

**RESOLUTION NO. 2009 – 062**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA PIGGY-BACKING ONTO A RECENT PROCUREMENT AND CONTRACTUAL AWARD MADE BY THE CITY OF PLANTATION AND THE CITY OF HOLLYWOOD RELATING TO WRECKER AND TOWING SERVICES; SELECTING A SUPERIOR TOWING COMPANY TO PROVIDE THE TOWN'S WRECKER AND TOWING SERVICES; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO ENTER INTO AN AGREEMENT WITH A SUPERIOR TOWING COMPANY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** the Town does not currently have a preferred wrecker towing service operator; and

**WHEREAS,** as part of a recent Court Order the Town needs to select a preferred wrecker towing service operator; and

**WHEREAS,** the Town's staff has performed an extensive review of other municipal towing contractors; and

**WHEREAS,** after reviewing the selected vendors the Town's staff believes that it is in the best interest of the Town to piggy-back off of the procurements performed by the City of Hollywood and the City of Plantation and to select A Superior Towing Company as the Town's preferred wrecking towing service operator; and

**WHEREAS,** A Superior Towing Company is located in close proximity to the Town and has ample staff and vehicles to efficiently handle the Town's towing needs.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Southwest Ranches, Florida:

**Section 1:** The above referenced recitals are true and correct and are incorporated herein by reference.

**Section 2:** The Town Council hereby agrees to piggy-back off of the recent procurements made by the City of Plantation and the City of Hollywood relating to wrecker and towing services.

**Section 3:** The Town Council hereby selects A Superior Towing Company to provide the Town's wrecker and towing services.

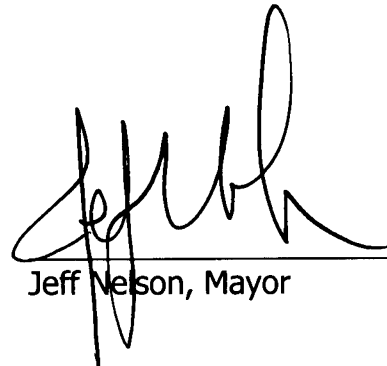
**Section 4:** The Town Council hereby authorizes the Mayor, Town Administrator and Town Attorney to enter into an Agreement in substantially the same form as that attached hereto as Exhibit "A" and to make such modifications, additions and/or deletions which they deem necessary to effectuate the intent of this Resolution.

**Section 5:** This Resolution shall become effective immediately upon its adoption.


**PASSED AND ADOPTED** by the Town Council of the Town of Southwest Ranches, Florida, this 7<sup>th</sup> day of May, 2009, on a motion by Council Member Aster Knight and seconded by Council Member Doug McKay.

Nelson	<u>Y</u>
Breitkreuz	<u>Absent</u>
Fisikelli	<u>Y</u>
Knight	<u>Y</u>
McKay	<u>Y</u>

Ayes	<u>4</u>
Nays	<u>0</u>
Absent	<u>1</u>
Abstaining	<u>0</u>

  
\_\_\_\_\_  
Jeff Nelson, Mayor

ATTEST:

  
\_\_\_\_\_  
Susan A. Owens, CMC, Town Clerk

Approved as to Form and Correctness:

  
\_\_\_\_\_  
Gary A. Poliakoff, J.D., Town Attorney

FTL\_DB: 1186098\_1

**AGREEMENT**

**BETWEEN**

**A SUPERIOR TOWING COMPANY**

**And**

**TOWN OF SOUTHWEST RANCHES**

**Providing for**

**FOR TOWN-WIDE WRECKER TOWING SERVICE**

This Agreement is made by and between A SUPERIOR TOWING COMPANY, a Florida corporation (hereinafter referred to as "CONTRACTOR"), having its principal place of business at 2385 S.W. 66 Terrace, Davie, FL 33317, and the TOWN OF SOUTHWEST RANCHES, a municipal corporation of the State of Florida (hereinafter referred to as "TOWN"). The TOWN is piggy-backing off of the procurements made by the City of Plantation and the City of Hollywood.

**WHEREAS**, the Town does not currently have a preferred wrecker towing service operator; and

**WHEREAS**, as part of a recent Court Order the Town needs to select a preferred wrecker towing service operator; and

**WHEREAS**, the Town's staff has performed an extensive review of other municipal towing contractors; and

**WHEREAS**, after reviewing the selected vendors the Town's staff believes that it is in the best interest of the Town to piggy-back off of the procurements performed by the City of Hollywood and the City of Plantation and to select A Superior Towing Company as the Town's preferred wrecking towing service operator; and

**WHEREAS**, A Superior Towing Company is located in close proximity to the Town and has ample staff and vehicles to efficiently handle the Town's towing needs.

**NOW, THEREFORE, in consideration of the mutual covenants, promises, terms and conditions set forth herein, and other good and valuable consideration, CONTRACTOR and TOWN do hereby agree as follows:**

SECTION 1  
BACKGROUND, PURPOSE AND INTENT

- 1.1 The above recitals are true and correct and incorporated herein as if set forth in full hereunder.
- 1.2 It is the purpose and intent of this Agreement for CONTRACTOR to provide town-wide wrecker towing service.
- 1.3 For purposes of this Agreement the term "TOWN" shall include, but shall not be limited to, the Town of Southwest Ranches, and its agencies, including its law enforcement department, fire/EMS, code enforcement department, and volunteer fire department.
- 1.3 This Agreement shall apply to all towing services for the removal of vehicles and the storage of such vehicles whenever such services are requested by the TOWN, including but not limited to the TOWN'S contracted fire/EMS and law enforcement service providers, and any individual or entity seeking wrecker towing services within the Town.
- 1.4 Contractor shall have all necessary state, county, Town, and local licenses and permits as may be required to operate this type of business.
- 1.5 This Agreement does not grant CONTRACTOR a franchise within the Town.

SECTION 2  
SCOPE OF SERVICES

- 2.1 **COMMUNICATIONS:**  
CONTRACTOR agrees to provide its own two-way radio or approved alternate communication system. The communications system shall be between CONTRACTOR's base station and all service trucks that provide towing services for TOWN. The communications system shall be regularly checked and remain fully operational during the term of this Agreement.
- 2.2 **STORAGE FACILITIES:**  
At all times during which CONTRACTOR is providing towing services to TOWN, CONTRACTOR shall maintain office facilities and storage facilities located no further than the Contractor's main facility within the Town of Davie.
  - 2.2.1 CONTRACTOR shall have an employee available at the storage facilities in the office, during regular business hours, (Monday through Friday, excluding legal holidays, from 7:00 a.m. to 7:00 p.m.) for immediate response to calls for service or for release of vehicles. The office shall not close during these hours. If an employee is needed

elsewhere, a replacement employee must be provided to keep the office open. An employee shall be on call, near CONTRACTOR's office, twenty-four (24) hours a day seven (7) days a week to respond to calls for service or for responding to emergencies.

2.2.2 In the event all storage facilities of CONTRACTOR are filled to capacity, CONTRACTOR shall not be relieved of any responsibility to perform and is required to make such arrangements for storage as will fulfill TOWN's requirements. All storage space at all times during the term of this Agreement shall meet the requirements of this Agreement. No storage space or area shall be used or changed unless prior written approval is obtained from the TOWN.

