



## **Contract Agreement**

### **RFQ 17-006**

This Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_; by and between the City of Smyrna, Georgia (City), having its principle place of business at 2800 King Street, Smyrna, Georgia 30080 and Barrow Wrecker Service (Contractor) having its principle place of business at 2261 Dixie Avenue, Smyrna, Georgia 30080.

WHEREAS, the City of Smyrna has caused Request for Qualifications Number (RFQ #17-006) to be issued soliciting proposals from qualified contractors to furnish all items, labor services, materials and appurtenances called for by them in accordance with this proposal. Barrow Wrecker Service is required to provide the services as called for in the scope of services; and

WHEREAS, Barrow Wrecker Service submitted a response to the RFQ #17-006; and

WHEREAS, Barrow Wrecker Service's submittal was deemed by the City of Smyrna to be the proposal determined to be most advantageous to the City; and

NOW THEREFORE, in consideration of the mutual covenant and promises contained herein, the parties agree as follows:

#### **1.0 Scope of Work**

Barrow Wrecker Service agrees to provide all Services and comply with all requirements specified in the RFQ, a copy of which is attached hereto as Appendix "A" and incorporated herein, and provide those Services as may be additionally specified in the Contractor's Statement in accordance with the terms and conditions of this agreement. The specifications are hereby made a part of this agreement by reference.

Services shall be in accordance with City of Smyrna, Part II – Code of Ordinances, Chapter 98 – Traffic and Vehicles Article II. - Vehicle Impoundment and State Law: Abandoned Motor Vehicles", O.C.G.A. 40-11-1 et seq.; "removal of vehicles from public property", O.C.G.A. 40-11-3.

Furthermore, the Contractor agrees that the performance of work and Services pursuant to the requirements of this contract Agreement shall be performed 24 hours per day 7 days per week.

#### **2.0 Payment**

The City shall pay the amount set out in the attached Item Schedule for services rendered hereunder. Payments shall be made individually by the City according to invoice, for each lot shipped.

### **3.0 Price**

The prices quoted and listed on the attached schedule (Appendix "B") shall be firm throughout the term of this contract.

### **4.0 Term**

The term of this contract shall be for one (1) year from the beginning date and all orders issued and postmarked by the Department during said term shall be filled at the contract price.

### **5.0 Renewal**

The City shall have the option, in its sole discretion, to renew the contract for four (4) additional renewals on a year-to-year basis by giving Barrow Wrecker Service written notice of the renewal decision at least sixty (60) days prior to the expiration of the initial term or renewal term and requesting Contractor's written consent for renewal of the Contract. Renewal will depend upon the best interests of the city, funding, and Contractor's performance. Upon the City's election, in its sole discretion, to renew any part of this Contract, Contractor shall remain obligated to perform in strict accordance with this Contract unless otherwise agreed by the City and the Contractor.

### **6.0 Independent Contractor**

The Contractor shall be independent Contractor. The Contractor is not an employee, agent, or representative of the City of Smyrna. The Contractor, at the contractor's expense, shall obtain and maintain all permits, license, or approvals that may be necessary for the performance of the services. The contractor shall furnish copies of all such permits, licenses, or approvals to the City of Smyrna within ten (10) days after issuance.

Inasmuch as the City of Smyrna and the Contractor are contractors independent of one another neither has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing signed by both parties hereto. The Contractor agrees not to represent itself as the City's agent for any purpose to any party or to allow any employee of the Contractor to do so, unless specifically authorized, in advance and in writing, to do so, and then only for the limited purpose stated in such authorization. The Contractor shall assume full liability for any contracts or agreements the Contractor enters into on behalf of the city of Smyrna without the express knowledge and prior written consent of the City.

### **7.0 Indemnification**

The contractor shall assume the obligation to indemnify and hold harmless the City, its officers, employees, engineers, associates, agents, subcontractors and representatives from and against any and all claims, damages, suits, fees, judgements, costs, expenses (including attorney's fees), liability or payment arising out of, or through, injury to any person or persons including death and loss of services, or damage to property, suffered through any cause whatsoever in the work involved in the contract and to defend on their behalf any suit brought against then arising from such cause.

### **8.0 Insurance**

The Contractor shall, at its own cost and expense, obtain and maintain worker's compensation and commercial general liability insurance coverage covering the period of this Agreement, such insurance

to be obtained from a responsible insurance company legally licensed and authorized to transact business in the state of Georgia. Contractor shall provide a Certificate of Insurance naming the City of Smyrna as additional insured in compliance with the minimum requirements of the state of Georgia to include worker's compensation. Contractor shall be responsible for all injuries or damages of any kind resulting from his/her work, to persons or property. The minimum insurance requirements are as follows:

- a. Commercial General Liability Coverage for personal injury and/or property damage with a minimum limit of \$1,000,000 per occurrence, \$2,000,000 aggregate.
- b. Automobile Liability – Any automobile operated by Contractor or Contractor's employees. Bodily injury and/or property damage of at least \$500,000 combined single limit per accident.
- c. Worker's Compensation and Employer's Liability – Statutory coverage at a minimum of \$100,000 per accident.

Each policy shall contain an endorsement that, in the event of change or cancellation, a thirty (30) day prior written notice must be sent by mail to the City of Smyrna, Georgia.

## **9.0 Termination**

### **9.1**

Any other provisions of this agreement notwithstanding, each party has the right to terminate this agreement if the other party breaches or is in default of any obligation hereunder which default or breach is incapable of cure or which, being capable of cure, has not been cured within thirty (30) days after receipt of written notice of such default (or such additional cure period as the non-defaulting party may authorize). In addition, if at any time after commencement of the services, the City of Smyrna shall, in its sole reasonable judgement, determine that such Services are inadequate, unsatisfactory, no longer needed, or substantially not conforming to the descriptions, warranties, or representations contained herein, the City may terminate this agreement upon thirty (30) days written notice to the Contractor.

