

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Herb Hyman/797-1016

PREPARED BY: Herb Hyman/797-1016

SUBJECT: Resolution

AFFECTED DISTRICT: All

ITEM REQUEST: **Schedule for Council Meeting**

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH WESTWAY TOWING, INC. TO AWARD A TOWING FRANCHISE.

REPORT IN BRIEF: The Town Council selected Westway Towing, Inc. as the most qualified firm for the award of a towing franchise by Resolution R-2008-44 and authorized staff to negotiate a contract for these services. The attached contract is a result of negotiations authorized by R-2008-44. The initial term of the franchise award is five (5) years with options to extend the contract for two (2) additional three (3) year terms by mutual consent of the parties and the approval of the Town Council.

PREVIOUS ACTIONS: R-2008-44.

CONCURRENCES: The contract was negotiated by the Procurement Manager, and the Assistant Town Administrator and reviewed by the Town Attorney.

FISCAL IMPACT: Yes

Has request been budgeted? n/a

If yes, expected cost: n/a.

Account Name: n/a

Additional Comments: This franchise award will result in \$200,000/yr. revenue to the Town

RECOMMENDATION(S): Motion to approve the resolution.

Attachment(s):

Contract Document

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH WESTWAY TOWING, INC. TO AWARD A TOWING FRANCHISE.

WHEREAS, the Town Council selected Westway Towing, Inc. as the highest ranking firm for the award of a towing franchise by Resolution R-2008-44; and

WHEREAS, staff negotiated a contract pursuant to Resolution R-2008-44; and

WHEREAS, after review, the Town Council authorizes the Mayor to execute a contract with Westway Towing, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council authorizes the Mayor to execute a contract with Westway Towing, Inc. to award a towing franchise which is attached hereto and identified as Attachment "A".

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2008

MAYOR/COUNCILM

EMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2008

**AGREEMENT BETWEEN THE TOWN OF DAVIE AND
WESTWAY TOWING, INC. FOR THE AWARD OF A TOWING
FRANCHISE**

THIS AGREEMENT, made and entered into the 5TH day of March,
2008 , by and between:

TOWN OF DAVIE, FLORIDA
a municipal corporation
6591 Orange Drive
Davie, Florida 33314
(hereinafter referred to as "TOWN")

and

WESTWAY TOWING, INC.
3681 West Oakland Park Blvd.
Lauderdale Lakes, FL 33311
(hereafter referred to as "CONTRACTOR")

WHEREAS, the Town issued a Request for Proposal (B-08-11) to
award a Towing Franchise; and

WHEREAS, the Town Council selected Westway Towing,
Inc. as the most qualified firm by Resolution R-2008-44 and authorized the Town
Administrator or his designee to negotiate contracts for such services.

NOW, THEREFORE, in consideration of the benefits
provided by CORPORATION to the citizens of Davie and the covenants and
conditions herein expressed and the faithful performance of all such covenants
and conditions, the parties agree as follows:

1. The term of the towing franchise is for a five (5) year period beginning on March 6, 2008. The franchise may be extended for two (2) additional three (3) year periods by mutual consent of the parties and the approval of the Town Council. Should the franchise term be extended beyond the initial five (5) year term, the tow rates and the franchise fee will be subject to negotiation. All towing rates have been established by the Town (see Attachment "A") and are the only rates that may be charged.

2. The Town agrees to direct and refer to the Contractor orders for removal of wrecked, abandoned or disabled vehicles from the streets or other property lying within the Town of Davie, which, in the discretion of the representatives of the Town of Davie, need to be removed. This agreement does not include the removal of vessels which can be classified as a "derelict" as referred to in Chapter 705 of the Florida State Statutes as it may be amended from time to time. However, The Town may direct the Contractor to remove abandoned boats, trailers, or mobile homes which violate code enforcement regulations. The disposition and or disposal of such property will be the responsibility of the Contractor.

