

**PROFESSIONAL SERVICES AGREEMENT
FOR
TOW AND VEHICLE STORAGE FACILITY MANAGEMENT**

This Municipal Tow Manager Agreement (this "Agreement") is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City") acting by and through its City Manager and by URT United Road Towing Inc., d/b/a UR Vehicle Management Solutions and URVMS (hereinafter referred to as "Contractor"), both of which may be referred to herein collectively as the "Parties."

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings as set out below:

"Chief" shall mean the Chief of Police of the San Antonio Police Department.

"City" is defined in the preamble of this Agreement as the City of San Antonio, Texas, a Municipal Corporation incorporated in accordance with the laws of the State of Texas.

"City-Owned Police Vehicles" shall mean vehicles having a gross vehicle weight equal to or less than 10,000 pounds which are owned, leased or in the custody of the City of San Antonio. Such vehicles may be operated during all times of the day or night.

"City's Dispatch System" shall mean the City's Computer Aided Dispatching (CAD) system Police Department Dispatch/Communication System.

"City's Request for Proposal" shall mean the Request for Proposal for Tow and Vehicle Storage Facility Management Services Contract issued by the City on December 6, 2023, Exhibit VII.

"City Streets" shall mean any street located in the City of San Antonio, not including major highways.

"City's Vehicle Storage Facility or VSF" shall mean 3625 Growden Road, San Antonio, TX 78227 or any other location(s) that may be designated by the Chief during the term of the Agreement, including the City's secondary Vehicle Storage Facility located at 442 9th Street, San Antonio, TX 78215. Both locations are specifically shown in Exhibit I.

"Consent tow" shall mean any tow of a motor vehicle initiated by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle. The term does not include a tow of a motor vehicle initiated by a peace officer investigating a traffic accident or a traffic incident that involves the vehicle.

"Contractor" is defined in the preamble of this Agreement as URT United Road Towing, Inc. d/b/a UR Vehicle Management Solutions and URVMS and includes its successors.

"Contractor's Dispatch System" shall mean the automated system as generally described in Exhibit II that allows Contractor to receive requests for Wrecker Services from City and to dispatch Equipment to the designated location. Contractor's Dispatch System must be compatible with City's dispatch system.

"Contractor's Operations Plan" shall mean the written plan submitted by Contractor to City in accordance with City's Request for Proposal.

"Courtesy Tow" shall mean the towing of legally parked vehicles, at no charge to the vehicle owner and at the direction of City, for the purpose of clearing an area for special events, construction or other occasions as determined by City.

"Department" shall mean the San Antonio Police Department.

"Dispatched Location" shall mean the location provided by City to Contractor where Wrecker Services are to be initiated under this Agreement.

"Equipment" shall mean vehicles, associated tools and materials needed to perform services in accordance with this Agreement.

"Hazardous Materials" means any material defined as a hazardous substance, hazardous waste or a hazardous material by state or federal law, and as described in Exhibit VI.

"Hazmat Services" means containment, removal and proper disposal of potentially hazardous and non-hazardous materials that are spilled on public rights-of-way as a result of traffic accidents or other traffic related incidents, such as the release of oil, fuel or hazardous or unknown materials or both, in reportable quantities. Hazardous Materials Remediation Services includes all activities that are incidental and necessary to effect containment, removal and proper disposal. HazMat requirements are generally described in Exhibit VI.

"Heavy Tows" shall mean the towing of a vehicle with a GVWR of over 25,000 pounds and may include large buses, trucks, trailers, and heavy construction equipment.

"Light Tows" shall mean the towing of a vehicle with a GVWR 10,000 pounds and may include automobiles, pickup trucks and small vans.

"Major Highways" shall mean IH 10, IH 35, US 281, US 90, IH 37, SH 151, Loop 410, and Loop 1604. (Does not include frontage roads).

"Medium Tows" shall mean the towing of a vehicle with a GVWR of 10,001 to 25,000 pounds and may include medium sized pickup trucks, buses, and recreation vehicles.

"Non-Consent Tow" shall mean any tow of a motor vehicle that is not a consent tow; however, expressly excluding private property impound tows.

"Personnel" shall mean employees of Contractor who are performing services under this Agreement.

"Police Special Vehicles" shall mean helicopters, Command Center, DWI command center; any police owned vehicle or vehicles in police custody with a GVWR over 25, 000 pounds.

"Response Time" shall mean the time in which the City requests "Wrecker Services" as defined below to a specified location, either through the City's Dispatch System or other resource, and the time Contractor's personnel arrives at that location with the requested equipment and prepared to perform "Wrecker Services." The agreed upon Response Time for this Agreement is twenty (20) minutes for Light and Medium duty tows, and forty-five (45) minutes for Heavy Duty tows.

"Response Time Performance Rating" shall mean the monthly percentage of total dispatched calls arriving at the directed location within the required Response Time as described in this Agreement. A satisfactory Response Time Performance Rating is ninety-five percent (95%) and is calculated by dividing the total number of Response Time Violations in the month by the total number of requests by City for Wrecker Services in that month.

"Response Time Violation" shall mean instances in which City requests "Wrecker Services" as defined below to a specified location and Contractor fails to arrive at the location prepared to perform "Wrecker Services" as defined below. Response Time Violations are subject to liquidated damages.

"Towing Operations" shall mean the detailed manner in which Contractor performs "Wrecker Services" as defined below including towing and recovery services (including heavy-duty recovery), impounding and releasing of vehicles to City's Vehicle Storage Facility. Such operations are generally described in Exhibit II. In all cases, Contractor shall ensure that it abides by detailed procedures accepted within the industry to ensure Contractor's best efforts to not damage vehicles in its possession.

"Wrecker Services" shall mean all labor, equipment (including tools) and material necessary for the prompt, reliable and efficient removal of motor vehicles from public streets, right of ways or other public property which are: 1) abandoned; 2) involved in a collision; 3) parked in

violation of law; and/or 4) are to be checked for evidence (including recovered stolen vehicles and vehicles belonging to individuals in the custody of the police). "Wrecker Services" includes all associated administrative services and the associated clean-up and/or containment of debris and materials, to include cleanup fluids from power unit and trailer operated power units, (Example: motor oil, diesel, reefer fuel tanks, hydraulic fluid from dump trailer power arm), materials, from accident scenes, City/State Rights of Way and private property. "Wrecker Services" explicitly excludes the towing of junked vehicles, pursuant to the City's nuisance abatement program contained in Chapter 19 of the City Code.

II. TERM

2.1 **Initial Term.** Unless sooner terminated in accordance with the provisions of this Agreement, the initial term of this Agreement shall be ten (10) years commencing on March 1, 2025 and terminating on February 28, 2035 (the "Initial Term").

2.2 **Renewal Term.** At the end of the Initial Term, City and Contractor may mutually agree to renew this Agreement for an additional two (2) five- year periods (the "Renewal Term") commencing on March 1, 2035 for the first renewal and terminating on February 28, 2045 for the second renewal. This Agreement shall be deemed to continue in full force and effect during the Renewal Term.

2.2.1 **Notice of Renewal.** Contractor shall give City written notice of its desire to have City exercise the Renewal Term at least sixty (60) days prior to the expiration of the Initial Term. City, in its sole discretion, may negotiate terms for such renewal.

III. SCOPE OF SERVICES

Tow Management Services

3.1 **Contractor's Rights.** City hereby grants to Contractor the right to provide and Contractor hereby commits to provide Wrecker Services and Hazmat Services pursuant to this Agreement at City's direction within the city limits of the City of San Antonio. City reserves the right to change the boundary lines of the City during the term of the Agreement. Such change shall be at the discretion of the City. Contractor's right to provide Wrecker Services is at the direction of City and is initiated through the Department's Dispatch Communication System or other means. The granting of this right by City does not guarantee Contractor any quantity of work or monetary gain. The Contractor, under this contract agrees to comply with all reasonable policies and regulations established by the Chief of Police or his authorized representatives.

