

CONTRACT

No. _____

THIS CONTRACT is executed this ____ day of _____, by and between the _____, a Florida municipal corporation, hereinafter called the "City", and RDK Assets, Inc and Affiliates, AND THEIR AFFILIATES hereinafter called the "Contractor",

WITNESSETH:

WHEREAS, the City issued RFP No. _____ (such document and all addenda thereto, if any, being hereafter referred to as "RFP") seeking proposals for certain complete refuse vehicles, including associated equipment and accessories ("Vehicles") and refuse bodies, including associated equipment and accessories, installed on cab and chassis furnished by the City ("Completed Vehicles"); and,

WHEREAS, on this ____ day of _____, the Contractor submitted a certain proposal ("Proposal") in response to that RFP; and,

WHEREAS, the City and the Contractor desire to enter into a contract for the purchase, leasing, or rental of Vehicles, Completed Vehicles, and Accessories in accordance with the following terms and conditions;

NOW, THEREFORE, in consideration of the mutual promises and covenants, obligations, and terms hereinafter set forth, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, City and Contractor hereby agree as follows:

SECTION 1.0 Purchase of Vehicles and Completed Vehicles.

1.1 Contractor shall provide such Vehicles and Completed Vehicles as the City may order from time to time. All Vehicles and Completed Vehicles shall be priced, designed, manufactured, and equipped in accordance with the specifications set forth in the Proposal and applicable Change Orders executed by the parties unless otherwise stated in this Contract. All Vehicles and Completed Vehicles shall conform and comply with all applicable federal, state, and local laws, statutes, ordinances, and regulations. If so requested by the City, Contractor shall install or mount the refuse body purchased by the City, either on City-furnished cab and chassis or on Contractor furnished cab and chassis, or Contractor may subcontract with the refuse body manufacturer or a third party to do so.

1.1.1 The Contractor and the City Fleet Management Division shall schedule the following meetings with respect to each order received from the City.

- (i) If needed, a pre-production meeting to completely review the specifications and the drawings prior to commencing assembly or production. This meeting shall include the cab and chassis manufacturer, if appropriate. The Contractor shall be represented by qualified technicians/engineers to properly facilitate the design and construction requirements. This meeting is normally held at the _____.
- (ii) If needed, a second meeting will be planned according to the needs of Fleet Management at the Contractor's facilities.
- (iii) A final review and inspection when each Vehicle and Completed Vehicle is considered by the Contractor to be complete. In addition to a complete inspection, City representatives will conduct a full performance test of each Vehicle and Completed Vehicle and all integral systems. The Contractor shall provide all technical information to the representatives reasonably required to assist the City in these inspections and shall make available to the City all reasonably required third-party certifications. A technician shall be available to complete any needed repairs or to replace items not meeting specifications. At the option of the City, this meeting will be held either at City Fleet Management Division facilities or at the facilities of the body manufacturer or Contractor's location.

The Contractor shall coordinate arrangements for these meetings with the City Fleet Management Division and the cab and chassis manufacturer, if appropriate, at least three weeks prior to the scheduled meeting. The Contractor shall bear all costs related to participation of its representatives or personnel in these meetings and activities.

1.1.2 The City or the Contractor, at any time, may request changes in the specifications or requirements related to particular Vehicles, refuse bodies and equipment, and associated accessories. No changes shall become effective until reduced to writing and signed by duly authorized representatives of each party ("Change Order"). All such Change Orders shall include, as a minimum, the following information:

- (i) The specific changes to be made;
- (ii) Changes, if any, in the time for delivery of each completed vehicle; and,
- (iii) Changes in the price of each completed vehicle and associated accessories.

- 1.2 Accessories. The Contractor shall provide such Accessories, as set forth in the RFP and the Proposal for use with refuse bodies and equipment, ordered from time to time by the City.

SECTION 2.0 PURCHASE OF PARTS.

- 2.1 The Contractor shall provide such parts for all Vehicles and Completed Vehicles as the City may order from time to time. The Contractor shall provide on-line parts ordering capability, if available, for the City and, upon request, will provide original manufacturer part numbers. All parts ordered by the City shall be delivered FOB to the Fleet Management Division within 48 hours from placement of the order. Delays in shipment beyond the reasonable control of the Contractor shall be subject to Section 11.1; provided, however, the Contractor, in such event, shall promptly provide Notice to the City regarding the details of any such delay so the City can make a final determination regarding responsibility. Long lead time parts or components not reasonable to inventory or fabricated components not reasonable to inventory are examples of orders that may require a longer delivery time. The Contractor shall expedite all such orders as reasonably timely as is possible.

