment that does not comply with this provision is void. This agreement is binding upon and inures to the benefit of the parties and their respective permitted successors and assigns.
- 6.13 Termination.** Subject to the provisions below, the contract may be terminated by the City upon thirty (30) calendar days advance written notice to the Contractor; but if any work or service hereunder is in progress, but not completed as of the date of termination, then the Contract may be extended upon written approval of the City until said work or services are completed and accepted.
- A. The City may terminate this contract for convenience at any time in which the case the parties shall negotiate reasonable termination costs.
 - B. In the event of termination for cause, the thirty (30) calendar days advance notice is waived and the Contractor shall not be entitled to termination costs.
- 6.14 Background Checks.** The Contractor shall obtain background checks on all personnel who will be assigned to this contract, working in any capacity including supervision. The background check, at the cost of the Contractor, must be completed and received by the City contract administrator before any personnel can perform work under this agreement. The Contractor should have enough qualified people with current background checks so as to be able to provide a replacement within twenty-four (24) hours. It is recommended that the Contractor keep on file with the contract administrator a list of persons who may work at City properties so that replacements can be quickly made. Should a replacement take longer than twenty-four (24) hours, this may be cause for termination of the agreement. Should the Contractor assign someone who has not had a background check that person will be immediately ordered off of City property. Failure to obtain background checks as specified can result in termination of the agreement. The Contractor shall maintain a current list of employees authorized to operate the vehicles proposed for use under the resulting contract, including their employment status, level of training, copy of South Carolina Driver's License, copy of South Carolina Law Enforcement Department Citizen's Access to Criminal Histories (SLED CATCH), and said list shall be

provided to the City's inspector upon request.

- 6.15 Confidentiality.** The Contractor acknowledges and understands that its employees may have access to proprietary, business information, or other confidential information belonging to the City of Myrtle Beach. Therefore, except as required by law, the Contractor agrees that its employees will not:
- A. Access or attempt to access data that is unrelated to their job duties or authorizations as related to this contract.
 - B. Access or attempt to access information beyond their stated authorization.
 - C. Disclose to any other person or allow any other person access to any information related to the City or any of its facilities or any other user of this contract that is proprietary or confidential. Disclosure of information includes, but is not limited to, verbal discussions, FAX transmissions, electronic mail messages, voice mail communication, written documentation, "loaning" computer access codes and/or another transmission or sharing of data.

The Contractor understands that the City, or others may suffer irreparable harm by disclosure of proprietary or confidential information and that the City may seek legal remedies available to it should such disclosure occur. Further, the Contractor understands that violations of this provision may result in Contract termination. The Contractor further understands that information and data obtained during the performance of this agreement shall be considered confidential, during and following the term of this contract, and will not be divulged without the purchasing agent's written consent and then only in strict accordance with prevailing laws. The Contractor shall hold all information provided by the City as proprietary and confidential, and shall make no unauthorized reproduction or distribution of such material.

- 6.16 City Confidentiality.** The City understands that certain information provided by the Contractor during the performance of this agreement may also contain confidential or proprietary information. Contractor acknowledges that this contract and public records provided pursuant to this Contract are subject to the Freedom of Information Act (FOIA.)

- 6.17 Force Majeure.** A party is not liable for failure to perform the party's obligation if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane, or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, strikes at national level or industrial disputes at a national level, or strike or industrial disputes by labor not employed by the affected party, its subcontractors or its suppliers and which affect an essential portion of the contracted for works but excluding any industrial dispute which is specific to the performance of the works or this contract, interruption or failure of electricity or telephone service. If a party asserts force majeure as an excuse for failure to perform the party's obligation, that party must immediately notify the other party giving full particulars of the event of force majeure and the reasons for

the event of force majeure preventing that party from, or delaying that party in performing its obligations under this contract and that party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its or their performance of the contract and to fulfill its or their obligations under the contract. An event of force majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event. The Contractor has no entitlement and City has no liability for: (1) any costs, losses, expenses, damages or the payment of any part of the contract price during an event of force majeure; and (2) any delay costs in any way incurred by the contractor due to an event of force majeure.

7.0 EVALUATION OF RFQS AND SELECTION FACTORS

The criteria set forth below will be used in the receipt of RFQs and selection of the successful Offeror(s).

7.01 RFQ Submission Format. Offerors are to make written statements that present the Offeror's qualifications and understanding of the work to be performed. Offerors shall address each of the specific evaluation criteria listed below, in the following order. Failure to include any of the requested information, *in the following order*, may be cause for the RFQ to be considered nonresponsive and rejected.

- A. Completion of Attachment 1, Attachment 2, Attachment 4, and Attachment 6.
- B. Provide an outline, in writing, describing how your firm will meet each of the criteria requirements listed in Section 4.0.
- C. Confirm that your firm will only bill for the categories and at the rates provided in Attachment 2.
- D. Provide a list of the number and types of tow truck(s) available to be used under the resulting contract. The list should include the year, make, model, and mileage of each tow truck.
- E. Provide photocopies of all sides of each tow truck that are on the list as required in item D above.
- F. Provide photocopy of state registration, operating authority, and state inspection receipt for each tow truck.
- G. Provide an equipment list for all tow truck(s) proposed for use under the contract.
- H. Provide proof of an adequate communications system with dispatch.
- I. Describe the amenities at the tow lot or storage facility. What type of camera system is installed? Does it have recording and storage capabilities? What other security measures are in place?
- J. Provide a brief history and description of your firm. Include information regarding experience with any governmental entities, and include the number of years in police-directed tow business.
- K. Provide a list of at least three (3) references for whom similar

services have been performed. This list shall include company name, person to contact, address, telephone number, fax number, e-mail address, and the nature of the work performed, see Attachment 4. Offeror hereby releases listed references from all claims and liability for damages that may result from the information provided by the reference.

- L. Provide Department of Motor Vehicle (DMV) user number or proof of service used for past two (2) years.
- M. Offerors shall provide a list of employees to operate the tow truck(s) proposed for use under the resulting contract, including their employment status, level of training, copy of South Carolina Driver's License and copy of Department of Criminal Justice Services (DCJS) certification.
- N. Submit current insurance requirements stated in Attachment 4.

7.02 Selection Factors. The City Selection Committee (CSC) will review and evaluate each RFQ on the basis of the criteria listed below:

- A. RFQ submitted by the time and date set forth in the Section 3.0.
- B. Offeror completed the RFQ as described in Section 3.0.
- C. Offeror meets or exceeds the qualification criteria set forth in Section 4.0.
- D. Offeror submitted the RFQ as described in Section 7.01.
The CSC will evaluate the submitted RFQ's to determine the validity of each submission and will submit their findings to the City Manager.

Attachment 1

City of Myrtle Beach, South Carolina

DIRECTED TOWING RFQ SUBMISSION FORMS

THE FIRM OF: _____

Address: _____

Hereby agrees to provide towing services as defined in Request for Qualifications No. RFQ 22-R0015.

