

**SOUTH DAYTONA POLICE DEPARTMENT  
MEMORANDUM**

**TO: James L. Gillis, Jr., City Manager**

**FROM: Mark J. Cheatham, Chief of Police**

**DATE: July 18, 2022**

**SUBJECT: Council Consideration of approving agreement with Thomson Holdings Enterprises LLC dba Volusia County Towing for Wrecker Towing Services (Bid 22-B-008).**

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The City agreement for Wrecker Towing Services with Arrow Service and Towing terminated June 30, 2022.

Staff solicited bids from qualified Towing Companies which were received until Friday, July 15 , 2022, at which time the submissions were publicly opened. The following bids were received:

<u>Name</u>	<u>Address</u>	<u>Fee Paid to City</u> <u>(per tow)</u>
Thomson Holdings Enterprises LLC dba Volusia County Towing	345 8 <sup>th</sup> Street Holly Hill, Florida 32117	\$152.95
Landay Enterprises Inc, dba Fryer's Towing Service	722 N. Segrave Street Daytona Beach, Florida 32114	\$124.12
Universal Towing Inc	542 LPGA Blvd Holly Hill, Florida 32117	\$112.75
Arrow Service & Towing	541 Carswell Avenue Holly Hill, Florida 32117	\$105.41

Towing contracts of this type are typical for municipal agencies. Towing companies either pay cities a monthly fee for the right to tow vehicles within their municipal limits or they pay a fee per tow. Since this procurement involves fees paid to the City, the highest responsible bidder must be chosen per ordinance.

As a result, staff is recommending that the City Council approve an Agreement with Thomson Holdings Enterprises LLC dba Volusia County Towing for Wrecker Towing Services. If approved, the agreement will begin August 1, 2022 and expire July 31, 2025. Three (3), one-year (1) extensions will be available for consideration after the 2025 expiration.

**City of South Daytona**  
**WRECKER SERVICE AGREEMENT**

This agreement entered into this 1<sup>ST</sup> day of August, 2022 by and between the City of South Daytona, Florida, a Municipal Corporation, hereinafter referred to as "City" and Thomson Holdings Enterprises LLC dba Volusia County Towing, a Florida Limited Liability Company, whose principal address 345 8<sup>th</sup> Street, Holly Hill, Florida 32117 hereinafter referred to as "Towing Company", in consideration of the mutual covenants contained herein, and subject to the terms and conditions listed below.

**WITNESSETH**

**WHEREAS**, the CITY is a political subdivision of the State of Florida, having a responsibility to provide certain services to benefit the citizens of the City of South Daytona; and

**WHEREAS**, the CITY has the full power and authority to enter into the transactions contemplated by this Agreement; and

**WHEREAS**, Towing Company is in the business of providing the equipment, materials, labor and other such service as identified in Exhibit "A" in the City of South Daytona and elsewhere in the State of Florida; and

**WHEREAS**, Towing Company is competent and has sufficient manpower, training, and technical expertise to perform the services contemplated by this Agreement in a timely and professional manner consistent with the standards of the industry in which Towing Company operates; and

**WHEREAS**, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

**WHEREAS**, Towing Company was the successful bidder of a project competitively bid and identified as Invitation to Bid (Exhibit "A") for City of South Daytona which satisfies the City's Procurement Policy; and

**WHEREAS**, Towing Company agrees to provide such goods and services as more particularly described in this Agreement, as well as in any bid or quotation documents issued in connection with this project.

**NOW THEREFORE** in consideration of the premises, and in consideration of the mutual conditions, covenants, and obligations hereafter expressed, the parties agree as follows:

1. **Recitals.** The foregoing recitals are true and correct, constitute a material inducement to the parties to enter into this Agreement, and are hereby ratified and made a part of this Agreement.
2. **Description of Work.**

## SERVICES TO BE PERFORMED BY TOWING COMPANY

The Towing Company shall provide the following services:

- A. The Towing Company shall provide for the towing and storage when required, of motor vehicles and trailers from public or private property lying within the City of South Daytona when so authorized by a representative of the City, at a rate not greater than the applicable maximum rates specified herein.
- B. When authorized by a representative of the City, the Towing Company shall, at a rate not greater than the applicable maximum rate specified herein, provide for the towing and storage of any motor vehicle, trailer, motorcycle, or motor scooter which is towed under the provisions of the Code of the City of South Daytona covering the removal and/or impounding of illegally parked or disabled vehicles, applicable State Statutes, or which is otherwise impounded or required to be moved by or at the direction of a police officer, from the point of origin to the place of business of the Towing Company. The Towing Company shall, at a rate not greater than the applicable maximum rate specified herein, provide for the towing and storage of any vehicle or trailer from the scene of an accident to a location within the area, as designated by the owner, other than the place of business of the Towing Company.
- C. When authorized by a representative of the City of South Daytona, the Towing Company shall, at no charge, provide towing service for all disabled city vehicles, whether owned or leased (excluding vehicles leased by the City where the lessor is responsible for the towing service). The no charge towing service shall be for city vehicles located within 50 road miles of South Daytona City Hall. For city vehicles located beyond the 50 road miles, the loaded per mile charge for each mile beyond the 50 road miles shall be as follows:
  - Class A \$1.50
  - Class B \$2.50
  - Class C \$3.50
- D. The Towing Company shall, at no cost to the City, promptly clean all debris off the public streets, ways, sidewalks, parks, avenues, and property of the City, and remove the same to a proper place away from the scene of any motor vehicle accident if the accident scene is to be, is being, or has been serviced by the Towing Company, or the agent, servants, or employees of the Towing Company.
- E. As directed by the City, the Towing Company shall, at no cost to the City, provide towing service for all confiscated vehicles from the point of seizure to either the South Daytona Police Station or designated Public Works Compound.

- F. The Towing Company guarantees that wrecker service shall be rendered at any and all times, as required by this Agreement, twenty-four (24) hours a day, seven (7) days a week, including holidays, and that personnel will be subject to call at any and all times. The Towing Company further guarantees that, it will be at the requested location within the City limits within twenty (20) minutes from the time the Towing Company receives a call requesting that a wrecker be dispatched. Compliance with this requirement will be calculated on a calendar month basis. Further, the City reserves the right to charge the towing company for the cost of city services incurred as a result of the delayed response.
- G. Upon request, the Towing Company shall provide the South Daytona Police Department with reasonable assistance in the examination of vehicles stored by the Towing Company. Such assistance shall include the availability and use of a wrecker at the storage site for the moving of vehicles to be examined by the Police.
- H. In the event the Police Department has founded suspicion that any property in, on, or affixed to the vehicle is stolen, and said property may be removed without adversely affecting the operability of the vehicle, the Police Department shall be permitted to effect the removal of the property.
- I. Upon the issuance of an order by the Volusia County Emergency Management Department to evacuate the City, or any portion thereof due to a hurricane or other emergency condition, the Towing Company shall supply one wrecker and an operator thereof for standby assignment by the City to assist in the immediate clearing of any disabled vehicles on or along the designated evacuation route.

### **3. PAYMENT TO THE CITY**

In consideration of the Towing Company being the City's exclusive towing company for the services set forth herein for the term of this Agreement, the Towing Company shall pay \$152.95 per tow to the City, beginning August 1, 2022.

The total for the prior month will be due on the 15<sup>th</sup> day of each month thereafter as long as this Agreement is in effect. The payment is subject to a late fee of 1.5 percent of the total payment due if not paid in full by the 15<sup>th</sup> day of the month. Failure of the Towing Company to remit the appropriate fee amount within the time allotted shall be grounds, at the discretion of the City, to terminate the contract.

### **4. TERM**

- A. The term of this Agreement shall be for a three (3) year period beginning August 1, 2022 and ending July 31, 2025.

- B. Extension - The City shall have the option of extending this contract, based upon satisfactory performance by the Towing Company, for three (3) additional twelve-month periods, with renewal the first day of August each preceding year. The City shall receive extension requests by April 1, of the current contract year or the renewal will expire. The notice of renewal shall be in writing.
- C. It is further understood by the parties to this Agreement that in the event the Towing Company is unable to respond to a call during the term of this contract, with one of its own wreckers, it is still responsible for providing a wrecker. It may utilize a wrecker from any other wrecker company in the County. In such cases, the substitute wrecker must comply with the terms agreed upon herein.

**5. RATE CHARGED OWNER**The Towing Company shall post a menu of the company's rates and charges hereunder. This information must be on a sign that has letters at least two (2) inches high on a background no smaller than two (2) feet by three (3) feet. The City must approve the sign and its contents, and the Towing Company shall post a sign twenty-four (24) hours per day, seven (7) days per week in a conspicuous place at the Towing Company's place of business.