SECTION 3.0 TERM.

The Term of this Contract shall be a period of _____ () years, commencing _____, unless earlier terminated in accordance with the terms of this Contract. Such term may be extended for an additional _____ () year period, subject to mutual agreement of the parties.

SECTION 4.0 CONTRACT PRICING AND PAYMENT.

- 4.1 Vehicles and Completed Vehicles.

- 4.1.1 During the Term, the City shall pay the Contractor for each Vehicle and Completed Vehicle ordered by the City based upon the Contractor's current pricing at the time a particular order is placed, provided, however, that such price shall not exceed (a) for the current model year, the initial prices as set forth in the Proposal or (b) for subsequent model years, the cost to the Contractor of any cab and chassis furnished by the Contractor plus __% and the cost to the Contractor of any refuse body plus __%. The Contractor will provide proof, satisfactory to the City/ County, of its cost for each cab and chassis and refuse body.

- 4.1.2 A standard warranty package (as described in the Proposal provided by

the manufacturer) is included in the price of each Vehicle and Completed Vehicle. Extended warranties shall be made available to the City at Contractor's cost from the manufacturer.

4.2 Parts and Accessories.

4.2.1 The Contractor shall sell to the City all parts and accessories, including Original Equipment Manufacturer or "OEM" parts, at its cost plus 25% plus freight if applicable; provided, however, that the price to the City shall be no greater than the lowest price offered by the Contractor to any other governmental agency. The City shall have the right to annually review and audit all Contractor records to verify that the Contractor is in compliance with this pricing requirement. If the Contractor is found not to be in compliance, the City will notify the Contractor, in writing, of such fact, and the Contractor, within 30 days of its receipt of such notice, shall pay to the City the applicable price differential for all affected parts and accessories purchased by the City, plus interest thereon at the rate of six percent (6%), for the period from the date of delivery of the affected parts or accessories through the date of such notice from the City.

4.2.2 The Contractor agrees to inventory certain parts at the _____ location, which parts shall be on consignment to the City. All parts used during the preceding 120 days and all parts with a lead-time of more than one week and used within the preceding 180 days shall be placed in inventory as consignment parts. Following receipt of the initial parts inventory, the City shall inventory such parts monthly. Based on such inventories, the City shall make payment to the Contractor for any net reduction in inventory, and the Contractor shall make monthly shipments to the City of all parts required by the City.

4.2.3 Parts consignment and pricing pertains to the City and shall not extend to others using this contract without mutual agreement. Parts consignment and pricing agreements by other entities shall be negotiated between parties and considered outside the limitations or conditions of this agreement.

4.3 Payment.

4.3.1 All Vehicles, Completed Vehicles, and Accessories prices shall be F.O.B.

4.3.2 All proper invoices shall be paid by the City in accordance with the Local Government Prompt Payment Act, Section 218.70, Florida Statutes.

4.3.3 In addition to other remedies available under this Contract, the City shall

have the right to deduct, offset against, or withhold from sums or payments otherwise due the Contractor any sums or amounts which the Contractor owes to the City pursuant to provisions of this Contract, as a result of breach or termination of this Contract. If the City deducts, offsets or withholds any sums due the Contractor, the City shall provide written notification to the Contractor of the amount and reason for the deduction, offset or withholding.

SECTION 5.0 DELIVERY AND ACCEPTANCE

- 5.1 The Contractor shall deliver, or shall cause the manufacturer to deliver, all Vehicles and Completed Vehicles to the City in accordance with the schedule set forth in the Proposal or such other time period as may be agreed by the parties. The Contractor and the City agree that timely delivery of all Vehicles and Completed Vehicles is of the essence of this Contract.
- 5.2 The Contractor shall, or shall cause the manufacturer to, fully assemble, service, and adjust each Vehicle and Completed Vehicle prior to delivery and shall demonstrate, to the satisfaction of the City, that each delivered Vehicle and Completed Vehicle conforms with agreed specifications and according to all manufacturer claims. The Contractor, pursuant to instructions from the City, shall be responsible for coordinating the delivery to the manufacturer of all cab and chassis required for installation of refuse bodies, equipment, and associated accessories. The delivery schedules shall be agreed upon at the first pre-construction meeting, but are subject to change.
- 5.3 With each Vehicle and Completed Vehicle, the Contractor shall deliver to the City, in an electronic format when available, acceptable to the City, the following:
- (i) one (1) copy of the associated technical and service manuals, per model, Thumb Drive & Link preferred;
 - (ii) a copy of the manufacturer's preventive maintenance schedule; and,
 - (iii) the manufacturer's statement of origin, title application, and all warranty documents. (If applicable)
- 5.4 All Vehicles and Completed Vehicles delivered to the City shall be owned by the Contractor at the time of delivery and shall be delivered free and clear of all liens and security interests of any kind.