3. The Contractor agrees to remove vehicles from the streets or other property within the limits of the Town of Davie if directed by any authorized representative of the Town of Davie. The Contractor must take all such vehicles to the Contractor's compound currently located at 4200 SW 47 Ave., Davie, FL 33314. The Contractor intends to move from these leased facilities and build a permanent location within the Town of Davie during the initial contract period. The Contractor will notify the Town of any change of compound address that occurs during the entire contract period. All dispatching of tow trucks will be handled from the Contractor's main office located at 3681 West Oakland Park Blvd., Lauderdale Lakes, FL 33311. Should the Contractor not be able to respond in an appropriate time frame (see section 10), the Town reserves the right to call another towing/wrecker firm and hold the Contractor responsible for all charges in excess of those outlined herein.

4. The Contractor agrees and covenants to indemnify and save harmless the Town from any and all claims, suits, actions, damages, and causes of action which might arise during the term of this agreement, for any personal injury, loss of life, or other actions of the Contractor, his agents, servants, employees or assigns, sustained in the performance of any wrecker services resulting from this agreement, and to defend any action or proceeding brought thereon and from and against any orders, judgments, executions, levies and decrees as may be entered therein.

5. The Contractor will maintain a compound of a sufficient size and capability to accommodate wrecked and abandoned vehicles to be removed from the Town of Davie pursuant to, and during the period of, this agreement. The compound must have an office, outside storage and inside storage.

- a) A sufficient size is defined as a compound suitable to store a minimum of fifty (50) cars outside and a minimum of ten (10) cars inside. Inside storage shall be in a permanent structure. Contractor will not conduct or allow any other activity or business to operate in the defined storage space. Access to the area where vehicles are being held as "evidence" shall be limited to authorized personnel only.
- b) The Contractor agrees to provide, on a 24 hour basis, 7 days a week, employees and sufficient equipment for immediate response to calls for service from the Town of Davie or its representatives, and in addition, to make available adequate personnel to staff their facility from 7:00 a.m. to 6:00 p.m., Monday through Saturday and from 12 noon to 5 p.m. on Sunday for release of vehicles. The Contractor agrees to respond at its compound within 30 minutes by Town request during off-business hours.
- c) The Contractor shall have available space for properly accommodating and protecting all motor vehicles entrusted to their care. All property used for storage of vehicles shall be completely enclosed by a 6 foot high fence topped with barbed wire or a painted 6 foot high louvered concrete wall topped with barbed wire. The fence or wall must be of adequate size to discourage theft of any vehicle or any property being stored inside.
- d) The Contractor agrees to furnish inside storage for all vehicles which are of a body type, or of a condition which is such that inclement weather could result in damage thereto. Inside storage shall mean inside a permanent structure.
- e) The Contractor shall be required to post a durable sign at the point of public contact within their compound which lists all rates applicable to Town of Davie requested tows in 24 point high lettering. The Contractor shall provide personnel at a walk-up window to deal with the public regarding retrieval of their vehicles.
- f) Any changes to the compound must have prior written approval by authorized Town staff.
- g) The compound shall be subject to periodic inspection. Should a deficiency be discovered during such inspection, the Town shall issue a written notice informing the Contractor of the deficiency. The Contractor shall have ten (10) calendar days to correct the deficiency to the satisfaction of the Town.

6. It is understood by and between the parties therein that the Town will not be responsible for the collection of payment of any charge for services rendered by reason of the Contractor having been dispatched relative to this agreement. All such services rendered shall be charged to the owner of the towed vehicle or other lawful claimant of possession. Tow charges shall be audited by the Town of Davie Police Department for compliance with the rates established herein. If, as a result of an audit, rates charged are not in compliance with the established rates, the Contractor will be contacted by the Police Department and required to refund the overcharged amount to the customer.

7. Contractor agrees to assume responsibility for any articles of personal property left in the vehicle at the time vehicle is towed. The Contractor agrees to replace any such article upon verification of the loss by the Town of Davie Police Department or other law enforcement agency. The Contractor further agrees to release any personal property without releasing the vehicle should the owner provide proper proof of ownership.

