



## CITY OF ATLANTA

Kasim Reed  
Mayor

SUITE 1900  
55 TRINITY AVENUE, SW  
ATLANTA, GA 30303  
(404) 330-6204 Fax: (404) 658-7705  
Internet Home Page: [www.atlantaga.gov](http://www.atlantaga.gov)

DEPARTMENT OF PROCUREMENT  
Adam L. Smith, Esq., CPPO, CPPB, CPPM, CPP  
Chief Procurement Officer  
[asmith@atlantaga.gov](mailto:asmith@atlantaga.gov)

May 14, 2015

Dear Potential Bidders:

**Re: FC-8023, Citywide Wrecker Services**

Attached is one (1) copy of **Addendum Number 2**, which is hereby made a part of the above-referenced project.

For additional information, please contact Mr. Art Smalls, Contract Officer, at (404) 865-8521 or by email at [asmalls@atlantaga.gov](mailto:asmalls@atlantaga.gov).

Sincerely,

Adam L. Smith

ALS/as

**ADDENDUM NO. 2**

This Addendum No. 2 forms a part of the Invitation to Bid and modifies the original solicitation package and any prior Addenda as noted below and is issued to incorporate the following:

- **The Bid due date HAS been modified and Bids are due on Wednesday, May 27, 2015 and should be time stamped in no later than 2:00 P.M. EST and delivered to the address listed below.**
- **The Bid Tabulation Sheet has been modified. Please refer to page 10 and 11 of this addendum.**
- **Please refer to Attachment No. 1 for a list of the City's fleet inventory.**
- **The draft agreement has been modified. Please refer to Attachment No. 2 of this addendum; of which totals 18 pages.**
- **The Bid Guarantee has been waived per this Addendum No. 2.**

Adam L. Smith, Esq., CPPO, CPPB, CPPM, CPP  
Chief Procurement Officer  
Department of Procurement  
55 Trinity Avenue, S. W.  
City Hall South, Suite 1900  
Atlanta, Georgia 30303

**\*\*All other pertinent information is to remain unchanged\*\***

**FC-8023, Citywide Wrecker Services**  
**Addendum No. 2**  
**May 14, 2015**  
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**Acknowledgment of Addendum No. 2**

**Bidders must sign below and return this form with Bid response to the Department of Procurement.**

Bidders must sign below and return this form with Bid to the Department of Procurement, 55 Trinity Avenue, City Hall South, Suite 1900, Atlanta, Georgia 30303 as acknowledgment of receipt of this Addendum.

This is to acknowledge receipt of **FC-8023, Citywide Wrecker Services** on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Legal Company Name of Bidder

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Attachment No. 2**

**1. Question**

This is a very difficult item to do (bid and performance bond). These are financial instruments and require substantial collateral and time to obtain. Is this an item that can be obtained after the award, if you are not awarded then you have spent money to getting something that you did not need?

**Answer**

A Payment Bond will only be provide at the time of award. No Performance Bond is needed.

**2. Question**

Performance Bond. Is this policy necessary since there are provisions stated in the contract to deal with contractors that fail to perform?

**Answer**

No Performance Bond will be required.

**3. Question**

In reference to the Payment Bond (A payment bond is a surety bond posted by a contractor to guarantee that his subcontractors and material suppliers on the project will be paid. They are required in contracts over \$30,000 with the Federal Government and must be 100% of the contract value) requires a LUMP SUM dollar amount. How this is calculated if there is no way of knowing the number of cars anticipated to be towed, therefore, there is not Lump Sum amount to use for this bond.

**Answer**

The City will require a Payment Bond in the amount of \$100,000 at the time of award.

**4. Questions**

(A performance bond, also known as a contract bond, is a surety bond issued by an insurance company or a bank to guarantee satisfactory completion of a project by a contractor. A job requiring a payment and performance bond will usually require a bid bond, to bid the job). Will a bank guarantee of satisfactory completion of the project satisfy the requirement for the performance bond by definition (see above).

**Answer**

The City will only require a Payment Bond of \$100,000 or a Letter of Irrevocable Credit.

**5. Question**

The City is requiring a 5% Bid Guarantee of the total bid. How is this percentage calculated? Is this based on the surcharge paid to the City? How can you pre determine how many vehicles will be towed and paid for by their owners?

**Answer**

The Bid Guarantee has been waived per this Addendum No. 2.

**6. Question**

The Payment and Performance Bond could oppose a challenge to obtain. Is there an option to obtain a bank letter of credit in place of the Payment bond and another option for the Performance Bond.

**Answer**

The alternative would be an Irrevocable Letter of Credit from an AM Best Bank.

**7. Question**

Performance Bond and Payment Bond --- Needs to be waived or give other options.

**Answer**

Only a Payment Bond will be required of \$100,000 or a Letter of Irrevocable Credit.

**8. Question**

Garage keepers limits – The \$1,000,000 requirement is excessive. This is an amount of coverage specific to each customer's vehicle and should be some average vehicle value X amount of vehicles you might damage at any one time. Can this limit be lowered to \$100,000 or so?

**Answer**

The lowest limit the City would consider is \$500,000.

**9. Question**

A fidelity bond is a form of insurance protection that covers policyholders for losses that they incur as a result of fraudulent acts by specified individuals. It usually insures a business for losses caused by the dishonest acts of its employees.

The City is already requesting a payment bond, can you please explain as to why you would ask for this and why the amount is so high, it looks as if this is a bond for a construction contract and not a towing contract.

**Answer**

A fidelity or Crime policy is requested for protection that will cover dishonest acts of its employees and to insure the City will receive all monies owed.

**10. Question**

Towing city vehicles other than police vehicles: Is there an outer boundary related to this that can be provided to help determine a dollar amount to submit on Bid Tabulation? Is it within 285? City limits only?

**Answer**

Within the I-285 corridor.

**11. Question**

All City of Atlanta vehicles, other than police vehicles must be towed to one of the City's five (5) locations. One location 4550 ASR Road, College Park, GA 30320 is outside I-285. Will the \$3.00 per mile apply in this case?

**Answer**

This address is at the Hartsfield-Jackson Airport within the I-285 corridor, but we will accept the \$3.00 per mile if outside of the I-285 corridor.

**12. Question**

If you have the breakdown on the City fleet please provide it.  
Light, medium, and heavy duty vehicles.

**Answer**

Yes. Please see attachment No. 1 of addenda No. 2.

**13. Question**

Scope of Services, p.2, 2.1 B states that there should be barbed wire along the top of the perimeter fence line and that an electric fence is acceptable. Is a solid metal fence-line with no barbed wire ok? Is an electric fence acceptable by code?

**Answer**

Yes. A solid metal fence with no barbed wire is acceptable.

**14. Question**

If this contract is not a 'ZONE BID' contract who will decide on the area of tow and if it is not agreed upon is there an option to negotiate or chose a different zone?

**Answer**

APD will make awards based on area need and the Bidders capacity to service the area appropriately. There will not be an opportunity to negotiate zones. If the Bidder decides that the area is not a good fit, the next responsive and responsible Bidder will be selected.

**15. Question**

Please clarify the tabulation sheet in accordance with the "Less than six wheels" and "under 10,000 lbs. and is these two different categories with a different amount associated with the bid price?