- A. For the terms of this agreement, the Towing Company may charge the owner/operator of the vehicle being towed or stored the rates listed below, provided that the maximum rates to be charged the owner for towing and storage of any motor vehicle or trailer towed at the direction of the City shall be the same as Volusia County rate structure. Examples are provided below:

**Class A** vehicles (gross vehicle weight rating at 9,999 pounds or less or a vehicle carrying a vessel 15 feet or less in length):

- 1. Trespass tow (Flat rate) ..... \$150.00
- 2. Nonconsensual tow ..... \$150.00
- 3. Nonconsensual tow, per mile over initial ten miles, per full extra mile ..... \$3.00
- 4. Nonconsensual tow, time beyond initial 30 minutes at scene, 15 minute block ..... \$30.00
- 5. Trespass or nonconsensual tow daily storage per day, inside storage ..... \$45.00
- 6. Immobilization ..... \$75.00
- 7. Outside storage, per day ..... \$40.00

**Class B** vehicles (gross vehicle weight rating at 10,000 pounds or more, but less than 19,500 pounds or vehicle carrying a vessel more than 15 feet, but less than 22 feet in length):

- 1. Trespass tow (Flat rate)..... \$250.00
- 2. Nonconsensual tow ..... \$250.00
- 3. Nonconsensual tow, per mile over initial ten miles, per full extra mile ..... \$4.00
- 4. Nonconsensual tow, time beyond initial 30 minutes at scene, per 15 minute block ..... \$50.00

- 5. Trespass or nonconsensual tow daily storage per day, inside storage .....\$55.00
- 6. Immobilization .....\$75.00
- 7. Outside storage, per day .....\$50.00

**Class C** vehicles (gross vehicle weight rating at 19,500 or more pounds, but less than 25,000 pounds or vehicle carrying a vessel more than 22 feet in length):

- 1. Trespass tow (Flat rate).....\$375.00
- 2. Nonconsensual tow .....\$375.00
- 3. Nonconsensual tow, per mile over initial ten miles, per full extra mile ..... \$5.00
- 4. Nonconsensual tow, time beyond initial 30 minutes at scene, per 15 minute block ...  
.....\$75.00
- 5. Trespass or nonconsensual tow daily storage per day, inside storage ..... \$75.00
- 6. Outside storage, per day ..... \$70.00

**Class D** vehicles (gross vehicle weight rating at more than 25,000 pounds):

- 1. Trespass tow (Flat rate).....\$500.00
- 2. Nonconsensual tow .....\$500.00
- 3. Nonconsensual tow, per mile over initial ten miles, per full extra mile . . . . . \$6.00
- 4. Nonconsensual tow, time beyond initial 30 minutes at scene, per 15 minute block ...  
\$100.00
- 5. Trespass or nonconsensual tow daily storage per day, inside storage..... \$85.00
- 6. Outside storage, per day ..... \$80.00

a. An additional daily storage fee, as set forth above, may be charged for any vessel, trailer or other mobile item, whether motorized or not, which is mounted on wheels and attached to a towed vehicle.

b. The maximum rates established in Subsection B above shall be a flat fee which shall be all-inclusive, and by way of illustration, no additional charges shall be made for:

- 1. Any fees for special equipment or services such as double hook-up, 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, other than those specified in the rate schedule;
- 2. Time spent at the scene of the tow, other than those specified in the rate schedule;
- 3. Release fees during normal business hours (Monday - Friday, 8:00 AM - 6:00 PM);
- 4. Access fees to allow the owner or the owner’s representative to remove personal property or examine the vehicle;
- 5. Yard fees, set-out fees, or gate fees for allowing the owner or any

tow company designated by the owner or his insurance company to take custody of and remove the vehicle from the impound area;

6. Fuel surcharge fees;
7. Storage for the first six 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 herein. Storage fees as set forth above may be assessed after the initial six-hour period based on calendar day increments. An administrative fee for compliance with statutory notice requirement, may be charged after the first 48 hours so long as the wrecker service has actually complied with the requirements of F.S. 713.78 including execution and mailing of the lien notice. The fee must be based on actual costs for such compliance. Further, a "tarpaulin fee" in the amount of \$15.00 may be assessed when the towing service reasonably finds it necessary to install and maintain tarpaulin coverage on any class A stored vehicle in order to protect the interior accessories or upholstery of such vehicle from damage by inclement weather. Tarpaulin fees for vehicles of any other class vehicle must be reasonable and based on actual costs.

d. An after-hours (Monday-Friday, 6:00 PM - 8:00 AM, Saturday and Sunday and National holidays) release fee not to exceed \$50.00 may be charged.

e. The maximum fees set forth herein may be changed from time to time by a resolution adopted by the City.

f. The Towing Company shall not assess two (2) charges or any additional fees when a towed vehicle is pulling another smaller vehicle (e.g., wood chipper, utility trailer, etc.), provided the second vehicle may be safely towed in its normal manner without being disconnected.

g. Clean-Up Charges:

1. Towing Company shall at no cost to the City or the Police Department clean up all debris off the public streets, ways, sidewalks, parks, avenues, and property of the City, and remove the same to a proper place away from the crash scene.
2. The Towing Company shall not charge the owner of the vehicle being towed for cleanup.

h. Administrative Fee

1. An Administrative Fee for compliance with statutory notice

requirements may be charged after the first forty-eight (48) hours so long as the wrecker service has actually complied with requirements of F.S. 713.78, including execution and mailing of the lien notice. This fee must be based on actual costs for such compliance and shall be itemized.