Type of towing to be provided: ___ Class A ___ Class B ___ Class C or Above
(mark all that apply)

Return the following with your RFQ. If Offeror fails to provide with their RFQ, items shall be provided within twenty-four (24) hours of RFQ opening. Failure to provide the following items with your RFQ may be cause for rejection of RFQ as non-responsive and/or non-responsible. It is the responsibility of the Offeror to ensure that it has received all addenda and to include signed copies with their RFQ.

ITEM:	INCLUDED: (X)
1. W-9 Form	_____
2. Certificate of Insurance	_____
3. Addenda, if any (Informality):	_____

Person to contact regarding this RFQ: _____

Title: _____ Phone: _____

Email: _____ Fax: _____

Name of person authorized to bind the Firm: _____

Signature: _____ Date: _____

By signing and submitting a RFQ, your firm acknowledges and agrees that it has read and understands the RFQ documents.

Attachment 2
Price Schedule

- a. Light Duty; Class A Wrecker/Rollback for towing vehicles of 7,000 lbs. or less
- | | | |
|--|----------|--------------|
| Tow | \$ _____ | per tow |
| Recovery Work | \$ _____ | per hour |
| Mileage (outside service area) | \$ _____ | per mile |
| No Tow Fee | \$ _____ | per tow |
| Decoupling | \$ _____ | per call |
| Vehicle Storage (after first 12 hours) | \$ _____ | per 24 hours |
| Extra Time at Scene | \$ _____ | per hour* |

*First hour on scene included with cost of tow.

- b. Medium Duty; Class B Wrecker for towing vehicles greater than 7,000 lbs. but no greater than 17,000 lbs.
- | | | |
|--|----------|--------------|
| Tow* | \$ _____ | per tow |
| Recovery Work | \$ _____ | per hour |
| Mileage (outside service area) | \$ _____ | per mile |
| No Tow Fee | \$ _____ | per tow |
| Decoupling | \$ _____ | per call |
| Vehicle Storage (after first 12 hours) | \$ _____ | per 24 hours |
| Extra Time at Scene | \$ _____ | per hour* |

*First hour on scene included with cost of tow.

- c. Heavy Duty; Class C and above Wrecker for towing vehicles greater than 17,000 lbs.
- | | | |
|--|----------|--------------|
| Tow* | \$ _____ | per tow |
| Recovery Work | \$ _____ | per hour |
| Mileage (outside service area) | \$ _____ | per mile |
| No Tow Fee | \$ _____ | per tow |
| Decoupling | \$ _____ | per call |
| Vehicle Storage (after first 12 hours) | \$ _____ | per 24 hours |
| Extra Time at Scene | \$ _____ | per hour* |

*First hour on scene included with cost of tow.

Attachment 3

TOWED VEHICLE REPORT FORM

Towed Vehicle Report

Name of Company: _____

Date of Tow: _____

Time of Tow: _____

Removed From: _____

Call Back Number to This Lot: _____

Driver Number: _____

Reason for Tow: _____

LIC#: _____

LIS: _____

LIY: _____

VYR: _____

VMA: _____

VMO: _____

VCO: _____

VIN: _____

Attachment 4

ADDITIONAL TERMS AND CONDITIONS

Failure to provide all information and/or documentation requested in this RFQ may be grounds for disqualification of the RFQ.

- a. List three (3) references (preferably commercial/government organizations) for whom your company now services or has serviced for a period of at least six (6) months. Please include name of company, name of individual to contact, address, telephone number, fax number, email, nature of the work, and length of service. **Do not include the City of Myrtle Beach as a reference.** Additional sheets may be attached.

a. _____

b. _____

c. _____

2. Insurance Requirements are attached. A current Certificate of Insurance meeting all insurance requirements must be provided with the RFQ. **Offerors will be considered non-responsive if the current Certificate of Insurance is not submitted.**

3. List any exceptions to specifications:

4. A copy of the current City of Myrtle Beach Business License must be submitted with the RFQ.

Attachment 5

City of Myrtle Beach INSURANCE REQUIREMENTS

PUBLIC LIABILITY AND PROPERTY DAMAGE

The Contractor shall purchase and thereafter maintain for the term of this agreement, and any subsequent extensions hereto, public liability insurance to protect Contractor from claims for bodily injury and/or property damage which may result from Contractor's performance of this agreement. The policy shall provide a combined single limit of liability of \$1,000,000 per occurrence for bodily injury and property damage with an aggregated limit of not less than \$1,000,000.

AUTOMOBILE LIABILITY

The Contractor shall purchase and thereafter maintain for the term of this agreement and any subsequent extensions hereto, comprehensive automobile liability insurance to protect the Contractor from claims for bodily injury and property damage which may arise from Contractor's use of motor vehicles in the performance of this agreement. The policy shall provide for a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage.

WORKERS' COMPENSATION INSURANCE

Prior to beginning the work, the Contractor shall take out full compensation insurance for all persons which may be employed directly or indirectly in the performance of this agreement, coverage is to apply to all employees for statutory limits in compliance with the applicable state and federal laws. The policy must provide Employers Liability coverage in the amount of \$500,000 each accident; \$500,000 bodily injury by disease each employee and \$500,000 bodily injury by disease policy limit and shall be maintained in full force and effect during the term and any subsequent extensions hereto.

EXCESS LIABILITY POLICY

At the option of the Contractor, the limits of the primary general liability, automobile liability and employer's liability policies may be less than stipulated herein, with an excess policy providing the additional limits needed. This form of coverage must be approved by the City and will only be acceptable when both the primary and excess policies include the coverage and endorsements required herein.

POLICY ENDORSEMENTS

The following requirements shall apply to the policy(s) indicated below:

A. General Liability and Automobile Liability

It is understood and agreed that the City of Myrtle Beach, its officials, agents and employees are recognized as additional insured under the policy and, as such, will be provided thirty (30) days written notice by mail of non-renewal, exhaustion of aggregate limit, modification of coverage or cancellation for any reason, and the company hereby agrees to provide such notice. Failure of the company to provide the required notice shall cause the coverage to continue in force for the benefit of the City, its officials, agents and employees until proper notification, as required herein, is provided, the provisions of the policy or any Certificate of Insurance to the contrary notwithstanding.

B. Workers' Compensation

The cancellation provision is hereby amended to provide that the City of Myrtle Beach will be provided thirty (30) days written notice via mail in the event of coverage cancellation.

INSURANCE REQUIREMENTS continued

NOTIFICATION OF INSURANCE COMPANIES

It is the responsibility of the Contractor to notify all insurance companies to familiarize themselves with all the terms and conditions of this agreement. The insurance companies shall waive their right of notification by the City of any change or modification of this contract, or of decreased or increased work, or of the cancellation of this agreement or of any other acts by the City or its authorized employees or agents under the terms of this agreement. The waiver by the insurance companies shall in no way relieve them of their obligations under this agreement.