**Answer**

The bid tabulation sheet has been revised to reflect one (1) amount for the "Less Than 6 Wheels" and "Police Action" Tows. Please see Revised Bid Tabulation Sheet on page 10 of this addendum.

**16. Question**

There is still about two and a half weeks until submission, will there be another question and answer period as I am sure you are aware as the time gets closer there will be even more questions before the deadline.

**Answer**

No. At this time we do not have an additional addendum period scheduled.

**17. Question**

There are certain parts of this package that has question or comments that does not pertain to this type of work, is it safe to "OMIT" the parts that are not relevant, i.e. reference sheets: ask for total contract amount including change orders, current completion status, etc...

**Answer**

Bidders are not responsible for any submissions or material associated with Exhibit B of Part II, General Conditions. Part II, Exhibit B has been deemed not applicable.

**18. Question**

References: The requirement is minimum of two references for each project described. Please clarify the "Project" this is referencing.

**Answer**

The term "Project" is in reference to past or present contracts of similar size your company has worked on.

**19. Question**

I am confused about the instructions regarding submitting Form 4 executed by their insurance company, and executed by their surety. Attached is a copy of the completed form, executed by the Surety Company, which is an insurance company.

**Answer**

Form 4 should be submitted to your insurance agent. It is a form which merely confirms that you are insurable. Your insurance is not due at the time of your bid submission.

**20. Question**

Please clarify City vehicles, other than Police vehicles Over and under 10,000lbs.

**Answer**

These are vehicles owned and operated by the City of Atlanta excluding APD vehicles.

**21. Question**

Understanding liquidated damages for not meeting specified time set on a police call. For none emergency towing for vehicles other than police vehicles, will the city remove the 30 min response time and allow a 2 hour response time if the none police vehicles will only be awarded to one vendor.

**Answer**

It has not been determined how many vendors will be selected to service the City vehicles portion of the contract. The city reserves the right to make multiple awards at their sole discretion.

**22. Question**

If the none police towing will go to each zone will the City set the time for none emergency towing to 1 hour, the national average for none emergency towing is 1hour, however not knowing the total number of vehicles in the City of Atlanta fleet and the breakdown as to size and how often the city now send out its own tow truck, the time requested may not be ample time.

**Answer**

We will evaluate the need for longer response times as the need arises.

**23. Question**

Part II Exhibit B General Conditions is for a construction project, in the last invitation, all vendors was told to remove the entire section GC-1 page 1 thru 73.

**Answer**

Bidders are not responsible for any submissions associated with Exhibit B of Part II, General Conditions. Part II, Exhibit B has been deemed not applicable.

**24. Questions**

On Contractor Disclosure Form page 1/7 required submittal form 2 will it be necessary to type the questions if we are going to provide the answer on a separate page because some questions will require more room then just checking a box, or just use your form check yes and also put see attached.

**Answer**

Yes. Check the box. Put see attached next to the box in the answer section and attached your long form answer.

**25. Questions**

Construction Contract Language on the last contract FC-7193 addendum # 2 Said to Omit Part II Exhibit B General Condition's in its entirety, its back in FC-8023 Should we omit GC-Page 1 thru 73.

**Answer**

Bidders are not responsible for any submissions associated with Exhibit B of Part II, General Conditions. Part II, Exhibit B has been deemed not applicable.

**26. Question**

There are 40-50 pages included in this ITB that describe construction related services and are unrelated to the towing services for the City. Can those pages be removed from the bid or an amendment to disregard language that does not relate to towing?

**Answer**

Bidders are not responsible for any submissions associated with Exhibit B of Part II, General Conditions. Part II, Exhibit B has been deemed not applicable.

**27. Questions**

IF the 40-50 pages that are unrelated to towing cannot not be disregarded in full, can it be clarified that this bid for towing does not take into consideration wages related to unions or other city standards for construction? IE I"Instruction to Bidders" p.7 # 22.

**Answer**

Part II, Exhibit B has been deemed not applicable.

**28. Question**

Can a USB jump drive be used instead of a CD for our 2 digital copies? "Instruction to Bidders" p. 2 # 4

**Answer**

Yes. Two (2) USB jump drives can be used instead of 2 CD's to serve as the digital copies of your Bid.

**29. Question**

Does the additional surcharge amount submitted on the Bid Tabulation have any bearing on zone selection or contract award? If so, in what sense? OR is it purely on experience, financial stability and ability to service the city?

**Answer**

No. The additional surcharge has no bearing on the awards. The zones will be awarded based on geography and capacity to service the area, once a Bidder has been deemed Responsive and Responsible.

**30. Question**

Regarding, Bid Tabulation for FC- 8023 Citywide Wrecker Service, the wrecker rates under 10K pounds are as follows:

	Fixed Towing Rate	Fixed Quarantined (Revenues to City)
Less than 6 wheels	\$150.00	\$45.00 No less than \$45.00 to City
Vehicles Towed (Police Actions)	\$150.00	\$45.00 No less than \$45.00 to City
		\$90.00 Total Bid

If we towed one vehicle (Police Actions), would we have to pay the city \$45.00 or \$90.00 for that one tow?

**Answer**

The Bid Tabulation sheet has been modified. The two sections listed above (City Less than 6 Wheels and Vehicles Towed by Police Actions) have been combined. A total bid of \$45.00 would be required.

**31. Question**

What is the different between less than 6 wheels and vehicles towed/impounded due to Police actions?

**Answer**

Vehicles towed due to police action and 6 wheels have been combined to make one (1) category. Please refer to the revised Bid Tabulation Sheet of this Addendum No. 2.

**REVISED Bid Tabulation Sheet (Bid Tabulation Form Page 1 of 2)**

**WRECKER RATES over 10k Pounds AS FOLLOWS:**

	Fixed Imposed Towing Rates	Fixed guaranteed <i>revenues to City:</i>
Vehicles 10,000.00-20,000.00 pounds (no trailer)	\$250.00	\$ _____ No Less Than \$65.00
Vehicles 20,0001.00 pounds and over (without a trailer)	\$400.00	\$ _____ No Less Than \$85.00
Vehicles 20,0001.00 pounds and over (with a trailer)	\$750.00	\$ _____ No Less Than \$100.00
		\$ _____ Total Bid Amount for for <b>Over 10k Pounds</b> Group
<b>Storage Fees:</b> <ul style="list-style-type: none"> <li>10,001 pounds to 20,000 pounds: \$20.00 per day</li> <li>20,001 pounds or greater per unit charge: \$25.00 per day</li> <li>20,001 pounds or greater – combination unit - \$50.00 per day</li> </ul>	City receives \$0 revenues	

**WRECKER RATES under 10k POUNDS AS FOLLOWS:**

	Fixed Imposed Towing Rates	Fixed guaranteed <i>revenues to City:</i>
Vehicles Towed/Impounded With Less Than 6 Wheels due to Police Action	\$150.00	\$ _____ No Less Than \$45.00
		\$ _____ Total Bid Amount for for <b>Under 10k</b> Pounds Group
Storage fees:	\$15 per day after first (24) hrs of storage	City received \$0 revenues
Vehicle Towed/Confiscated due to Police Action (e.g. drug trafficking)	Shall be stored and returned over to the City to manage for all auction purposes.	
Storage Fee	City receives \$0 revenues	
Police Vehicles (e.g. cars, trucks, motorcycles, scooter, etc.)	Bidder receives \$0 revenues for all tows within Metro Atlanta Area. Tows outside the Metro Areas shall constitute \$80.00 tow fee and Mileage Rate of \$3.00 per mile	