- a) Unclaimed personal property in the vehicles stored by the Contractor shall be disposed of pursuant to Florida State Statutes as they may be amended from time to time.
- b) The Contractor agrees not to undertake any repairs to, or remove any part or parts from any vehicle towed or stored pursuant to the provisions herein, without first obtaining permission in writing from the owner or person entitled to lawful possession to complete the same. All estimates for repair work will be in writing. The Contractor further agrees that when making any repairs, or rendering any estimates or invoices, that he/she will abide by Chapter 2-19 of the Florida Administrative Code, relating to motor vehicles, sales, repairs, maintenance and service, which chapter is incorporated herein by reference, and made a part hereof. The Contractor further agrees that he will include a notification that there is a financial association between Wreck-A-Mended Collision Center and Westway Towing, Inc. on all written estimates for repair. The Town reserves the right to request that the relationship between Wreck-A-Mended Collision Center and Westway Towing, Inc. appears on the towing ticket as well as the estimate for repair.
- c) No work orders, other than for towing service, will be signed at the scene of initial towing.
- d) Contractor agrees to assume responsibility for theft from or of any vehicle stored in the Contractor's compound pursuant to this agreement.

8. Tow trucks used by the Contractor to tow vehicles from the streets and property within the Town of Davie as herein provided, will possess the following equipment:

- a) The name of the establishment along with address and phone number must be painted lettered in a professional manner on both sides of the vehicles.

- b) There shall be a rotor beam or strobe type light mounted on top of the wrecker, in such a manner that it can be seen from the front, rear, and both sides. This light shall not be in operation when a wrecker has been dispatched on a tow call. The rotating/strobe light will be used at the scene of the tow, and while towing the vehicle back to a compound. No tow vehicle will be equipped with a siren.
- c) Amber lights shall be installed on the front of the wrecker, with amber reflectors on the front sides.
- d) Red lights and red reflectors shall be installed on the rear and rear sides.
- e) Spot or flood lights.
- f) Minimum of one 4 lb. CO2 fire extinguisher or equal.
- g) One set of three portable reflectors.
- h) At least one heavy duty push broom and shovel.
- i) One axe.
- j) One crowbar or prybar.
- k) One set of jumper cables.
- l) One four-way lug wrench.
- m) One flashlight.
- n) Five 30-minute fuses.
- o) Two red flags at least 1' X 1' or traffic cones.
- p) One pair of bolt cutters.

9. Wreckers will be classified as follows:

- a) CLASS A for cars and light trucks, will have the following equipment.
 - i) Tow truck shall have a minimum manufacturer capacity of 10,000 pounds GVW.
 - ii) Boom capacity of not less than 4 tons.
 - iii) Power winch with a pulling capacity of not less than four tons.
 - iv) Minimum of 100 feet of 3/8 inch cable.
 - v) Cradle or tow plate or tow sling to pick up vehicles. Cradle or tow plate to be equipment with safety chains, and so constructed that no further damage will occur when picking up vehicle.
 - vi) Dual Rear Wheels.

- b) CLASS B for one and two ton trucks, will have the following equipment:
 - i) Tow truck shall have a minimum manufacturer capacity of 15,000 pounds GVW.
 - ii) Total boom capacity of not less than 6 tons.
 - iii) Power winch with a pulling capacity of not less than 10 tons.

iv) Minimum of 200 feet of at least 7/16 inch cable.

- v) Cradle tow or tow sling to pick up vehicles. Cradle or tow plate to be equipment with safety chains.
 - vi) Double booms so constructed as to permit splittings or single boom hydraulic elevated and extendible with 360 degrees swivel at end of boom.
 - vii) Dual Rear Wheels.
- c. CLASS C for semi-trucks, house trailers, buses etc., shall have the following equipment:
- i) Tow truck shall have a minimum manufacturer capacity of 25,000 pounds GVW.
 - ii) Total boom capacity of not less than 15 tons.
 - iii) Power winch with a pulling capacity of not less than 25 tons.
 - iv) Double booms so constructed as to permit splittings or single boom hydraulic elevated and extendible with 360 degrees swivel at end of boom.
 - v) Minimum of 200 feet of at least 9/16 inch cable.
 - vi) Airbrakes so constructed as to lock all wheels automatically upon failure of same.
 - vii) Cradle tow plate or tow sling to pick up vehicles. Cradle or tow plate to be equipped with safety chain.
 - viii) Dual Rear Wheels.