CERTIFICATES OF INSURANCE

Contractor shall file with the City a Certificate of Insurance, which shall be approved by the City prior to the inception of any work. Renewal certificates shall be sent to the City thirty (30) days prior to any expiration date.

INSURER LICENSING AND RATING

All insurance companies providing coverage to the City, shall be licensed to do business in the State and have an A.M. Best rating of "A- "or better.

INSURANCE COVERAGE ADJUSTMENTS

In response to changing circumstance of loss exposures, the City reserves the right to modify the insurance coverage, limits of liability, policy endorsements and policy terms required in this contract. The City will provide written notice to the Contractor, which outlines such changes and allow Contractor a reasonable period of time in which to comply with the new requirements. However, in no event shall Contractor compliance period be longer than thirty (30) days.

COVERAGE CANCELLATION OR UNSATISFACTORY COVERAGE

If at any time any of the foregoing policies shall be or become unsatisfactory to the City, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the City, the Contractor shall, upon notice to that effect from the City, promptly obtain a new policy and submit the same for approval to the City. Upon failure of the Contractor to furnish, deliver and maintain the insurance coverage's required herein, this agreement, at the sole discretion of the City, may be forthwith declared suspended, discontinued or terminated. Failure of the Contractor to take out and/or maintain any required insurance shall not relieve the Contractor from any liability under this agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the Contractor concerning indemnification.

HOLD HARMLESS

Contractor agrees to protect, defend, indemnify and hold the City, its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, cost, charges, professional fees or other expenses and liabilities of every kind and character arising out of, or relating to, any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind in connection with or arising out of this agreement, and/or the performance hereof, that are due to the negligence of the Contractor, its officers, employees or agents. The Contractor further agrees to investigate, handle, respond to, provide defense for and defend the same at its sole expense and agrees to bear all other costs and expenses related thereto.

<i>CERTIFICATE OF INSURANCE</i>					CERTIFICATE NUMBER	
PRODUCER Insurance Agent Name 4000 Insurance Pkwy Anytown, USA 99999			THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN.			
<i>COMPANIES AFFORDING COVERAGE</i>						
INSURED Bidding Firm's Name 1000 Any Street Anytown, USA 99999			COMPANY A ABC INSURANCE COMPANY COMPANY B COMPANY C COMPANY D			
<i>COVERAGES-THIS CERTIFICATE SUPERCEDES AND REPLACES ANY PREVIOUSLY ISSUED CERTIFICATE FOR THE POLICY NOTED BELOW</i>						
This is to certify that policies of insurance described herein have been issued to the insured named herein for the policy indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which the certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, conditions and exclusions of such policies. Aggregate limits shown may have been reduced by paid claims.						
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	<i>General Liability</i> <input checked="" type="checkbox"/> Commercial General Liability <input type="checkbox"/> Claims Made <input checked="" type="checkbox"/> Occur <input type="checkbox"/> Owners & Contractor's Prot	XYZ1234	00/00/00	00/00/00	General Aggregate Products-Comp/Op Agg Personal & Adv Injury Each Occurrence Fire Damage (any 1 fire)	\$ 1,000,000 \$ 1,000,000 \$ 1,000,000 \$ 1,000,000 \$ 50,000
A	<i>Automobile Liability</i> <input checked="" type="checkbox"/> Any Auto <input type="checkbox"/> All Owned Autos <input type="checkbox"/> Scheduled Autos <input checked="" type="checkbox"/> Hired Autos <input checked="" type="checkbox"/> Non-Owned Autos	XYZ1234	00/00/00	00/00/00	Combined Single Limit Bodily Injury (Per person) Bodily Injury (Per accident) Property Damage	\$ 1,000,000 \$ \$ \$
	<i>Garage Liability</i> <input type="checkbox"/> Any Auto		00/00/00	00/00/00	Auto Only-Ea Accident Other than auto only: Each Accident Aggregate	\$ \$ \$
	<i>Excess Liability</i> <input type="checkbox"/> Umbrella Form <input type="checkbox"/> Other than Umbrella Form		00/00/00	00/00/00	Each Occurrence Aggregate	\$ \$
A	<i>Workers Compensation (and Employer's Liability)</i> The Proprietor/Partners Executive Officers Are: <input checked="" type="checkbox"/> Inc <input type="checkbox"/> Excl	XYZ1234	00/00/00	00/00/00	<input checked="" type="checkbox"/> WC Statutory Limits <input type="checkbox"/> Other EL Each Accident EL Disease-Policy Ltd EL Disease-Ea Employee	\$ 500,000 \$ 500,000 \$ 500,000
	<i>Other</i>					
Description of Operations/Locations/Vehicles/Special Items:						
City of Myrtle Beach is named as additional insured with respect to General and Automobile Liability						
CERTIFICATE HOLDER			CANCELLATION			
City of Myrtle Beach Attn: Purchasing Division Drawer 2468 Myrtle Beach, SC 29578-2468			Should any of the policies described herein be cancelled before the expiration date thereof, the insurer affording coverage will endeavor to mail 30 days written notice to the certificate holder named herein, but failure to mail such notice shall impose no obligation or liability of any kind upon the insurer affording coverage, its agents or representatives, or the issuer of this certificate.			

Attachment 6

RFQ AND SIGNATURE DOCUMENT

RFQ Number: 22-R0015

The undersigned, as Offeror, declare that we have examined all RFQ documents contained herein and will contract, thereon, with the City of Myrtle Beach (hereinafter referred to as the "City") and do everything necessary for the fulfillment of this contract. We agree any addenda received are part of the RFQ documents. (If no addenda have been received, please place a zero in the space provided.)

In addition, we propose to furnish the following services in strict conformance to the RFQ specifications and RFQ invitation issued by the City of Myrtle Beach for this RFQ. Any exceptions are clearly noted as required.

We understand that any false statement made to meet any requirements may result in contract cancellation or initiation of action under federal or state laws, or both.

Offeror – Company Name

Mailing Address

Remittance Address (if different from mailing address)

Telephone Number

Fax Number

E-mail

Authorized Signature

Date

Addenda Numbers Received: _____

Printed Name: _____

City Business License Number: _____

South Carolina Sales Tax Registration Number: _____

If no SC Sales Tax Number, please give reason: _____

Federal Tax ID Number (FEIN): _____

Attachment 7

ORDINANCE 2022-

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

AN ORDINANCE GRANTING A FRANCHISE
TO PROVIDE TOWING AND STORAGE
SERVICES WITHIN THE CITY OF MYRTLE
BEACH, SOUTH CAROLINA

WHEREAS, pursuant to the exercise of its police power the City is responsible for the identification, towing, preservation, storage and disposal of abandoned, derelict, wrecked, inoperable or disabled motor vehicles from the streets, public rights-of-way, and other public and private property within its territorial limits, as well as motor vehicles that are reported stolen; are subject to confiscation and forfeiture; seizure as evidence; or which are determined to constitute a public nuisance; and

WHEREAS, the City has determined that the delivery of towing and storage service can be provided most effectively and efficiently through the grant of a franchise;

NOW, THEREFORE, IT IS HEREBY ORDAINED THAT a non-exclusive franchise is granted to provide towing and storage services to the City according to the terms and conditions set forth in the attached franchise agreements.