SECTION 6.0 INDEMNIFICATION.

- 6.1 The Contractor shall indemnify and save harmless the City, its officials and employees, from all losses, damages, costs, expenses, liability, claims, actions, and judgments of any kind whatsoever, including reasonable attorney's fees and costs of litigation, to the extent arising out of or caused by any act or omission of

the Contractor, its subcontractors, or their respective employees, officers, directors, or agents, in the performance under this Contract. The indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under any Workers' Compensation Act, Disability Benefit Act, or other Employee Benefit Act.

- 6.2 The Contractor shall, at its sole expense, defend any claim, suit or proceeding brought against the City, its officials or employees, to the extent such claim, suit or proceeding is based on a claim that any Vehicle or Completed Vehicle, or any process involved in manufacture of the same, or any parts, or equipment, furnished under this Contract (collectively, "Infringing Work") constitutes infringement of any registered patent of the United States of America or County of manufacture, provided that City shall give the Contractor prompt written notice of any such claim, suit or proceeding and shall give the Contractor authority, information and assistance in a timely manner for the defense of the same. The Contractor shall indemnify and hold the City, its officials or employees, harmless from and against all costs and damages awarded, and all attorney's fees incurred or awarded, in any suit or proceeding so defended. The Contractor will not be responsible for any settlement or proceeding made without its prior written approval. In case said Infringing Work is held to constitute an infringement and the use of said Infringing Work is enjoined, the Contractor shall, at its own expense and at its option, either (a) procure for City the right to continue using said Infringing Work, (b) replace said Infringing Work with substantially equivalent, equally functional, non-infringing Work, parts or combination thereof, or (c) modify such Infringing Work so that it becomes non-infringing, while maintaining the same functionality.

SECTION 7.0 INSURANCE.

- 7.1 Prior to commencing work, Contractor shall procure and maintain at Contractor's own cost and expense for the duration of the Contract, the following insurance against claims for injuries to person or damages to property which may arise from or in connection with the performance of the Scope of Services hereunder by Contractor, its agents, representatives, employees or sub-consultants. The cost of such insurance shall be borne by Contractor.

7.1.1 Contractor shall maintain the following coverage with limits no less than the indicated amounts:

- (a) *Commercial General/Umbrella Liability Insurance* - \$1,000,000 limit per occurrence for property damage and bodily injury. The certificate of insurance shall state whether the coverage is provided on a claims-made or preferably on an occurrence basis. The insurance shall include coverage for the following (if applicable):

- (i) Premise/Operations

- (i) Explosion, Collapse and Underground Property Damage Hazard (only when applicable to the project)
- (ii) Products/Completed Operations
- (iii) Contractual
- (iv) Independent Contractors
- (v) Broad Form Property Damage
- (vi) Personal Injury

(a) *Business Automobile/Umbrella Liability Insurance* - \$1,000,000 limit per accident for property damage and personal injury.

- (i) Owned/Leased Autos
- (ii) Non-owned Autos
- (iii) Hired Autos

(b) *Workers' Compensation and Employers'/Umbrella Liability Insurance* - Workers' Compensation statutory limits as required by Chapter 440, Florida Statutes. This policy should include Employers'/Umbrella Liability Coverage for \$1,000,000 per accident.

7.1.2 ***Other Insurance Provisions***

(a) *Workers' Compensation and Employers' Liability and Property Coverage*

- (i) The insurer shall agree to waive all rights of subrogation against City, member of its City Commission, boards, commissions and committees, officers, agents, employees and volunteers for losses arising from activities and operations of Contractor in the performance of Services under this Contract.

(b) *All Coverage*

- (i) Each insurance policy required by this Article shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to City in accordance with this Contract.
- (ii) If Contractor, for any reason, fails to maintain any insurance coverage that is required pursuant to this Contract, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this Contract and obtain damages from Contractor resulting from said breach.