### 2.3 **TOWING SERVICE:**

Requests for public towing service and removal of traffic hazards shall be routed through the TOWN and may be called in by any TOWN official, including but not limited to its law enforcement department, fire/EMS, and/or its Code Enforcement Division. The TOWN including any of its agents will have the right to cancel a request for services from CONTRACTOR at any time, including up to time of hookup. Except in situations where a vehicle has a police hold, if the registered owner or other legally authorized person in control of the vehicle arrives at the scene prior to the removal or towing of the vehicle, the vehicle shall be disconnected from the towing or removal apparatus, and that person shall be allowed to remove the vehicle without interference upon payment of a reasonable service fee of not more than one half of the posted rate for such towing service, for which a receipt shall be issued, unless that person refuses to remove a vehicle which is otherwise illegally or unlawfully parked. CONTRACTOR agrees that the mere response to a service call scene without other action does not constitute a service for which charges are applicable. All vehicles being towed to CONTRACTOR's storage compound shall be taken directly to that area. Nothing herein will prevent the owner of a vehicle from selecting his/her own tow service; however, the Officer on the scene may take any action deemed necessary to clear the scene, including, but not limited to, cancellation of a non-contracted wrecker up to time of hook-up due to a delay or an emergency condition. The location of the towed vehicles must be retained in the designated compound and removed only with proper authorization from the Town's law enforcement department or similarly authorized law enforcement agency.

Should CONTRACTOR furnish a wrecker in a higher class than the one required for a particular class of vehicle, the only charges that are authorized are those for the proper class of wrecker for the vehicle being towed.

An owner of a vehicle shall be allowed to remove personal unattached property from his/her vehicle on a "one time" only basis at no additional charge. An additional charge of \$20.00 may be assessed for each subsequent request to remove personal unattached property. No other charges may be imposed.

In addition to the standard towing of vehicles to remove traffic hazards and unlawful parking, CONTRACTOR shall provide unlimited towing of boats, travel trailers, horse trailers, farm equipment, golf carts, mowing equipment, generators, compressors, skid steer loaders, ATV'S, trenchers and forklifts at the request of TOWN.

**2.4 TOWING PROCEDURES FOR LAW ENFORCEMENT PROCESSING:**

Vehicles impounded for evidentiary purposes, an investigative confiscation, or other law enforcement hold pursuant to the law enforcement agency's instructions, may be stored for a period of up to five (5) working days, excluding weekends and holidays, at no charge to TOWN. After that time, if the vehicle needs to be held pursuant to a law enforcement hold for a longer period of time, the responsible law enforcement agency may have the vehicle removed by CONTRACTOR to a TOWN storage facility without charge to TOWN. If the vehicle needs to be held pursuant to a law enforcement agency hold for a longer period of time, the TOWN shall provide CONTRACTOR with written notification to continue the hold and to either remove the vehicle or to retain the vehicle at the CONTRACTOR's lot. Under circumstances when the vehicle needs to be stored at the CONTRACTOR's lot beyond the five (5) day period, CONTRACTOR may charge TOWN a \$5.00 per day storage fee. No additional fees listed in the rate schedule may be added to the \$5.00 per day storage fee. If CONTRACTOR does not receive written notification to continue a vehicle hold, CONTRACTOR may release the vehicle to the owner/lien holder pursuant to F.S. 713.78. CONTRACTOR must notify the TOWN of an impending release of a vehicle with a law enforcement hold prior to releasing the vehicle to the owner. If the law enforcement agency has the vehicle removed from CONTRACTOR's lot and the vehicle is subsequently released to the owner, the owner will be responsible for the initial tow and storage for the number of days the vehicle remained at CONTRACTOR's lot. This will not include the tow to or from a TOWN storage facility. All holds must include the following:

1. Name of TOWN agency authorizing tow; and
2. Date and time the hold is placed on the vehicle; and
3. A general description of the vehicle, including color, make, model, body style and year, VIN, registration plate with state and year, and validation sticker number with state and year; and
4. The specific reason for placing the hold; and
5. The condition of the vehicle; and
6. The location where the vehicle is being held; and
7. The name, address and phone number of the tow company storage facility.

Vehicles requested to be towed by the Town's law enforcement agency will be accompanied by a completed "Vehicle Hold & Storage Receipt" Form. This form will be provided by the law enforcement agency to CONTRACTOR at the time of service.

**2.5 TOWING OF VEHICLES SEIZED FOR FORFEITURE:**

Vehicles seized for forfeiture pursuant to a law enforcement agency or Court Order may be stored for a period of up to, but not more than, thirty (30) calendar days without charge to TOWN. After that time, if forfeiture proceedings are to be instituted, the vehicle may be removed and transported to a TOWN storage facility by CONTRACTOR at no cost to TOWN.

**2.6 TOWING OF TOWN OWNED AND LEASED VEHICLES:**

TOWN owned or leased vehicles and equipment, including but not limited to vehicles and equipment of the TOWN's law enforcement agency, fire department, EMS, and volunteer fire department, shall be towed/retrieved by CONTRACTOR at no cost to TOWN. In addition, during the term of this Agreement, CONTRACTOR shall, at no charge to the TOWN, dispose of up to forty (40) vehicles or equipment that are within the size limits of up to 25 feet in length as established by the Florida Department of Transportation.

**2.7 DELAYS:**

CONTRACTOR shall respond to requests for service within twenty (20) minutes of the receipt of request for service. If longer than twenty (20) minutes, a penalty shall be imposed. The penalty shall be \$50.00 per service call unless CONTRACTOR has good cause in the opinion of the Town Administrator. Penalty fees may be imposed following written notification of any delay of service beyond twenty (20) minutes.

**2.8 REMOVAL OF DEBRIS AND CLEAN-UP:**

After arrival at a scene, the tow truck operator shall remove any hazards and/or debris from the street as requested by the law enforcement agency. CONTRACTOR must ensure all tow truck operators that perform hazardous materials cleanup meet all training and prescribed requirements of all applicable laws, rules and regulations. In addition, it shall be the responsibility of CONTRACTOR property to dispose of all hazardous materials and debris in accordance with all applicable laws, rules and regulations. An additional fee may be charged for hazardous material removal in accordance with the current rates set forth by Broward County Ordinance.

2.9 **VEHICLE IMPOUNDMENT HOLD:**

In cases where a vehicle has a law enforcement hold, CONTRACTOR is required to reduce removal, towing and storage charges when ordered by the TOWN's Special Magistrate or a Court of law.

2.10 **PROTECTION OF VEHICLES AND PROPERTY:**

In addition to the responsibility of providing security for stored vehicles, CONTRACTOR shall assume responsibility for any articles of value left in the vehicle and listed on the property receipt form. CONTRACTOR shall replace any such article upon verification of the loss by the designated investigative person representing the TOWN's law enforcement agency. CONTRACTOR shall assume total responsibility to ensure at time of tow that impounded vehicles shall remain in the same condition and retain the same equipment. CONTRACTOR shall also assume responsibility for any articles of value left in the vehicle and listed on the Vehicle Inventory Receipt. Any complaints concerning thefts from a stored vehicle shall be investigated by the TOWN's law enforcement agency and appropriate action taken. Provisions under this section do not preclude any aggrieved party from seeking remedy in the appropriate court.

2.11 **WEATHERPROOFING OF VEHICLE:**

If, in the opinion of the TOWN's law enforcement agency, the vehicle requires special weather protection, CONTRACTOR shall so note it on the vehicle storage receipt, shall be required to substantially cover the vehicle with a weatherproof material, and shall be allowed to charge a one time fee for this service per Broward County Ordinance. No additional charges will be allowed.

2.12 **RELEASE OF VEHICLES:**

CONTRACTOR shall directly release any vehicle which has not been marked "hold," provided that the proper proof of identification and ownership is presented and payment of appropriate fees is received. Any vehicle tow which is marked "hold" will not be released without written authority from the appropriate law enforcement agency, which issued the hold. CONTRACTOR shall release any vehicle towed in at the request of the TOWN's law enforcement agency only to the person whose name appears on the title or registration certificate as the registered owner or lien holder of the vehicle, or to the authorized agent of such person. The vehicles released by CONTRACTOR shall be delivered to the public right-of-way at no additional charge. This shall include the use of any necessary equipment. Vehicles shall be available for release between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, excluding holidays.

