

**AGREEMENT BETWEEN THE CITY OF COOPER CITY
AND WESTWAY TOWING, INC.**

THIS IS AN AGREEMENT, dated the _____ day of _____, 20____, by and between:

THE CITY OF COOPER CITY, a municipal corporation of the State of Florida with a business address of **9090 S.W. 50th Place, Cooper City, Florida 33328** (hereinafter referred to as the "CITY")

and

WESTWAY TOWING, INC., a **towing services company**, authorized to do business in the State of Florida, with a business address of **3681 West Oakland Park Blvd., Lauderdale Lakes, FL 33311** (hereinafter referred to as the "CONTRACTOR"). CITY and CONTRACTOR may hereinafter be referred to collectively as the "Parties."

WITNESSETH:

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and CONTRACTOR agree as follows:

**ARTICLE 1
PREMABLE**

In order to establish the background, context and form of reference for this Agreement and to generally express the objectives, and intentions of the respective parties herein, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

1.1 On **Friday, April 10, 2020**, the CITY advertised its notice to bidders of the CITY's desire to hire a firm to provide **towing services** as more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof, for the said bid entitled:

**RFP 2020-3-FIN
"TOWING SERVICES"**

1.2 On **Tuesday, May 5, 2020**, the proposals were opened at the offices of the City Clerk.

1.3 On July 1, 2020, the CITY entered into an agreement with A&B Towing, Inc. to provide towing services within the City.

1.4 On **Monday, October 31, 2022**, A&B Towing, Inc. provided the CITY with notice of its intent to terminate the agreement between A&B Towing, Inc. and the CITY effective December 31, 2022.

1.5 Section 2-258(c)(1) of the CITY's Procurement Code authorizes the City Manager or the City Manager's designee to make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances.

1.6 Section 2-258(c)(2) of the City's Procurement Code further authorizes the City Manager to determine whether an emergency exists for purposes of emergency purchases and procurements.

1.7 If the City Manager determines that an emergency exists, Section 2-258(c)(2) of the CITY's Procurement Code allows the City Manager to authorize emergency expenditures for the procurement or temporary acquisition of supplies, equipment and services necessary to meet the City's needs as a result of the emergency, and may delegate for a department head or other designee to secure emergency proposals.

1.8 The City Manager has determined that the pending lapse in towing services to the CITY constitutes an emergency that is a threat to the public's health, welfare, or safety.

1.9 The City Manager seeks to enter into a month-to-month emergency contract for Towing Services with CONTRACTOR for a period not to exceed six (6) months until such time that the City enters into a new agreement for towing services upon the completion of a formal procurement process.

ARTICLE 2

SERVICES AND RESPONSIBILITIES

2.1 CONTRACTOR hereby agrees to perform the services for **towing services**, as more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof, ("Property") in accordance with the Scope of Services outlined in the specifications, "**RFP 2020-3-FIN**", attached hereto and made a part hereof as **Exhibit "A."** CONTRACTOR agrees to do everything required by this Agreement, the Sealed Bid Package, Addenda to this Agreement, and Commission award complete with proposal form. In the event of any conflicts between this Agreement, Exhibit A, this Agreement shall prevail, followed by Exhibit A.

- A. Contractor agrees to remove vehicles from the streets or other property located within the City, remove traffic hazards and/or store designated vehicles at Contractor's impound facility as directed by authorized representatives of the City or the City's Public Safety Provider (the "Services").
- B. Contractor shall furnish all labor, equipment, and materials necessary for the performance of the Services.
- C. The Contractor agrees that after arrival at a scene, the tow truck operator (the "Operator") shall remove any hazards or debris and glass from the street and impound such vehicles as requested by the responding Officer/Deputy. The Contractor agrees that it is the duty of the Officer/Deputy to determine when a vehicle should be impounded and that the Operator shall abide with the decision made by the Officer/Deputy.
- D. The Contractor agrees to make available, on a twenty-four (24) hour basis, attendants and equipment for immediate response to calls for service from the City or City's Public Safety Provider. In addition, Contractor shall make available adequate personnel to staff Contractor's

storage facility from 7:00 AM to 7:00 PM for the purpose of releasing vehicles to owners and further agrees to provide on-call personnel to release vehicles between 7:00 PM and 7:00 AM, when necessary.