7.1.3. **Verification of Coverage**

Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Upon execution of the contract documents, the certificates and endorsements are to be received and approved by City before work commences.

SECTION 8.0 TERMINATION.

- 8.1 The City or Contractor may, by written notice to the other party, terminate this Contract in whole or in part, at any time, due to the failure of the other party to fulfill its obligations.
- 8.2 Provided there are no pending orders for Vehicles or Completed Vehicles that have not been either accepted or rejected by the City, the City may, by written notice to the Contractor and at any time, terminate this Contract. In the event of such termination, the City shall pay the Contractor for all Vehicles and Completed Vehicles accepted by the City as of the effective date of the termination.
- 8.3 The rights and remedies of the parties provided in this Section 8 are in addition to any other rights and remedies such party may have at law, in equity, or under this Contract.

SECTION 9.0 WARRANTY AND MAINTENANCE.

- 9.1 The Contractor hereby warrants all Vehicles and Completed Vehicles as set forth in its Proposal and in the individual related warranty documents. The Contractor will respond on site in _____, for all warranty repairs within _____ hours (normal working day, Monday-Friday) following notice from the City. Contractor makes no additional warranties whatsoever, expressed or implied, including any warranty of merchantability or fitness for a particular purpose, with respect to the equipment, parts and/or accessories, other than those provided by the manufacturer or agreed upon in this contract or associated documents.

9.2

The Contractor agrees to place at least one manufacture trained technician, (upon request) at _____. The labor rate of \$_____ per hour will be paid for all non warranty work provided by Contractor. This rate will not increase more than the Contractor's actual cost for such labor for the duration of this Contract. The technician must be approved by the City's Superintendent, Fleet Management ("Superintendent"). This technician shall facilitate and expedite both warranty-related work and general repairs, as directed by the Superintendent. Warranty and non-warranty assignments together shall not be more than 40-hours in any week unless requested by the City and agreed by the Contractor. This excludes weeks where vacations, holidays, sickness or training to keep skills updated prevents the technician from an actual

40-hour week period. In cases where the amount of warranty work does not require 40-hours in a particular week the City shall provide non-warranty assignments.

- 9.5 The Contractor shall process all paper work in conjunction with warranty-related work or claims. The City shall not be obligated to pay the Contractor for any warranty-related repairs or replacements; however, the Contractor shall be entitled to receive any reimbursement or payment that may be offered by the manufacturer with respect to warranty repairs, replacements, or claims performed or paid by the Contractor. .

SECTION 10.0 MISCELLANEOUS PROVISIONS.

- 10.1 Time shall be of the essence in performance of this Contract; provided, however, that either party shall be excused from timely performance under this Contract to the extent that, but only to the extent that, such delay is the result of any cause beyond the reasonable control of, and not the result of negligence or the lack of diligence of, the party claiming such excuse from timely performance.
- 10.2 Failure to enforce or insist upon compliance with any of the terms or conditions of this Contract or failure to give notice or declare this Contract terminated shall not constitute a general waiver or relinquishment of the same or any other terms, conditions, or acts; but the same shall be and remain at all times in full force and effect.
- 10.3 If written notice to a party is required under this Contract, such notice shall be given by hand delivery, recognized overnight delivery service, or by first class mail, registered and return receipt requested, to Contractor as follows: (Verbally, Electronic, Email notification is acceptable)

RDK Assets, Inc. and Affiliates
3214 Adamo Drive, Tampa, Florida 33605
Phone; (813) 241-0711 or (866) 735-6098
Fax: (813) 241-0414

Joanie Beckwith, Municipal Sales
Manager Steve Gonser, General Manager
Richard D. Kemner, President

and to the City/County as follows:

Attn: _____

- 10.4 Contractor shall not assign any of their rights or obligations under this Contract without prior approval by the City.
- 10.5 Contractor shall be responsible for performance of this Contract, including all work or labor, regardless of who renders such performance. No other parties shall interface directly with the City without mutual agreement, unless such direct interface is in the best interest of the City.
- 10.6 This Contract and every question arising hereunder shall be construed, interpreted, or determined according to the laws of the State of Florida. Venue for any action brought in relation to this Contract shall be placed in a court of competent jurisdiction in _____, ____; provided, however, that such venue restriction shall not apply to purchases by other governmental agencies.
- 10.7 As required by Section 287.133, (2 (a), Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or a public work, may not submit proposals on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in s.287.010 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. Any person must notify the City within 30 days after a conviction of a public entity crime applicable to that person or to an affiliate of that person.
- 10.8 The language of this Contract shall be construed according to its fair meaning, and not strictly for or against either City or Contractor. The section headings appearing herein are for the convenience of the parties and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Contract. If any provision of this Contract is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Contract and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of this Contract is capable of two constructions, one of which would

render the provision void and the other of which would render the provisions valid, then the provision shall have the meaning which renders it valid.

