



**THE CITY OF DAYTONA BEACH
OFFICE OF THE PURCHASING AGENT**

Post Office Box 2451
Daytona Beach, Florida 32115-2451

Phone (386) 671-8080
Fax (386) 671-8085

**REQUEST FOR PROPOSALS
INVITATION**

NOTICE IS HEREBY GIVEN that sealed proposals will be received in the office of the Purchasing Agent, Daytona Beach City Hall, Room 146, 301 South Ridgewood Avenue, Daytona Beach, Florida 32114, until April 4, 2019 at 2:00 PM, at which time they will be publicly opened for the following:

TOWING & STORAGE SERVICES FOR THE CITY OF DAYTONA BEACH

AWARD OF CONTRACT subject to the Purchasing Code of the City of Daytona Beach.

THE RFP MAY BE OBTAINED on-line at <http://purchasing.codb.us> by clicking on the link to "Public Solicitations" or as a hard copy at the office of the Purchasing Agent City Hall, 301 South Ridgewood Avenue, Room 146, Daytona Beach, FL 32114.

SCOPE OF WORK: consists of 24 hour per day, 7 day per week on-call towing and, when required, storage of motor vehicles and trailers when so authorized by the City, at a rate not greater than the applicable maximum rates established by the City. Storage facility must be within the Daytona Beach corporation limits.

THE CITY RESERVES THE RIGHT to reject any or all proposals or parts thereof, or to accept the proposal(s) or parts thereof, when considered by it to be in the best interest of the City. Any proposal received after the time and date specified will not be considered. No proposer may withdraw their proposal for a period of sixty (60) days after the date of the opening of proposals. This time period is reserved for the purpose of reviewing proposals and investigating the qualifications of the proposers.

PROPOSALS SHALL BE ADDRESSED to the City of Daytona Beach, Purchasing Agent, 301 South Ridgewood Avenue, Room 146, Daytona Beach, Florida, 32114, and all proposals shall have the following plainly marked on the outside of the envelope:

PROPOSAL FOR: **TOWING & STORAGE SERVICES FOR THE CITY OF DAYTONA BEACH**
PROPOSAL NO: **19321**

**THE CITY OF DAYTONA BEACH
BY: KIRK ZIMMERMAN, CPPB
BUYER
ISSUED: March 21, 2019**

THE CITY OF DAYTONA BEACH
REQUEST FOR PROPOSALS
TOWING & STORAGE SERVICES FOR THE CITY OF DAYTONA BEACH
No. 19321

GENERAL CONDITIONS

THIS IS NOT A BID. This is a Request for Proposals for non-professional services issued in accordance with the City of Daytona Beach Code Chapter 30, Article II, Division 3, "Source Selection and Contract Formation". The Request for Proposal specifies the services needed, and lists the criteria upon which the Proposal responses will be evaluated. When received, Proposals will be reviewed and ranked in order, beginning with the one deemed most advantageous to the City. Contract negotiations will commence with the selected Proposer(s). Upon completion of satisfactory negotiations, the contract negotiated that best meets the needs of the City will be recommended for award to the City Commission. A copy of Chapter 30 may be obtained upon request.

GENERAL CONDITIONS

1. **INSTRUCTIONS TO PROPOSERS:** To insure consideration of your Proposal, please follow these instructions. One original and five (5) copies of all Proposal sheets must be executed and returned, unless otherwise directed. **Provide one pdf copy of the Proposal in its entirety on cd, dvd, or other electronic media.** All Proposals not in compliance with the conditions specified herein are subject to rejection.

2. **PROPOSAL ENVELOPE:** All Proposals must be returned in a sealed box or envelope addressed to the City of Daytona Beach and should contain on the outside the following information:
 - a. Name and address of Proposer
 - b. Proposal Number 19321
 - c. Date and time of Proposal opening

PLEASE NOTE: The address of the Purchasing Division is:

Daytona Beach City Hall
301 South Ridgewood Avenue
Room 146
Daytona Beach, FL 32114

3. **REQUESTS FOR INTERPRETATIONS.** If the Proposer is in doubt as to the meaning of any of the RFP Documents or other Contract Documents included in this solicitation, the Proposer may submit a written request to the City for an interpretation, care of the Purchasing Agent at the address set forth in the Invitation for delivery of the completed Proposal. Such requests must be received 10 days prior to Proposal opening in order to be considered. The City is not obligated to respond to such requests. Any clarification or interpretation issued by the City in the form of a written addendum will be deemed to be a part of the Proposal Documents.

No oral clarification or interpretation will be binding.

4. **EXECUTION OF PROPOSAL:** The Proposal must contain a manual signature of an individual or of an authorized representative of the firm making the Proposal, in the space provided on the Proposal Form, if provided as a part of the Proposal package, or on Proposer's own form, if a specific Proposal form is not provided. The Proposer's name shall be inserted on all sheets requiring the Proposer's name. In order to insure uniformity, Proposals must be submitted on the Proposal Form, if provided, and on the attached pages.

5. **PROPOSAL OPENING - LATE PROPOSALS:** Proposals will be opened publicly, the name of the Proposers read aloud and recorded, on the date and time indicated, at the location specified in this Request for Proposals. It is the Proposers' responsibility to make certain that his/her Proposal is in the hands of the Purchasing Agent prior to the opening time at the specified location. Any Proposal received thereafter will be rejected and returned to the Proposer.
6. **WITHDRAWAL OF PROPOSALS:** Proposals may be amended or withdrawn only by written notice prior to the Proposal opening. Proposal amendments must be submitted in a sealed envelope. Amendments or withdrawals received after the Proposal opening will not be effective, and the original Proposal submitted will be considered.
7. **CONSIDERATION OF PROPOSALS:** Telephonic, electronic, or faxed Proposals will not be considered. The Proposer agrees that his/her Proposal will not be withdrawn within sixty (60) calendar days following opening of the Proposals, and that during such time his Proposal will remain firm and irrevocable. The City reserves the right to reject any or all Proposals, and to waive any technical defects in Proposals.
8. **COOPERATIVE PURCHASING:** All Proposers awarded contracts from this RFP are required to permit governmental entities in Volusia County to participate in the Contract under the same prices, terms, and conditions except that allowances may be made for differences in delivery costs. At the option of the awarded Proposer, the use of the Contract resulting from this solicitation may be extended to other governmental agencies, cities, counties, and political subdivisions.
9. **GENERAL REVIEW PROCEDURES:** The Purchasing Code, Chapter 30, Code of the City of Daytona Beach, sets forth the general review procedures for competitive sealed proposals. Under the Purchasing Code, the City Manager is required to evaluate and rank responsive Proposals in accordance with the criteria identified in the RFP. Before submitting a recommendation for final action on this RFP to the City Commission, the City Manager is authorized to "shortlist" and negotiate with one or more of the Proposers who submitted the highest ranked Proposals. As part of these negotiations, the City Manager may request revised Proposals from shortlisted Proposers.

The City Manager has adopted a policy delegating the task of initially ranking responsive Proposals to a Selection Committee. The Selection Committee may require personal interviews with Proposers before submitting its recommendations to the City Manager.

10. **LOCAL PREFERENCE:** Local preference has been waived for this solicitation.
11. **AWARD:** The award will be made by the City to the firm most qualified and offering the best value to the City, which will be determined by evaluation of Proposals using the evaluation criteria contained in the RFP, and in accordance with applicable rules and regulations governing the purchase and contract adopted and established by the City, and the State of Florida.

Any contract resulting from this solicitation may, in the alternative, be awarded by the City of Daytona Beach Community Redevelopment Agency (CRA). Therefore, any bids/proposals submitted in response to this solicitation shall be deemed to be offers to the CRA as well as the City. Any final written contract may be with the CRA instead of the City.

12. **NON-COLLUSION:** By submitting a Proposal in response to the request and signing the Anti-Collusion Statement form enclosed, the Proposer represents that, should the Proposal be accepted, the resulting contract(s) would not violate any provisions of federal law or regulations, or any ordinances or regulations established by the City. The Proposer warrants as an integral and essential part of his/her Proposal: (a) that he/she has not participated in nor is he/she obligated or bound by any Contract, arrangement or other understanding with any person, firm or corporation with respect to the allocation of the business afforded by or resulting from the acceptance of his/her Proposal; (b) that his/her Proposal is or is intended to be competitive and free from any collusion with any person, firm or corporation; and (c) that he/she is not a party to nor has participated in nor

is he/she obligated or otherwise bound by any Contract, arrangement or other understanding with any person, firm or corporation relating to the exchange of information concerning Proposals, prices, terms or conditions upon which the contract(s) resulting from this acceptance is to be performed.

13. **PERMITS, ETC.:** All Proposals submitted shall include in the price the cost of any business or professional licenses, permits or fees required by the City and any agency having jurisdiction over the services solicited through this Request for Proposals.
14. **PATENT INFRINGEMENT, ETC:** By submission of a Proposal the Proposer certifies that the services to be furnished will not infringe any valid patent, copyright, or trademark and the successful Proposer shall, at his/her own expense, defend any and all actions or suits charging such infringement and hold the City harmless in case of any such infringements.
15. **TAXES:** All Proposals shall be exclusive of federal taxes. However, if the Proposer believes that certain other taxes are properly payable by the City, he/she may list such taxes separately in each case directly below the respective item price. Tax exemption certificates will be furnished upon request.
16. **PERFORMANCE:** During the performance of the contract, the Proposer agrees as follows:
 - a. The Proposer will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin.
 - b. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirement of this section.
17. **FLORIDA PUBLIC RECORDS LAW:** Sealed proposals received by the City pursuant to the Request for Proposals will be temporarily exempt from disclosure in accordance with Florida's Public Records Laws. Thereafter, all Proposals will be open for a personal inspection by any person pursuant to Public Records Law.