2. No other charges or fees, other than those specified and authorized in this schedule, are allowed for services provided under this agreement. If the contractor shall assess or collect any other fees, expenses, charges, or costs not authorized under this agreement, including, but not limited to, fees for administrative functions, yard fees, access fees, registration checks, etc., the City shall have good cause to terminate this agreement.
3. If a vehicle owner, or other person entitled to possession of a towed and/or stored vehicle, seeks to claim the vehicles from the Towing Company, the Towing Company shall provide him/her with an itemized statement, including any Administrative fees, of all applicable charges in every case where fees are due.

i. The City and the Police Department shall not be liable in the event of non-payment by the owner of the vehicle being towed.

j. The Towing Company agrees to tow abandoned or junked vehicles, and the City shall surrender all salvage rights that may be permitted by law to the Towing Company and shall retain no liens upon the vehicle, but the City does not guarantee or warrant that the Towing Company has any salvage rights from said assignment.

## **6. INNOCENT OWNER**

- A. An "Innocent Owner's" vehicle may be towed and stored as a result of a crime. The Police Department shall identify these vehicles to the Towing Company. An "Innocent Owner" is an owner or other person authorized to possess the vehicle who is not the perpetrator of a crime or civil infraction. "Innocent Owner" vehicles include, but are not limited to, the following:
  1. Recovered stolen vehicles
  2. Vehicles that are seized for forensic testing (i.e. sexual batteries, abductions, homicides, etc.) when the owner/operator was not the perpetrator.
  3. Vehicles that were damaged by stop-sticks when the owner/operator of the vehicle was not the intended target.
  4. Vehicles damaged in crashes caused by or resulting from the pursuit of a

criminal or a criminal flight from apprehension where the owner/operator was not involved.

NOTE: "Innocent Owners" shall not include those persons whose vehicles are determined by the Police Department to have been stolen by an immediate family member, where it is reasonably believed that the vehicle was exchanged by the owner/operator for illegal controlled substances, or where the vehicle is used in the commission of a crime, and the suspect is operating the vehicle with the implied or actual consent of the owner.

- B. If a victim meets the definition of an "Innocent Owner" and has no insurance or has a deductible of seventy-five (\$75) dollars or more, the Towing Company shall charge the "Innocent Owner" a fee not to exceed seventy-five (\$75) dollars. The Towing Company can charge additional costs to the "Innocent Owners" insurance carrier or to some other insurance company who is liable for those costs, but in no event will the "Innocent Owner" be responsible to pay more than seventy-five (\$75) dollars out of pocket for the cost of towing and the first seventy-two (72) hours of storage. The rate for subsequent storage shall be as stated in Section 5 (Rate Charged Owners). The "per tow" fee shall not apply to "Innocent Owners" tows.

## **7. PROHIBITED CHARGES**

- A. Charges for "waiting time" are expressly prohibited when providing services pursuant to this agreement.
- B. The services called for in Section 2 of this agreement entitled SERVICES TO BE PERFORMED BY TOWING COMPANY shall be provided at no cost to the owner of the towed vehicle whenever the Police Department determines that the vehicle was towed in error at the request of the Police Department; Furthermore, the City shall NOT be charged any fee or cost if a vehicle is towed in error at the direction of the Police Department.

## **8. RATES CHARGED THE CITY**

- A. In consideration for the services to be provided by the Towing Company under the terms of this Agreement, the Towing Company will provide the City with wrecker services for City vehicles as outlined previously in 1(C).

## **9. SALVAGE RIGHTS**

- A. In consideration for the services to be provided by the Towing Company, under the terms of this Agreement, the City hereby grants the Towing Company all salvage rights that may be permitted by law on any vehicle which may be towed pursuant to this Agreement; however, the City does not guarantee or warrant that the Towing Company has any salvage rights from said assignment. This does not include those vehicles seized and held for possible forfeiture by the City. The City will not be charged towing charges or storage fees for storage in cases of vehicles seized for forfeiture. Prior to releasing a seized vehicle to the owner, the owner must pay the Towing Company for the towing and/or storage fees and present the City with a paid

receipt from the Towing Company.

