REQUEST FOR COUNCIL ACTION

CITY COUNCIL MEETING DATE:

AUGUST 16, 2016

TITLE:

AGREEMENTS FOR ROTATIONAL TOWING AND STORAGE SERVICES FOR THE POLICE DEPARTMENT {STRATEGIC PLAN NO. 1, 5}

CITY MANAGER

CLERK OF COUNCIL USE ONLY:

APPROVED

- ☐ As Recommended
- ☐ As Amended
- ☐ Ordinance on 1st Reading
- ☐ Ordinance on 2nd Reading
- ☐ Implementing Resolution
- ☐ Set Public Hearing For_____

CONTINUED TO _____

FILE NUMBER _____

RECOMMENDED ACTION

1. Authorize the City Manager and Clerk of the Council to execute a three-year agreement with To N Mo for the period of September 1, 2016 through August 31, 2019 to provide police rotational towing and storage services, subject to non-substantive changes approved by the City Manager and City Attorney.

2. Authorize the City Manager and Clerk of the Council to execute a three-year agreement with California Tow for the period of September 1, 2016 to August 31, 2019 to provide police rotational towing and storage services, subject to non-substantive changes approved by the City Manager and City Attorney.

3. Authorize the City Manager and Clerk of the Council to execute a three-year agreement with B&D Tow for the period of September 1, 2016 to August 31, 2019 to provide police rotational towing and storage services, subject to non-substantive changes approved by the City Manager and City Attorney.

4. Authorize the City Manager and Clerk of the Council to execute a three-year agreement with Metro Pro Inc. for the period of September 1, 2016 to August 31, 2019 to provide police rotational towing and storage services, subject to non-substantive changes approved by the City Manager and City Attorney.

5. Authorize the City Manager and Clerk of the Council to execute a three-year agreement with Hadley Tow for the period of September 1, 2016 to August 31, 2019 to provide police rotational towing and storage services, subject to non-substantive changes approved by the City Manager and City Attorney.

DISCUSSION

The Santa Ana Police Department routinely encounters the need to have vehicles towed or stored for a variety of reasons and depends upon private sector partners skilled in the area of towing operations to accomplish this objective. The City intends to contract with five tow companies to provide necessary towing services on a rotational basis. Towing services may include, but are not limited to, towing vehicles from public or private property at the direction of Police employees, owner's request for a tow made via the Police Department, the storage of vehicles, the secure storage of vehicles containing evidentiary value, debris clean-up and removal, recovery services and administrative oversight of vehicles in the custody of the contractor.

On March 31, 2016, the Police Department issued a request for proposals (RFP No.16-051) for police rotational towing and storage services. On April 13, 2016 a pre-proposal meeting was conducted and on May 5th, 2016 the City received proposals from five firms. To N Mo, California Tow, B&D Tow, Metro Pro and Hadley Tow each submitted proposals for consideration.

An evaluation committee consisting of representatives from the Police Department Traffic Division reviewed and rated the five proposals. The proposals were evaluated according to Responsiveness to RFP (25%), Vehicle Inspections (25%), Site Inspections (25%) and Interview Score (25%). The results of the RFP evaluation are as follows:

Vendor	Points / Score
To N Mo	237 / 96.8%
B&D Tow	227 / 94.3%
Metro Pro	207 / 85.5%
California Tow	200 / 83.8%
Hadley Tow	198 / 80.3%
Max Points 300	

The Police Department proposes to enter into a three-year agreement with To N Mo, California Tow, B&D Tow, Metro Pro and Hadley Tow. All of these companies are Santa Ana based businesses and either have been accommodating, professional and consistent in their towing services, or are capable of providing professional towing and storage services to the Santa Ana community.

Fees for towing and storage services are established under the City's miscellaneous fee schedule. Those fees are based upon fees for towing and storage services surveyed throughout the County and are compliant with industry standards.

STRATEGIC PLAN ALIGNMENT

Approval of this item supports the City's efforts to meet Goal #1 - Community Safety, Objective #5 (provide high quality Police and Fire/Emergency Medical Services response within the City of Santa Ana).

FISCAL IMPACT

There is no fiscal impact associated with this item. Individuals whose vehicles are towed pay the tow providers directly for their services.

Carlos Rojas
Chief of Police
Santa Ana Police Department

Exhibits:
1. Agreement with Standard Enterprises, Inc., dba To' N' Mo'
2. Agreement with Greater Southern California Towing, Inc., dba California Tow
3. Agreement with Hadley Towing, Inc.
4. Agreement with MetroPro Road Services, Inc., and
5. Agreement with B & D Towing, Inc.

SERVICE AGREEMENT
ROTATIONAL TOW PROVIDER

THIS AGREEMENT, made and entered into this 16th day of August, 2016 by and between Standard Enterprises, Inc., a California corporation doing business as To' N Mo' (hereinafter "Contractor"), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (hereinafter "City").

RECITALS

A. The City desires to retain a contractor having special skill and knowledge in the field of providing vehicle towing and storage services.

B. Contractor represents that it is able and willing to provide such services to the City.

C. In undertaking the performance of this Agreement, Contractor represents that it is knowledgeable in its field and that any services performed by Contractor under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional consulting firm in the field.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

1. SCOPE OF SERVICES

Contractor shall provide vehicle towing and storage service at the request of the Santa Ana Police Department, on a rotational basis, in accordance with the terms and conditions set forth in the Scope of Service, attached hereto as Exhibit A and incorporated by this reference. The City intends to contract with several tow companies to provide necessary towing services on a rotational basis. Towing services may include, but are not limited to, towing vehicles from public or private property at the direction of Police employees, owner's request for a tow made via the Police Department, the storage of vehicles, the secure storage of vehicles containing evidentiary value, debris clean-up and removal, recovery services and administrative oversight of vehicles in the custody of the contractor.

2. COMPENSATION

a. The parties intend that towing and storage fees will be paid by the vehicle owner at the rates and charges set forth in Contractor's then current and approved fee schedule, attached as Exhibit B and incorporated by this reference.

b. When Contractor provides services chargeable to the City as set forth in Exhibit A, the Contractor shall submit a monthly invoice by the 15th of the month to the City for

any such services rendered in the prior month, if applicable. The invoice shall include all information enumerated in California Vehicle Code ("CVC") § 22651.07(e) and include the following information:

i. Contractor's invoice number
ii. Santa Ana Police Department's case number

c. Payment by City shall be made within sixty (60) days following receipt of proper invoice, subject to City accounting procedures. Payment need not be made for work which fails to meet the standards of performance for professional towing services or in accordance with the standards set forth in this agreement.

d. Adjustments to the Towing and Storage Fee Schedule

The Traffic Commander shall examine the towing and storage rates authorized in accordance with this agreement on an annual basis. The Traffic Commander may recommend to the Division Commander and the Chief of Police to adjust the towing and storage rates, not to exceed two percent (2%) annually, based on the most recent statistics, as follows: the two indices which will be used for determining adjustments to the towing and storage fee schedule shall be the prior twelve (12) months, reporting month December, Consumer Price Index (CPI) for All Urban Consumers for Los Angeles-Anaheim-Riverside Consolidated Metropolitan Statistical Area, published by the United States Department of Labor's Bureau of Labor Statistics or any relevant successor for the Orange County area, and the twelve (12) month December Producer Price Index for Petroleum (PPI). The adjustment formula shall be as follows: The CPI shall be weighted at ninety (90%) percent and PPI shall be weighted at ten (10%) percent. However, fee adjustments will only be made if justified and shall occur at the sole discretion of the Chief of Police based on recommendations from the Traffic Commander.

3. TERM

This Agreement shall commence on September 1, 2016 and continue through August 31, 2019, with two (2) one (1) year options to renew exercisable at the option of the City unless terminated earlier in accordance with Section 11, below.

4. INDEPENDENT CONTRACTOR

Contractor shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Contractor performs the services which are the subject matter of this Agreement; however, the services to be provided by Contractor shall be provided in a manner consistent with all applicable standards and regulations governing such services. Contractor shall pay all salaries and wages, employer's social security taxes, unemployment

insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

5. INSURANCE

Prior to undertaking performance of work under this Contract, Contractor shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

a. Commercial General Liability Insurance – the Contractor shall maintain commercial general liability insurance which shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting there from and damage to property, resulting from any act or occurrence arising out of Contractor's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting there from, and property damage, in the total amount of $1,000,000 per occurrence, $2,000,000 in the aggregate.

b. Business Automobile Liability Insurance, or equivalent form, shall be maintained by the Contractor with a combined single limit of not less than $1,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles as well as uninsured motorist coverage with a combined single limit of not less than $1,000,000 per occurrence.

c. Worker's Compensation Insurance – in accordance with the provisions of Section 3300 of the Labor Code, Contractor is required to be insured against liability for worker's compensation or to undertake self-insurance. Prior to commencing the performance of the work under this Contract, Contractor agrees to obtain and maintain any employer's liability insurance with limits not less than $1,000,000 per accident.

d. Garage Liability and Garage Keeper's Liability Insurance – the Contractor shall maintain garage liability insurance to include all premises, operations and coverage for bodily injury and property damage with a combined single limit of not less than $1,000,000 per occurrence as well as garage keeper's liability insurance for vehicles in the care, custody and control of the operator in the storage facility with a single limit of not less than $100,000 per occurrence.

e. On-Hook Insurance – the Contractor shall maintain on-hook insurance with limits not less than those required by the California Highway Patrol:

1. Class A tow truck - $25,000
2. Class B tow truck - $50,000
3. Class C or Class D tow truck - $100,000

f. The following requirements apply to the insurance to be provided by Contractor pursuant to this section:

1. Commercial general liability and business automobile insurance policies shall (a) name the City, its officers, employees, agents, volunteers and representatives as additional insured(s); (b) be primary and not contributory with respect to insurance or self-insurance programs maintained by the City; and (c) contain standard separation of insureds provisions. Contractor shall maintain all insurance required above in full force and effect for the entire period covered by this Agreement.
2. Certificates of insurance shall be furnished to the City upon execution of this Contract and shall be approved in form by the City Attorney.
3. All of the Contractor's storage facilities shall be listed in the certificates of insurance.
4. Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City.

g. If Contractor fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the City with required proof that insurance has been procured and is in force and paid for, the City shall have the right, at the City's election, to forthwith terminate this Contract. Such termination shall not affect Contractor's right to be paid for services satisfactorily provided in accordance with this agreement prior to notification of termination. The Contractor waives the right to receive compensation and agrees to indemnify the City for any work performed prior to approval of insurance by the City.

6. INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its officers, agents and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any work performed or services provided under this Contract (including, without limitation, defects in workmanship and/or materials) or Contractor's presence or activities conducted performing the work (including the negligent and/or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, contractors, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable for any or all of them). Notwithstanding the foregoing, nothing herein shall be construed to require Contractor to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees

in any action on or to enforce the terms of this Contract. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Contractor.

7. CONFLICT OF INTEREST CLAUSE

Contractor covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement.

8. NOTICE

With the exception of insurance certificates and renewals, any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by facsimile or other telegraphic communication in the manner provided in this Section, to the following persons:

To City:
Clerk of the City Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702-1988
Fax 714- 647-6956

With courtesy copies to:
Office of the Chief of Police
City of Santa Ana
Santa Ana Police Department
60 Civic Center Plaza
Santa Ana, CA 92701
Fax 714-245-8190

and
City Attorney
City of Santa Ana
20 Civic Center Plaza (M-29)
P.O. Box 1988
Santa Ana, California 92702
Fax 714- 647-6515

To Contractor:
Standard Enterprises, Inc., dba To' N Mo'.
518 North Poinsettia Street
Santa Ana, CA 92701
Fax 714-714-543-9042

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by facsimile, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

9. EXCLUSIVITY AND AMENDMENT

This Agreement represents the complete and exclusive statement between the City and Contractor, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Contractor. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Contractor nor the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.

10. ASSIGNMENT

a. Inasmuch as this Contract is intended to secure the specialized services of Contractor, the Contractor may not sell, assign, transfer, delegate or subcontract any interest herein without the prior written consent of City and any such sale, assignment, transfer, delegation or subcontract without the City's prior written consent shall nullify and void any existing contract with the City.

b. Unless previously approved by the City, the sale or transfer of the controlling interest in a company shall be cause for immediate termination of this contract and the Contractor shall be replaced on the Rotational Tow List by another company on an existing eligibility list or during a future RFQ process.

11. TERMINATION

a. The City reserves the right to immediately terminate the contract, without penalty, for cause.

b. In the event Contractor fails or refuses to timely perform any of the provisions of this Agreement in the manner required, or if Contractor violates any provision of this

Agreement, Contractor shall be deemed in default. City shall provide written notice of such default to Contractor's Project Manager. If possible, the Contractor shall cure said default within a period of two (2) working days. If such cure is not completed in a timely manner, City may terminate the Agreement forthwith by giving written notice to Contractor's Project Manager. The City may, in addition to the other remedies provided in this Agreement or authorized by law, terminate this Agreement by giving written notice of termination. Contractor shall be responsible for all costs incurred by City, including replacement costs of equipment and labor required to provide service during Contractor's default.

c. As described in Exhibit A, concerning the investigation and disposition of complaints, the City may terminate this agreement immediately for cause if it has been determined by the Traffic Commander, with concurrence from the Field Operations Bureau Commander, that the Contractor has committed major or minor rule violations associated with this agreement, or has committed violations of the law, and termination of the contract is deemed to be the appropriate disposition.

d. This agreement may be terminated without cause by City by written notice delivered to the Contractor either personally or by mail, thirty (30) days prior to the end of the then current term. Upon termination, City shall pay Contractor for services rendered as specified in the Agreement prior to the effective date of termination.

12. CONTRACTOR OPTION FOR TERMINATION

The Contractor may request termination of the contract when conditions during the contract make it impossible to perform or when prevented from proceeding with the contract by act of God, by law or official action of a public authority or in the event of nonpayment by the City. Such request will require ninety (90) days written notice prior to contract termination date requested. In the event of nonpayment of undisputed sums by the City, Contractor shall give the City thirty (30) working days to cure the alleged breach.

13. DISCRIMINATION

Contractor shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Contractor affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

14. EMPLOYMENT OPPORTUNITIES FOR SANTA ANA RESIDENTS

Contractor shall make every effort to solicit and advertise employment opportunities to Santa Ana residents. The City shall inform the Contractor of areas to publicize recruitment opportunities, such as work centers and community centers.

Contractor shall provide to City, a description of efforts and procedures used to notify residents of employment opportunities as they occur but, at a minimum, once each year prior to the City exercising its option to extend the contract.

15. CONTRACTOR'S PARTICIPATION AT COMMUNITY MEETINGS, EVENTS AND PUBLIC AWARENESS CAMPAIGNS

If requested by City, the Contractor shall agree to participate in community meetings, community events and public awareness campaigns, such as National Night Out, DUI presentations or any other neighborhood or City event. Such participation shall be upon City request provided with reasonable notice of the event. Such events will not exceed four (4) requests per year.

16. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

a. Contractor shall perform all requirements under this contract in strict observance of and in compliance with all applicable environmental, traffic, safety and any other laws, regulations, ordinances, codes and any other legislative or statutory requirements.

b. Contractor warrants that the performance of services under this contract shall be compliant with the current requirements of the Occupational Safety and Health Act (OSHA) and as it may be amended or updated throughout the term of this contract.

17. FINES

The Contractor shall be liable for all violation fines levied against the City by any Federal, State or local agency, including but not limited to the Air Quality Management District (AQMD), and the Regional Water Quality Control Board, due to the action or failure to act by Contractor.

18. JURISDICTION - VENUE

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

19. PROFESSIONAL LICENSES

Contractor shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the

State of California, the City of Santa Ana and all other governmental agencies. Contractor shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

20. MISCELLANEOUS PROVISIONS

a. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

b. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

ATTEST:

MARIA D. HUIZAR
Clerk of the Council

CITY OF SANTA ANA

DAVID CAVAZOS
City Manager

APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney

By: Laura A. Rossini
Laura A. Rossini
Senior Assistant City Attorney

STANDARD ENTERPRISES, INC. DBA TO' N MO'

Modesto Sanchez
Chief Executive Officer

RECOMMENDED FOR APPROVAL:

Carlos Rojas
Chief of Police

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT A – SCOPE OF SERVICES

I. USE OF ROTATIONAL TOW LIST

A. CRITERIA AND RULES FOR USE BY POLICE EMPLOYEES

The City agrees to utilize the rotational tow list for all service requests initiated by members of the Santa Ana Police Department except where provided for in this agreement. Therefore, the City agrees to operate under the following policy guidelines unless reasonably necessary to deviate due to exigent or unforeseen circumstances:

1. Whenever the driver or owner specifies a particular club, association or tow service to care for his/her vehicle, the garage or tow service requested shall be called and such calls shall not constitute a rotational tow call.

2. When a driver does not specify a particular garage or tow service, the garage or tow service called shall be taken from the rotational list in numerical order. When more than one vehicle is to be towed from a collision scene and the drivers do not specify a preference, the rotation list shall be followed on the basis of one tow truck for each vehicle utilizing the numerical rotational order. The rotation list shall be followed on a per vehicle basis rather than per collision or call for service. When multiple Contactors are called to the same incident, the distribution of vehicles shall be determined by the police officer at the scene.

3. If the eligible Contractor does not answer the telephone or acknowledge the call via a software dispatch system, is unable to respond, unable to perform the required services, refuses to respond or provide the requested service, or is cancelled due to an excessive response time, that company shall be passed over and shall not be eligible until the Contractor comes up on the rotation list again.

4. It shall be the responsibility of the Contractor to notify the Police Department if it is unable to respond within the required time limit or with the appropriate equipment for the type of service requested.

5. If it is determined the Contractor is not needed and is cancelled by the Police Department or the vehicle owner, the Contractor shall be placed back on top of the rotation list and no charge shall result from the call.

6. The rotation list shall be used on occasions where an officer stores or impounds a vehicle and the driver or owner is not consulted or is not present.

7. All employees of the Police Department are specifically prohibited from soliciting or recommending any garage or tow service, either directly or indirectly. All officers are directed to ascertain from the party in charge of the vehicle as to their preference of a towing agency. A request of "no preference" by the person in charge will be relayed to dispatch by the officer and will result in a call to the Contractor that is next up on the rotation list.

B. REPORTING PROCEDURES

1. All officers requesting a tow truck from the rotational list for the towing, storing or impounding of a vehicle shall complete the Santa Ana Police Department storage/impound form when required by Departmental policy or procedure. The form shall be signed by both the officer and the driver of the tow truck. A copy of the Santa Ana Police Department storage/impound form shall be given to the tow truck driver prior to the vehicle being towed from the scene.

II. CONTRACTOR REQUIREMENTS AND RESPONSIBILITIES

A. WORK ASSIGNMENTS AND SCHEDULE

The Contractor shall be available to provide services within the corporate limits of the City of Santa Ana 24-hours per day, seven (7) days per week, 365 days per year. There are no exceptions for holidays under the project. The Contractor shall also make reasonable accommodations for its personnel to attend meetings with City staff from the Police Department, City Attorney's Office or any other City Agency as required by the Project Manager.

B. WORKING HOURS AND RESPONSE TIMES

1. All services under this contact shall be available 24-hours per day, seven (7) days per week, 365-days per year without exception.

2. The owner, principal or business manager of the proposing Contractor shall have a minimum of five (5) years of verifiable experience in the towing for-hire industry. Prior experience performing towing services for a law enforcement agency are highly desirable but not required. If the owner, principal or business manager possessing this requisite experience is no longer employed by the Contractor at any time during the course of the contract, the Contractor shall immediately report such change in condition to the City's Project Manager and participation on the rotation list shall be suspended until a new owner, principal or business manager is identified and approved.

3. The Contractor shall be required to have a dispatcher on-duty 24-hours per day with the capability to communicate instantly with all trucks and/or drivers assigned to this project.

4. All requests for tow services shall be acknowledged or refused within three (3) minutes by the Contractor's dispatcher and response to the scene shall occur within 20 minutes from the time the Contractor is notified by the Police Department's Communications Division.

    a. The 20 minute response time applies only to tow requests requiring a Class A tow truck.
    b. The Contractor shall be required to comply with this requirement by providing appropriate staffing levels and, if necessary, strategically staging personnel during peak traffic times to allow drivers sufficient time to arrive while complying with all traffic laws and regulations in their response to service requests.

    c. For any request requiring a Class B, C or Class D tow truck, the Contractor shall have the necessary equipment on scene within 45 minutes of notification by the Police Department's Communications Division if a Department employee identifies the need for such equipment or when determined by the Contractor's employee after responding to the scene and assessing the situation.

5. The Contractor shall be required to have a minimum of one (1) driver on duty 24-hours per day, seven (7) days per week. In addition, the Contractor shall have at least one (1) other driver on-call or stand-by.

6. The Contractor will also be required to maintain office hours between 8:00 am and 5:00 pm, seven (7) days a week, 365 days per year so vehicle owners can retrieve stored or impounded vehicles.

C. REQUIRED TOW VEHICLES AND EQUIPMENT

1. At a minimum, the Contractor shall possess, maintain and be the listed registered owner of the following classes of tow vehicles (meeting requirements as defined in the most current version of CHP 234B – Tow Truck Inspection Guide):

    a. Four (4) Class A tow trucks designed for light duty towing operations.
    b. One (1) Class B tow truck designed for medium duty towing operations.
    c. One (1) Class C tow truck designed for heavy duty towing operations.

2. In addition, the Contractor shall either possess and maintain, or have immediate access to, one (1) Class D tow truck designed for super heavy duty towing operations (meeting requirements as defined in the most current version of CHP 234B – Tow Truck Inspection Guide). Even if subcontracted, this vehicle shall

be made available for inspection and the Contractor will be held responsible for the condition and suitability of this vehicle.

3. The company name, business address, telephone number and tow truck identification number shall be permanently and properly affixed to each vehicle in a manner prescribed pursuant to CVC § 27907.

4. There shall be no words or language affixed to the vehicle associating the Contractor or the vehicle with the Santa Ana Police Department (e.g. "official police tow") without the prior written approval of the City's Project Manager.

5. At no time shall the Contractor exceed the gross vehicle weight rating (GVWR) and/or safe loading requirements of the tow truck, including, but not limited to, exceeding the tow trucks GVWR, front axle weight rating, rear axle weight rating, maximum tire weight ratings, or failure to maintain 50 percent of the tow truck's unladen weight on the front axle when lifting or carrying a load.

6. The authorized Towing and Storage Fee Schedule shall be posted in public view in all tow trucks.

7. Contractors shall not share equipment with any other Contractor with the limited exception of access to a Class D tow truck as specified above.

8. All of the vehicles identified above and used in accordance with this agreement shall be equipped with the minimum equipment required to perform towing operations as well as the equipment pursuant to CVC § 27700 and the "Service and Other Equipment" section of the CHP 234B (Tow Truck Inspection Guide) form. The Contractor may also be required to carry any other safety devices reasonably required by the City.

9. The contractor shall maintain all vehicles and equipment in good repair for use by the Contractor's employees assigned to perform services pursuant to this agreement. The Contractor shall be responsible for, and pay for all operating expenses, equipment, maintenance and insurance for vehicles assigned to perform work related to this agreement. All tow trucks shall be equipped and maintained in accordance with applicable sections from the California Vehicle Code, Title 13 of the California Code of Regulations, the requirements of this RFP and industry standards.

10. All vehicles shall be kept clean, be free of offensive odors and maintain a professional appearance.

11. All tow trucks shall be inspected annually by the California Highway Patrol and maintain a current Commercial Vehicle Safety Alliance (CVSA) decal. The Contractor shall provide current copies of CHP 234B (Tow Truck Inspection

Guide) and CHP 407F (Safetynet Driver/Vehicle Inspection Report) for each vehicle to the City's Project Manager or designee.

12. The Contractor agrees that the Santa Ana Police Department may inspect any vehicle, without prior notice, at any time during normal business hours.

13. The Contractor shall provide instant communication access via cellular phone or radio to all personnel while performing their duties.

G. GLOBAL POSITIONING SYSTEM (GPS)

It is highly desirable for the Contractor to provide GPS capabilities in all of their tow trucks. If offered for consideration in the Contractor's Response, the City and Contractor shall be able to view this information via computer in real time and the Contractor shall provide GPS reports at the request of the City.

H. CONTRACTOR'S BUSINESS OFFICE REQUIREMENTS

1. The Contractor shall maintain an office and storage facility within the corporate limits of the City of Santa Ana and remain in compliance with any requirements imposed by the Police Department, the Planning Division or any other Department, Agency or Agent of the City of Santa Ana in accordance with federal regulations, state law, the Santa Ana Municipal Code and this agreement.

2. It is preferable that the office and storage facility be at the same location to minimize the impact on the community. However, should additional locations exist, the Contractor agrees to conduct all business from the primary facility and any costs associated with operating a secondary location and/or moving vehicles to or from that secondary location shall not be passed along to any customer covered under this agreement.

3. The primary facility shall have a sign clearly visible to the public that identifies the location as a towing service.

4. The business hours shall be clearly posted.

5. The office shall be sufficiently staffed to allow customers to speak with a company representative during normal business hours without unnecessary delay.

6. Current and approved rates pursuant to the Towing and Storage Fee Schedule shall be posted in public view in the Contractor's office and/or storage facility in compliance with California Civil Code § 3070 and CVC § 22651.07.

7. The Contractor shall comply with the provisions of CVC § 22651.1.

8. The Contractor shall maintain records of all tow services furnished by the Contractor at the primary office location.

    a. Invoices shall contain the required itemized information pursuant to CVC 22651.07(e).
    b. Itemized invoices shall contain a distinct notice upon the invoice stating "Upon request, you are entitled to receive a copy of the "Towing Fees and Access Notice." This notice shall be contained within a bordered text box, printed in no less than 10-point type pursuant to CVC 22651.07(a)(1)(B)(3).

9. The operator's primary business office shall also maintain business records relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, lien sale actions, driver's record of duty status (intrastate and/or interstate), and Federal Communication Commission licensing (if applicable).

10. The Contractor agrees that a representative from the Santa Ana Police Department may inspect all business records, facilities and vehicles without notice during normal business hours.

11. The Contractor shall permit the Santa Ana Police Department to make copies of business records at their place of business or remove business records for the purpose of reproduction.

12. Lien fees, or any fees related to the preparation of a lien, shall not exceed the amounts allowable in the Towing and Storage Fee Schedule, attached hereto as Exhibit B, and in compliance with all relevant provision of the California Vehicle Code and California Civil Code.

I. STORAGE FACILITY AND VEHICLE STORAGE REQUIREMENTS

1. It is preferable that the storage facility is located at the same location as the primary business office. However, if located at a different location than the main office, the storage facility must be within the corporate limits of the City of Santa Ana and have an on-site release office at all storage lots. Persons seeking to take possession of their vehicle or property shall not be required to travel to more than one location to recover their vehicle from the Contractor's custody.

2. The storage facility and all vehicles towed at the direction of the City shall be made available to police personnel 24-hours per day, 7-days per week.

3. The entire storage lot must be sufficiently well lit to deter theft. Other theft deterrent devices (e.g. cameras, alarms, on-site personnel, etc.) are highly desirable.

4. The storage lot must be completely secured by a wall or fencing and a gate that is able to be locked to maintain security for stored and impounded vehicles. The minimum height requirement for the fence and gate shall be six (6) feet.

5. The storage lot shall be large enough to hold a minimum of 100 vehicles at any given location. This requirement is the minimum area reserved for Santa Ana vehicles and additional space is highly desirable. All vehicles towed by the City shall be stored within the corporate city limits and the vehicle or any of its contents shall be made available for release within the corporate city limits. If multiple storage facilities are maintained, the Contractor shall only use the secondary lot when the primary lot is full and shall not charge for transportation beyond that of the main storage facility.

6. The Contractor shall also provide an inside storage facility, which must consist of four walls with a solid roof and a door equipped with a locking device. Additional security features are highly desirable. This facility shall be sufficient to reasonably protect vehicles from theft, tampering, weather, environmental conditions or any other circumstances that could cause the removal or contamination of evidence. Access to this area by employees or other individuals shall also be restricted. This facility shall be capable of storing a minimum of four (4) mid-sized vehicles for the City of Santa Ana and sufficient space to conduct forensic analysis of the vehicle on-site if necessary.

7. Vehicles impounded pursuant to CVC § 10751 shall be placed in an area of the storage facility that will provide sufficient space and privacy, allowing auto theft investigators to perform a vehicle inspection without delay. This requirement shall be required for the first ten (10) days of impound.

8. Vehicles will not be released, sold or dismantled until a signed release form has been obtained from the Santa Ana Police Department. The signed release form will be kept by the towing company as proof of authority for the release.

9. Release forms are required for impounded vehicles and vehicles with a "hold" placed on them by police department personnel. The release form will indicate they are from the Santa Ana Police Department and shall only be signed by authorized members of the Police Department.

    a. Stolen vehicles recovered by the Police Department will be released to the victim/owner by the Contractor with proof of ownership. Unless specifically noted, no release will be required from the Police Department.
    b. Stolen vehicles recovered by the Police Department requiring further investigation as determined by the handling officer will be impounded pursuant to CVC § 22655.5, thereby placing a hold on the vehicle. The impound box will be marked along with an explanation in the narrative.