This ordinance shall take effect immediately upon adoption.

BRENDA BETHUNE

ATTEST;

JENNIFER ADKINS, CITY CLERK

1st Reading:
2nd Reading:

WHEREAS, pursuant to the exercise of its police power the City is responsible for the identification, towing, preservation, storage and disposal of abandoned, derelict, wrecked, inoperable or disable motor vehicles from the streets, public rights of way, and other public and private property within its territorial limits, as well as motor vehicles that are reported stolen; are subject to confiscation and forfeiture; seizure as evidence; or which are determined to constitute a public nuisance; and

WHEREAS, the City had determined that the delivery of these services can be provided most effectively and efficiently through the grant of a non-exclusive franchise; and

WHEREAS, the City Council, by Ordinance duly adopted on _____ has authorized the City Manager to execute this franchise for the _____ companies that replied to the City's Requests for Qualifications, provided however, that signatures to this agreement and compliance with the requirements of any Request for Qualifications and this franchise document must be in affixed and in place by midnight, _____ to qualify to accept calls at 12:01 a.m. _____.

NOW, THEREFORE, PURSUANT TO THE FRANCHISE POWER OF THE CITY OF MYRTLE BEACH and _____, in consideration of the foregoing premises and mutual promises of each, the parties agree as follows:

Subject to the terms and conditions set forth herein, the City of Myrtle Beach grants to, a non-exclusive franchise to provide towing, recovery, preservation, storage and disposal services on and over the streets, public rights-of-way and other public and private property for a period of five (5) years, beginning on _____, 2022 and ending on _____, 2027 subject to the following terms and conditions:

Definitions: For the purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meanings given herein. The word "shall" is always mandatory and not merely directory.

- a. "Abandoned Vehicle" means: a Motor Vehicle required to be registered in this State, if operated on a public highway in this State, that is left unattended on a highway for more than forty-eight hours, or a Motor Vehicle that has remained on private property or other public property for a period of more than seven days without the consent of the owner or Person in control of the property.
- b. "Affiliated Person: means:
 1. any Person having, a direct or indirect Controlling Interest in the Company; or
 2. any person in which the Company has, a direct or indirect, controlling interest; or
 3. any Person, directly or indirectly, controlling, controlled by or under common control with the Company
- c. "Agreement: means: this franchise agreement including all appendices and exhibits thereto, and all amendments and modifications thereof.
- d. "City" means: the City of Myrtle Beach, South Carolina, its officials, officers, employees, agents, contractors or designees.

- e. "Company" means: a business entity properly organized, licensed or permitted under applicable federal, state and local law and includes all directors, officers, partners, officials, principles, employees, agents, contractors or designees and shall be for the purposes of this contract known as Company.
- f. "Confiscation" means: seizure and forfeiture of private property as a consequence of criminal conviction or a pleas of "Nolo Contendere", or because possession or use of the property was in violation of State or Federal Law.
- g. "Control" or Controlling Interest" means: working control in whatever manner exercised, including, without limitation, working control through ownership or management of the Company.
- h. "Derelict Vehicle" means: a Motor Vehicle required to be registered in this State if operated on a public highway in the State:
 - 1. whose certificate of registration has expired and the registered owner no longer resides at the address listed on the last certificate of registration on record with the South Carolina Department of Motor Vehicles; or
 - 2. whose motor or other major parts have been removed so as either to render the Motor Vehicle inoperable or the operation of which would violate South Carolina Code of Laws, Section 56-5-4410; or
 - 3. whose manufacturer's serial plates, motor vehicle identification numbers, license number plates, and any other means of identification have been removed so as to nullify efforts to locate or identify the registered owner; or
 - 4. whose registered owner of record disclaims ownership or releases his right thereto; or
 - 5. which is more than eight years old and does not bear a current registration.
- i. "Effective Date" means: the date on which the Agreement takes effect.
- j. "Expiration Date" means: the date on which the Agreement expires or such other date which is specified as the date of expiration pursuant to a revocation, or termination of the Franchise.
- k. "Franchise" means: the right and privilege granted by City to Company to provide Services pursuant to the terms of the Agreement, City Code of Ordinances and State law.
- 1. "Gross Franchise Revenue" means: all franchise revenue, as determined in accordance with generally accepted accounting principles, which is received by Company or any Affiliated Person, which is derived from providing Services to the City or the public pursuant to the grant of a franchise.
- m. "Motor Vehicle" means: any device in, upon or by which any Person or property is or may be transported or drawn upon any public highway, Public Right of Way or public or private property. Motor Vehicle shall not include any device propelled solely by human power or which is used exclusively upon stationary rails or tracks.
- n. "Official" means: any City official, law enforcement or code enforcement officer.
- o. "Person" means: any natural person or any association, company, firm, partnership, joint venture, corporation, governmental entity, or other legal entity.

- p. "Public Nuisance" means: a condition or property which is determined by an Official to be offensive to public order; detrimental to property values or community appearance; obstructs or interferes with the enjoyment of adjacent property or premises; is hazardous or injurious to the public health, safety or welfare; or which requires an expenditure of public resources which are of a greater frequency, intensity and duration than other conditions or properties of similar situation.
- q. "Public Right of Way" means: the surface, air space above the surface, and area below the surface of any public street, highway, lane, path alley, sidewalk, avenue, boulevard, drive concourse, bridge, tunnel, park, parkway, waterway, strand, dock, bulkhead, pier, easement or other public property within the Service Area.
- r. "Service Fees" means: allowable costs of towing, recovering, preserving, storing and any other charges authorized by the grant of a franchise.
- s. "Services" means: the towing, recovery, preservation, storage, release or disposal of Motor Vehicles, debris clean up and disposal and all administrative and operational functions attendant thereto.
- t. "Service Area" means: within the city limits of the city of Myrtle Beach.
- u. "State" means: the State of South Carolina.
- v. "State Law" means: the South Carolina Code of Law, as amended.
- w. "Stolen Motor Vehicle" means: a Motor Vehicle that has been reported stolen by its owner to a police officer of the State, and where a report has been accepted and carried on the records of the sheriff, chief of police or department as a stolen vehicle.
- x. "Tow Report" means: a preprinted form documenting a request for Services which records the status of the Motor Vehicle, the circumstances of and justification for its removal the physical condition of the Motor Vehicle and any personal property contained in the Motor Vehicle.

Purpose: To obtain Services for Motor Vehicles owned or operated by the City; other Motor Vehicles as defined herein; and to ensure the delivery of prompt and efficient Services to the City and the public.

Police Power: All rights and privileges granted herein are subject to the police power of the City to adopt and enforce ordinances and regulations necessary to promote the health, safety and general welfare of the public. Expressly reserved to City is the right to adopt, in addition to the provisions of this Agreement and existing City ordinances and regulations and state and federal statutes, such additional ordinances and regulations as the City may find necessary in the exercise of its police power.