**CITY VEHICLES OTHER THAN POLICE VEHICLES RATES OVER 10K POUNDS AS FOLLOWS:**

	Fixed guaranteed rate <i>paid by the City to Bidder:</i>
Vehicles 10,000.00-20,000.00 pounds (no trailer)	\$ _____
Vehicles 20,0001.00 pounds and over (without a trailer)	\$ _____
Vehicles 20,0001.00 pounds and over (with a trailer)	\$ _____
\$ _____ Total Bid Amount for for <b>Over 10k Pounds</b> Group	

**CITY VEHICLES OTHER THAN POLICE VEHICLES RATES UNDER 10K POUNDS AS FOLLOWS:**

	Fixed guaranteed rate <i>paid by the City to Bidder:</i>
Less Than 6 Wheels	\$ _____ Total Bid Under 10K Pounds

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It is understood and agreed that the City shall receive a monetary compensation in the event the Bidder fails to honor all of the below-referenced service deliverables. These fees shall be adjusted by the Bidder from the revenue portions due to the City for that given month, or shall constitute a default of any future contract terms:

- For Each Towing delay (30mins): \$50.00 per occurrence;
- For Each Towing delay Within H-JAIA (20mins): \$50.00 per occurrence; and
- For Each Towing delay Within the Right of Way (15mins): \$50.00 per occurrence.

All revenues and corresponding reports shall be due to the City by the fifth (5<sup>th</sup>) of the month after the first (1<sup>st</sup>) month following the effective date of any future agreement. For all revenues not paid to the City by the fifteen (15<sup>th</sup>) of the month "or the next corresponding business day thereafter", shall constitute a default of any future contract terms. In this instance, Bidders shall be penalized \$25.00 per day for a maximum period of fifteen (15) calendar days, which shall be deducted from the next month's revenues due to the City. Any time beyond this twenty (20) day window shall constitute an automatic termination, at the sole discretion of the City. In such instances, the City may then have the option to pursue contract opportunities with next qualified responsive and responsible Bidder, in order to maintain the quality and level of service needed on behalf of the City.

Yes, I agree to honor the above-referenced Fixed Imposed Towing Rates for Each Towing Scenario, as well as the Fixed Surcharge Rates Offered to the City. Additionally, I agree to the liquated fees that shall be accessed per occurrences should the required towing timeframes or revenue payment terms not be adhered to:

**Corporate Bidder:**  
**Company Name:**

**Name of Authorized Designee:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

\_\_\_\_\_  
**Corporate Secretary/Assistant**  
**Secretary (Seal)**  
**Date:** \_\_\_\_\_

**OR**

**Non-Corporate Bidder:**  
**Company Name:**

**Name of Authorized Designee:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

\_\_\_\_\_  
**Notary Public (Seal)**  
**My Commission Expires:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

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**32. Question**

Can we assume that the total bid of \$90.00 represents wrecker fees of \$300.00 and two vehicles or motorcycle?

**Answer**

Yes. \$90.00 would represent the minimum bid under that scenario.

**33. Questions**

When we submit our bids, do we have to include Part II Exhibit B, General Conditions (page 1 to 73)?

**Answer**

Bidders are not responsible for any submissions or material associated with Exhibit B of Part II, General Conditions. Part II, Exhibit B has been deemed not applicable.

**34. Question**

If a vehicle brakes down in Zone 3, will that call go to the contractor in zone 3, or will all calls over and under two tons go to one company, the one with the lowest bidder for the entire City.

**Answer**

City owned vehicles will be towed by the winning bidder(s) for City owned vehicles over and under 10k Pounds.

**35. Question**

It's my belief the City would receive the best service's from the vendor serving the zone it's assigned to. Will the City set the rates for towing of non-city police cars at ½ the price of towing of impounds for the weight class and have the zone wrecker handle the call for that zone.

**Answer**

The rates for non-police vehicles will be determined based on a competitive process factoring bid price, responsiveness, and a Bidders responsibility to perform the requested services.

**Attachment No. 1 of Addenda No. 2**

Department	Passenger Vehicle	Heavy Trucks	Heavy Equipment	Grand Total
Airport Fire & Rescue	25	32	0	57
Airport Police	46	6	0	52
Aviation Department	161	116	41	318
Corrections	22	2	0	24
DIT	6	0	0	6
DPW - Commissioner's Office	2	0	0	2
DPW - Office Of Fleet Services	47	27	11	85
DPW - OOT - Highway & Street	34	49	34	117
DPW - OOT - Traffic & Signal	54	31	6	91
DPW - Solid Waste Services	64	187	21	272
Finance	5	0	0	5
Fire Rescue	95	78	1	174
Human Resources	4	0	0	4
Mayor's Office	33	0	0	33
Parks & Recreation	131	73	38	242
Planning	77	1	0	78
Police Department	1,147	24	8	1,179
Solicitor, Courts, Law	9	0	0	9
Watershed - Drinking Water	428	89	34	551
Watershed - Waste Water	168	151	68	387
<b>TOTAL</b>	<b>2,558</b>	<b>866</b>	<b>262</b>	<b>3,686</b>

**[Attachment No.2 of Addenda No.2]**  
**\*\*\*This Draft Agreement is in the Place of**  
**Part II, Exhibit A, of FC-8023 Citywide Wrecker Services\*\*\***

**(DRAFT) SERVICES AGREEMENT; CONTRACT NO. FC-8023**

This Draft Services Agreement ("Agreement") is entered into and effective as of \_\_\_\_\_ (the "Effective Date") between the City of Atlanta ("City") and the service provider ("Service Provider") set forth below.

<b>Contract Name:</b>	<b>Contract No. FC-8023</b>
<b>Service Provider</b>	<b>City of Atlanta</b>
<b>Name:</b>	<b>Using Agency: The Atlanta Police Department</b>
<b>Address:</b>	<b>Address:</b>
<b>Phone:</b>	<b>Phone:</b>
<b>Fax:</b>	<b>Fax:</b>
<b>Authorized Representative:</b>	<b>Authorized Representative:</b>

**1. Background.**

1.1 City desires to obtain from Service Provider the services ("Services") described generally on **Exhibit A** attached.

1.2 The total not to exceed compensation amount payable by City during the initial term of this Agreement is \$\_\_\_\_\_ ("Maximum Payment Amount"). More detailed terms concerning compensation payable under this Agreement are set forth on **Exhibit A**.

**2. Term.**

2.1 Initial Term. The initial term of this Agreement will be five (5) years. This Agreement shall commence on the Effective Date and end on [\_\_\_\_\_]. The initial term of the Agreement and any renewal term(s) are collectively referred to as the "Term".

2.2 Renewal Terms. City shall have the right in its sole discretion to renew this Agreement for a two (2) year additional term according to the following procedure:

2.2.1 If City desires to exercise an option to renew, it will submit legislation authorizing such renewal for consideration by City's Council and Mayor prior to the expiration of the prior Term. The legislation will establish that the date of such renewal will be the day immediately following the expiration day of the prior Term;

3. If such legislation is enacted, within five (5) days of such enactment, City will notify Service Provider of such renewal, at which time Service Provider shall be bound to provide Services during such renewal Term, without the need for the Parties to execute any further documents evidencing such renewal, it being acknowledged by Service Provider that its initial execution of this Agreement is deemed its agreement to continue to provide Services during any renewal Term.