These vehicles will not be released until the victim/owner obtains a release from the Police Department.

c. If the owner of the vehicle is unable to prove ownership to the tow agency, they will be referred to the Santa Ana Police Department and a release will be issued once ownership is established.

d. If a registered owner is unable to retrieve their vehicle from storage, a vehicle authorization form shall be provided by the Contractor to the person authorized to pick-up the vehicle. The authorized recipient, on behalf of the registered owner, will be required to provide identification for the Contractor to photocopy (front/back).

10. When a vehicle is impounded, the towing company will place the word "hold" or other similar notation on the windshield of the vehicle. This is to minimize unauthorized contact with the vehicle and to provide control measures to prevent the inadvertent release.

    a. The responsibility for determining and placing the word "hold" or other similar notation on the windshield of the vehicle will be the responsibility of the Contractor at the time of vehicle possession. The Contractor's employee signature on the storage/impound report will acknowledge an understanding of the type of report completed by the officer and any necessary holds. The Contractor should clarify any misunderstandings or omissions on the report at this time.

11. Vehicles towed or stored with an "evidence hold" shall not be touched, moved or tampered with in any manner without the written consent of the City's Project Manager or designee.

12. The Contractor agrees to tow and store vehicles taken pursuant to an "evidence hold" as defined in CVC §§ 22655.5 or 22655(a) without charge to the City and agrees to release the vehicle to the owner at the City's request. Unless waived in whole or in part by the City's Project Manager, the tow company may pursue collections from the registered owner for these charges but shall not exceed the cost of the tow and storage fees for a maximum of thirty (30) days. Furthermore, the Contractor may attempt to collect these fees, or make arrangements to collect these fees, at the time of release but shall not hold the vehicle in lieu of payment unless specifically authorized by the City's Project Manager or designee.

13. In any case where the Police Department inadvertently and/or erroneously causes the impound or storage of a vehicle, or fails to properly notify the owner in a timely manner, the Contractor agrees to release the vehicle at the request of the City's Project Manager or designee and waive all fees or charges associated with the tow.

14. Any personal property released from a vehicle shall occur at the business office or primary storage facility and shall require authorization from the Police Department. All property shall be released pursuant to CVC § 22851(b) and CVC § 22651.07. Personal property includes any property not affixed to the vehicle (e.g. clothes, cell phones, papers, pull-out / detachable face radios, etc.)

J. CUSTOMER SERVICE

Contractor shall provide service which is accessible, courteous, responsive, timely, equitable and given in the spirit of professionalism and mutual respect. Contractor's personnel are a reflection of the City of Santa Ana and, as such, are expected to:

1. Interact with customers and City officials, whether in person or on the phone, in a pleasant, respectful and professional manner.

2. Give full attention to each customer's needs by asking questions. Provide information, products and service in an accurate, organized and complete manner. Determine that the customer's request has been fulfilled.

3. Maintain a professional demeanor at all times that is free from rude, discourteous or harassing behavior.

4. Comply with all federal, state, county, and city laws and regulations.

5. Use adequate equipment that is kept clean and neat at all times.

6. Train other Contractor employees to be polite and courteous during public contact.

7. Employ truth and accuracy in reporting customer service records.

K. RATES AND FEES

Notwithstanding other provisions of this agreement related to rates and fees, the Contractor agrees to comply with the following provisions as they relate to rates and fees charged in accordance with this agreement:

1. For services provided pursuant to this Agreement, the Contractor shall collect towing, storage and other service fees from the vehicle owner at the time of release. Said fees shall comply with the Santa Ana Police Department's Towing and Storage Fee Schedule, attached hereto as Exhibit B, and incorporated by this reference.

2. The Contractor acknowledges that the fee schedule is intended to list the maximum amounts for services rendered but nothing in this Agreement shall preclude the Contractor from charging less than the maximum fee allowed.

3. Nothing shall prohibit a Contractor from sending a Class B, C or D tow truck to a call requiring a lighter class tow truck to perform requested services. However, the Contactor acknowledges that fees may only be charged for the class necessary to perform the requested services and not necessarily for the class of tow truck dispatched to the call.

4. No fees may be charged for personnel, equipment or services reasonably necessary to perform the required service.

5. No lien shall be placed on the vehicle for services performed or initiated, and subsequently cancelled on-scene by the Santa Ana Police Department, unless the Contractor has presented a written statement to the vehicle's registered owner or agent for the signed authorization of services to be performed pursuant to Civil Code § 3068(a).

    a. The Contractor shall not attempt to take possession of a vehicle in order to establish a lien for any services performed or initiated and subsequently cancelled.
    b. The Contractor shall not bill the City of Santa Ana or Santa Ana Police Department for any services performed or initiated, and subsequently cancelled by the department. However, in such cases, the incident shall not be considered a rotational call and the Contractor shall be returned to the top of the rotation list.

6. The Towing and Storage Fee Schedule shall be posted in the business offices, storage facilities and tow trucks pursuant to CVC § 22651.07.

7. Rate adjustments may be considered based on the criteria set forth in this Agreement.

8. Contractor's failure to comply with the Towing and Storage Fee Schedule shall be subject to disciplinary action.

9. The Contractor shall not seek payment from the City of Santa Ana for services provided pursuant to this Agreement. However, the City shall be responsible for the following charges ordered by the City pursuant to this Agreement:

    a. Collision cleanup as outlined in this Agreement;
    b. Other services authorized by the City's Project Manager prior to the performance of said duties.

L. MISCELLANEOUS PROVISIONS

1. The Contractor shall have a Carrier Identification and a valid Motor Carrier Property (MCP) permit, which shall be provided to the City's Project Manager or designee. The expiration or suspension of the MCP shall result in immediate suspension from the rotation list as well as possible disciplinary action.

2. There may be times when the Contractor comes across a vehicle blocking the roadway although not assigned to the call or next on the rotation list. At the discretion of the officer at the scene, the Contractor may be directed to assist in moving the vehicle to the side of the roadway only. This service shall be provided without cost to the City or vehicle owner, and shall not affect the Contractor's position on the rotation list.

3. The Contractor shall be held accountable for all vehicles, personal property and vehicle accessories once the vehicle is in the possession of the driver and/or stored at their facility. The Contractor agrees to relieve the City, its officers, agents and employees of all responsibility once the vehicle is in the custody of the Contractor.

4. There shall be no photography or video recording at the scene of a tow or collision by the Contractor or any employee unless directly related to the towing operation. Photographs or video recordings shall only be directed at vehicles or the area immediately surrounding the vehicle but in no case shall capture any image of a person(s) injured or killed at the scene.

5. The Contractor, nor any employee of the Contractor, shall accept from any person or offer a gratuity to any member of the City in violation of CVC § 12110(a) and the City's gift ban ordinance.

6. The Contractor shall remain in compliance with CVC § 10652 as required.

7. Due to the negative perception of Private Party Impounds (PPI's) and the nexus to predatory towing practices, whether actual or perceived, the City of Santa Ana and the Santa Ana Police Department have an interest in ensuring any Contractor working on its behalf is not associated with these practices. In addition, tow companies that engage in PPI's are subjected to complaints and investigations on a more frequent basis than those that do not participate in this facet of the towing business. Therefore, the City strongly discourages any Contractor assigned to the rotational tow list from engaging in PPI's within the corporate limits of the City of Santa Ana. Subject to the investigative process outlined in the RFP, any company found to be in violation of PPI regulations including, but not limited to, applicable sections of CVC § 22658 or any other laws or regulations associated with PPI's shall be subject to suspension or immediate removal from the rotation list for sustained complaints or convictions for violations of the law.

M. UTILIZATION OF DISPATCH AND TRACKING SOLUTIONS SOFTWARE

The City uses Dispatch & Tracking Solutions (DTS) software for its rotational towing administration. The Contractor shall agree to utilize the most recent, updated, upgraded Dispatch & Tracking Solutions software program (DTS), or any other software solution selected by the City, to dispatch and track tow activity via a web-based Internet connection. All tow requests originating from the Santa Ana Police Department may be made utilizing this program. The Contractor's failure to have the DTS program in full operation and to acknowledge tow requests in a timely manner pursuant to this RFP shall result in a finding of default and shall result in immediate suspension from the tow rotation list. Failure to remedy the problem shall be grounds for the termination of the agreement between the City and the Contractor.

The Contractor must be willing to must enter into a separate agreement, contract, or license for DTS software, or any other software solution implemented by the City, with the owner of that proprietary software. The City shall not provide the software program, any licensing or sub-licensing thereof or any intermediary services for the procurement by the Contractor of the software program. This Contract shall not be executed by the City until the Contractor has demonstrated to the City's Project Manager or designee satisfactory compliance with the requirements set forth herein. The Contractor shall be liable for all fees, charges, rates and service charges required for the procurement and use of DTS software or any similar software solution.

If the City should elect to use a different program than DTS at some point in the future, the Contractor agrees to comply with the above requirements as it relates to the new software solution after provided reasonable notice by the City and sufficient opportunity to procure said software program.

N. RESPONSIBILITIES WHEN RESPONDING TO CALLS FOR SERVICE

1. When the Contractor is called to the scene of a vehicle tow or a collision scene, the Contractor's employee will clean-up all debris at the scene in accordance with CVC § 27700 without charge to the City.

    a. If this service does not result in a vehicle tow, it shall not be considered a rotational call and the tow company shall be placed back on the top of the rotational tow list.
    b. Police employees should not call a rotational tow to the scene of a collision for the sole purpose of cleaning up debris. However, should this occur or become necessary, the Contractor may bill the City for the cost of the response in accordance with the City's Towing and Storage Fee Schedule.

O. PERFORMANCE DURING INCLEMENT WEATHER OR DISASTERS

1. The Contractor acknowledges that the services provided under this contract are integral to the operations of the City of Santa Ana and the Santa Ana Police Department. Therefore, the Contractor agrees to perform the duties of this contract regardless of weather or other adverse conditions including, but not limited to, any disasters whether man-made or acts of God.

2. During periods of inclement weather or disaster, the Contractor shall agree to adjust staffing levels to meet the increased demands for service during these times.

3. Should the Contractor be unable to fulfill their responsibilities under the conditions described in this section, the Contractor shall be responsible for any and all costs incurred by the City should the need to hire outside contractors become necessary to meet the needs of the Police Department due to the Contractor's default.

P. PROTECTION OF THE PUBLIC AND DAMAGES TO EXISTING STRUCTURES

1. The Contractor shall exercise due care and caution at all times for the protection of all persons and property. All fines, penalties and/or repair charges resulting from the Contractor's actions shall be the sole responsibility of the Contractor.

2. Understanding that the Contractor will respond to calls involving traffic collisions or traffic hazards, and pursuant to CVC § 22513, the Contractor shall only place or use equipment to block vehicle traffic lanes or render assistance to a motorist while exercising due care for the safety of the tow truck driver, the motorist and the motoring public. Tow truck drivers should be trained in scene management in accordance with this section. The Contractor shall ensure that all appropriate traffic safety warning devices are utilized as deemed necessary.

3. Contractors will be required to respond to calls where vehicles have collided with other objects and may have already caused damage to varying degrees. The methods proposed by the Contractor for towing and recovery services shall be reasonable and consistent with industry standards, best practices, and in a manner that shall not cause unnecessary additional harm, deface or damage any City or private property. In the event that damage to the City's right-of-way or private property has occurred due to the negligence of the Contractor, the Contractor shall be solely responsible for its repair or replacement in excess of the amount covered by the required insurance.

Q. SPECIFICATIONS

This Scope of Services is intended to cover all labor, material and standards of workmanship to be employed for in this work plan or reasonably implied by terms of same. Work or materials of a minor nature which may not be specifically mentioned, but which may be reasonably assumed as necessary for the completion of this work, shall be performed by the Contractor as if described in the specifications.

R. RECORDS

1. The Contractor shall keep accurate records concerning all vehicle tows, vehicle storages and vehicle releases or disposition.

2. In addition, the Contractor shall maintain accurate records of his/her employees or agents and provide the City with names and telephone numbers of emergency contact employees.

3. The Contractor shall complete a report each calendar month indicating the number of calls for service, the number of vehicles towed, the number of vehicles in storage (regular and secure) and their current status, vehicles released, vehicles sent to lien sale, the status of any other vehicles or services rendered by the Contractor on behalf of the City, GPS information (if requested by the City) or any other information as may be required by the City's Project Manager or designee.

4. A phone log will be submitted monthly of all calls from the Santa Ana Police Department to the Contractor, identifying whether or not those calls required a request for service, and a description of the action taken as a result of the call.

5. The Contractor shall provide monthly customer service phone logs from the public, indicating name, date, time and phone number of caller, reason for the call, any specific requests, the Contractor's response or action, and the amount of time required to address request. Such logs shall be accurate and truthful.

6. The Contractor shall permit the City to inspect and audit its books and records regarding City provided services at any reasonable time.

S. AUDITS AND INSPECTIONS

The Chief of Police or his designee shall conduct regular audits and inspections of the Contractor(s) assigned to this project to ensure they are fulfilling their responsibilities in accordance with the terms and conditions of this agreement. All work found during such audits or inspections to be substandard or failing to conform to the requirements of this agreement shall be corrected immediately by the Contractor and the City shall have the right to immediately suspend the Contractor from the rotation list until the

issue(s) is/are corrected. Failure to correct in a reasonable timeline as outlined in this Agreement may result in termination of the contract.

T. INVESTIGATION OF COMPLAINTS, LAWS, RULES, OR TERMS AND CONDITIONS OF AGREEMENT

Whenever a complaint or allegation is lodged against a Contractor or initiated by the Police Department, the Traffic Commander shall assign a supervisor from the Traffic Division to investigate any allegations. A fair, impartial and comprehensive investigation shall be conducted and the findings documented for review. To the extent required by law, the Contractor shall cooperate fully in the investigation and provide any documentation requested by the investigator to assist in making a finding. In addition, the Contractor shall be given the opportunity, either orally or in writing, to respond to the complaint at the point deemed appropriate by the investigator. The City expects that the Contractor will demonstrate professional business practices and truth in reporting as it relates to any records or information requested.

Minor infractions shall include, but not be limited to, situations such as poor customer service, failure to comply with non-safety related terms of the agreement, or minor equipment or facility deficiencies. Major infractions shall include, but not be limited to, situations involving honesty, integrity, safety, security, gross overcharging of a customer or a pattern of overcharging, failure to comply with the provisions of CVC § 22658 as it relates to PPI's, criminal violations (moral turpitude, DUI, drug related offenses, theft, etc.), or significant, repeated or flagrant violations of this agreement.

If it is determined that criminal charges are appropriate, the assigned investigator shall document the incident on a crime report and present the case to the appropriate prosecuting authority for review.

Based on the nature and seriousness of the misconduct being investigated, the Chief of Police may temporarily suspend the Contractor, or its agent individually, from the rotation list until the investigation is completed and a proper disposition is reached.

The standard for sustaining a complaint against the Contractor or the Contractor's agent shall be a preponderance of the evidence, regardless of the nature of the violation. Other investigative findings may include unfounded (false or factually incorrect), exonerated (action occurred but was lawful or within the terms of this agreement) or not sustained (inconclusive due to insufficient evidence or independent witnesses).

All complaints shall be forwarded to the Traffic Commander for review, approval and determination/recommendation of discipline if appropriate.

U. DISCIPLINARY ACTION

The Contractor agrees that failure by the Contractor, or its agent, to comply with the law or terms and conditions of this agreement shall be cause for administrative disciplinary action. However, nothing in this agreement shall preclude the City from taking appropriate enforcement action for violations of the law. Within 60 days of receipt of the complaint, the Traffic Commander shall review the findings of the investigation and recommend disciplinary action if appropriate. The Traffic Commander shall take into account the nature of the complaint, the findings of the investigation, past complaints against the Contractor and past practice of the Department to maintain equitable treatment of all Contractors assigned to the rotational tow list. Depending on the nature and complexity of the sustained violation, the Traffic Commander may allow the Contractor or designee to provide a brief written statement for consideration and/or may contact Contractor to ask additional questions.

Disciplinary action shall typically be progressive in nature and based on the Contractor's record during the previous five (5) years from the date of complaint. Therefore, multiple infractions for similar offenses, regardless of their severity, will result in increased disciplinary action. However, this does not preclude the Traffic Commander from recommending more serious sanctions where major rule violations have been committed or there are aggravating facts associated with the misconduct.

The following actions may be recommended:

1. No further action.
2. Issue a written warning.
3. Impose a suspension for minor violations (one (1) to 30-days).
4. Impose a suspension for multiple minor violations or a single major violation (30 to 90-days).
5. Termination of the contract for cause and immediate removal from the rotation list.

The Contractor shall be notified in writing of the City's intent to impose disciplinary action. The Traffic Commander shall have the authority to impose discipline up to and including the imposition of a suspension for minor violations as long as the suspension does not exceed 30-days in length. However, nothing in this article shall preclude the Traffic Commander from reducing the recommended discipline based on mitigating facts. Recommended suspensions exceeding 30-days in length or termination from the rotation list shall be approved by the Field Operations Bureau Commander prior to imposition.

The Traffic Commander may recommend to the Chief of Police the immediate termination of this agreement if the conduct of the Contractor, or agents, are determined to pose a danger to the public, have an excessive number of complaints

that tax the investigative resources of the Police Department, or the Contractor's actions reflect negatively upon the City.

V. RIGHT TO APPEAL

Upon receipt of a notice to impose disciplinary action, the Contractor shall have the right to submit a written appeal within ten (10) business days to the Field Operations Bureau Commander.

The Field Operations Bureau Commander shall issue their findings in writing within ten (10) business days of the receipt of written appeal. If the Contractor disagrees with the findings of the appeal, their final remedy shall be the opportunity to submit a written appeal to the Chief of Police within ten (10) business days, via the Traffic Commander. The Chief of Police shall issue a written decision within (10) business days. The decision of the Chief of Police shall be final.

Disciplinary action shall not be imposed until the hearing and appeal process has been exhausted. However, if the conduct of the Contractor is deemed to be so egregious or poses a danger to public safety, the City may exercise its right to immediately suspend the Contractor as set forth in this agreement. In such cases, the time during which the Contractor is suspended may be applied to the balance of a suspension imposed by the City, at the discretion of the hearing officer, and shall be the Contractor's only remedy as far as a pre-hearing suspension is concerned. Any time in excess of that credited toward an imposed suspension shall be lost. Failure to request an appeal, submit a written appeal, or appear at a mutually agreed upon hearing will waive the Contractor's right to further appeal and disciplinary action shall be imposed.

W. SUPERVISION OF CONTRACT AND MEETINGS WITH CITY

All work shall meet with the approval of the Santa Ana Police Department. As determined necessary by the City, there shall be a minimum of one monthly meeting with the Contractor and the City representative during the first year to determine progress and to establish areas needing attention. Status reports of activities performed by the Contractor will be submitted in writing to the City on a monthly basis or as determined necessary by the City.

Any specific problem area which does not meet the conditions of the specifications set forth herein shall be called to the attention of the Contractor and if not corrected immediately, or within a reasonable period, may result in the Contractor being found in default of this agreement, which may result in suspension from the rotation list until the issue(s) is/are corrected in a satisfactory manner as set forth in the specifications or termination.

X. MATERIALS AND EQUIPMENT

The contractor shall make a reasonable effort to purchase equipment and materials in the City of Santa Ana and to utilize Santa Ana vendors. Contractor shall report its efforts as requested by the City.

Y. DEFINITIONS

1. **City** – shall mean City of Santa Ana and representatives of the City of Santa Ana (e.g. Police Department or its agents).

2. **City's Project Manager** – shall be synonymous with the Traffic Commander for purposes of this project.

3. **Contractor** – shall mean any towing company submitting a response to this RFP and selected to perform services for the City on the Rotational Tow List, and shall include all employees or agents of said company.

4. **Inclement Weather or Disasters** – any adverse weather or environmental conditions, regardless of severity or duration, which places an increased demand or strain on public services, including tow operations, whether man-made or acts of God.

5. **Street** – all paved dedicated public rights-of-way within the existing or future City limits.

6. **Public Property** – any property under the control and direction of the City of Santa Ana or any other government agency within the corporate limits of the City of Santa Ana or State of California.

7. **Private Property** – any property that is privately owned or held by someone other than a government agency.

EXHIBIT B

FEE SCHEDULE

AUTHORIZED TOWING AND STORAGE FEE SCHEDULE*

Service	Fee
Stored Vehicle Release Fee (PD)	$75.00
Class A	$195.00
Class B or Flatbed	$225.00
Class C	$325.00
Class D	$360.00
Dolly, Go-Jacks or Linkage Fee	$60.00
Rollover or Winching Fee	$130.00
Clean-up Fee (fee to City capped at $35.00 per occurrence)	$60.00
Hazmat Fee (per five (5) gallon bucket)	$115.00
Vehicle Storage Fees (Daily)	
Class A – Outside	$55.00
Class A – Inside	$60.00
Class B – Outside	$60.00
Class B – Inside	$65.00
Class C or Class D – Outside	$65.00
Class C or Class D – Inside	$70.00
After Hours Release	50% of the authorized towing charge
Minimum Service Call or Drop Fee	50% of the authorized towing charge
Lien Sale	As authorized by the California Civil and Vehicle Codes
Mileage (per mile outside the corporate city limits)	$9.00

* Fees indicated herein will become the City's maximum authorized rates effective at the time of contract implementation; minimum 1 hour.

SERVICE AGREEMENT
ROTATIONAL TOW PROVIDER

THIS AGREEMENT, made and entered into this 16th day of August, 2016 by and between Greater Southern California Towing, Inc., a California corporation doing business as California Tow (hereinafter "Contractor"), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (hereinafter "City").

RECITALS

A. The City desires to retain a contractor having special skill and knowledge in the field of providing vehicle towing and storage services.

B. Contractor represents that it is able and willing to provide such services to the City.

C. In undertaking the performance of this Agreement, Contractor represents that it is knowledgeable in its field and that any services performed by Contractor under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional consulting firm in the field.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

1. SCOPE OF SERVICES

Contractor shall provide vehicle towing and storage service at the request of the Santa Ana Police Department, on a rotational basis, in accordance with the terms and conditions set forth in the Scope of Service, attached hereto as Exhibit A and incorporated by this reference. The City intends to contract with several tow companies to provide necessary towing services on a rotational basis. Towing services may include, but are not limited to, towing vehicles from public or private property at the direction of Police employees, owner's request for a tow made via the Police Department, the storage of vehicles, the secure storage of vehicles containing evidentiary value, debris clean-up and removal, recovery services and administrative oversight of vehicles in the custody of the contractor.

2. COMPENSATION

a. The parties intend that towing and storage fees will be paid by the vehicle owner at the rates and charges set forth in Contractor's then current and approved fee schedule, attached as Exhibit B and incorporated by this reference.

b. When Contractor provides services chargeable to the City as set forth in Exhibit A, the Contractor shall submit a monthly invoice by the 15th of the month to the City for

any such services rendered in the prior month, if applicable. The invoice shall include all information enumerated in California Vehicle Code ("CVC") § 22651.07(e) and include the following information:

i. Contractor's invoice number
ii. Santa Ana Police Department's case number

c. Payment by City shall be made within sixty (60) days following receipt of proper invoice, subject to City accounting procedures. Payment need not be made for work which fails to meet the standards of performance for professional towing services or in accordance with the standards set forth in this agreement.

d. Adjustments to the Towing and Storage Fee Schedule

The Traffic Commander shall examine the towing and storage rates authorized in accordance with this agreement on an annual basis. The Traffic Commander may recommend to the Division Commander and the Chief of Police to adjust the towing and storage rates, not to exceed two percent (2%) annually, based on the most recent statistics, as follows: the two indices which will be used for determining adjustments to the towing and storage fee schedule shall be the prior twelve (12) months, reporting month December, Consumer Price Index (CPI) for All Urban Consumers for Los Angeles-Anaheim-Riverside Consolidated Metropolitan Statistical Area, published by the United States Department of Labor's Bureau of Labor Statistics or any relevant successor for the Orange County area, and the twelve (12) month December Producer Price Index for Petroleum (PPI). The adjustment formula shall be as follows: The CPI shall be weighted at ninety (90%) percent and PPI shall be weighted at ten (10%) percent. However, fee adjustments will only be made if justified and shall occur at the sole discretion of the Chief of Police based on recommendations from the Traffic Commander.

3. TERM

This Agreement shall commence on September 1, 2016 and continue through August 31, 2019, with two (2) one (1) year options to renew exercisable at the option of the City unless terminated earlier in accordance with Section 11, below.

4. INDEPENDENT CONTRACTOR

Contractor shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Contractor performs the services which are the subject matter of this Agreement; however, the services to be provided by Contractor shall be provided in a manner consistent with all applicable standards and regulations governing such services. Contractor shall pay all salaries and wages, employer's social security taxes, unemployment

insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

5. INSURANCE

Prior to undertaking performance of work under this Contract, Contractor shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

a. Commercial General Liability Insurance – the Contractor shall maintain commercial general liability insurance which shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting there from and damage to property, resulting from any act or occurrence arising out of Contractor's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting there from, and property damage, in the total amount of $1,000,000 per occurrence, $2,000,000 in the aggregate.

b. Business Automobile Liability Insurance, or equivalent form, shall be maintained by the Contractor with a combined single limit of not less than $1,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles as well as uninsured motorist coverage with a combined single limit of not less than $1,000,000 per occurrence.

c. Worker's Compensation Insurance – in accordance with the provisions of Section 3300 of the Labor Code, Contractor is required to be insured against liability for worker's compensation or to undertake self-insurance. Prior to commencing the performance of the work under this Contract, Contractor agrees to obtain and maintain any employer's liability insurance with limits not less than $1,000,000 per accident.

d. Garage Liability and Garage Keeper's Liability Insurance – the Contractor shall maintain garage liability insurance to include all premises, operations and coverage for bodily injury and property damage with a combined single limit of not less than $1,000,000 per occurrence as well as garage keeper's liability insurance for vehicles in the care, custody and control of the operator in the storage facility with a single limit of not less than $100,000 per occurrence.

e. On-Hook Insurance – the Contractor shall maintain on-hook insurance with limits not less than those required by the California Highway Patrol:

1. Class A tow truck - $25,000
2. Class B tow truck - $50,000
3. Class C or Class D tow truck - $100,000

f. The following requirements apply to the insurance to be provided by Contractor pursuant to this section:

1. Commercial general liability and business automobile insurance policies shall (a) name the City, its officers, employees, agents, volunteers and representatives as additional insured(s); (b) be primary and not contributory with respect to insurance or self-insurance programs maintained by the City; and (c) contain standard separation of insureds provisions. Contractor shall maintain all insurance required above in full force and effect for the entire period covered by this Agreement.
2. Certificates of insurance shall be furnished to the City upon execution of this Contract and shall be approved in form by the City Attorney.
3. All of the Contractor's storage facilities shall be listed in the certificates of insurance.
4. Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City.

g. If Contractor fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the City with required proof that insurance has been procured and is in force and paid for, the City shall have the right, at the City's election, to forthwith terminate this Contract. Such termination shall not affect Contractor's right to be paid for services satisfactorily provided in accordance with this agreement prior to notification of termination. The Contractor waives the right to receive compensation and agrees to indemnify the City for any work performed prior to approval of insurance by the City.

6. INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its officers, agents and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any work performed or services provided under this Contract (including, without limitation, defects in workmanship and/or materials) or Contractor's presence or activities conducted performing the work (including the negligent and/or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, contractors, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable for any or all of them). Notwithstanding the foregoing, nothing herein shall be construed to require Contractor to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees

in any action on or to enforce the terms of this Contract. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Contractor.

7. CONFLICT OF INTEREST CLAUSE

Contractor covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement.

8. NOTICE

With the exception of insurance certificates and renewals, any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by facsimile or other telegraphic communication in the manner provided in this Section, to the following persons:

To City:
Clerk of the City Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702-1988
Fax 714- 647-6956

With courtesy copies to:
Office of the Chief of Police
City of Santa Ana
Santa Ana Police Department
60 Civic Center Plaza
Santa Ana, CA 92701
Fax 714-245-8190

and
City Attorney
City of Santa Ana
20 Civic Center Plaza (M-29)
P.O. Box 1988
Santa Ana, California 92702
Fax 714- 647-6515

To Contractor:
Greater Southern California Towing, Inc., dba California Tow
2202 West 5th Street
Santa Ana, CA 92703
Fax 714-714-542-0108

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by facsimile, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

9. EXCLUSIVITY AND AMENDMENT

This Agreement represents the complete and exclusive statement between the City and Contractor, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Contractor. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Contractor nor the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.

10. ASSIGNMENT

a. Inasmuch as this Contract is intended to secure the specialized services of Contractor, the Contractor may not sell, assign, transfer, delegate or subcontract any interest herein without the prior written consent of City and any such sale, assignment, transfer, delegation or subcontract without the City's prior written consent shall nullify and void any existing contract with the City.

b. Unless previously approved by the City, the sale or transfer of the controlling interest in a company shall be cause for immediate termination of this contract and the Contractor shall be replaced on the Rotational Tow List by another company on an existing eligibility list or during a future RFQ process.