If the Proposer believes that the Proposal or any portion thereof is permanently exempt from disclosure under the public records laws, the Proposer must state the grounds for this position in CAPITAL LETTERS on the cover sheet accompanying the sealed Proposal. The Proposer will be contacted prior to the opening of the Proposal and a determination will be made as to whether or not it is exempt prior to opening. If a determination is made that it is not exempt from disclosure, the Proposer may in writing request the return of the sealed Proposal.

18. **EVALUATION CRITERIA:** The weighted evaluation criteria will be used to evaluate Proposals and develop a recommendation to the City Manager as described in Section 8, above. Each criterion will be scored between 1 and 5; 1=poor, 2=below average, 3=average, 4=above average, 5=excellent. Scores will be multiplied by the criterion weight for a weighted score; weighted scores will be totaled for the weighted total score.

TAB 1. The amount of franchise fee to be paid to the City. Complete the attached *Fee Schedule (page 10)* completing each line. Specify the monthly franchise fee to the City in accordance with the terms and conditions of this RFP. There will be a maximum of 37 points for the Proposal Form and 1 point for each of the following: Anti-Collusion, Drug Free Workplace, and Crime Entity. **40 Points.**

TAB 2. Proposer's Qualifications & Experience of the Company. Submit a narrative no more than 3 pages that include number of years in business, number of years in the Daytona Beach corporation limits, submit a copy of all Licenses, Certificates, Registrations, permits etc. that the

company Proposer. Company must be licensed and/or registered in the State of Florida and Volusia County, the City of Daytona Beach.

A. The Towing Company will, during the term of this Contract, own or lease a minimum of six (6) wreckers to provide the services called for by this Contract. The wreckers must include: one (1) Class "A" wrecker with four wheel drive; one (1) Class "B" wrecker; one (1) Class "D" wrecker; and three (3) car carriers. The wreckers of the Towing Company will meet the requirements and specifications established and set forth in this Contract. **(15 points for the minimum stated fleet and 1 point for each additional wrecker or car carrier up to a maximum of 25 points).**

B. No owner, partner, employee, or agent of the Towing Company will have been:

1. Convicted of any felony in the past five (5) years or, if less than five (5) years where the person's civil rights have not been restored;
2. Convicted of any felony, misdemeanor, or municipal ordinance violation directly related to the business of operating a wrecker, regardless of length of time or whether civil rights have been restored. For the purpose of this rule, any offense involving perjury, false statement, or dishonesty will also be considered to be directly related to the business of operating a wrecker.
3. For the purposes of this section, a conviction will mean an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or nolo contendere; or a jury verdict of guilty when adjudication is withheld and the accused is placed on probation.

C. The Towing Company will not hire or retain any employee, permanently or temporarily, who has been convicted of the offense of driving under the influence of alcohol or any controlled substance chemical substance to the extent that normal faculties are impaired or driving with a unlawful blood alcohol level, or of any criminal traffic offense, within the last five (5) years.

D. The Towing Company will comply with all the requirements for a drug free workplace certification 287.087 F.S.

TAB 3. Experience of Employees/Staff. Give a complete list of the number of managers, supervisors, and other staff employed at the primary compound site from which services will be rendered including their respective names, position, and driver's license number(s), and position. Identify the staff members who will provide the services, including staff from sites other than the local site, if necessary. Include their towing experience. Resumes for each managerial and supervisory person to be assigned to the project should be submitted, as well as those of the principals of the firm, including the following information:

- a) Relative Supplemental education
- b) Membership in various relevant national, state and local associations
- c) Experience in providing towing services (number of years) **15 Points.**

TAB 4. References. Provide references on the form provided in this package including name, address, contact person, and phone number. **10 points.**

19. **REFERENCES:** The contact person(s) listed as a reference shall be someone who has personal knowledge of the contractor's performance during the referenced project. Contact persons must have been informed that they are being used as a reference and that the City may be calling them. More than one person can be listed but all must have knowledge of the project. DO NOT list principals or officers who will not be able to answer specific questions regarding the project.

20. **REJECTION OF PROPOSALS:** The City reserves the right to reject any or all Proposals in whole or in part and to award by items, parts of items, or by any aggregate group of items specified. The

City also reserves the right to waive technical defect when in its judgment the best interests of the City thereby will be served.

21. **QUALIFYING PROPOSERS:** Prior to awarding of Proposal, the City may require submission by Proposer of complete financial statement and questionnaire describing Proposer's financial ability and experience in performance of similar work.
22. **RULES AND REGULATIONS:** All work performed under this Contract shall be in strict compliance with local, State and Federal laws, rules and regulations. Proposer shall assume all liability for fines and penalties assessed by the authorities for any infractions.
23. **MINORITY AND WOMEN WORK FORCE PARTICIPATION:** The City has an established policy of: 1) promoting Minority and Women-Owned Business Enterprise participation in business contracts and 2) requiring Proposers doing business with the City to use good faith efforts to promote cultural diversity and minority participation in the work force, including managerial positions. Proposers must provide information as part of the Proposal acknowledging its understanding and willingness to comply with the Purchasing Code of The City of Daytona Beach.
24. **NO COSTS:** The City of Daytona Beach bears no responsibility for any costs incurred in the preparation of the Proposal.
25. **DRUG FREE WORKPLACE:** The selected firm must provide the Drug Free Workplace Form in accordance with Florida Statute 287.087, prior to Contract award.
26. **PROHIBITION OF LOBBYING.** Except for negotiations authorized by the City Purchasing Code, the Consultants Competitive Negotiations Act, or other state or federal law, lobbying by the Proposer, or the Proposer's principals, officers, employees, attorneys, or other agents, is strictly prohibited during the Blackout Period. Lobbying in violation of this section may cause the proposal to be rejected.

"Lobbying" means influencing or attempting to influence action or non-action in connection with this RFP or the proposal, through direct or indirect oral or written communication with the Mayor, any member of the City Commission, the City Manager, or any other City employee. The following activities are not within the definition of "lobbying," and are permitted: requests for clarification submitted to the Purchasing Agent in accordance with this RFP, discussions with the Selection Committee as part of the selection process, the submission of additional information in response to a request by the City, and addressing the City Commission during the City Commission meeting at which the contract is awarded or all Proposals are rejected.

The Blackout Period begins on the date that this RFP is issued and ends when the contract is awarded or all Proposals are rejected.

27. **SELECTION PROCESS:**

For the purpose of selecting the most qualified firm, the City will use a competitive selection process as set forth in pertinent City and State procurement requirements. The procedure will involve the following steps:

- a. The City will advertise and mail notice of formal Requests For Proposals to interested Proposers.
- b. The City's Selection Committee will review, rank, and shortlist all Proposals received by the established deadline for submission. Oral presentations by the short-listed Proposers to clarify their Proposals may be required. These presentations will serve to explain implementation techniques integral to their written Proposal. Subsequent to the receipt of Proposals, the City may schedule a time for each requested oral presentation at a place convenient to the City.

- c. The City's Selection Committee will then rank each Proposal and prepare a recommendation for approval by the City Manager. Upon receipt of the City Manager's authorization, the City's Project Manager shall negotiate a contract with the highest ranked Proposer(s) approved by the City Manager. Should the Project Manager be unable to negotiate a satisfactory contract with the any of the shortlisted Proposers, the City Manager, or designee, shall terminate such negotiations with any or all of the shortlisted Proposers and begin negotiations with remaining Proposers based on ranking, until negotiations are successful or this RFP is cancelled.
- d. **The City Commission has the sole authority to bind the City to the terms and conditions of a contract that has been approved in a public meeting of the City Commission. The City Commission reserves the right to modify or reject any contract for the acquisition of goods and/or services submitted to it for consideration.**

SPECIAL INSTRUCTIONS

SI 1. MINIMUM QUALIFICATIONS.

- a. Storage facility as defined in section 1 of the scope must be in the Daytona Beach City Limits.
- b. During the 5-year period prior to the proposal date, no owner, partner, officer, employee, or agent of the Towing Company has been convicted of any felony; or as to any owner, partner, officer, employee or agent of Towing Company who has been convicted of a felony within this 5-year period, such person's civil rights have been restored;
- c. Prior to the proposal Date, no owner, partner, officer, employee or agent of the Towing Company has been convicted of any felony, misdemeanor, or municipal ordinance violation directly related to the business of operating a wrecker, regardless of length of time or whether civil rights have been restored. For the purpose of this warranty, any offense involving perjury, false statement, or dishonesty will also be considered to be directly related to the business of operating a wrecker.
- d. For the purposes of this section, a conviction will mean an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or nolo contendere; or a jury verdict of guilty when adjudication is withheld and the accused is placed on probation.

TAB 1 – FEE SCHEDULE

RFP No. 19321

The Towing Company shall pay the following amount to The City each month during the term of the Contract:

\$ _____ /month

_____ per month
(in words)

Minor Services Fee Schedule:

Description of Minor Services:	Fee Charged
Vehicle Lockout	\$
Tire Change	\$
Jump Start	\$
Wrecker on the scene and owner arrives	\$

Location of Storage Facility including street address: _____

Number of wreckers:

Class "A": _____

Class "B": _____

Class "D": _____

Car Carriers: _____

Submitted By:

Name of Firm:	Signed By <i>(an authorized officer agent of the company)</i>
Address:	Name and Title:
City, State, Zip:	Telephone:
Email:	Fax:

ANTI-COLLUSION STATEMENT

By signing this form, the Proposer agrees that this Proposal is made without any other understanding, Contract, or connection with any person, corporation, or firm submitting a Proposal for the same purpose and that the Proposal is in all respects fair and without collusion or fraud.