- E. The Contractor agrees to be responsible for notifying, in writing with proof of receipt, the registered owner or agent of the whereabouts of the vehicle within twenty-four (24) hours of impoundment if the owner's identification has been supplied by the City or City's Public Safety Provider on the vehicle storage receipt; and if not, within forty-eight (48) hours after the information is received. The Contractor agrees to maintain a log at the place of business listing the date, time, method and date of receipt of notification. Contractor shall, on the first of each month, provide City with a record of all vehicles towed and/or stored by Contractor during the preceding month.
 - i. The Contractor agrees that the Officer/Deputy on the scene will be responsible for obtaining the information required on the vehicle storage receipt. If, at the time of impounding, the name of the registered owner of the vehicle is not available, it will be the responsibility of BSO to supply this information to the Contractor as soon as possible.
- F. The Contractor agrees to directly release any vehicle which has not been marked "HOLD", provided 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 City's Public Safety Provider.
- G. Except as otherwise specified in paragraph (E) above, Contractor agrees that the release of any vehicle towed in at the request of the City's Public Safety Provider will be authorized only to the person whose name appears on the title or registration certificate as the registered owner of the vehicle or to the authorized agent of such person.
- H. Contractor shall accept payment from the vehicle owner or authorized representative for charges in any of at least four (4) of the following forms:
 - i. Cash,
 - ii. Money order,
 - iii. Valid traveler's check
 - iv. Valid bank credit or debit card
 - v. Valid personal check showing on its face the name and address of the vehicle owner or authorized representative.

2.2 REQUEST FOR SERVICE

- A. All requests for tow service and removal of traffic hazards shall be made through the City or City's Public Safety Provider. The City or City's Public Safety Provider reserves the right to cancel a request for Services 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 for which charges are applicable.

- B. Unless the City, City's Public Safety Provider or vehicle owner or operator specifically requests the vehicle be transported on a slide back carrier, Contractor shall charge the rate for the equipment required to safely tow the vehicle, regardless of the tow vehicle used.
- C. All vehicles towed to the Contractor's storage compound shall be taken directly to the compound located at **3330 Burris Road, Davie, FL 33314**.
- D. If after accessing an accident scene, the Officer/Deputy determines the safety of the public requires immediate removal of the vehicle(s), or if the owner's requested tow service does not respond within a reasonable time, the Contractor shall remove the vehicle(s) to the side of the road or other safe area. If such action is taken, the owner of the vehicle so moved may be charged in accordance with the rate schedule attached hereto as Exhibit "A".
- E. Contractor shall respond to calls for the towing of City or City's Public Safety Provider vehicles within twenty (20) minutes.
- F. The Contractor agrees to provide a communications system adequate to cover the City. All trucks operated pursuant to this rule shall be equipped with a business-type communication radio or mobile telephone, or cellular telephone.

2.2 CONTRACTOR shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement, except as otherwise specifically provided for herein, and all work performed under this Agreement shall be done in a professional manner.

2.3 CONTRACTOR hereby represents to CITY, with full knowledge that CITY is relying upon these representations when entering into this Agreement with CONTRACTOR, that CONTRACTOR has the professional expertise, experience and manpower to perform the services to be provided by CONTRACTOR pursuant to the terms of this Agreement.

2.4 CONTRACTOR assumes professional and technical responsibility for performance of its services to be provided hereunder in accordance with recognized professional standards of good engineering practice. If within one year following completion of its services, such services fail to meet the aforesaid standards, and the CITY promptly advises CONTRACTOR thereof in writing, CONTRACTOR agrees to re-perform such deficient services without charge to the CITY.

2.5 CONTRACTOR shall not utilize the services of any sub-Contractor without the prior written approval of CITY.

ARTICLE 3 **TERM AND TERMINATION**

3.1 The term of this Agreement shall be for a period of six (6) months, commencing on January 1, 2023, and terminating on June 30, 2023. This agreement may be extended on a month-to-month basis upon mutual written agreement of the parties.