11. TERMINATION

a. The City reserves the right to immediately terminate the contract, without penalty, for cause.

b. In the event Contractor fails or refuses to timely perform any of the provisions of this Agreement in the manner required, or if Contractor violates any provision of this

Agreement, Contractor shall be deemed in default. City shall provide written notice of such default to Contractor's Project Manager. If possible, the Contractor shall cure said default within a period of two (2) working days. If such cure is not completed in a timely manner, City may terminate the Agreement forthwith by giving written notice to Contractor's Project Manager. The City may, in addition to the other remedies provided in this Agreement or authorized by law, terminate this Agreement by giving written notice of termination. Contractor shall be responsible for all costs incurred by City, including replacement costs of equipment and labor required to provide service during Contractor's default.

c. As described in Exhibit A, concerning the investigation and disposition of complaints, the City may terminate this agreement immediately for cause if it has been determined by the Traffic Commander, with concurrence from the Field Operations Bureau Commander, that the Contractor has committed major or minor rule violations associated with this agreement, or has committed violations of the law, and termination of the contract is deemed to be the appropriate disposition.

d. This agreement may be terminated without cause by City by written notice delivered to the Contractor either personally or by mail, thirty (30) days prior to the end of the then current term. Upon termination, City shall pay Contractor for services rendered as specified in the Agreement prior to the effective date of termination.

12. CONTRACTOR OPTION FOR TERMINATION

The Contractor may request termination of the contract when conditions during the contract make it impossible to perform or when prevented from proceeding with the contract by act of God, by law or official action of a public authority or in the event of nonpayment by the City. Such request will require ninety (90) days written notice prior to contract termination date requested. In the event of nonpayment of undisputed sums by the City, Contractor shall give the City thirty (30) working days to cure the alleged breach.

13. DISCRIMINATION

Contractor shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Contractor affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

14. EMPLOYMENT OPPORTUNITIES FOR SANTA ANA RESIDENTS

Contractor shall make every effort to solicit and advertise employment opportunities to Santa Ana residents. The City shall inform the Contractor of areas to publicize recruitment opportunities, such as work centers and community centers.

Contractor shall provide to City, a description of efforts and procedures used to notify residents of employment opportunities as they occur but, at a minimum, once each year prior to the City exercising its option to extend the contract.

15. CONTRACTOR'S PARTICIPATION AT COMMUNITY MEETINGS, EVENTS AND PUBLIC AWARENESS CAMPAIGNS

If requested by City, the Contractor shall agree to participate in community meetings, community events and public awareness campaigns, such as National Night Out, DUI presentations or any other neighborhood or City event. Such participation shall be upon City request provided with reasonable notice of the event. Such events will not exceed four (4) requests per year.

16. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

a. Contractor shall perform all requirements under this contract in strict observance of and in compliance with all applicable environmental, traffic, safety and any other laws, regulations, ordinances, codes and any other legislative or statutory requirements.

b. Contractor warrants that the performance of services under this contract shall be compliant with the current requirements of the Occupational Safety and Health Act (OSHA) and as it may be amended or updated throughout the term of this contract.

17. FINES

The Contractor shall be liable for all violation fines levied against the City by any Federal, State or local agency, including but not limited to the Air Quality Management District (AQMD), and the Regional Water Quality Control Board, due to the action or failure to act by Contractor.

18. JURISDICTION - VENUE

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

19. PROFESSIONAL LICENSES

Contractor shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the

State of California, the City of Santa Ana and all other governmental agencies. Contractor shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

20. MISCELLANEOUS PROVISIONS

a. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

b. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

ATTEST:

MARIA D. HUIZAR
Clerk of the Council

CITY OF SANTA ANA

DAVID CAVAZOS
City Manager

APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney

By: Laura A. Rossini
Laura A. Rossini
Senior Assistant City Attorney

GREATER SOUTHERN CALIFORNIA TOWING, INC. DBA CALIFORNIA TOW

Arturo Diaz
President

RECOMMENDED FOR APPROVAL:

Carlos Rojas
Chief of Police

EXHIBIT A – SCOPE OF SERVICES

I. USE OF ROTATIONAL TOW LIST

A. CRITERIA AND RULES FOR USE BY POLICE EMPLOYEES

The City agrees to utilize the rotational tow list for all service requests initiated by members of the Santa Ana Police Department except where provided for in this agreement. Therefore, the City agrees to operate under the following policy guidelines unless reasonably necessary to deviate due to exigent or unforeseen circumstances:

1. Whenever the driver or owner specifies a particular club, association or tow service to care for his/her vehicle, the garage or tow service requested shall be called and such calls shall not constitute a rotational tow call.

2. When a driver does not specify a particular garage or tow service, the garage or tow service called shall be taken from the rotational list in numerical order. When more than one vehicle is to be towed from a collision scene and the drivers do not specify a preference, the rotation list shall be followed on the basis of one tow truck for each vehicle utilizing the numerical rotational order. The rotation list shall be followed on a per vehicle basis rather than per collision or call for service. When multiple Contactors are called to the same incident, the distribution of vehicles shall be determined by the police officer at the scene.

3. If the eligible Contractor does not answer the telephone or acknowledge the call via a software dispatch system, is unable to respond, unable to perform the required services, refuses to respond or provide the requested service, or is cancelled due to an excessive response time, that company shall be passed over and shall not be eligible until the Contractor comes up on the rotation list again.

4. It shall be the responsibility of the Contractor to notify the Police Department if it is unable to respond within the required time limit or with the appropriate equipment for the type of service requested.

5. If it is determined the Contractor is not needed and is cancelled by the Police Department or the vehicle owner, the Contractor shall be placed back on top of the rotation list and no charge shall result from the call.

6. The rotation list shall be used on occasions where an officer stores or impounds a vehicle and the driver or owner is not consulted or is not present.

7. All employees of the Police Department are specifically prohibited from soliciting or recommending any garage or tow service, either directly or indirectly. All officers are directed to ascertain from the party in charge of the vehicle as to their preference of a towing agency. A request of "no preference" by the person in charge will be relayed to dispatch by the officer and will result in a call to the Contractor that is next up on the rotation list.

B. REPORTING PROCEDURES

1. All officers requesting a tow truck from the rotational list for the towing, storing or impounding of a vehicle shall complete the Santa Ana Police Department storage/impound form when required by Departmental policy or procedure. The form shall be signed by both the officer and the driver of the tow truck. A copy of the Santa Ana Police Department storage/impound form shall be given to the tow truck driver prior to the vehicle being towed from the scene.

II. CONTRACTOR REQUIREMENTS AND RESPONSIBILITIES

A. WORK ASSIGNMENTS AND SCHEDULE

The Contractor shall be available to provide services within the corporate limits of the City of Santa Ana 24-hours per day, seven (7) days per week, 365 days per year. There are no exceptions for holidays under the project. The Contractor shall also make reasonable accommodations for its personnel to attend meetings with City staff from the Police Department, City Attorney's Office or any other City Agency as required by the Project Manager.

B. WORKING HOURS AND RESPONSE TIMES

1. All services under this contact shall be available 24-hours per day, seven (7) days per week, 365-days per year without exception.

2. The owner, principal or business manager of the proposing Contractor shall have a minimum of five (5) years of verifiable experience in the towing for-hire industry. Prior experience performing towing services for a law enforcement agency are highly desirable but not required. If the owner, principal or business manager possessing this requisite experience is no longer employed by the Contractor at any time during the course of the contract, the Contractor shall immediately report such change in condition to the City's Project Manager and participation on the rotation list shall be suspended until a new owner, principal or business manager is identified and approved.

3. The Contractor shall be required to have a dispatcher on-duty 24-hours per day with the capability to communicate instantly with all trucks and/or drivers assigned to this project.

4. All requests for tow services shall be acknowledged or refused within three (3) minutes by the Contractor's dispatcher and response to the scene shall occur within 20 minutes from the time the Contractor is notified by the Police Department's Communications Division.

   a. The 20 minute response time applies only to tow requests requiring a Class A tow truck.
   b. The Contractor shall be required to comply with this requirement by providing appropriate staffing levels and, if necessary, strategically staging personnel during peak traffic times to allow drivers sufficient time to arrive while complying with all traffic laws and regulations in their response to service requests.

   c. For any request requiring a Class B, C or Class D tow truck, the Contractor shall have the necessary equipment on scene within 45 minutes of notification by the Police Department's Communications Division if a Department employee identifies the need for such equipment or when determined by the Contractor's employee after responding to the scene and assessing the situation.

5. The Contractor shall be required to have a minimum of one (1) driver on duty 24-hours per day, seven (7) days per week. In addition, the Contractor shall have at least one (1) other driver on-call or stand-by.

6. The Contractor will also be required to maintain office hours between 8:00 am and 5:00 pm, seven (7) days a week, 365 days per year so vehicle owners can retrieve stored or impounded vehicles.

C. REQUIRED TOW VEHICLES AND EQUIPMENT

1. At a minimum, the Contractor shall possess, maintain and be the listed registered owner of the following classes of tow vehicles (meeting requirements as defined in the most current version of CHP 234B – Tow Truck Inspection Guide):

   a. Four (4) Class A tow trucks designed for light duty towing operations.
   b. One (1) Class B tow truck designed for medium duty towing operations.
   c. One (1) Class C tow truck designed for heavy duty towing operations.

2. In addition, the Contractor shall either possess and maintain, or have immediate access to, one (1) Class D tow truck designed for super heavy duty towing operations (meeting requirements as defined in the most current version of CHP 234B – Tow Truck Inspection Guide). Even if subcontracted, this vehicle shall

be made available for inspection and the Contractor will be held responsible for the condition and suitability of this vehicle.

3. The company name, business address, telephone number and tow truck identification number shall be permanently and properly affixed to each vehicle in a manner prescribed pursuant to CVC § 27907.

4. There shall be no words or language affixed to the vehicle associating the Contractor or the vehicle with the Santa Ana Police Department (e.g. "official police tow") without the prior written approval of the City's Project Manager.

5. At no time shall the Contractor exceed the gross vehicle weight rating (GVWR) and/or safe loading requirements of the tow truck, including, but not limited to, exceeding the tow trucks GVWR, front axle weight rating, rear axle weight rating, maximum tire weight ratings, or failure to maintain 50 percent of the tow truck's unladen weight on the front axle when lifting or carrying a load.

6. The authorized Towing and Storage Fee Schedule shall be posted in public view in all tow trucks.

7. Contractors shall not share equipment with any other Contractor with the limited exception of access to a Class D tow truck as specified above.

8. All of the vehicles identified above and used in accordance with this agreement shall be equipped with the minimum equipment required to perform towing operations as well as the equipment pursuant to CVC § 27700 and the "Service and Other Equipment" section of the CHP 234B (Tow Truck Inspection Guide) form. The Contractor may also be required to carry any other safety devices reasonably required by the City.

9. The contractor shall maintain all vehicles and equipment in good repair for use by the Contractor's employees assigned to perform services pursuant to this agreement. The Contractor shall be responsible for, and pay for all operating expenses, equipment, maintenance and insurance for vehicles assigned to perform work related to this agreement. All tow trucks shall be equipped and maintained in accordance with applicable sections from the California Vehicle Code, Title 13 of the California Code of Regulations, the requirements of this RFP and industry standards.

10. All vehicles shall be kept clean, be free of offensive odors and maintain a professional appearance.

11. All tow trucks shall be inspected annually by the California Highway Patrol and maintain a current Commercial Vehicle Safety Alliance (CVSA) decal. The Contractor shall provide current copies of CHP 234B (Tow Truck Inspection

Guide) and CHP 407F (Safetynet Driver/Vehicle Inspection Report) for each vehicle to the City's Project Manager or designee.

12. The Contractor agrees that the Santa Ana Police Department may inspect any vehicle, without prior notice, at any time during normal business hours.

13. The Contractor shall provide instant communication access via cellular phone or radio to all personnel while performing their duties.

G. GLOBAL POSITIONING SYSTEM (GPS)

It is highly desirable for the Contractor to provide GPS capabilities in all of their tow trucks. If offered for consideration in the Contractor's Response, the City and Contractor shall be able to view this information via computer in real time and the Contractor shall provide GPS reports at the request of the City.

H. CONTRACTOR'S BUSINESS OFFICE REQUIREMENTS

1. The Contractor shall maintain an office and storage facility within the corporate limits of the City of Santa Ana and remain in compliance with any requirements imposed by the Police Department, the Planning Division or any other Department, Agency or Agent of the City of Santa Ana in accordance with federal regulations, state law, the Santa Ana Municipal Code and this agreement.

2. It is preferable that the office and storage facility be at the same location to minimize the impact on the community. However, should additional locations exist, the Contractor agrees to conduct all business from the primary facility and any costs associated with operating a secondary location and/or moving vehicles to or from that secondary location shall not be passed along to any customer covered under this agreement.

3. The primary facility shall have a sign clearly visible to the public that identifies the location as a towing service.

4. The business hours shall be clearly posted.

5. The office shall be sufficiently staffed to allow customers to speak with a company representative during normal business hours without unnecessary delay.

6. Current and approved rates pursuant to the Towing and Storage Fee Schedule shall be posted in public view in the Contractor's office and/or storage facility in compliance with California Civil Code § 3070 and CVC § 22651.07.

7. The Contractor shall comply with the provisions of CVC § 22651.1.

8. The Contractor shall maintain records of all tow services furnished by the Contractor at the primary office location.

    a. Invoices shall contain the required itemized information pursuant to CVC 22651.07(e).
    b. Itemized invoices shall contain a distinct notice upon the invoice stating "Upon request, you are entitled to receive a copy of the "Towing Fees and Access Notice." This notice shall be contained within a bordered text box, printed in no less than 10-point type pursuant to CVC 22651.07(a)(1)(B)(3).

9. The operator's primary business office shall also maintain business records relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, lien sale actions, driver's record of duty status (intrastate and/or interstate), and Federal Communication Commission licensing (if applicable).

10. The Contractor agrees that a representative from the Santa Ana Police Department may inspect all business records, facilities and vehicles without notice during normal business hours.

11. The Contractor shall permit the Santa Ana Police Department to make copies of business records at their place of business or remove business records for the purpose of reproduction.

12. Lien fees, or any fees related to the preparation of a lien, shall not exceed the amounts allowable in the Towing and Storage Fee Schedule, attached hereto as Exhibit B, and in compliance with all relevant provision of the California Vehicle Code and California Civil Code.

I. STORAGE FACILITY AND VEHICLE STORAGE REQUIREMENTS

1. It is preferable that the storage facility is located at the same location as the primary business office. However, if located at a different location than the main office, the storage facility must be within the corporate limits of the City of Santa Ana and have an on-site release office at all storage lots. Persons seeking to take possession of their vehicle or property shall not be required to travel to more than one location to recover their vehicle from the Contractor's custody.

2. The storage facility and all vehicles towed at the direction of the City shall be made available to police personnel 24-hours per day, 7-days per week.

3. The entire storage lot must be sufficiently well lit to deter theft. Other theft deterrent devices (e.g. cameras, alarms, on-site personnel, etc.) are highly desirable.

4. The storage lot must be completely secured by a wall or fencing and a gate that is able to be locked to maintain security for stored and impounded vehicles. The minimum height requirement for the fence and gate shall be six (6) feet.

5. The storage lot shall be large enough to hold a minimum of 100 vehicles at any given location. This requirement is the minimum area reserved for Santa Ana vehicles and additional space is highly desirable. All vehicles towed by the City shall be stored within the corporate city limits and the vehicle or any of its contents shall be made available for release within the corporate city limits. If multiple storage facilities are maintained, the Contractor shall only use the secondary lot when the primary lot is full and shall not charge for transportation beyond that of the main storage facility.

6. The Contractor shall also provide an inside storage facility, which must consist of four walls with a solid roof and a door equipped with a locking device. Additional security features are highly desirable. This facility shall be sufficient to reasonably protect vehicles from theft, tampering, weather, environmental conditions or any other circumstances that could cause the removal or contamination of evidence. Access to this area by employees or other individuals shall also be restricted. This facility shall be capable of storing a minimum of four (4) mid-sized vehicles for the City of Santa Ana and sufficient space to conduct forensic analysis of the vehicle on-site if necessary.

7. Vehicles impounded pursuant to CVC § 10751 shall be placed in an area of the storage facility that will provide sufficient space and privacy, allowing auto theft investigators to perform a vehicle inspection without delay. This requirement shall be required for the first ten (10) days of impound.

8. Vehicles will not be released, sold or dismantled until a signed release form has been obtained from the Santa Ana Police Department. The signed release form will be kept by the towing company as proof of authority for the release.

9. Release forms are required for impounded vehicles and vehicles with a "hold" placed on them by police department personnel. The release form will indicate they are from the Santa Ana Police Department and shall only be signed by authorized members of the Police Department.

    a. Stolen vehicles recovered by the Police Department will be released to the victim/owner by the Contractor with proof of ownership. Unless specifically noted, no release will be required from the Police Department.
    b. Stolen vehicles recovered by the Police Department requiring further investigation as determined by the handling officer will be impounded pursuant to CVC § 22655.5, thereby placing a hold on the vehicle. The impound box will be marked along with an explanation in the narrative.

These vehicles will not be released until the victim/owner obtains a release from the Police Department.

c. If the owner of the vehicle is unable to prove ownership to the tow agency, they will be referred to the Santa Ana Police Department and a release will be issued once ownership is established.

d. If a registered owner is unable to retrieve their vehicle from storage, a vehicle authorization form shall be provided by the Contractor to the person authorized to pick-up the vehicle. The authorized recipient, on behalf of the registered owner, will be required to provide identification for the Contractor to photocopy (front/back).

10. When a vehicle is impounded, the towing company will place the word "hold" or other similar notation on the windshield of the vehicle. This is to minimize unauthorized contact with the vehicle and to provide control measures to prevent the inadvertent release.

    a. The responsibility for determining and placing the word "hold" or other similar notation on the windshield of the vehicle will be the responsibility of the Contractor at the time of vehicle possession. The Contractor's employee signature on the storage/impound report will acknowledge an understanding of the type of report completed by the officer and any necessary holds. The Contractor should clarify any misunderstandings or omissions on the report at this time.

11. Vehicles towed or stored with an "evidence hold" shall not be touched, moved or tampered with in any manner without the written consent of the City's Project Manager or designee.

12. The Contractor agrees to tow and store vehicles taken pursuant to an "evidence hold" as defined in CVC §§ 22655.5 or 22655(a) without charge to the City and agrees to release the vehicle to the owner at the City's request. Unless waived in whole or in part by the City's Project Manager, the tow company may pursue collections from the registered owner for these charges but shall not exceed the cost of the tow and storage fees for a maximum of thirty (30) days. Furthermore, the Contractor may attempt to collect these fees, or make arrangements to collect these fees, at the time of release but shall not hold the vehicle in lieu of payment unless specifically authorized by the City's Project Manager or designee.

13. In any case where the Police Department inadvertently and/or erroneously causes the impound or storage of a vehicle, or fails to properly notify the owner in a timely manner, the Contractor agrees to release the vehicle at the request of the City's Project Manager or designee and waive all fees or charges associated with the tow.

14. Any personal property released from a vehicle shall occur at the business office or primary storage facility and shall require authorization from the Police Department. All property shall be released pursuant to CVC § 22851(b) and CVC § 22651.07. Personal property includes any property not affixed to the vehicle (e.g. clothes, cell phones, papers, pull-out / detachable face radios, etc.)

J. CUSTOMER SERVICE

Contractor shall provide service which is accessible, courteous, responsive, timely, equitable and given in the spirit of professionalism and mutual respect. Contractor's personnel are a reflection of the City of Santa Ana and, as such, are expected to:

1. Interact with customers and City officials, whether in person or on the phone, in a pleasant, respectful and professional manner.

2. Give full attention to each customer's needs by asking questions. Provide information, products and service in an accurate, organized and complete manner. Determine that the customer's request has been fulfilled.

3. Maintain a professional demeanor at all times that is free from rude, discourteous or harassing behavior.

4. Comply with all federal, state, county, and city laws and regulations.

5. Use adequate equipment that is kept clean and neat at all times.

6. Train other Contractor employees to be polite and courteous during public contact.

7. Employ truth and accuracy in reporting customer service records.

K. RATES AND FEES

Notwithstanding other provisions of this agreement related to rates and fees, the Contractor agrees to comply with the following provisions as they relate to rates and fees charged in accordance with this agreement:

1. For services provided pursuant to this Agreement, the Contractor shall collect towing, storage and other service fees from the vehicle owner at the time of release. Said fees shall comply with the Santa Ana Police Department's Towing and Storage Fee Schedule, attached hereto as Exhibit B, and incorporated by this reference.

2. The Contractor acknowledges that the fee schedule is intended to list the maximum amounts for services rendered but nothing in this Agreement shall preclude the Contractor from charging less than the maximum fee allowed.

3. Nothing shall prohibit a Contractor from sending a Class B, C or D tow truck to a call requiring a lighter class tow truck to perform requested services. However, the Contactor acknowledges that fees may only be charged for the class necessary to perform the requested services and not necessarily for the class of tow truck dispatched to the call.

4. No fees may be charged for personnel, equipment or services reasonably necessary to perform the required service.

5. No lien shall be placed on the vehicle for services performed or initiated, and subsequently cancelled on-scene by the Santa Ana Police Department, unless the Contractor has presented a written statement to the vehicle's registered owner or agent for the signed authorization of services to be performed pursuant to Civil Code § 3068(a).

    a. The Contractor shall not attempt to take possession of a vehicle in order to establish a lien for any services performed or initiated and subsequently cancelled.
    b. The Contractor shall not bill the City of Santa Ana or Santa Ana Police Department for any services performed or initiated, and subsequently cancelled by the department. However, in such cases, the incident shall not be considered a rotational call and the Contractor shall be returned to the top of the rotation list.

6. The Towing and Storage Fee Schedule shall be posted in the business offices, storage facilities and tow trucks pursuant to CVC § 22651.07.

7. Rate adjustments may be considered based on the criteria set forth in this Agreement.

8. Contractor's failure to comply with the Towing and Storage Fee Schedule shall be subject to disciplinary action.

9. The Contractor shall not seek payment from the City of Santa Ana for services provided pursuant to this Agreement. However, the City shall be responsible for the following charges ordered by the City pursuant to this Agreement:

    a. Collision cleanup as outlined in this Agreement;
    b. Other services authorized by the City's Project Manager prior to the performance of said duties.

L. MISCELLANEOUS PROVISIONS

1. The Contractor shall have a Carrier Identification and a valid Motor Carrier Property (MCP) permit, which shall be provided to the City's Project Manager or designee. The expiration or suspension of the MCP shall result in immediate suspension from the rotation list as well as possible disciplinary action.

2. There may be times when the Contractor comes across a vehicle blocking the roadway although not assigned to the call or next on the rotation list. At the discretion of the officer at the scene, the Contractor may be directed to assist in moving the vehicle to the side of the roadway only. This service shall be provided without cost to the City or vehicle owner, and shall not affect the Contractor's position on the rotation list.

3. The Contractor shall be held accountable for all vehicles, personal property and vehicle accessories once the vehicle is in the possession of the driver and/or stored at their facility. The Contractor agrees to relieve the City, its officers, agents and employees of all responsibility once the vehicle is in the custody of the Contractor.

4. There shall be no photography or video recording at the scene of a tow or collision by the Contractor or any employee unless directly related to the towing operation. Photographs or video recordings shall only be directed at vehicles or the area immediately surrounding the vehicle but in no case shall capture any image of a person(s) injured or killed at the scene.

5. The Contractor, nor any employee of the Contractor, shall accept from any person or offer a gratuity to any member of the City in violation of CVC § 12110(a) and the City's gift ban ordinance.

6. The Contractor shall remain in compliance with CVC § 10652 as required.

7. Due to the negative perception of Private Party Impounds (PPI's) and the nexus to predatory towing practices, whether actual or perceived, the City of Santa Ana and the Santa Ana Police Department have an interest in ensuring any Contractor working on its behalf is not associated with these practices. In addition, tow companies that engage in PPI's are subjected to complaints and investigations on a more frequent basis than those that do not participate in this facet of the towing business. Therefore, the City strongly discourages any Contractor assigned to the rotational tow list from engaging in PPI's within the corporate limits of the City of Santa Ana. Subject to the investigative process outlined in the RFP, any company found to be in violation of PPI regulations including, but not limited to, applicable sections of CVC § 22658 or any other laws or regulations associated with PPI's shall be subject to suspension or immediate removal from the rotation list for sustained complaints or convictions for violations of the law.

M. UTILIZATION OF DISPATCH AND TRACKING SOLUTIONS SOFTWARE

The City uses Dispatch & Tracking Solutions (DTS) software for its rotational towing administration. The Contractor shall agree to utilize the most recent, updated, upgraded Dispatch & Tracking Solutions software program (DTS), or any other software solution selected by the City, to dispatch and track tow activity via a web-based Internet connection. All tow requests originating from the Santa Ana Police Department may be made utilizing this program. The Contractor's failure to have the DTS program in full operation and to acknowledge tow requests in a timely manner pursuant to this RFP shall result in a finding of default and shall result in immediate suspension from the tow rotation list. Failure to remedy the problem shall be grounds for the termination of the agreement between the City and the Contractor.

The Contractor must be willing to must enter into a separate agreement, contract, or license for DTS software, or any other software solution implemented by the City, with the owner of that proprietary software. The City shall not provide the software program, any licensing or sub-licensing thereof or any intermediary services for the procurement by the Contractor of the software program. This Contract shall not be executed by the City until the Contractor has demonstrated to the City's Project Manager or designee satisfactory compliance with the requirements set forth herein. The Contractor shall be liable for all fees, charges, rates and service charges required for the procurement and use of DTS software or any similar software solution.

If the City should elect to use a different program than DTS at some point in the future, the Contractor agrees to comply with the above requirements as it relates to the new software solution after provided reasonable notice by the City and sufficient opportunity to procure said software program.

N. RESPONSIBILITIES WHEN RESPONDING TO CALLS FOR SERVICE

1. When the Contractor is called to the scene of a vehicle tow or a collision scene, the Contractor's employee will clean-up all debris at the scene in accordance with CVC § 27700 without charge to the City.

    a. If this service does not result in a vehicle tow, it shall not be considered a rotational call and the tow company shall be placed back on the top of the rotational tow list.
    b. Police employees should not call a rotational tow to the scene of a collision for the sole purpose of cleaning up debris. However, should this occur or become necessary, the Contractor may bill the City for the cost of the response in accordance with the City's Towing and Storage Fee Schedule.

O. PERFORMANCE DURING INCLEMENT WEATHER OR DISASTERS

1. The Contractor acknowledges that the services provided under this contract are integral to the operations of the City of Santa Ana and the Santa Ana Police Department. Therefore, the Contractor agrees to perform the duties of this contract regardless of weather or other adverse conditions including, but not limited to, any disasters whether man-made or acts of God.

2. During periods of inclement weather or disaster, the Contractor shall agree to adjust staffing levels to meet the increased demands for service during these times.

3. Should the Contractor be unable to fulfill their responsibilities under the conditions described in this section, the Contractor shall be responsible for any and all costs incurred by the City should the need to hire outside contractors become necessary to meet the needs of the Police Department due to the Contractor's default.

P. PROTECTION OF THE PUBLIC AND DAMAGES TO EXISTING STRUCTURES

1. The Contractor shall exercise due care and caution at all times for the protection of all persons and property. All fines, penalties and/or repair charges resulting from the Contractor's actions shall be the sole responsibility of the Contractor.

2. Understanding that the Contractor will respond to calls involving traffic collisions or traffic hazards, and pursuant to CVC § 22513, the Contractor shall only place or use equipment to block vehicle traffic lanes or render assistance to a motorist while exercising due care for the safety of the tow truck driver, the motorist and the motoring public. Tow truck drivers should be trained in scene management in accordance with this section. The Contractor shall ensure that all appropriate traffic safety warning devices are utilized as deemed necessary.

3. Contractors will be required to respond to calls where vehicles have collided with other objects and may have already caused damage to varying degrees. The methods proposed by the Contractor for towing and recovery services shall be reasonable and consistent with industry standards, best practices, and in a manner that shall not cause unnecessary additional harm, deface or damage any City or private property. In the event that damage to the City's right-of-way or private property has occurred due to the negligence of the Contractor, the Contractor shall be solely responsible for its repair or replacement in excess of the amount covered by the required insurance.

Q. SPECIFICATIONS

This Scope of Services is intended to cover all labor, material and standards of workmanship to be employed for in this work plan or reasonably implied by terms of same. Work or materials of a minor nature which may not be specifically mentioned, but which may be reasonably assumed as necessary for the completion of this work, shall be performed by the Contractor as if described in the specifications.

R. RECORDS

1. The Contractor shall keep accurate records concerning all vehicle tows, vehicle storages and vehicle releases or disposition.

2. In addition, the Contractor shall maintain accurate records of his/her employees or agents and provide the City with names and telephone numbers of emergency contact employees.

3. The Contractor shall complete a report each calendar month indicating the number of calls for service, the number of vehicles towed, the number of vehicles in storage (regular and secure) and their current status, vehicles released, vehicles sent to lien sale, the status of any other vehicles or services rendered by the Contractor on behalf of the City, GPS information (if requested by the City) or any other information as may be required by the City's Project Manager or designee.

4. A phone log will be submitted monthly of all calls from the Santa Ana Police Department to the Contractor, identifying whether or not those calls required a request for service, and a description of the action taken as a result of the call.

5. The Contractor shall provide monthly customer service phone logs from the public, indicating name, date, time and phone number of caller, reason for the call, any specific requests, the Contractor's response or action, and the amount of time required to address request. Such logs shall be accurate and truthful.