4. **Interpretation.**

4.1 All capitalized terms used in this Agreement shall have the meanings ascribed to them in the Contract Documents and on **Exhibit B** attached hereto.

4.2 If there is a conflict between any of the Contract Documents, precedence shall be given in the following order:<sup>1</sup>

1. Agreement
2. Exhibit A – Services and Additional Compensation Terms
3. Exhibit B - Definitions
4. Exhibit D - City Security Policies
5. Exhibit E - Dispute Resolution Procedures
6. Appendix A - Office of Contract Compliance Requirements
7. Appendix B - Insurance and Bonding Requirements
8. Additional Contract Documents

5. **Authorization.** If applicable, this Agreement is authorized by legislation adopted by City which is attached as **Exhibit C**.

5. **Services.**

5.1 **Description of Services.** Service Provider agrees to provide to City the Services per this Agreement. Exhibit A sets forth the following: (a) the period of time during which the Services will be provided; (b) a description of the Services to be provided; (c) the amounts payable and payment schedule for the Services; and (d) any additional provisions applicable to the Services. If any services to be performed are not specifically included on Exhibit A, but are reasonably necessary to accomplish the purpose of this Agreement, they will be deemed to be implied in the scope of the Services to the same extent as if specifically described on **Exhibit A**.

5.2 **Resources.** Unless otherwise expressly provided in this Agreement, all equipment, software, Facilities and Service Provider Personnel required for the proper performance of Services shall be furnished by and be under the control of Service Provider. Service Provider shall be responsible, at its sole cost, for procuring and using such resources in proper and qualified and high quality working and performing order.

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<sup>1</sup> For purposes of this provision, authorized changes to an item listed in the order of precedence pursuant to a Change Document take precedence over the particular item changed.

### 5.3 Change Documents.

5.3.1 This section will govern changes to the Agreement, whether such changes involve an increase in the Maximum Payment Amount or not. Changes in the Services or other aspects of this Agreement shall be made by written document ("Change Document" or "Unilateral Change Document").<sup>2</sup> All changes shall be implemented pursuant to this subsection (the "Change Document Procedures") and any Applicable Law.

5.3.2 Potential Change Documents that may be issued concerning this Agreement include, but are not limited to:

(a) Change Documents to the Agreement involving an increase to the Maximum Payment Amount executed between City and Service Provider which may or may not require legislative approval under Code Section 2-1292;

(b) Change Documents to the Agreement involving no increase to the Maximum Payment Amount, changes in the value of the Charges or changes in the terms or amounts of compensation under the Maximum Payment Amount executed between City and Service Provider pursuant to Code Section 2-1292(d); and

(c) Unilateral Change Documents to the Agreement issued by City pursuant to Code Section 2-1292(d) involving no increase to the Maximum Payment Amount, changes in the value of the Charges or changes in the terms or amounts of compensation under the Maximum Payment Amount.

Change Documents that do not involve an increase in the Maximum Payment Amount will be executed pursuant to Code Section 2-1292(d) either bilaterally or unilaterally by City.

5.3.3 City may propose a change in the Services or other aspects of this Agreement by delivering written notice to Service Provider describing the requested change ("Change Request"). Within ten (10) days of receipt of City's Change Request, Service Provider shall evaluate it and submit a written response ("Proposed Change Document"). A Change Request which involves the reduction of Services shall be effective upon written notice to Service Provider.

5.3.4 Service Provider may, without receiving any Change Request, on its own submit a Proposed Change Document describing its own proposed requested change to the Agreement.

5.3.5 Each Proposed Change Document shall include the applicable schedule for implementing the proposed change, any applicable changes to the Charges (either increased

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<sup>2</sup> Change Documents may assume numerous multiple forms and titles depending on the nature of the change involved (e.g. Change Order, Unilateral Change Order, Amendment, Contract Modification, Renewal, etc.).

or decreased) and all other information applicable to the proposed change. Each Proposed Change Document shall constitute an offer by Service Provider and shall be irrevocable for a period of sixty (60) days. City shall review and may provide Service Provider with comments regarding a Proposed Change Document, and Service Provider shall respond to such comments, if any. A Proposed Change Document from Service Provider will become effective only when executed by an authorized representative of City.

5.3.6 City may propose any changes to the Agreement, including, but not limited to, changes that it contends do not involve an increase to the Maximum Payment Amount, a change in the Charges or changes in the terms or amounts of compensation under the Maximum Payment Amount, and Service Provider shall, in good faith, evaluate such proposed Change Request. If City and Service Provider are able to reach agreement on such Change Request, each will execute a Change Document concerning such Change Request pursuant to Code Section 2-1292(d). Nothing in this Agreement shall, in the event of disagreement between City and Service Provider concerning a proposed Change Request, or otherwise, prohibit City from issuing a Unilateral Change Document to Service Provider, pursuant to Code Section 2-1292(d), and City and Service Provider agree to resolve their dispute pursuant to the Dispute Resolution Procedures set forth in **Exhibit E**. During the pendency of such dispute, Service Provider shall continue to perform the Services, as changed by such Unilateral Change Document.

5.4 Suspension of Services. City may, by written notice to Service Provider, suspend at any time the performance of any or all of the Services to be performed under this Agreement. Upon receipt of a suspension notice, Service Provider must, unless the notice requires otherwise, (a) immediately discontinue suspended Services on the date and to the extent specified in the notice; (b) place no further orders or subcontracts for materials, services or facilities with respect to suspended Services, other than to the extent required in the notice; and (c) take any other reasonable steps to minimize costs associated with the suspension.

## **6. Service Provider's Obligations.**

6.1 Service Provider Personnel. Service Provider shall be responsible, at its own cost, for all recruiting, hiring, training, educating and orienting of all Service Provider Personnel, all of whom shall be fully qualified and shall be authorized under Applicable Law to perform the Services.

6.2 Service Provider Authorized Representative. Service Provider designates the Service Provider Authorized Representative named on page 1 of this Agreement ("Service Provider Authorized Representative") and, such Person shall: (a) be a project executive and employee within Service Provider's organization, with the information, authority and resources available to properly coordinate Service Provider's responsibilities under this Agreement; (b) serve as primary interface and the single-point of communication for the provision of Services by Service Provider; (c) have day-to-day responsibility and authority to address issues relating to the Services; and (d) devote adequate time and efforts to managing and coordinating the Services.

6.3 Qualifications. Upon City's reasonable request, Service Provider will make available to City all relevant records of the education, training, experience, qualifications, work history and performance of Service Provider Personnel.

6.4 Removal of Personnel Assigned to City Contract. Within a reasonable period, but not later than seven (7) days after Service Provider's receipt of notice from City that the continued assignment to the City Contract of any Service Provider Personnel is not in the best interests of City, Service Provider shall remove such Service Provider Personnel from City's Contract. Service Provider will not be required to terminate the employment of such individual. Service Provider will assume all costs associated with the replacement of any Service Provider Personnel. In addition, Service Provider agrees to remove from City's Contract any Service Provider Personnel who has engaged in willful misconduct or has committed a material breach of this Agreement immediately after Service Provider becomes aware of such misconduct or breach.