10. The Contractor agrees to own or lease, at a minimum, three (3) Class A wreckers, two (2) Class B wreckers, one (1) Class C wrecker, and have available at all times a sufficient number of Class A, B, and C wreckers, along with sufficient employees, so that he may respond to a tow call from the Town of Davie within 20 minutes, and forthwith proceed to remove any type vehicle or vehicles from the streets or property in the Town of Davie. The 20 minute response time shall apply to all calls from the Police Department and/or any calls from the Town which involves a Town vehicle which is inhibiting the flow of traffic. For tows involving Town vehicles not blocking traffic, the preferred response time is 20 minutes. If Contractor cannot respond to tow the Town vehicle within 20 minutes, he/she shall contact the Town within the 20 minute time and advise his/her estimated time of arrival. In any event, response time to tow a Town owned vehicle shall not exceed one hour. The Contractor's fleet must include at least four flatbed style tow trucks of any category type and each vehicle must be equipped with all items listed in section 8 herein. The type of equipment used for each tow shall be listed on the tow invoice. The Contractor agrees to use and charge for only the appropriate equipment needed for each tow. All equipment must be properly licensed and in good operational condition.

11. The Contractor shall meet all the requirements of the Florida State Statutes, Broward County Ordinances, Town of Davie Ordinances and any other industry related laws or regulations as they may be amended from time to time in rendering service as required.

12. The Contractor, while acting under this agreement, will obey all traffic laws of the State of Florida and the Town of Davie, and agrees that no vehicle operated by the Contractor, his agents, servants, employees or assigns will be operated as an emergency vehicle.

13. The Contractor agrees to provide all towing vehicles used pursuant to this agreement with a two-way radio communication system. The communication system shall be between the Contractor's base station and all tow and service trucks utilized in providing police towing service. The Contractor further agrees to notify the Town of Davie Police Department of any additional telephone numbers or change of numbers. No radios will be tuned to any police frequencies.

14. The Contractor agrees that after arrival at a scene, the tow operator shall remove any hazards, broken glass or debris from the street, and impound such vehicles as requested by the Police, Fire or Code Enforcement Officer. This clean up shall be considered as part of the first 1/2 hour of labor and is not a separate billable item. The Contractor will be responsible for the cost of clean up of any hazardous waste contamination caused by the Contractor in the course of providing towing services. In no event will the tow operator be responsible for the removal of hazardous waste.

15. The Contractor's liability for a towed vehicle and all personal property contained therein, will commence with the time the wrecker is hooked onto the vehicle to be towed. The Contractor will have his employee, representative, or agent inventory jointly with a Police Officer, or owner, or possessor of the vehicle, all personal property in the vehicle(s) which he is directed to tow. Such inventory shall be made in triplicate, and shall be signed by both parties making the same. One copy thereof shall be maintained by the Contractor as a permanent record. One copy of the inventory shall be given to the owner or operator of the vehicle towed if known, and one copy shall be retained by the Town of Davie Police Department. The Contractor shall maintain such personal property in an appropriate locked property room. The Contractor shall 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 agreement. No vehicle shall be removed from the scene before such inventory is completed.

- a) The Contractor will provide to the Town of Davie Police Department, bi-weekly, a complete and detailed listing of vehicles which have been towed or other services provided pursuant to this agreement along with a copy of each tow invoice once it has been paid or the vehicle has otherwise been removed, transferred, or left the control of the Contractor. Similar information will be provided to the Town of Davie relating to personal property coming into the Contractor's control as a result of this agreement.
- b) Contractor will be required to follow the guidelines set forth in Florida State Statute 713.78 as it may be amended from time to time regarding liens for towing and storage. Any reports or notifications pursuant to the requirements of Florida State Statutes will be sent to the Town of Davie Police Department and the vehicle owner.
- c) The Contractor agrees to permit members of the Town of Davie Police Department or other authorized personnel to inspect his compound, equipment, stored vehicles, personal property and records relative to this agreement, whenever, in the opinion of said representative of the Town of Davie, such inspection is deemed reasonably necessary.
- d) The Town of Davie reserves the right to cancel a request for services of the Contractor at any time, including up to the time of hook-up. The Contractor agrees that the mere response to a service call scene without other action does not constitute a service call for which charges are applicable.
- e) The Contractor agrees to release any vehicle which has not been marked "hold", providing the proper proof of identification and ownership is presented. The Contractor further agrees that any vehicle towed in, which is marked "hold", cannot be released without written authority from the Town of Davie Police Department. Persons who make application for the release of towed and/or stored vehicles shall be required to present a copy of the tow-in sheet or proof of ownership by title or registration. In the event the Contractor is holding personal property removed from the stored vehicle, upon its release, the owner or person entitled to possession will receipt the Contractor's copy of the inventory. All confiscated vehicles in process of being awarded to the Town of Davie should not be charged to the Town of Davie for towing and storage. If, however, the Town does not complete the confiscation