## 10. STORAGE FACILITIES

The Towing Company shall maintain a primary storage garage and/or outside storage facility complying with applicable building and zoning regulations; maintain a valid and current occupational license with the city of storage location; and maintain an office open to and available during regular business hours at the storage location. Business hours shall include Monday to Friday, 8:00 AM to 6:00 PM, excluding Saturday and Sunday and national holidays.

Such storage facility shall:

- A. Contain a minimum of one hundred (100) spaces, measuring 9 feet by 19 feet each, in an area which is completely fenced and secure.
  - B. Have available a minimum of two (2) spaces inside a building for the storing of vehicles which require police processing. These spaces shall be maintained to provide protection from the weather and security from the general public for vehicles which require police processing.
  - C. Be located within ten (10) road miles of South Daytona city limits.
  - D. Each towing service shall staff or monitor its (published number) telephone at all times and immediately advise any vehicle owner or authorized representative who calls by phone the following:
    - The storage site to which the vehicle was towed.
    - The time the vehicle was towed or removed.
    - The make, model, year, color, VIN and license plate number of the vehicle.
    - The police report or event number assigned at the time of reporting by the Police Department.
1. The Towing Company shall have an employee on duty at said primary storage facility, or upon immediate call to the facility, twenty-four (24) hours a day, seven (7) days a week, including national holidays, within 30 minutes.
  2. Said storage facilities shall be subject to inspection and shall be approved by the City prior to the award of any contract. Storage facilities shall be subject to periodic inspections at any time during the term of this Agreement when deemed necessary by the City to ensure compliance with this contract. Notice of any discrepancies or deficiencies in contract compliance found by the City shall be submitted to the Towing Company in writing, and the Towing Company shall remedy the same within fifteen

(15) days of receipt of such notice. Upon failure of the Towing Company to remedy the deficiencies in contract compliance, action may be taken by the City pursuant to Sections 26 and 27 herein.

3. Vehicles, which have been marked "HOLD" for investigative purposes by the Police Department shall be held at the storage facility, unless indicated otherwise, for whatever period of time necessary to properly process the vehicle and finish the investigation, at no charge to the City. Personnel of the South Daytona Police Department shall be permitted access to such vehicles at any time. Vehicles stored in enclosed areas shall be secured from access by unauthorized persons. The Towing Company shall take reasonable steps to protect all stored vehicles and their contents from theft and damage.

## **11. WRECKER EQUIPMENT AND WRECKER COMPANY PERSONNEL**

- A. The Towing Company shall, during the term of this Agreement, own or lease a minimum of four (4) wreckers to provide the services called for by this Agreement. The wreckers must include: two (2) Class "A" wreckers; one (1) Class "C" wrecker; and one (1) rollback. The wreckers of the Towing Company shall meet the requirements and specifications established and set forth in the current Florida Highway Patrol Rules and Regulations for wreckers.
- B. Said wreckers shall be of a recognized commercial make and shall have a wrecker winch (chassis) and truck towing capacity suitable for the removal and transportation of the various types of motor vehicles contemplated by this Agreement without damage to such vehicles and without undue interference with the flow of traffic.
  1. Each wrecker shall be equipped with the following: commercial/industrial tools, equipment and supplies, heavy duty push broom, axe, crowbar/prybar, fire extinguisher, bolt cutters, jumper cables, 4-way lug wrench, safety chains, flashlight, flares, flags, reflectors, snatch block, and winch cable.
  2. Each wrecker shall have amber rotor/strobe lights which shall be used at the scene pursuant to Florida Statutes.
- C. No owner, partner, employee, or agent of the Towing Company shall have been:
  1. Convicted of any felony when the person's civil rights have not been restored.
  2. Convicted of any felony or first degree misdemeanor within the past ten (10) years directly related to the business of operating a wrecker, regardless of whether civil rights have been restored. For the purpose of this rule, any offense involving perjury or false statement shall be considered to be directly related to the business of operating a wrecker.

- D. The Towing Company shall not hire or retain any wrecker driver, permanently or temporarily, who has been convicted of the offense of driving under the influence of alcohol or any controlled substance or chemical substance to the extent that normal faculties are impaired or driving with an unlawful blood alcohol level, or of any criminal traffic offense, within the past five years.
- E. The Towing Company shall provide written notice to the Police Department names, addresses and driver's license numbers of all employees who operate or may operate any wrecker for the Towing Company upon execution of this Agreement and within seventy-two(72) hours of hiring any new employees.
- F. The Towing Company shall provide written notice to the Police Department the names, addresses and driver's license numbers of all employees who operate or may operate any wrecker for the Towing Company upon execution of this Agreement, each and every June 1.
- G. All wrecker drivers employed permanently or temporarily shall possess a current valid Florida Commercial Driver's License.
- H. The Towing Company must have legally operated within Volusia County for at least one year prior to making a contract bid proposal with the City.