3.2 This Agreement may be terminated by either party for cause, or by the CITY for convenience, upon thirty

(30) days written notice by the CITY to CONTRACTOR in which event the CONTRACTOR shall be paid its compensation for services performed to termination date. In the event that the CONTRACTOR abandons this Agreement or causes it to be terminated, CONTRACTOR shall indemnify the CITY against any loss pertaining to this termination up to a maximum of the full contracted fee amount. All finished or unfinished documents, data, studies, plans, surveys, and reports prepared by CONTRACTOR shall become the property of CITY and shall be delivered by CONTRACTOR to CITY immediately.

ARTICLE 4 **COMPENSATION AND METHOD OF PAYMENT**

4.1 CONTRACTOR shall be entitled to invoice CITY on a monthly basis for services performed. The invoice shall include, but not be limited to, date of service, the amount of time spent, a description of the service, and any other information reasonably required by CITY.

4.2 CITY will make its best efforts to pay CONTRACTOR within thirty (30) days of receipt of proper invoice the total shown to be due on such invoice.

4.3 All payments shall be governed by the Florida Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

4.4 Payment will be made to CONTRACTOR at:

WESTWAY TOWING, INC.
Attn: Brett Holcombe
3681 West Oakland Park Blvd.
Lauderdale Lakes, FL 33311

ARTICLE 5 **ADMINISTRATIVE FEES AND COSTS OF SERVICES TO THE PUBLIC**

5. ADMINISTRATIVE FEES AND COSTS OF SERVICES TO THE PUBLIC

5.1 Administrative Fee

5.1.1 As a condition of the Agreement, and pursuant to Florida Statutes, F.S. 323.002 (4), the Contractor agrees to pay to the City an Administrative Fee equal to twenty-five percent (25%) of the towing rates currently established by the Broward County Board of County Commissioners in accordance with the provisions of Part IX, "Environmental and Consumer Protection Division", Chapter 40.50 "Environmental and Consumer Protection Fee Schedule", Section c, "Towing and Immobilization Rates and Fees", Paragraph 4. "Maximum Nonconsent Rates" of the Broward County Administrative Code to cover the cost of enforcement, including parking enforcement by the City when a vehicle is towed from public property. The Contractor shall be responsible for the collection of the administrative fee on behalf of the City and shall remit such fee to the City upon collection on a quarterly basis, on the first business day of the new quarter.

5.1.2 The Contractor shall provide along with the Contractor's Towing Activity Report (See Scope of Work – Technical And Operational Requirements – Section 24 "REPORTS" herein), a detailed report or any and all Administrative Fees collected either already remitted to be remitted to the City, for each tow.

5.1.3 Upon adjustment of the towing rates by the Broward County Board of County Commissioners, the Administrative Fee shall be adjusted to reflect collections of 25% of the adjusted fees, which shall be in effect on the date that the adjusted Broward County rates take effect, which will normally be October 1st of each year. Payments shall be made in arrears and shall be due on the first business day of the contract quarter for the previously completed quarter (e.g. collections due on October 1st will be for the most recently completed period of July 1st through September 30th, and so on). If Administrative fees are delinquent, a late charge of \$50.00 shall be applied in addition to interest at the highest rate allowed by current State Statute.

5.2 Cost of Services to the Public

5.2.1 The CONTRACTOR shall be governed by the rates established by the Broward County Administrative Code, Part IX. "Environmental and Consumer Protection Division", Chapter 40.50 "Environmental and Consumer Protection Fee Schedule", Section c, "Towing and Immobilization Rates and Fees", Paragraph 4. "Maximum Nonconsent Rates" of the Broward County Administrative Code as may be amended from time to time, in effect at the time of the provision of services.

5.2.2 Rates may only be adjusted if allowed on October 1st of each year, or by a formal action by the Broward County Commission, by formal resolution, which amends the Broward County Administrative Code. Such rate adjustments shall be effective on the date provided for by the action taken by the Broward County Commission.

5.2.3 A copy of the most recent rates at the time of publication of this solicitation is attached hereto.

ARTICLE 6 **CHANGES TO SCOPE OF WORK AND ADDITIONAL WORK**

6.1 CITY or CONTRACTOR may request changes that would increase, decrease, or otherwise modify the Scope of Services, as described in **Exhibit "A,"** to be provided under this Agreement as described in Article 2 of this Agreement. These changes will affect the monthly compensation accordingly. Such changes or additional services must be in accordance with the provisions of the Code of Ordinances of the CITY, and must be contained in a written amendment, executed by the parties hereto, with the same formality, equality and dignity herewith prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work.