Grant of Authority: Subject to this Agreement and applicable law, the City hereby grants to the Company the non-exclusive right and privilege to provide Services over the Public Rights-of-Way, and other public and private property within the territorial limits of the City. City expressly reserves the right to grant other franchises, on the same subject matter and terms and conditions. This Agreement does not grant any privilege or convey any rights other than those expressly provided herein.

Scope of Service: Services shall be performed when requested by the City, and shall include requested Services for: City owned or operated Motor Vehicles; abandoned and derelict Motor Vehicles as defined in State Law; vehicles subject to confiscation and forfeiture under State law; stolen, wrecked, disabled or inoperable Motor Vehicles; and any other Motor Vehicle determined to constitute a Public Nuisance.

Term of Service: The franchise term shall be for a period of five (5) years beginning on the Effective Date and ending on the Expiration Date specified herein.

Renewal: The City reserves the right to grant or deny renewal of this Franchise.

Franchise Fee: Company shall pay the City five percent (5%) of the Gross Franchise Revenue, due and payable no later than May 31st of the year following each expired franchise year during the term hereof. Company shall be afforded a ten (10) day grace period for payment of its Franchise Fee, after which time a ten percent (10%) late fee will be assessed and any unpaid amounts will accrue interest at a rate of eighteen percent (18%) per annum, compounded daily. A failure by the Company to pay any franchise fee, late fee or accrued interest within thirty (30) days shall be deemed a material breach of this Agreement and grounds for revocation of the franchise.

Service Hours: The Company shall provide Services, notwithstanding any provision of state law releasing a Company of any obligation beyond normal business hours, to the City and the public Twenty-four (24) hours a day seven (7) days a week. Company shall respond to a request for the release of any Motor Vehicle from its service facility within thirty (30) minutes.

Service Procedures: Motor Vehicles that are subject to confiscation and forfeiture shall be towed to the City's Equipment Maintenance Compound, 3231 Mr. Joe White Avenue. Motor Vehicles that have been reported stolen or which have been designated, as evidence shall be towed to either the Myrtle Beach Police Department Annex Building, 3341 Corsair Street or Company's service facility per the directions of the Official on scene. All other Motor Vehicles shall be towed to Company's service facility and secured therein until claimed by the owner or other Person entitled to lawful possession of the Motor Vehicle, or if unclaimed, until lawful disposal of the Motor Vehicle has been effected by the Company in accordance with State Law. Except in the case of a wrecked Motor Vehicle, a Tow Report shall be completed for all Motor Vehicles for which Services are provided. Upon completion of the Tow Report by the Official it shall be reviewed for accuracy and signed by the Official and Company representative at the scene. The white copy shall be retained by the Official. The pink copy shall be maintained by the Company and the canary copy shall be given to the owner/operator of the Motor Vehicle, or if the owner/operator of the Motor Vehicle, or if the owner/operator is not present at the scene, it shall be placed inside the Motor Vehicle. Motor Vehicles shall not be moved from the scene until the Tow Report has been completed and its removal authorized by the Official. The Tow Report shall set forth the following minimum information:

- a. Status: Abandoned/Derelict/Confiscated/Stolen/Evidence/Nuisance.
- b. Year, Make, Model and body style of Motor Vehicle, if applicable
- c. Vehicle Identification Number (VIN), if applicable.
- d. License Plate Number and State, if applicable.
- e. Detailed description of the physical condition of the Motor Vehicle to include any damage, missing parts or accessories and such other information as will accurately describe the Motor Vehicle at the time of the tow.

- f. Itemized list of all personal property contained in the Motor Vehicle as well as any personal property removed by the Company or Official for preservation and safekeeping.

Owner/Operator Request: Nothing in this Agreement shall be construed to require the owner/operator or a Motor Vehicle involved in a vehicular accident within the territorial limits of the City to utilize the Services of Company. The owner/operator may use any tow operator of his or her choice or, if the owner/operator options to use Company's Services, to require Company to tow the Motor Vehicle to a location other than Company's service facility. Company understands that the City will assume no financial liability for such Services, and that the owner/operator shall be solely responsible for the payment of all fees and charges for Services rendered by Company.

Motor Vehicle Releases: Company shall, upon receipt of proof of ownership or right of possession and the payment of authorized Service Fees applicable to the Motor Vehicle, release the Motor Vehicle to its owner or other Person entitled to lawful possession thereof. Company shall affect the release of Motor Vehicles during all service hours, and shall provide the Person taking possession of the Motor Vehicle an itemized invoice specifying all Service Fees paid, and shall record and maintain said record for the term of this Agreement, plus three (3) years, the following information for each Motor Vehicle release:

- a. Date and time of release.
- b. Motor Vehicle year, make, model, body style and VIN, if applicable.
- c. License plate number and state, if applicable.
- d. Name, address, driver license number and state as well as the residence and business telephone number of the Person taking possession of the Motor Vehicle.
- e. Written justification/evidence that Person is lawfully entitled to possession of the Motor Vehicle.

Payment Method: For services rendered, or for any fee, or to redeem a motor vehicle from storage, the franchisee shall accept in payment:

1. Cash, or
2. Money order, or
3. A check issued by an insurance company, or
4. A valid debit card, subject to the provisions of subsection (b) of this section or
5. A valid major credit card or charge card, subject to the provisions of subsection (b) of this section.

(b) With any type of electronic transfer or payment card, the franchisee may request additional identification by the presentation of state issued driver's license. Unless the motorist is unable to produce such identification, or the operator has a bona fide reason to believe the card or other identification is fictitious, altered, stolen, expired or revoked or not valid for any other cause or is clearly offered with intent to defraud the issuer, the debit card, charge card or credit card shall be deemed an acceptable form of payment in lieu of cash. The wrecker operator shall notify the police when payment is declined due to a determination that the card or other identification is fictitious, altered, stolen, expired or revoked or not valid for any other cause or is clearly offered with intent to defraud the issuer.

Disposition of Unclaimed Motor Vehicles: Company understands that the City is vested with the authority and responsibility to: declare a Motor Vehicle to be Abandoned or Derelict; pursue confiscation and forfeiture of a Motor Vehicle; seize a Motor Vehicle for evidentiary purposes; take custody of a stolen Motor Vehicle; declare a Motor Vehicle a Public Nuisance; remove a wrecked, disabled or inoperable Motor Vehicle from, the public right of way or

other public or private property; and to ensure the lawful disposal of such Motor Vehicles in accordance with applicable State Law.

Non-Discrimination: Company shall not deny Service or otherwise discriminate against any individual in violation of the Constitution of the United States or the State of South Carolina, or in violation of any rule, regulation, statute, or ordinance of City, the State of South Carolina or the United States.