- 10.9 Contractor agrees that it will not discriminate against any employee or applicant for employment for work under this Contract because of race, color, religion, gender, age or national origin and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, creed, color, sex, marital status or national origin. The Contractor will post a copy of this pledge in a conspicuous place, available to all employees and job applicants and will place or cause to be placed a statement in all solicitations or advertisement for job applicants, including subcontracts, that the respondent is an "Equal Opportunity Employer".
- 10.10 The Contractor, if requested by the City, shall repurchase any Vehicle or Completed Vehicle sold to the City under this Agreement during the thirteenth (13th), twenty-fourth (24th), thirty-sixth (36th), or forty-eighth (48th) month after final acceptance of the same by the City, provided such Vehicle or Completed Vehicle is in service and in good mechanical condition. Good mechanical condition shall be defined as having at least 50% tread on the tires and 50% surface area on the brake pads, having no major mechanical problems or major body damage, and able to pass a DOT inspection according to those requirements on form 401-FC02-3136. Major mechanical problems or body damage shall be defined as any individual mechanical problem or body damage costing more than \$1,000.00. The City agrees to give at least 6 months notice of its desire to have the Contractor repurchase a particular Vehicle or Completed Vehicle. The repurchase price paid to the City shall be equal to the greater of a negotiated price or 73% of the City's original cost at 13 months, 55% at 24 months, 40% at 36 months, or 25% at 48 months. The actual date of the transfer of ownership shall depend on delivery of new vehicles to take the place of the vehicles being repurchased by the Contractor; however, the amount of the repurchase price shall remain the same regardless of the actual transfer date. The Contractor's obligation to repurchase shall not be contingent on the City's purchasing a replacement Vehicle or Completed Vehicle from the Contractor.
- 10.11 The Contractor agrees to lease rent or sell Vehicles to the City in accordance with the terms and conditions set forth in the Proposal.
- 10.12 The Contractor shall make Vehicles and refuse bodies, including associated equipment and accessories, available to other governmental entities on the same terms and conditions as set forth in this Contract, including leasing rental, and option to repurchase under Section 10.10. Should any such entity purchase a Vehicle or refuse body, including associated equipment and accessories, on such basis, which will be indicated by such governmental entities referencing this City/County of _____ Contract No. _____, the Contractor shall report such purchases to the City/County and, within thirty (30) days following final payment for each such purchase, shall provide a credit to the City/County in the amount of 0.5% of

the purchase price of such Vehicle or refuse body, including associated equipment and accessories. The City shall have the option, if such credit is not used within 6 months, or receiving payment from the Contractor in the amount of the credit. This provision shall apply to all purchases, leases, and rentals initiated during the term of this Agreement, even if such purchase, lease, or rental is completed after the termination of this Contract.

10.13 It is understood and agreed that this Contract, including exhibits and references (if any), is the entire Contract between the parties and supersedes all prior oral agreements and negotiations between the parties relating to the subject matter hereof. City and Contractor, by mutual agreement, may change or amend the terms and conditions of this Contract. All such changes or amendments shall be set forth in a written amendment to this Contract.

10.14 If any portion of this Contract, or any Exhibit or portion thereof, is held to be invalid by a court of law, such provision shall be considered severable, and the remainder of this Contract shall be construed and enforced in a manner consistent with the intent of the Parties. Should any provision of this Agreement directly conflict with a provision of the RFP or the Proposal, the provision of this Agreement shall control.

10.15 It is the intent of the Parties that any provision of this Agreement that, by its terms or by any reasonable interpretation thereof, is intended to survive termination (whether by expiration, default, extinguishment or otherwise) of this Agreement, including indemnity obligations, will do so.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized representatives, effective the date first above written.

CITY/COUNTY OF _____

Attest:

Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Witness as to the Contractor

RDK Assets, INC. and Affiliates

Witness as to the Contractor

By: _____

(Type or print name and title of signatory)