

EXTENSION AND AMENDMENT TO AGREEMENT

THIS EXTENSION AND AMENDMENT TO THE AGREEMENT dated _____, 2021, between:

CITY OF POMPANO BEACH, a municipal corporation of the State of Florida, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, hereinafter referred to as "CITY,"

and

EMERALD TRANSPORTATION CORPORATION, a Florida corporation, having its office and place of business at 4000 North Powerline Road, Deerfield Beach, Florida 33073, hereinafter referred to as "EMERALD."

WHEREAS, EMERALD entered into an agreement with CITY offering to provide towing and wrecker service within the corporate limits of the city on February 24, 2011, ("Original Agreement"), and approved by Resolution No. 2011-145; and

WHEREAS, the parties entered into an Extension and Amendment to the Original Agreement on February 16, 2016, approved by City Resolution No. 2016-105; and

WHEREAS, the CITY and EMERALD have agreed to extend the Original Agreement for an additional five (5) year term, include additional provisions, amend certain terms and conditions, and to substitute Exhibit "B," Rate Schedule, to the Original Agreement.

WITNESSETH:

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments herein set forth CITY and EMERALD agree as follows:

1. Each "WHEREAS" clause set forth above is true and correct and herein incorporated by this reference.

2. The original Agreement between CITY and EMERALD, to provide towing and wrecker services within the corporate limits of the CITY, approved by Resolution No. 2011-145. dated February 24, 2010 a copy of which is attached hereto and made a part hereof as Exhibit "A," shall remain in full force and effect except as specifically amended hereinbelow.

3. The Original Agreement between the parties is hereby amended by amending Paragraph 2 as follows:

2. The term of this Agreement shall be for an initial period of five (5) years and shall commence at 12:00 a.m. on March 1 2011. Six (6) months prior to the expiration of this Agreement, the CITY may choose to enter into negotiations for ~~an extension of the Agreement for one renewal term for an additional five (5) years~~ additional five (5) year extensions subject to Commission approval. The CITY may also choose to solicit a competitive bid or Request for Proposals (RFP). In the event a new Agreement is not in place prior to the expiration date, this Agreement will automatically convert to a month-to-month Agreement until a new Agreement between the CITY and EMERALD is in place, or upon termination by the CITY with thirty (30) days prior written notice provided.

4. The Original Agreement between the parties is hereby amended by amending Paragraph No. 3 as follows:

3. ~~EMERALD shall pay CITY a Franchise Fee in the initial amount of One Hundred Fifty One Thousand and Noll 00 (\$151,000.00) Dollars per annum. The amount of Twelve Thousand Five Hundred Eight Three and 33/100 (\$12,583.33) Dollars shall be paid upon the commencement of this Agreement and thereafter paid monthly, due and payable on the first day of each calendar month until the termination of this Agreement. If the payment is delinquent by more than fifteen (15) days after the payment is due, an additional charge of Fifty (\$50.00) Dollars per day will be due for each day's delay in payment, retroactive to and beginning with the due date of the payment. In the event that a delinquent payment and resulting penalties are due, any payments received will first be applied to the penalty amount, prior to being applied to the regular monthly payment due. In this respect, the Fifty (\$50.00) Dollar penalty fee shall accrue until the monthly payment and all applicable penalties are paid in full. Commencing on the renewal term for the additional five years, EMERALD shall pay CITY a Franchise Fee in the amount of One Hundred Seventy Eight Thousand One Hundred Eighty and 00/100 Dollars (\$178,180.00) per annum. The amount of Fourteen Thousand Eight Hundred Forty Eight and 33/100 (\$14,848.33) Dollars shall be paid upon the commencement of the renewal term~~

~~and thereafter paid monthly, due and payable on the first day of each calendar month until the termination of this Agreement.~~

EMERALD shall pay CITY by and through its imposition of an administrative fee on the registered owner or other legally authorized person in control of a vehicle or vessel that is towed by EMERALD from public property. Said fee shall equal twenty five percent (25%) of the tow rates adopted by the City, and in accordance with State law, to cover the cost of removal, which also includes enforcement and parking enforcement. EMERALD shall impose and collect the administrative fee on behalf of CITY and shall timely remit such fee to CITY after it is collected, within thirty (30) days of said collection.