### **9.2**

The City of Smyrna may terminate this agreement immediately without prejudice to any other right of action or remedy if the Contractor:

#### **9.2.1**

Becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise. In the event that any of the above events occur, the contractor shall immediately notify the City of Smyrna of each occurrence.

#### **9.2.2**

After five (5) days written notice fails to:

- a) Maintain the required insurance, or;
- b) In any other manner to perform the requirements of the RFQ

## **10.0**

RFQ #17-006, any amendments thereto, and the Contractor's submittal in response thereto, including any best and final offer, are incorporated in this Agreement by reference and form an integral part of this agreement. In the event of a conflict in language between this Agreement and the foregoing documents incorporated herein, the provisions and requirements set forth in this agreement shall govern. In the event of a conflict between the language of the RFQ, as amended, and the Contractor's submittal, the language in the formal shall govern.

## **11.0**

The Contractor must obtain all necessary licenses and comply with local, state, and federal requirements. The Contractor shall comply with all laws, rules and regulations of any governmental entity pertaining to its performance under this Agreement.

### **11.1**

State Requirements.

#### **11.1.1**

Georgia Security and Immigration Compliance

In Compliance with the Georgia Security and Immigration Compliance Act of 2006 Act 457, Section 2 of Senate Bill 529, Chapter 300-10-1 (O.C.G.A. 13-10-91), all Contractors must comply with the above mentioned State of Georgia regulations by completing the provided affidavits relative to contractors and subcontractors stating affirmatively that the contractor and any subcontractors are registered and participating in a federal work authorization program. All applicable affidavits have been included with this contract and must be signed, notarized and returned to the City's Purchasing Office. Employers with one employee must sign the Contractor's Affidavit. Single owners with no employees must sign the SAVE form and provide a copy of a Georgia Driver's License or other approved identification document.

## **12.0 Assignment**

The Contractor shall not assign or subcontract the whole or any part of this Agreement without the City of Smyrna's prior written consent.

## **13.0 Amendments in Writing**

No amendments to this agreement shall be effective unless it is in writing and signed by duly authorized representatives of the parties.

## **14.0 Drug-Free Work Place**

### **14.1**

A drug-free work place will be provided for the Contractor's employees during the performance of this Agreement; and

### **14.2**

The Contractor will secure from any subcontractor hired to work in a drug-free work place a written certification so stating and in accordance with Paragraph 7, subsection B of the Official Code of Georgia Annotated Section 50-24-3

### **14.3**

The Contractor may be suspended, terminated, or debarred if it is determined that:

#### **14.3.1**

The Contractor has made false certification herein; or

#### **14.3.2**

The Contractor has violated such certification by failure to carry out the requirements of the Official Code of Georgia Annotated Section 50-24-3.

### **15.0 Additional Terms**

Neither the City or any Department shall be bound by any terms and conditions included in any Vendor packaging, invoice, catalog, brochure, technical data sheet, or other document which attempts to impose any condition in variance with or in addition to the terms and conditions contained herein.

### **16.0 Antitrust Actions**

For good cause and as consideration for executing this Contract, Vendor acting herein by and through its duly authorized agent hereby conveys, sells, assigns, and transfers to the City of Smyrna all rights, title, and interest to and to all causes of action it may now or hereafter acquire under the antitrust laws of the United states and the state of Georgia relating to the particular goods or services purchased or acquired by the City of Smyrna pursuant hereto.

### **17.0 Reporting Requirement**

Reports shall be submitted to the Administrative Commander on a monthly basis providing, as a minimum, data regarding the number of impound tows as well as the dollar amount withheld for the purpose of administrative fees required from this Contract.

### **18.0 Governing Law**

This agreement shall be governed in all respects by the laws of the state of Georgia. The Superior court of Cobb County, Georgia shall have exclusive jurisdiction to try disputes arising under or by virtue of this contract.

### **19.0 Entire Agreement**

This agreement constitutes the entire Agreement between the parties with respect to the subject matter contained herein; all prior agreements, representations, statement, negotiations, and undertakings are suspended hereby. Neither party has relied on any representation, promise, nor inducement not contained herein.

## 20.0 Personnel

Contractor shall only hire and employ individuals performing services hereunder with suitable training, experience, and skills to perform the services and the position to which such individual is assigned.

Contractor shall, at its expense, conduct (or cause to be conducted), in compliance with all applicable laws, the following checks on each individual performing services hereunder:

- a. A background check, including the: (i) name and all names used in the previous seven years, (ii) date of birth, (iii) city, state and country of birth, and (iv) passport number (if one is held) and issuing country, issue date and expiration date;
- b. Criminal checks; and
- c. Drug testing

At the City's request, and to the extent permitted by law, Contractor shall provide copies of such checks with respect to any individual performing services hereunder, and the City shall comply with the law with respect to the use, retention, disposal and confidentiality of such information.

With respect to any individual performing services hereunder that the City believes is (a) not conducting him or herself in accordance with the applicable code of conduct as provided to Contractor by the City from time to time, (b) improperly providing the services, (c) engaged in conduct that is criminal, fraudulent, or likely to cause harm to the City's employees or property, or (d) not adequately complying with the terms of the contract agreement, Contractor shall, upon the City's request, as soon as reasonably practicable: (i) if applicable, terminate such individual's access to City property, and (ii) remove such individual of his or her responsibility of providing services to the City.

## 21.0 Special Terms and Conditions

Appendix "B" – Fee Schedule

Appendix "C" – Administrative Fee

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized officers as of the day and year set forth next to each signature.

CITY OF SMYRNA

By: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_

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

CONTRACTOR

By: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_

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