## **12. RADIO AND TELEPHONE COMMUNICATIONS**

- A. The Towing Company shall provide a two-way radio communications system between their office and all tow trucks operated by the Towing Company. The Towing Company shall maintain a direct telephone line for incoming Police calls.

## **13. NON-EXCLUSIVENESS OF SERVICE**

- A. The Towing Company agrees that the owner or person in possession of any vehicle which has been incapacitated shall have the opportunity of contacting a wrecker or tow company of his or 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, shall be given the opportunity of having such vehicle towed to a location other than the storage facility of the Towing Company.

## **14. BENEFITS FROM REPAIRS PROHIBITED**

- A. The Towing Company shall not benefit directly or indirectly, without the express written consent of the owner of the vehicle, or the owner's designated representative, from any motor 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 shall state the repairs/painting to be done as well as the price and terms of payment therefore.

## **15. LIABILITY OF TOWING COMPANY**

- A. The liability of the Towing Company for any towed vehicle and all property contained therein shall commence at the time a wrecker is hooked to any vehicle to be towed. The Towing Company or its employee, representative, or agent shall inventory all personal property contained in the vehicle to be towed and endorse the inventory prepared by the Police Officer in charge.

## **16. PERSONAL PROPERTY IN VEHICLES**

- A. To the extent provided by law, the Towing Company shall be accountable and liable for damage or loss to all personal property in the vehicles towed and for all vehicle accessories. Personal property situated in a vehicle stored by the Towing Company shall 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. The determination of the owner or person entitled to legal possession shall be made by the Towing Company. Should the Towing Company release any personal property, the owner or person entitled to possession thereof shall receipt the Towing Company for the same.

## **17. RELEASE OF THE VEHICLE**

- A. 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. The Towing Company will release the vehicle to the owner of the vehicle or the person that was in legal custody of the vehicle at the time of the tow, provided that there is no evidence to presume that the person was not authorized to have possession of the car. It will be presumed that said person was in custody of the vehicle if the person has the car key for said vehicle. Any vehicle, which has been marked "HOLD" by the South Daytona Police Department, cannot be released without prior authority from the Police Department. The Towing Company shall require proper proof of ownership or right to possession before releasing a vehicle, and the Towing Company shall be given a receipt for the vehicle.

## **18. POSTING CHARGES AND ACCEPTANCE OF CREDIT CARDS**

- A. The Towing Company shall prominently post a sign at the storage facility in such a manner that it is conspicuous to the public, which lists the charges to be imposed upon persons whose vehicles are towed pursuant to this Agreement. As to such persons, the Towing Company shall not impose any charges that exceed such posted or listed amounts. The Towing Company shall provide a complete list of charges, surcharges, cleanups, standbys, drafts, postage, administrative charges and/or any other related fees/charges on a form which can be reproduced and provided to the vehicle's owner, operators and the Police Department. If the Towing Company accepts payment by credit card in any aspect of its business operations, then the Towing Company must accept credit cards as payment for city authorized tows and storage. The credit card payment must be accepted for every item charged for the release of the vehicle.

## **19. ITEMIZED STATEMENTS**

- A. 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 shall 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.

## **20. INDEMNIFICATION**

- A. The Towing Company shall indemnify and hold harmless the City of South Daytona and its agents, officers and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees arising out of or resulting from the work provided that the claim, damage, loss and expense is caused in whole or in part by any negligent act or omission of the City, the Towing Company, any subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, regardless or whether or not it is caused in part by a party indemnified hereunder.

## **21. INSURANCE**

- A. Required Insurance:

The Towing Company shall purchase and maintain, at its own expense, the following types and amounts of insurance, in form and companies satisfactory to the City:

- 1. Workers' Compensation Insurance:

Workers' Compensation Insurance for all employees of the Towing Company connected with the work, which is the subject of this agreement. The insurance required by this provision shall comply fully with the Florida Workers' Compensation Law and include Employers Liability Insurance with limits of not less than \$500,000 per occurrence. No class of employee, including the Towing Company itself, if an individual, shall be excluded from the Workers' Compensation coverage.