6. The Contractor shall permit the City to inspect and audit its books and records regarding City provided services at any reasonable time.

S. AUDITS AND INSPECTIONS

The Chief of Police or his designee shall conduct regular audits and inspections of the Contractor(s) assigned to this project to ensure they are fulfilling their responsibilities in accordance with the terms and conditions of this agreement. All work found during such audits or inspections to be substandard or failing to conform to the requirements of this agreement shall be corrected immediately by the Contractor and the City shall have the right to immediately suspend the Contractor from the rotation list until the

issue(s) is/are corrected. Failure to correct in a reasonable timeline as outlined in this Agreement may result in termination of the contract.

T. INVESTIGATION OF COMPLAINTS, LAWS, RULES, OR TERMS AND CONDITIONS OF AGREEMENT

Whenever a complaint or allegation is lodged against a Contractor or initiated by the Police Department, the Traffic Commander shall assign a supervisor from the Traffic Division to investigate any allegations. A fair, impartial and comprehensive investigation shall be conducted and the findings documented for review. To the extent required by law, the Contractor shall cooperate fully in the investigation and provide any documentation requested by the investigator to assist in making a finding. In addition, the Contractor shall be given the opportunity, either orally or in writing, to respond to the complaint at the point deemed appropriate by the investigator. The City expects that the Contractor will demonstrate professional business practices and truth in reporting as it relates to any records or information requested.

Minor infractions shall include, but not be limited to, situations such as poor customer service, failure to comply with non-safety related terms of the agreement, or minor equipment or facility deficiencies. Major infractions shall include, but not be limited to, situations involving honesty, integrity, safety, security, gross overcharging of a customer or a pattern of overcharging, failure to comply with the provisions of CVC § 22658 as it relates to PPI's, criminal violations (moral turpitude, DUI, drug related offenses, theft, etc.), or significant, repeated or flagrant violations of this agreement.

If it is determined that criminal charges are appropriate, the assigned investigator shall document the incident on a crime report and present the case to the appropriate prosecuting authority for review.

Based on the nature and seriousness of the misconduct being investigated, the Chief of Police may temporarily suspend the Contractor, or its agent individually, from the rotation list until the investigation is completed and a proper disposition is reached.

The standard for sustaining a complaint against the Contractor or the Contractor's agent shall be a preponderance of the evidence, regardless of the nature of the violation. Other investigative findings may include unfounded (false or factually incorrect), exonerated (action occurred but was lawful or within the terms of this agreement) or not sustained (inconclusive due to insufficient evidence or independent witnesses).

All complaints shall be forwarded to the Traffic Commander for review, approval and determination/recommendation of discipline if appropriate.

U. DISCIPLINARY ACTION

The Contractor agrees that failure by the Contractor, or its agent, to comply with the law or terms and conditions of this agreement shall be cause for administrative disciplinary action. However, nothing in this agreement shall preclude the City from taking appropriate enforcement action for violations of the law. Within 60 days of receipt of the complaint, the Traffic Commander shall review the findings of the investigation and recommend disciplinary action if appropriate. The Traffic Commander shall take into account the nature of the complaint, the findings of the investigation, past complaints against the Contractor and past practice of the Department to maintain equitable treatment of all Contractors assigned to the rotational tow list. Depending on the nature and complexity of the sustained violation, the Traffic Commander may allow the Contractor or designee to provide a brief written statement for consideration and/or may contact Contractor to ask additional questions.

Disciplinary action shall typically be progressive in nature and based on the Contractor's record during the previous five (5) years from the date of complaint. Therefore, multiple infractions for similar offenses, regardless of their severity, will result in increased disciplinary action. However, this does not preclude the Traffic Commander from recommending more serious sanctions where major rule violations have been committed or there are aggravating facts associated with the misconduct.

The following actions may be recommended:

1. No further action.
2. Issue a written warning.
3. Impose a suspension for minor violations (one (1) to 30-days).
4. Impose a suspension for multiple minor violations or a single major violation (30 to 90-days).
5. Termination of the contract for cause and immediate removal from the rotation list.

The Contractor shall be notified in writing of the City's intent to impose disciplinary action. The Traffic Commander shall have the authority to impose discipline up to and including the imposition of a suspension for minor violations as long as the suspension does not exceed 30-days in length. However, nothing in this article shall preclude the Traffic Commander from reducing the recommended discipline based on mitigating facts. Recommended suspensions exceeding 30-days in length or termination from the rotation list shall be approved by the Field Operations Bureau Commander prior to imposition.

The Traffic Commander may recommend to the Chief of Police the immediate termination of this agreement if the conduct of the Contractor, or agents, are determined to pose a danger to the public, have an excessive number of complaints

that tax the investigative resources of the Police Department, or the Contractor's actions reflect negatively upon the City.

V. RIGHT TO APPEAL

Upon receipt of a notice to impose disciplinary action, the Contractor shall have the right to submit a written appeal within ten (10) business days to the Field Operations Bureau Commander.

The Field Operations Bureau Commander shall issue their findings in writing within ten (10) business days of the receipt of written appeal. If the Contractor disagrees with the findings of the appeal, their final remedy shall be the opportunity to submit a written appeal to the Chief of Police within ten (10) business days, via the Traffic Commander. The Chief of Police shall issue a written decision within (10) business days. The decision of the Chief of Police shall be final.

Disciplinary action shall not be imposed until the hearing and appeal process has been exhausted. However, if the conduct of the Contractor is deemed to be so egregious or poses a danger to public safety, the City may exercise its right to immediately suspend the Contractor as set forth in this agreement. In such cases, the time during which the Contractor is suspended may be applied to the balance of a suspension imposed by the City, at the discretion of the hearing officer, and shall be the Contractor's only remedy as far as a pre-hearing suspension is concerned. Any time in excess of that credited toward an imposed suspension shall be lost. Failure to request an appeal, submit a written appeal, or appear at a mutually agreed upon hearing will waive the Contractor's right to further appeal and disciplinary action shall be imposed.

W. SUPERVISION OF CONTRACT AND MEETINGS WITH CITY

All work shall meet with the approval of the Santa Ana Police Department. As determined necessary by the City, there shall be a minimum of one monthly meeting with the Contractor and the City representative during the first year to determine progress and to establish areas needing attention. Status reports of activities performed by the Contractor will be submitted in writing to the City on a monthly basis or as determined necessary by the City.

Any specific problem area which does not meet the conditions of the specifications set forth herein shall be called to the attention of the Contractor and if not corrected immediately, or within a reasonable period, may result in the Contractor being found in default of this agreement, which may result in suspension from the rotation list until the issue(s) is/are corrected in a satisfactory manner as set forth in the specifications or termination.

X. MATERIALS AND EQUIPMENT

The contractor shall make a reasonable effort to purchase equipment and materials in the City of Santa Ana and to utilize Santa Ana vendors. Contractor shall report its efforts as requested by the City.

Y. DEFINITIONS

1. **City** – shall mean City of Santa Ana and representatives of the City of Santa Ana (e.g. Police Department or its agents).

2. **City's Project Manager** – shall be synonymous with the Traffic Commander for purposes of this project.

3. **Contractor** – shall mean any towing company submitting a response to this RFP and selected to perform services for the City on the Rotational Tow List, and shall include all employees or agents of said company.

4. **Inclement Weather or Disasters** – any adverse weather or environmental conditions, regardless of severity or duration, which places an increased demand or strain on public services, including tow operations, whether man-made or acts of God.

5. **Street** – all paved dedicated public rights-of-way within the existing or future City limits.

6. **Public Property** – any property under the control and direction of the City of Santa Ana or any other government agency within the corporate limits of the City of Santa Ana or State of California.

7. **Private Property** – any property that is privately owned or held by someone other than a government agency.

EXHIBIT B

FEE SCHEDULE

AUTHORIZED TOWING AND STORAGE FEE SCHEDULE*

Service	Fee
Stored Vehicle Release Fee (PD)	$75.00
Class A	$195.00
Class B or Flatbed	$225.00
Class C	$325.00
Class D	$360.00
Dolly, Go-Jacks or Linkage Fee	$60.00
Rollover or Winching Fee	$130.00
Clean-up Fee (fee to City capped at $35.00 per occurrence)	$60.00
Hazmat Fee (per five (5) gallon bucket)	$115.00
Vehicle Storage Fees (Daily)	
Class A – Outside	$55.00
Class A – Inside	$60.00
Class B – Outside	$60.00
Class B – Inside	$65.00
Class C or Class D – Outside	$65.00
Class C or Class D – Inside	$70.00
After Hours Release	50% of the authorized towing charge
Minimum Service Call or Drop Fee	50% of the authorized towing charge
Lien Sale	As authorized by the California Civil and Vehicle Codes
Mileage (per mile outside the corporate city limits)	$9.00

* Fees indicated herein will become the City's maximum authorized rates effective at the time of contract implementation; minimum 1 hour.

SERVICE AGREEMENT
ROTATIONAL TOW PROVIDER

THIS AGREEMENT, made and entered into this 16th day of August, 2016 by and between Hadley Tow, Inc., a California corporation doing business as California Tow (hereinafter "Contractor"), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (hereinafter "City").

RECITALS

A. The City desires to retain a contractor having special skill and knowledge in the field of providing vehicle towing and storage services.

B. Contractor represents that it is able and willing to provide such services to the City.

C. In undertaking the performance of this Agreement, Contractor represents that it is knowledgeable in its field and that any services performed by Contractor under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional consulting firm in the field.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

1. SCOPE OF SERVICES

Contractor shall provide vehicle towing and storage service at the request of the Santa Ana Police Department, on a rotational basis, in accordance with the terms and conditions set forth in the Scope of Service, attached hereto as Exhibit A and incorporated by this reference. The City intends to contract with several tow companies to provide necessary towing services on a rotational basis. Towing services may include, but are not limited to, towing vehicles from public or private property at the direction of Police employees, owner's request for a tow made via the Police Department, the storage of vehicles, the secure storage of vehicles containing evidentiary value, debris clean-up and removal, recovery services and administrative oversight of vehicles in the custody of the contractor.

2. COMPENSATION

a. The parties intend that towing and storage fees will be paid by the vehicle owner at the rates and charges set forth in Contractor's then current and approved fee schedule, attached as Exhibit B and incorporated by this reference.

b. When Contractor provides services chargeable to the City as set forth in Exhibit A, the Contractor shall submit a monthly invoice by the 15th of the month to the City for

any such services rendered in the prior month, if applicable. The invoice shall include all information enumerated in California Vehicle Code ("CVC") § 22651.07(e) and include the following information:

i. Contractor's invoice number
ii. Santa Ana Police Department's case number

c. Payment by City shall be made within sixty (60) days following receipt of proper invoice, subject to City accounting procedures. Payment need not be made for work which fails to meet the standards of performance for professional towing services or in accordance with the standards set forth in this agreement.

d. Adjustments to the Towing and Storage Fee Schedule

The Traffic Commander shall examine the towing and storage rates authorized in accordance with this agreement on an annual basis. The Traffic Commander may recommend to the Division Commander and the Chief of Police to adjust the towing and storage rates, not to exceed two percent (2%) annually, based on the most recent statistics, as follows: the two indices which will be used for determining adjustments to the towing and storage fee schedule shall be the prior twelve (12) months, reporting month December, Consumer Price Index (CPI) for All Urban Consumers for Los Angeles-Anaheim-Riverside Consolidated Metropolitan Statistical Area, published by the United States Department of Labor's Bureau of Labor Statistics or any relevant successor for the Orange County area, and the twelve (12) month December Producer Price Index for Petroleum (PPI). The adjustment formula shall be as follows: The CPI shall be weighted at ninety (90%) percent and PPI shall be weighted at ten (10%) percent. However, fee adjustments will only be made if justified and shall occur at the sole discretion of the Chief of Police based on recommendations from the Traffic Commander.

3. TERM

This Agreement shall commence on September 1, 2016 and continue through August 31, 2019, with two (2) one (1) year options to renew exercisable at the option of the City unless terminated earlier in accordance with Section 11, below.

4. INDEPENDENT CONTRACTOR

Contractor shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Contractor performs the services which are the subject matter of this Agreement; however, the services to be provided by Contractor shall be provided in a manner consistent with all applicable standards and regulations governing such services. Contractor shall pay all salaries and wages, employer's social security taxes, unemployment

insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

5. INSURANCE

Prior to undertaking performance of work under this Contract, Contractor shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

a. Commercial General Liability Insurance – the Contractor shall maintain commercial general liability insurance which shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting there from and damage to property, resulting from any act or occurrence arising out of Contractor's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting there from, and property damage, in the total amount of $1,000,000 per occurrence, $2,000,000 in the aggregate.

b. Business Automobile Liability Insurance, or equivalent form, shall be maintained by the Contractor with a combined single limit of not less than $1,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles as well as uninsured motorist coverage with a combined single limit of not less than $1,000,000 per occurrence.

c. Worker's Compensation Insurance – in accordance with the provisions of Section 3300 of the Labor Code, Contractor is required to be insured against liability for worker's compensation or to undertake self-insurance. Prior to commencing the performance of the work under this Contract, Contractor agrees to obtain and maintain any employer's liability insurance with limits not less than $1,000,000 per accident.

d. Garage Liability and Garage Keeper's Liability Insurance – the Contractor shall maintain garage liability insurance to include all premises, operations and coverage for bodily injury and property damage with a combined single limit of not less than $1,000,000 per occurrence as well as garage keeper's liability insurance for vehicles in the care, custody and control of the operator in the storage facility with a single limit of not less than $100,000 per occurrence.

e. On-Hook Insurance – the Contractor shall maintain on-hook insurance with limits not less than those required by the California Highway Patrol:

1. Class A tow truck - $25,000
2. Class B tow truck - $50,000
3. Class C or Class D tow truck - $100,000

f. The following requirements apply to the insurance to be provided by Contractor pursuant to this section:

1. Commercial general liability and business automobile insurance policies shall (a) name the City, its officers, employees, agents, volunteers and representatives as additional insured(s); (b) be primary and not contributory with respect to insurance or self-insurance programs maintained by the City; and (c) contain standard separation of insureds provisions. Contractor shall maintain all insurance required above in full force and effect for the entire period covered by this Agreement.
2. Certificates of insurance shall be furnished to the City upon execution of this Contract and shall be approved in form by the City Attorney.
3. All of the Contractor's storage facilities shall be listed in the certificates of insurance.
4. Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City.

g. If Contractor fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the City with required proof that insurance has been procured and is in force and paid for, the City shall have the right, at the City's election, to forthwith terminate this Contract. Such termination shall not affect Contractor's right to be paid for services satisfactorily provided in accordance with this agreement prior to notification of termination. The Contractor waives the right to receive compensation and agrees to indemnify the City for any work performed prior to approval of insurance by the City.

6. INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its officers, agents and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any work performed or services provided under this Contract (including, without limitation, defects in workmanship and/or materials) or Contractor's presence or activities conducted performing the work (including the negligent and/or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, contractors, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable for any or all of them). Notwithstanding the foregoing, nothing herein shall be construed to require Contractor to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees

in any action on or to enforce the terms of this Contract. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Contractor.

7. CONFLICT OF INTEREST CLAUSE

Contractor covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement.

8. NOTICE

With the exception of insurance certificates and renewals, any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by facsimile or other telegraphic communication in the manner provided in this Section, to the following persons:

To City:
Clerk of the City Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702-1988
Fax 714- 647-6956

With courtesy copies to:
Office of the Chief of Police
City of Santa Ana
Santa Ana Police Department
60 Civic Center Plaza
Santa Ana, CA 92701
Fax 714-245-8190

and
City Attorney
City of Santa Ana
20 Civic Center Plaza (M-29)
P.O. Box 1988
Santa Ana, California 92702
Fax 714- 647-6515

To Contractor:
Hadley Tow, Inc.
818 East Walnut Street
Santa Ana, CA 92701
Fax 714-568-1639

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by facsimile, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

9. EXCLUSIVITY AND AMENDMENT

This Agreement represents the complete and exclusive statement between the City and Contractor, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Contractor. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Contractor nor the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.

10. ASSIGNMENT

a. Inasmuch as this Contract is intended to secure the specialized services of Contractor, the Contractor may not sell, assign, transfer, delegate or subcontract any interest herein without the prior written consent of City and any such sale, assignment, transfer, delegation or subcontract without the City's prior written consent shall nullify and void any existing contract with the City.

b. Unless previously approved by the City, the sale or transfer of the controlling interest in a company shall be cause for immediate termination of this contract and the Contractor shall be replaced on the Rotational Tow List by another company on an existing eligibility list or during a future RFQ process.

11. TERMINATION

a. The City reserves the right to immediately terminate the contract, without penalty, for cause.

b. In the event Contractor fails or refuses to timely perform any of the provisions of this Agreement in the manner required, or if Contractor violates any provision of this

Agreement, Contractor shall be deemed in default. City shall provide written notice of such default to Contractor's Project Manager. If possible, the Contractor shall cure said default within a period of two (2) working days. If such cure is not completed in a timely manner, City may terminate the Agreement forthwith by giving written notice to Contractor's Project Manager. The City may, in addition to the other remedies provided in this Agreement or authorized by law, terminate this Agreement by giving written notice of termination. Contractor shall be responsible for all costs incurred by City, including replacement costs of equipment and labor required to provide service during Contractor's default.

c. As described in Exhibit A, concerning the investigation and disposition of complaints, the City may terminate this agreement immediately for cause if it has been determined by the Traffic Commander, with concurrence from the Field Operations Bureau Commander, that the Contractor has committed major or minor rule violations associated with this agreement, or has committed violations of the law, and termination of the contract is deemed to be the appropriate disposition.

d. This agreement may be terminated without cause by City by written notice delivered to the Contractor either personally or by mail, thirty (30) days prior to the end of the then current term. Upon termination, City shall pay Contractor for services rendered as specified in the Agreement prior to the effective date of termination.

12. CONTRACTOR OPTION FOR TERMINATION

The Contractor may request termination of the contract when conditions during the contract make it impossible to perform or when prevented from proceeding with the contract by act of God, by law or official action of a public authority or in the event of nonpayment by the City. Such request will require ninety (90) days written notice prior to contract termination date requested. In the event of nonpayment of undisputed sums by the City, Contractor shall give the City thirty (30) working days to cure the alleged breach.

13. DISCRIMINATION

Contractor shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Contractor affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

14. EMPLOYMENT OPPORTUNITIES FOR SANTA ANA RESIDENTS

Contractor shall make every effort to solicit and advertise employment opportunities to Santa Ana residents. The City shall inform the Contractor of areas to publicize recruitment opportunities, such as work centers and community centers.

Contractor shall provide to City, a description of efforts and procedures used to notify residents of employment opportunities as they occur but, at a minimum, once each year prior to the City exercising its option to extend the contract.

15. CONTRACTOR'S PARTICIPATION AT COMMUNITY MEETINGS, EVENTS AND PUBLIC AWARENESS CAMPAIGNS

If requested by City, the Contractor shall agree to participate in community meetings, community events and public awareness campaigns, such as National Night Out, DUI presentations or any other neighborhood or City event. Such participation shall be upon City request provided with reasonable notice of the event. Such events will not exceed four (4) requests per year.

16. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

a. Contractor shall perform all requirements under this contract in strict observance of and in compliance with all applicable environmental, traffic, safety and any other laws, regulations, ordinances, codes and any other legislative or statutory requirements.

b. Contractor warrants that the performance of services under this contract shall be compliant with the current requirements of the Occupational Safety and Health Act (OSHA) and as it may be amended or updated throughout the term of this contract.

17. FINES

The Contractor shall be liable for all violation fines levied against the City by any Federal, State or local agency, including but not limited to the Air Quality Management District (AQMD), and the Regional Water Quality Control Board, due to the action or failure to act by Contractor.

18. JURISDICTION - VENUE

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

19. PROFESSIONAL LICENSES

Contractor shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the

State of California, the City of Santa Ana and all other governmental agencies. Contractor shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

20. MISCELLANEOUS PROVISIONS

a. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

b. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

ATTEST:

MARIA D. HUIZAR
Clerk of the Council

CITY OF SANTA ANA

DAVID CAVAZOS
City Manager

APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney

By: Laura A. Rossini
Laura A. Rossini
Senior Assistant City Attorney

HADLEY TOW, INC.

Mark Hassan
President

RECOMMENDED FOR APPROVAL:

Carlos Rojas
Chief of Police

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT A – SCOPE OF SERVICES

I. USE OF ROTATIONAL TOW LIST

A. CRITERIA AND RULES FOR USE BY POLICE EMPLOYEES

The City agrees to utilize the rotational tow list for all service requests initiated by members of the Santa Ana Police Department except where provided for in this agreement. Therefore, the City agrees to operate under the following policy guidelines unless reasonably necessary to deviate due to exigent or unforeseen circumstances:

1. Whenever the driver or owner specifies a particular club, association or tow service to care for his/her vehicle, the garage or tow service requested shall be called and such calls shall not constitute a rotational tow call.

2. When a driver does not specify a particular garage or tow service, the garage or tow service called shall be taken from the rotational list in numerical order. When more than one vehicle is to be towed from a collision scene and the drivers do not specify a preference, the rotation list shall be followed on the basis of one tow truck for each vehicle utilizing the numerical rotational order. The rotation list shall be followed on a per vehicle basis rather than per collision or call for service. When multiple Contactors are called to the same incident, the distribution of vehicles shall be determined by the police officer at the scene.

3. If the eligible Contractor does not answer the telephone or acknowledge the call via a software dispatch system, is unable to respond, unable to perform the required services, refuses to respond or provide the requested service, or is cancelled due to an excessive response time, that company shall be passed over and shall not be eligible until the Contractor comes up on the rotation list again.

4. It shall be the responsibility of the Contractor to notify the Police Department if it is unable to respond within the required time limit or with the appropriate equipment for the type of service requested.

5. If it is determined the Contractor is not needed and is cancelled by the Police Department or the vehicle owner, the Contractor shall be placed back on top of the rotation list and no charge shall result from the call.

6. The rotation list shall be used on occasions where an officer stores or impounds a vehicle and the driver or owner is not consulted or is not present.

7. All employees of the Police Department are specifically prohibited from soliciting or recommending any garage or tow service, either directly or indirectly. All officers are directed to ascertain from the party in charge of the vehicle as to their preference of a towing agency. A request of "no preference" by the person in charge will be relayed to dispatch by the officer and will result in a call to the Contractor that is next up on the rotation list.

B. REPORTING PROCEDURES

1. All officers requesting a tow truck from the rotational list for the towing, storing or impounding of a vehicle shall complete the Santa Ana Police Department storage/impound form when required by Departmental policy or procedure. The form shall be signed by both the officer and the driver of the tow truck. A copy of the Santa Ana Police Department storage/impound form shall be given to the tow truck driver prior to the vehicle being towed from the scene.

II. CONTRACTOR REQUIREMENTS AND RESPONSIBILITIES

A. WORK ASSIGNMENTS AND SCHEDULE

The Contractor shall be available to provide services within the corporate limits of the City of Santa Ana 24-hours per day, seven (7) days per week, 365 days per year. There are no exceptions for holidays under the project. The Contractor shall also make reasonable accommodations for its personnel to attend meetings with City staff from the Police Department, City Attorney's Office or any other City Agency as required by the Project Manager.

B. WORKING HOURS AND RESPONSE TIMES

1. All services under this contact shall be available 24-hours per day, seven (7) days per week, 365-days per year without exception.

2. The owner, principal or business manager of the proposing Contractor shall have a minimum of five (5) years of verifiable experience in the towing for-hire industry. Prior experience performing towing services for a law enforcement agency are highly desirable but not required. If the owner, principal or business manager possessing this requisite experience is no longer employed by the Contractor at any time during the course of the contract, the Contractor shall immediately report such change in condition to the City's Project Manager and participation on the rotation list shall be suspended until a new owner, principal or business manager is identified and approved.

3. The Contractor shall be required to have a dispatcher on-duty 24-hours per day with the capability to communicate instantly with all trucks and/or drivers assigned to this project.

4. All requests for tow services shall be acknowledged or refused within three (3) minutes by the Contractor's dispatcher and response to the scene shall occur within 20 minutes from the time the Contractor is notified by the Police Department's Communications Division.

   a. The 20 minute response time applies only to tow requests requiring a Class A tow truck.
   b. The Contractor shall be required to comply with this requirement by providing appropriate staffing levels and, if necessary, strategically staging personnel during peak traffic times to allow drivers sufficient time to arrive while complying with all traffic laws and regulations in their response to service requests.

   c. For any request requiring a Class B, C or Class D tow truck, the Contractor shall have the necessary equipment on scene within 45 minutes of notification by the Police Department's Communications Division if a Department employee identifies the need for such equipment or when determined by the Contractor's employee after responding to the scene and assessing the situation.

5. The Contractor shall be required to have a minimum of one (1) driver on duty 24-hours per day, seven (7) days per week. In addition, the Contractor shall have at least one (1) other driver on-call or stand-by.

6. The Contractor will also be required to maintain office hours between 8:00 am and 5:00 pm, seven (7) days a week, 365 days per year so vehicle owners can retrieve stored or impounded vehicles.

C. REQUIRED TOW VEHICLES AND EQUIPMENT

1. At a minimum, the Contractor shall possess, maintain and be the listed registered owner of the following classes of tow vehicles (meeting requirements as defined in the most current version of CHP 234B – Tow Truck Inspection Guide):

   a. Four (4) Class A tow trucks designed for light duty towing operations.
   b. One (1) Class B tow truck designed for medium duty towing operations.
   c. One (1) Class C tow truck designed for heavy duty towing operations.

2. In addition, the Contractor shall either possess and maintain, or have immediate access to, one (1) Class D tow truck designed for super heavy duty towing operations (meeting requirements as defined in the most current version of CHP 234B – Tow Truck Inspection Guide). Even if subcontracted, this vehicle shall

be made available for inspection and the Contractor will be held responsible for the condition and suitability of this vehicle.

3. The company name, business address, telephone number and tow truck identification number shall be permanently and properly affixed to each vehicle in a manner prescribed pursuant to CVC § 27907.

4. There shall be no words or language affixed to the vehicle associating the Contractor or the vehicle with the Santa Ana Police Department (e.g. "official police tow") without the prior written approval of the City's Project Manager.

5. At no time shall the Contractor exceed the gross vehicle weight rating (GVWR) and/or safe loading requirements of the tow truck, including, but not limited to, exceeding the tow trucks GVWR, front axle weight rating, rear axle weight rating, maximum tire weight ratings, or failure to maintain 50 percent of the tow truck's unladen weight on the front axle when lifting or carrying a load.

6. The authorized Towing and Storage Fee Schedule shall be posted in public view in all tow trucks.

7. Contractors shall not share equipment with any other Contractor with the limited exception of access to a Class D tow truck as specified above.

8. All of the vehicles identified above and used in accordance with this agreement shall be equipped with the minimum equipment required to perform towing operations as well as the equipment pursuant to CVC § 27700 and the "Service and Other Equipment" section of the CHP 234B (Tow Truck Inspection Guide) form. The Contractor may also be required to carry any other safety devices reasonably required by the City.

9. The contractor shall maintain all vehicles and equipment in good repair for use by the Contractor's employees assigned to perform services pursuant to this agreement. The Contractor shall be responsible for, and pay for all operating expenses, equipment, maintenance and insurance for vehicles assigned to perform work related to this agreement. All tow trucks shall be equipped and maintained in accordance with applicable sections from the California Vehicle Code, Title 13 of the California Code of Regulations, the requirements of this RFP and industry standards.

10. All vehicles shall be kept clean, be free of offensive odors and maintain a professional appearance.

11. All tow trucks shall be inspected annually by the California Highway Patrol and maintain a current Commercial Vehicle Safety Alliance (CVSA) decal. The Contractor shall provide current copies of CHP 234B (Tow Truck Inspection

Guide) and CHP 407F (Safetynet Driver/Vehicle Inspection Report) for each vehicle to the City's Project Manager or designee.

12. The Contractor agrees that the Santa Ana Police Department may inspect any vehicle, without prior notice, at any time during normal business hours.

13. The Contractor shall provide instant communication access via cellular phone or radio to all personnel while performing their duties.

G. GLOBAL POSITIONING SYSTEM (GPS)

It is highly desirable for the Contractor to provide GPS capabilities in all of their tow trucks. If offered for consideration in the Contractor's Response, the City and Contractor shall be able to view this information via computer in real time and the Contractor shall provide GPS reports at the request of the City.

H. CONTRACTOR'S BUSINESS OFFICE REQUIREMENTS

1. The Contractor shall maintain an office and storage facility within the corporate limits of the City of Santa Ana and remain in compliance with any requirements imposed by the Police Department, the Planning Division or any other Department, Agency or Agent of the City of Santa Ana in accordance with federal regulations, state law, the Santa Ana Municipal Code and this agreement.

2. It is preferable that the office and storage facility be at the same location to minimize the impact on the community. However, should additional locations exist, the Contractor agrees to conduct all business from the primary facility and any costs associated with operating a secondary location and/or moving vehicles to or from that secondary location shall not be passed along to any customer covered under this agreement.

3. The primary facility shall have a sign clearly visible to the public that identifies the location as a towing service.

4. The business hours shall be clearly posted.

5. The office shall be sufficiently staffed to allow customers to speak with a company representative during normal business hours without unnecessary delay.