All motor vehicles which have not been reclaimed must be disposed of according to applicable State, TOWN and County laws.



2.13 **VIEWING OF IMPOUNDED VEHICLES:**

CONTRACTOR agrees to allow the registered owner of an impounded vehicle or the registered owner's agent or insurance representative, upon proper identification, to view said vehicle on the premises of CONTRACTOR. CONTRACTOR shall allow every vehicle owner or authorized representative to inspect the towed vehicle within a reasonable time upon his/her arrival at the storage facility and before payment of any charges. The vehicle's owner or representative shall be permitted to remove from the vehicle any and all personal possessions not affixed to the vehicle, including but not limited to telephones, tapes, tools, etc., and CONTRACTOR shall assist any vehicle's owner/agent in doing so. The vehicle's owner/authorized representative shall acknowledge receipt of such property on a form provided by CONTRACTOR.

2.14 **EQUIPMENT AVAILABILITY:**

If CONTRACTOR sub-contracts, CONTRACTOR is still responsible for meeting all of the requirements of these rules and regulations.

2.15 **EQUIPMENT:**

CONTRACTOR must have adequate up-to-date equipment capable of handling all types of vehicles in the safest possible way and in any situation that may arise.

2.16 **FORMS:**

CONTRACTOR shall provide standardized, printed, sequentially numbered, TOWN approved computer-generated receipt forms listing the nature of the work performed.

CONTRACTOR shall provide a separate invoice for each and every towing service provided under this Agreement. The basic information contained in the invoice shall include, but shall not be limited to, the following:

- A. Date of Service Call.
- B. Case number assigned by TOWN.
- C. Location where tow originated and destination.
- D. Vehicle VIN number.
- E. Vehicle make and model.
- F. Vehicle license number.
- G. Driver's name and I.D. number.
- H. Reason for the tow such as: accident, parking, road blockage, TOWN vehicle, confiscated, abandoned/derelect, etc.
- I Breakdown of all towing, recovery, and storage charges.

The following information shall be printed or stamped on the invoice/receipt and provided to the owner when the owner picks up his/her vehicle:

- A. A policy statement concerning policies and procedures provided by TOWN.
- B. TOWN telephone numbers for questions or complaints regarding the contract. (The type size and content of this information is subject to TOWN approval.)

**2.17 TIME LIMIT FOR RESPONDING TO CALLS:**

- 2.17.1 CONTRACTOR is expected to respond (arrive at the scene) within twenty (20) minutes of notice at any time of the day or night with appropriate equipment at the request of the TOWN. CONTRACTOR assumes all liability in meeting the twenty (20) minute response time including, but not limited to, any and all damages resulting from traffic accidents and motor vehicle infraction fines.
- 2.17.2 CONTRACTOR is not to hook up or move any vehicle at the scene in any way without first having received instructions from the TOWN.
- 2.17.3 In the case of abandoned or derelict vehicles where the TOWN is not waiting at or on its way to the scene, and CONTRACTOR is so notified, response time shall be within twelve (12) hours of notice.

**2.18 REQUIREMENTS FOR DRIVERS:**

- 2.18.1 CONTRACTOR agrees to review annually each employee's drivers license to ensure that all of the drivers have a valid Florida driver's license, that all drivers have not been arrested for serious misdemeanors or felonies, and that all drivers are insured. Drivers shall remain alert, neat, clean, and courteous while operating towing vehicles or responding to towing calls. CONTRACTOR agrees to be responsible for all drivers, and shall have a drug-free workplace policy that is enforced.
- 2.18.2 The TOWN reserves the right to conduct background investigations on all drivers and towing CONTRACTOR's personnel.
- 2.18.3 The TOWN may limit or restrict certain drivers representing CONTRACTOR from responding to calls within the TOWN.
- 2.18.4 All drivers shall, during the term of this Agreement possess the following qualifications and adhere to the following standard. The CONTRACTOR shall immediately suspend any driver from performing services under this

Agreement upon there being probable cause that a driver fails to maintain the qualifications or standards listed below and shall dismiss the Driver from performing contracted service if the CONTRACTOR determines that a driver failed to maintain the qualifications or standards listed below:

1. Minimum age for driver shall be 21 years.
2. Drivers must possess a valid Florida driver's license as required by law.
3. Drivers shall have no more than three (3) moving violations or accidents (counted individually or combined) within a five (5) year period, and shall have no more than one conviction of a DUI or misdemeanor substance offense within the last three (3) years. Drivers shall have no history of a conviction for a DWI, or felonious possession, control, or distribution of an illegal substance. Additionally, drivers shall have no history of felony convictions.
4. In the event a law enforcement agency charges a driver with any of the foregoing, or with reckless driving, upon receipt of knowledge of such fact, the driver involved shall be suspended, and may be dismissed as provided above.
5. Drivers must be capable of speaking, writing and understanding the English language fluently.
6. Drivers shall operate the wrecker vehicles in a safe manner.
7. Drivers shall be courteous to all passengers and the general public at all times and shall respond to passenger questions.
8. Drivers shall not accept gratuities.
9. Drivers shall assist passengers with disabilities with entering and exiting the vehicles in accordance with safe practice.
10. Drivers shall not test positive for drug use on a drug test administered by a responsible testing facility, and shall consent to random drug testing.
11. Drivers shall have detailed knowledge of the street system within the TOWN.

**2.19 COMPETENCY FOR CONTRACTOR:**

Inspection of the existing or proposed facilities will be made prior to the commencement of towing services pursuant to this Agreement. CONTRACTOR must have all necessary

County and local licenses and permits as may be required to operate the type of requisite business. CONTRACTOR is presumed to be familiar with all laws, ordinances, rules and regulations that may, in any way, affect the work. Ignorance of applicable laws, ordinances, rules or regulations on the part of CONTRACTOR will in no way relieve it from responsibility.

CONTRACTOR shall provide standardized, printed sequentially numbered, TOWN designed invoice forms listing the nature of the work performed, for the exclusive use of Police tows, Parking tows or Code Enforcement tows. A legible invoice shall be made for each and every vehicle towed.

CONTRACTOR shall keep on file for three (3) years copies of all paid invoices, together with Vehicle Storage Receipts and any and all impound logs filed by sequentially numbered incident forms. These records shall be subject to inspection by designated TOWN representatives during normal business hours.

CONTRACTOR shall comply with all written procedures as issued by the TOWN, which will facilitate the release of towed and/or impounded vehicles to the owner.

2.20 **HOURS FOR REDEMPTION; TIME LIMIT AFTER REQUEST FOR RELEASE:**

All owners of vehicles which were towed or which are located in the impound area must be able to redeem such vehicles from the CONTRACTOR during Monday through Friday, excluding legal holidays, from 7:00 a.m. to 7:00 p.m. When the storage site is closed, the telephone number of the CONTRACTOR or its employee must be prominently posted for purposes of redemption. The CONTRACTOR or one of its employees must be able to be reached at all times by the TOWN. Upon receipt of a telephone request from the TOWN to open the site to redeem a vehicle which is not on "Hold" by the TOWN, the vehicle must be released within one (1) hour. In the event the TOWN requests a vehicle be released outside of the time the impound area is required to be open, a member of the TOWN will accompany the person, to whom the vehicle is to be released, to the impound area and witness the delivery of the vehicle.

SECTION 3  
**SAFETY PRECAUTIONS**

3.1 **SAFETY PROCEDURES:**

CONTRACTOR shall use all appropriate equipment and safety procedures required to provide the services required by this Agreement. Failure to use proper equipment and safety precautions for each tow or retrieval constitutes a violation of this Agreement.