Service Response Time: Except as provided herein, Company shall respond to a location in the Service Area where Services have been requested within thirty (30) minutes receipt of notice from the City. Services for City vehicles disabled more than twenty-five (25) miles outside of the Service area shall be provided within a reasonable time after notification given the travel time to the location of the disable vehicle. However, in no event shall services for such City vehicles be completed more than twelve (12) hours after request by the City. Services requested for removal of Motor Vehicles from private property shall be scheduled as soon as possible, but in no case shall the requested Services be completed more than twenty-four (24) hours after request by the City. Company agrees that City Requests for Services shall be given priority over any other requests for service, and that Company's first available service equipment shall be dispatched to a City request.

Service Quality: Company shall ensure that sufficient qualified personnel are available during all service hours to meet the demand for Services. Company shall maintain a State of South Carolina, Department of Motor Vehicles Report for each wrecker operator, which shall be updated annually. Each wrecker operator shall be properly licensed by the State and have a minimum of one (1) years experience in towing and recovery work or comparable training and education. Company shall insure that its personnel are uniformed, neat, and clean and conduct themselves in a courteous, responsible manner. Company personnel providing services shall be identified by a Company issued picture identification card, which shall be laminated and displayed on the employee's uniform during all service hours.

Service Equipment: All service equipment and accessories shall be modern, commercially manufactured, and in good mechanical condition. Company service equipment may only utilize amber strobe lighting after arrival at the service location and while actively performing towing or recovery services, and may not be used by Company as an emergency vehicle. Company's service equipment is prohibited from using a siren in the performance of its obligations. Service equipment shall be equipped with reliable two-way communications. The use of answering services, call forwarding or pagers to receive service request from the City is prohibited, nor may Company monitor City communications channels for the purpose of providing Services. Company understands that a City request for Services will be made via telephone or facsimile and agrees to provide sufficient telecommunications capacity to ensure reliable, prompt and responsive delivery of Services during all service hours.

Service Facilities: Company shall operate and maintain a business office and storage facility located within the Service Area to ensure the efficient administration of its responsibilities and the proper, safe and secure preservation and storage of Motor Vehicles until such are claimed by the owner, or other person or entity entitled to lawful possession of the Motor Vehicle, or are otherwise lawful disposed of. Motor Vehicles shall not be staged or stored at any locations other than the Company's storage facility. Re-tows of Motor Vehicle towed pursuant to a request by the City are prohibited unless prior written approval is provided by the City, the owner or Person entitled to lawful possession of the Motor Vehicle. Company service facilities shall comply with all applicable building and zoning codes and meet or exceed the following specifications:

a. Business Office

Clearly identified by permitted signage displaying Company name and telephone number

One (1) public pay phone.

A legible schedule of all Service Fees shall be posed in plain view of the public.

b. Storage Facility

Clearly identified by permitted signage displaying Company name and telephone number.

One (1) public pay phone

A legible schedule of all Service Fees shall be posted in plain view of the public.

Large enough to permit the secure storage of thirty (30) Motor Vehicles providing a two (2') foot buffer around each Motor Vehicle.

Fully illuminated during evening hours to ensure public safety and security of stored Motor Vehicles.

Fully enclosed by a solid fence or wall of not less than five (5') feet nor more than six (6') feet in height that screens the storage facility and Motor Vehicles contained therein from public view. The enclosure and screening shall be maintained in good condition and damage or deterioration shall be repaired within seventy-two (72) hours.

Service Fees: Pursuant to Company's response to the City's request for qualifications and the provisions of this Agreement, the below listed charges are the only service fees authorized to be charged by Company for Services under this Agreement.

a. **Light Duty; Class A Wrecker/ Rollback for towing vehicles of 7,000 lbs or less:**

Tow	\$ _____ per tow
Recovery Work	\$ _____ per hour
Mileage (outside service area)	\$ _____ per mile
No tow fee	\$ _____ per tow
Decoupling	\$ _____ per call
Vehicle storage (after 1st 12 hours)	\$ _____ per 24 hours
Extra time at scene	\$ _____ per hour*

b. **Medium Duty; Class B Wrecker for towing vehicles greater than 7,000 lbs but not greater than 17,000 lbs:**

Tow	\$ _____ per tow
Recovery Work	\$ _____ per hour
Mileage (outside service area)	\$ _____ per mile
No tow fee	\$ _____ per call
Decoupling fee	\$ _____ per call
Vehicle storage (after 1st 12 hours)	\$ _____ per 24 hours
Extra time at scene	\$ _____ per hour*

c. **Heavy Duty; Class C and above Wrecker for towing vehicles greater than 17,000 lbs:**

Tow	\$ _____ per tow
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Recovery Work	\$ _____ per hour
Mileage (outside service area)	\$ _____ per mile
No tow fee	\$ _____ per call
Decoupling fee	\$ _____ per call
Vehicle storage (after 1st 12 hours)	\$ _____ per 24 hours
Extra time at scene	\$ _____ per hour*

* 1st hour on scene included in cost of tow.

Protection of Motor Vehicles and Personal Property: Company's liability for any Motor Vehicle and all personal property contained therein shall commence at the time Company's service equipment is hooked onto the Motor Vehicle. Company shall be solely responsible for the preservation of the Motor Vehicle and personal property, and shall be accountable while such is stored at Company's service facility, or until Company's service equipment is disconnected from the Motor Vehicle upon its delivery to an alternate designation location. Company may elect to remove personal property from a Motor Vehicle stored at its service facility for safekeeping. Personal property so removed shall be documented on the Tow Report. Disposition of personal property shall be in accordance with State law. Company's liability for the Motor Vehicle and personal property contained therein shall end when the owner or Person lawfully entitled to possession of the Motor Vehicle or personal property takes custody thereof. In the event of a complaint of missing or stolen personal property or damage to the Motor Vehicle, Company agrees to fully cooperate with any law enforcement investigation pertaining to the complaint, including making Company personnel available to the investigating officer as requested. Company agrees to fully abide by the laws of general application regarding vehicles for hire in Chapter 23 of the Code of Laws.

Insurance: Company shall, at its sole expense, obtain insurance coverage to insure the Company and the City against liability in each of the following areas:

- a. Commercial General Liability insurance with limits no less than \$1,000,000 each occurrence combined single limit for Bodily Injury, Property Damage including coverage for premises/operations, contractual liability, and products/completed operations. This policy if insurance shall be written in an "occurrence" based format.
- b. Garage Liability. The company shall obtain garage liability insurance, which provides coverage in the amount of at least one million dollars (\$1,000,000) per occurrence, combined single limit, for bodily injury and property damage arising from or occurring in connection with the Services provided pursuant to this Agreement.
- c. Garage Keepers Legal Liability. The company shall carry Garage Keepers Legal Liability insurance with limits of not less than one hundred fifty thousand (\$150,000) dollars per occurrence.
- d. On Hook and Cargo Legal Liability. Company shall carry On Hook/Cargo Legal Liability with limits no less than (\$100,000) dollars per occurrence.
- e. Automobile Liability. Company shall obtain automobile liability insurance which provides coverage in the amount of at least one million dollars (\$1,000,000) per occurrence, combined single limit, for bodily injury and property damage arising from or occurring in connection with the use of an automobile by the Company or any Person acting on behalf of the Company in connection with Services provided pursuant to this Agreement.
- f. Workers' Compensation and Employers' Liability. Company shall obtain workers' compensation and employers' liability insurance, which provides coverage in the amount of at least five hundred thousand dollars (\$500,000.00) for bodily injury by disease per employee or by accident per employee.