6.5 Subcontracting. Unless specifically authorized in this Agreement, Service Provider will not enter into any agreement with or delegate or subcontract any Services to any Third Party without the prior written approval of City, which City may withhold in its sole discretion. If Service Provider subcontracts any of the Services (after having first obtained City's prior written approval, in its sole discretion), Service Provider shall: (i) be responsible for the performance of Services by the subcontractors; (ii) remain City's sole point of contact for the Services; and (iii) be responsible for the payment to any subcontractors.

6.6 Key Service Provider Personnel and Key Subcontractors.

6.6.1 The following Persons are identified by Service Provider as Key Service Provider Personnel under this Agreement:

- (a) \_\_\_\_\_;
- (b) \_\_\_\_\_; and
- (c) \_\_\_\_\_.

6.6.2 The following Persons are identified by Service Provider as Key Subcontractors under this Agreement:

- (a) \_\_\_\_\_;
- (b) \_\_\_\_\_; and
- (c) \_\_\_\_\_.

6.6.3 Service Provider shall not transfer, reassign or replace any Service Provider Key Personnel or Key Subcontractor, except as a result of retirement, voluntary resignation, involuntary termination for cause in Service Provider's sole discretion, illness, disability or death, during the term of this Agreement without prior written approval from City.

6.7 Conflicts of Interest. Service Provider shall immediately notify City in writing, specifically disclosing any and all potential or actual conflicts of interests, which arise or may arise during the execution of its work in the fulfillment of the requirements of the Agreement. City shall make a written determination as to whether a conflict of interest actually exists and the actions to be taken to resolve the conflict of interest.

6.8 Commercial Activities. Neither Service Provider nor any Service Provider Personnel shall establish any commercial activity, issue concessions, or permits of any kind to third Parties for establishing any activities on City property.

## 7. City's Authorized Representative.

7.1 Designation and Authority. City designates the City Authorized Representative named on page 1 of this Agreement (the "City Authorized Representative") who shall: (a) serve as primary interface and the single-point of communication for the provision of Services; (b) have day-to-day responsibility to address issues relating to this Agreement; and (c) to the extent provided under the Code, have the authority to execute any additional documents or changes on behalf of City.

7.2 City's Right to Review and Reject. Any Service or other document or item to be submitted or prepared by Service Provider hereunder shall be subject to the review of the City Authorized Representative. The City Authorized Representative may disapprove, if in the City Authorized Representative's sole opinion the Service, document or item is not in accordance with the requirements of this Agreement or sound professional service principles, or is impractical, uneconomical or unsuited in any way for the purposes for which the Service, document or item is intended. If any of the said items or any portion thereof are so disapproved, Service Provider shall revise the items until they meet the approval of the City Authorized Representative. However, Service Provider shall not be compensated under any provision of this Agreement for repeated performance of such disapproved items.

## 8. Payment Procedures.

8.1 General. City will not be obligated to pay Service Provider any amount in addition to the Charges for Service Provider's provision of the Services. Service Provider Personnel hourly rates, reimbursable expenses and other compensable items under this Agreement are set forth on **Exhibit A**.

8.2 Invoices. Service Provider shall prepare and submit to City invoices for payment of all Charges in accordance with **Exhibit A**. Each invoice shall be in such detail and in such format as City may reasonably require. To the extent not set forth on **Exhibit A**, Service Provider shall invoice City monthly for Services rendered.

8.3 Taxes. The Charges are inclusive of all taxes, levies, duties and assessments ("Taxes") of every nature due in connection with Service Provider's performance of the Services. Service Provider is responsible for payment of such Taxes to the appropriate governmental authority. If Service Provider is refunded any Tax payments made relating to the Services, Service Provider shall remit the amount of such refund to City within forty-five (45) days of receipt of the refund.

8.4 Payment. City shall endeavor to pay all undisputed Charges within thirty (30) days of the date of the receipt by City of a properly rendered and delivered invoice. Notwithstanding the forgoing, unless otherwise provided on **Exhibit A**, all undisputed Charges on an invoice properly rendered and delivered shall be payable within forty-five (45) days of the date of receipt by City.

8.5 Disputed Charges. If City in good faith disputes any portion of an invoice, City may withhold such disputed amount and notify Service Provider in writing of the basis for any dispute within thirty (30) days of the later of: (a) receipt of the invoice; or (b) discovery of the basis for any such dispute. City and Service Provider agree to use all reasonable commercial efforts to resolve any disputed amount in any invoice within thirty (30) days of the date City notifies Service Provider of the disputed amount.

8.6 No Acceptance of Nonconforming Work. No payment of any invoice or any partial or entire use of the Services by City constitutes acceptance of any Services.

8.7 Payment of Other Persons. Prior to the issuance of final payment from City, Service Provider shall certify to City in writing, in a form satisfactory to City, that all subcontractors, materialmen, suppliers and similar firms or persons engaged by Service Provider in connection with this Agreement have been paid in full or will be paid in full utilizing the monies constituting final payment to Service Provider.

9. Service Provider Representations and Warranties. As of the Effective Date and continuing throughout the Term, Service Provider warrants to City that:

9.1 Authority. Service Provider is duly incorporated or formed, validly existing and is in good standing under the laws of the state in which it is incorporated or formed, and is in good standing in each other jurisdiction where the failure to be in good standing would have a material adverse affect on its business or its ability to perform its obligations under this Agreement. Service Provider has all necessary power and authority to enter into and perform its obligations under this Agreement, and the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary actions on its part. This Agreement constitutes a legal, valid and binding obligation of Service Provider, enforceable against it in accordance with its terms. No action, suit or proceeding in which Service Provider is a party that may restrain or question this Agreement or the provision of Services by Service Provider is pending or threatened.

9.2 Standards. The Services will be performed in a workmanlike manner in accordance with the standards imposed by Applicable Law and the practices and standards used in well managed operations performing services similar to the Services.

9.3 Conformity. The development, creation, delivery, provision, implementation, testing, maintenance and support of all Services shall conform in all material respects to the description of such Services in the Contract Documents.

9.4 Materials and Equipment. Any equipment or materials provided by Service Provider shall be new, of clear title, not subject to any lien or encumbrance, of the most suitable grade of their respective kinds for their intended uses, shall be free of any defect in design or

workmanship and shall be of merchantable quality and fit for the purposes for which they are intended.

## **10. Compliance with Laws.**

10.1 General. Service Provider and its subcontractors will perform the Services in compliance with all Applicable Laws.

10.2 City's Socio-Economic Programs. Service Provider shall comply with Appendix A and any applicable City socio-economic programs, including, but not limited to, City's EBO and EEO Programs, and requirements set forth in the Code in the performance of the Services.

10.3 Consents, Licenses and Permits. Service Provider will be responsible for, and the Charges shall include the cost of, obtaining, maintaining and complying with, and paying all fees and taxes associated with, all applicable licenses, authorizations, consents, approvals and permits required of Service Provider in performing Services and complying with this Agreement.