**3.2 INVENTORY OF PROPERTY WITHIN TOWED VEHICLES**

3.2.1 The CONTRACTOR will have his employee, representative or agent inventory jointly with a law enforcement officer or owner or possessor of the vehicle all personal property in the vehicle which he is directed to tow. Such inventory shall be made in triplicate and shall be maintained by the CONTRACTOR as a permanent record. One (1) copy will be given to the owner or operator of the vehicle being towed, if known, or securely attached to the vehicle, and one (1) copy will be retained by the law enforcement agency. At the time the inventory is made, if the owner or operator of the vehicle being towed is reporting any stolen or damaged items, such item shall be listed on the inventory list.

3.2.2 The CONTRACTOR shall also be solely liable and responsible to the owner or person or legal entity entitled to lawful possession for all personal property in any vehicle towed under this contract, and for the vehicle towed.

**3.3 SAFEKEEPING OF VEHICLES; PROPERTY; REPORT OF SERVICES RENDERED:**

3.3.1 The CONTRACTOR shall be responsible for the safekeeping of and shall be accountable to the owner of the vehicle for all personal property, vehicle accessories, and vehicle stored within the storage facilities of the CONTRACTOR. The CONTRACTOR shall not be required, however, to pick up and safe keep any proposed personal property which is strewn about the accident scene, or which is not both safely secured within the vehicle at the time the CONTRACTOR responds to the scene and capable of being transported by tow.

3.3.2 The CONTRACTOR immediately upon removal or impounding of any vehicle shall prepare a written report of the services rendered which will include the following:

Case No. \_\_\_\_\_ Vehicle Towing Service (Contract):

- (1) Make of vehicle and type; and
- (2) License number; and
- (3) Vehicle Identification number; and
- (4) Number of tires (including spare); and

- (5) Tools and other personal property; and
- (6) General description of the vehicle as to the condition, damaged parts (identified in detail), and such other information as may be necessary to adequately describe the vehicle. Such report shall be signed by the CONTRACTOR and delivered immediately to the TOWN's law enforcement agency.

#### SECTION 4 TYPES OF EQUIPMENT

- 4.1 CONTRACTOR shall have available the following types of equipment:

##### WRECKERS (TOW TRUCKS)

All wreckers will be registered and shall have appropriate licenses to operate as wreckers. CONTRACTOR's towing license number shall be displayed on the front of the vehicle in letters at least three (3) inches high. The company name (or name of Joint Venture) shall be displayed on the driver and passenger side of the vehicle in letters at least three (3) inches high. CONTRACTOR's address (or address of Joint Venture) and telephone number shall be displayed on driver and passenger side of the vehicle in letters at least two (2) inches high. CONTRACTOR shall produce evidence of ownership or valid 1<sup>st</sup> party lease of the required number of Class "A", Class "B", Class "C", Class "D" and slide back car carriers. CONTRACTOR shall maintain mobile communications equipment between its truck and base stations. All equipment shall be maintained in a state of readiness for response as delineated in this Agreement. CONTRACTOR agrees to have no markings on vehicles that indicate or tend to indicate any official relationship between CONTRACTOR and the TOWN.

#### SECTION 5 EMPLOYEES

- 5.1 Upon commencement of the contractual relationship, CONTRACTOR shall submit to the Contract Administrator a list of all current employees and new personnel, including full name, home address, date of birth and proof of current valid Florida driver's license. Furthermore, CONTRACTOR shall supply the same information to the Contract Administrator within forty-eight (48) hours of the hiring and separation of said employees.

TOWN reserves the right to approve substitutions for assigned personnel proposed for this engagement. Substitutions may be allowed for staff turnover, sickness or other emergency situations.

SECTION 6  
SIGNAGE

- 6.1 CONTRACTOR must post a TOWN approved signage indicating charges authorized by TOWN, in accordance with this Agreement. The sign must be minimum one (1) inch lettering and permanently and conspicuously posted in the area where the charges are paid to CONTRACTOR.

CONTRACTOR agrees that its tow signs and any issued correspondences shall not indicate any official relationship between CONTRACTOR and TOWN.

SECTION 7  
INSPECTION OF EQUIPMENT, STORAGE FACILITIES

- 7.1 All equipment and storage facilities of CONTRACTOR may be inspected by the TOWN at any time. The TOWN reserves the right to reject the use of any storage facilities or equipment after inspection by the TOWN.

SECTION 8  
RELATIONSHIP AND PERFORMANCE

8.1 **INDEPENDENT CONTRACTOR:**

It is the intent of the parties hereto that (i) CONTRACTOR shall be legally considered as an independent CONTRACTOR and not an authorized agent, partner, affiliate, joint venturer or representative of TOWN, (ii) neither CONTRACTOR nor CONTRACTOR's employees shall, under any circumstances, be considered servants or agents of TOWN, and (iii) TOWN shall not be legally responsible or liable for any act, omission, negligence, debt or default of CONTRACTOR, its employees or agents.

8.2 **ETHICS AND CONDUCT:**

CONTRACTOR shall conduct its business in an orderly and ethical manner at all times and shall use every means to obtain and keep the confidence of the general public. All public contact shall be in a courteous and orderly manner. CONTRACTOR shall not divulge any information with respect to a towed vehicle when such vehicle has a law enforcement agency hold. Anyone wishing to obtain information on a vehicle with a law enforcement agency hold shall be referred to the appropriate law enforcement agency.

SECTION 9  
COMPENSATION & METHOD OF PAYMENT

9.1 **MONTHLY FEE TO BE PAID TO TOWN:**

CONTRACTOR shall pay to TOWN, a contract fee in the amount of thirteen percent (13%) of all monies collected as a result of this Agreement. Said payment shall be made by the tenth day of every month based upon the prior month's collections. Payments are to be made punctually by cashier's check or CONTRACTOR check drawn on a local bank. Payments shall be delivered to Town of Southwest Ranches Accounts Receivable c/o Finance Department 6589 SW 160 Avenue, Southwest Ranches, FL 33331.

9.2 **FEMA REIMBURSEMENT:**

If TOWN should ever receive funds from the Federal Emergency Management Agency as reimbursement for the towing of vehicles by CONTRACTOR pursuant to this Agreement, TOWN shall promptly pay eighty-seven percent (87%) of such funds to CONTRACTOR for the towing of non-TOWN vehicles and equipment.

9.3 **MAXIMUM ALLOWABLE RATES:**

The TOWN's maximum rates shall be consistent with the maximum rates established by Section 24.50 of the Broward County Administrative Code, as may be amended from time to time, for providing towing, removal and storage services for wrecked or disabled vehicles removed from accident scenes and non-consensual removal of vehicles from public streets and areas within the TOWN. CONTRACTOR shall not charge in excess of the maximum rates established by the Broward County Administrative Code. TOWN has exclusive authority to alter, revise, increase or decrease rates due to consumer price index adjustment.

9.4 **VEHICLE CLASSIFICATIONS:**

For charges as stated herein, fees charged shall be based on gross vehicle weight as set forth by Section 24.50 of the Broward County Administrative Code.

9.5 **TOWING CHARGE(S):**

The maximum fee to be charged for towing each class of vehicle shall be as set forth in Section 24.50 of the Broward County Administrative Code. This maximum fee shall include services associated with towing, winching, waiting time, overturning and use of a dolly or flatbed for any vehicle subject to tow.

\*Cancellation after tow services engaged (vehicle not towed from scene) only half of the towing fee may be collected.



9.6 **STORAGE CHARGE(S):**

The maximum fee to be charged for storage of each class of vehicle for each twenty-four (24) hour period, or portion thereof, after the first six (6) hours, which is included in the above maximum towing fee, shall be as set forth in Section 24.50 of the Broward County Administrative Code.