- 2. Liability Insurance:

General Liability Insurance, including coverage for operations, products completed operations, and personal injury insuring the Towing Company and any other interests, including but not limited to any associated or subsidiary companies involved in the work. Automobile Liability Insurance which shall insure claims for damages because of bodily injury or death of a person or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the Towing Company for the work which is the subject of this Agreement. The Liability Insurance shall include contractual liability insurance applicable to the Towing Company's obligations under the paragraphs of this agreement. The Liability Insurance shall name the City of South Daytona as an additional insured. The General and Automobile Liability Insurance shall each have a limit of liability of no less than \$500,000 for injury or death and no less than \$1,000,000 for injury or death to two or more persons as a result of any one occurrence and no less than \$250,000 for property damage to

one or more persons as a result of any one occurrence, or in lieu thereof, a combined single limit for bodily injury and property damage of no less than \$1,000,000. If insurance coverage is provided with a general aggregate, then the aggregate shall be in an amount of no less than \$2,000,000. The limit of liability for personal injury shall be no less than \$1,000,000 and the limit of liability for contractual liability shall be no less than \$1,000,000.

### 3. Garage Keepers Legal Liability Insurance:

Garage Keepers Legal Liability Insurance in an amount reasonably sufficient (no less than \$50,000) to protect the owners of any and all vehicles towed or stored by the Towing Company, 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 City Manager.

### B. Proof of Insurance:

The Towing Company shall furnish proof of insurance acceptable to the City prior to or at the time of execution of the Agreement and the Towing Company shall not commence work under this Agreement until all the insurance required under this Agreement has been obtained and filed with and approved by the City. The Towing Company shall furnish evidence of all required insurance in the form of certificates of insurance which shall clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, the expiration dates, and shall contain the following language as to cancellation:

In the event of cancellation of this policy by the insurer or any insured, this company shall give not less than thirty (30) days advance written notice to:

City Manager  
City of South Daytona  
P. O. Box 214960  
South Daytona, Florida 32121

If requested by the City, the Towing Company 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. The Towing Company shall file replacement certificates thirty (30) days prior to expiration or termination of the required insurance occurring prior to the expiration of this Agreement. In the event such insurance shall lapse, the City expressly reserves the right to renew the insurance at the Towing Company's expense.

## 22. RECORDS, BOOKS, AND PAYMENT

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 one central location as provided hereinafter. Additionally, the monthly sum payable to the City by the Towing Company will be submitted to the office of the City Police Chief by the 15<sup>th</sup> day of each month for the duration of this contract, along with information contained in subparagraph (B) below. The Towing

Company shall maintain for one (1) year following the towing of any vehicle towed under authority of the Police Department the following records of such tow:

- A. 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, including an itemized list of all charges.
- B. The Towing Company shall be required to submit a list of all vehicles towed under authority of the Police Department with payment every 30 days, describing each vehicle by Make, Year, Model, VIN, Tag Number, Date, Incident Report Number and Reason.
- C. The Towing Company acknowledges that the business records maintained by it in connection with its towing services for the City are subject to public inspection under the Public Records Act, Chapter 119, Florida Statutes.

### **23. RIGHT TO CANCEL SERVICE CALL**

- A. The City shall have the right to cancel a request for Towing Company services until the time the wrecker arrives on the scene, and there shall 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.

### **24. COMPLIANCE WITH LAWS**

- A. The Towing Company agrees to and shall comply with all applicable provision of the Florida Statutes, including Section 316.530, and all applicable City ordinances.

### **25. CASH BOND**

Prior to the effective commencement date of this Agreement, the Towing Company shall post a cash or surety performance bond in the amount of \$40,000 with the City to be used by the City in the event:

- A. The Towing Company fails to provide wrecker service required by this Agreement, for the purpose of defraying costs incurred by the City in making adequate arrangements for the removal of vehicles.
- B. The Towing Company breaches the terms of this Agreement and it is terminated by the City as provided in Section 26 entitled BREACH OF AGREEMENT, for the purpose of defraying the cost of re-bidding this Agreement. This includes damages sustained by the City as a result of the BREACH OF AGREEMENT; including loss of future revenue as provided for under this Agreement.

## **26. BREACH OF AGREEMENT**

- A. It shall be the right of the City Manager and any officials of the City which he may designate to observe closely the wrecker service operations and if, in the opinion of the City Manager, there has been a breach of contract, the City Manager or his designee shall so notify the Towing Company, in writing, specifying the manner in which there has been a breach of contract. If, within a period of seven (7) days, the Towing Company has not eliminated the condition considered to be a breach of contract, the City Manager may so notify the City Council and a hearing shall be set for a date within fifteen (15) days of such notice. At that time, the City Council shall hear the Towing Company and the City representative and shall make a determination as to whether or not there has been a breach of contract, and shall direct what further action shall be taken by the City, as herein after provided. Any lesser remedial action then cancellation shall not waive the City's right to further remedial action.
- B. In addition to terminating this Agreement, the City may recover from the cash or surety bond all administrative costs as provided by Section 25 of this Agreement.
- C. The City may, if it so elects, pursue any other remedies provided by law for breach of this Agreement or any of its terms, covenants, conditions, or stipulations. No right or remedy herein conferred upon or reserved to the City or Towing Company is intended to be exclusive of any other right or remedy, and each and every right and remedy given hereunder, or now or hereafter existing at law or at equity or by statute.