Sign in ink in the space provided below. Unsigned Proposals will be considered incomplete, and will be disqualified and rejected.

IT IS AGREED BY THE UNDERSIGNED PROPSEER THAT THE SIGNING AND DELIVERY OF THE PROPSAL REPRESENTS THE PROPOSER'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THE FORGOING TERMS AND CONDITIONS AND SCOPE OF SERVICES, AND IF AWARDED, THIS CONTRACT WILL REPRESENT THE CONTRACT BETWEEN THE PARTIES.

NAME OF FIRM: _____

SIGNATURE: _____

(MUST BE SIGNED BY A COMPANY OFFICER OR AUTHORIZED AGENT)

NAME TYPED: _____ TITLE: _____

ADDRESS: _____

CITY AND STATE: _____

TELEPHONE: _____ EMAIL: _____

DRUG FREE WORKPLACE FORM

The undersigned, in accordance with the Florida Statute 287.087 hereby certifies that _____
_____ does:

(Proposer)

1. Publish a statement notifying that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violation of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, any Available drug counseling, rehabilitation, employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under Proposal a copy of the statement specified in Paragraph 1.
4. In the statement specified in Paragraph 1, notify the employees that, as a condition of working on the commodities or contractual services that the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to any violation of Chapter 1893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is convicted.
6. Make a good faith effort to continue to maintain a drug free workplace through implementation of Paragraph 1, through Paragraph 5.

As the person authorized to sign this statement, I certify that this firm fully complies with the above requirements.

Date: _____

Signature & Title

AFFIDAVIT ON PUBLIC ENTITY CRIMES

(To be signed in the presence of a notary public or other officer authorized to administer oaths.)

Before me, the undersigned authority, personally appeared

_____, who, being by me first duly sworn, made the following statements:

1. The business address of _____ (insert name of BIDDER), hereinafter the "BIDDER," is _____.

2. My relationship to BIDDER is _____. (relationship such as "sole proprietor," "partner," "president," "vice president," etc.)

3. I understand that a "public entity crime" as defined in Section 287.133(1)(g), *Florida Statutes*, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any BID or CONTRACT for goods or SERVICES to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

4. I understand that "convicted" or "conviction" as defined in Section 287.133(1)(b), *Florida Statutes*, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.

5. I understand that an "affiliate" as defined in *Florida Statutes*, 287.133(1)(a), *Florida Statutes*, means:

- A. A predecessor or successor of a person convicted of a public entity crime; or
- B. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

6. I understand that a "person" as defined in Paragraph 287.133(1)(e), *Florida Statutes*, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding CONTRACT and which BIDs or applies to BID on CONTRACTs for the provision of goods or SERVICES let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

7. Based on information and belief: (check or initial A. or B. below)

___A. Neither the BIDDER, nor any of the BIDDER's officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the BIDDER, nor any affiliate of BIDDER, has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

___B. The BIDDER, or one or more of the BIDDER's officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of BIDDER entity, or an affiliate of BIDDER, has been charged with and convicted of a public entity crime subsequent to July 1, 1989. There has been a subsequent proceeding before a Hearing

Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing; and

(if Paragraph 7.B. applies, check or initial one of the following)

_____ There has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing, and the Final Order **did not place** the BIDDER or any affiliate of BIDDER on the convicted VENDOR list. (Attach a copy of the final order)

_____ There has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing. The Final Order **placed** the BIDDER or any affiliate of BIDDER on the convicted VENDOR list, but the date of the Final Order is **more than 36 months** prior to the date of submission of the BIDDER's BID. (Attach a copy of the final order)

_____ There has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing. The Final Order **placed** the BIDDER or any affiliate of BIDDER on the convicted VENDOR list, but the BIDDER (or as applicable the affiliate of BIDDER) has since been **removed from the convicted VENDOR list** in accordance with *Florida Statutes* Section 287.133(3)(f). (Attach a copy of the final order, and a copy of the order/official agency document granting the petition to remove.)

I UNDERSTAND THAT THE BIDDER IS REQUIRED TO INFORM THE CITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN Section 287.017, FLORIDA STATUTES, OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS AFFIDAVIT.

Signed: _____

Date signed: _____

STATE OF _____

COUNTY OF _____

Sworn to and subscribed before me in the state and county referenced above on this ___ day of _____, 20__, by _____, as _____, and who (circle one) took an oath / is personally known to me.

Notary Public

My commission expires

TAB 4 - REFERENCES

List references for whom similar work has been performed

Name _____ Contact Person _____

Address _____ Telephone Number _____

Name _____ Contact Person _____

Address _____ Telephone Number _____

Name _____ Contact Person _____

Address _____ Telephone Number _____

Name _____ Contact Person _____

Address _____ Telephone Number _____

Name _____ Contact Person _____

Address _____ Telephone Number _____

SCOPE OF SERVICES

SECTION 1. DEFINITIONS

For purposes herein, certain terms and phrases are defined as follows:

Accident Cleanup Services means the cleanup of all debris and obstructions located on the public streets, ways, sidewalks, parks, avenues, and property of the City, created by a vehicular accident, and removal the same to a proper storage or disposal; place away from the accident scene.

Agreement or Contract means the written contract between the City and the Towing Company providing the Towing Company the exclusive franchise to provide as-needed towing services within the City of Daytona Beach, subject to Towing Company's meeting all terms and conditions stated.

City means the City of Daytona Beach, a Florida municipal corporation.

City Code means any provision of the City of Daytona Beach Code of Ordinances, as hereafter amended.

City Representative means: Any City police officer, the City Manager, or the City Manager's designee. Towing Company acknowledges that, with respect to City Vehicles, the City Manager may designate multiple persons, including department or division heads and/or the City employee who is authorized to use a City Vehicle, to act as City Representative.

City Vehicle means (i) a Vehicle owned or leased by City, other than a refuse collection vehicle or a Vehicle leased by City for which the lessor is obligated to provide towing; or (ii) a Vehicle being seized by the City pursuant to Fla. Stat. ch. 932, as amended. The term, "City Vehicle," includes Vehicles owned or lease by the City for Department operations ("Police Vehicles") or Fire Department operations ("Fire Vehicles").

City Yards means a City-owned or operated facilities for storing of City Vehicles, including the PD Yard.

Contract Documents means all documents comprising the Contract, including this Scope of Services, the Fee Schedule, the City's Request for Proposals and all Addenda thereto issued before proposals were opened (collectively, the "RFP"), the Towing Company's written proposal in response to the RFP and all documents attached thereto (collectively, the "Proposal"), all attachments attached to or incorporated by reference into the Contract as Exhibits, and any amendments to the Contract approved after the Effective Date.

Contractor or "Towing Company" means the firm under contract with the City

pursuant to this Agreement; and unless the context clearly indicates otherwise includes all owners, officers, members, employees, subsidiaries, and agents of the firm.

Department means City Police Department.

Fee Schedule means the schedule of the maximum fees that Towing Company may charge Vehicle owners for performance of certain towing and related services as referenced herein. The Fee Schedule is attached to the Contract as part of Exhibit B.

Minor Vehicle Servicing means performing jump starting, tire changing, or vehicle lockout services on a City Vehicle.

Non-City Vehicle means any Vehicle other than a City Vehicle.

Trespass Tow means a tow provided by a qualified wrecker service provided in accordance with Chapter 110 of the City Code and Fla. Stat. Section 715.07, as they may hereafter be amended.

PD Yard means the vehicle storage area at City Police Department Headquarters, 129 Valor Boulevard, Daytona Beach 32114, designated by the City Police Chief as the destination site for certain Vehicles towed by Towing Company pursuant to this Contract.

Service Call means a request made by a City Representative for Towing Company to provide one or more services pursuant to this Agreement.

Storage Facility means the site owned by the Towing Company and used by Towing Company to provide secured parking and related services in compliance with this Contract.

Vehicle means a motor vehicle as defined in Fla. Stat. §§ 316.003 and 320.01(a), and a motorized scooter and trailer as defined in Fla. Stat § 316.003. The term, "Vehicle," excludes boats and vessels as described by Florida law.

Wrecker means a tow truck or other heavy vehicle used by Towing Company to provide services required by the Contract, in accordance with this Scope of services.

SECTION 2. SERVICES PERFORMED BY THE TOWING COMPANY

- A. **General Vehicle Towing and Related Services.** When authorized by a City Representative, the Towing Company will provide for the towing and storage of any Vehicle which is towed pursuant to applicable provisions of Florida Statutes or City Code covering the removal and/or impounding of illegally parked or disabled Vehicles, or which is otherwise impounded or required to be moved by or at the direction of a City police officer or other City Representative, from the point of origin to the Towing Company's Storage Facility.