\*Vehicles subject to forfeiture will not accrue storage or towing charges for the first thirty (30) days of storage.

9.7 **SERVICE-CALL FEES OTHER THAN TOWING:**

Tow or hook-up fees and service-call fees are separate items. A service-call fee can be charged in addition to the tow service rendered, i.e., repair flat or start vehicle. Any service-call fee must be approved by the vehicle owner prior to the service being provided. Service-call fees are set forth in Section 24.50 of the Broward County Administrative Code.

9.8 **ADMINISTRATIVE CHARGES (AFTER 24 HOURS):**

Administrative charges include verification of a vehicle identification number, search of vehicle for ownership information, preparation of documents required by Florida Statutes, preparation and mailing of any applicable notification letters, preparation of vehicle for auction. CONTRACTOR must actually perform research to determine ownership of and notification to vehicle owner. Written documentation of the effort to ascertain ownership of the vehicle must be in the form of a TAVIS report and must be made available upon request. Administrative charges shall not be imposed on vehicles with a police hold until or unless the hold is removed and such administrative services become applicable.

9.9 **RESPONSIBILITY FOR PAYMENT:**

The motor vehicle owner or legally authorized representative is responsible for payment of charges imposed by CONTRACTOR in accordance with the rate schedule. TOWN shall not be responsible for any charges imposed for towing and storage or for securing payments due CONTRACTOR upon vehicle release authorized by TOWN.

SECTION 10  
**RECORDS & NOTIFICATION**

10.1 **REPORTS AND OWNER NOTIFICATION:**

The appropriate law enforcement agency on scene will be responsible for obtaining the information required on the vehicle towing/storage receipt for all titled vehicles. The law enforcement office is required to submit a report

describing the circumstances requiring the dispatch of a tow truck. The wrecker driver shall not remove a vehicle from the scene without a copy of a fully executed and legible receipt. If, at the time of removal, the name of the registered owner of the vehicle is not available, CONTRACTOR may request the Town's law enforcement agency to provide such information. If the state of registration is unknown, CONTRACTOR shall make a good faith effort to notify any potential owner or lien holder, and such notice shall be given within a reasonable period of time from the date of storage. Good faith effort means the following has been performed by CONTRACTOR to establish ownership or interest in the towed vehicle:

1. Check of vehicle for any type of tag, tag record, temporary tag, or regular tag.
2. Check of Law Enforcement Report for tag number, if the vehicle was towed at the request of a Law Enforcement Officer.
3. Check of trip sheet or tow ticket indicating if a tag was on the vehicle at the beginning of the tow.
4. If there is no address of the owner on the impound report, check of Law Enforcement Report to see if an out-of-state address is indicated from the driver license information.
5. Check of vehicle for inspection sticker or other stickers and decals that may indicate a state of possible registration.
6. Check of the interior of the vehicle for any papers that may be in the glove box, trunk, or other areas for a state of registration.

CONTRACTOR shall maintain a separate log of vehicles of which the owner or lien holder cannot be determined. This log shall be maintained at the tow location listing the date, time, method of notification, location towed from and total towing and storage charges.

If a non-law enforcement agency tow is requested, CONTRACTOR shall notify the town's law enforcement agency of such tow to include such information in the Town's law enforcement agency's tow log.

10.2 **CONTRACTOR SHALL MAINTAIN, AT ITS PLACE OF BUSINESS, A FILE THAT WILL CONTAIN:**

- Vehicle towing/storage receipt of each vehicle on premises towed under this agreement and proof of ownership notification and invoice of charges for all vehicles released. These receipts will be maintained sequentially by date according to the Police Case Number, Parking Enforcement Division Case Number or Code Enforcement Case Number.
- Log of all calls for service on a monthly basis.

- Notification log indicating date, time and method of notification to the registered owner of a towed, stored vehicle.
- Copies of all release forms.
- Copies of all forms pertaining to the disposal of vehicles not claimed by owner(s).
- A log indicating vehicles to be auctioned, date of auction, name and address of owner and/or lien holder, and date contacted.

The TOWN reserves the right to examine any and all records relative to this Agreement, and said files and logs shall be available for inspection and checking during normal working hours, during the entire term of this Agreement and for three (3) years thereafter.

### 10.3 **CONTRACTOR SHALL SUPPLY THE TOWN:**

- Copy of public notice of sale at least ten (10) days prior to date of sale, and a detailed listing of vehicle serial number, tow receipt number, year, make and model number of vehicle, moneys received, and purchaser's name and address.
- Copy of paid towing/storage receipt on a monthly basis identified by the towing receipt number.
- Monthly summary report, fifteen (15) days following the end of the previous month, identifying all services provided (towing and service calls) to include vehicle type, vehicle manufacturer, license tag number, service provided, date and time service provided, total cost of service and invoice number. A separate report shall be submitted for TOWN owned equipment.
- Said summation/summary report shall be in a form acceptable to the Contract Administrator.

### 10.4 **AUDIT RIGHTS:**

TOWN reserves the right to audit the records of CONTRACTOR relating to this Agreement at any time during the performance and term of this Agreement and for a period of three (3) years after termination of this Agreement. If required by TOWN, CONTRACTOR shall agree to submit to an audit by an independent certified public account selected by TOWN. CONTRACTOR shall allow TOWN to inspect, examine and review the records of CONTRACTOR at any and all times during normal business hours during the term of this Agreement.

## 10.5 **REPORTS:**

CONTRACTOR will make all vehicle tow information continuously available on a Microsoft Excel spreadsheet that can be sent via E-mail to the TOWN. The spreadsheet shall include the following:

- Towing Activity Report, to include for each and every tow:
  1. Date of tow.
  2. Service call number assigned by TOWN.
  3. Type of tow such as accident, parking, abandoned, TOWN vehicle, etc.
  4. Total cost of tow.
  5. License plate number
  
- Vehicle Release Report, to include:
  1. All information contained in the Towing Activity Report.
  2. Date vehicle released or disposed of.
  3. Method of disposition such as: release to owner, release to TOWN, auction.
  4. A complete breakdown of all towing charges with a total including sales taxes.

## 10.6 **FORWARDING OF TOWING RECEIPTS TO TOWN:**

CONTRACTOR shall be responsible for forwarding copies of all vehicle tow receipts for vehicles released on a monthly basis, together with a copy of a completed numbered invoice for each vehicle, no later than the 10th day of each following month. CONTRACTOR shall also provide TOWN, on a monthly basis, a log of all calls for service listing the following:

- A log of all vehicles with police holds.
- An impound/notification log for the previous week.
- A log completed prior to vehicle auctions.

## 10.7 **ANNUAL PERFORMANCE REVIEW; INSPECTIONS AND AUDITS:**

TOWN will conduct an annual performance review of CONTRACTOR. Criteria to be evaluated will consist of, but not be limited to, response times, complaints received, care and custody of vehicles and owners' possessions, condition of facilities and equipment, extent and clarity of records, and conduct of management and personnel. Such a review will be conducted ninety (90) days prior to the Agreement anniversary date, and CONTRACTOR will be provided a written copy of the review. Within thirty (30) days of the sending of the review, CONTRACTOR may respond to the review in writing, and the

parties shall meet to discuss the review and other pertinent subjects. A final report that will consist of the review, CONTRACTOR's written response, and a summary of the annual review meeting will be prepared by TOWN staff with a copy sent to the TOWN Administrator and CONTRACTOR.

CONTRACTOR agrees that all records, equipment, personnel, office and storage facilities shall be subject to periodic checks and quarterly audits by representatives of TOWN without prior notice.