3.2 **Subcontractor Requirement.** It is understood and agreed that no less than ninety-two and ninety-five hundredths' percent (92.95%) of the work performed under this Agreement shall be

performed by the number of subcontractors prescribed in Contractor's City approved SBEDA Utilization Plan. Such Plan may be amended upon the approval of both the Department and the City's Economic Development Department. Contractor shall provide the City with a signed copy of each written agreement between the Contractor and subcontractor prior to the utilization of subcontractor on this Agreement. Each approved subcontractor shall be obligated to perform services in accordance with the terms and conditions of the Agreement. Contractor retains full responsibility for acts of the subcontractor performed in furtherance of this Agreement. Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees. In no event may a subcontractor be in default of any contract with the City or be in arrears on payments in taxes or other fees or charges to the City, State, or any other political subdivision of the State of Texas. Additionally, no subcontractor shall have been previously terminated from any City contract or have pending litigation, claims, or debts which may adversely affect the ability to perform services under this Agreement.

3.3 Response Time and Response Time Performance Rating City and Contractor agree that the required Response Time for Wrecker Services performed under this Agreement are as follows for the first year:

- (a) Major Highways twenty (20) minutes
- (b) City Surface Streets twenty-five (20) minutes
- (c) Heavy Duty forty-five (45) minutes

Contractor shall maintain a monthly Response Time Performance Rating of ninety-five percent (95%) throughout the Term of this Agreement.

3.4 Towing Management. Contractor shall manage all non-consent towing services and operations for the City and ensure that Wrecker Services are performed to industry accepted procedures that achieve safety, reliability and the preservation of personal property in the possession or care of Contractor.

3.4.1 The City may, based upon need, request alterations to Contractor's approved Towing Operations Plan. Upon such request, the Parties agree to coordinate any such alteration to Contractor's Towing Operation Plan should the Parties agree that such alteration is necessary, beneficial and of no cost to Contractor.

3.4.2 The City may, based upon poor performance of Contractor, direct alterations to Contractor's approved Towing Operations Plan. Upon such

direction, Contractor agrees to alter the Contractor's Towing Operation Plan so long as such alteration is of no cost to Contractor.

3.4.3 Contractor shall maintain a local administrative office within the City of San Antonio city limits.

3.4.4 Contractor shall maintain a central dispatch facility within the City of San Antonio city limits.

3.5 Management Processes. Contractor shall have in place and make available to City prior to the commencement of this Agreement the following documented processes to manage and/or administer this agreement. The processes shall be approved by the City and include, but is not limited to the descriptions below.

3.5.1 Transition - The process shall establish a seamless integration to implement Contractor's management of City Wrecker Services and operations.

3.5.2 Operations - The process shall establish and maintain a method to conduct operations, including service categories, specific tasks for subcontractors, prime Contractor and subcontractors' staff assigned and to meet required response times during the term of this Agreement.

3.5.3 Monitoring - The process shall establish and maintain a method to ensure subcontractor compliance which shall include sanctions for contract, performance, service, staff, and/or equipment violations.

3.5.4 Complaint Resolution- The process shall establish and maintain a method to be used to address third-party complaints against the manner in which Contractor has provided services under this Agreement. Contractor shall use its best efforts to minimize complaints and resolve disputes with third-parties within sixty (60) calendar days. If sixty (60) calendar days has surpassed, Contractor will provide updated bimonthly status to City. Contractor shall notify City within twenty-four (24) hours of complaints and resolutions. Contractor shall provide a copy of any written complaints and any information and/or documentation relating to any individual complaint to the City. Should a complaint involve monetary damages in an amount less than FIVE HUNDRED DOLLARS (\$500.00), City's Police Chief may direct a resolution of such complaint. The Contractor shall also establish and maintain a method for complaints from Subcontractors to be addressed. Contractor shall provide a copy of any written complaints and any information and/or documentation relating to any individual complaint to the City.

3.5.5 Maintenance - The process shall establish and maintain a method to ensure maintenance of tow trucks and equipment throughout term of this Agreement which will identify proposed tasks and schedules that includes daily, weekly, monthly and annual maintenance to support the safe and reliable operation of towing equipment.

3.5.6 Training - The process shall establish and maintain a method to ensure all employees are qualified to perform Wrecker Services in a safe and efficient manner under this Agreement.

3.5.7 Safety - The process shall establish and maintain a method which provides a safe and healthy workplace and that minimizes on-the-job injuries by implementing safety standards based on applicable legal and voluntary codes, rules and standards.

3.5.8 Emergency- The process shall establish and maintain a method to ensure continued operations to include dispatch and Wrecker Services, in the event of an emergency such as declared disasters, evacuations, severe inclement weather or any other event deemed by the City, the City's Emergency Operations Coordinator, or the City Manager. The process shall also include coordination with SAPD Traffic Unit.

3.6 Reporting Requirements. Contractor shall report to City monthly activity of Wrecker Services performed under this Agreement to include the number of requests by performance rating categories for Wrecker Services made by City by, the number of dispatched vehicle responses by Contractor to City's requests, Response Times to City's request, the number of Response Time Violations by Contractor and any additional information as requested by City. All reporting shall be made electronically unless otherwise directed by City. All generated data, reports and invoices shall be capable of being submitted to City electronically via real time downloads. Such information may be requested by City on a daily, weekly, monthly, quarterly or annual basis. Additionally, Contractor is required to inform City immediately of any vehicle accident involving a towing vehicle operated by Contractor and provide status until resolution is made. City may consider the accident, and the surrounding circumstances, in reviewing Contractor's performance under this Agreement. Contractor shall maintain all financial and operational records directly related to, and limited to, performance under this Agreement in an accessible information management system and all such information shall be made available and accessible to City.

3.7 Intentionally Left Blank.

3.8 City's Performance Review. At any time, including weekly, monthly, quarterly or annually City may conduct a performance review of this Agreement. The information used in assessing Contractor's performance may include the information submitted by Contractor and any other information deemed pertinent by City. Contractor shall maintain all records and

documentation related to Wrecker Services and make immediately available to City upon request, during but not limited to performance reviews. At the end of each contract year during the term of this contract and upon termination of this contract, Contractor shall engage an independent certified public accountant, agreed to by City, to audit the accuracy of reported Tow Management fees and sales for the preceding contract year, during the term of the contract, and the current year, at the termination of this contract, in accordance with the Statement on Standards for Attestation Engagements, as well as any other standards that may apply.

Said CPA shall furnish, within ninety calendar days of the end of the contract year, a written report on agreed-upon procedures to City. The CPA must state in the report an opinion whether the Tow Management fees collected, as defined in the contract, and the amounts paid to City during the preceding year of the agreement are accurately stated.

It is agreed that audits are performed annually for performance review. Any other audit during any given year are for cause.

3.9 Information and Technology. Contractor shall use automated systems that shall be preapproved by City prior to the commencement date of this Agreement and which shall be implemented during a transition period determined by City that shall immediately precede the commencement date. Said automated system shall be compatible and interface with the City's Information Technology in the performance of Wrecker Services under this Agreement. Contractor shall implement and maintain, at Contractor's expense, sufficient hardware and software to provide the services outlined in this Agreement to interact with City's data systems as necessary to provide such services. Contractor will take all reasonable precautions to ensure the security of City's networks.

3.10 Downtown Vehicle Storage Facility. Contractor is required to have access to a licensed vehicle storage facility approved by the City within the City's downtown district, as defined in the City's Unified Development Code, that is capable of holding seventy-five (75) City dispatched vehicles at all times. Contractor must have access to facility for the duration of this Agreement. This location shall be the primary location for Central Zone parking violations and must be staffed and operated 24 hours a day.