1. *Towing Services for Private Property Owners Excluded.* Services covered by this Paragraph 2.A. **DO NOT** include Trespass Towing as referenced in ch. 110 of the City Code or, or the towing of vehicles from private property as regulated by Fla. Stat. §715.07.
2. *Rights of Private Vehicle Owners.* The Towing Company agrees that the owner or person in possession of any Vehicle, which has been incapacitated, will have the opportunity of contacting a wrecker or tow company of his/her own choice if the disabled Vehicle does not create a hazardous condition and a reasonable response time can be expected. Said person, at the scene of the accident or disabled vehicle, will be given the opportunity of having such Vehicle towed to a location other than the Storage Facility.
3. *Access to Stored Vehicle.* When Towing Company has previously towed a Vehicle as authorized above and stored the Vehicle at the Storage Facility, upon the Department's request Towing Company will provide the Department with prompt and reasonable access to the Vehicle to allow police examination of the Vehicle. This will include, where applicable, towing of the Vehicle from the Storage Facility Site to the PD Yard for such purposes; and in such instance City will pay Towing Company one-half the Base Towing Fee for the Vehicle set forth in the Attachment A for the towing of the Vehicle to and from the PD Yard.
4. *Assistance in Collection of Fees.* Towing Company agrees to assist the City in the collection of any fees imposed by City ordinance for police services in connection with the towing of Vehicles.
5. *Fees for General Vehicle Towing and Related Services.* The services rendered by the owing Company under Paragraph 3.A shall be at no expense to the City, unless the Contract specifically provides otherwise. This shall not prevent the Towing Company from charging the owner of the Vehicle fees for such services, at rates which will not exceed the maximum rates set forth in Attachment A. The City will have no liability in the event the Vehicle owner fails to pay such fees; instead, Towing Company's sole recourse will be salvage rights to the Vehicle and other rights that may exist on the part of a wrecker and/or storage service against a Vehicle owner as provided by City Code or Florida law.

B. City Vehicle Towing/Minor Servicing.

1. When authorized by a City Representative, the Towing Company will provide for the towing and/or Minor Servicing of any disabled City Vehicle (other than City refuse vehicles, and Vehicles leased to the City where the lessor is responsible for towing).

2. *Fees for City Vehicle Towing and Servicing.* Towing Company will be entitled to charge the City certain fees for provision of services with respect to City Vehicles under this Paragraph 3.A, as follows:
 - a. Base Fees. No Base Fee will be payable to Towing Company for towing of Police/Fire Vehicles, or Vehicles being seized under Chapter 932, Fla. Stat. For all other City Vehicles, Towing Company will be entitled to charge the City ½ the Base Fee set forth in Attachment A.
 - b. Mileage-Based Fees. No mileage-based fees, will be due for the towing of any City Vehicle if the point of pickup for a City Vehicle being towed is within City limits or within 10 air miles of the City limits. If the point of pickup is 10 air miles or more from the City limits, Towing Company will be entitled to charge the City the mileage-based fee set forth in Attachment A, from the point of pickup until the City Vehicle being towed is within 10 air miles of the City.
 - c. Fee for Minor Servicing of City Vehicle. Towing Company will be entitled to charge the City the fee set forth in the Fee Schedule for Minor Servicing of City Vehicles.

Except as specifically provided above, Towing Company will provide towing and related services for City Vehicles as described in this Paragraph 2.B., free of charge to the City.

C. Accident Cleanup.

1. The Towing Company will expeditiously respond to all calls from the Department, or other City Representative, for on-scene service at accidents and will immediately remove all obstructions caused by accidents even if actual towing is not required.
2. Where the Towing Company is providing vehicle towing services at the scene of the accident, The Towing Company will perform the accident cleanup at no additional cost. Alternatively, when the Towing Company is providing Accident Cleanup without also providing towing services in accordance with this Agreement, the Towing Company will be entitled to charge the City for the actual time of the removal of the obstruction based on the class of wrecker required, in accordance with the Proposal Form.

D. Examination Assistance. Upon request, the Towing Company will provide the Department with reasonable assistance in the examination of Vehicles stored by the Towing Company. Such assistance will include the availability and use of a wrecker at the Storage Facility for the moving of Vehicles to be examined by the Police.

E. Ancillary Services. Any ancillary service, such as the use of dolly, dropping and hooking up linkage, are to be performed only if required and appropriate. These

services will be provided at no charge to the City.

- F. **Limitation on Charging the City for the Cost of Service.** All services provided by Towing Company pursuant to this Agreement will be at no expense to the City, unless specifically provided otherwise. This will not prevent the Towing Company from charging the owner of the Vehicle for such services according to the rates provided in the Fee Schedule..

SECTION 3. RESPONSE TO SERVICE CALLS

- A. The Towing Company guarantees that the services described herein will be rendered at any and all times, as required by this Agreement, 24 hours a day, 7 days a week, including holidays; and that Towing Company will provide for a sufficient number of qualified Towing Company personnel service calls at any and all times.
- B. The Towing Company guarantees that, for at least 95% of all service calls, Towing Company, including all required wreckers, equipment, and personnel, will be at the requested location within the City limits within 15 minutes from the time that Towing Company receives the service call. Towing Company further guarantees that in the remaining 5% of calls, Towing Company, including all required wreckers, equipment, and personnel will be at the requested location within 30 minutes.
- C. Unless authorized by the Department, flashing amber lights will not be used while responding to a call for service.
- D. Flashing amber lights will be used at the scene and when towing from the scene in accordance with 316.2397(3), Fla. Stat.
- E. When no hold is placed against the Vehicle by the investigating officer, Towing Company will tow to any location that the Vehicle owner requests within the limits of Daytona Beach, or if the Vehicle Owner is not present or is not competent to make such request, to the Storage Facility.
- F. Any ancillary service, such as the use of dolly, dropping and hooking up linkage, are to be performed only if required and appropriate.
- G. Nothing herein will be deemed to prohibit a City Representative from contacting another firm or person for towing or related services if Towing Company materially fails to respond to a Service Call in a timely manner or with sufficient equipment or personnel as required by this Scope of Services; or from recouping the charges owed to such third party firm or person from the performance bond that Towing Company is required to provide pursuant to the Contract.

SECTION 4. WRECKER, EQUIPMENT, AND WRECKER DRIVER/OPERATOR

SPECIFICATIONS

- A. Each tow truck owned or maintained by Towing Company will be commercially manufactured and will conform to the requirements set out herein. The wrecker and equipment will be operable.
- B. The tow truck and equipment will be inspected by the Chief of Police or his or her designee annually.
- C. Towing Company's wreckers, other equipment, and wrecker drivers/operators used for services under this Agreement will at all times meet the following specifications:
 - 1. *Class A Wrecker*
 - a. A truck chassis with manufacturer's rated capacity of at least 10,000 pounds gross vehicle weight rating.
 - b. A complete, commercially manufactured crane and twin winch having a manufacturer's rating of at least 4+ tons for each winch must be mounted on the chassis.
 - c. A minimum of 100' of 3/8-inch cable per winch.
 - d. Cradle, tow plate, or tow sling to pick up Vehicles. The cradle or tow plate is to be equipped with safety chains and so constructed that no further damage will occur when picking up Vehicles.
 - e. Dual rear wheels.
 - f. Equipped with wheel lifts or equivalent.
 - 2. *Class A Car carriers (Roll-back or Slide-back)*
 - a. A truck chassis with a manufacturer's rated capacity of at least 10,000 pounds gross vehicle weight rating, with a minimum 16 foot bed.
 - b. Dual rear wheels.
 - c. One winch with a minimum 4 ton capacity.
 - d. A minimum of 50 feet of 3/8-inch cable.
 - e. A brake lock device.
 - f. A minimum of 4 safety chains and 4 tie down chains, each 10' in length.

- g. Equipped with wheel lifts or equivalent.

3. *Class B Wrecker*

- a. A truck chassis with a manufacturer's rated capacity of at least 18,000 pounds gross vehicle weight rating.
- b. A complete, twin-winch, commercially manufactured crane and winch having a manufacturer's rating of at least 10+ ton capacity mounted on the chassis.
- c. A minimum of 150 ft. of at least 1/2-inch cable.
- d. A cradle, tow plate, or tow sling to pick up Vehicles. The cradle or tow plate or tow sling is to be equipped with safety chains and so constructed that no further damage will occur when picking up Vehicles.
- e. Air brakes so constructed as to lock the rear wheels automatically upon failure and to supply air to disabled Vehicles.
- f. Dual rear wheels.

4. *Class C Wrecker*

- a. A truck chassis with a manufacturer's rated capacity of at least 30,000 pounds gross vehicle weight rating.
- b. A complete, twin-winch, commercially manufactured crane and winch having a manufacturer's rating of at least 25 ton capacity mounted on the chassis.
- c. A minimum of 200' of at least 5/8-inch cable.
- d. A cradle or tow plate or tow sling to pick up Vehicles. The cradle or tow plate or tow sling is to be equipped with safety chains and so constructed that no further damage will occur when picking up Vehicles.
- e. Air brakes so constructed as to lock the rear wheels automatically upon failure and to supply air to disabled Vehicles.
- f. Dual rear wheels.

5. *Class D Wrecker*

- a. A truck chassis with a manufacturer's rated capacity of at least 58,000 pounds gross vehicle-weight rating.
- b. A complete, twin-winch, commercially manufactured crane and winch having a manufacturer's rating of at least 35+ ton capacity mounted on the chassis.
- c. Equipped with an under-reach with a 45,000 pound retracted capacity and 15,000 pound extended capacity.
- d. A minimum of 250' of at least 3/4-inch cable.
- e. A cradle or tow plate or tow sling to pick up Vehicles. The cradle or tow plate or tow slings to be equipped with safety chains and so constructed that no further damage will occur when picking up Vehicles.
- f. Air brakes so constructed as to lock the rear wheels automatically upon failure and to supply air to disabled Vehicles.
- g. Dual rear axles.

6. *Equipment Requirements*

- a. The name, address and telephone number of the Operator must be professionally lettered and painted in a conspicuous place on both sides of the truck as required by 713.78(6) F.S. Magnetic or removable signs or placards will not meet this requirement.
- b. The operator will have nothing on Vehicles, buildings or correspondence that implies any official relationship between the operator and Department or City.
- c. Wreckers will be properly equipped with clearance and marker lights and all other equipment as required by Florida Statutes.
- d. There will be a rotor beam or strobe light, amber in color, mounted on the wrecker in such a manner that it can be seen from the front, rear, and both sides.
- e. Dollies, except Class C and D.
- f. At least one heavy duty push broom with a minimum width of 24".
- g. Flood lights on the hoist (Car carriers will mount on the top of the front

of the bed).