## SECTION 11 COMPLAINTS MADE TO TOWN

11.1 Any complaints received by TOWN concerning misconduct on the part of CONTRACTOR, such as excessive charges, poor business practices, damage to vehicles, etc. shall be referred to the Town Administrator. The Town Administrator shall notify CONTRACTOR of any complaints within five (5) business days after receipt of the complaint unless a criminal investigation is anticipated. CONTRACTOR shall submit a written response to the particular complaint to the Town Administrator within five (5) business days of notification of the complaint. A written disposition of the complaint will be forwarded to CONTRACTOR and complainant upon completion of an investigation. Any complaints concerning theft from a stored vehicle shall be investigated by the TOWN's law enforcement department and appropriate action taken.

### 11.2 **Failure to Correct Complaints or Violations of this Agreement:**

- (1) It is the intent of the TOWN to ensure that the CONTRACTOR provides a quality of level of service. To this end, all complaints shall be promptly resolved pursuant to the provisions this Agreement.
- (2) It shall be the duty of the CONTRACTOR to take reasonable steps that may be necessary to address the complaint. Failure to address the complaint as set forth below may result in an administrative cost being assessed against the CONTRACTOR. In assessing administrative costs, consideration will be given to extreme weather conditions and other conditions outside the CONTRACTOR's control. It is hereby agreed that the TOWN may collect from the CONTRACTOR, administrative costs in the following amounts:
  - (i) Failure or neglect to address complaints as required by this Agreement - \$100 per day
  - (ii) Failure to have a vehicle operator properly licensed - \$100

per day

- (iii) Failure to maintain office hours as required by this Agreement - \$100 per day
- (iv) Failure to comply with the hours of operation as required by this Agreement - \$100 per day
- (v) Failure to provide Services within the time limits provided in this Agreement- \$100 per day
- (vi) Failure to clean up accident scenes - \$100 per day
- (vii) Failure to maintain equipment in a safe manner - \$100 per day
- (viii) Failure to repair damage to customer, private or public property caused by contractor or its personnel - \$100 per day

### 11.3

#### **Complaints; customer service:**

- (a) Complaints by Customers:  
CONTRACTOR shall designate a supervisor to handle all complaints such as excess charges, poor business practices, damage to vehicles, and so forth generated within the TOWN. This person shall have day to day authority to resolve day to day customer pick-up complaints. All complaints shall be addressed within the next business day. The CONTRACTOR's office, as heretofore designated for notice purposes, shall remain open Monday through Friday 7:00 A.M. to 7:00 P.M., excluding legal holidays, for the purpose of handling complaints; and, for that purpose, there shall be maintained adequate telephones and responsible person(s) in charge during such business hours. The CONTRACTOR shall provide the TOWN with one or more telephone numbers to be utilized in the case of an emergency. The CONTRACTOR shall prepare a form or maintain a register in its office of all complaints on a form approved by the TOWN and indicate the disposition of each. Such records shall be available for TOWN inspection at all times during business hours. The form shall indicate the day and the hour on which the complaint was received and the day and the hour on which it was resolved. When a complaint is received on the day preceding a holiday or after 12:00 noon, it shall be serviced

on the next working day.

(b) Complaints by TOWN.

All complaints concerning misconduct on the part of the CONTRACTOR made by the TOWN or disputes between the TOWN and CONTRACTOR will be referred to the Mayor who shall conduct investigations and inquiries, including discussions with the CONTRACTOR and involved staff. The determinations of the Mayor shall be binding upon the parties, and the failure of the CONTRACTOR to follow any such determination may be considered a material breach and subject the CONTRACTOR to immediate termination for cause.

SECTION 12  
EFFECTIVE DATE & TERM

12.2 **TERM OF AGREEMENT:**

This Agreement shall become effective on the last date of execution by either of the Parties to this Agreement. The Agreement shall be effective for three (3) years and the TOWN reserves the right to extend the Agreement, provided that both parties agree that all the terms, conditions and specifications remain the same and the extension is approved by the Town Council.

SECTION 13  
NOTICE

13.1 Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it was intended at the place last specified; and the place for giving notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the representative places for giving of notice:

FOR TOWN:

Charles Lynn, Town Administrator  
6589 S. W. 160 Avenue  
Southwest Ranches, FL 33331

WITH A COPY TO:

Town Attorney  
Becker & Poliakoff, PA  
Attn: Keith M. Poliakoff  
3111 Stirling Road  
Fort Lauderdale, FL 33312

FOR CONTRACTOR:

A Superior Towing Company  
Mr. Sean Loscalzo, President  
2835 SW 66<sup>th</sup> Avenue  
Davie, Florida 33317

SECTION 14  
GENERAL TERMS

**14.1 RELEASE OF VEHICLE AT SCENE:**

Any vehicle released at the scene may be towed to any location at owner's or driver's request at towing rates in accordance with Section 24.50 of the Broward County Administrative Code.

**14.2 VEHICLE OWNER'S SELECTION OF TOWING SERVICE:**

Nothing herein will prevent the owner of a vehicle from selecting his/her own towing service.

**14.3 CONTRACTOR'S COMPLIANCE WITH LAWS:**

CONTRACTOR shall abide by all applicable Federal, State, County and Municipal laws, codes, ordinances, rules and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

**14.4 CRIME VICTIMS EXEMPTION:**

If the towed vehicle is determined by the appropriate law enforcement department to be a crime scene and is being held for processing, no towing or storage charges shall be charged to the vehicle's owner.

SECTION 15  
ASSIGNMENT

15.1 CONTRACTOR shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement, or any or all of its rights, title, interest, or obligation therein, to any person, company or corporation without the prior written consent of TOWN, which consent may be unreasonably withheld.

SECTION 16  
CHANGES IN RULES AND REGULATIONS

If TOWN deems it necessary to add, change or delete rules or regulations, it may be done through approval by the TOWN Council. Under no conditions can CONTRACTOR



charge a fee in excess of the rate schedule or not contained in the rate schedule without the approval of the TOWN Council.

## SECTION 17 TERMINATION

### 17.1 **SUSPENSION:**

Should CONTRACTOR, at any time during the term of this Agreement, including any option term, be found in violation of any of the terms and conditions of this Agreement, TOWN shall have the right to suspend CONTRACTOR until the violation is resolved to the satisfaction of TOWN. If the violation is not promptly resolved or is of such a serious nature that TOWN determines that suspension is not adequate, TOWN reserves the right to terminate for cause. Should CONTRACTOR or its principals, at any time during the term of this Agreement, become the subject of a criminal investigation, the TOWN Administrator or his/her designee shall have the right to suspend CONTRACTOR until the outcome of any pending investigation, including trial should one result. Upon termination of the criminal investigation that does not result in criminal charges, TOWN, in its sole discretion, may cancel the Agreement or reinstate the Agreement. Should criminal charges result from the investigation, at the conclusion of the trial or upon a plea bargain by CONTRACTOR, TOWN, in its sole discretion, may cancel the Agreement or reinstate the Agreement.

### 17.2 **CONTRACTOR DEFAULT:**

The occurrence of any of the following events shall constitute cause for canceling this Agreement, and the Agreement shall, in fact, automatically terminate upon any one of the following:

- Failing to respond three (3) times during the course of any year to TOWN's requests for tows. (A delayed response in excess of forty five (45) minutes may be considered a failure to respond),
- Failing to submit the fee payment(s) in a timely fashion,
- CONTRACTOR's filing an adjudication of insolvency, reorganization or bankruptcy,
- Abandonment of the premises or discontinuance of operation,
- The making of a general assignment for the benefit of creditors,

- Intentionally exceeding rates authorized by this Agreement by more than three (3) times,
- An unsatisfactory annual review (by the Contract Administrator) specifying any one of the following:
  1. Deficient performance,
  2. Criminal Conduct,
  3. Violations of State, Federal or Municipal Laws or Regulations, or
  4. Sustained complaints of rude or discourteous service, or
- A violation of Section 10.6 of this Agreement.