3.11 Inspection of Facility. Contractor's Downtown Vehicle Storage Facility is subject to inspection by state, city, and county authorized health department officials, fire department, and other agencies relative to safety requirements. Contractor shall immediately notify Chief, in writing, of any notices of violations which are received during or in connection with inspections performed pursuant to this section 3.11. A copy of any such report received by Contractor shall be immediately sent to the Chief, unless the notice or report was generated by the San Antonio Police Department. City shall have the option to be present at all inspections and shall be given prior notice of inspections whenever possible within two (2) business days of inspection date.

3.12 Notice to City. If Contractor becomes aware of any condition in the Downtown Vehicle Storage Facility that is unsafe or unhealthy, Contractor shall immediately notify the Chief in writing. City shall also be notified within two (2) days by Contractor of any accident or safety hazard that occurs on the premises of the Downtown Vehicle Storage Facility. Contractor shall also advise City, in writing, of action Contractor has taken to remedy any safety hazard or other violation.

3.13 OSHA Compliance. Contractor shall provide access to the Downtown Vehicle Storage Facility to authorized representatives of the Secretary of Labor for the purpose of inspecting or carrying out any of the Secretary's duties under the Occupational Safety and Health Act (hereinafter referred to as "the Act") of 1980, as amended. Contractor is responsible for any violation of the Act or any regulation issued hereunder related to Contractor's activities under this Agreement and shall immediately remedy any conditions giving rise to such a violation. Contractor shall give City prompt written notice of any such violation. **CONTRACTOR SHALL DEFEND AND HOLD HARMLESS CITY FROM ANY FINE, PENALTY, OR LIABILITY IN CONNECTION WITH ANY VIOLATION OF THE OCCUPATIONAL SAFETY AND HEALTH ACT UNLESS SUCH FINE, PENALTY, OR LIABILITY SHALL ARISE FROM THE EXISTENCE OF A PREMISES DEFECT OVER WHICH CONTRACTOR HAS NO CONTROL OR DUTY UNDER THIS AGREEMENT.**

3.14 City's Access to Facility. In addition to any rights of access granted to City in this Agreement, City may at any time during the term of this Agreement, have access to Contractor's Downtown Vehicle Storage Facility for the purposes of inspection and to ensure compliance with the terms of this Agreement.

3.15 Towing Operations. Contractor shall operate and be capable of providing Wrecker Services in accordance with this Agreement twenty-four (24) hours a day, 365 days a year including weekends and holidays. Contractor shall ensure performance of Wrecker Services under the laws, regulations, orders, ordinances and guidelines of the State of Texas, Bexar County and the City of San Antonio. Contractor shall substantially comply with the Towing Operations described in Exhibit II. Such operations shall include, but are not limited to, the following:

3.16 Dispatching. Contractor shall be capable of receiving requests for Wrecker Services from City through City's Dispatch System or other means as required by City, on a 24 hour basis, 365 days a year and immediately dispatch the appropriate Equipment and Personnel to the directed location to perform Wrecker Services within the prescribed response time for each category.

3.16.1 Contractor's Dispatch System. Contractor's Dispatch System, shall be automated and shall enable Contractor to receive requests for Wrecker Services directly from City's Dispatch System or other resource that City deems

necessary, including but not limited to telephones, cell phones or other similar devices. Contractor shall ensure that Contractor's Dispatch System is seamlessly integrated to receive requests directly from City's Dispatch System and that Contractor's Dispatch System is compatible with City's Information Technology. Contractor is solely responsible for any costs incurred to achieve compatibility between Contractor's Dispatch System and City's Dispatch System and City's Information Technology. Contractor's Dispatch System shall be capable of dispatching Contractor's Equipment to an identified location promptly and efficiently. Contractor will provide P25 compliant radio communication capability between the San Antonio Police Department officers, San Antonio Police Department emergency communications and tow truck operators.

3.16.2 Dispatched Call Monitoring. Contractor's Dispatch System shall allow City personnel to view and monitor, through City's existing Information Technology, active dispatch requests, the location of Contractor's Equipment and the direction such Equipment is heading. This information shall be updated every thirty (30) seconds providing up-to-the-minute status of dispatched calls.

3.16.3 Backup Dispatch. Contractor shall have in place a dispatch system or procedure approved by City that will act as a backup system for such circumstances as when Contractor's primary Dispatch System is inoperable by no fault of the Contractor.

3.17 Contractor and Subcontractor's Personnel. Contractor shall supply all personnel or subcontractors as may be necessary to perform the required services of this Agreement. All personnel working under this Agreement shall be fully qualified and legally capable of performing their individual job duties, including possessing any necessary licenses or specialized training mandated by federal, state or local laws or regulations.

3.17.1 Incident Management Towing Operator's License. All drivers performing Incident Management Tows under this Agreement shall possess the required Incident Management Towing Operator's License in accordance with Texas Occupations Code, Title 14, Section 2308.153; criteria set forth by the Texas Department of Licensing and Regulation (TDLR) and shall maintain the required level of Continuing Education to renew such license annually. Upon request of City, Contractor shall provide proof of compliance which may include copies of such Incident Management Towing Operator's Licenses.

3.17.2 City Badging. Drivers performing services under this Agreement, including subcontractors must be badged by the City's Contract Towing Office prior to providing services. The City requires

the submission of an application for badge processing and shall coordinate with Contractor to ensure a timely badging process. Contractor is responsible for all costs associated with meeting badging requirements.

3.17.3 Employee Criminal Background Check. Contractor shall ensure that all employees performing under this Agreement are subject to criminal background and history checks, including fingerprint verification by the San Antonio Police Department. Prior to commencing Agreement services, all Tow Truck Operators shall be required to produce a statement from the San Antonio Police Department certifying that the driver is not a sex offender registered with the Texas Department of Public Safety and that the driver has never been convicted of any sexual offense or any offense against a child. Any costs associated with the performance of a criminal background check or the issuance of a license or permit in accordance Texas Administrative Code Ch. 60 Sections 60.40 and 60.41 shall be paid by Contractor.

3.17.4 Personnel. Contractor will maintain a process that supports fair hiring practices and screening of employment applicants.

3.18 Permission to Operate. Additionally, Contractor shall not allow a driver to operate under this Agreement if the wrecker driver:

(a) is under indictment, charged, convicted or granted deferred adjudication that did not result in dismissal of:

- criminal homicide
- murder
- capital murder

(b) manslaughter, but excluding criminally negligent homicide if under indictment, is currently on community supervision including, but not limited to probation and deferred adjudication, or has been convicted of any of the following:

- Any offense involving fraud or theft of more than \$750;
- Any offense involving the unauthorized use of a vehicle;
- Any misdemeanor or felony violation of state or federal laws regulating firearms;
- Multiple offenses involving violence to any person except conduct classified as no greater than a Class C misdemeanor offense under state law;
- Any offense involving prostitution or the promotion of prostitution;

- Registered sex offender;
- Any offense involving sexual assault, sexual abuse or indecency;
- Any offense within the last five (5) years involving the sale, manufacturing or possession of drugs; or
- Any offense after five (5) years involving the possession of drugs equaling:
 - More than four (4) ounces;
 - A felony offense of a controlled substance
- Any offense involving driving while intoxicated within five (5) years of the application date or more than one (1) offense involving driving while intoxicated, or a combination of driving while intoxicated and other drug or alcohol related offenses.