6. Current and approved rates pursuant to the Towing and Storage Fee Schedule shall be posted in public view in the Contractor's office and/or storage facility in compliance with California Civil Code § 3070 and CVC § 22651.07.

7. The Contractor shall comply with the provisions of CVC § 22651.1.

8. The Contractor shall maintain records of all tow services furnished by the Contractor at the primary office location.

    a. Invoices shall contain the required itemized information pursuant to CVC 22651.07(e).
    b. Itemized invoices shall contain a distinct notice upon the invoice stating "Upon request, you are entitled to receive a copy of the "Towing Fees and Access Notice." This notice shall be contained within a bordered text box, printed in no less than 10-point type pursuant to CVC 22651.07(a)(1)(B)(3).

9. The operator's primary business office shall also maintain business records relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, lien sale actions, driver's record of duty status (intrastate and/or interstate), and Federal Communication Commission licensing (if applicable).

10. The Contractor agrees that a representative from the Santa Ana Police Department may inspect all business records, facilities and vehicles without notice during normal business hours.

11. The Contractor shall permit the Santa Ana Police Department to make copies of business records at their place of business or remove business records for the purpose of reproduction.

12. Lien fees, or any fees related to the preparation of a lien, shall not exceed the amounts allowable in the Towing and Storage Fee Schedule, attached hereto as Exhibit B, and in compliance with all relevant provision of the California Vehicle Code and California Civil Code.

I. STORAGE FACILITY AND VEHICLE STORAGE REQUIREMENTS

1. It is preferable that the storage facility is located at the same location as the primary business office. However, if located at a different location than the main office, the storage facility must be within the corporate limits of the City of Santa Ana and have an on-site release office at all storage lots. Persons seeking to take possession of their vehicle or property shall not be required to travel to more than one location to recover their vehicle from the Contractor's custody.

2. The storage facility and all vehicles towed at the direction of the City shall be made available to police personnel 24-hours per day, 7-days per week.

3. The entire storage lot must be sufficiently well lit to deter theft. Other theft deterrent devices (e.g. cameras, alarms, on-site personnel, etc.) are highly desirable.

4. The storage lot must be completely secured by a wall or fencing and a gate that is able to be locked to maintain security for stored and impounded vehicles. The minimum height requirement for the fence and gate shall be six (6) feet.

5. The storage lot shall be large enough to hold a minimum of 100 vehicles at any given location. This requirement is the minimum area reserved for Santa Ana vehicles and additional space is highly desirable. All vehicles towed by the City shall be stored within the corporate city limits and the vehicle or any of its contents shall be made available for release within the corporate city limits. If multiple storage facilities are maintained, the Contractor shall only use the secondary lot when the primary lot is full and shall not charge for transportation beyond that of the main storage facility.

6. The Contractor shall also provide an inside storage facility, which must consist of four walls with a solid roof and a door equipped with a locking device. Additional security features are highly desirable. This facility shall be sufficient to reasonably protect vehicles from theft, tampering, weather, environmental conditions or any other circumstances that could cause the removal or contamination of evidence. Access to this area by employees or other individuals shall also be restricted. This facility shall be capable of storing a minimum of four (4) mid-sized vehicles for the City of Santa Ana and sufficient space to conduct forensic analysis of the vehicle on-site if necessary.

7. Vehicles impounded pursuant to CVC § 10751 shall be placed in an area of the storage facility that will provide sufficient space and privacy, allowing auto theft investigators to perform a vehicle inspection without delay. This requirement shall be required for the first ten (10) days of impound.

8. Vehicles will not be released, sold or dismantled until a signed release form has been obtained from the Santa Ana Police Department. The signed release form will be kept by the towing company as proof of authority for the release.

9. Release forms are required for impounded vehicles and vehicles with a "hold" placed on them by police department personnel. The release form will indicate they are from the Santa Ana Police Department and shall only be signed by authorized members of the Police Department.

    a. Stolen vehicles recovered by the Police Department will be released to the victim/owner by the Contractor with proof of ownership. Unless specifically noted, no release will be required from the Police Department.
    b. Stolen vehicles recovered by the Police Department requiring further investigation as determined by the handling officer will be impounded pursuant to CVC § 22655.5, thereby placing a hold on the vehicle. The impound box will be marked along with an explanation in the narrative.

These vehicles will not be released until the victim/owner obtains a release from the Police Department.

c. If the owner of the vehicle is unable to prove ownership to the tow agency, they will be referred to the Santa Ana Police Department and a release will be issued once ownership is established.

d. If a registered owner is unable to retrieve their vehicle from storage, a vehicle authorization form shall be provided by the Contractor to the person authorized to pick-up the vehicle. The authorized recipient, on behalf of the registered owner, will be required to provide identification for the Contractor to photocopy (front/back).

10. When a vehicle is impounded, the towing company will place the word "hold" or other similar notation on the windshield of the vehicle. This is to minimize unauthorized contact with the vehicle and to provide control measures to prevent the inadvertent release.

    a. The responsibility for determining and placing the word "hold" or other similar notation on the windshield of the vehicle will be the responsibility of the Contractor at the time of vehicle possession. The Contractor's employee signature on the storage/impound report will acknowledge an understanding of the type of report completed by the officer and any necessary holds. The Contractor should clarify any misunderstandings or omissions on the report at this time.

11. Vehicles towed or stored with an "evidence hold" shall not be touched, moved or tampered with in any manner without the written consent of the City's Project Manager or designee.

12. The Contractor agrees to tow and store vehicles taken pursuant to an "evidence hold" as defined in CVC §§ 22655.5 or 22655(a) without charge to the City and agrees to release the vehicle to the owner at the City's request. Unless waived in whole or in part by the City's Project Manager, the tow company may pursue collections from the registered owner for these charges but shall not exceed the cost of the tow and storage fees for a maximum of thirty (30) days. Furthermore, the Contractor may attempt to collect these fees, or make arrangements to collect these fees, at the time of release but shall not hold the vehicle in lieu of payment unless specifically authorized by the City's Project Manager or designee.

13. In any case where the Police Department inadvertently and/or erroneously causes the impound or storage of a vehicle, or fails to properly notify the owner in a timely manner, the Contractor agrees to release the vehicle at the request of the City's Project Manager or designee and waive all fees or charges associated with the tow.

14. Any personal property released from a vehicle shall occur at the business office or primary storage facility and shall require authorization from the Police Department. All property shall be released pursuant to CVC § 22851(b) and CVC § 22651.07. Personal property includes any property not affixed to the vehicle (e.g. clothes, cell phones, papers, pull-out / detachable face radios, etc.)

J. CUSTOMER SERVICE

Contractor shall provide service which is accessible, courteous, responsive, timely, equitable and given in the spirit of professionalism and mutual respect. Contractor's personnel are a reflection of the City of Santa Ana and, as such, are expected to:

1. Interact with customers and City officials, whether in person or on the phone, in a pleasant, respectful and professional manner.

2. Give full attention to each customer's needs by asking questions. Provide information, products and service in an accurate, organized and complete manner. Determine that the customer's request has been fulfilled.

3. Maintain a professional demeanor at all times that is free from rude, discourteous or harassing behavior.

4. Comply with all federal, state, county, and city laws and regulations.

5. Use adequate equipment that is kept clean and neat at all times.

6. Train other Contractor employees to be polite and courteous during public contact.

7. Employ truth and accuracy in reporting customer service records.

K. RATES AND FEES

Notwithstanding other provisions of this agreement related to rates and fees, the Contractor agrees to comply with the following provisions as they relate to rates and fees charged in accordance with this agreement:

1. For services provided pursuant to this Agreement, the Contractor shall collect towing, storage and other service fees from the vehicle owner at the time of release. Said fees shall comply with the Santa Ana Police Department's Towing and Storage Fee Schedule, attached hereto as Exhibit B, and incorporated by this reference.

2. The Contractor acknowledges that the fee schedule is intended to list the maximum amounts for services rendered but nothing in this Agreement shall preclude the Contractor from charging less than the maximum fee allowed.

3. Nothing shall prohibit a Contractor from sending a Class B, C or D tow truck to a call requiring a lighter class tow truck to perform requested services. However, the Contactor acknowledges that fees may only be charged for the class necessary to perform the requested services and not necessarily for the class of tow truck dispatched to the call.

4. No fees may be charged for personnel, equipment or services reasonably necessary to perform the required service.

5. No lien shall be placed on the vehicle for services performed or initiated, and subsequently cancelled on-scene by the Santa Ana Police Department, unless the Contractor has presented a written statement to the vehicle's registered owner or agent for the signed authorization of services to be performed pursuant to Civil Code § 3068(a).

    a. The Contractor shall not attempt to take possession of a vehicle in order to establish a lien for any services performed or initiated and subsequently cancelled.
    b. The Contractor shall not bill the City of Santa Ana or Santa Ana Police Department for any services performed or initiated, and subsequently cancelled by the department. However, in such cases, the incident shall not be considered a rotational call and the Contractor shall be returned to the top of the rotation list.

6. The Towing and Storage Fee Schedule shall be posted in the business offices, storage facilities and tow trucks pursuant to CVC § 22651.07.

7. Rate adjustments may be considered based on the criteria set forth in this Agreement.

8. Contractor's failure to comply with the Towing and Storage Fee Schedule shall be subject to disciplinary action.

9. The Contractor shall not seek payment from the City of Santa Ana for services provided pursuant to this Agreement. However, the City shall be responsible for the following charges ordered by the City pursuant to this Agreement:

    a. Collision cleanup as outlined in this Agreement;
    b. Other services authorized by the City's Project Manager prior to the performance of said duties.

L. MISCELLANEOUS PROVISIONS

1. The Contractor shall have a Carrier Identification and a valid Motor Carrier Property (MCP) permit, which shall be provided to the City's Project Manager or designee. The expiration or suspension of the MCP shall result in immediate suspension from the rotation list as well as possible disciplinary action.

2. There may be times when the Contractor comes across a vehicle blocking the roadway although not assigned to the call or next on the rotation list. At the discretion of the officer at the scene, the Contractor may be directed to assist in moving the vehicle to the side of the roadway only. This service shall be provided without cost to the City or vehicle owner, and shall not affect the Contractor's position on the rotation list.

3. The Contractor shall be held accountable for all vehicles, personal property and vehicle accessories once the vehicle is in the possession of the driver and/or stored at their facility. The Contractor agrees to relieve the City, its officers, agents and employees of all responsibility once the vehicle is in the custody of the Contractor.

4. There shall be no photography or video recording at the scene of a tow or collision by the Contractor or any employee unless directly related to the towing operation. Photographs or video recordings shall only be directed at vehicles or the area immediately surrounding the vehicle but in no case shall capture any image of a person(s) injured or killed at the scene.

5. The Contractor, nor any employee of the Contractor, shall accept from any person or offer a gratuity to any member of the City in violation of CVC § 12110(a) and the City's gift ban ordinance.

6. The Contractor shall remain in compliance with CVC § 10652 as required.

7. Due to the negative perception of Private Party Impounds (PPI's) and the nexus to predatory towing practices, whether actual or perceived, the City of Santa Ana and the Santa Ana Police Department have an interest in ensuring any Contractor working on its behalf is not associated with these practices. In addition, tow companies that engage in PPI's are subjected to complaints and investigations on a more frequent basis than those that do not participate in this facet of the towing business. Therefore, the City strongly discourages any Contractor assigned to the rotational tow list from engaging in PPI's within the corporate limits of the City of Santa Ana. Subject to the investigative process outlined in the RFP, any company found to be in violation of PPI regulations including, but not limited to, applicable sections of CVC § 22658 or any other laws or regulations associated with PPI's shall be subject to suspension or immediate removal from the rotation list for sustained complaints or convictions for violations of the law.

M. UTILIZATION OF DISPATCH AND TRACKING SOLUTIONS SOFTWARE

The City uses Dispatch & Tracking Solutions (DTS) software for its rotational towing administration. The Contractor shall agree to utilize the most recent, updated, upgraded Dispatch & Tracking Solutions software program (DTS), or any other software solution selected by the City, to dispatch and track tow activity via a web-based Internet connection. All tow requests originating from the Santa Ana Police Department may be made utilizing this program. The Contractor's failure to have the DTS program in full operation and to acknowledge tow requests in a timely manner pursuant to this RFP shall result in a finding of default and shall result in immediate suspension from the tow rotation list. Failure to remedy the problem shall be grounds for the termination of the agreement between the City and the Contractor.

The Contractor must be willing to must enter into a separate agreement, contract, or license for DTS software, or any other software solution implemented by the City, with the owner of that proprietary software. The City shall not provide the software program, any licensing or sub-licensing thereof or any intermediary services for the procurement by the Contractor of the software program. This Contract shall not be executed by the City until the Contractor has demonstrated to the City's Project Manager or designee satisfactory compliance with the requirements set forth herein. The Contractor shall be liable for all fees, charges, rates and service charges required for the procurement and use of DTS software or any similar software solution.

If the City should elect to use a different program than DTS at some point in the future, the Contractor agrees to comply with the above requirements as it relates to the new software solution after provided reasonable notice by the City and sufficient opportunity to procure said software program.

N. RESPONSIBILITIES WHEN RESPONDING TO CALLS FOR SERVICE

1. When the Contractor is called to the scene of a vehicle tow or a collision scene, the Contractor's employee will clean-up all debris at the scene in accordance with CVC § 27700 without charge to the City.

    a. If this service does not result in a vehicle tow, it shall not be considered a rotational call and the tow company shall be placed back on the top of the rotational tow list.
    b. Police employees should not call a rotational tow to the scene of a collision for the sole purpose of cleaning up debris. However, should this occur or become necessary, the Contractor may bill the City for the cost of the response in accordance with the City's Towing and Storage Fee Schedule.

O. PERFORMANCE DURING INCLEMENT WEATHER OR DISASTERS

1. The Contractor acknowledges that the services provided under this contract are integral to the operations of the City of Santa Ana and the Santa Ana Police Department. Therefore, the Contractor agrees to perform the duties of this contract regardless of weather or other adverse conditions including, but not limited to, any disasters whether man-made or acts of God.

2. During periods of inclement weather or disaster, the Contractor shall agree to adjust staffing levels to meet the increased demands for service during these times.

3. Should the Contractor be unable to fulfill their responsibilities under the conditions described in this section, the Contractor shall be responsible for any and all costs incurred by the City should the need to hire outside contractors become necessary to meet the needs of the Police Department due to the Contractor's default.

P. PROTECTION OF THE PUBLIC AND DAMAGES TO EXISTING STRUCTURES

1. The Contractor shall exercise due care and caution at all times for the protection of all persons and property. All fines, penalties and/or repair charges resulting from the Contractor's actions shall be the sole responsibility of the Contractor.

2. Understanding that the Contractor will respond to calls involving traffic collisions or traffic hazards, and pursuant to CVC § 22513, the Contractor shall only place or use equipment to block vehicle traffic lanes or render assistance to a motorist while exercising due care for the safety of the tow truck driver, the motorist and the motoring public. Tow truck drivers should be trained in scene management in accordance with this section. The Contractor shall ensure that all appropriate traffic safety warning devices are utilized as deemed necessary.

3. Contractors will be required to respond to calls where vehicles have collided with other objects and may have already caused damage to varying degrees. The methods proposed by the Contractor for towing and recovery services shall be reasonable and consistent with industry standards, best practices, and in a manner that shall not cause unnecessary additional harm, deface or damage any City or private property. In the event that damage to the City's right-of-way or private property has occurred due to the negligence of the Contractor, the Contractor shall be solely responsible for its repair or replacement in excess of the amount covered by the required insurance.

Q. SPECIFICATIONS

This Scope of Services is intended to cover all labor, material and standards of workmanship to be employed for in this work plan or reasonably implied by terms of same. Work or materials of a minor nature which may not be specifically mentioned, but which may be reasonably assumed as necessary for the completion of this work, shall be performed by the Contractor as if described in the specifications.

R. RECORDS

1. The Contractor shall keep accurate records concerning all vehicle tows, vehicle storages and vehicle releases or disposition.

2. In addition, the Contractor shall maintain accurate records of his/her employees or agents and provide the City with names and telephone numbers of emergency contact employees.

3. The Contractor shall complete a report each calendar month indicating the number of calls for service, the number of vehicles towed, the number of vehicles in storage (regular and secure) and their current status, vehicles released, vehicles sent to lien sale, the status of any other vehicles or services rendered by the Contractor on behalf of the City, GPS information (if requested by the City) or any other information as may be required by the City's Project Manager or designee.

4. A phone log will be submitted monthly of all calls from the Santa Ana Police Department to the Contractor, identifying whether or not those calls required a request for service, and a description of the action taken as a result of the call.

5. The Contractor shall provide monthly customer service phone logs from the public, indicating name, date, time and phone number of caller, reason for the call, any specific requests, the Contractor's response or action, and the amount of time required to address request. Such logs shall be accurate and truthful.

6. The Contractor shall permit the City to inspect and audit its books and records regarding City provided services at any reasonable time.

S. AUDITS AND INSPECTIONS

The Chief of Police or his designee shall conduct regular audits and inspections of the Contractor(s) assigned to this project to ensure they are fulfilling their responsibilities in accordance with the terms and conditions of this agreement. All work found during such audits or inspections to be substandard or failing to conform to the requirements of this agreement shall be corrected immediately by the Contractor and the City shall have the right to immediately suspend the Contractor from the rotation list until the

issue(s) is/are corrected. Failure to correct in a reasonable timeline as outlined in this Agreement may result in termination of the contract.

T. INVESTIGATION OF COMPLAINTS, LAWS, RULES, OR TERMS AND CONDITIONS OF AGREEMENT

Whenever a complaint or allegation is lodged against a Contractor or initiated by the Police Department, the Traffic Commander shall assign a supervisor from the Traffic Division to investigate any allegations. A fair, impartial and comprehensive investigation shall be conducted and the findings documented for review. To the extent required by law, the Contractor shall cooperate fully in the investigation and provide any documentation requested by the investigator to assist in making a finding. In addition, the Contractor shall be given the opportunity, either orally or in writing, to respond to the complaint at the point deemed appropriate by the investigator. The City expects that the Contractor will demonstrate professional business practices and truth in reporting as it relates to any records or information requested.

Minor infractions shall include, but not be limited to, situations such as poor customer service, failure to comply with non-safety related terms of the agreement, or minor equipment or facility deficiencies. Major infractions shall include, but not be limited to, situations involving honesty, integrity, safety, security, gross overcharging of a customer or a pattern of overcharging, failure to comply with the provisions of CVC § 22658 as it relates to PPI's, criminal violations (moral turpitude, DUI, drug related offenses, theft, etc.), or significant, repeated or flagrant violations of this agreement.

If it is determined that criminal charges are appropriate, the assigned investigator shall document the incident on a crime report and present the case to the appropriate prosecuting authority for review.

Based on the nature and seriousness of the misconduct being investigated, the Chief of Police may temporarily suspend the Contractor, or its agent individually, from the rotation list until the investigation is completed and a proper disposition is reached.

The standard for sustaining a complaint against the Contractor or the Contractor's agent shall be a preponderance of the evidence, regardless of the nature of the violation. Other investigative findings may include unfounded (false or factually incorrect), exonerated (action occurred but was lawful or within the terms of this agreement) or not sustained (inconclusive due to insufficient evidence or independent witnesses).

All complaints shall be forwarded to the Traffic Commander for review, approval and determination/recommendation of discipline if appropriate.

U. DISCIPLINARY ACTION

The Contractor agrees that failure by the Contractor, or its agent, to comply with the law or terms and conditions of this agreement shall be cause for administrative disciplinary action. However, nothing in this agreement shall preclude the City from taking appropriate enforcement action for violations of the law. Within 60 days of receipt of the complaint, the Traffic Commander shall review the findings of the investigation and recommend disciplinary action if appropriate. The Traffic Commander shall take into account the nature of the complaint, the findings of the investigation, past complaints against the Contractor and past practice of the Department to maintain equitable treatment of all Contractors assigned to the rotational tow list. Depending on the nature and complexity of the sustained violation, the Traffic Commander may allow the Contractor or designee to provide a brief written statement for consideration and/or may contact Contractor to ask additional questions.

Disciplinary action shall typically be progressive in nature and based on the Contractor's record during the previous five (5) years from the date of complaint. Therefore, multiple infractions for similar offenses, regardless of their severity, will result in increased disciplinary action. However, this does not preclude the Traffic Commander from recommending more serious sanctions where major rule violations have been committed or there are aggravating facts associated with the misconduct.

The following actions may be recommended:

1. No further action.
2. Issue a written warning.
3. Impose a suspension for minor violations (one (1) to 30-days).
4. Impose a suspension for multiple minor violations or a single major violation (30 to 90-days).
5. Termination of the contract for cause and immediate removal from the rotation list.

The Contractor shall be notified in writing of the City's intent to impose disciplinary action. The Traffic Commander shall have the authority to impose discipline up to and including the imposition of a suspension for minor violations as long as the suspension does not exceed 30-days in length. However, nothing in this article shall preclude the Traffic Commander from reducing the recommended discipline based on mitigating facts. Recommended suspensions exceeding 30-days in length or termination from the rotation list shall be approved by the Field Operations Bureau Commander prior to imposition.

The Traffic Commander may recommend to the Chief of Police the immediate termination of this agreement if the conduct of the Contractor, or agents, are determined to pose a danger to the public, have an excessive number of complaints

that tax the investigative resources of the Police Department, or the Contractor's actions reflect negatively upon the City.

V. RIGHT TO APPEAL

Upon receipt of a notice to impose disciplinary action, the Contractor shall have the right to submit a written appeal within ten (10) business days to the Field Operations Bureau Commander.

The Field Operations Bureau Commander shall issue their findings in writing within ten (10) business days of the receipt of written appeal. If the Contractor disagrees with the findings of the appeal, their final remedy shall be the opportunity to submit a written appeal to the Chief of Police within ten (10) business days, via the Traffic Commander. The Chief of Police shall issue a written decision within (10) business days. The decision of the Chief of Police shall be final.

Disciplinary action shall not be imposed until the hearing and appeal process has been exhausted. However, if the conduct of the Contractor is deemed to be so egregious or poses a danger to public safety, the City may exercise its right to immediately suspend the Contractor as set forth in this agreement. In such cases, the time during which the Contractor is suspended may be applied to the balance of a suspension imposed by the City, at the discretion of the hearing officer, and shall be the Contractor's only remedy as far as a pre-hearing suspension is concerned. Any time in excess of that credited toward an imposed suspension shall be lost. Failure to request an appeal, submit a written appeal, or appear at a mutually agreed upon hearing will waive the Contractor's right to further appeal and disciplinary action shall be imposed.

W. SUPERVISION OF CONTRACT AND MEETINGS WITH CITY

All work shall meet with the approval of the Santa Ana Police Department. As determined necessary by the City, there shall be a minimum of one monthly meeting with the Contractor and the City representative during the first year to determine progress and to establish areas needing attention. Status reports of activities performed by the Contractor will be submitted in writing to the City on a monthly basis or as determined necessary by the City.

Any specific problem area which does not meet the conditions of the specifications set forth herein shall be called to the attention of the Contractor and if not corrected immediately, or within a reasonable period, may result in the Contractor being found in default of this agreement, which may result in suspension from the rotation list until the issue(s) is/are corrected in a satisfactory manner as set forth in the specifications or termination.

X. MATERIALS AND EQUIPMENT

The contractor shall make a reasonable effort to purchase equipment and materials in the City of Santa Ana and to utilize Santa Ana vendors. Contractor shall report its efforts as requested by the City.

Y. DEFINITIONS

1. **City** – shall mean City of Santa Ana and representatives of the City of Santa Ana (e.g. Police Department or its agents).

2. **City's Project Manager** – shall be synonymous with the Traffic Commander for purposes of this project.

3. **Contractor** – shall mean any towing company submitting a response to this RFP and selected to perform services for the City on the Rotational Tow List, and shall include all employees or agents of said company.

4. **Inclement Weather or Disasters** – any adverse weather or environmental conditions, regardless of severity or duration, which places an increased demand or strain on public services, including tow operations, whether man-made or acts of God.

5. **Street** – all paved dedicated public rights-of-way within the existing or future City limits.

6. **Public Property** – any property under the control and direction of the City of Santa Ana or any other government agency within the corporate limits of the City of Santa Ana or State of California.

7. **Private Property** – any property that is privately owned or held by someone other than a government agency.

EXHIBIT B

FEE SCHEDULE

AUTHORIZED TOWING AND STORAGE FEE SCHEDULE*

Service	Fee
Stored Vehicle Release Fee (PD)	$75.00
Class A	$195.00
Class B or Flatbed	$225.00
Class C	$325.00
Class D	$360.00
Dolly, Go-Jacks or Linkage Fee	$60.00
Rollover or Winching Fee	$130.00
Clean-up Fee (fee to City capped at $35.00 per occurrence)	$60.00
Hazmat Fee (per five (5) gallon bucket)	$115.00
Vehicle Storage Fees (Daily)	
Class A – Outside	$55.00
Class A – Inside	$60.00
Class B – Outside	$60.00
Class B – Inside	$65.00
Class C or Class D – Outside	$65.00
Class C or Class D – Inside	$70.00
After Hours Release	50% of the authorized towing charge
Minimum Service Call or Drop Fee	50% of the authorized towing charge
Lien Sale	As authorized by the California Civil and Vehicle Codes
Mileage (per mile outside the corporate city limits)	$9.00

* Fees indicated herein will become the City's maximum authorized rates effective at the time of contract implementation; minimum 1 hour.

SERVICE AGREEMENT
ROTATIONAL TOW PROVIDER

THIS AGREEMENT, made and entered into this 16th day of August, 2016 by and between MetroPro Road Services, Inc., a California corporation, (hereinafter "Contractor"), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (hereinafter "City").

RECITALS

A. The City desires to retain a contractor having special skill and knowledge in the field of providing vehicle towing and storage services.

B. Contractor represents that it is able and willing to provide such services to the City.

C. In undertaking the performance of this Agreement, Contractor represents that it is knowledgeable in its field and that any services performed by Contractor under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional consulting firm in the field.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

1. SCOPE OF SERVICES

Contractor shall provide vehicle towing and storage service at the request of the Santa Ana Police Department, on a rotational basis, in accordance with the terms and conditions set forth in the Scope of Service, attached hereto as Exhibit A and incorporated by this reference. The City intends to contract with several tow companies to provide necessary towing services on a rotational basis. Towing services may include, but are not limited to, towing vehicles from public or private property at the direction of Police employees, owner's request for a tow made via the Police Department, the storage of vehicles, the secure storage of vehicles containing evidentiary value, debris clean-up and removal, recovery services and administrative oversight of vehicles in the custody of the contractor.

2. COMPENSATION

a. The parties intend that towing and storage fees will be paid by the vehicle owner at the rates and charges set forth in Contractor's then current and approved fee schedule, attached as Exhibit B and incorporated by this reference.

b. When Contractor provides services chargeable to the City as set forth in Exhibit A, the Contractor shall submit a monthly invoice by the 15th of the month to the City for

any such services rendered in the prior month, if applicable. The invoice shall include all information enumerated in California Vehicle Code ("CVC") § 22651.07(e) and include the following information:

i. Contractor's invoice number
ii. Santa Ana Police Department's case number

c. Payment by City shall be made within sixty (60) days following receipt of proper invoice, subject to City accounting procedures. Payment need not be made for work which fails to meet the standards of performance for professional towing services or in accordance with the standards set forth in this agreement.

d. Adjustments to the Towing and Storage Fee Schedule

The Traffic Commander shall examine the towing and storage rates authorized in accordance with this agreement on an annual basis. The Traffic Commander may recommend to the Division Commander and the Chief of Police to adjust the towing and storage rates, not to exceed two percent (2%) annually, based on the most recent statistics, as follows: the two indices which will be used for determining adjustments to the towing and storage fee schedule shall be the prior twelve (12) months, reporting month December, Consumer Price Index (CPI) for All Urban Consumers for Los Angeles-Anaheim-Riverside Consolidated Metropolitan Statistical Area, published by the United States Department of Labor's Bureau of Labor Statistics or any relevant successor for the Orange County area, and the twelve (12) month December Producer Price Index for Petroleum (PPI). The adjustment formula shall be as follows: The CPI shall be weighted at ninety (90%) percent and PPI shall be weighted at ten (10%) percent. However, fee adjustments will only be made if justified and shall occur at the sole discretion of the Chief of Police based on recommendations from the Traffic Commander.

3. TERM

This Agreement shall commence on September 1, 2016 and continue through August 31, 2019, with two (2) one (1) year options to renew exercisable at the option of the City unless terminated earlier in accordance with Section 11, below.