## **11. Confidential Information.**

11.1 General. Each Party agrees to preserve as strictly confidential all Confidential Information of the other Party for two (2) years following the expiration or termination of this Agreement; provided, however, that each Party's obligations for the other Party's Confidential Information that constitutes trade secrets pursuant to Applicable Laws will continue for so long as such Confidential Information continues to constitute a trade secret under Applicable Law. Any Confidential Information that may be deemed Sensitive Security Information by the Department of Homeland Security or any other similar Confidential Information related to security will be considered trade secrets. Upon request by City, Service Provider will return any trade secrets to City. Each Party agrees to hold the Confidential Information of the other in trust and confidence and will not disclose it to any Person, or use it (directly or indirectly) for its own benefit or the benefit of any other Person other than in the performance of its obligations under this Agreement.

11.2 Disclosure of Confidential Information or Information Other Party Deems to be Confidential Information. Each Party will be entitled to disclose any Confidential Information if compelled to do so pursuant to: (i) a subpoena; (ii) judicial or administrative order; or (iii) any other requirement imposed upon it by Applicable Law. Prior to making such a disclosure, to the extent allowed pursuant to Applicable Law, each Party shall provide the other with thirty six (36) hours prior notice by facsimile of its intent to disclose, describing the content of the information to be disclosed and providing a copy of the pleading, instrument, document, communication or other written item compelling disclosure or, if not in writing, a detailed description of the nature of the communication compelling disclosure with the name, address, phone number and facsimile number of the Person requesting disclosure. Should the non-disclosing Party contest the disclosure, it must: a) seek a protective order preventing such disclosure; or b) intervene in such action compelling disclosure, as appropriate. This Section shall be applicable to information that one Party deems to be Confidential Information but the other Party does not.

## **12. Work Product.**

12.1 Except as otherwise expressly provided in this Agreement, all reports, information, data, specifications, computer programs, technical reports, operating manuals and similar work or other documents, all deliverables, and other work product prepared or authored by Provider or any of its contractors exclusively for the City under this Agreement, and all intellectual property rights associated with the foregoing items (collectively, the "Work Product") shall be and remain the sole and exclusive property of the City. Any of Provider's or its contractors' works of authorship comprised within the Work Product (whether created alone or in concert with City or Third Party) shall be deemed to be "works made for hire" and made in the course of services rendered and, whether pursuant to the provisions of Section 101 of the U.S. Copyright Act or other Applicable Law, such Work Product shall belong exclusively to City. Provider and its contractors grant the City a non-exclusive, perpetual, worldwide, fully paid up, royalty-free license to all Work Product not exclusively developed for City under this Agreement.

12.2 If any of the Work Product is determined not to be a work made for hire, Service Provider assigns to City, worldwide and in perpetuity, all rights, including proprietary rights, copyrights, and related rights, and all extensions and renewals of those rights, in the Work Product. If Service Provider has any rights to the Work Product that cannot be assigned to City, Service Provider unconditionally and irrevocably waives the enforcement of such rights and irrevocably grants to City during the term of such rights an exclusive, irrevocable, perpetual, transferable, worldwide, fully paid and royalty-free license, with rights to sublicense through multiple levels of sublicensees, to reproduce, make, have made, create derivative works of, distribute, publicly perform and publicly display by all means, now known or later developed, such rights.

12.3 City shall have the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name or for its own benefit, all patents, copyrights, applications and registrations, renewals and continuations and all other appropriate protection.

12.4 To the extent exclusive title or complete and exclusive ownership rights in any Work Product created by Service Provider Personnel may not originally vest in City by operation of Applicable Law, Service Provider shall, immediately upon request, unconditionally and irrevocably assign, transfer and convey to City all rights, title and interest in the Work Product.

12.5 Without any additional cost to City, Service Provider Personnel shall promptly give City all reasonable assistance and execute all documents City may reasonably request to enable City to perfect, preserve, enforce, register and record its rights in all Work Product. Service Provider irrevocably designates City as Service Provider's agent and attorney-in-fact to execute, deliver and file, if necessary, any documents necessary to give effect to the provisions of this Section and to take all actions necessary, in Service Provider's name, with the same force and effect as if performed by Service Provider.

## **13. Audit and Inspection Rights.**

### **13.1 General.**

13.1.1 Service Provider will provide to City, and any Person designated by City, access to Service Provider Personnel and to Service Provider owned Facilities for the purpose of performing audits and inspections of Service Provider, Service Provider Personnel and/or any of the relevant information relating to the Services and this Agreement. Such audits, inspections and access may be conducted to: (a) verify the accuracy of Charges and invoices; (b) examine Service Provider's performance of the Services; (c) monitor compliance with the terms of this Agreement; and (d) any other matters reasonably requested by City. Service Provider shall provide full cooperation to City and its designated Persons in connection with audit functions and examinations by regulatory authorities.

13.1.2 All audits and inspections will be conducted during normal business hours (except with respect to Services that are performed during off-hours).

13.1.3 Service Provider shall promptly respond to and rectify the deficiencies identified in and implement changes suggested by any audit or inspection report.

13.1.4 If any audit or inspection of Charges or Services reveals that City has overpaid any amounts to Service Provider, Service Provider shall promptly refund such overpayment and Service Provider shall also pay to City interest on the overpayment amount at the rate of one-half percent (0.5%) per month (or such maximum rate permissible by Applicable Law, if lower) from the date the overpayment was made until the date the overpayment is refunded to City by Service Provider.

13.2 Records Retention. Until the later of: (a) six (6) years after expiration or termination of this Agreement; (b) the date that all pending matters relating to this Agreement (e.g., disputes) are closed or resolved by the Parties; or (c) the date such retention is no longer required to meet City's records retention policy or any record retention policy imposed by Applicable Law, if more stringent than City's policy, Service Provider will maintain and provide access upon request to the records, data, documents and other information required to fully and completely enable City to enforce its audit rights under this Agreement.

#### **14. Indemnification by Service Provider.**

14.1 General Indemnity. Service Provider shall indemnify and hold City, its agencies and its and their respective officers, directors, employees, advisors, and agents, successors and permitted assigns, harmless from any losses, liabilities, damages, demands and claims, and all related costs (including reasonable legal fees and costs of investigation, litigation, settlement, judgment, interest and penalties) arising from claims or actions based upon:

(a) Service Provider's or Service Provider Personnel's performance, non-performance or breach of this Agreement;

(b) compensation or benefits of any kind, by or on behalf of Service Provider Personnel, or any subcontractor, claiming an employment or other relationship with Service Provider or such subcontractor (or claiming that this Agreement creates an inherent, statutory or implied employment relationship with City or arising in any other manner out of this Agreement or the provision of Services by such Service Provider Personnel or subcontractor);

(c) any actual, alleged, threatened or potential violation of any Applicable Laws by Service Provider or Service Provider Personnel, to the extent such claim is based on the act or omission of Service Provider or Service Provider Personnel, excluding acts or omissions by or at the direction of City;

(d) death of or injury to any individual caused, in whole or in part, by the tortious conduct of Service Provider or any Person acting for, in the name of, at the direction or supervision of or on behalf of Service Provider; and

(e) damage to, or loss or destruction of, any real or tangible personal property caused, in whole or in part, by the tortious conduct of Service Provider or any Person acting for, in the name of, at the direction or supervision of or on behalf of Service Provider.