- h. One square shovel.
- i. One axe.
- j. One crowbar or pry bar with a minimum length of 30 inches.
- k. Minimum of one 5-pound CO2 or dry chemical fire extinguisher or equivalent. The extinguisher must be of an approved type and have a current inspection tag attached.
- l. One pair of bolt cutters with a minimum 1/2 inch opening.
- m. One set of jumper cables.
- n. One four-way lug wrench.
- o. One flashlight.
- p. One set of red reflectors.
- q. Five 30-minute flares.
- r. One snatch block for each winch, manufacturers rating to match winch, except car carrier.
- s. One set of scotch blocks for wheels or hydraulic rear extendible scotch blocks (Class B, C, and D only).
- t. External air hookup and hoses (Class B, C, and D only).
- u. Extra towing chain - six to eight feet with hooks.
- v. At least six safety cones or 3 triangle reflectors.
- w. Fifty pounds of sand or equivalent.

7. *Wrecker Drivers/Operators*

- a. All operators are required to have a valid Florida CDL license in their possession at all times.
- b. Wrecker operators are required to comply and be familiar with the Florida Uniform Traffic Control Law, Chapter 316, Florida Statutes.

- c. Wrecker drivers properly at the scene of an accident will remove only the Vehicle involved at the direction of the Investigating officer.
- d. Wrecker drivers will sweep glass from the roadway and remove all debris or hazards from the scene as required by the agreement.
- e. The wrecker operator will be thoroughly familiar with the wrecker he is operating.
- f. The Towing Company will be responsible for any damage to a Vehicle caused by the wrecker operator/driver.

SECTION 5. STORAGE FACILITY

A. The Towing Company will maintain a storage garage and/or outside storage facility ("Storage Facility") complying with applicable building and zoning regulations. Such Storage Facility will:

- 1. Contain a minimum of 250 spaces in an area, which is completely enclosed via fence or wall of at least 6 feet in height. The fence or wall shall have barriers at the top to discourage access. If a fence is selected, it will include opaque material to screen the inside the Storage Facility from view. The spaces will all be located within a single compound. The Storage Facility will have other features such as lighting or camera system to ensure the security of the environment, as approved by the Police Chief.
- 2. Have available a minimum of 4 spaces inside a building for the storing of Vehicles which require police processing. These spaces will be maintained to provide protection from the weather and security to preserve chain of custody for Vehicles, which require police processing.
- 3. Be located in the City of Daytona Beach.

B. The Towing Company will have an employee on duty at said storage facility 24 hours a day, 7 days a week, including holidays.

Said Storage Facility will be subject to inspection and will be approved by the City prior to the award of any Agreement. Storage facilities will be subject to periodic inspections at any time by the Chief of Police or his designee when deemed necessary by the City to ensure compliance with this Agreement.

C. Notice of any discrepancies or deficiencies in Agreement compliance found by the City will be submitted to the Towing Company in writing, and the Towing Company will promptly remedy the same. Vehicles, which have been marked "HOLD" for forfeiture purposes by the Police Department, will be held at the Storage Facility, unless indicated otherwise, at no charge for storage to the City. If the City takes

legal ownership of the Vehicle after forfeiture the City will pay the Towing Company a flat rate of \$150.00 for the initial tow and transfer to City Yards. If the Vehicle is released back to the owner as part of a negotiated settlement the owner will pay the tow bill, which may include storage charges set forth in the Fee Schedule, for no more than 5 business days, or 8 total days including holidays and weekends at the Storage Facility prior to the City releasing the Vehicle.

Vehicles towed for criminal investigative purposes for the processing of evidence where the Vehicle is the property of a victim or other person who is not a suspect or defendant in the criminal investigation will be billed as follows: The City will be responsible for the tow bill only of any Vehicle held for investigative purposes. These rates will be billed at one half the normal rate.

The total towing and storage bill for Vehicles towed for criminal investigative or evidence purposes will be paid by the vehicle owner (if not victim, suspect, or defendant in a criminal investigation) and will not exceed the following:

\$200.00 for Class A or Class B Vehicles

\$300.00 for Class C Vehicles

\$400.00 for Class D Vehicles

Personnel of the Police Department will be permitted access to such Vehicles at any time. All Vehicles stored in enclosed areas will be secured from access by unauthorized persons. The Towing Company will take reasonable steps to protect all stored Vehicles and their contents from theft and damage. At such time the City releases the "HOLD", storage fees may begin to accrue against the owner of the Vehicle at the rates set forth in the Fee Schedule.

SECTION 6. ADDITIONAL REQUIREMENTS REGARDING WRECKER EQUIPMENT AND WRECKER COMPANY PERSONNEL

- E. The Towing Company will, during the term of this Agreement, own or lease a minimum of 6 wreckers to provide the services called for by this Agreement. The wreckers must include: 1 Class "A" wrecker with 4-wheel drive; 1 Class "B" wrecker; 1 Class "D" wrecker; and 3 car carriers. The wreckers of the Towing Company will meet the requirements and specifications established and set forth in this Agreement.
- F. As an inducement for City to enter into this Agreement, Towing Company warrants each of the following:
 - 1. The Towing Company will not hire or retain any employee, permanently or temporarily, who has been convicted of the offense of driving under the influence of alcohol or any controlled substance chemical substance to the extent that normal faculties are impaired or driving with a unlawful blood alcohol level, or of any criminal traffic offense, within the last 5 years.

2. The Towing Company will comply with all the requirements for a drug free workplace certification 287.087 F.S.

SECTION 7. RADIO COMMUNICATIONS

The City will issue radios to the Towing Company for communication with the Police Department. The City will be responsible for maintaining the radios while the Agreement is in force. The Towing Company agrees to pay for repairs or replacement of radios when damage or loss is due to the abuse or neglect of the Towing Company.

SECTION 8. VEHICLE OWNER'S RIGHTS

The Towing Company agrees that the owner or person in possession of any Vehicle, which has been incapacitated, will have the opportunity of contacting a wrecker or tow company of his/her own choice if the disabled Vehicle does not create a hazardous condition and a reasonable response time can be expected. Said person, at the accident or place of incapacity, will be given the opportunity of having such Vehicle towed to a location other than the storage facility of the Towing Company.

SECTION 9. FEES CHARGED TO VEHICLE OWNERS; SALVAGE RIGHTS

- A. Subject to the terms and conditions stated herein, the Towing Company may charge the owner of a non-City Vehicle being towed or stored pursuant to this Agreement, the fees listed in the Fee Schedule. No other fees may be charged.
- B. The City will not be liable in the event of nonpayment by the owner of the non-City Vehicle being towed. However, whenever Towing Company tows a privately-owned Vehicle at the request of the Department (except for Vehicles being seized by the City pursuant to Chapter 932, Fla. Stat.), City will agree to surrender all salvage rights and to retain no liens on such Vehicle.

SECTION 10. FEE CHARGES TO THE CITY

Towing Company will not charge the City or be entitled to collect compensation from the CITY for any services rendered by Towing Company under this Agreement except as specifically provided in this Agreement.

SECTION 11. PROHIBITED CHARGES

The services called for in Section 2 of this Agreement will be provided at no cost to the owner of the towed Vehicle whenever the City determines that the Vehicle was towed in error at the request of the City, nor will the City in such a case, be responsible for payment of a tow charge or storage costs.

Towing Company will not be entitled to fees or charges in addition to or beyond those

maximum fees and charges set forth in the Fee Schedule. For example, Towing Company will not charge such Vehicle owners/operators any type of surcharge based on Towing Company's obligation to pay the Franchise Fee referenced in the Agreement.

SECTION 12. BENEFITS FROM REPAIRS

The Towing Company will not benefit directly or indirectly, without the express written consent of the owner of the Vehicle, or the owner's designated representative, from any Vehicle repair or painting with respect to Vehicles towed and/or stored by the Towing Company under the terms and provisions of any agreement between the City and the Towing Company. Any such agreement between the Towing Company and the owner, or between the Towing Company and a repair facility will state the repairs/painting to be done as well as the price and terms of payment therefore.

SECTION 13. LIABILITY OF TOWING COMPANY

The liability of the Towing Company for any towed Vehicle and all property contained therein will commence at the time a wrecker is hooked to any Vehicle to be towed. The Towing Company or its employee, representative, or agent will inventory all personal property contained in the Vehicle to be towed or endorse the inventory sheet(s) prepared by the police officer in charge.

SECTION 14. PERSONAL PROPERTY IN VEHICLES

To the extent provided by law, the Towing Company will be accountable and liable for damage or loss of all personal property in the Vehicles towed and for all Vehicle accessories. Personal property situated in a Vehicle stored by the Towing Company will not be disposed of to defray any charges for storage or towing of the Vehicle, except as provided by law. All such personal property must be returned at once, unless directed otherwise by the City, to the owner or person entitled to legal possession thereof upon proper proof of ownership or right to possession thereof upon proper proof of ownership or right to possession, as provided by law. The Towing Company will make the determination of the owner or person entitled to legal possession. Should the Towing Company release any personal property, the owner or person entitled to possession thereof will receipt the Towing Company for the same.

SECTION 15. RELEASE OF THE VEHICLE

The Towing Company agrees to release any Vehicle, which has not been marked "HOLD" to the proper owner, or person entitled to possession of the Vehicle. Any Vehicle, which has been marked "HOLD" by the Department, cannot be released without prior authority from the Department. The Towing Company will require proper proof of ownership or right to possession before releasing a Vehicle, and the Towing Company will be given a receipt for the Vehicle. The Towing Company will deliver to the Department on a regular basis as decided by the Police Records Supervisor a report of all Vehicles released.