(c) is on probation, parole, or mandatory supervision for an offense noted herein;

(d) has falsified or materially altered or omitted pertinent information in any governmental record, including an application for wrecker driver;

(e) has been convicted of four (4) or more moving violations of the traffic laws of this state or any other state within the twelve (12) month period immediately preceding the date of application;

(f) any other job-related offense;

(g) has not met the requirements as set forth by federal, state and local rules and regulations;

(h) was suspended from operating prior to this contract with the City within three (3) years preceding the date of application;

(i) does not provide all the required information in the application or renewal and any documentation required to be provided with the application or renewal.

3.19 Training. Contractor shall provide training for all drivers operating under this Agreement.

3.19.1 Trainer. The Contractor may provide employees qualified to evaluate and/or train all drivers and making application to operate a tow truck or other recovery equipment, under this Agreement. Alternatively, the Contractor may, at its discretion and expense, have training of all personnel done through outside sources. Qualifications to operate in this capacity shall, at a minimum, be based on 5 years industry experience in a full and complete range of towing and recovery situations and certification from a recognized towing and recovery school or training class. Additionally, such employee(s) shall have a full and complete understanding of all administrative and operational areas of the current Agreement. Further, the Contractor assumes full and complete responsibility for documenting and evaluating all wrecker drivers' experience, ensuring their understanding, qualifications, and expertise in all areas of towing and recovery of vehicles to meet accepted industry standards. The Contractor shall maintain complete and current files on all drivers.

3.19.2 Driver. The training qualifications in Attachment A shall be included in the training and are considered minimum requirements to operate for each position listed including Light, Medium, Heavy Duty Drivers, and Supervisor/Incident Manager. The Contractor shall be responsible to ensure that any individual performing tow driver duties has received the training indicated within one month of hire. An additional 60-day extension will be allowed upon written request from the Contractor to the Contract Towing Office.

3.20 Equipment. Contractor shall provide all Equipment necessary to perform Wrecker Services. All Equipment shall be in good working order for the duration of this Agreement. Contractor shall supply, upon request by City, a list of Contractor Equipment inventory dedicated to performance of this Agreement. In addition, Contractor shall ensure that Contractor's Equipment meet the following minimum criteria:

3.20.1 Drivers. All drivers shall wear a reflective vest or reflective apparel at all times while working outside of the tow vehicle. Reflective apparel must meet the ANSI 107-2015 TYPE R - CLASS 3 requirements for high visibility safety apparel. During daylight hours, a fluorescent shirt may be worn instead of the reflective apparel, however, the fluorescent shirt must meet the ANSI 107-2015 TYPE R - CLASS 3 requirements for high visibility safety apparel. All wrecker drivers shall be required to wear clean clothes, be well groomed, courteous, well groomed, to wear company uniforms and openly display their current City and TDLR badges.

3.20.2 Vehicles. Contractor shall have immediate access to a sufficient number of light duty tow trucks, medium duty tow trucks and heavy-duty tow trucks necessary to perform under this Agreement. All of Contractor's vehicles shall be equipped with automated vehicle locator (AVL) devices and "real-time" global positioning systems (GPS) that will allow Contractor and City to monitor the location and direction of vehicles used to perform Wrecker Services. Such AVL and GPS systems shall be on and operational at all times that a driver is on-duty. No light and medium-duty vehicles used to perform Wrecker Services under this Agreement shall be older than fifteen (15) years, no heavy-duty vehicles used to perform Wrecker Services under this Agreement shall be older than fifteen (15) years or as exception is authorized by Chief of Police or designee and Contractor shall allow City access to inspect Contractor's vehicles or other Equipment upon request. All vehicles shall be equipped, at a minimum, with the following:

- Permanent labeling on each side door of the vehicle with the Tow Contractor's name and affiliation with City under this Agreement;
- Dollies;
- Motorcycle Slings;
- Tire Tools;
- 36" crowbar;
- Safety Chains/Straps;
- A four-way emergency flashing system and at least one flashing amber light (or other color permitted by State law) at least five (5) inches in diameter, capable of emitting light in a 360 degree radius, mounted high on the tow truck;
- A light mounted behind the cab of the tow truck capable of illuminating the area of the tow scene under dark or foggy conditions;
- Portable auxiliary brake lights, emergency flasher, turn signal, and taillight with protective pads/covers on the bottom, for use on towed vehicles;
- A warning alarm, clearly audible above the surrounding noise in the vicinity and designed to sound when the tow vehicle is shifted into reverse to signify that the vehicle is backing;
- A fire extinguisher with an Underwriter's Laboratory rating of at least 5B:C. Class B and C trucks shall carry fire extinguishers with a cumulative UL rating of at least 10B:C;
- A broom, shovel, container for accident debris, ten (10) pounds of

grease and fluid absorbent material, and any other equipment necessary to clean up an accident scene in accordance with state and local law;

- At least six (6) flares or other emergency reflective devices
- Tires, adequate in size and rating for the size and weight of the tow truck, with not less than 3/32nds inch of tread and mounted on rims secured with the manufacturer's recommended number of lug nuts;
- Two-way radio equipment or other electronic device capable of communicating with the Tow Contractor's dispatcher at all times. Such equipment shall be approved and licensed in accordance with federal law; and
- Any other equipment required by state law.

3.20.3 Portable Data Collection. Contractor shall, at its own expense and by the Effective Date of this Agreement, have the capability to collect all towing service record data electronically.

3.21 Towing of Vehicles Parked in Violation of the Law:

3.21.1 Downtown Parking. These vehicles will be towed to Contractor's Downtown VSF which will be located within the downtown area of San Antonio or as directed by San Antonio Police Department personnel. A drop fee is allowed whenever a vehicle parked in violation of the law is dropped.

3.21.2 City Facility Parking. A fee for towing of a vehicle improperly parked at the City parking facilities and lots will be towed to the City's Vehicle Storage Facility. May be charged as set forth in Section VI. A drop fee is allowed whenever a vehicle parked in violation of the law is dropped. No charge is allowed whenever a vehicle parked in violation of the law is dropped.

3.22 Relocation Tows. Upon direction of City through its police officers or employees, Contractor shall tow vehicles for accommodations of public utility work, parades or street closures, street construction, for actual or threatened riot or civil disorder and/or emergency situations. Courtesy Tows are exempted from the City's compensation under Article VII.

3.23 Stand-by Tow Services. Hourly rates may be utilized if authorized by the Chief of Police or designee. Stand by time initiates at arrival of wrecker.

3.24 Police Vehicles Consent Tows. Contractor shall ensure to response time for police vehicles tows is two (2) hours. If designated as a tow, response time must be within 30 minutes

(staff standing by or police officer). Contractor will ensure all Light-duty City Owned Vehicles (including motorcycles) shall be towed and no tires shall have any contact with the ground. Contractor will ensure all hybrid and electric City Owned Vehicles must be towed on a flat bed or roll back truck transport. Contractor will ensure specialized tows of SAPD vehicles and equipment include helicopters, SWAT trucks, Bomb trucks, Command Center and others as designated by the Chief of Police shall be towed within 45 minutes with proper equipment. Contractor shall complete tire changes, battery jumps, and inoperable light duty tows free of charge for all SAPD vehicles.

3.25 Vehicle Storage Facility. The City currently owns a Vehicle Storage Facility located at 3625 Growdon Road, San Antonio, TX 78227 and as more specifically described in Exhibit I. This location shall be the primary location for vehicle storage under this Agreement. The City may also instruct Contractor to tow vehicles to 442 Ninth St, San Antonio, TX 78215 as City's Evidence Processing Facility. The location of the City's Vehicle Storage Facility is subject to change over the life of the Agreement. It is agreed that Contractor will acquire a second Vehicle Storage Facility lot in a location mutually agreeable to City within the next five years or when requested by City with 120 calendar days' notice. City Manager has the authority to enter into any new Vehicle Storage Facility Agreement without return to City Council provided funding allocated and approved.