6.2 In no event will the CONTRACTOR be compensated for any work which has not been described in a separate written agreement executed by the parties hereto.

ARTICLE 7 **INDEMNIFICATION**

7.1 CONTRACTOR shall indemnify and save harmless and defend the CITY, its trustees, elected and

appointed officials, agents, servants and employees from and against any and all claims, demands, or causes of action of whatsoever kind or nature sustained by the CITY or any third party arising out of, or by reason of, or resulting from acts, error, omission, or negligent act of CONTRACTOR, its agents, servants or employees in the performance under this Agreement, for all costs, losses and expenses, including but not limited to, damages to persons or third party property, judgments and attorneys' fees arising out of or in connection with the performance by CONTRACTOR pursuant to this Agreement.

7.2 CONTRACTOR shall indemnify CITY for all loss, damage, expense or liability including, without limitation, court costs and attorneys' fees that may result by reason of any infringement or claim of infringement of any patent, trademark, copyright, trade secret or other proprietary right due to services furnished pursuant to this Agreement. CONTRACTOR will defend and/or settle at its own expense any action brought against the CITY to the extent that it is based on a claim that products or goods furnished to CITY by CONTRACTOR pursuant to this Agreement, or if any portion of the services or goods furnished in the performance of the service becomes unusable as a result of any such infringement or claim.

7.3 CONTRACTOR'S aggregate liability shall not exceed the proceeds of insurance required to be placed pursuant to this Agreement plus the compensation received by CONTRACTOR, or extend to any claims brought subsequent to the expiration of warranty period outlined above. The CITY's rights and remedies and CONTRACTOR's liabilities as set forth in this Agreement, are exclusive, and the CITY hereby releases CONTRACTOR from all further or subsequent liability, whether based in contract or tort and irrespective of fault, negligence, or strict liability.

ARTICLE 8 **INSURANCE**

Where Contractors are required to enter or go onto the City of Cooper City property (including any property which is owned or leased by the City or upon which the City has a license, easement or right-of-way) to deliver materials or perform work or services as a result of an award, the successful Contractor shall assume the full duty, obligation and expense of obtaining all necessary licenses, permits and insurance and assure all work complies with all applicable Broward County and City of Cooper City building requirements and the Florida Building Code. The Contractor shall be liable for any damages or loss to the City occasioned by negligence of the Contractor or any person the Contractor has designated in the completion of the contract as a result of his or her bid.

The Contractor shall indemnify and hold harmless the CITY and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractor. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, agents and instrumentalities as herein provided.

Contractor shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.

Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the City's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.

Policies shall be endorsed to provide the CITY with notice of cancellation or the Contractor shall obtain written agreement from its Agent to provide the CITY with 30-day notice of cancellation.

Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, the CONTRACTOR shall furnish, as soon as reasonably practicable, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The CONTRACTOR shall not commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. CONTRACTOR shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.

Prior to the commencement of the project, CONTRACTOR shall provide the City with a certificate of liability insurance and a copy of the additional insured endorsement naming the City of Cooper City its employees, directors, officers, agents, independent contractors, successors and assigns, and other authorized representatives as additional insured on a primary and non-contributory basis to the extent of the contractual obligation assumed by the Proposer. Additionally, the Contractor shall provide the City with a copy of the certificates of insurance and a copy of the additional insured endorsement reflecting the same insurance coverage for all subcontractors utilized by Contractor.

The City shall be granted a Waiver of Subrogation on the CONTRACTOR'S Workers' Compensation and General Liability insurance policy, and affirmed on the Certificate of Liability Insurance and a Waiver of Subrogation Endorsement. The Contractor waives, and the Contractor shall ensure that the Contractor's insurance carrier waives, all subrogation rights against the City, its officials, employees, agents and volunteers for all losses or damages.

8.1.1 REQUIRED INSURANCE

8.1.1.1 Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000

2. Fire Damage Limit (Damage to rented premises) - \$100,000
3. Personal & Advertising Injury Limit - \$1,000,000
4. General Aggregate Limit - \$2,000,000
5. Products & Completed Operations Aggregate Limit - \$3,000,000

Products & Completed Operations Coverage shall be maintained for two (2) years after the final payment under this contract.