## **27. MISLEADING, DISHONEST AND ILLEGAL PRACTICES**

- A. The Towing Company warrants that it will not engage in any misleading, dishonest, or illegal practices with regard to the vehicles towed pursuant to this Agreement, and shall charge owners of vehicles only those amounts permitted under this Agreement for those services covered by this Agreement. In the event that an overcharge or other violation covered by this paragraph is reported to the City, the City shall promptly notify the Towing Company of the alleged violation. If a satisfactory explanation is not received by the City within twenty-four (24) hours from the Towing Company, or the violation is not otherwise remedied and assurances given that similar violations will not occur in the future, within the twenty-four (24) hour period the violation may be reported to the City Council for cancellation of this Agreement or other appropriate action as provided by Section 26 herein.

## **28. PUBLIC RECORDS**

- A. The Towing Company must comply with the public records provisions of Chapter 119, Florida Statutes, including the following:
  - a. Keep and maintain public records required by the CITY to perform the service.
  - b. Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.
  - c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement term and following completion of the

Agreement if TOWING COMPANY does not transfer the records to the CITY.

- d. Upon completion of this Agreement, transfer, at no cost, to the CITY all public records in possession of TOWING COMPANY or keep and maintain public records required by the CITY to perform the service. If TOWING COMPANY transfers all public records to the CITY upon completion of this Agreement, TOWING COMPANY must destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If TOWING COMPANY keeps and maintains public records upon completion of this Agreement, TOWING COMPANY must meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.
  - i. "Public records" is defined in Section 119.011(12), Florida Statutes, as may, from time to time, be amended.
  - ii. If TOWING COMPANY asserts any exemptions to the requirements of Chapter 119 and related law, TOWING COMPANY will have the burden of establishing such exemption, by way of injunctive or other relief as provided by law.
  - iii. TOWING COMPANY consents to the CITY's enforcement of TOWING COMPANY's Chapter 119 requirements, by all legal means, including, but not limited to, a mandatory injunction, whereupon TOWING COMPANY must pay all court costs and reasonable attorney's fees incurred by CITY.
  - iv. TOWING COMPANY's failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by TOWING COMPANY will be grounds for immediate unilateral cancellation of this Agreement by the CITY.
  - v. **IF THE TOWING COMPANY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE TOWING COMPANY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, DEPUTY CITY CLERK BECKY WITTE, AT 386-322-3011; BWITTE@SOUTHDAYTONA.ORG; MAILING ADDRESS: 1672 RIDGEWOOD AVENUE, SOUTH DAYTONA, FL 32119.**

## 29. MISCELLANEOUS

- A. The descriptive headings appearing in this Agreement are for convenience only and are not to be construed either as a part of the terms and conditions hereof or as any interpretation thereof.
- B. The bid documents and specifications, attached hereto, are made a part of this Agreement.
- C. It is mutually understood and agreed that nothing contained in this Agreement is intended, or shall be construed, as in any way creating or establishing the relationship of co-partner or joint ventures between the parties hereto or as constituting the Towing Company as agent or representative of the City for any purpose or in any

manner whatsoever.

- D. Towing Company affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., Towing Company is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Towing Company requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Fla. Stat.
- E. The Towing Company shall not assign or merge this Agreement and its rights hereunder, in whole or in part, except with the prior written consent of the City.
- F. This Agreement shall be governed by the laws of the State of Florida.
- G. Venue for any legal proceedings regarding this Agreement shall be in Volusia County, Florida.
- H. In the event either party is required to file suit to enforce this Agreement, the prevailing party shall pay reasonable attorneys' fees and costs.

**The undersigned parties, being fully advised of the above terms and conditions, do hereby freely and voluntarily execute this agreement.**

**City of South Daytona:**

Signed: \_\_\_\_\_

Printed Name: William C. Hall

Title: Mayor

Date: \_\_\_\_\_

**Wrecker Service:**

Signed:  \_\_\_\_\_

Printed Name: Derek Thomson

Title: Owner

Date: July 20, 2022

Attest:

\_\_\_\_\_  
James L. Gillis, Jr.  
City Manager

Approved as to form:

\_\_\_\_\_  
Wade C. Vose, City Attorney