Period of Insurance: The insurance policies required herein shall be maintained by Company during the term of this Agreement and any renewal period.

Terms of Insurance: The insurance policies shall comply with the following conditions:

- a. **Named Insured.** The City shall be included as a "Named Insured" on the general liability, garage keepers' liability and automobile liability insurance policies. Endorsement of the City as named insured on any Company insurance policy shall not prohibit or in any way limit the right of the City to make claim against the Company or to be compensated, recover damages, or obtain reimbursement pursuant to any insurance policy.
- b. **Cancellation.** All insurance policies required in this Agreement shall include the following endorsement issued by the insurance company: "It is hereby understood and agreed that this insurance coverage shall not be canceled or non-renewed for any reason until thirty (30) days prior written notice of cancellation or non-renewal has been provided by the insurance company to the "Named Insured. "
- c. **Replacement Coverage.** The company may not cancel or permit the lapse of any required insurance policy without providing evidence to the City that Company has obtained replacement insurance complying with the requirements of this Agreement not later than ten (10) days prior to cancellation or non-renewal of the policy in question.
- d. **Company Insurance is Primary.** The insurance policies provided by Company shall be primary to any insurance policy or program of self-insurance maintained by the City, which shall be considered excess and on contributing.
- e. **Deductible or Self-Insured Retention.** The Company shall be solely responsible for the payment, satisfaction or assumption of any deductible or self-insured retention stipulated in any insurance policy required to be provided by this Agreement.
- f. **Insurance Certificates.** Upon execution of this Agreement, Company shall provide the City with a certification of insurance, acceptable to the City, demonstrating that the insurance coverage required herein has been obtained and is in effect. Company shall also provide a certificate of insurance for all renewal policies not later than ten (10) days prior to the policy's effective date.
- g. **Contractor or Subcontractor Insurance.** Company shall require all contractors and subcontractor to procure and maintain the insurance coverage equivalent to that specified herein. Contractors and subcontractors shall provide Company a certificate of insurance as evidence of compliance with this requirement.
- h. **Insurer Licensing and Rating.** All insurance companies providing coverage to Company, City and any contractor or subcontractor shall be licensed to do business in the State and have an A.M. Best rating of "A-" or better.

Insurance Coverage Adjustment: In response to changing circumstance or loss exposures, the City reserves the right to modify the insurance coverage, limits of liability, policy endorsements and policy terms required in this Agreement. The City will provide written notice to the Company, which outlines such changes and allow Company a reasonable period of time in which to comply with the new requirements. However, in no event shall Company compliance period be longer than thirty (30) days.

Performance Bond: Company shall obtain and maintain during the entire term of this Agreement, at its sole cost and expense, and file with City a corporate surety bond of a surety company authorized to do business in the State of South Carolina, to guarantee the faithful performance by Company of all of its obligations under this Agreement. Such performance bond shall be in the amount of Ten Thousand Dollars and No Cents (\$10,000.00).

- a. Conditions. The performance bond shall provide, but not be limited to the following conditions:
 1. There shall be recoverable by City, jointly and severally from the principal and surety, all fines and penalties due to City and any and all damages, losses, costs and expenses suffered or incurred by City resulting from the failure of the Company to comply with one or more provisions of this Agreement. Such losses, costs and expenses shall include, but not be limited to, reasonable attorney's fees and other legal, consulting and auditing expenses.
 2. Not less than thirty (30) days prior notice to City shall be provided of surety's or company's intention to cancel, materially change, or not to renew the bond.
- b. Forfeiture. The total amount of the performance bond shall be forfeited in favor of City in the event:
 1. Company abandons this franchise or any material part thereof at any time during the term hereof.
 2. There is any change in ownership or control of Company without prior written approval of City.
 3. The franchise is revoked as provided herein.

Liability, Indemnification, Hold Harmless, Duty to Defend, Relationship of Parties: The Company specifically agrees to be civilly responsible for the acts or omissions of its own employees, agents, and officials, should any claim, loss, administrative proceeding, common pleas suit or equity proceeding, damage, cause of action, liability, cost or expense (including attorney's fees and witness costs) arise from the performance of duties or obligations contemplated herein. The City shall not be liable for any liability of the Company, any Affiliated Person of any other Person, arising out of or in connection with the Company's performance or non-performance of its obligation under this Agreement. The Company assumes the liability inherent in the acts contemplated herein. Should a claim or action be made against the City on the Company's acts or omissions from the performance of duties or obligations contemplated herein, the Company agrees to legally defend the City upon demand and without reservation upon notice, and to indemnify and hold harmless the City, should it suffer loss or damage, from and against any and all awards, liabilities, costs, suits, penalties, claims or judgments including attorney's fees and cost, arising out of or in connection with the Company's performance or failure to perform any of its obligations under this Agreement. This agreement creates a contractual relationship between the parties, and is not intended to create the relationship of third party beneficiary toward a specific member of the public or the public at large, master/servant, principal/agent, employer/employee, partnership or joint venture, or any other relationship recognized by law or equity where one party could be deemed responsible or held accountable for the debts, acts or omissions of the other in conduct of their business. Further, this Agreement is not intended to create a relationship whereby performance by the non-governmental entity would constitute "state action" for any purpose whatsoever.

Liability Not Limited: The liabilities and indemnification obligations of the Company set forth herein shall not be limited to the extent of insurance coverage provided pursuant to this Agreement, except to the extent necessary to avoid duplicate recover from or payment by the Company or its insurer.

Licenses and Permits: The Company shall obtain, at its sole expense, all applicable licenses, including business license, penalties and other authorization necessary to provide the Services required herein.

Taxes and Other Fees: Nothing in this Agreement shall be construed to limit the authority of the City, the State or any governmental entity to impose any tax, fee, or assessment of general applicability on the Company or any Affiliated Person. The Company shall be obligated to pay all taxes, assessments, and other fees which may be imposed on the Company's business or activities or which may be imposed as a result of this Agreement. However, Gross Franchise Revenue, as defined herein, shall not be subject to business license taxation by the City. All other gross revenue of the Company shall be subject to business license taxation as provided in the City Code of Ordinances. The Company shall keep the Public Right of Way and other public property free and clear of all liens, including mechanics' liens and any other liability resulting from its performance or non-performance under the terms of this Agreement

Contractors and Subcontractors: All Company contractors and subcontractors providing Services pursuant to this Agreement shall be subject to the approval of the City and be properly licensed and permitted, trained, experienced and qualified to perform Services for which it has contracted, Company's contractors and subcontractors shall not be permitted to delivery more than 10% of the Services requested by the City pursuant to this Agreement. Company's contractor and subcontractor personnel shall meet or exceed the service quality criteria set forth in this Agreement and their service facilities shall be located within the Service Area defined herein. The Company shall be responsible for any act or omission of any contractor or subcontractor and shall promptly, upon notice, correct any such act or omission.