SECTION 16. POSTING CHARGES

The Towing Company will prominently post a sign at the Storage Facility in such a manner that it is conspicuous to the public with one-inch black lettering on a white background, which lists the charges to be imposed upon persons whose Vehicles are towed pursuant to this Agreement. As to such persons, the Towing Company will not impose any charges that exceed the amounts listed in Attachment A, or as to trespass tows provided pursuant to chapter 110, City Code, the fees established in or pursuant to that chapter.

SECTION 17. ITEMIZED STATEMENTS

Should any owner or person entitled to possession of a towed and/or stored Vehicle seek to reclaim the same from the Towing Company, the Towing Company will provide such owner or such person offering title to possession with an itemized statement of all charges relating to the towing and storage of such Vehicle.

SECTION 18. RECORDS, BOOKS AND PAYMENT

- A. The City reserves the right, during normal business hours, to inspect and audit the Towing Company records pertaining to service provided under this Agreement. All records must be maintained at the Storage Location, or with the City Manager's approval other location within or near the City limits.
- B. Towing Company will submit copies of all Towing Company paid invoices for services provided each month as a result of this Agreement with the monthly invoice to the City, if requested by the City's Chief Financial Officer. Such invoices may be in the form of electronic document or spreadsheet.
- C. The Towing Company will maintain for one year, following the towing of any Vehicle towed under authority of a City Representative, the following records of such tow:
 1. Where the Vehicle was towed from; the date towed; the driver who towed the Vehicle; where it was towed to; a complete description of the Vehicle; the name and address of the registered owner; the disposition of the Vehicle; the date the Vehicle was released or disposed of; and all correspondence sent or received concerning said Vehicle.
 2. The Towing Company will be required to submit a list of all Vehicles towed under authority of the Department to the Records Section of the Department on a regular basis as approved by the Department's Information Resources Manager, describing each Vehicle by Make, Year, Model, VIN and Tag Number.
 3. The records will be submitted utilizing the following procedures:

- a. The Company will computerize its record keeping procedures. The computer will be of the type commonly called 100% IBM PC Compatible.
 - b. The program used to store and retrieve records from the company's computer will be approved by the Department.
 - c. The records submitted to the Department will be in an Excel Spreadsheet and will be approved by the Department.
- D. The Towing Company will provide Fax machines, as approved by the Department, capable of transmitting documents between the Department and the Towing Company.

SECTION 19. RIGHT TO CANCEL SERVICE CALL

The City will have the right to cancel a request for Towing Company services until the time the wrecker arrives on the scene, and there will be no charge to the City or the Vehicle operator/owner. When a wrecker is to be canceled, it must be canceled over the police radio prior to the wrecker's arrival on the scene. The term "arrives on the scene" is construed to mean that the responding wrecker has arrived within the close physical proximity of the Vehicle to be towed and the wrecker has stopped in preparation to perform the towing service. The Towing Company may charge a service charge of no more than \$50 to release the Vehicle at the scene.

ATTACHMENT A
ORDINANCE 110-38: TOWING RATE STRUCTURE FOR CITY OF DAYTONA BEACH

- (a) The maximum rates for a trespass/nonconsensual tow of a vehicle or for the storage of a towed vehicle when the point of origin of the tow is within the city limits shall be as follows:
- (1) Class A vehicles.
 - a. Towing of vehicles with a gross vehicle weight rating of up to and including 9,999 pounds ... \$125
 - b. Maximum daily storage, after 12 hours ... \$30.00
 - (2) Class B vehicles.
 - a. Towing of vehicles with a gross vehicle weight rating of more than 9,999 pounds and up to and including 19,500 ... \$250.00
 - b. Maximum daily storage, after 12 hours ... \$35.00
 - (3) Class C vehicles.
 - a. Towing of vehicles with a gross vehicle weight of more than 19,500 pounds but less than 25,000 GVWR, which are upright and in a towable condition ... \$375.00
 - b. Maximum daily storage, after 12 hours ... \$60.00
 - (4) Towing of vehicles with a GVWR of over 25,000 pounds, which are upright and in a towable condition ... \$500.00
- Maximum daily storage, after 12 hours\ \$60.00
- (b) Every maximum rate established in subsection (a) of this section shall be a flat fee which shall be all-inclusive, and, by way of illustration, no additional charges shall be made for the following:
- (1) Any fees for special equipment or services such as double hookup, vehicle entry when locked, dropping transmission linkage, axle or drive shaft removal, dollies, trailer or flat bed, lifts, slim jims, go jacks, removing bumpers, airing up brakes, and mileage.
 - (2) Time spent at the scene of the tow.
 - (3) Release fees during normal business hours (Monday through Friday, 8:00 a.m. to 6:00 p.m.)
 - (4) Storage for the first 12 hours.
- (c) No other fees of whatever kind may be charged for services rendered during the first 12 hours that the vehicle is in the possession of the wrecker, beginning from the time the vehicle is delivered to the storage facility, except as specifically provided in this section. Storage fees as set forth in this section may be assessed after the initial 12-hour period based on 24-hour increments and not on calendar days. An administrative fee not to exceed \$35.00 may be charged after the first 48 hours so long as the wrecker has actually complied with the requirements of F.S. § 713.78, including execution and mailing of the lien notice.
- (d) Prior to commencement of a tow, if a wrecker is hooked to a vehicle when the owner arrives, a hookup fee not to exceed \$25.00 may be charged. For purposes of this section, a tow commences when a vehicle has been removed from the tow site and is en route to a storage site.
- (e) No fee shall be charged by a wrecker to an owner who arrives at such owner's vehicle prior to hookup of the vehicle.
- (f) An after-hours (Monday through Friday, 6:00 p.m. to 8:00 a.m. and Saturday and Sunday) release fee not to exceed \$25.00 may be charged.

(g) The maximum fees set forth in this section may be changed from time to time by a resolution adopted by the city commission.

**TOWING SERVICES CONTRACT
CONTRACT NO. 19321**

THE PARTIES TO THIS CONTRACT are the City of Daytona Beach, a Florida municipal corporation (the "CITY"), and _____ ("CONTRACTOR").

In consideration of the mutual covenants herein contained, the Parties agree as follows:

Section 1. Scope of services; Exclusive Provider. CONTRACTOR will provide Vehicle towing, storage, and related services to the CITY as further described in Exhibit A, attached hereto and incorporated herein by reference. As referenced in Exhibit A, CONTRACTOR will be the exclusive provider of such services so long as CONTRACTOR is not in breach of this Contract.

Section 2. Contract Term; Renewal. The Initial Term of this Contract will be 5 years, commencing on the Effective Date. The CITY will have the option to renew this Contract for 2 additional Terms of 5 years, by providing CONTRACTOR written notice. Such notice must be provided at least 30 days prior to the end of the Initial Term, unless CONTRACTOR waives this requirement.

Section 3. Franchise Fee. In consideration of being granted the exclusive right to provide towing and related services to the CITY as described herein, CONTRACTOR agrees to pay the CITY an annual Franchise Fee of \$_____. The Franchise Fee will be paid in 12 equal monthly installments, without need for invoicing by the CITY, on or before the beginning of each calendar month; provided, however, that the initial monthly installment will be paid within 10 days after the Effective Date. Any portion of an installment of the Franchise Fee not paid when due will be subject to a Late Fee of 10% of the amount unpaid. In the event that a delinquent payment of a Franchise Fee installment and resulting Late Fees due, any payments received will first be applied to the Late Fee amount, prior to being applied to the regular installment due.

Section 4. CONTRACTOR's Compensation.

(a) Except where specifically provided in the scope, CITY will have no obligation to pay CONTRACTOR for work performed by CONTRACTOR under this Contract. Instead, CONTRACTOR will have the right to charge and collect from private owners of Vehicles towed or serviced by CONTRACTOR under this Contract, certain fees and charges in amounts up to the maximum amounts set forth in the Fee Schedule, attached hereto and incorporated herein as Exhibit B to this Contract. CITY will have no liability to CONTRACTOR in the event that such private owner does not pay the fee charged. Instead, CONTRACTOR will have such lien and salvage rights as are provided by or under the Agreement, or pursuant to applicable provisions of the City Code or Florida law.

(b) As to those fees and charges that the CITY specifically agrees to pay to CONTRACTOR in Exhibit A, no payment will be due for services performed until CONTRACTOR submits a proper invoice. CONTRACTOR may invoice the CITY no more frequently than monthly, and no sooner than 30 days after the Effective Date.

(c) The CITY will pay based on the fees and charges provided for in the Exhibits, provided that such work is reflected on CONTRACTOR's invoice.

(d) In order to be considered proper, the invoice must include all information and documentation that the CITY may need to verify the accuracy of the invoice and the amount of payment due based on the specific requirements of this Contract, and must be accompanied by any reports required by this Contract.

(e) The CITY will within 30 days after receipt of an invoice notify the CONTRACTOR that the invoice is improper, or pay CONTRACTOR the amount due.

Section 5. Standard of Performance. CONTRACTOR's services will at a minimum meet the level care and skill ordinarily used by members of CONTRACTOR's profession performing the type of services provided herein within the State of Florida.

Section 6. Relationship between Parties. This Contract does not create an employee-employer relationship between the CITY and CONTRACTOR. CONTRACTOR is an independent contractor of the CITY and will be in control of the means and the method in which the requested work is performed. As an independent contractor, CONTRACTOR will be solely responsible for payment of all federal, state and local income tax, and self-employment taxes, arising from this Contract; and CONTRACTOR agrees to indemnify and hold harmless the CITY from any obligations relating to such taxes. The CITY will not make deductions from payments due, for such taxes, or for social security, unemployment insurance, worker's compensation, or other employment or payroll taxes. CONTRACTOR will also be responsible for the performance of CONTRACTOR's subcontractors.