and returns the vehicle to the owner, the Contractor will be entitled to collect the tow fee and any applicable storage charges.

16. The Contractor shall have prepared billheads, setting forth the names and addresses of the places of business of the Contractor.

a) Before an impounded vehicle is claimed by the owner or person lawfully entitled to possession, the Contractor will provide such person with an itemized statement of all charges made for the towing and storage of the vehicle(s). Before receiving payment, the Contractor, the agent, servant, employee or assign, will prepare a bill on the above billhead in triplicate containing the following information:

- i) Name and address of the person engaging the Contractor.
- ii) License number of vehicle(s).
- iii) Motor and VIN number.
- iv) Personal property recovered and returned to the owner of the vehicle or person lawfully entitled to its possession.
- v) Make, year, model, color of vehicle(s) towed and/or stored and release date.
- vi) A complete, legible breakdown of the elements of the charges for towing and/or storage (i.e. 2 days storage @ \$10=\$20.) Breakdown shall include all unit costs multiplied by an hourly rate or flat rate as specified on the rate schedule contained in this document.
- vii) The date when the Contractor took possession of the vehicle and the date it was released to the owner or his assignee.
- viii) A signature of the person who took custody of the vehicle from the Contractor, attesting to the date on which it was received and the amount paid.

The back page of the invoice that is provided as a receipt when the owner pays for and picks up his vehicle will be legibly printed or stamped with a list of all approved rates, and Town phone numbers for questions or complaints regarding this contract. The type size and content of this information is subject to the Town's approval.

The Contractor shall retain a duplicate copy of such bill, and shall send the third copy to the Town of Davie Police Department within the bi-weekly reporting cycle during which the vehicle was released, transferred, or had a change in status along with the bi-weekly report of all vehicles towed.

- b) The Contractor shall keep a hard cover log of the number and types of calls handled under this agreement. The log shall contain the date the vehicle or vehicles were towed, the make, model, license plate number if known, the VIN numbers, and the name and address of the owner or driver or person claiming the vehicle, and the date the vehicle was released to the owner or driver.

17. The Contractor shall pay the Town of Davie the annual franchise fee of \$200,000. The franchise fee is payable to the Town of Davie in four (4) quarterly payments as follows:

Payment 1 – \$50,000 due on or before March 12, 2008

Payment 2 - \$50,000 due on or before June 12, 2008

Payment 3 - \$50,000 due on or before September 12, 2008

Payment 4 - \$50,000 due on or before December 12, 2008

Quarterly franchise fee payments for subsequent years of the contract are due on the same schedule as described above. The amount of the franchise fee is subject to change based on negotiations between the Town and the Contractor.

18. The Contractor agrees that in the performance of this agreement he will not discriminate or permit discrimination in his hiring practices or in the performance of this agreement, against any person on the basis of his/her race, color, sex, religion, political affiliation, marital status, handicap or disability, age or national origin.

19. Nothing contained in the agreement will prevent the owner or operator of a motor vehicle from calling a wrecker or tow truck of his own choice, or requesting that his vehicle be towed to a garage or compound other than that of the Contractor.

20. The Contractor agrees that he will not assign any portion of this contract without the written permission of the Town.

21. If the Contractor fails to adequately perform the services described herein, including prompt response time and accurate customer billing, in the sole discretion of the Town, the Contractor will incur penalties. The first and second infractions will result in verbal warnings documented in the contractor's performance file. The third infraction will result in a written warning notifying the Contractor that the next infraction will result in the cancellation of the contract. A fourth infraction will result in the written notification of cancellation of the contract.