Books and Records: The Company shall maintain complete and accurate books of account, files and records related to Company operations and business activities arising out of this Agreement

City's Right of Inspection, Review and Audit: The City shall have the right to inspect, review and audit, at Company's service facility, during normal business hours, upon seventy-two (72) hours notice to Company, all records, whether in printed or electronic form, which pertain to the Company's performance of its obligations under this Agreement, and all related business activity. Subjects to be considered shall include but not be limited to: Compliance with this Agreement and applicable law; Company's performance; financial records and reporting; Company's service facilities and equipment; books and records; complaint and resolution logs; receipts; maps; plans; accounting statements; financial statements; contracts; service logs; and records of requests for service whether held by the Company, any Affiliated Person or any other Person, who has Control or a Controlling Interest, or any management or other authority over Company or any part thereof, by contract or any other arrangement. The Company shall not deny access to any records on the basis of a claim by the Company that such records contain proprietary information. Company acknowledges that all records related to this Agreement shall be considered public records subject to the provisions of the South Carolina Freedom of Information Act.

Proprietary Information: It shall be the sole responsibility of the Company to establish the proprietary nature of any information or records maintained pursuant to this Agreement. The City shall, to the extent permitted by State law, notify the Company of any request by a third party for information which the Company has designated as proprietary at least five (5) days prior to disclosure of such information to a third party.

Penalties: If Company fails to observe any of its obligations City may assess Company, and Company agrees to pay to City a monetary penalty in accordance with the Schedule of Penalties set forth below. Such assessment shall not constitute a waiver by City of any other right or remedy in may have under this Agreement, or under applicable law, including, without limitation, its right to recover from Company and its sureties such additional damages, losses, costs, and expenses as may have been suffered or incurred by City by reason of or arising out of Company's breach of this Agreement.

- a. Disposition: Amounts received by City as penalties assessed against Company, may be used by City for any purpose it deems fit.
- b. Schedule of Penalties: The following monetary penalties shall apply, and the Company's liability therefore shall accrue from the date the violation began:
 1. Failure to respond or late response to a service request
Complaints, course or pattern of conduct evidencing incompatibility \$50 each
 2. Failure to maintain Company's insurance \$200 each day
 3. Failure to maintain performance bond \$200 each day
- c. City Waiver: City retains the right to waive any of the above penalties. Such determination shall be within the sole discretion of the City, except that City shall grant such a waiver where extenuating circumstances result from an act of nature, force majeure or other reason beyond the control of Company. A decision by the City to waive any penalty shall apply only to that instance and shall not be construed as a waiver of any future penalty or other rights the City has under the terms of this Agreement.
- d. Further Recourse: In addition to the foregoing penalties, upon the failure, refusal or neglect of Company to provide any Services or other act required by law or by this Agreement to be properly completed as prescribed by this Agreement, City may cause such Services or other act to be performed or completed in whole or in part, and upon so doing shall submit to Company an itemized statement of the costs thereof. Company shall, within thirty (30) days after receipt of such statement pay to the City the entire amount thereof.

Revocation of Franchise: In addition to all other rights and powers of City by virtue of this Agreement, City may revoke the franchise and all rights and privileges of Company hereunder in the event Company either:

- a. Substantially violates any material provision of this Agreement or any rule, order or determination of City made pursuant hereto where such violation remains for a period of thirty (30) days following notice to Company that a material breach is deemed to exist; or
- b. Attempts to evade any material provision of this Agreement or practices any fraud or deceit upon City; or
- c. Establishes a pattern or course of conduct of late arrivals, no shows, complaints about the administration of the franchise, specifically in regards to call rotation, inspections,

facility or equipment requirements, or other indicia of an incompatible working relationship in the discretion of the Manager; or

- d. Accumulates, within a period of six consecutive months, penalties imposed under this Agreement, in an amount exceeding \$2,500 in the aggregate; or
- e. Any conviction, guilty plea, or plea of nolo contendere, or equivalent plea, of the Company, any Officer of the Company, any Affiliated Person or any other Person who Controls or who has a Controlling Interest in Company and its operations, of any felony, including bribery or fraud, or three (3) or more convictions within a consecutive twelve (12) month period of South Carolina, Code of Law, Section 56-19-840, arising out of or in connection with this Agreement or any business, operation, or activity of the Company; or
- f. Any material misrepresentation in connection with any representation or warranty contained in Company's response to the RFP, this Agreement or negotiation or modification of this Agreement; or
- g. Occurrence of any event which indicates the likelihood of foreclosure on or suspension of Company's business, including the assignment of any or all property material to the performance of Company's obligations hereunder for the benefit of creditors or the designation of a receiver or similar official.

Remedies: In the event the Company fails to comply with a material provision of this Agreement, the City shall:

- a. Provide Company written notice of the breach.
- b. Company shall, not later than fifteen (15) days after receipt of notice from the City, provide a written response to the City which: (i) presents facts demonstrating that the breach has been cured; (ii) presents facts to refute or excuse the breach; or (iii) propose as method and schedule to cure the breach.
- c. Upon receipt of the Company's written response determine (i) whether the Company has failed to comply with a material provision of the Agreement; (ii) whether such failure is excusable; or (iii) whether the Company has cured or is moving to cure the breach or has proposed an acceptable method and schedule for curing the breach.
- d. Upon a determination that the Company failed to comply with a material provision of this Agreement, such failure is not excusable, and the Company has not cured the breach or proposed an acceptable method and schedule for curing the breach, the City Manager will schedule a public hearing before City Council for the purpose of terminating this Agreement. Such public hearing shall be held on not less than thirty (30) days notice, at which all interested parties are afforded an opportunity to be heard.

Assignment or Transfer: Company may not assign or transfer, in whole or in part, its rights, privileges, or obligations under this Agreement without the prior written consent of the City.

Notices: Notices provided for in this Agreement shall be in writing, delivered by hand or sent via certified mail, return receipt requested to the parties at the following addresses, or such other address as the parties may, from time to time, designate in writing:

City: City Manager
P.O. Box 2468
Myrtle Beach, South Carolina 29578

Company:

Amendment or Modification: This Agreement shall not be amended or modified except by written instrument executed in the same manner as this Agreement.

Governing Law and Venue: This Agreement shall be governed in all respects by the law of the State of South Carolina and shall be subject to the jurisdiction of the Fifteenth Judicial Circuit, Horry County, South Carolina.

WITNESS the due execution hereof this _____ day of _____, 2022.

In the presence of:

CITY OF MYRTLE BEACH

By: _____
Jonathan "Fox" Simons, City Manager

In the presence of:

By: _____