3.26 Prohibitions. In the performance of this Agreement, Contractor and Subcontractors shall be prohibited from the following:

- intentionally causing damage to the persons or property of others;
- acting or inferring that Contractor's vehicles are emergency vehicles;
- operating overhead emergency lights while en route to or from a tow scene;
- disobeying traffic control devices (traffic lights, stop signs, etc.);
- using any type of siren;
- soliciting of any kind related to vehicles towed under this Agreement;
- requiring the performance of repair work on a vehicle involved in an accident or breakdown in connection with providing Wrecker Services for such vehicle or limiting, in any way, a vehicle owner/operator's ability to have the vehicle towed to a destination of their choice;
- making any repairs or alterations to a vehicle other than necessary to perform the services wrecker services under this Agreement;
- towing any vehicle which is occupied by any person, except as specifically directed by a police officer;
- charging for services not performed or making duplicate charges for the same service or charge any fee in excess of those permitted

- under state law or this Agreement;
- using profane or obscene language which offends a customer or any other person;
- being verbally or physically offensive, abusive, disrespectful or discourteous to any customer, motorist, City employee or any other person;
- touching any customer, motorist, City employee or any other person;
- performing services under this Agreement while consuming, or while under the influence of drugs or alcohol;
- operating any vehicle or other equipment in the performance of this Agreement in a careless, reckless, or negligent manner;
- requiring any vehicle owner/owner's agent to make any statement or sign any document relieving the Contractor from responsibility for the condition of the vehicle or its personal effects prior to the owner's/owner's agent's inspection of vehicle or personal effects;
- own interest, whether controlling or otherwise in any Subcontractor under this contract or any auto body and/or repair shop during the term of the Agreement;
- not taking the vehicle to the directed location, but "stashing" such vehicle for any period of time.

Impound Services

3.27 Contractor shall:

- a) Provide sufficient staffing, equipment and materials necessary to provide efficient and timely services 24 hours a day, seven days a week, 365 days a year;
- b) Accept vehicles and miscellaneous property (e.g., stolen/found property, parts, etc.) from SAPD 24 hours a day, seven days a week;
- c) Inspect, document and list each vehicle's condition and any items that are visible and in plain sight inside of a vehicle;
- d) Take no less than four (4) photos of the entire vehicle at the time of impound;
- e) Maintain knowledge of current City tow fees;
- f) Ensure City tow fees are listed properly on the tow invoicing receipts;
- g) Use a formalized process to send notifications to vehicle and property owners, and legal lien holders, as required by law to owners and/or lienholders as required;

h) Have management processes in place in the following areas. The processes shall be approved by the City and include, but is not limited to the descriptions below:

h.1 Transition - The process shall establish a seamless integration to implement Contractor's management of City Vehicle Storage Facility Services and operations.

h.2 Operations - The process shall establish and maintain a method to conduct operations, including service categories, specific tasks for subcontractors, prime Contractor and subcontractors' staff assigned and to meet required response times during the term of this Agreement.

h.3 Monitoring - The process shall establish and maintain a method to ensure subcontractor compliance which shall include sanctions for contract, performance, service, staff, and/or equipment violations.

h.4 Complaint Resolution - The process shall establish and maintain a method to be used to address third-party complaints against the manner in which Contractor has provided services under this Agreement. Contractor shall use its best efforts to minimize complaints and resolve disputes with third-parties within thirty (30) calendar days. If thirty (30) calendar days has surpassed, Contractor will provide updated bimonthly status to City. Contractor shall notify City within twenty-four (24) hours of complaints and resolutions. Contractor shall provide a copy of any written complaints and any information and/or documentation relating to any individual complaint to the City. Should a complaint involve monetary damages in an amount less than FIVE HUNDRED DOLLARS (\$500.00), City's Police Chief may direct a resolution of such the complaint. The Contractor shall also establish and maintain a method for complaints from Subcontractors to be addressed. Contractor shall provide a copy of any written complaints and any information and/or documentation relating to any individual complaint to the City.

h.5 Maintenance - The process shall establish and maintain a method to ensure maintenance of tow trucks and equipment throughout term of this Agreement which will identify proposed tasks and schedules that includes daily, weekly, monthly and annual maintenance to support the safe and reliable operation of VSF equipment.

h.6 Training - The process shall establish and maintain a method to ensure all employees are qualified to perform impound/VSF Services in a safe and efficient manner under this Agreement.

h.7 Safety - The process shall establish and maintain a method which provides a safe and healthy workplace and that minimizes on-the-job injuries by implementing safety standards based on applicable legal and voluntary codes, rules and standards.

h.8 Emergency- The process shall establish and maintain a method to ensure continued impound/VSF operations in the event of an emergency such as declared disasters, evacuations, severe inclement weather or any other event deemed by the City, the City's Emergency Operations Coordinator, or the City Manager. The process shall also include coordination with SAPD Traffic Unit.

3.28 Storage Services – Contractor shall:

- a) Organize and maintain all vehicles in orderly rows to allow the safe movement of traffic and the safe delivery and removal of vehicles.
- b) Perform a physical inventory of the vehicles stored at the VSF, quarterly on a calendar-year basis.
- c) Cooperate with any investigation of citizen or Customer complaints and work with SAPD in good faith to resolve the complaints.
- d) Provide individuals who are attempting to claim vehicles with an escort to the vehicle, when needed, for the purposes of obtaining ownership documentation located inside the vehicle.
- e) Formalize and document a proper “Report of Damage or Loss” process.
- f) Provide and maintain a process which defines how “SAPD Hold” vehicles and/or property from crime scenes or pending investigation shall be processed to protect the integrity of the vehicle and its contents until the investigation is completed.
- g) Maintain the ability to process and secure a separate area within the VSF to properly store all vehicles and/or property that have had an "SAPD Hold" placed on them (i.e. to include but not limited to evidence from a crime scene, seized vehicles or one waiting for a search warrant).
- h) Ensure vehicles and property are preserved in a manner that prevents damage.

3.29 Release of Vehicles and Property – Contractor shall:

- a) Properly release vehicles to owners or legal lien holders twenty-four hours a day, seven days a week;
- b) Obtain proper documentation from owners and legal lien holders (i.e. to include a valid government photo identification card/driver's license, proof of ownership or authorization from the registered owner to claim, and proof of insurance) in order to release vehicle;
- c) Ensure all owners and/or lien holders pay all applicable fees (i.e. to include but not limited to towing, notification, impound and storage fees) except when SAPD provides a waiver of such fees;
- d) Prior to the release of a vehicle, ensure that all SAPD approved fee adjustments have been applied to the vehicle's record;
- e) Ensure signs inside and outside of the customer service areas of the VSF are in compliance with any State of Texas regulations pertaining to such placements.

3.30 Auction Services for Abandoned Vehicles – Contractor shall provide auction services and maintain processes which:

- a) Provide to SAPD a weekly motor vehicle auction listing for abandoned vehicles which have been impounded and have been deemed abandoned and eligible for public auction per Texas Transportation Code 683;
- b) Ensure public auctions are held at a frequency approved by the City;
- c) Allow the authorized SAPD designee, any time prior and up to the start of bidding, to withdraw any vehicle without accruing fees or expense charges for the purposes of utilizing the vehicle for law enforcement purposes. City ensures the vehicles will be returned to the Contractor for public auction once the City has deemed the vehicles no longer eligible for City use;
- d) Maintain a process, in accordance with City policy, to review certain criteria of all auction participants (e.g., age requirements, family, etc.) which prohibit participants from bidding and/or purchasing auctioned vehicles;
- e) Ensure that the auctioneer, if any, is licensed by the State of Texas as required by the Texas Department of Licensing and Regulation;
- f) Provide and maintain a timely notification process to send notifications of vehicles prior to auction.