### 17.3 **TERMINATION FOR CONVENIENCE OF TOWN**

Upon thirty (30) calendar days' written notice delivered by certified mail, return receipt requested, to CONTRACTOR, TOWN may, without cause and without prejudice to any other right or remedy, terminate this Agreement for TOWN's convenience whenever TOWN determines that such termination is in the best interests of TOWN. Where this Agreement is terminated for the convenience of TOWN, the notice of termination to CONTRACTOR shall state that this Agreement is being terminated for the convenience of TOWN under the termination clause and the extent of termination. Upon receipt of the notice of termination for convenience, CONTRACTOR shall promptly discontinue all work at the time and to the extent indicated in the notice of termination except as it may be necessary to complete any continued portions of the work.

## SECTION 18 INSURANCE

### 18.1 **INSURANCE REQUIREMENTS:**

CONTRACTOR shall be responsible for its performance and every part thereof, and all material, tools, appliances and equipment of every description used in connection therewith. CONTRACTOR shall specifically and distinctly assume, and does so assume, all risks of damage or injury to property or persons used or employed on or in connection with the work and of all damage or injury to any person or property, wherever located, resulting from any action, omission, or operation under the Agreement or in connection with the performance thereof.

CONTRACTOR further certifies that it does currently meet all insurance requirements of TOWN and agrees to submit valid, timely certificates of coverage.

Insurance coverage, as required in this Agreement, shall be in force throughout the term of this Agreement. Should CONTRACTOR fail to provide acceptable evidence of current insurance within seven (7) days of receipt of a written notice at any time during

the term of this Agreement, TOWN shall have the right to consider the Agreement breached, justifying the termination thereof.

Compliance by CONTRACTOR and all subcontractors with the foregoing requirements as to carrying insurance and furnishing copies of the insurance policies shall not relieve CONTRACTOR and all subcontractors of their liabilities and obligations under this section or any other section or provision of this Agreement.

**18.1.1 WORKERS' COMPENSATION:**

CONTRACTOR must comply with the Worker's Compensation Laws of the State of Florida and maintain workers' compensation and employer's liability coverage of not less than:

\$500,000.00 Bodily injury by accident  
\$500,000.00 Bodily injury by disease, policy limits  
\$500,000.00 Bodily injury by disease, each employee

**18.1.2 AUTOMOBILE LIABILITY:**

CONTRACTOR is required to possess business automobile coverage providing liability insurance for all owned, leased and borrowed vehicles.

The minimum limits acceptable shall be:

\$1,000,000.00 Combined single limit (CSL).

If split limits are provided, the minimum limits acceptable shall be:

\$ 500,000.00 per person  
\$ 1,000,000.00 per occurrence  
\$ 100,000.00 property damage

**18.1.3 GENERAL LIABILITY:**

CONTRACTOR is required to purchase and maintain General Liability Insurance throughout the life of this Agreement. Coverage should include as a minimum:

- Premises operations
- Products and completed operations
- Blanket contractual liability
- Personal injury liability
- Expanded definition of property damage

The minimum limits acceptable shall be:

\$1,000,000.00 Combined single limit (CSL)

If split limits are provided, the minimum limits acceptable shall be:

\$ 500,000.00 per person  
\$1,000,000.00 per occurrence  
\$ 100,000.00 property damage

**18.1.4 GARAGE KEEPER'S LEGAL LIABILITY:**

CONTRACTOR is required to purchase and maintain a Garage Policy to include Garage Liability Insurance extending to vehicles, owned or leased by TOWN, left with CONTRACTOR for servicing, repair, storage, or safekeeping. Coverage should include as a minimum:

- Premises and operations
- Vehicle liability
- Contractual liability
- Products and completed operations liability
- Garage keeper's legal liability, to include comprehensive and collision

The Garage Keeper's or On Hook and Cargo Legal Liability shall extend to all vehicles in the care, custody, or control of CONTRACTOR.

CONTRACTOR's insurance shall be primary to any coverage maintained by TOWN. The minimum limits acceptable shall be:

\$1,000,000.00 Combined single limit (CSL) for liability \$ 250,000.00 Garage keeper's legal liability.

An endorsement shall be issued stating that TOWN shall not be liable for the payments for any premiums or assessments on any policies on which it is named.

CONTRACTOR shall provide TOWN with at least thirty (30) days' written notice of cancellation, non-renewal or material change of the required insurance coverage.

CONTRACTOR shall name TOWN as an additional insured on all policies, except workers' compensation.

TOWN reserves the right to require additional insurance in order to meet the full value of this Agreement.

SECTION 19  
INDEMNIFICATION

19.1 **INDEMNITY/HOLD HARMLESS AGREEMENT:**

CONTRACTOR shall indemnify, defend and hold harmless TOWN, its elected and appointed officials, employees and agents for any and all suits, actions, legal or administrative proceedings, claims, damage, liabilities, interest, attorney's fees, and costs of any kind, whether arising prior to the start of activities or following the completion or acceptance thereof and in any manner directly or indirectly caused, occasioned or contributed to in whole or in part by reason of any act, error or omission, fault or negligence, whether active or passive, by CONTRACTOR, or anyone acting under its direction or control or on its behalf in connection with or incident to its performance of this Agreement.

CONTRACTOR further certifies that it will meet all insurance requirements of TOWN and agrees to produce valid, timely certificates of coverage. These provisions shall survive the expiration or earlier termination of this Agreement. Nothing in this Agreement shall be construed to affect any of the TOWN's rights, privileges, and immunities under the doctrine of sovereign immunity or as set forth in Florida Statute Section 768.28.

SECTION 20  
EQUAL EMPLOYMENT OPPORTUNITY

- 20.1 CONTRACTOR does not and shall not discriminate against any person, employee, or applicant for employment because of race, creed, color, religion, sex, national origin, ancestry, age or disability.

SECTION 21  
MERGER CLAUSE

- 21.1 This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to all matters contained herein; and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated on any prior representations or agreements, whether oral or written.

It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and equal dignity herewith.

SECTION 22  
DAMAGES/RESPONSIBILITY

- 22.1 CONTRACTOR shall be responsible for all damages resulting from use of improper procedures and/or equipment. The owners of the company or the officers of the company (if a corporation) and the company shall be responsible jointly and severally, except as expressly prohibited by law, for the acts of their employees while on duty.

SECTION 23  
PUBLIC ENTITY CRIMES

- 23.1 A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not continue to provide any goods or services to a public entity, may not continue to a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list.

SECTION 24  
INTERPRETATION

- 24.1 The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The singular shall include the plural, and vice versa, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

SECTION 25  
RESOLUTION OF DISPUTES, JURISDICTION, VENUE & ATTORNEY'S FEES

- 25.1 To prevent litigation, it is agreed by the parties hereto that TOWN Administrator shall decide all questions, claims, difficulties and disputes of whatever nature which may arise relative to the technical interpretation of the Agreement and fulfillment of this Agreement as to the character, quality, amount and value of any services provided or work done and materials furnished, or proposed to be done or furnished under or, by reason of, the Agreement by CONTRACTOR. The TOWN Administrator's decision shall be reduced to writing and a copy furnished to the CONTRACTOR within a reasonable time following submission to the TOWN of the question, claim, difficulty or dispute as referenced above. The TOWN Administrator's decision shall be final and conclusive unless determined by a

court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not supported by competent evidence.

25.2 **BY ENTERING INTO THIS AGREEMENT, CONTRACTOR AND TOWN HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY IN ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF THIS AGREEMENT.**

25.3 This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the exclusive jurisdiction and exclusive venue of an appropriate Court of competent jurisdiction in the Seventeenth Judicial Circuit in and for Broward County, Florida.