CONTRACTOR will not hold itself out as representing the CITY in any matter arising under this Contract.

Section 7. Documents. All reports, estimates, logs, original drawings, and other materials furnished, prepared or executed by CONTRACTOR during the term of and in accordance with the provisions of this Contract will be the property of the CITY and delivered to the CITY upon demand or, if no demand has previously been made, upon completion of the particular task for which such materials were prepared, executed, or otherwise required, or upon termination or expiration of this Contract.

Section 8. Public Records.

(a) To the extent applicable, CONTRACTOR will comply with the requirements of Florida's Public Records Law, ch. 119, Fla. Stat., which include the following:

(1) Keeping and maintaining public records that the CITY requires for performance of the service provided herein.

(2) Upon the request of the City Clerk of the CITY, (i) providing the City Clerk with a copy of requested public records or (ii) allowing inspection or copying of the records, within a reasonable time after receipt of the City Clerk's request, at a cost that does not exceed the cost provided in Ch. 119, Florida Statutes, or as otherwise provided by law.

(3) Ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law until completion of this Contract, and following such completion if CONTRACTOR fails to transfer such records to the CITY.

(4) Upon completion of this Contract, keep and maintain public records required by the CITY to perform the service. CONTRACTOR will meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY upon request from the City Clerk, in a format that is compatible with the CITY's information technology systems.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTRACTOR MUST CONTACT THE CITY CLERK, WHOSE CONTACT INFORMATION IS AS FOLLOWS:

(Phone)	386 671-8023
(Email)	clerk@codb.us

(Address) 301 S. Ridgewood Avenue
Daytona Beach, FL 32114

Section 9. Termination of Contract.

(a) The CITY may by written notice to CONTRACTOR terminate this Contract, in whole or in part, at any time, either for the CITY's convenience or because of the failure of the CONTRACTOR to fulfill its contractual obligations.

(1) Before terminating for convenience, CITY must provide CONTRACTOR at least 90 day's advance notice of termination. This Contract will terminate automatically and without need for further notice upon the expiration of the notice period.

(2) Except as provided in Section 9(a)(3), before terminating due to CONTRACTOR's material breach of its contractual obligations, CITY must provide CONTRACTOR prior written notice, specifying the breach and demanding; and in such instance, CONTRACTOR must remedy the breach:

- (i) Within 7 days of receipt of such notice, where the breach consists of CONTRACTOR's material failure to maintain and operate the Storage Facility in strict accordance with the requirements of Exhibit A.
- (ii) In all other instances covered by this Section 9(a)(2), within 10 days of receipt of CITY's notice, or within such longer period as may be reasonably required if the nature of the breach is that it cannot be remedied within 10 days of receipt of such notice.

This Contract will terminate automatically and without need for further notice if CONTRACTOR fails to remedy the material breach within the period described in the CITY's notice of breach.

(3) The CITY may terminate this Contract upon CONTRACTOR's breach without providing CONTRACTOR an opportunity to remedy the breach as referenced immediately above, if CONTRACTOR, or CONTRACTOR's owners, officers, employees, or agents, in connection with the services or rights provided herein: (i) commit a criminal act in relation to the services provided herein; (ii) willfully engage in activity that poses a material risk of injury to persons or damage to property; or (iii) engage in any misleading, dishonest, or illegal practices. Termination will be effective immediately upon providing CONTRACTOR written notice.

(b) If the termination is for convenience, CONTRACTOR will be paid compensation for authorized services performed to the date of termination. If termination is due to CONTRACTOR's material breach, the CITY reserves all rights and remedies it may have under law due to such breach. Among other things, the CITY may take over the work and prosecute the same to completion by other agreements or otherwise; and in such case, the CONTRACTOR will be liable to the CITY for all reasonable additional costs occasioned to the CITY thereby.

(c) If after notice of termination for the CONTRACTOR's failure to fulfill contractual obligations it is judicially determined by a court of law that the CONTRACTOR had not so failed, the termination will be conclusively deemed to have been effected for the CITY's convenience. In such event, adjustment in payment to CONTRACTOR will be made as provided in Section 9(b) for a termination for convenience.

(d) The rights and remedies of CITY provided for in this Section are in addition and supplemental to any and all other rights and remedies provided by law or under this Contract.

Section 10. Suspension of Services. The CITY may suspend CONTRACTOR's services if the notice of material breach provided pursuant to Section 9(a)(2) so directs. The CITY may also suspend

CONTRACTOR's services in lieu of termination, under the conditions set forth in Section 10(a)(3), by providing CONTRACTOR written notice of suspension. CONTRACTOR will suspend activities immediately upon receipt thereof; and in such instance CONTRACTOR's rights to provide services referenced herein will also automatically be suspended for the period of such suspension.

Section 11. Indemnification. CONTRACTOR will indemnify and hold harmless the CITY, including the CITY's officers, employees, and agents, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of CONTRACTOR, or CONTRACTOR's officers, employees, or agents, including subcontractors and other persons employed or used by CONTRACTOR in the performance of this Contract. This indemnification Contract is separate and apart from, and in no way limited by, any insurance provided pursuant to this Contract or otherwise.

Section 12. Insurance. CONTRACTOR will provide and maintain at CONTRACTOR's own expense, insurance of the kinds of coverage and in the amounts set forth in this Section. All such insurance will be primary and non-contributory with the CITY's own insurance. In the event any request for the performance of services presents exposures to the CITY not covered by the requirements set forth below, the CITY reserves the right to add insurance requirements that will cover such an exposure.

(a) **Coverage and Amounts.**

(1) **Workers Compensation Insurance** as required by Florida Statutes, Chapter 440, Workers' Compensation Insurance, for all employees of CONTRACTOR, employed at the site of the service or in any way connected with the work, which is the subject of this service. The insurance required by this provision will comply fully with the Florida Workers' Compensation Law and include Employers' Liability Insurance with limits of not less than \$500,000 per occurrence. Any associated or subsidiary company involved in the service must be named in the Workers' Compensation coverage. If CONTRACTOR wishes to claim an exemption from worker's compensation insurance requirements, CONTRACTOR will notify the Risk Manager in writing on CONTRACTOR's official letterhead.

(2) **Liability Insurance**, including (i) **Commercial General Liability coverage** for operations, independent contractors, products-completed operations, broad form property damage, and personal injury on an "occurrence" basis insuring CONTRACTOR and any other interests, including but not limited to any associated or subsidiary companies involved in the work; (ii) **Automobile Liability Insurance**, which will insure claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the CONTRACTOR in the performance of this Contract; and (iii) Garage Keepers Legal Liability Insurance (including as applicable hook/cargo endorsement), in an amount reasonably sufficient to protect the owners of any and all Vehicles towed or stored by CONTRACTOR pursuant to this Agreement, from loss or damages to such Vehicle on account of such removal or storage. The insurance may be provided with a deductible in an amount deemed acceptable to the Risk Manager.

THE COMMERCIAL GENERAL LIABILITY INSURANCE POLICY WILL NAME THE CITY AS AN ADDITIONAL INSURED. CONTRACTOR'S Commercial General Liability insurance policy shall provide coverage to CONTRACTOR, and CITY when required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) without the attachment of any endorsements excluding or limiting coverage for Products/Completed Operations, Independent Contractors, Property of CITY in Contractor's Care, Custody or Control or Property of CITY on which contracted operations are being performed, Explosion, Collapse or Underground hazards (XCU Coverage, Contractual Liability or Separation of Insureds). When CITY is added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent shall be used to provide such Additional Insured status.

The limit of liability for each policy will be a combined single limit for bodily injury and property damage of no less than \$1,000,000 per occurrence. If insurance is provided with a general

aggregate, then the aggregate will be in an amount of no less than \$2,000,000. The Risk Manager may authorize lower liability limits for the automobile policy only, at the Risk Manager's sole discretion.

Unless specifically waived hereafter in writing by the Risk Manager, CONTRACTOR agrees that the Insurer will waive its rights of subrogation, if any, against the CITY on each of the types of required insurance coverage listed above.

(b) **Proof of Insurance.** CONTRACTOR will furnish proof of insurance acceptable to the CITY prior to or at the time of execution of this Contract. CONTRACTOR will not commence work until all proof of such insurance has been filed with and approved by the CITY. CONTRACTOR will furnish evidence of all required insurance in the form of certificates of insurance which will clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, and the expiration dates.

If requested by the CITY, CONTRACTOR will furnish copies of the insurance contracts to support the certificates of insurance and the copies of said insurance must be acceptable to the CITY.

(c) **Cancellation; Replacement Required.** CONTRACTOR will file replacement certificates 30 days prior to expiration or termination of the required insurance occurring prior to the acceptance of the work by the CITY. If a required policy is canceled without CONTRACTOR's prior knowledge CONTRACTOR will immediately notify the CITY immediately upon becoming aware that a required insurance coverage has been canceled for any reason, and promptly replace the canceled policy. The CITY expressly reserves the right to replace the canceled policy at CONTRACTOR's expense if CONTRACTOR fails to do so.

(d) **Termination of Insurance.** CONTRACTOR may not cancel the insurance required by this Contract until the work is completed, accepted by the CITY and CONTRACTOR has received written notification from the Risk Manager that CONTRACTOR may cancel the insurance required by this Contract and the date upon which the insurance may be canceled. The Risk Management Division of the CITY will provide such written notification at the request of CONTRACTOR if the request is made no earlier than two weeks before the work is to be completed.