4. INDEPENDENT CONTRACTOR

Contractor shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Contractor performs the services which are the subject matter of this Agreement; however, the services to be provided by Contractor shall be provided in a manner consistent with all applicable standards and regulations governing such services. Contractor shall pay all salaries and wages, employer's social security taxes, unemployment

insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

5. INSURANCE

Prior to undertaking performance of work under this Contract, Contractor shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

a. Commercial General Liability Insurance – the Contractor shall maintain commercial general liability insurance which shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting there from and damage to property, resulting from any act or occurrence arising out of Contractor's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting there from, and property damage, in the total amount of $1,000,000 per occurrence, $2,000,000 in the aggregate.

b. Business Automobile Liability Insurance, or equivalent form, shall be maintained by the Contractor with a combined single limit of not less than $1,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles as well as uninsured motorist coverage with a combined single limit of not less than $1,000,000 per occurrence.

c. Worker's Compensation Insurance – in accordance with the provisions of Section 3300 of the Labor Code, Contractor is required to be insured against liability for worker's compensation or to undertake self-insurance. Prior to commencing the performance of the work under this Contract, Contractor agrees to obtain and maintain any employer's liability insurance with limits not less than $1,000,000 per accident.

d. Garage Liability and Garage Keeper's Liability Insurance – the Contractor shall maintain garage liability insurance to include all premises, operations and coverage for bodily injury and property damage with a combined single limit of not less than $1,000,000 per occurrence as well as garage keeper's liability insurance for vehicles in the care, custody and control of the operator in the storage facility with a single limit of not less than $100,000 per occurrence.

e. On-Hook Insurance – the Contractor shall maintain on-hook insurance with limits not less than those required by the California Highway Patrol:

1. Class A tow truck - $25,000
2. Class B tow truck - $50,000
3. Class C or Class D tow truck - $100,000

f. The following requirements apply to the insurance to be provided by Contractor pursuant to this section:

1. Commercial general liability and business automobile insurance policies shall (a) name the City, its officers, employees, agents, volunteers and representatives as additional insured(s); (b) be primary and not contributory with respect to insurance or self-insurance programs maintained by the City; and (c) contain standard separation of insureds provisions. Contractor shall maintain all insurance required above in full force and effect for the entire period covered by this Agreement.
2. Certificates of insurance shall be furnished to the City upon execution of this Contract and shall be approved in form by the City Attorney.
3. All of the Contractor's storage facilities shall be listed in the certificates of insurance.
4. Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City.

g. If Contractor fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the City with required proof that insurance has been procured and is in force and paid for, the City shall have the right, at the City's election, to forthwith terminate this Contract. Such termination shall not affect Contractor's right to be paid for services satisfactorily provided in accordance with this agreement prior to notification of termination. The Contractor waives the right to receive compensation and agrees to indemnify the City for any work performed prior to approval of insurance by the City.

6. INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its officers, agents and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any work performed or services provided under this Contract (including, without limitation, defects in workmanship and/or materials) or Contractor's presence or activities conducted performing the work (including the negligent and/or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, contractors, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable for any or all of them). Notwithstanding the foregoing, nothing herein shall be construed to require Contractor to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees

in any action on or to enforce the terms of this Contract. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Contractor.

7. CONFLICT OF INTEREST CLAUSE

Contractor covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement.

8. NOTICE

With the exception of insurance certificates and renewals, any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by facsimile or other telegraphic communication in the manner provided in this Section, to the following persons:

To City:
Clerk of the City Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702-1988
Fax 714- 647-6956

With courtesy copies to:
Office of the Chief of Police
City of Santa Ana
Santa Ana Police Department
60 Civic Center Plaza
Santa Ana, CA 92701
Fax 714-245-8190

and
City Attorney
City of Santa Ana
20 Civic Center Plaza (M-29)
P.O. Box 1988
Santa Ana, California 92702
Fax 714- 647-6515

To Contractor:
MetroPro Road Services, Inc.
2550 South Garnsey Street
Santa Ana, California 92707
Fax 714-556-7600

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by facsimile, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

9. EXCLUSIVITY AND AMENDMENT

This Agreement represents the complete and exclusive statement between the City and Contractor, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Contractor. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Contractor nor the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.

10. ASSIGNMENT

a. Inasmuch as this Contract is intended to secure the specialized services of Contractor, the Contractor may not sell, assign, transfer, delegate or subcontract any interest herein without the prior written consent of City and any such sale, assignment, transfer, delegation or subcontract without the City's prior written consent shall nullify and void any existing contract with the City.

b. Unless previously approved by the City, the sale or transfer of the controlling interest in a company shall be cause for immediate termination of this contract and the Contractor shall be replaced on the Rotational Tow List by another company on an existing eligibility list or during a future RFQ process.

11. TERMINATION

a. The City reserves the right to immediately terminate the contract, without penalty, for cause.

b. In the event Contractor fails or refuses to timely perform any of the provisions of this Agreement in the manner required, or if Contractor violates any provision of this

Agreement, Contractor shall be deemed in default. City shall provide written notice of such default to Contractor's Project Manager. If possible, the Contractor shall cure said default within a period of two (2) working days. If such cure is not completed in a timely manner, City may terminate the Agreement forthwith by giving written notice to Contractor's Project Manager. The City may, in addition to the other remedies provided in this Agreement or authorized by law, terminate this Agreement by giving written notice of termination. Contractor shall be responsible for all costs incurred by City, including replacement costs of equipment and labor required to provide service during Contractor's default.

c. As described in Exhibit A, concerning the investigation and disposition of complaints, the City may terminate this agreement immediately for cause if it has been determined by the Traffic Commander, with concurrence from the Field Operations Bureau Commander, that the Contractor has committed major or minor rule violations associated with this agreement, or has committed violations of the law, and termination of the contract is deemed to be the appropriate disposition.

d. This agreement may be terminated without cause by City by written notice delivered to the Contractor either personally or by mail, thirty (30) days prior to the end of the then current term. Upon termination, City shall pay Contractor for services rendered as specified in the Agreement prior to the effective date of termination.

12. CONTRACTOR OPTION FOR TERMINATION

The Contractor may request termination of the contract when conditions during the contract make it impossible to perform or when prevented from proceeding with the contract by act of God, by law or official action of a public authority or in the event of nonpayment by the City. Such request will require ninety (90) days written notice prior to contract termination date requested. In the event of nonpayment of undisputed sums by the City, Contractor shall give the City thirty (30) working days to cure the alleged breach.

13. DISCRIMINATION

Contractor shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Contractor affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

14. EMPLOYMENT OPPORTUNITIES FOR SANTA ANA RESIDENTS

Contractor shall make every effort to solicit and advertise employment opportunities to Santa Ana residents. The City shall inform the Contractor of areas to publicize recruitment opportunities, such as work centers and community centers.

Contractor shall provide to City, a description of efforts and procedures used to notify residents of employment opportunities as they occur but, at a minimum, once each year prior to the City exercising its option to extend the contract.

15. CONTRACTOR'S PARTICIPATION AT COMMUNITY MEETINGS, EVENTS AND PUBLIC AWARENESS CAMPAIGNS

If requested by City, the Contractor shall agree to participate in community meetings, community events and public awareness campaigns, such as National Night Out, DUI presentations or any other neighborhood or City event. Such participation shall be upon City request provided with reasonable notice of the event. Such events will not exceed four (4) requests per year.

16. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

a. Contractor shall perform all requirements under this contract in strict observance of and in compliance with all applicable environmental, traffic, safety and any other laws, regulations, ordinances, codes and any other legislative or statutory requirements.

b. Contractor warrants that the performance of services under this contract shall be compliant with the current requirements of the Occupational Safety and Health Act (OSHA) and as it may be amended or updated throughout the term of this contract.

17. FINES

The Contractor shall be liable for all violation fines levied against the City by any Federal, State or local agency, including but not limited to the Air Quality Management District (AQMD), and the Regional Water Quality Control Board, due to the action or failure to act by Contractor.

18. JURISDICTION - VENUE

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

19. PROFESSIONAL LICENSES

Contractor shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the

State of California, the City of Santa Ana and all other governmental agencies. Contractor shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

20. MISCELLANEOUS PROVISIONS

a. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

b. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

ATTEST:

MARIA D. HUIZAR
Clerk of the Council

CITY OF SANTA ANA

DAVID CAVAZOS
City Manager

APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney

By: Laura A. Rossini
Laura A. Rossini
Senior Assistant City Attorney

METROPRO ROAD SERVICES, INC.

Brad Humphreys
President

RECOMMENDED FOR APPROVAL:

Carlos Rojas
Chief of Police

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT A – SCOPE OF SERVICES

I. USE OF ROTATIONAL TOW LIST

A. CRITERIA AND RULES FOR USE BY POLICE EMPLOYEES

The City agrees to utilize the rotational tow list for all service requests initiated by members of the Santa Ana Police Department except where provided for in this agreement. Therefore, the City agrees to operate under the following policy guidelines unless reasonably necessary to deviate due to exigent or unforeseen circumstances:

1. Whenever the driver or owner specifies a particular club, association or tow service to care for his/her vehicle, the garage or tow service requested shall be called and such calls shall not constitute a rotational tow call.

2. When a driver does not specify a particular garage or tow service, the garage or tow service called shall be taken from the rotational list in numerical order. When more than one vehicle is to be towed from a collision scene and the drivers do not specify a preference, the rotation list shall be followed on the basis of one tow truck for each vehicle utilizing the numerical rotational order. The rotation list shall be followed on a per vehicle basis rather than per collision or call for service. When multiple Contactors are called to the same incident, the distribution of vehicles shall be determined by the police officer at the scene.

3. If the eligible Contractor does not answer the telephone or acknowledge the call via a software dispatch system, is unable to respond, unable to perform the required services, refuses to respond or provide the requested service, or is cancelled due to an excessive response time, that company shall be passed over and shall not be eligible until the Contractor comes up on the rotation list again.

4. It shall be the responsibility of the Contractor to notify the Police Department if it is unable to respond within the required time limit or with the appropriate equipment for the type of service requested.

5. If it is determined the Contractor is not needed and is cancelled by the Police Department or the vehicle owner, the Contractor shall be placed back on top of the rotation list and no charge shall result from the call.

6. The rotation list shall be used on occasions where an officer stores or impounds a vehicle and the driver or owner is not consulted or is not present.

7. All employees of the Police Department are specifically prohibited from soliciting or recommending any garage or tow service, either directly or indirectly. All officers are directed to ascertain from the party in charge of the vehicle as to their preference of a towing agency. A request of "no preference" by the person in charge will be relayed to dispatch by the officer and will result in a call to the Contractor that is next up on the rotation list.

B. REPORTING PROCEDURES

1. All officers requesting a tow truck from the rotational list for the towing, storing or impounding of a vehicle shall complete the Santa Ana Police Department storage/impound form when required by Departmental policy or procedure. The form shall be signed by both the officer and the driver of the tow truck. A copy of the Santa Ana Police Department storage/impound form shall be given to the tow truck driver prior to the vehicle being towed from the scene.

II. CONTRACTOR REQUIREMENTS AND RESPONSIBILITIES

A. WORK ASSIGNMENTS AND SCHEDULE

The Contractor shall be available to provide services within the corporate limits of the City of Santa Ana 24-hours per day, seven (7) days per week, 365 days per year. There are no exceptions for holidays under the project. The Contractor shall also make reasonable accommodations for its personnel to attend meetings with City staff from the Police Department, City Attorney's Office or any other City Agency as required by the Project Manager.

B. WORKING HOURS AND RESPONSE TIMES

1. All services under this contact shall be available 24-hours per day, seven (7) days per week, 365-days per year without exception.

2. The owner, principal or business manager of the proposing Contractor shall have a minimum of five (5) years of verifiable experience in the towing for-hire industry. Prior experience performing towing services for a law enforcement agency are highly desirable but not required. If the owner, principal or business manager possessing this requisite experience is no longer employed by the Contractor at any time during the course of the contract, the Contractor shall immediately report such change in condition to the City's Project Manager and participation on the rotation list shall be suspended until a new owner, principal or business manager is identified and approved.

3. The Contractor shall be required to have a dispatcher on-duty 24-hours per day with the capability to communicate instantly with all trucks and/or drivers assigned to this project.

4. All requests for tow services shall be acknowledged or refused within three (3) minutes by the Contractor's dispatcher and response to the scene shall occur within 20 minutes from the time the Contractor is notified by the Police Department's Communications Division.

   a. The 20 minute response time applies only to tow requests requiring a Class A tow truck.
   b. The Contractor shall be required to comply with this requirement by providing appropriate staffing levels and, if necessary, strategically staging personnel during peak traffic times to allow drivers sufficient time to arrive while complying with all traffic laws and regulations in their response to service requests.

   c. For any request requiring a Class B, C or Class D tow truck, the Contractor shall have the necessary equipment on scene within 45 minutes of notification by the Police Department's Communications Division if a Department employee identifies the need for such equipment or when determined by the Contractor's employee after responding to the scene and assessing the situation.

5. The Contractor shall be required to have a minimum of one (1) driver on duty 24-hours per day, seven (7) days per week. In addition, the Contractor shall have at least one (1) other driver on-call or stand-by.

6. The Contractor will also be required to maintain office hours between 8:00 am and 5:00 pm, seven (7) days a week, 365 days per year so vehicle owners can retrieve stored or impounded vehicles.

C. REQUIRED TOW VEHICLES AND EQUIPMENT

1. At a minimum, the Contractor shall possess, maintain and be the listed registered owner of the following classes of tow vehicles (meeting requirements as defined in the most current version of CHP 234B – Tow Truck Inspection Guide):

   a. Four (4) Class A tow trucks designed for light duty towing operations.
   b. One (1) Class B tow truck designed for medium duty towing operations.
   c. One (1) Class C tow truck designed for heavy duty towing operations.

2. In addition, the Contractor shall either possess and maintain, or have immediate access to, one (1) Class D tow truck designed for super heavy duty towing operations (meeting requirements as defined in the most current version of CHP 234B – Tow Truck Inspection Guide). Even if subcontracted, this vehicle shall

be made available for inspection and the Contractor will be held responsible for the condition and suitability of this vehicle.

3. The company name, business address, telephone number and tow truck identification number shall be permanently and properly affixed to each vehicle in a manner prescribed pursuant to CVC § 27907.

4. There shall be no words or language affixed to the vehicle associating the Contractor or the vehicle with the Santa Ana Police Department (e.g. "official police tow") without the prior written approval of the City's Project Manager.

5. At no time shall the Contractor exceed the gross vehicle weight rating (GVWR) and/or safe loading requirements of the tow truck, including, but not limited to, exceeding the tow trucks GVWR, front axle weight rating, rear axle weight rating, maximum tire weight ratings, or failure to maintain 50 percent of the tow truck's unladen weight on the front axle when lifting or carrying a load.

6. The authorized Towing and Storage Fee Schedule shall be posted in public view in all tow trucks.

7. Contractors shall not share equipment with any other Contractor with the limited exception of access to a Class D tow truck as specified above.

8. All of the vehicles identified above and used in accordance with this agreement shall be equipped with the minimum equipment required to perform towing operations as well as the equipment pursuant to CVC § 27700 and the "Service and Other Equipment" section of the CHP 234B (Tow Truck Inspection Guide) form. The Contractor may also be required to carry any other safety devices reasonably required by the City.

9. The contractor shall maintain all vehicles and equipment in good repair for use by the Contractor's employees assigned to perform services pursuant to this agreement. The Contractor shall be responsible for, and pay for all operating expenses, equipment, maintenance and insurance for vehicles assigned to perform work related to this agreement. All tow trucks shall be equipped and maintained in accordance with applicable sections from the California Vehicle Code, Title 13 of the California Code of Regulations, the requirements of this RFP and industry standards.

10. All vehicles shall be kept clean, be free of offensive odors and maintain a professional appearance.

11. All tow trucks shall be inspected annually by the California Highway Patrol and maintain a current Commercial Vehicle Safety Alliance (CVSA) decal. The Contractor shall provide current copies of CHP 234B (Tow Truck Inspection

Guide) and CHP 407F (Safetynet Driver/Vehicle Inspection Report) for each vehicle to the City's Project Manager or designee.

12. The Contractor agrees that the Santa Ana Police Department may inspect any vehicle, without prior notice, at any time during normal business hours.

13. The Contractor shall provide instant communication access via cellular phone or radio to all personnel while performing their duties.

G. GLOBAL POSITIONING SYSTEM (GPS)

It is highly desirable for the Contractor to provide GPS capabilities in all of their tow trucks. If offered for consideration in the Contractor's Response, the City and Contractor shall be able to view this information via computer in real time and the Contractor shall provide GPS reports at the request of the City.

H. CONTRACTOR'S BUSINESS OFFICE REQUIREMENTS

1. The Contractor shall maintain an office and storage facility within the corporate limits of the City of Santa Ana and remain in compliance with any requirements imposed by the Police Department, the Planning Division or any other Department, Agency or Agent of the City of Santa Ana in accordance with federal regulations, state law, the Santa Ana Municipal Code and this agreement.

2. It is preferable that the office and storage facility be at the same location to minimize the impact on the community. However, should additional locations exist, the Contractor agrees to conduct all business from the primary facility and any costs associated with operating a secondary location and/or moving vehicles to or from that secondary location shall not be passed along to any customer covered under this agreement.

3. The primary facility shall have a sign clearly visible to the public that identifies the location as a towing service.

4. The business hours shall be clearly posted.

5. The office shall be sufficiently staffed to allow customers to speak with a company representative during normal business hours without unnecessary delay.

6. Current and approved rates pursuant to the Towing and Storage Fee Schedule shall be posted in public view in the Contractor's office and/or storage facility in compliance with California Civil Code § 3070 and CVC § 22651.07.

7. The Contractor shall comply with the provisions of CVC § 22651.1.

8. The Contractor shall maintain records of all tow services furnished by the Contractor at the primary office location.

    a. Invoices shall contain the required itemized information pursuant to CVC 22651.07(e).
    b. Itemized invoices shall contain a distinct notice upon the invoice stating "Upon request, you are entitled to receive a copy of the "Towing Fees and Access Notice." This notice shall be contained within a bordered text box, printed in no less than 10-point type pursuant to CVC 22651.07(a)(1)(B)(3).

9. The operator's primary business office shall also maintain business records relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, lien sale actions, driver's record of duty status (intrastate and/or interstate), and Federal Communication Commission licensing (if applicable).

10. The Contractor agrees that a representative from the Santa Ana Police Department may inspect all business records, facilities and vehicles without notice during normal business hours.

11. The Contractor shall permit the Santa Ana Police Department to make copies of business records at their place of business or remove business records for the purpose of reproduction.

12. Lien fees, or any fees related to the preparation of a lien, shall not exceed the amounts allowable in the Towing and Storage Fee Schedule, attached hereto as Exhibit B, and in compliance with all relevant provision of the California Vehicle Code and California Civil Code.

I. STORAGE FACILITY AND VEHICLE STORAGE REQUIREMENTS

1. It is preferable that the storage facility is located at the same location as the primary business office. However, if located at a different location than the main office, the storage facility must be within the corporate limits of the City of Santa Ana and have an on-site release office at all storage lots. Persons seeking to take possession of their vehicle or property shall not be required to travel to more than one location to recover their vehicle from the Contractor's custody.

2. The storage facility and all vehicles towed at the direction of the City shall be made available to police personnel 24-hours per day, 7-days per week.

3. The entire storage lot must be sufficiently well lit to deter theft. Other theft deterrent devices (e.g. cameras, alarms, on-site personnel, etc.) are highly desirable.

4. The storage lot must be completely secured by a wall or fencing and a gate that is able to be locked to maintain security for stored and impounded vehicles. The minimum height requirement for the fence and gate shall be six (6) feet.

5. The storage lot shall be large enough to hold a minimum of 100 vehicles at any given location. This requirement is the minimum area reserved for Santa Ana vehicles and additional space is highly desirable. All vehicles towed by the City shall be stored within the corporate city limits and the vehicle or any of its contents shall be made available for release within the corporate city limits. If multiple storage facilities are maintained, the Contractor shall only use the secondary lot when the primary lot is full and shall not charge for transportation beyond that of the main storage facility.

6. The Contractor shall also provide an inside storage facility, which must consist of four walls with a solid roof and a door equipped with a locking device. Additional security features are highly desirable. This facility shall be sufficient to reasonably protect vehicles from theft, tampering, weather, environmental conditions or any other circumstances that could cause the removal or contamination of evidence. Access to this area by employees or other individuals shall also be restricted. This facility shall be capable of storing a minimum of four (4) mid-sized vehicles for the City of Santa Ana and sufficient space to conduct forensic analysis of the vehicle on-site if necessary.

7. Vehicles impounded pursuant to CVC § 10751 shall be placed in an area of the storage facility that will provide sufficient space and privacy, allowing auto theft investigators to perform a vehicle inspection without delay. This requirement shall be required for the first ten (10) days of impound.

8. Vehicles will not be released, sold or dismantled until a signed release form has been obtained from the Santa Ana Police Department. The signed release form will be kept by the towing company as proof of authority for the release.

9. Release forms are required for impounded vehicles and vehicles with a "hold" placed on them by police department personnel. The release form will indicate they are from the Santa Ana Police Department and shall only be signed by authorized members of the Police Department.

    a. Stolen vehicles recovered by the Police Department will be released to the victim/owner by the Contractor with proof of ownership. Unless specifically noted, no release will be required from the Police Department.
    b. Stolen vehicles recovered by the Police Department requiring further investigation as determined by the handling officer will be impounded pursuant to CVC § 22655.5, thereby placing a hold on the vehicle. The impound box will be marked along with an explanation in the narrative.

These vehicles will not be released until the victim/owner obtains a release from the Police Department.

c. If the owner of the vehicle is unable to prove ownership to the tow agency, they will be referred to the Santa Ana Police Department and a release will be issued once ownership is established.

d. If a registered owner is unable to retrieve their vehicle from storage, a vehicle authorization form shall be provided by the Contractor to the person authorized to pick-up the vehicle. The authorized recipient, on behalf of the registered owner, will be required to provide identification for the Contractor to photocopy (front/back).

10. When a vehicle is impounded, the towing company will place the word "hold" or other similar notation on the windshield of the vehicle. This is to minimize unauthorized contact with the vehicle and to provide control measures to prevent the inadvertent release.

    a. The responsibility for determining and placing the word "hold" or other similar notation on the windshield of the vehicle will be the responsibility of the Contractor at the time of vehicle possession. The Contractor's employee signature on the storage/impound report will acknowledge an understanding of the type of report completed by the officer and any necessary holds. The Contractor should clarify any misunderstandings or omissions on the report at this time.

11. Vehicles towed or stored with an "evidence hold" shall not be touched, moved or tampered with in any manner without the written consent of the City's Project Manager or designee.

12. The Contractor agrees to tow and store vehicles taken pursuant to an "evidence hold" as defined in CVC §§ 22655.5 or 22655(a) without charge to the City and agrees to release the vehicle to the owner at the City's request. Unless waived in whole or in part by the City's Project Manager, the tow company may pursue collections from the registered owner for these charges but shall not exceed the cost of the tow and storage fees for a maximum of thirty (30) days. Furthermore, the Contractor may attempt to collect these fees, or make arrangements to collect these fees, at the time of release but shall not hold the vehicle in lieu of payment unless specifically authorized by the City's Project Manager or designee.

13. In any case where the Police Department inadvertently and/or erroneously causes the impound or storage of a vehicle, or fails to properly notify the owner in a timely manner, the Contractor agrees to release the vehicle at the request of the City's Project Manager or designee and waive all fees or charges associated with the tow.

14. Any personal property released from a vehicle shall occur at the business office or primary storage facility and shall require authorization from the Police Department. All property shall be released pursuant to CVC § 22851(b) and CVC § 22651.07. Personal property includes any property not affixed to the vehicle (e.g. clothes, cell phones, papers, pull-out / detachable face radios, etc.)

J. CUSTOMER SERVICE

Contractor shall provide service which is accessible, courteous, responsive, timely, equitable and given in the spirit of professionalism and mutual respect. Contractor's personnel are a reflection of the City of Santa Ana and, as such, are expected to:

1. Interact with customers and City officials, whether in person or on the phone, in a pleasant, respectful and professional manner.

2. Give full attention to each customer's needs by asking questions. Provide information, products and service in an accurate, organized and complete manner. Determine that the customer's request has been fulfilled.

3. Maintain a professional demeanor at all times that is free from rude, discourteous or harassing behavior.

4. Comply with all federal, state, county, and city laws and regulations.

5. Use adequate equipment that is kept clean and neat at all times.

6. Train other Contractor employees to be polite and courteous during public contact.

7. Employ truth and accuracy in reporting customer service records.

K. RATES AND FEES

Notwithstanding other provisions of this agreement related to rates and fees, the Contractor agrees to comply with the following provisions as they relate to rates and fees charged in accordance with this agreement:

1. For services provided pursuant to this Agreement, the Contractor shall collect towing, storage and other service fees from the vehicle owner at the time of release. Said fees shall comply with the Santa Ana Police Department's Towing and Storage Fee Schedule, attached hereto as Exhibit B, and incorporated by this reference.

2. The Contractor acknowledges that the fee schedule is intended to list the maximum amounts for services rendered but nothing in this Agreement shall preclude the Contractor from charging less than the maximum fee allowed.

3. Nothing shall prohibit a Contractor from sending a Class B, C or D tow truck to a call requiring a lighter class tow truck to perform requested services. However, the Contactor acknowledges that fees may only be charged for the class necessary to perform the requested services and not necessarily for the class of tow truck dispatched to the call.

4. No fees may be charged for personnel, equipment or services reasonably necessary to perform the required service.

5. No lien shall be placed on the vehicle for services performed or initiated, and subsequently cancelled on-scene by the Santa Ana Police Department, unless the Contractor has presented a written statement to the vehicle's registered owner or agent for the signed authorization of services to be performed pursuant to Civil Code § 3068(a).

    a. The Contractor shall not attempt to take possession of a vehicle in order to establish a lien for any services performed or initiated and subsequently cancelled.
    b. The Contractor shall not bill the City of Santa Ana or Santa Ana Police Department for any services performed or initiated, and subsequently cancelled by the department. However, in such cases, the incident shall not be considered a rotational call and the Contractor shall be returned to the top of the rotation list.

6. The Towing and Storage Fee Schedule shall be posted in the business offices, storage facilities and tow trucks pursuant to CVC § 22651.07.

7. Rate adjustments may be considered based on the criteria set forth in this Agreement.

8. Contractor's failure to comply with the Towing and Storage Fee Schedule shall be subject to disciplinary action.

9. The Contractor shall not seek payment from the City of Santa Ana for services provided pursuant to this Agreement. However, the City shall be responsible for the following charges ordered by the City pursuant to this Agreement:

    a. Collision cleanup as outlined in this Agreement;
    b. Other services authorized by the City's Project Manager prior to the performance of said duties.

L. MISCELLANEOUS PROVISIONS

1. The Contractor shall have a Carrier Identification and a valid Motor Carrier Property (MCP) permit, which shall be provided to the City's Project Manager or designee. The expiration or suspension of the MCP shall result in immediate suspension from the rotation list as well as possible disciplinary action.

2. There may be times when the Contractor comes across a vehicle blocking the roadway although not assigned to the call or next on the rotation list. At the discretion of the officer at the scene, the Contractor may be directed to assist in moving the vehicle to the side of the roadway only. This service shall be provided without cost to the City or vehicle owner, and shall not affect the Contractor's position on the rotation list.

3. The Contractor shall be held accountable for all vehicles, personal property and vehicle accessories once the vehicle is in the possession of the driver and/or stored at their facility. The Contractor agrees to relieve the City, its officers, agents and employees of all responsibility once the vehicle is in the custody of the Contractor.

4. There shall be no photography or video recording at the scene of a tow or collision by the Contractor or any employee unless directly related to the towing operation. Photographs or video recordings shall only be directed at vehicles or the area immediately surrounding the vehicle but in no case shall capture any image of a person(s) injured or killed at the scene.

5. The Contractor, nor any employee of the Contractor, shall accept from any person or offer a gratuity to any member of the City in violation of CVC § 12110(a) and the City's gift ban ordinance.

6. The Contractor shall remain in compliance with CVC § 10652 as required.

7. Due to the negative perception of Private Party Impounds (PPI's) and the nexus to predatory towing practices, whether actual or perceived, the City of Santa Ana and the Santa Ana Police Department have an interest in ensuring any Contractor working on its behalf is not associated with these practices. In addition, tow companies that engage in PPI's are subjected to complaints and investigations on a more frequent basis than those that do not participate in this facet of the towing business. Therefore, the City strongly discourages any Contractor assigned to the rotational tow list from engaging in PPI's within the corporate limits of the City of Santa Ana. Subject to the investigative process outlined in the RFP, any company found to be in violation of PPI regulations including, but not limited to, applicable sections of CVC § 22658 or any other laws or regulations associated with PPI's shall be subject to suspension or immediate removal from the rotation list for sustained complaints or convictions for violations of the law.

M. UTILIZATION OF DISPATCH AND TRACKING SOLUTIONS SOFTWARE

The City uses Dispatch & Tracking Solutions (DTS) software for its rotational towing administration. The Contractor shall agree to utilize the most recent, updated, upgraded Dispatch & Tracking Solutions software program (DTS), or any other software solution selected by the City, to dispatch and track tow activity via a web-based Internet connection. All tow requests originating from the Santa Ana Police Department may be made utilizing this program. The Contractor's failure to have the DTS program in full operation and to acknowledge tow requests in a timely manner pursuant to this RFP shall result in a finding of default and shall result in immediate suspension from the tow rotation list. Failure to remedy the problem shall be grounds for the termination of the agreement between the City and the Contractor.

The Contractor must be willing to must enter into a separate agreement, contract, or license for DTS software, or any other software solution implemented by the City, with the owner of that proprietary software. The City shall not provide the software program, any licensing or sub-licensing thereof or any intermediary services for the procurement by the Contractor of the software program. This Contract shall not be executed by the City until the Contractor has demonstrated to the City's Project Manager or designee satisfactory compliance with the requirements set forth herein. The Contractor shall be liable for all fees, charges, rates and service charges required for the procurement and use of DTS software or any similar software solution.