14.2 Intellectual Property Indemnification by Service Provider. Service Provider shall indemnify and hold City Indemnitees, harmless from and against any losses, liabilities, damages, demands and claims, and all related costs (including reasonable legal fees and costs of investigation, litigation, settlement, judgment, interest and penalties) arising from claims or actions based upon any of the materials and methodologies used by Service Provider (or any Service Provider agent, contractor, subcontractor or representative), or City's use thereof (or access or other rights thereto) in connection with the Services infringes or misappropriates the Intellectual Property Rights of a Third Party. If any materials or methodologies provided by Service Provider hereunder is held to constitute, or in Service Provider's reasonable judgment is likely to constitute, an infringement or misappropriation, Service Provider will in addition to its indemnity obligations, at its expense and option, and after consultation with City regarding City's preference in such event, either: (A) procure the right for City Indemnitees to continue using such materials or methodologies; (B) replace such materials or methodologies with a non-infringing equivalent, provided that such replacement does not result in a degradation of the functionality, performance or quality of the Services; (C) modify such materials or methodologies, or have such materials or methodologies modified, to make them non-infringing, provided that such modification does not result in a degradation of the functionality, performance or quality of the materials or methodologies; or (D) create a feasible workaround that would not have any adverse impact on City.

## 15. Limitation of Liability.

15.1 General. THE MAXIMUM AGGREGATE LIABILITY OF CITY HEREUNDER IS LIMITED TO THE TOTAL OF ALL CHARGES ACTUALLY PAID DURING THE CURRENT YEAR UNDER THE AGREEMENT. EXCEPT FOR PROVIDER'S INDEMNITY OBLIGATIONS SET FORTH IN THE **SECTION ENTITLED "INDEMNIFICATION BY SERVICE PROVIDER"** AND WILLFUL MISCONDUCT OR GROSS NEGLIGENCE BY PROVIDER, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES (OR ANY COMPARABLE CATEGORY OR FORM OF SUCH DAMAGES, HOWSOEVER CHARACTERIZED IN ANY JURISDICTION), ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, NEGLIGENCE,

TORT, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE, AND EVEN IF FORESEEABLE OR IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15.2 Exceptions to Limitations. The limitations set forth in the immediate subsection shall not apply to: (a) personal injury, wrongful death or tangible property damage; or (b) any claim involving a violation of any Applicable Law concerning homeland security, terrorist activity or security sensitive information, regardless of the manner in which such damages are characterized.

16. Insurance and Bonding Requirements. Service Provider shall comply with the insurance and bonding requirements set forth on **Appendix B**.

17. Force Majeure. Neither Party will be liable for default or delay in the performance of its obligations under this Agreement to the extent such default or delay is caused by a Force Majeure Event. Upon the occurrence of a Force Majeure Event, the non-performing Party will be excused from performance or observance of affected obligations for as long as: (a) the Force Majeure Event continues; and (b) the Party continues to attempt to recommence performance or observance to the extent commercially reasonable without delay. If any Force Majeure Event continues for thirty (30) consecutive days, City may, at its option during such continuation, terminate this Agreement, in whole or in part, without penalty or further obligation or liability of City.

18. Termination.

18.1 Termination by City for Cause. City may at its option, by giving written notice to Service Provider, terminate this Agreement:

(a) for a material breach of the Contract Documents by Service Provider that is not cured by Service Provider within seven (7) days of the date on which City provides written notice of such breach;

(b) immediately for a material breach of the Contract Documents by Service Provider that is not reasonably curable within seven (7) days;

(c) immediately upon written notice for numerous breaches of the Contract Documents by Service Provider that collectively constitute a material breach or reasonable grounds for insecurity concerning Service Provider's performance; or

(d) immediately for engaging in behavior that is dishonest, fraudulent or constitutes a conflict of interest with Service Provider's obligations under this Agreement or is in violation of any City Ethics Ordinances.

18.2 Re-procurement Costs. In addition to all other rights and remedies City may have, if this Agreement is terminated by City pursuant to the above subsection entitled "**Termination by City for Cause**", Service Provider will be liable for all costs in excess of the Charges for all terminated Services reasonably and necessarily incurred by City in the completion of the Services, including the cost of administration of any agreement awarded to

other Persons for completion. If City improperly terminates this Agreement for cause, the termination for cause will be considered a termination for convenience in accordance with the provisions of the **Section entitled "Termination by City for Convenience"**.

18.3 Termination by City for Insolvency. City may terminate this Agreement immediately by delivering written notice of such termination to Service Provider if Service Provider: (a) becomes insolvent, as that term may be defined under Applicable Law, or is unable to meet its debts as they mature; (b) files a voluntary petition in bankruptcy or seeks reorganization or to effect a plan or other arrangement with creditors; (c) is adjudicated bankrupt or makes an assignment for the benefit of its creditors generally; (d) fails to deny or contest the material allegations of an involuntary petition filed against it pursuant to any Applicable Law relating to bankruptcy, arrangement or reorganization, which is not dismissed within sixty (60) days; or (e) applies for or consents to the appointment of any receiver for all or any portion of its property.

18.4 Termination by City for Convenience. At any time during the Term of this Agreement, City may terminate this Agreement for convenience upon fourteen (14) days written notice of such termination. Upon a termination for convenience, Service Provider waives any claims for damages, including loss of anticipated profits. As Service Provider's sole remedy and City's sole liability, City will pay Charges for the Services properly performed prior to the notice of termination, plus all reasonable costs for Services performed after the termination, as specified in such notice, and reasonable administrative costs of settling and paying claims arising out of the termination of Services under purchase orders or subcontracts except to the extent any products under such purchase orders or subcontracts can be used by Service Provider in its business within the thirty (30) days following termination. If requested, Service Provider shall substantiate such costs with proof satisfactory to City.

18.5 Termination for Lack of Appropriations. If, during the Term of this Agreement, legislation establishing a Maximum Payment Amount for the following year is not enacted, this Agreement will terminate in its entirety on the last day of the annual term for which a Maximum Payment Amount has been legislatively authorized.

18.6 Effect of Termination. Unless otherwise provided herein, termination of this Agreement, in whole or in part and for any reason, shall not affect: (a) any liabilities or obligations of either Party arising before such termination or out of the events causing such termination; or (b) any remedies to which a Party may be entitled under this Agreement, at law or in equity. Upon termination of this Agreement, Service Provider shall immediately: (i) discontinue Services on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of the terminated Services; (ii) inventory, maintain and turn over to City all work product, licenses, equipment, materials, plant, tools, and property furnished by Service Provider or provided by City for performance of the terminated Services; (iii) promptly obtain cancellation, upon terms satisfactory to City, of all purchase orders, subcontracts, rentals or any other agreements existing for performance of the terminated Services, or assign those agreements, as directed by City; (iv) comply with all other reasonable requests from City regarding the terminated Services; and (v) continue to perform in accordance with all of the terms and conditions of this Agreement any portion of the Services that are not terminated.

## 19. Dispute Resolution.

19.1 All disputes under the Contract Documents or concerning Services shall be resolved under this **Section** and **Exhibit E**. Both Parties shall continue performing under this Agreement while the Parties are seeking to resolve any such dispute unless, during that time, this Agreement is terminated or expires. A dispute over payment will not be deemed to preclude performance by Service Provider.

19.2 Applicable Law. The Contract Documents shall be governed by and construed in accordance with the substantive laws of the State of Georgia without regard to its choice of law principles.