If at any time during this contract, including any option terms, the Contractor or its principals become the subject of a criminal investigation, the Town shall have the right to suspend the Contractor until the outcome of any pending investigation or trial result. Upon termination of the criminal investigation or trial, the Town reserves the right to cancel or reinstate the contract.

22. INSURANCE REQUIREMENTS

Contractor shall obtain and maintain the following insurance coverage's with the listed coverage limits throughout the extended life of this agreement:

- a. Commercial General Liability - \$ 1,000,000 per occurrence
 - Premises/Operations
 - Products/Completed operations
 - Contractual Liability
 - Sub-Contractors Coverage
- b. Business Automobile Liability - \$ 1,000,000 per occurrence
- c. Workers' Compensation - Florida Statutory Limit (Minimum)
 - Employers Liability - \$ 500,000 (Minimum)
- d. Garage Keepers Legal Liability-\$1,000,000.00

Contractor shall require their insurance Agent or Carrier to provide the Town with a Certificate of Insurance on a standard ACORD form or equivalent form showing the policy Effective Date and Expiration Date for each of the above listed coverage's and shall replace any expiring certificates with new certificates throughout the life of this agreement and any required extended coverage period. Each such Certificate of Insurance shall be sent to and shall list the following as the Certificate Holder:

Town of Davie
Attn: Procurement Manager
6591 Orange Drive
Davie, FL 33314

All insurance certificates must be delivered to the above address prior to the start of any work award by this contract.

- a. Each such Certificate shall include the following wording: **“the Town of Davie, its officers, and employees are named as additional insured's with respect to the General and Automobile liability of Corporation related to any work performed under this agreement”** and shall provide for **30 days prior** written notice to the Certificate Holder of any cancellation prior to the expiration date of the coverage's listed on the certificate.

The required insurance coverage shall be issued by an insurance company duly authorized and licensed to do business in the State of Florida and having an AMBest insurance rating of not less than B+.

Contractor shall require any sub-contractors to comply with these requirements in the same manner that Contractor is required to comply or Contractor shall provide for “General Contractors Insurance” coverage that provides the above coverage's for themselves as well as any subcontractor working under them.

Nothing in this Agreement shall be construed to affect in any way the Town's rights, privileges, and immunities, including sovereign immunity as provided by law as set forth in Florida Statute 768.28.

INDEMNIFICATION:

The Contractor agrees to indemnify and hold harmless the Town, its officers, agents and employees from any and all liability, including defense costs, attorneys' fees, and all other fees incidental to the defense, loss, or damage the Town may suffer as a result of any and all suits, claims, demands, costs, or judgments against the Town arising from the acts or failure to act of the Contractor, its officers, employees and/or agents resulting from Contractor's implementation of this contract. Nothing in this Agreement shall be construed to affect in any way the Town's rights, privileges and immunities as set forth in Florida Statutes 768.28.

23. The contractor agrees to indemnify and hold harmless the Town, its officers, agents, and employees from any and all liability, defense costs, including attorneys' fees, and all other fees incidental to the defense, loss, or damage the town may suffer as a result of claims, demands, costs, or judgments against it arising from the subject project. Nothing in this agreement shall be construed to affect in any way the Town's rights, privileges and immunities as set forth in Florida Statutes 768.28.

24. The Contractor will provide towing and allied services to all Town vehicles and equipment and will assist the Police Department in recovery of evidence/property requiring utilization of wrecker service, without benefit of compensation (evidence may be something other than a vehicle). If a vehicle is mechanically sound but is classified as "evidence", Contractor will tow the vehicle to the Police Department without benefit of compensation. The need for towing or allied services shall be in the sole discretion of the Town. The term "allied services" shall include but not be limited to tire changes, jump starts, and lock outs. The Contractor will also assist the Town in towing vehicles to car dealerships for warranty work, safety recalls, towing of Town owned vehicles to the Davie Arena for auction, etc. without benefit of compensation. When the Town owned vehicle is repaired or classified as safe to drive, it shall be the Town's responsibility to pick up that vehicle from the dealership or repair facility and bring it back to the Town's facilities. When a mechanically unsound vehicle is classified by the Police Department as "evidence" and is towed to the Contractor's compound, the Contractor may charge the owner for the cost of towing pursuant to the pricing schedule. However, no storage fees shall accrue until the Police Department formally releases the "hold" on the evidence. While it is not required to perform normal tow services under this contract, towing some Town of Davie equipment requires more than a Class C

wrecker. Should this situation occur, the Contractor would be expected to ensure that this piece of equipment will be towed at no charge to the Town.