If the City should elect to use a different program than DTS at some point in the future, the Contractor agrees to comply with the above requirements as it relates to the new software solution after provided reasonable notice by the City and sufficient opportunity to procure said software program.

N. RESPONSIBILITIES WHEN RESPONDING TO CALLS FOR SERVICE

1. When the Contractor is called to the scene of a vehicle tow or a collision scene, the Contractor's employee will clean-up all debris at the scene in accordance with CVC § 27700 without charge to the City.

    a. If this service does not result in a vehicle tow, it shall not be considered a rotational call and the tow company shall be placed back on the top of the rotational tow list.
    b. Police employees should not call a rotational tow to the scene of a collision for the sole purpose of cleaning up debris. However, should this occur or become necessary, the Contractor may bill the City for the cost of the response in accordance with the City's Towing and Storage Fee Schedule.

O. PERFORMANCE DURING INCLEMENT WEATHER OR DISASTERS

1. The Contractor acknowledges that the services provided under this contract are integral to the operations of the City of Santa Ana and the Santa Ana Police Department. Therefore, the Contractor agrees to perform the duties of this contract regardless of weather or other adverse conditions including, but not limited to, any disasters whether man-made or acts of God.

2. During periods of inclement weather or disaster, the Contractor shall agree to adjust staffing levels to meet the increased demands for service during these times.

3. Should the Contractor be unable to fulfill their responsibilities under the conditions described in this section, the Contractor shall be responsible for any and all costs incurred by the City should the need to hire outside contractors become necessary to meet the needs of the Police Department due to the Contractor's default.

P. PROTECTION OF THE PUBLIC AND DAMAGES TO EXISTING STRUCTURES

1. The Contractor shall exercise due care and caution at all times for the protection of all persons and property. All fines, penalties and/or repair charges resulting from the Contractor's actions shall be the sole responsibility of the Contractor.

2. Understanding that the Contractor will respond to calls involving traffic collisions or traffic hazards, and pursuant to CVC § 22513, the Contractor shall only place or use equipment to block vehicle traffic lanes or render assistance to a motorist while exercising due care for the safety of the tow truck driver, the motorist and the motoring public. Tow truck drivers should be trained in scene management in accordance with this section. The Contractor shall ensure that all appropriate traffic safety warning devices are utilized as deemed necessary.

3. Contractors will be required to respond to calls where vehicles have collided with other objects and may have already caused damage to varying degrees. The methods proposed by the Contractor for towing and recovery services shall be reasonable and consistent with industry standards, best practices, and in a manner that shall not cause unnecessary additional harm, deface or damage any City or private property. In the event that damage to the City's right-of-way or private property has occurred due to the negligence of the Contractor, the Contractor shall be solely responsible for its repair or replacement in excess of the amount covered by the required insurance.

Q. SPECIFICATIONS

This Scope of Services is intended to cover all labor, material and standards of workmanship to be employed for in this work plan or reasonably implied by terms of same. Work or materials of a minor nature which may not be specifically mentioned, but which may be reasonably assumed as necessary for the completion of this work, shall be performed by the Contractor as if described in the specifications.

R. RECORDS

1. The Contractor shall keep accurate records concerning all vehicle tows, vehicle storages and vehicle releases or disposition.

2. In addition, the Contractor shall maintain accurate records of his/her employees or agents and provide the City with names and telephone numbers of emergency contact employees.

3. The Contractor shall complete a report each calendar month indicating the number of calls for service, the number of vehicles towed, the number of vehicles in storage (regular and secure) and their current status, vehicles released, vehicles sent to lien sale, the status of any other vehicles or services rendered by the Contractor on behalf of the City, GPS information (if requested by the City) or any other information as may be required by the City's Project Manager or designee.

4. A phone log will be submitted monthly of all calls from the Santa Ana Police Department to the Contractor, identifying whether or not those calls required a request for service, and a description of the action taken as a result of the call.

5. The Contractor shall provide monthly customer service phone logs from the public, indicating name, date, time and phone number of caller, reason for the call, any specific requests, the Contractor's response or action, and the amount of time required to address request. Such logs shall be accurate and truthful.

6. The Contractor shall permit the City to inspect and audit its books and records regarding City provided services at any reasonable time.

S. AUDITS AND INSPECTIONS

The Chief of Police or his designee shall conduct regular audits and inspections of the Contractor(s) assigned to this project to ensure they are fulfilling their responsibilities in accordance with the terms and conditions of this agreement. All work found during such audits or inspections to be substandard or failing to conform to the requirements of this agreement shall be corrected immediately by the Contractor and the City shall have the right to immediately suspend the Contractor from the rotation list until the

issue(s) is/are corrected. Failure to correct in a reasonable timeline as outlined in this Agreement may result in termination of the contract.

T. INVESTIGATION OF COMPLAINTS, LAWS, RULES, OR TERMS AND CONDITIONS OF AGREEMENT

Whenever a complaint or allegation is lodged against a Contractor or initiated by the Police Department, the Traffic Commander shall assign a supervisor from the Traffic Division to investigate any allegations. A fair, impartial and comprehensive investigation shall be conducted and the findings documented for review. To the extent required by law, the Contractor shall cooperate fully in the investigation and provide any documentation requested by the investigator to assist in making a finding. In addition, the Contractor shall be given the opportunity, either orally or in writing, to respond to the complaint at the point deemed appropriate by the investigator. The City expects that the Contractor will demonstrate professional business practices and truth in reporting as it relates to any records or information requested.

Minor infractions shall include, but not be limited to, situations such as poor customer service, failure to comply with non-safety related terms of the agreement, or minor equipment or facility deficiencies. Major infractions shall include, but not be limited to, situations involving honesty, integrity, safety, security, gross overcharging of a customer or a pattern of overcharging, failure to comply with the provisions of CVC § 22658 as it relates to PPI's, criminal violations (moral turpitude, DUI, drug related offenses, theft, etc.), or significant, repeated or flagrant violations of this agreement.

If it is determined that criminal charges are appropriate, the assigned investigator shall document the incident on a crime report and present the case to the appropriate prosecuting authority for review.

Based on the nature and seriousness of the misconduct being investigated, the Chief of Police may temporarily suspend the Contractor, or its agent individually, from the rotation list until the investigation is completed and a proper disposition is reached.

The standard for sustaining a complaint against the Contractor or the Contractor's agent shall be a preponderance of the evidence, regardless of the nature of the violation. Other investigative findings may include unfounded (false or factually incorrect), exonerated (action occurred but was lawful or within the terms of this agreement) or not sustained (inconclusive due to insufficient evidence or independent witnesses).

All complaints shall be forwarded to the Traffic Commander for review, approval and determination/recommendation of discipline if appropriate.

U. DISCIPLINARY ACTION

The Contractor agrees that failure by the Contractor, or its agent, to comply with the law or terms and conditions of this agreement shall be cause for administrative disciplinary action. However, nothing in this agreement shall preclude the City from taking appropriate enforcement action for violations of the law. Within 60 days of receipt of the complaint, the Traffic Commander shall review the findings of the investigation and recommend disciplinary action if appropriate. The Traffic Commander shall take into account the nature of the complaint, the findings of the investigation, past complaints against the Contractor and past practice of the Department to maintain equitable treatment of all Contractors assigned to the rotational tow list. Depending on the nature and complexity of the sustained violation, the Traffic Commander may allow the Contractor or designee to provide a brief written statement for consideration and/or may contact Contractor to ask additional questions.

Disciplinary action shall typically be progressive in nature and based on the Contractor's record during the previous five (5) years from the date of complaint. Therefore, multiple infractions for similar offenses, regardless of their severity, will result in increased disciplinary action. However, this does not preclude the Traffic Commander from recommending more serious sanctions where major rule violations have been committed or there are aggravating facts associated with the misconduct.

The following actions may be recommended:

1. No further action.
2. Issue a written warning.
3. Impose a suspension for minor violations (one (1) to 30-days).
4. Impose a suspension for multiple minor violations or a single major violation (30 to 90-days).
5. Termination of the contract for cause and immediate removal from the rotation list.

The Contractor shall be notified in writing of the City's intent to impose disciplinary action. The Traffic Commander shall have the authority to impose discipline up to and including the imposition of a suspension for minor violations as long as the suspension does not exceed 30-days in length. However, nothing in this article shall preclude the Traffic Commander from reducing the recommended discipline based on mitigating facts. Recommended suspensions exceeding 30-days in length or termination from the rotation list shall be approved by the Field Operations Bureau Commander prior to imposition.

The Traffic Commander may recommend to the Chief of Police the immediate termination of this agreement if the conduct of the Contractor, or agents, are determined to pose a danger to the public, have an excessive number of complaints

that tax the investigative resources of the Police Department, or the Contractor's actions reflect negatively upon the City.

V. RIGHT TO APPEAL

Upon receipt of a notice to impose disciplinary action, the Contractor shall have the right to submit a written appeal within ten (10) business days to the Field Operations Bureau Commander.

The Field Operations Bureau Commander shall issue their findings in writing within ten (10) business days of the receipt of written appeal. If the Contractor disagrees with the findings of the appeal, their final remedy shall be the opportunity to submit a written appeal to the Chief of Police within ten (10) business days, via the Traffic Commander. The Chief of Police shall issue a written decision within (10) business days. The decision of the Chief of Police shall be final.

Disciplinary action shall not be imposed until the hearing and appeal process has been exhausted. However, if the conduct of the Contractor is deemed to be so egregious or poses a danger to public safety, the City may exercise its right to immediately suspend the Contractor as set forth in this agreement. In such cases, the time during which the Contractor is suspended may be applied to the balance of a suspension imposed by the City, at the discretion of the hearing officer, and shall be the Contractor's only remedy as far as a pre-hearing suspension is concerned. Any time in excess of that credited toward an imposed suspension shall be lost. Failure to request an appeal, submit a written appeal, or appear at a mutually agreed upon hearing will waive the Contractor's right to further appeal and disciplinary action shall be imposed.

W. SUPERVISION OF CONTRACT AND MEETINGS WITH CITY

All work shall meet with the approval of the Santa Ana Police Department. As determined necessary by the City, there shall be a minimum of one monthly meeting with the Contractor and the City representative during the first year to determine progress and to establish areas needing attention. Status reports of activities performed by the Contractor will be submitted in writing to the City on a monthly basis or as determined necessary by the City.

Any specific problem area which does not meet the conditions of the specifications set forth herein shall be called to the attention of the Contractor and if not corrected immediately, or within a reasonable period, may result in the Contractor being found in default of this agreement, which may result in suspension from the rotation list until the issue(s) is/are corrected in a satisfactory manner as set forth in the specifications or termination.

X. MATERIALS AND EQUIPMENT

The contractor shall make a reasonable effort to purchase equipment and materials in the City of Santa Ana and to utilize Santa Ana vendors. Contractor shall report its efforts as requested by the City.

Y. DEFINITIONS

1. **City** – shall mean City of Santa Ana and representatives of the City of Santa Ana (e.g. Police Department or its agents).

2. **City's Project Manager** – shall be synonymous with the Traffic Commander for purposes of this project.

3. **Contractor** – shall mean any towing company submitting a response to this RFP and selected to perform services for the City on the Rotational Tow List, and shall include all employees or agents of said company.

4. **Inclement Weather or Disasters** – any adverse weather or environmental conditions, regardless of severity or duration, which places an increased demand or strain on public services, including tow operations, whether man-made or acts of God.

5. **Street** – all paved dedicated public rights-of-way within the existing or future City limits.

6. **Public Property** – any property under the control and direction of the City of Santa Ana or any other government agency within the corporate limits of the City of Santa Ana or State of California.

7. **Private Property** – any property that is privately owned or held by someone other than a government agency.

EXHIBIT B

FEE SCHEDULE

AUTHORIZED TOWING AND STORAGE FEE SCHEDULE*

Service	Fee
Stored Vehicle Release Fee (PD)	$75.00
Class A	$195.00
Class B or Flatbed	$225.00
Class C	$325.00
Class D	$360.00
Dolly, Go-Jacks or Linkage Fee	$60.00
Rollover or Winching Fee	$130.00
Clean-up Fee (fee to City capped at $35.00 per occurrence)	$60.00
Hazmat Fee (per five (5) gallon bucket)	$115.00
Vehicle Storage Fees (Daily)	
Class A – Outside	$55.00
Class A – Inside	$60.00
Class B – Outside	$60.00
Class B – Inside	$65.00
Class C or Class D – Outside	$65.00
Class C or Class D – Inside	$70.00
After Hours Release	50% of the authorized towing charge
Minimum Service Call or Drop Fee	50% of the authorized towing charge
Lien Sale	As authorized by the California Civil and Vehicle Codes
Mileage (per mile outside the corporate city limits)	$9.00

* Fees indicated herein will become the City's maximum authorized rates effective at the time of contract implementation; minimum 1 hour.

SERVICE AGREEMENT
ROTATIONAL TOW PROVIDER

THIS AGREEMENT, made and entered into this 16th day of August, 2016 by and between B&D Towing, Inc., a California corporation, (hereinafter "Contractor"), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (hereinafter "City").

RECITALS

A. The City desires to retain a contractor having special skill and knowledge in the field of providing vehicle towing and storage services.

B. Contractor represents that it is able and willing to provide such services to the City.

C. In undertaking the performance of this Agreement, Contractor represents that it is knowledgeable in its field and that any services performed by Contractor under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional consulting firm in the field.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

1. SCOPE OF SERVICES

Contractor shall provide vehicle towing and storage service at the request of the Santa Ana Police Department, on a rotational basis, in accordance with the terms and conditions set forth in the Scope of Service, attached hereto as Exhibit A and incorporated by this reference. The City intends to contract with several tow companies to provide necessary towing services on a rotational basis. Towing services may include, but are not limited to, towing vehicles from public or private property at the direction of Police employees, owner's request for a tow made via the Police Department, the storage of vehicles, the secure storage of vehicles containing evidentiary value, debris clean-up and removal, recovery services and administrative oversight of vehicles in the custody of the contractor.

2. COMPENSATION

a. The parties intend that towing and storage fees will be paid by the vehicle owner at the rates and charges set forth in Contractor's then current and approved fee schedule, attached as Exhibit B and incorporated by this reference.

b. When Contractor provides services chargeable to the City as set forth in Exhibit A, the Contractor shall submit a monthly invoice by the 15th of the month to the City for any such services rendered in the prior month, if applicable. The invoice shall include all

information enumerated in California Vehicle Code ("CVC") § 22651.07(e) and include the following information:

i. Contractor's invoice number
ii. Santa Ana Police Department's case number

c. Payment by City shall be made within sixty (60) days following receipt of proper invoice, subject to City accounting procedures. Payment need not be made for work which fails to meet the standards of performance for professional towing services or in accordance with the standards set forth in this agreement.

d. Adjustments to the Towing and Storage Fee Schedule

The Traffic Commander shall examine the towing and storage rates authorized in accordance with this agreement on an annual basis. The Traffic Commander may recommend to the Division Commander and the Chief of Police to adjust the towing and storage rates, not to exceed two percent (2%) annually, based on the most recent statistics, as follows: the two indices which will be used for determining adjustments to the towing and storage fee schedule shall be the prior twelve (12) months, reporting month December, Consumer Price Index (CPI) for All Urban Consumers for Los Angeles-Anaheim-Riverside Consolidated Metropolitan Statistical Area, published by the United States Department of Labor's Bureau of Labor Statistics or any relevant successor for the Orange County area, and the twelve (12) month December Producer Price Index for Petroleum (PPI). The adjustment formula shall be as follows: The CPI shall be weighted at ninety (90%) percent and PPI shall be weighted at ten (10%) percent. However, fee adjustments will only be made if justified and shall occur at the sole discretion of the Chief of Police based on recommendations from the Traffic Commander.

3. TERM

This Agreement shall commence on September 1, 2016 and continue through August 31, 2019, with two (2) one (1) year options to renew exercisable at the option of the City unless terminated earlier in accordance with Section 11, below.

4. INDEPENDENT CONTRACTOR

Contractor shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Contractor performs the services which are the subject matter of this Agreement; however, the services to be provided by Contractor shall be provided in a manner consistent with all applicable standards and regulations governing such services. Contractor shall pay all salaries and wages, employer's social security taxes, unemployment

insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

5. INSURANCE

Prior to undertaking performance of work under this Contract, Contractor shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

a. Commercial General Liability Insurance – the Contractor shall maintain commercial general liability insurance which shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting there from and damage to property, resulting from any act or occurrence arising out of Contractor's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting there from, and property damage, in the total amount of $1,000,000 per occurrence, $2,000,000 in the aggregate.

b. Business Automobile Liability Insurance, or equivalent form, shall be maintained by the Contractor with a combined single limit of not less than $1,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles as well as uninsured motorist coverage with a combined single limit of not less than $1,000,000 per occurrence.

c. Worker's Compensation Insurance – in accordance with the provisions of Section 3300 of the Labor Code, Contractor is required to be insured against liability for worker's compensation or to undertake self-insurance. Prior to commencing the performance of the work under this Contract, Contractor agrees to obtain and maintain any employer's liability insurance with limits not less than $1,000,000 per accident.

d. Garage Liability and Garage Keeper's Liability Insurance – the Contractor shall maintain garage liability insurance to include all premises, operations and coverage for bodily injury and property damage with a combined single limit of not less than $1,000,000 per occurrence as well as garage keeper's liability insurance for vehicles in the care, custody and control of the operator in the storage facility with a single limit of not less than $100,000 per occurrence.

e. On-Hook Insurance – the Contractor shall maintain on-hook insurance with limits not less than those required by the California Highway Patrol:

1. Class A tow truck - $25,000
2. Class B tow truck - $50,000
3. Class C or Class D tow truck - $100,000

f. The following requirements apply to the insurance to be provided by Contractor pursuant to this section:

1. Commercial general liability and business automobile insurance policies shall (a) name the City, its officers, employees, agents, volunteers and representatives as additional insured(s); (b) be primary and not contributory with respect to insurance or self-insurance programs maintained by the City; and (c) contain standard separation of insureds provisions. Contractor shall maintain all insurance required above in full force and effect for the entire period covered by this Agreement.
2. Certificates of insurance shall be furnished to the City upon execution of this Contract and shall be approved in form by the City Attorney.
3. All of the Contractor's storage facilities shall be listed in the certificates of insurance.
4. Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City.

g. If Contractor fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the City with required proof that insurance has been procured and is in force and paid for, the City shall have the right, at the City's election, to forthwith terminate this Contract. Such termination shall not affect Contractor's right to be paid for services satisfactorily provided in accordance with this agreement prior to notification of termination. The Contractor waives the right to receive compensation and agrees to indemnify the City for any work performed prior to approval of insurance by the City.

6. INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its officers, agents and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any work performed or services provided under this Contract (including, without limitation, defects in workmanship and/or materials) or Contractor's presence or activities conducted performing the work (including the negligent and/or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, contractors, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable for any or all of them). Notwithstanding the foregoing, nothing herein shall be construed to require Contractor to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees

in any action on or to enforce the terms of this Contract. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Contractor.

7. CONFLICT OF INTEREST CLAUSE

Contractor covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement.

8. NOTICE

With the exception of insurance certificates and renewals, any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by facsimile or other telegraphic communication in the manner provided in this Section, to the following persons:

To City:
Clerk of the City Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702-1988
Fax 714- 647-6956

With courtesy copies to:
Office of the Chief of Police
City of Santa Ana
Santa Ana Police Department
60 Civic Center Plaza
Santa Ana, CA 92701
Fax 714-245-8190

and
City Attorney
City of Santa Ana
20 Civic Center Plaza (M-29)
P.O. Box 1988
Santa Ana, California 92702
Fax 714- 647-6515

To Contractor:
B&D Towing, Inc.
1502 North Susan Street
Santa Ana, California 92703
Fax 714-835-4910

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by facsimile, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

9. EXCLUSIVITY AND AMENDMENT

This Agreement represents the complete and exclusive statement between the City and Contractor, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Contractor. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Contractor nor the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.

10. ASSIGNMENT

a. Inasmuch as this Contract is intended to secure the specialized services of Contractor, the Contractor may not sell, assign, transfer, delegate or subcontract any interest herein without the prior written consent of City and any such sale, assignment, transfer, delegation or subcontract without the City's prior written consent shall nullify and void any existing contract with the City.

b. Unless previously approved by the City, the sale or transfer of the controlling interest in a company shall be cause for immediate termination of this contract and the Contractor shall be replaced on the Rotational Tow List by another company on an existing eligibility list or during a future RFQ process.

11. TERMINATION

a. The City reserves the right to immediately terminate the contract, without penalty, for cause.

b. In the event Contractor fails or refuses to timely perform any of the provisions of this Agreement in the manner required, or if Contractor violates any provision of this

Agreement, Contractor shall be deemed in default. City shall provide written notice of such default to Contractor's Project Manager. If possible, the Contractor shall cure said default within a period of two (2) working days. If such cure is not completed in a timely manner, City may terminate the Agreement forthwith by giving written notice to Contractor's Project Manager. The City may, in addition to the other remedies provided in this Agreement or authorized by law, terminate this Agreement by giving written notice of termination. Contractor shall be responsible for all costs incurred by City, including replacement costs of equipment and labor required to provide service during Contractor's default.

c. As described in Exhibit A, concerning the investigation and disposition of complaints, the City may terminate this agreement immediately for cause if it has been determined by the Traffic Commander, with concurrence from the Field Operations Bureau Commander, that the Contractor has committed major or minor rule violations associated with this agreement, or has committed violations of the law, and termination of the contract is deemed to be the appropriate disposition.

d. This agreement may be terminated without cause by City by written notice delivered to the Contractor either personally or by mail, thirty (30) days prior to the end of the then current term. Upon termination, City shall pay Contractor for services rendered as specified in the Agreement prior to the effective date of termination.

12. CONTRACTOR OPTION FOR TERMINATION

The Contractor may request termination of the contract when conditions during the contract make it impossible to perform or when prevented from proceeding with the contract by act of God, by law or official action of a public authority or in the event of nonpayment by the City. Such request will require ninety (90) days written notice prior to contract termination date requested. In the event of nonpayment of undisputed sums by the City, Contractor shall give the City thirty (30) working days to cure the alleged breach.

13. DISCRIMINATION

Contractor shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Contractor affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

14. EMPLOYMENT OPPORTUNITIES FOR SANTA ANA RESIDENTS

Contractor shall make every effort to solicit and advertise employment opportunities to Santa Ana residents. The City shall inform the Contractor of areas to publicize recruitment opportunities, such as work centers and community centers.

Contractor shall provide to City, a description of efforts and procedures used to notify residents of employment opportunities as they occur but, at a minimum, once each year prior to the City exercising its option to extend the contract.

15. CONTRACTOR'S PARTICIPATION AT COMMUNITY MEETINGS, EVENTS AND PUBLIC AWARENESS CAMPAIGNS

If requested by City, the Contractor shall agree to participate in community meetings, community events and public awareness campaigns, such as National Night Out, DUI presentations or any other neighborhood or City event. Such participation shall be upon City request provided with reasonable notice of the event. Such events will not exceed four (4) requests per year.

16. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

a. Contractor shall perform all requirements under this contract in strict observance of and in compliance with all applicable environmental, traffic, safety and any other laws, regulations, ordinances, codes and any other legislative or statutory requirements.

b. Contractor warrants that the performance of services under this contract shall be compliant with the current requirements of the Occupational Safety and Health Act (OSHA) and as it may be amended or updated throughout the term of this contract.

17. FINES

The Contractor shall be liable for all violation fines levied against the City by any Federal, State or local agency, including but not limited to the Air Quality Management District (AQMD), and the Regional Water Quality Control Board, due to the action or failure to act by Contractor.

18. JURISDICTION - VENUE

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

19. PROFESSIONAL LICENSES

Contractor shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the

State of California, the City of Santa Ana and all other governmental agencies. Contractor shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

20. MISCELLANEOUS PROVISIONS

a. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

b. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

ATTEST:

MARIA D. HUIZAR
Clerk of the Council

CITY OF SANTA ANA

DAVID CAVAZOS
City Manager

APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney

By: Laura A. Rossini
Laura A. Rossini
Senior Assistant City Attorney

B&D TOWING, INC.

Efrain Davalos
President

RECOMMENDED FOR APPROVAL:

Carlos Rojas
Chief of Police

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT A – SCOPE OF SERVICES

I. USE OF ROTATIONAL TOW LIST

A. CRITERIA AND RULES FOR USE BY POLICE EMPLOYEES

The City agrees to utilize the rotational tow list for all service requests initiated by members of the Santa Ana Police Department except where provided for in this agreement. Therefore, the City agrees to operate under the following policy guidelines unless reasonably necessary to deviate due to exigent or unforeseen circumstances:

1. Whenever the driver or owner specifies a particular club, association or tow service to care for his/her vehicle, the garage or tow service requested shall be called and such calls shall not constitute a rotational tow call.

2. When a driver does not specify a particular garage or tow service, the garage or tow service called shall be taken from the rotational list in numerical order. When more than one vehicle is to be towed from a collision scene and the drivers do not specify a preference, the rotation list shall be followed on the basis of one tow truck for each vehicle utilizing the numerical rotational order. The rotation list shall be followed on a per vehicle basis rather than per collision or call for service. When multiple Contactors are called to the same incident, the distribution of vehicles shall be determined by the police officer at the scene.

3. If the eligible Contractor does not answer the telephone or acknowledge the call via a software dispatch system, is unable to respond, unable to perform the required services, refuses to respond or provide the requested service, or is cancelled due to an excessive response time, that company shall be passed over and shall not be eligible until the Contractor comes up on the rotation list again.

4. It shall be the responsibility of the Contractor to notify the Police Department if it is unable to respond within the required time limit or with the appropriate equipment for the type of service requested.

5. If it is determined the Contractor is not needed and is cancelled by the Police Department or the vehicle owner, the Contractor shall be placed back on top of the rotation list and no charge shall result from the call.

6. The rotation list shall be used on occasions where an officer stores or impounds a vehicle and the driver or owner is not consulted or is not present.

7. All employees of the Police Department are specifically prohibited from soliciting or recommending any garage or tow service, either directly or indirectly. All officers are directed to ascertain from the party in charge of the vehicle as to their preference of a towing agency. A request of "no preference" by the person in charge will be relayed to dispatch by the officer and will result in a call to the Contractor that is next up on the rotation list.

B. REPORTING PROCEDURES

1. All officers requesting a tow truck from the rotational list for the towing, storing or impounding of a vehicle shall complete the Santa Ana Police Department storage/impound form when required by Departmental policy or procedure. The form shall be signed by both the officer and the driver of the tow truck. A copy of the Santa Ana Police Department storage/impound form shall be given to the tow truck driver prior to the vehicle being towed from the scene.

II. CONTRACTOR REQUIREMENTS AND RESPONSIBILITIES

A. WORK ASSIGNMENTS AND SCHEDULE

The Contractor shall be available to provide services within the corporate limits of the City of Santa Ana 24-hours per day, seven (7) days per week, 365 days per year. There are no exceptions for holidays under the project. The Contractor shall also make reasonable accommodations for its personnel to attend meetings with City staff from the Police Department, City Attorney's Office or any other City Agency as required by the Project Manager.

B. WORKING HOURS AND RESPONSE TIMES

1. All services under this contact shall be available 24-hours per day, seven (7) days per week, 365-days per year without exception.

2. The owner, principal or business manager of the proposing Contractor shall have a minimum of five (5) years of verifiable experience in the towing for-hire industry. Prior experience performing towing services for a law enforcement agency are highly desirable but not required. If the owner, principal or business manager possessing this requisite experience is no longer employed by the Contractor at any time during the course of the contract, the Contractor shall immediately report such change in condition to the City's Project Manager and participation on the rotation list shall be suspended until a new owner, principal or business manager is identified and approved.

3. The Contractor shall be required to have a dispatcher on-duty 24-hours per day with the capability to communicate instantly with all trucks and/or drivers assigned to this project.

4. All requests for tow services shall be acknowledged or refused within three (3) minutes by the Contractor's dispatcher and response to the scene shall occur within 20 minutes from the time the Contractor is notified by the Police Department's Communications Division.

   a. The 20 minute response time applies only to tow requests requiring a Class A tow truck.
   b. The Contractor shall be required to comply with this requirement by providing appropriate staffing levels and, if necessary, strategically staging personnel during peak traffic times to allow drivers sufficient time to arrive while complying with all traffic laws and regulations in their response to service requests.

   c. For any request requiring a Class B, C or Class D tow truck, the Contractor shall have the necessary equipment on scene within 45 minutes of notification by the Police Department's Communications Division if a Department employee identifies the need for such equipment or when determined by the Contractor's employee after responding to the scene and assessing the situation.

5. The Contractor shall be required to have a minimum of one (1) driver on duty 24-hours per day, seven (7) days per week. In addition, the Contractor shall have at least one (1) other driver on-call or stand-by.

6. The Contractor will also be required to maintain office hours between 8:00 am and 5:00 pm, seven (7) days a week, 365 days per year so vehicle owners can retrieve stored or impounded vehicles.

C. REQUIRED TOW VEHICLES AND EQUIPMENT

1. At a minimum, the Contractor shall possess, maintain and be the listed registered owner of the following classes of tow vehicles (meeting requirements as defined in the most current version of CHP 234B – Tow Truck Inspection Guide):

   a. Four (4) Class A tow trucks designed for light duty towing operations.
   b. One (1) Class B tow truck designed for medium duty towing operations.
   c. One (1) Class C tow truck designed for heavy duty towing operations.