The City of Cooper City must be shown as an additional insured with respect to this coverage.

8.1.1.2 Worker's Compensation and Employers Liability Insurance covering all employees, and/or volunteers of the Contractor engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the Contractor shall require the subcontractor similarly to provide Workers Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the Contractor. Coverage for the Contractor and his subcontractor shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

1. Workers' Compensation:	Coverage A	Statutory
2. Employers Liability:	Coverage B	\$500,000 Each Accident \$500,000 Disease – Policy Limit \$500,000 Disease – Each Employee

8.1.1.3 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

1. Any Auto (Symbol 1)
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos (Symbol 8)
Combined Single Limit (Each Accident) - \$1,000,000
3. Non-Owned Autos (Symbol 9)
Combined Single Limit (Each Accident) - \$1,000,000

8.1.1.4 Professional Liability/Errors & Omissions Insurance, when applicable, with a limit of liability no less than \$1,000,000 per wrongful act. This coverage shall be maintained for a period of no less than two (2) years after final payment of the contract.

8.1.1.5 Sexual Abuse may not be excluded from any policy.

8.2 REQUIRED INSURANCE ENDORSEMENTS

1. The City of Cooper City shall be named as an Additional Insured on each of the General Liability policies required herein
2. Waiver of all Rights of Subrogation against the CITY
3. 30-Day Notice of Cancellation or Non-Renewal to the CITY
4. Contractors' policies shall be Primary & Non-Contributory

5. All policies shall contain a "severability of interest" or "cross liability" liability clause without obligation for premium payment of the CITY
6. The City of Cooper City shall be named as a Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.

CONTRACTOR shall name the CITY, as an additional insured on each of the General Liability policies required herein and shall hold the CITY, its agents, officers and employees harmless on account of claims for damages to persons, property or premises arising out of the services provided hereunder. Any insurance required of the CONTRACTOR pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work is subcontracted unless such subcontractor is covered by the protection afforded by the CONTRACTOR and provided proof of such coverage is provided to CITY. The CONTRACTOR and any subcontractors shall maintain such policies during the term of this Agreement. Contractor shall agree to waive all rights of subrogation against the City, members of the City Commission, boards, commissions and committees, officers, agents, employees and volunteers for losses arising from activities and operations of Contractor in the performance of its obligations under this agreement.

The CITY reserves the right to require any other additional types of insurance coverage and/or higher limits of liability it deems necessary based on the nature of work being performed under this Contract.

ARTICLE 9 **INDEPENDENT CONTRACTOR**

9.1 This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the CONTRACTOR is an independent Contractor under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The CONTRACTOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONTRACTOR's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR, which policies of CONTRACTOR shall not conflict with CITY, State, H.U.D., or United States policies, rules or regulations relating to the use of CONTRACTOR's Funds provided for herein. The CONTRACTOR agrees that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CITY and the CITY will not be liable for any obligation incurred by CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

ARTICLE 10 **VENUE**

10.1 This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this agreement shall be in Broward County, Florida.

ARTICLE 11 **PUBLIC RECORDS**

11.1 The City of Cooper City is public agency subject to Chapter 119, Florida Statutes. The CONTRACTOR shall comply with Florida's Public Records Law. Specifically, the CONTRACTOR shall:

11.1.1 Keep and maintain public records required by the CITY to perform the service;

11.1.2 Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, Fla. Stat., or as otherwise provided by law;

11.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and, following completion of the contract, CONTRACTOR shall destroy all copies of such confidential and exempt records remaining in its possession after the CONTRACTOR transfers the records in its possession to the CITY; and

11.1.4 Upon completion of the contract, CONTRACTOR shall transfer to the CITY, at no cost to the CITY, all public records in CONTRACTOR's possession. All records stored electronically by the CONTRACTOR must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

11.2 The failure of CONTRACTOR to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement, for which, the City may terminate the Agreement.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT

**CITY CLERK
9090 S.W. 50th PLACE
COOPER CITY, FL 33328
(954) 434-4300
PRR@CooperCityFL.org**

**ARTICLE 12
FEMA REQUIREMENTS - NOT APPLICABLE FOR THIS AGREEMENT**

**ARTICLE 13
SCRUTINIZED COMPANIES – 287.135 AND 215.473**

SCRUTINIZED COMPANIES. CONTRACTOR certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, F.S. In addition, CONTRACTOR agrees to observe the requirements of Section 287.135, F.S., for applicable sub-agreements entered into for the performance of work under this Agreement. Pursuant to Section 287.135, F.S., the CITY may immediately terminate this Agreement for cause if the CONTRACTOR, its affiliates, or its subcontractors are found to have submitted a false certification; or if the

CONTRACTOR, its affiliates, or its subcontractors are placed on any applicable scrutinized companies list or engaged in prohibited contracting activity during the term of the Agreement. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

ARTICLE 14 **E-VERIFY**

A. Registration Requirement; Termination. Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

(i) All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and

(ii) All persons (including sub vendors/sub consultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Cooper City. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Cooper City; and

(iii) The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

ARTICLE 15 **MISCELLANEOUS**

15.1 **Ownership of Documents.** Reports, surveys, plans, studies and other data provided in connection with this Agreement are and shall remain the property of CITY whether or not the project for which they are made is completed. City hereby agrees to use CONTRACTOR's work product for its intended purposes.

15.2 **Records.** CONTRACTOR shall keep such records and accounts and require any and all subcontractor to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement, and any expenses for which CONTRACTOR expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by CITY and shall be kept for a period of ten (10) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by CITY of any fees or expenses based upon such entries. All records shall be maintained and available for disclosure,

as appropriate, in accordance with Chapter 119, F.S.

15.3 **Assignments; Amendments.** This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONTRACTOR without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of CONTRACTOR shall constitute an assignment which requires CITY approval. However, this Agreement shall run to the benefit of CITY and its successors and assigns.

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 of equal dignity herewith.

15.4 **No Contingent Fees.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

15.5 **Notice.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, CONTRACTOR and CITY designate the following as the respective places for giving of notice:

CITY Joseph Napoli
 City Manager
 City of Cooper City
 9090 S.W. 50th Place
 Cooper City, Florida 33328
 Telephone No. (954) 434-4300

Copy To: Jacob G. Horowitz, City Attorney
 Goren, Cherof, Doody & Ezrol, P.A.
 3099 East Commercial Boulevard, Suite 200
 Fort Lauderdale, Florida 33308
 Telephone No. (954) 771-4500
 Facsimile No. (954) 771-4923

Contractor **President**
 Brett Holcombe
 WESTWAY TOWING, INC.
 3681 West Oakland Park Blvd.
 Lauderdale Lakes, FL 33311
 E-mail: baheavyhauler@gmail.com
 Telephone No: 954-731-1115

15.6 **Binding Authority.** 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.

15.7 **Headings.** Headings herein are for convenience of reference only and shall not be considered on any interpretation of this Agreement.

15.8 **Exhibits.** Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.

15.9 **Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

15.10 **Extent of Agreement.** This Agreement represents the entire and integrated agreement between the CITY and the CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral.

15.11 **Legal Representation.** It is acknowledged that each party was represented by counsel in the preparation of and contributed equally to the terms and conditions of this Agreement and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.

15.12 **Counterparts and Execution.** This Agreement may be executed in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.

END OF SECTION

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

CITY:

CITY OF COOPER CITY, FLORIDA

ATTEST:

By: _____
CITY CLERK

By: _____
CITY MANAGER

By: _____
CITY MAYOR

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

CONTRACTOR:

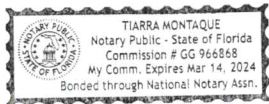
WESTWAY TOWING, INC.

By: [Signature]
Name: Brett Holcombe
Title: President

STATE OF Florida
COUNTY OF Howard

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Brett Holcombe as President of **WESTWAY TOWING, INC.**, a company authorized to conduct business in the State of Florida, and acknowledged execution of the foregoing Agreement as the proper official of **WESTWAY TOWING, INC.** for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this 7th day of December, 2022.



Tiarra Montaque
NOTARY PUBLIC
Tiarra Montaque
(Name of Notary Typed, Printed or Stamped)