- g) Seek out, develop, evaluate, and implement strategies to maximize the return on the sale of auctioned vehicles. Contractor shall advise SAPD of any new strategies that it intends to implement, prior to implementation. SAPD shall have the right to disapprove the use of said strategies;
- h) Contractor shall not knowingly permit the following persons to participate in bidding for a vehicle being auctioned or to purchase a vehicle that has been auctioned in connection with this contract: (1) any person under the age of eighteen years; (2) Contractor; (3) Contractor's employees; (4) spouses and family members to the third degree of consanguinity of Contractor's employees; (5) the vehicle storage facility subcontractors; (6) the vehicle storage facility subcontractor's employees; (7) spouses and family members to the third degree of consanguinity of the vehicle storage facility subcontractor's employees; (8) City's employees; and (9) immediate family members of City's employees.
- i) Contractor shall maintain, with input and direction from City, as needed, a list of prohibited buyers. Contractor shall not knowingly permit persons whose names appear on said list or their representatives to participate in bidding for a vehicle being auctioned or to purchase a vehicle that has been auctioned in connection with this contract.

3.31 Fee Collection – Contractor shall:

3.31.1 Provide a number of alternative means for Customers to pay fees, including cash, credit cards, Debit/ATM card with a valid ID card as proof of identity, and personal checks with valid ID card as proof of identity if verified through a check verification service provided by Contractor.

3.31.2 Provide a number of alternative electronic means, including but not limited to, Payment Card Industry (PCI) compliance Europay, Mastercard and Visa (EMV) capable credit card reader, check verification system, etc. for the payment of fees and services.

3.31.3 Provide all staffing, equipment and materials necessary to collect all revenue, perform a daily reconciliation, cash over/short report and prepare deposits for armored transport following proper reconciliation, internal controls and cash handling procedures.

3.31.4 Collect Impound Fees, Notification Fees, and Storage Fees as set by the San Antonio City Council, and not to exceed a maximum amount defined by State law, plus taxes in appropriate amounts. City reserves the right to make changes to these fees which may be approved pursuant to changes in State law governing such fees.

3.31.5 Collect Towing Fee (including but not limited to, hook-up, mileage, dollies

and/or special equipment) to be remitted to the City as identified on the TSR or by SAPD Designee.

3.31.6 For each vehicle sold at auction, collect the Auction Processing Fee and the Auction Proceeds (the bid amount).

3.31.7 Waive all fees for individuals whose vehicle was stolen and shall provide hardship grants annually waiving all fees for individuals whose household income is 250% of the Federal poverty guidelines (currently less than \$39,125.00 for an individual or \$80,375.00 for a family of four) as determined and approved by city. The cost of fee waivers shall be deducted from monies owed to the City under the Agreement.

3.31.8 Conduct Other Collection Activities, if requested to do so by City at any point during the term of this Agreement, subject to mutual agreement between City and Contractor as to the terms and scope of performance and based on data to be provided by City, if any.

3.31.9 Charge no fees to SAPD for City vehicles that may be placed in the VSF impound lot.

3.31.10 SAPD found property shall be processed with no charges to the SAPD.

3.31.11 Charge no storage fees while on hold for vehicles and property including vehicles and property SAPD may direct to be relocated from the impound lot.

3.31.12 Remit all taxes collected in a timely manner to the State (i.e. impound, auction and any other services where taxes are applicable).

3.31.13 Submit written requests for fee changes, identifying current and proposed fees and a justification for the request, to the City through SAPD Chief of Police. Requests to revise fees shall be subject to City approval. City Manager has authority to effectuate all amendments without the need for further council action.

3.32 VSF and Operations –Contractor shall:

3.32.1 Manage the day-to-day operations of the VSF, beginning at the Growdon Road entrance and any future VSF location and maintain and repair all structures on the property including, driveways, fences, lighting and paved/unpaved lots, as required or as directed by the SAPD designee;

3.32.2 Be knowledgeable of any new laws or directives that pertain to the storage, release and sale of stored vehicles.

3.32.3 Operate “Other Services” at the VSF in a manner which is efficient and business like as approved by SAPD.

3.32.4 Store only impounded vehicles, and other items, as authorized by the SAPD. The SAPD authorizes Contractor to store its equipment and other items utilized by Contractor to operate the VSF, at the VSF. Furthermore, SAPD authorizes the employees of Contractor to park their vehicles at VSF during business hours.

3.32.5 Provide all staffing, equipment and materials necessary to perform all work related to the receipt, impoundment and release of vehicles at the VSF. Such resources shall be provided in sufficient number to assure efficient and effective operations which result in:

- a) For no less than 90% of vehicles in any given calendar month, a maximum vehicle intake time of not more 15 minutes until the vehicle is ready to be stored in a space.
- b) Contractor will use commercially reasonable efforts, as agreed to by SAPD, to reduce waiting time for customers. Specifically, if a sudden influx of customers arrive at VSF and the release staff on hand are not able to make direct individual verbal contact with Customers within 15 minutes of arrival, Contractor’s employees from other departments, including the supervisor on duty will assist with releases.
- c) For no less than 90% of vehicles in any given calendar month, a maximum vehicle release time of not more than 30 minutes from the time the Customer appears at the counter until the vehicle is released to the customer subject to Customer cooperation and timely presentation of documentation necessary to identify Customer has right to possession of vehicle.
- d) For no less than 90% of vehicles in any given calendar month, provide individuals who are attempting to claim vehicles with an escort to the vehicle, when needed, for the purposes of obtaining ownership documentation located inside the vehicle within 30 minutes. Additionally, Contractor will outline in operational SOP how items removed from the vehicles will be handled in compliance with TDLR vehicle release requirements.

The provisions above may be reviewed by SAPD and Contractor.

3.32.6 Impound and release vehicles twenty-four (24) hours a day every day.

3.32.7 Provide the SAPD access to the VSF at all times.

3.32.8 Create, process and retain, as directed by SAPD, all administrative records, related to the receipt, impoundment, and release of vehicles to include the creation, processing and retention of records related to Towing Fees, as reflected on the TSR, to be collected by the Contractor on behalf of the City per Section IX., Records

Retention.

3.32.9 Send proper notices to owners and/or lien holders, as required, of said vehicles within 5 days of receiving the vehicle at the VSF. On the 10th day after first notification is sent, a notification of abandonment must be sent to owner and/or lien holders in the same manner per Transportation Code 683.

3.32.10 In processing releases, require documentation pursuant to City Code, Chapter 19, Section 19-54.

3.32.11 Coordinate with the SAPD when necessary in order to maximize customer service, safety and proficient services under this Agreement.

3.32.12 Coordinate with the SAPD on any and all requests received from other law enforcement agencies related to operations at the VSF and/or received/impounded vehicles.

3.32.13 Coordinate with SAPD any investigation of citizen or Customer complaints and work with City in good faith to resolve the complaints.

3.32.14 Provide an indoor, well- lit, climate controlled customer service area at the VSF in compliance with the Americans with Disabilities Act (ADA) requirements.

3.32.15 Provide a SAPD approved emergency and weather contingency plan.

3.33 VSF Personnel - Contractor shall:

3.33.1 Maintain a process that supports fair hiring practices and screening of employment applicants to include language services where requested.

3.33.2 Conduct complete criminal background checks to include fingerprinting and obtaining criminal background verifications from federal, state and local law enforcement agencies for all personnel.

3.33.3 SAPD must approve Contractor's documented process on Contractor's criminal background check and random drug testing processes.