25. The Contractor performing under the agreement agrees to abide by all applicable ordinances of the Town of Davie, laws of Broward County, laws of the State of Florida, and laws of the United States. The Contractor shall use “good business practices” as defined by industry standards when towing vehicles. The Contractor shall not be entitled to additional compensation beyond that defined in the rate schedule regardless of method of towing required (e.g. If a flatbed is required to tow a vehicle, Contractor will not charge more than the tow rate identified in the rate schedule).

26. The Contractor will work with the Town of Davie Police Department for vehicles as required throughout the term of the contract.

27. The Contractor shall provide the Town with a performance bond or irrevocable letter of credit in the amount of 100% of the yearly franchise fee. The performance bond or irrevocable letter of credit shall include a clause that allows for renewals on a yearly basis or a new bond will be issued each year of the contract.

28. All terms and conditions of this contract shall be reviewed on an annual basis by the Town and the Contractor and any amendments to the contract shall be made administratively.

29. At the end of the franchise term, or if contract is cancelled, all vehicles remaining in the Contractor's possession, which were obtained pursuant to the franchise agreement, shall be handled with the vehicle owner in a manner consistent with the franchise terms which were in effect at the time the vehicle was acquired.

30. **PUBLIC ENTITY CRIMES INFORMATION:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit 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, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

31. **DISCRIMINATION:** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public

entity for the construction or repair of a public building or public work, may not submit on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.

32 Town reserves the right to audit the records of Contractor relating to this project at any time during the performance and term of the Agreement and for a period of three (3) years after completion and acceptance by Town. If required by Town, Contractor shall agree to submit to an audit by an independent certified public accountant 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.

33. It is understood and agreed that Contractor is and shall remain an independent contractor with respect to the services being performed by Contractor pursuant to this Agreement and shall not, for any purpose, be deemed an employee of Town.

34 Contractor covenants that no person under its employ who presently exercises any functions or responsibilities in connection with this Agreement has any personal

financial interests, direct or indirect, with Town. Contractor further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed. Any such interests, on the part of Contractor or its employees, must be disclosed in writing to Town.

35 Contractor is aware of the conflict of interest laws of Broward County and the

State of Florida, Chapter 112, Florida Statutes (1993), as amended, and agrees that it will fully comply in all respects with the terms of said laws.

36. Contractor warrants that it has not employed or retained any person employed by Town to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay, any public official or person employed by Town any fee, commission, percentage, brokerage fee or gift of any kind, contingent upon or resulting from the award of his privilege.

37. This is a personal services Agreement whereby Town has expressly retained Contractor. This Agreement is not assignable or transferable in whole or in part without the prior expressed written consent of the Town which consent can be arbitrarily withheld.

38 Contractor shall comply with all statutes, laws, ordinances, rules, regulations and lawful orders of the United States of America, State of Florida, Town of Davie and of any other public authority which may be applicable to this Agreement.

39 Any claim, objection or dispute arising out of the terms of this Agreement shall be

litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida and the

prevailing party to any resultant judgment shall be entitled to an award of all reasonable

attorney's fees, paralegal expenses, interest and court costs incurred by such prevailing party

against the losing party including reasonable appellant attorney's fees, interest and taxable

costs.

40 The validity, construction and effect of this agreement shall be governed by the laws of the State of Florida.

41. In the event that either party shall become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, or become subject to rehabilitation, then, at the option of the other party and immediately upon written notice, this Agreement shall terminate and be of no further force and effect.