19.3 Jurisdiction and Venue. The Parties hereby submit and consent to the exclusive jurisdiction of the state courts of Fulton County, Georgia or in the United States District Court for the Northern District of Georgia and irrevocably agree that all actions or proceedings relating to this Agreement will be litigated in such courts, and each of the Parties waives any objection which it may have based on improper venue or forum non conveniens to the conduct of any such action or proceeding in such court.

## 20. General.

20.1 Notices. Any notice under this Agreement shall be in writing and sent to the respective Party at the address on page 1 of this Agreement, or, if applicable, to the City's Department of Procurement at 55 Trinity Avenue, Suite 1790, Atlanta, Georgia, 30303, and shall be deemed delivered: (a) when delivered by hand or courier or by overnight delivery with signature receipt required; (b) when sent by confirmed facsimile with a copy sent by another means specified in this **Section**; or (c) three (3) days after the date of mailing by United States certified mail, return receipt requested, postage prepaid. Any Party may change its address for communications by notice in accordance with this Section.

20.2 Waiver. Any waiver by the Parties or failure to enforce their rights under this Agreement shall be deemed applicable only to the specific matter and shall not be deemed a waiver or failure to enforce any other rights under this Agreement, and this Agreement shall continue in full force and effect as though such previous waiver or failure to enforce any rights had not occurred. No supplement, modification, amendment or waiver of this Agreement will be binding on City unless executed in writing by the City Authorized Representative.

20.3 Assignment. Neither this Agreement, nor any rights or obligations under it, are assignable in any manner without the prior written consent of the other Party and any attempt to do so without such written consent shall be void ab initio.

20.4 Publicity. Service Provider shall not make any public announcement, communication to the media, take any photographs or release any information concerning City, the Services or this Agreement without the prior written consent of City.

20.5 Severability. In the event that any provision of this Agreement is declared invalid, unenforceable or unlawful, such provision shall be deemed omitted and shall not affect the validity of other provisions of this Agreement.

20.6 Further Assurances. Each Party shall provide such further documents or instruments required by the other Party as may be reasonably necessary to give effect to this Agreement.

20.7 No Drafting Presumption. No presumption of any Applicable Law relating to the interpretation of contracts against the drafter shall apply to this Agreement.

20.8 Survival. Any provision of this Agreement which contemplates performance subsequent to any termination or expiration of this Agreement or which must survive in order to give effect to its meaning, shall survive the expiration or termination of this Agreement.

20.9 Independent Contractor. Service Provider is an independent contractor of City and nothing in this Agreement shall be deemed to constitute Service Provider and City as partners, joint venturers, or principal and agent, or be construed as requiring or permitting the sharing of profits or losses. Neither Party has the authority to represent or bind or create any legal obligations for or on behalf of the other Party.

20.10 Third Party Beneficiaries. This Agreement is not intended, expressly or implicitly, to confer on any other Person any rights, benefits, remedies, obligations or liabilities.

20.11 Cumulative Remedies. Except as otherwise provided herein, all rights and remedies under this Agreement are cumulative and are in addition to and not in lieu of any other remedies available under Applicable Law, in equity or otherwise.

20.12 Entire Agreement. The Contract Documents contain the entire Agreement of the Parties relating to their subject matter and supersede all previous communications, representations or agreements, oral or written, between the Parties with respect to such subject matter. This Agreement may only be amended or modified by a writing executed by each Party's authorized representative and each such writing shall be deemed to incorporate the Contract Documents, except to the extent that City is authorized under Applicable Law to issue Unilateral Change Documents. SERVICE PROVIDER MAY NOT UNILATERALLY AMEND OR MODIFY THIS AGREEMENT BY INCLUDING PROVISIONS IN ITS INVOICES, OR OTHER BUSINESS FORMS, WHICH SHALL BE DEEMED OBJECTED TO BY CITY AND OF NO FORCE OR EFFECT.

20.13 Unauthorized Goods or Services. Service Provider acknowledges that this Agreement and any changes to it by amendment, modification, change order or other similar document may have required or may require the legislative authorization of the City's Council and approval of the Mayor. Under Georgia law, Service Provider is deemed to possess knowledge concerning the City's ability to assume contractual obligations and the consequences of Service Provider's provision of goods or services to the City under an unauthorized contract, amendment, modification, change order or other similar document, including the possibility that the Service Provider may be precluded from recovering payment for such unauthorized goods or services. Accordingly, Service Provider agrees that if it provides goods or services to the City under a contract that has not received proper legislative authorization or if Service Provider provides goods or services to the City in excess of the any contractually authorized goods or services, as required by the City's Charter and Code, the City may withhold payment for any

unauthorized goods or services provided by Service Provider. Service Provider assumes all risk of non-payment for the provision of any unauthorized goods or services to the City, and it waives all claims to payment or to other remedies for the provision of any unauthorized goods or services to the City, however characterized, including, without limitation, all remedies at law or equity.

**21. Liquidated Damages.**

The performance of the Work under Agreement within the specified time is essential to the City's economic interests. The attention of potential Bidders is directed to the provisions of the Agreement Documents, which establish the basis for liquidated damages to be paid to the City in the event that the services levels are not adhered to or revenues are not honored as specified in any future agreement between the Bidder and the City.

**It is understood and agreed that the City shall receive a monetary compensation in the event the Bidder fails to honor all of the below-referenced service deliverables. These fees shall be adjusted by the Bidder from the revenue portions due to the City for that given month, or shall constitute a default of any future contract terms. A delay shall be defined as, one (1) minute or more beyond the time allotted to arrive on the scene to secure the requested vehicle. The response time shall be initiated from the time of the call dispatched from the City to the Towing Company assigned to a particular zone.**

**For Each Towing delay beyond (30mins): \$50.00 per occurrence**

**For Each Towing delay Within H-JAIA beyond(20mins): \$50.00 per occurrence**

**For Each Towing delay Within the Right of Way beyond (15mins): \$50.00 per occurrence**

All revenues and corresponding reports shall be due to the City by the fifth (5th) of the month after the first (1st) month following the effective date of any future agreement. For all revenues not paid to the City by the fifteen (15th) of the month "or the next corresponding business day thereafter", shall constitute a default of any future contract terms. In this instance, Bidders shall be penalized \$25.00 per day for a maximum period of fifteen (15) days, which shall be deducted from the next month's revenues due to the City. Any time beyond this twenty (20) day window shall constitute an automatic termination, at the sole discretion of the City. In such instances, the City may then have the option to pursue contract opportunities with next qualified responsive and responsible Bidder, in order to maintain the quality and level of service needed on behalf of the City.

The Parties hereto by authorized representatives have executed this Agreement as of the Effective Date.

**City of Atlanta**

\_\_\_\_\_  
**Mayor**

\_\_\_\_\_  
**Municipal Clerk (Seal)**

**Approved:**

\_\_\_\_\_  
**The Atlanta Police Department**

\_\_\_\_\_  
**Chief Procurement Officer**

**Approved as to form:**

\_\_\_\_\_  
**City Attorney**

**Signature Block Options for Service Provider:**

**Corporate signature:**

**[Insert Corporate Name]**

\_\_\_\_\_

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

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

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

\_\_\_\_\_  
**Corporate Secretary/Assistant  
Secretary (Seal)**

**Limited Liability Company:**

**[Insert LLC Name]**

\_\_\_\_\_

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

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

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

\_\_\_\_\_  
**Notary Public (Seal)**

**My Commission Expires:** \_\_\_\_\_