3.33.4 For any of the offenses listed below, Contractor's employees cannot provide services pursuant to this contract if the Contractor's employee:

- a) Has been convicted of a felony or misdemeanor crime involving dishonest conduct or possession of illegal drugs;
- b) Is under indictment or has been convicted or granted deferred adjudication that has not resulted in a dismissal for the offense of criminal homicide, including murder, capital murder, and manslaughter, but excluding criminally negligent homicide;
- c) During the seven (7) years immediately preceding the criminal

history check, was convicted or granted deferred adjudication for the offense of criminal homicide, including murder, involuntary manslaughter, criminally negligent homicide, rape, sexual abuse, sexual assault, sale or possession of illegal drugs, robbery, or felony theft;

- d) Is under indictment or charged by information or complaint or convicted or granted deferred adjudication that did not result in dismissal for any offense involving fraud or theft, the unauthorized use of a vehicle, violation of any state or federal laws regulating firearms, violence to any person, except conduct classified as no greater than a Class C misdemeanor offense under state law, prostitution or the promotion of prostitution, sexual assault, sexual abuse, lewdness or indecency, the use, sale or possession of drugs, driving while intoxicated, or any job-related offense;
- e) Is on probation, parole, or mandatory supervision for an offense noted herein; or
- f) Has falsified or materially altered or omitted pertinent information in any government record.

3.33.5 Provide and maintain, at Contractor's own expense, all licenses, registrations, permits and authorization necessary for operating the VSF and public auction for all employees.

3.33.6 Ensure all personnel wear professional uniforms (i.e., company uniforms) and be well groomed and clean.

3.34 Property Management – Contractor shall:

3.34.1 Dedicate office space, for sole use of SAPD.

3.34.2 Be responsible for all maintenance of the VSF and repairs as required or as directed by the Chief or his/her designee except that any maintenance to the on-site water well will be conducted by the San Antonio Water System.

3.34.3 Ensure all parking areas remain clean, all parking spaces are clearly marked, all wheel stops are properly aligned and unbroken, and all handicapped and reserved parking spaces are used only by appropriate persons, by contacting the appropriate authorities.

3.34.4 Provide all janitorial services, including trash removal and disposal, at all buildings at the VSF.

3.34.5 Provide for the collection and disposal of all trash and debris on the VSF grounds and keep the grounds free of unsightly vegetation.

3.34.6 Provide extermination services to the interior and exterior of all buildings on site on at a minimum, a quarterly basis.

3.34.7 Keep the area in and around the water building free of debris and vegetation.

3.34.8 Provide public access to not less than two (2) Americans with Disabilities Act compliant portable restrooms, in the unsecured parking lot area of the VSF. Maintain and service the portable restrooms on a regular basis, as approved by the SAPD.

3.34.9 Contractor is responsible for the electricity and water expenses of the facility located on City owned property. The SAPD will invoice Contractor for payment to the SAPD. The water expenses include the operation and maintenance fees and expenses as assessed by San Antonio Water System.

3.34.10 Provide and maintain the Water Tank/Building at the City's VSF to include but not limited to providing potable water for personnel.

3.34.11 Restrict personnel from utilizing unpotable water for consumption or sanitization.

3.34.12 Replace the water filter (to include testing of the water) annually.

3.34.13 Maintain the water hydraulics and pump by a certified technician.

3.34.14 Refill the water tank when it has reached 500 gallons.

3.34.15 Power wash the inside of the water shed at a minimum of once a year.

3.35 Environmental Protection – Contractor shall:

3.35.1 Ensure a process to meet all of the requirements specified under Texas Pollutant Discharge Elimination System (TPDES) permit TXR05000 effective August 13, 2016 and as so outlined in City Code Chapter 34.

3.35.2 Maintain and address the replacement of the sand in the leaker row, at a minimum, quarterly.

3.35.3 Ensure access to the San Antonio Water System (SAWS) to the VSF to conduct sampling and analysis of well water.

3.35.4 Provide a documented process for the removal of all hazmat material.

3.35.5 Contractor shall indemnify the City, defend, and hold it harmless from and against all costs, claims, liens, damages, losses, expenses, fees, fines, penalties,

proceedings, actions, demands, causes of action, liability and suits of any kind and nature, (including reasonable attorney's fees) arising out of, resulting from, or relating to, directly or indirectly, the presence of Hazardous Substances in or about the VSF introduced by Contractor or its agents, employees, or invitees, and that violate Environmental Laws, specifically including toxic torts. However, Contractor is not obligated to remedy or indemnify, defend and hold the City harmless from and against any costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, (including reasonable attorney's fees and toxic torts) arising out of, resulting from, or relating to, directly or indirectly, the presence of Hazardous Substances in or about the VSF that existed at the VSF prior to Contractor's possession of the VSF. Attached hereto as Exhibit VI. are copies of a Phase I Environmental Site Assessment and Phase II Environmental Site Assessment, dated March 1, 2017, and performed by Raba Kistner Environmental, Inc. of San Antonio, Texas, evidencing the environmental condition of the VSF prior to Contractor's possession of the VSF.

3.35.6 "Environmental Laws" shall mean one or more of the following (i) The Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq. ("CERCLA"), (ii) the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq. ("SWDA"), (iii) the Federal Resource Conservation and Recovery Act of 1986 42 U.S.C § 6921 et seq., (iv) the Clean Water Act, 33 U.S.C. § 1321 et seq., (iv) the Clean Air Act, 42 U.S.C. § 7401 et seq., (v) any other federal or state law, ordinance, regulation, order or decree that relates to Hazardous Substances or regulated wastes, and (vi) any present federal or state regulation, ordinance, code, license, approval, order, decree, permit, authorization, Environmental Protection Agency requirement, or any state equivalent agency requirement, in each case concerning or relating to the handling, use, presence, production, operation, transportation, treatment, storage, labeling, testing, processing, discharge, disposal, release, control or clean-up of any Hazardous Substances or regulated wastes.

3.35.7 The Contractor shall make any regulatory claim, demand, notice of violation, or any letter or expression of environmental concern from an agency, immediately known to the City without delay. Contractor shall share with the City and provide written copies of any and all correspondence, studies, assessments, and expressions of professional opinion, written and unwritten, formal and informal that may be generated by an environmental agency as a result of any environmental agency inquiry, claim, enforcement action, or letter of concern. Contractor shall have no privilege to withhold any information from the City in this regard.

3.35.8 The Contractor shall particularly address storm water compliance requirements of both state and federal agencies, i.e., the Texas Commission on Environmental Quality (TCEQ) and USEPA (United States Environmental Protection Agency). Storm water management plans for the site shall be the

Contractor's responsibility, using BMP (best management practices) or other methods deemed necessary or suggested by regulatory guidance or as determined by the City's Environmental Services Manager in collaboration with the Drainage Utility Manager, to ensure compliance with the City's NPDES/TPEDS permit (National/Texas Pollution Discharge Elimination Systems permit). Specifically, Contractor agrees to employ at least the following BMP measures: (a) to segregate vehicles that are visibly leaking fluids, from other vehicles, by confining leaking vehicles to an area approximately 50' by 300', the run-off from which area may be addressed with either a berm or drainage containment, or both, at Contractor's discretion as may best inhibit run-off from the leaking vehicles; (b) no fewer than one time per month, sweep the entire premises to capture and legally dispose of sand, absorbent media, if any, and other debris; and (c) test storm water discharge quarterly.

3.35.9 Contractor shall be responsible, at its sole expense for responding, answering, and remediating any and all conditions so directed or demanded by a State or Federal regulatory agency arising from or related to the presence of Hazardous Substances in or about the VSF introduced by Contractor or its agents, employees, or invitees and that violate Environmental Laws. This remediation obligation shall survive until the expiration of the applicable statute of limitations.

3.36 Capital Improvement – Vehicle Processing Facility for Evidence

3.36.1 Contractor shall provide a Vehicle Processing Facility for Evidence at the VSF which shall be a fully enclosed workspace of sufficient size to store and process up to three (3) standard size automobiles at the same time.