2. In addition, the Contractor shall either possess and maintain, or have immediate access to, one (1) Class D tow truck designed for super heavy duty towing operations (meeting requirements as defined in the most current version of CHP 234B – Tow Truck Inspection Guide). Even if subcontracted, this vehicle shall

be made available for inspection and the Contractor will be held responsible for the condition and suitability of this vehicle.

3. The company name, business address, telephone number and tow truck identification number shall be permanently and properly affixed to each vehicle in a manner prescribed pursuant to CVC § 27907.

4. There shall be no words or language affixed to the vehicle associating the Contractor or the vehicle with the Santa Ana Police Department (e.g. "official police tow") without the prior written approval of the City's Project Manager.

5. At no time shall the Contractor exceed the gross vehicle weight rating (GVWR) and/or safe loading requirements of the tow truck, including, but not limited to, exceeding the tow trucks GVWR, front axle weight rating, rear axle weight rating, maximum tire weight ratings, or failure to maintain 50 percent of the tow truck's unladen weight on the front axle when lifting or carrying a load.

6. The authorized Towing and Storage Fee Schedule shall be posted in public view in all tow trucks.

7. Contractors shall not share equipment with any other Contractor with the limited exception of access to a Class D tow truck as specified above.

8. All of the vehicles identified above and used in accordance with this agreement shall be equipped with the minimum equipment required to perform towing operations as well as the equipment pursuant to CVC § 27700 and the "Service and Other Equipment" section of the CHP 234B (Tow Truck Inspection Guide) form. The Contractor may also be required to carry any other safety devices reasonably required by the City.

9. The contractor shall maintain all vehicles and equipment in good repair for use by the Contractor's employees assigned to perform services pursuant to this agreement. The Contractor shall be responsible for, and pay for all operating expenses, equipment, maintenance and insurance for vehicles assigned to perform work related to this agreement. All tow trucks shall be equipped and maintained in accordance with applicable sections from the California Vehicle Code, Title 13 of the California Code of Regulations, the requirements of this RFP and industry standards.

10. All vehicles shall be kept clean, be free of offensive odors and maintain a professional appearance.

11. All tow trucks shall be inspected annually by the California Highway Patrol and maintain a current Commercial Vehicle Safety Alliance (CVSA) decal. The Contractor shall provide current copies of CHP 234B (Tow Truck Inspection

Guide) and CHP 407F (Safetynet Driver/Vehicle Inspection Report) for each vehicle to the City's Project Manager or designee.

12. The Contractor agrees that the Santa Ana Police Department may inspect any vehicle, without prior notice, at any time during normal business hours.

13. The Contractor shall provide instant communication access via cellular phone or radio to all personnel while performing their duties.

G. GLOBAL POSITIONING SYSTEM (GPS)

It is highly desirable for the Contractor to provide GPS capabilities in all of their tow trucks. If offered for consideration in the Contractor's Response, the City and Contractor shall be able to view this information via computer in real time and the Contractor shall provide GPS reports at the request of the City.

H. CONTRACTOR'S BUSINESS OFFICE REQUIREMENTS

1. The Contractor shall maintain an office and storage facility within the corporate limits of the City of Santa Ana and remain in compliance with any requirements imposed by the Police Department, the Planning Division or any other Department, Agency or Agent of the City of Santa Ana in accordance with federal regulations, state law, the Santa Ana Municipal Code and this agreement.

2. It is preferable that the office and storage facility be at the same location to minimize the impact on the community. However, should additional locations exist, the Contractor agrees to conduct all business from the primary facility and any costs associated with operating a secondary location and/or moving vehicles to or from that secondary location shall not be passed along to any customer covered under this agreement.

3. The primary facility shall have a sign clearly visible to the public that identifies the location as a towing service.

4. The business hours shall be clearly posted.

5. The office shall be sufficiently staffed to allow customers to speak with a company representative during normal business hours without unnecessary delay.

6. Current and approved rates pursuant to the Towing and Storage Fee Schedule shall be posted in public view in the Contractor's office and/or storage facility in compliance with California Civil Code § 3070 and CVC § 22651.07.

7. The Contractor shall comply with the provisions of CVC § 22651.1.

8. The Contractor shall maintain records of all tow services furnished by the Contractor at the primary office location.

    a. Invoices shall contain the required itemized information pursuant to CVC 22651.07(e).
    b. Itemized invoices shall contain a distinct notice upon the invoice stating "Upon request, you are entitled to receive a copy of the "Towing Fees and Access Notice." This notice shall be contained within a bordered text box, printed in no less than 10-point type pursuant to CVC 22651.07(a)(1)(B)(3).

9. The operator's primary business office shall also maintain business records relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, lien sale actions, driver's record of duty status (intrastate and/or interstate), and Federal Communication Commission licensing (if applicable).

10. The Contractor agrees that a representative from the Santa Ana Police Department may inspect all business records, facilities and vehicles without notice during normal business hours.

11. The Contractor shall permit the Santa Ana Police Department to make copies of business records at their place of business or remove business records for the purpose of reproduction.

12. Lien fees, or any fees related to the preparation of a lien, shall not exceed the amounts allowable in the Towing and Storage Fee Schedule, attached hereto as Exhibit B, and in compliance with all relevant provision of the California Vehicle Code and California Civil Code.

I. STORAGE FACILITY AND VEHICLE STORAGE REQUIREMENTS

1. It is preferable that the storage facility is located at the same location as the primary business office. However, if located at a different location than the main office, the storage facility must be within the corporate limits of the City of Santa Ana and have an on-site release office at all storage lots. Persons seeking to take possession of their vehicle or property shall not be required to travel to more than one location to recover their vehicle from the Contractor's custody.

2. The storage facility and all vehicles towed at the direction of the City shall be made available to police personnel 24-hours per day, 7-days per week.

3. The entire storage lot must be sufficiently well lit to deter theft. Other theft deterrent devices (e.g. cameras, alarms, on-site personnel, etc.) are highly desirable.

4. The storage lot must be completely secured by a wall or fencing and a gate that is able to be locked to maintain security for stored and impounded vehicles. The minimum height requirement for the fence and gate shall be six (6) feet.

5. The storage lot shall be large enough to hold a minimum of 100 vehicles at any given location. This requirement is the minimum area reserved for Santa Ana vehicles and additional space is highly desirable. All vehicles towed by the City shall be stored within the corporate city limits and the vehicle or any of its contents shall be made available for release within the corporate city limits. If multiple storage facilities are maintained, the Contractor shall only use the secondary lot when the primary lot is full and shall not charge for transportation beyond that of the main storage facility.

6. The Contractor shall also provide an inside storage facility, which must consist of four walls with a solid roof and a door equipped with a locking device. Additional security features are highly desirable. This facility shall be sufficient to reasonably protect vehicles from theft, tampering, weather, environmental conditions or any other circumstances that could cause the removal or contamination of evidence. Access to this area by employees or other individuals shall also be restricted. This facility shall be capable of storing a minimum of four (4) mid-sized vehicles for the City of Santa Ana and sufficient space to conduct forensic analysis of the vehicle on-site if necessary.

7. Vehicles impounded pursuant to CVC § 10751 shall be placed in an area of the storage facility that will provide sufficient space and privacy, allowing auto theft investigators to perform a vehicle inspection without delay. This requirement shall be required for the first ten (10) days of impound.

8. Vehicles will not be released, sold or dismantled until a signed release form has been obtained from the Santa Ana Police Department. The signed release form will be kept by the towing company as proof of authority for the release.

9. Release forms are required for impounded vehicles and vehicles with a "hold" placed on them by police department personnel. The release form will indicate they are from the Santa Ana Police Department and shall only be signed by authorized members of the Police Department.

    a. Stolen vehicles recovered by the Police Department will be released to the victim/owner by the Contractor with proof of ownership. Unless specifically noted, no release will be required from the Police Department.
    b. Stolen vehicles recovered by the Police Department requiring further investigation as determined by the handling officer will be impounded pursuant to CVC § 22655.5, thereby placing a hold on the vehicle. The impound box will be marked along with an explanation in the narrative.

These vehicles will not be released until the victim/owner obtains a release from the Police Department.

c. If the owner of the vehicle is unable to prove ownership to the tow agency, they will be referred to the Santa Ana Police Department and a release will be issued once ownership is established.

d. If a registered owner is unable to retrieve their vehicle from storage, a vehicle authorization form shall be provided by the Contractor to the person authorized to pick-up the vehicle. The authorized recipient, on behalf of the registered owner, will be required to provide identification for the Contractor to photocopy (front/back).

10. When a vehicle is impounded, the towing company will place the word "hold" or other similar notation on the windshield of the vehicle. This is to minimize unauthorized contact with the vehicle and to provide control measures to prevent the inadvertent release.

    a. The responsibility for determining and placing the word "hold" or other similar notation on the windshield of the vehicle will be the responsibility of the Contractor at the time of vehicle possession. The Contractor's employee signature on the storage/impound report will acknowledge an understanding of the type of report completed by the officer and any necessary holds. The Contractor should clarify any misunderstandings or omissions on the report at this time.

11. Vehicles towed or stored with an "evidence hold" shall not be touched, moved or tampered with in any manner without the written consent of the City's Project Manager or designee.

12. The Contractor agrees to tow and store vehicles taken pursuant to an "evidence hold" as defined in CVC §§ 22655.5 or 22655(a) without charge to the City and agrees to release the vehicle to the owner at the City's request. Unless waived in whole or in part by the City's Project Manager, the tow company may pursue collections from the registered owner for these charges but shall not exceed the cost of the tow and storage fees for a maximum of thirty (30) days. Furthermore, the Contractor may attempt to collect these fees, or make arrangements to collect these fees, at the time of release but shall not hold the vehicle in lieu of payment unless specifically authorized by the City's Project Manager or designee.

13. In any case where the Police Department inadvertently and/or erroneously causes the impound or storage of a vehicle, or fails to properly notify the owner in a timely manner, the Contractor agrees to release the vehicle at the request of the City's Project Manager or designee and waive all fees or charges associated with the tow.

14. Any personal property released from a vehicle shall occur at the business office or primary storage facility and shall require authorization from the Police Department. All property shall be released pursuant to CVC § 22851(b) and CVC § 22651.07. Personal property includes any property not affixed to the vehicle (e.g. clothes, cell phones, papers, pull-out / detachable face radios, etc.)

J. CUSTOMER SERVICE

Contractor shall provide service which is accessible, courteous, responsive, timely, equitable and given in the spirit of professionalism and mutual respect. Contractor's personnel are a reflection of the City of Santa Ana and, as such, are expected to:

1. Interact with customers and City officials, whether in person or on the phone, in a pleasant, respectful and professional manner.

2. Give full attention to each customer's needs by asking questions. Provide information, products and service in an accurate, organized and complete manner. Determine that the customer's request has been fulfilled.

3. Maintain a professional demeanor at all times that is free from rude, discourteous or harassing behavior.

4. Comply with all federal, state, county, and city laws and regulations.

5. Use adequate equipment that is kept clean and neat at all times.

6. Train other Contractor employees to be polite and courteous during public contact.

7. Employ truth and accuracy in reporting customer service records.

K. RATES AND FEES

Notwithstanding other provisions of this agreement related to rates and fees, the Contractor agrees to comply with the following provisions as they relate to rates and fees charged in accordance with this agreement:

1. For services provided pursuant to this Agreement, the Contractor shall collect towing, storage and other service fees from the vehicle owner at the time of release. Said fees shall comply with the Santa Ana Police Department's Towing and Storage Fee Schedule, attached hereto as Exhibit B, and incorporated by this reference.

2. The Contractor acknowledges that the fee schedule is intended to list the maximum amounts for services rendered but nothing in this Agreement shall preclude the Contractor from charging less than the maximum fee allowed.

3. Nothing shall prohibit a Contractor from sending a Class B, C or D tow truck to a call requiring a lighter class tow truck to perform requested services. However, the Contactor acknowledges that fees may only be charged for the class necessary to perform the requested services and not necessarily for the class of tow truck dispatched to the call.

4. No fees may be charged for personnel, equipment or services reasonably necessary to perform the required service.

5. No lien shall be placed on the vehicle for services performed or initiated, and subsequently cancelled on-scene by the Santa Ana Police Department, unless the Contractor has presented a written statement to the vehicle's registered owner or agent for the signed authorization of services to be performed pursuant to Civil Code § 3068(a).

    a. The Contractor shall not attempt to take possession of a vehicle in order to establish a lien for any services performed or initiated and subsequently cancelled.
    b. The Contractor shall not bill the City of Santa Ana or Santa Ana Police Department for any services performed or initiated, and subsequently cancelled by the department. However, in such cases, the incident shall not be considered a rotational call and the Contractor shall be returned to the top of the rotation list.

6. The Towing and Storage Fee Schedule shall be posted in the business offices, storage facilities and tow trucks pursuant to CVC § 22651.07.

7. Rate adjustments may be considered based on the criteria set forth in this Agreement.

8. Contractor's failure to comply with the Towing and Storage Fee Schedule shall be subject to disciplinary action.

9. The Contractor shall not seek payment from the City of Santa Ana for services provided pursuant to this Agreement. However, the City shall be responsible for the following charges ordered by the City pursuant to this Agreement:

    a. Collision cleanup as outlined in this Agreement;
    b. Other services authorized by the City's Project Manager prior to the performance of said duties.

L. MISCELLANEOUS PROVISIONS

1. The Contractor shall have a Carrier Identification and a valid Motor Carrier Property (MCP) permit, which shall be provided to the City's Project Manager or designee. The expiration or suspension of the MCP shall result in immediate suspension from the rotation list as well as possible disciplinary action.

2. There may be times when the Contractor comes across a vehicle blocking the roadway although not assigned to the call or next on the rotation list. At the discretion of the officer at the scene, the Contractor may be directed to assist in moving the vehicle to the side of the roadway only. This service shall be provided without cost to the City or vehicle owner, and shall not affect the Contractor's position on the rotation list.

3. The Contractor shall be held accountable for all vehicles, personal property and vehicle accessories once the vehicle is in the possession of the driver and/or stored at their facility. The Contractor agrees to relieve the City, its officers, agents and employees of all responsibility once the vehicle is in the custody of the Contractor.

4. There shall be no photography or video recording at the scene of a tow or collision by the Contractor or any employee unless directly related to the towing operation. Photographs or video recordings shall only be directed at vehicles or the area immediately surrounding the vehicle but in no case shall capture any image of a person(s) injured or killed at the scene.

5. The Contractor, nor any employee of the Contractor, shall accept from any person or offer a gratuity to any member of the City in violation of CVC § 12110(a) and the City's gift ban ordinance.

6. The Contractor shall remain in compliance with CVC § 10652 as required.

7. Due to the negative perception of Private Party Impounds (PPI's) and the nexus to predatory towing practices, whether actual or perceived, the City of Santa Ana and the Santa Ana Police Department have an interest in ensuring any Contractor working on its behalf is not associated with these practices. In addition, tow companies that engage in PPI's are subjected to complaints and investigations on a more frequent basis than those that do not participate in this facet of the towing business. Therefore, the City strongly discourages any Contractor assigned to the rotational tow list from engaging in PPI's within the corporate limits of the City of Santa Ana. Subject to the investigative process outlined in the RFP, any company found to be in violation of PPI regulations including, but not limited to, applicable sections of CVC § 22658 or any other laws or regulations associated with PPI's shall be subject to suspension or immediate removal from the rotation list for sustained complaints or convictions for violations of the law.

M. UTILIZATION OF DISPATCH AND TRACKING SOLUTIONS SOFTWARE

The City uses Dispatch & Tracking Solutions (DTS) software for its rotational towing administration. The Contractor shall agree to utilize the most recent, updated, upgraded Dispatch & Tracking Solutions software program (DTS), or any other software solution selected by the City, to dispatch and track tow activity via a web-based Internet connection. All tow requests originating from the Santa Ana Police Department may be made utilizing this program. The Contractor's failure to have the DTS program in full operation and to acknowledge tow requests in a timely manner pursuant to this RFP shall result in a finding of default and shall result in immediate suspension from the tow rotation list. Failure to remedy the problem shall be grounds for the termination of the agreement between the City and the Contractor.

The Contractor must be willing to must enter into a separate agreement, contract, or license for DTS software, or any other software solution implemented by the City, with the owner of that proprietary software. The City shall not provide the software program, any licensing or sub-licensing thereof or any intermediary services for the procurement by the Contractor of the software program. This Contract shall not be executed by the City until the Contractor has demonstrated to the City's Project Manager or designee satisfactory compliance with the requirements set forth herein. The Contractor shall be liable for all fees, charges, rates and service charges required for the procurement and use of DTS software or any similar software solution.

If the City should elect to use a different program than DTS at some point in the future, the Contractor agrees to comply with the above requirements as it relates to the new software solution after provided reasonable notice by the City and sufficient opportunity to procure said software program.

N. RESPONSIBILITIES WHEN RESPONDING TO CALLS FOR SERVICE

1. When the Contractor is called to the scene of a vehicle tow or a collision scene, the Contractor's employee will clean-up all debris at the scene in accordance with CVC § 27700 without charge to the City.

    a. If this service does not result in a vehicle tow, it shall not be considered a rotational call and the tow company shall be placed back on the top of the rotational tow list.
    b. Police employees should not call a rotational tow to the scene of a collision for the sole purpose of cleaning up debris. However, should this occur or become necessary, the Contractor may bill the City for the cost of the response in accordance with the City's Towing and Storage Fee Schedule.

O. PERFORMANCE DURING INCLEMENT WEATHER OR DISASTERS

1. The Contractor acknowledges that the services provided under this contract are integral to the operations of the City of Santa Ana and the Santa Ana Police Department. Therefore, the Contractor agrees to perform the duties of this contract regardless of weather or other adverse conditions including, but not limited to, any disasters whether man-made or acts of God.

2. During periods of inclement weather or disaster, the Contractor shall agree to adjust staffing levels to meet the increased demands for service during these times.

3. Should the Contractor be unable to fulfill their responsibilities under the conditions described in this section, the Contractor shall be responsible for any and all costs incurred by the City should the need to hire outside contractors become necessary to meet the needs of the Police Department due to the Contractor's default.

P. PROTECTION OF THE PUBLIC AND DAMAGES TO EXISTING STRUCTURES

1. The Contractor shall exercise due care and caution at all times for the protection of all persons and property. All fines, penalties and/or repair charges resulting from the Contractor's actions shall be the sole responsibility of the Contractor.

2. Understanding that the Contractor will respond to calls involving traffic collisions or traffic hazards, and pursuant to CVC § 22513, the Contractor shall only place or use equipment to block vehicle traffic lanes or render assistance to a motorist while exercising due care for the safety of the tow truck driver, the motorist and the motoring public. Tow truck drivers should be trained in scene management in accordance with this section. The Contractor shall ensure that all appropriate traffic safety warning devices are utilized as deemed necessary.

3. Contractors will be required to respond to calls where vehicles have collided with other objects and may have already caused damage to varying degrees. The methods proposed by the Contractor for towing and recovery services shall be reasonable and consistent with industry standards, best practices, and in a manner that shall not cause unnecessary additional harm, deface or damage any City or private property. In the event that damage to the City's right-of-way or private property has occurred due to the negligence of the Contractor, the Contractor shall be solely responsible for its repair or replacement in excess of the amount covered by the required insurance.

Q. SPECIFICATIONS

This Scope of Services is intended to cover all labor, material and standards of workmanship to be employed for in this work plan or reasonably implied by terms of same. Work or materials of a minor nature which may not be specifically mentioned, but which may be reasonably assumed as necessary for the completion of this work, shall be performed by the Contractor as if described in the specifications.

R. RECORDS

1. The Contractor shall keep accurate records concerning all vehicle tows, vehicle storages and vehicle releases or disposition.

2. In addition, the Contractor shall maintain accurate records of his/her employees or agents and provide the City with names and telephone numbers of emergency contact employees.

3. The Contractor shall complete a report each calendar month indicating the number of calls for service, the number of vehicles towed, the number of vehicles in storage (regular and secure) and their current status, vehicles released, vehicles sent to lien sale, the status of any other vehicles or services rendered by the Contractor on behalf of the City, GPS information (if requested by the City) or any other information as may be required by the City's Project Manager or designee.

4. A phone log will be submitted monthly of all calls from the Santa Ana Police Department to the Contractor, identifying whether or not those calls required a request for service, and a description of the action taken as a result of the call.

5. The Contractor shall provide monthly customer service phone logs from the public, indicating name, date, time and phone number of caller, reason for the call, any specific requests, the Contractor's response or action, and the amount of time required to address request. Such logs shall be accurate and truthful.

6. The Contractor shall permit the City to inspect and audit its books and records regarding City provided services at any reasonable time.

S. AUDITS AND INSPECTIONS

The Chief of Police or his designee shall conduct regular audits and inspections of the Contractor(s) assigned to this project to ensure they are fulfilling their responsibilities in accordance with the terms and conditions of this agreement. All work found during such audits or inspections to be substandard or failing to conform to the requirements of this agreement shall be corrected immediately by the Contractor and the City shall have the right to immediately suspend the Contractor from the rotation list until the

issue(s) is/are corrected. Failure to correct in a reasonable timeline as outlined in this Agreement may result in termination of the contract.

T. INVESTIGATION OF COMPLAINTS, LAWS, RULES, OR TERMS AND CONDITIONS OF AGREEMENT

Whenever a complaint or allegation is lodged against a Contractor or initiated by the Police Department, the Traffic Commander shall assign a supervisor from the Traffic Division to investigate any allegations. A fair, impartial and comprehensive investigation shall be conducted and the findings documented for review. To the extent required by law, the Contractor shall cooperate fully in the investigation and provide any documentation requested by the investigator to assist in making a finding. In addition, the Contractor shall be given the opportunity, either orally or in writing, to respond to the complaint at the point deemed appropriate by the investigator. The City expects that the Contractor will demonstrate professional business practices and truth in reporting as it relates to any records or information requested.

Minor infractions shall include, but not be limited to, situations such as poor customer service, failure to comply with non-safety related terms of the agreement, or minor equipment or facility deficiencies. Major infractions shall include, but not be limited to, situations involving honesty, integrity, safety, security, gross overcharging of a customer or a pattern of overcharging, failure to comply with the provisions of CVC § 22658 as it relates to PPI's, criminal violations (moral turpitude, DUI, drug related offenses, theft, etc.), or significant, repeated or flagrant violations of this agreement.

If it is determined that criminal charges are appropriate, the assigned investigator shall document the incident on a crime report and present the case to the appropriate prosecuting authority for review.

Based on the nature and seriousness of the misconduct being investigated, the Chief of Police may temporarily suspend the Contractor, or its agent individually, from the rotation list until the investigation is completed and a proper disposition is reached.

The standard for sustaining a complaint against the Contractor or the Contractor's agent shall be a preponderance of the evidence, regardless of the nature of the violation. Other investigative findings may include unfounded (false or factually incorrect), exonerated (action occurred but was lawful or within the terms of this agreement) or not sustained (inconclusive due to insufficient evidence or independent witnesses).

All complaints shall be forwarded to the Traffic Commander for review, approval and determination/recommendation of discipline if appropriate.

U. DISCIPLINARY ACTION

The Contractor agrees that failure by the Contractor, or its agent, to comply with the law or terms and conditions of this agreement shall be cause for administrative disciplinary action. However, nothing in this agreement shall preclude the City from taking appropriate enforcement action for violations of the law. Within 60 days of receipt of the complaint, the Traffic Commander shall review the findings of the investigation and recommend disciplinary action if appropriate. The Traffic Commander shall take into account the nature of the complaint, the findings of the investigation, past complaints against the Contractor and past practice of the Department to maintain equitable treatment of all Contractors assigned to the rotational tow list. Depending on the nature and complexity of the sustained violation, the Traffic Commander may allow the Contractor or designee to provide a brief written statement for consideration and/or may contact Contractor to ask additional questions.

Disciplinary action shall typically be progressive in nature and based on the Contractor's record during the previous five (5) years from the date of complaint. Therefore, multiple infractions for similar offenses, regardless of their severity, will result in increased disciplinary action. However, this does not preclude the Traffic Commander from recommending more serious sanctions where major rule violations have been committed or there are aggravating facts associated with the misconduct.

The following actions may be recommended:

1. No further action.
2. Issue a written warning.
3. Impose a suspension for minor violations (one (1) to 30-days).
4. Impose a suspension for multiple minor violations or a single major violation (30 to 90-days).
5. Termination of the contract for cause and immediate removal from the rotation list.

The Contractor shall be notified in writing of the City's intent to impose disciplinary action. The Traffic Commander shall have the authority to impose discipline up to and including the imposition of a suspension for minor violations as long as the suspension does not exceed 30-days in length. However, nothing in this article shall preclude the Traffic Commander from reducing the recommended discipline based on mitigating facts. Recommended suspensions exceeding 30-days in length or termination from the rotation list shall be approved by the Field Operations Bureau Commander prior to imposition.

The Traffic Commander may recommend to the Chief of Police the immediate termination of this agreement if the conduct of the Contractor, or agents, are determined to pose a danger to the public, have an excessive number of complaints

that tax the investigative resources of the Police Department, or the Contractor's actions reflect negatively upon the City.

V. RIGHT TO APPEAL

Upon receipt of a notice to impose disciplinary action, the Contractor shall have the right to submit a written appeal within ten (10) business days to the Field Operations Bureau Commander.

The Field Operations Bureau Commander shall issue their findings in writing within ten (10) business days of the receipt of written appeal. If the Contractor disagrees with the findings of the appeal, their final remedy shall be the opportunity to submit a written appeal to the Chief of Police within ten (10) business days, via the Traffic Commander. The Chief of Police shall issue a written decision within (10) business days. The decision of the Chief of Police shall be final.

Disciplinary action shall not be imposed until the hearing and appeal process has been exhausted. However, if the conduct of the Contractor is deemed to be so egregious or poses a danger to public safety, the City may exercise its right to immediately suspend the Contractor as set forth in this agreement. In such cases, the time during which the Contractor is suspended may be applied to the balance of a suspension imposed by the City, at the discretion of the hearing officer, and shall be the Contractor's only remedy as far as a pre-hearing suspension is concerned. Any time in excess of that credited toward an imposed suspension shall be lost. Failure to request an appeal, submit a written appeal, or appear at a mutually agreed upon hearing will waive the Contractor's right to further appeal and disciplinary action shall be imposed.

W. SUPERVISION OF CONTRACT AND MEETINGS WITH CITY

All work shall meet with the approval of the Santa Ana Police Department. As determined necessary by the City, there shall be a minimum of one monthly meeting with the Contractor and the City representative during the first year to determine progress and to establish areas needing attention. Status reports of activities performed by the Contractor will be submitted in writing to the City on a monthly basis or as determined necessary by the City.

Any specific problem area which does not meet the conditions of the specifications set forth herein shall be called to the attention of the Contractor and if not corrected immediately, or within a reasonable period, may result in the Contractor being found in default of this agreement, which may result in suspension from the rotation list until the issue(s) is/are corrected in a satisfactory manner as set forth in the specifications or termination.

X. MATERIALS AND EQUIPMENT

The contractor shall make a reasonable effort to purchase equipment and materials in the City of Santa Ana and to utilize Santa Ana vendors. Contractor shall report its efforts as requested by the City.

Y. DEFINITIONS

1. **City** – shall mean City of Santa Ana and representatives of the City of Santa Ana (e.g. Police Department or its agents).

2. **City's Project Manager** – shall be synonymous with the Traffic Commander for purposes of this project.

3. **Contractor** – shall mean any towing company submitting a response to this RFP and selected to perform services for the City on the Rotational Tow List, and shall include all employees or agents of said company.

4. **Inclement Weather or Disasters** – any adverse weather or environmental conditions, regardless of severity or duration, which places an increased demand or strain on public services, including tow operations, whether man-made or acts of God.

5. **Street** – all paved dedicated public rights-of-way within the existing or future City limits.

6. **Public Property** – any property under the control and direction of the City of Santa Ana or any other government agency within the corporate limits of the City of Santa Ana or State of California.

7. **Private Property** – any property that is privately owned or held by someone other than a government agency.

EXHIBIT B

FEE SCHEDULE

AUTHORIZED TOWING AND STORAGE FEE SCHEDULE*

Service	Fee
Stored Vehicle Release Fee (PD)	$75.00
Class A	$195.00
Class B or Flatbed	$225.00
Class C	$325.00
Class D	$360.00
Dolly, Go-Jacks or Linkage Fee	$60.00
Rollover or Winching Fee	$130.00
Clean-up Fee (fee to City capped at $35.00 per occurrence)	$60.00
Hazmat Fee (per five (5) gallon bucket)	$115.00
Vehicle Storage Fees (Daily)	
Class A – Outside	$55.00
Class A – Inside	$60.00
Class B – Outside	$60.00
Class B – Inside	$65.00
Class C or Class D – Outside	$65.00
Class C or Class D – Inside	$70.00
After Hours Release	50% of the authorized towing charge
Minimum Service Call or Drop Fee	50% of the authorized towing charge
Lien Sale	As authorized by the California Civil and Vehicle Codes
Mileage (per mile outside the corporate city limits)	$9.00

* Fees indicated herein will become the City's maximum authorized rates effective at the time of contract implementation; minimum 1 hour.