(e) **Liabilities Unaffected.** CONTRACTOR's liabilities under this Contract will survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverages. Similarly, CONTRACTOR's liabilities under this Contract will not be limited to the extent of the existence of any exclusions or limitations in insurance coverages, or by CONTRACTOR's failure to obtain insurance coverage.

CONTRACTOR will not be relieved from responsibility to provide required insurance by any failure of the CITY to demand such coverage, or by CITY's approval of a policy submitted by CONTRACTOR that does not meet the requirements of this Contract.

(f) **Risk Manager.** All references to the Risk Manager will be deemed to include the Risk Manager's designee.

Section 14. Bonds. Prior to the Effective Date, CONTRACTOR will post a cash or surety performance bond with the CITY, in the amount of \$5,000.00 or the equivalent of one month's installment of the Franchise Fee, whichever is greater, to be used by the CITY in either of the following events:

(a) If the Towing Company fails to provide services required by this Agreement, for the purpose of defraying costs incurred by the City in making alternative arrangements for such services. The CITY's application of the bond as authorized by this Paragraph will not be deemed to waive the CITY's rights to terminate this Contract or suspend CONTRACTOR's performance.

(b) If the CITY, after terminating this Agreement due to CONTRACTOR's material breach of this Agreement, for the purpose of defraying CITY's cost of acquiring a replacement service provider. Agreement.

If the CITY draws on the bond as referenced in Paragraph 14(a) above, the CITY may by notice require CONTRACTOR to replenish the bond so as to provide the full amount required above. CONTRACTOR will replenish the bond within 10 business days of receipt of such notice.

Section 15. Notice. Unless otherwise expressly agreed herein, all notices, requests, and demands to or upon the Parties will be delivered by hand, delivered by a courier service, provided to a nationally recognized delivery service for overnight delivery, >~~[delete the following yellow-highlighted clause if no fax is provided]~~ transmitted to a receiving fax machine followed by hard copy within two days, or by U.S. mail, postage prepaid by registered or certified mail, return receipt requested, to the addresses set forth herein:

To the CITY:
Attn: Craig Capri, Police Chief
City of Daytona Beach Police Department
129 Valor Blvd
Daytona Beach, FL 32114

To CONTRACTOR:
>

provided, however, that either Party may change the person or address designated for receipt of the Party's notices, by providing written notice to the other Party.

Section 16. Personnel. CONTRACTOR represents that CONTRACTOR has or will secure at CONTRACTOR's own expense, all personnel required in performing the services under this Contract. Such personnel will not be employees of or have any contractual relationship with the CITY.

All personnel engaged in the work will be fully qualified and will be authorized under state and local law to perform such services.

Section 17. CITY's Responsibilities. The CITY agrees to make available for review and use by the CONTRACTOR, reports, studies, and data relating to the services required. The CITY will establish a project manager to meet periodically with the CONTRACTOR to facilitate coordination and ensure expeditious review of work product.

Section 18. Limitation on Waivers. Neither the CITY's review, approval, or acceptance of, or payment for, any of the services provided by CONTRACTOR, will be construed to operate as a waiver of the CITY's rights under this Contract. CONTRACTOR will be and always remain liable to the CITY in accordance with applicable law for any and all damages to the CITY caused by the CONTRACTOR's negligent or wrongful provision of any of the services furnished under this Contract.

Failure of the CITY to exercise any right or option arising out of a breach of this Contract will not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach. Furthermore, the failure of the CITY at any time to insist upon strict performance of any condition, promise, Contract or understanding set forth herein will not be construed as a waiver or relinquishment of the CITY's right to insist upon strict performance of the same condition, promise, Contract or understanding at a future time.

Section 19. Dispute Resolution. If a dispute exists concerning this Contract, the Parties agree to use the following procedure prior to pursuing any judicial remedies.

(a) **Negotiations.** A Party will request in writing that a meeting be held between representatives of each Party within 14 calendar days of the request or such later date that the Parties may agree to. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization. The purpose of this meeting is to negotiate in the matters constituting the dispute in good faith. The Parties may mutually agree in writing to waive this step and proceed directly to mediation as described below.

(b) **Non-Binding Mediation.** Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. Within 30 days after the procedure described in Subsection (a) proves unsuccessful or the Parties mutually waive the subsection (a) procedure, the Parties will submit to a non-binding mediation. The mediation, at a minimum, will provide for (i) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, (ii) a meeting of all Parties for the exchange of points of view and (iii) separate meetings between the mediator and each Party to the dispute for the formulation of resolution alternatives. The Parties will select a mediator trained in mediation skills and certified to mediate by the Florida Bar, to assist with resolution of the dispute. The Parties will act in good faith in the selection of the mediator and give consideration to qualified individuals nominated to act as mediator. Nothing in this Contract prevents the Parties from relying on the skills of a person who also is trained in the subject matter of the dispute or a contract interpretation expert. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization.

If the Parties fail to reach a resolution of the dispute through mediation, then **the Parties are** released to pursue any judicial remedies available to them.

Section 20. General Terms and Conditions.

(a) **Amendments.** Except as otherwise provided herein, no change or modification of this Contract will be valid unless the same is in writing and signed by both Parties.

(b) **Assignments and Subcontracting.** No assignment or subcontracting will be permitted without the CITY's written approval.

(c) **Compliance with Laws and Regulations.** In providing all services pursuant to this Contract, CONTRACTOR will aProposale by all statutes, ordinances, rules, and regulations pertaining to, or regulating the provisions of, such services including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations will constitute a material breach of this Contract and will entitle the CITY to terminate this Contract immediately upon delivery of written notice of termination to the CONTRACTOR.

(d) **Truth in Negotiations Certificate.** CONTRACTOR hereby certifies that the wages and other factual unit costs supporting the compensation herein are accurate, complete, and current at the time of this Contract.

(e) **No Third Party Beneficiaries.** There are no third-party beneficiaries of CONTRACTOR's services under this Contract.

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

(g) **Nondiscrimination.** CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their sex, race, creed, color, or national origin. Further, CONTRACTOR agrees to comply with all local, state, and federal laws and ordinances regarding discrimination in employment against any individual on the basis of race, color, religion, sex, national origin, physical or mental impairment, or age. In particular, CONTRACTOR agrees to comply with the provisions of Title 7 of the Civil Rights Act of 1964, as amended, and applicable executive orders including, but not limited to, Executive Order No. 11246.

(h) **Principles in Construing Contract.** This Contract will be governed by and construed in accordance with the laws of the State of Florida. Captions and paragraph headings used herein are for convenience only, are not a part of this Contract and will not be deemed to limit or alter any provisions hereof or to be relevant in construing this Contract. The use of any gender herein will be deemed to be or include the other genders, and the use of the singular herein will be deemed to be or include the plural (and vice versa), wherever appropriate. If any word, phrase, clause, sentence or provision of the Contract, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding will only effect such word, phrase, clause, sentence or provision, and such finding will not affect the remaining portions of this Contract; this being the intent of the Parties in entering into the Contract; and all provisions of the Contract are declared to be severable for this purpose.

(i) **Venue.** The exclusive venue for any litigation arising out of this Contract will be Volusia County, Florida if in state court, or the U.S. District Court, Middle District of Florida if in federal court.

(j) **Litigation Costs.** Except where specifically provided herein, in case of litigation between the Parties concerning this Contract, each party will bear all of its litigation costs, including attorney's fees.

(k) **Force Majeure.** A force majeure event is an act of God or of the public enemy, riots, civil commotion, war, acts of government or government immobility (whether federal, state, or local) fire, flood, epidemic, quarantine restriction, strike, freight embargo, or unusually severe weather; provided, however, that no event or occurrence will be deemed to be a force majeure event unless the failure to perform is beyond the control and without any fault or negligence of the Party charged with performing or that Party's officers, employees, or agents. Whenever this Contract imposes a deadline for performing upon a Party, the deadline will be extended by one day for each day that a Force Majeure event prevents the Party from performing; provided, however, that the Party charged with performing and claiming delay due to a Force Majeure event will promptly notify the other Party of the Event and will use its best efforts to minimize any resulting delay.

(l) **Jury Trial Waived.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS CONTRACT, OR ANY DEALINGS BETWEEN THE PARTIES. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY DISPUTES BETWEEN THE PARTIES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.

(m) **Authority to Bind CONTRACTOR.** The undersigned representative of CONTRACTOR represents and warrants the he or she is fully authorized to bind CONTRACTOR to the terms and conditions of this Contract.

(n) **Incorporation of RFP and Proposal.** The CITY's Invitation to Proposal 19321, and the CONTRACTOR's responsive proposal are incorporated herein by reference as **Composite Exhibit C**. **Composite Exhibit C** is not attached but will remain on file with the CITY's Purchasing Agent and will be available upon request made to the City Clerk. In case of conflicts between the RFP and Proposal, the RFP will govern. In case of conflicts between **Composite Exhibit C** and other provisions of this Contract, including **Exhibits A and B**, this Contract will govern.

(o) **Integration.** This Contract represents the entire Contract of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by either Party except as expressly set forth herein, or in other contemporaneous written agreements.

IN WITNESS WHEREOF, the Parties through their undersigned representatives have caused this Contract to be executed in duplicate original.

THE CITY

CONTRACTOR

By: _____
Derrick L. Henry, Mayor

By: _____
Printed Name: _____

Date: _____

Title: _____

Date: _____

Attest: _____
Letitia LaMagna, City Clerk

Approved as to legal form:

By: _____
Robert Jagger, City Attorney

EXHIBIT A: RFP SOLICITATION *(to be provided)*

EXHIBIT B: PROPOSAL SUBMITTED *(to be provided)*

Composite Exhibit C is not attached. It will be kept on file with the Purchasing Agent, and will be made available upon request made to the City Clerk.