CITY adopts all tow rates as adopted by Broward County, Florida as exists currently or as amended in the future, for purposes of the Agreement. EMERALD agrees to adhere to all such Broward County tow rates for purposes of all its business activity within the City under this Agreement, and for purposes of compensation to CITY under same.

EMERALD shall submit to City a complete list at the conclusion of each quarter in any calendar year this Agreement is in effect, listing each tow performed, identifying the vehicle owner or operator, the amounts charged, and whether the administrative fee was collected and paid to CITY along with said amount. No such administrative fee shall be charged to nor collected from CITY or its Law Enforcement Agency BSO, for any services provided to their vehicles by EMERALD. Likewise, EMERALD shall not be responsible to remit any administrative fees to CITY for services rendered to said parties.

5. That paragraph 70 of the original agreement is hereby deleted and replaced with the following language:

70. Agreement must be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement will be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in Federal court, the exclusive venue for any such lawsuit will be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

6. The Original Agreement is hereby amended by adding additional language to read as follows:

71. Public Records.

(a) The CITY of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The EMERALD shall comply with Florida's Public Records Law, as amended. Specifically, the EMERALD shall:

(1) Keep and maintain public records required by the CITY in order to perform the service.

(2) Upon request from the CITY's custodian of public records, provide the CITY with a copy of 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, Florida Statutes or as otherwise provided by law.

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the EMERALD does not transfer the records to the CITY.

(4) Upon completion of the Agreement, transfer, at no cost to the CITY, all public records in possession of the EMERALD, or keep and maintain public records required by the CITY to perform the service. If the EMERALD transfers all public records to the CITY upon completion of the Agreement, the EMERALD shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the EMERALD keeps and maintains public records upon completion of the contract, the EMERALD shall meet all applicable requirements for retaining public records. All records stored electronically 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.

(b) Failure of EMERALD to provide the above described public records to the CITY within a reasonable time may subject EMERALD to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF EMERALD HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO EMERALD'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS

**AGREEMENT, CONTACT THE CUSTODIAN OF
PUBLIC RECORDS AT:**

CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com

7. The Original Agreement is hereby amended by adding additional language to read as follows:

72. Nothing in this Agreement shall constitute a waiver by the CITY of its sovereign immunity limits as set forth in Section 768.28, Florida Statutes. Nothing herein shall be construed as consent from either party to be sued by third parties.

8. The Original Agreement is hereby amended by adding additional language to read as follows:

73. Neither party shall be obligated to perform any duty, requirement or obligation hereunder if such performance is prevented by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, acts of nature or by any reason of any other matter or condition beyond the control of either party, which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall economic hardship or lack of funds be considered an event of Force Majeure. If either party is unable to perform or delayed in their performance of any obligations hereunder by reason of any event of Force Majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for either party to correct the adverse effect of such event of Force Majeure.

EMERALD must follow all Federal, State, County, and City safety guidelines, including all CDC safety guidelines in effect during the term of the program including, but not limited to, social distancing and personal protection equipment. Inability to conduct the program and follow any and all required safety guidelines from the COVID-19 crisis or other similar emergency, or failure to follow such requirements including, but not limited to, social distancing shall constitute grounds for immediate cancellation of this Agreement unilaterally by the City upon written notice, which may be provided via electronic mail.

9. The parties hereto agree to extend the original Agreement for an additional five (5) year period, ending February 28, 2026.

10. This Agreement shall bind the parties and their respective executors, administrators, successors and assign and shall be fully effective as though the amendment and extension had been originally included in the Agreement.

THE REMAINDER OF THE PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

“CITY”:

CITY OF POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY

MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

MARK E. BERMAN, CITY ATTORNEY

"EMERALD":

Witnesses:

Justin Mai Dale

Christine Marie Dale
(Print or Type Name)

[Signature]

Michael R Marcus
(Print or Type Name)

EMERALD TRANSPORTATION CORPORATION

By: *[Signature]*
James M. Jennings, President

STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 1dth day of Jan., 2021, by James M. Jennings as President of Emerald Transportation Corporation, a Florida corporation on behalf of the corporation. He is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:



Jeanise Barbe
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG149683
Expires 10/9/2021

Jeanise Barbe
NOTARY PUBLIC, STATE OF FLORIDA

Jeanise BARBE
(Name of Acknowledger Typed, Printed or Stamped)

GG 149683
Commission Number

MEB:jrm
1/11/2021
L:agr/mgr/2021-231