25.4 The TOWN and CONTRACTOR are the beneficiaries of this Agreement and as such, may enforce this Agreement by action at law or in equity. In the event of any litigation between the TOWN and CONTRACTOR resulting from and/or arising out of this Agreement, it is hereby acknowledged and agreed that the prevailing party shall be entitled to recover any and all reasonable attorney's fees and costs from the non-prevailing party in any such litigation, including attorneys fees and costs incurred at the trial level and on appeal.

#### SECTION 26 DRUG-FREE WORKPLACE

26.1 CONTRACTOR is affirming, by execution of this Agreement, that it is either has or will establish a drug- free workplace in accordance with applicable laws.

#### SECTION 27 THIRD PARTY BENEFICIARIES

27.1 Neither CONTRACTOR nor TOWN intends directly or substantially to benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be able to assert a claim against either of them based upon this Agreement.

#### SECTION 28 CONFLICTS

28.1 Neither CONTRACTOR nor its employees will have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONTRACTOR's loyal and conscientious exercise of judgment relating to its performance under this Agreement.

CONTRACTOR agrees that none of its officers and employees shall, during the term of this Agreement, serve as an expert witness against TOWN in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse to the interests of TOWN or in connection with any such pending legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or legal or administrative proceeding.

SECTION 29  
WAIVER OF BREACH AND MATERIALITY

- 29.1 Failure of TOWN to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

TOWN and CONTRACTOR agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement, and therefore, is a material term hereof.

SECTION 30  
SEVERANCE

- 30.1 In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless TOWN or CONTRACTOR elects to terminate this Agreement. The election to terminate shall be made within seven (7) days after the finding by the court becomes final.

SECTION 31  
JOINT PREPARATION

- 31.1 Preparation of this Agreement has been a joint effort of TOWN and CONTRACTOR and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

SECTION 32  
APPLICABLE LAW, VENUE AND ATTORNEY'S FEES

- 32.1 This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. In any litigation between CONTRACTOR and TOWN concerning this Agreement (excluding, however, CONTRACTOR's duty to defend, hold harmless and indemnify TOWN), each party shall bear its own attorneys fees and waive the right to trial by jury or the ability to assert permissive counterclaims. Venue for litigation concerning this Agreement shall be in Broward County, Florida.



SECTION 33  
COUNTERPARTS

- 33.1 This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.

SECTION 34  
NO AMENDMENT OR WAIVER

- 34.1 This Agreement may not be changed, altered or modified except by an instrument in writing signed by all parties hereto, with the same formality and of equal dignity as the execution of this Agreement prior to the initiation of any Work reflecting such change.

SECTION 35  
TIME IS OF THE ESSENCE

- 35.1 Time is of the essence for this Agreement. The parties agree that the time for performance may be reasonably extended for matters outside the control of the respective parties. Where necessary to effectuate the intent of the parties, the terms of the Agreement shall survive completion of the Project. This Agreement shall be construed under the laws of the State of Florida regardless of where executed by either party.

SECTION 36  
DEFAULT PROVISION

- 36.1 In case of default by CONTRACTOR, the TOWN may procure the articles or services from other sources and hold the contractor responsible for any excess costs occasioned or incurred thereby.

SECTION 37  
WRITTEN AGREEMENT

- 37.1 This Agreement is binding upon the parties hereto, their successors and assigns and replaces any and all prior agreements or understanding between the parties hereto (whether written or oral) and cannot be modified except in a written document signed by TOWN and CONTRACTOR. This Agreement is the joint product of the parties and shall not be more strictly construed against any party to this Agreement.

SECTION 38  
JOINT PREPARATION

38.1 The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

SECTION 39  
ENTIRE AGREEMENT

39.1 This Agreement incorporates and includes all prior negotiations and understandings applicable to the matters contained herein. The parties agree that this Agreement constitutes the entire understanding and agreement between the parties and supersedes previous Agreements and representations whether written or oral.

SECTION 40  
NON-DISCRIMINATION

40.1 CONTRACTOR shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. CONTRACTOR shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, CONTRACTOR shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

40.2 CONTRACTOR's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin.

SECTION 41  
FURTHER ASSURANCES

41.1 TOWN and CONTRACTOR agree to execute, acknowledge, and deliver, and cause to be done, executed, acknowledged, and delivered, all such further documents and perform such acts as shall be requested of it to carry out this Agreement and give effect hereto solely consistent with applicable Federal, State and local laws, rules or regulations. Accordingly, without in any manner limiting

the specific rights and obligations set forth in this Agreement, the parties declare their intention to cooperate with each other in effecting the terms of this Agreement.

SECTION 42  
PROFESSIONAL ASSURANCES

- 42.1 CONTRACTOR shall perform all services under this Agreement in accordance with the highest standard of care used by similarly situated CONTRACTORS, under similar circumstances and shall exercise a reasonable degree of skill and care, as determined by the degree of skill and care ordinarily employed by others of the same profession.

SECTION 43  
COUNTERPARTS

- 43.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute the same Agreement.

SECTION 44  
SURVIVABILITY

- 44.1 **Section 19 of this Agreement entitled "Indemnification"; Section 18 of this Agreement entitled "Insurance"; Section 25 of this Agreement entitled Resolution of Disputes, Jurisdiction, Venue and Attorneys' Fees"; and Section 41 of this Agreement entitled "Further Assurances" shall survive the termination, cancellation, or expiration of this Agreement for any reason whatsoever.**

SECTION 45  
REPRESENTATION OF AUTHORITY

- 45.1 The individuals executing this Agreement on behalf of any entity do hereby represent and warrant that they are, on the date of this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of their principal.

SECTION 46  
COMPLIANCE WITH LAWS

- 46.1 CONTRACTOR shall comply with all federal, state, and local laws, codes, ordinances, rules and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

**SECTION 47**  
**PERFORMANCE**

47.1 CONTRACTOR represents that all persons performing the services required under this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth herein in a skillful and respectable manner.

**SECTION 48**  
**BINDING AUTHORITY**

48.1 Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

**SECTION 49**  
**TRUTH-IN-NEGOTIATION CERTIFICATE**

49.1 Signature of this Agreement by CONTRACTOR shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.

**SECTION 50**  
**BODY SHOP, REPAIR, SALVAGE**

50.1 CONTRACTOR shall not own, have any interest in, or shall be affiliated in any way with any automotive repair, paint, body, salvage, junkyard, or recycling business. CONTRACTOR shall not direct or steer any owner or operator of a vehicle being towed, to any automotive repair, paint, body, salvage, junkyard, or recycling business. Further, CONTRACTOR shall not undertake any repairs to, or remove any part or parts from any vehicle towed or stored.

IN WITNESS THEREOF, THE PARTIES HERETO HAVE MADE AND EXECUTED THIS agreement on the respective dates under each signature: Contractor through its president, duly authorized to execute same and the TOWN OF SOUTHWEST RANCHES, signing by and through its Mayor and Town Administrator authorized to execute same by Council action on the 7<sup>th</sup> day of May, 2009.

**WITNESSES:**

\_\_\_\_\_  
\_\_\_\_\_

**CONTRACTOR:  
A SUPERIOR TOWING COMPANY**

By: \_\_\_\_\_  
Mr. Sean Loscalzo, President  
\_\_\_\_ day of \_\_\_\_\_, 2009

**TOWN OF SOUTHWEST RANCHES**

By: \_\_\_\_\_  
Jeff Nelson, Mayor  
\_\_\_\_ day of \_\_\_\_\_, 2009

**ATTEST:**

\_\_\_\_\_  
Susan A. Owens, Town Clerk

By: \_\_\_\_\_  
Charles Lynn, Town Administrator  
\_\_\_\_ day of \_\_\_\_\_, 2009

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Gary A. Poliakoff, J.D. Town Attorney

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