42 This Agreement contains the entire understanding of the parties relating to the subject matter hereof superseding all prior communications between the parties, whether oral or written, and this Agreement may not be altered, amended, modified or otherwise changed nor may any of the terms hereof be waived, except by a written instrument executed by both parties. The failure of a party to seek redress for violation of or to insist on strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment for the future of any covenant, term, condition or election but the same shall continue and remain in full force and effect.

43 Should any part, term or provision of this Agreement be by the courts decided to be illegal or in Conflict with any law of the State, the validity of the remaining portions or provisions shall not be affected thereby.

44 All notices or other communications required by this Agreement shall be in writing and deemed delivered upon mailing by certified mail, return receipt requested, to the following persons and addresses unless otherwise specified herein:

TOWN:

Procurement Manager
Town of Davie
6591 Orange Drive
Davie, Florida 33314

CORPORATION:

Craig Goldstein
Westway Towing, Inc.
3681 West Oakland Park Blvd.
Lauderdale Lakes, FL 33311

ATTACHMENT "A"

RATE SCHEDULE

1. Class A Tow (vehicle gross weight rating up to and including 10,000 lbs.)-to include code enforcement violation, arrest, illegal parking, accident, etc.
 - a. First 30 minutes \$90.00
 - b. Each additional 30 minutes \$45.00
 - c. Outside storage (after six (6) hours) \$22.00/day
 - d. Inside storage \$28.00/day

2. Class B Tow (vehicle gross weight rating more than 10,000 lbs. but less than 15,000 lbs.)-to include code enforcement violation, arrest, illegal parking, accident, etc.
 - a. First 30 minutes \$148.00
 - b. Each additional 30 minutes \$74.00
 - c. Outside storage (after six (6) hours) \$33.00/day
 - d. Inside storage \$39.00/day

3. Class C Tow (vehicle gross weight rating more than 15,000 lbs. but less than 30,000 lbs.)-to include code enforcement violation, arrest, illegal parking, accident, etc.
 - a. First 30 minutes \$260.00
 - b. Each additional 30 minutes \$130.00
 - c. Outside storage (after six (6) hours) \$45.00/day
 - d. Inside storage \$51.00/day

4. Class D Tow (vehicle gross weight rating of 30,000 lbs. or more)-to include code enforcement violation, arrest, illegal parking, accident, etc.
 - a. First 30 minutes \$340.00
 - b. Each additional 30 minutes \$170.00
 - c. Outside storage (after six (6) hours) \$45.00/day
 - d. Inside storage \$51.00/day

5. Miscellaneous other charges applicable to Class A, B, C, and D above
 - a. Road Service
 1. Class A \$40.00
 2. Class B \$56.00
 3. Class C \$72.50
 4. Class D \$72.50
 - b. Diver (submerged vehicle, per hour/per diver) \$150.00/hr.
Must be performed by a certified diver and only after the use of a diver has been approved by the investigating law enforcement official.

6. Administration (after 24 hours) for all vehicles regardless of Class all actual cost incurred in obtaining ownership information and providing notice* \$30.00 plus

*Applicable only when Contractor must actually perform research to determine ownership of and notification to vehicle owner, lien-holders, or insurance companies. Written documentation of the effort to ascertain ownership of the vehicle must be in the form of a TAVIS report or similar documentation and be included in the reports issued to the Town of Davie Police Department. Costs shall mean actual fees charged by the State of Florida for obtaining ownership information and shall include the cost of actual postage fees and advertising fees.

All labor charges shall be for time on scene. If the incident involves a commercial vehicle that requires additional work to be performed at the Contractor's yard, it will be documented and submitted to the Davie Police Department with the bi-weekly reports.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first written above, in two (2) counterparts, each of which shall without proof or accounting for the other counterpart be deemed an original Contract.

Witness:

Contractor

BY

Title

Date: _____

OWNER

Town of Davie, a Florida
Municipal Corporation

ATTEST:

Russell Muniz
Town Clerk

Tom Truex
Mayor

(Seal)

Gary Shimun
Town Administrator

APPROVED AS TO FORM AND
CORRECTNESS:

DATE: _____

John Rayson
Town Attorney
Town of Davie

Council Approved: _____
Date