3.36.2 The specific design options and features of the Vehicle Processing Facility, Contractor's acquisition process and cost impact to the City and the Contractor shall be determined and reviewed for acceptance by City and Contractor and in consultation with the SAPD.

3.36.3 The enclosed area should be approximately 75' by 30' and the Contractor shall include the following features:

- a) Secured and controlled access to the building by SAPD only;
- b) Three (3) large bay doors with automatic garage door opener for each;
- c) Garage openers must be installed in each bay;
- d) Concrete floor;
- e) One standard entryway door for foot traffic;
- f) Garage openers must be installed in each bay;
- g) Tool and bench storage to include electrical attached in each bay;
- h) 11' to 15' insulated ceiling;
- i) A built-in workstation in each of the four (4) bay areas along the 75-foot wall, to include storage above and below the counter;

- j) Adequate overhead and side fluorescent lighting, which will provide an even distribution of light throughout the entire interior of the facility;
- k) Electrical outlets: Four (4) dedicated circuits, 30 amps each; Five (5) 4-plug electrical receptacles evenly spaced along back wall; and three (3) 2-plug electrical outlets evenly spaced between counter and cabinets;
- l) Adequate climate control (heating and cooling) to maintain a comfortable indoor working environment;
- m) Built-in air exchange system, built to code requirements, to include explosion-proof exhaust fans for venting exhaust and chemical fumes;
- n) Sink area;
- o) Safety eyewash station meeting ANSI standard Z358.1-19-90;
- p) Pit in last bay area or an automatic vehicle lift for undercarriage inspections with safety railing separating pit area from other bays and foot-traffic areas. Tire guides, six (6) inches in height, shall be installed on the sides of the pit to safely guide vehicles being moved over the pit;
- q) Air compressor with one quick disconnect per bay;
- r) Air compressor must support the bays and the vehicle lifts; and
- s) Retractable fluorescent droplights from the ceiling above each bay area (four (4) total), and two (2) retractable lights in the pit area with safety cover.

3.36.4 All Capital Improvements to the VSF by Contractor (to the exclusion of computer software of Contractor that is proprietary) shall become the property of City.

3.36.5 City agrees to release a portion of Capital Expenditure Funds (CAPEX) for City approved and demonstrated capital expenditures.

3.37 Vehicle Storage Area for the SAPD Vehicle Processing

3.37.1 The vehicle storage area shall be adjacent to or in close proximity to the SAPD Vehicle Processing Facility and shall include:

- a) An area that shall accommodate up to 20 vehicles;
- b) An area that is covered and paved with asphalt or concrete;
- c) A fenced and secured area: The fence shall be eight feet in height, chain link, with locking gate(s), and with razor wire affixed to the top of the fence around the circumference of the storage area. Any proposed alternatives to chain link fencing will be considered and are subject to the approval of the City;
- d) Secured and controlled access to the storage area by authorized

- e) SAPD Forensic personnel only; and Maintenance for area around the SAPD Vehicle Processing Facility. Contractor is responsible for paying for trash collection and pest control.

3.37.2 Contractor shall maintain all records and documentation related to operations improvements of the City's VSF.

- 3.38 Information and Communications Technology – Contractor shall implement in accordance with Exhibit VIII. IT Statement of Work, and maintain an information management system that provides an effective and efficient process to intake, inventory and release impounded vehicles and can function and interface with current ARIES system, and any future replacement system which may be used by SAPD. SAPD will use its best efforts to assure that the future replacement software of SAPD is developed in "SQL" language. (See attached hereto Exhibit E, Contractor's IT Transition Period Plan.) Contractor shall:

3.38.1 Ensure all computers utilized at the VSF have internet access;

3.38.2 Provide and maintain all electronic data/information related to vehicle auctioned at the VSF;

3.38.3 Provide and maintain recorded images from the surveillance system daily for a retention period of ninety (90) days;

3.38.4 Provide and maintain a website which displays digital photos of high-value vehicles impounded/scheduled for auction. Display photos of vehicles on the website. Contractor and SAPD may modify requirements to increase auction sales when needed.

3.38.5 Provide a means for the City to access the information management system for the City's VSF to run administrative reports such as but not limited to inquiry on impounded vehicles, fees collected, date of notifications, lien holder, owner, date of auction, and inventory.

3.38.6 Provide a telephone system for the VSF and a separate SAPD phone line.

3.38.7 Any software required to use or integrate with the Contractor's system will be provided by Contractor.

- 3.39 Security.

3.39.1 Contractor will utilize industry leading methods to ensure VSF security including existing security lighting and surveillance.

3.39.2 Provide security measures to include surveillance to protect the vehicles at

the VSF, and ensure the safety of all persons visiting and/or working at the VSF.

3.39.3 Ensure security lighting, secured fence and video camera surveillance systems are operable at all times;

3.39.4 Provide SAPD with remote and physical access to the surveillance system at all times and retain recorded images for ninety (90) days unless otherwise directed by SAPD.

3.40 Performance Standards

3.40.1 Contractor shall provide and meet administrative and operational performance standards. The performance standards have been set to achieve a degree of accuracy and timeliness agreed upon by the City and Contractor. The parties agree that Contractor's failure to perform certain obligations under this Agreement during the respective time limits imposed will cause the City to incur cost and inconvenience not contemplated under this Agreement, which cost and inconvenience will constitute damage to the City and the public, that the exact amount of such damage will be extremely difficult or impractical to fix, and that actual damages that might be sustained by the City is uncertain and would be difficult of ascertainment. The City and Contractor agree that the amounts described as liquidated damages in this section of the Agreement are not penalties, but represent a fair and reasonable estimate of the damages that the City will incur by reason of Contractor's failure to perform, and are fair compensation to City for its losses. The City and Contractor have agreed upon performance standards as defined below to measure certain aspects of the Contractor's responsibilities.

3.40.2 The SAPD performance review format will be established within the first three months of the contract and will not change throughout the contract term. The Contractor and SAPD may agree to any and all future modifications. Each performance standard may be reviewed based on the frequency established below and no fines will be assessed in the same calendar month.

3.40.3 The total amount of liquidated damages that SAPD may collect under this Section 3.40.3 shall be no more than \$6,500.00 per review. Upon written notices from the SAPD of said violations, any assessed amounts shall be accumulated into the applicable compliance review. All fees may be collected as follows:

A) Environmental – Contractor shall meet the standards of the BMP with a score of 90% or above based on semi-annual performance reviews as described within section 3.7. of this Agreement. Should the performance review drop below 90%, the following liquidated damages will apply:

Environmental Review Rating	Liquidated Damages
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89% -80%	\$3,000.00
79% -70%	\$4,500.00
69 % - 60%	\$5,500.00
50% and below	\$6,500.00

B) Texas Department of Licensing and Regulation (TDLR) – For no less than 98% of vehicles in any given calendar month, notification requirements to vehicle owners and/or lien holders shall comply with all applicable laws and with section 3.26 (g) of this Agreement. The City may review compliance on a quarterly basis; should the performance drop below 98%, the Contractor will be assessed an amount of \$50 per occurrence.

C) Agreement – Contractor shall meet all the standards of this Agreement. Contractor shall achieve 90% or above on based on a score during an annual performance review. Should the performance review drop below 90%, the following liquidated damages will apply:

Performance Guarantees	Liquidated Damages
89% -80%	\$3,000.00
79% -70%	\$4,500.00
69 % - 60%	\$5,500.00
50% and below	\$6,500.00

3.41 SAPD Private Property Solution

3.41.1 Contractor shall provide and maintain a private property impound electronic web-based solution with public and City access.

3.41.2 Contractor's website shall be compatible with and accessible through a link from SAPD website.

3.41.3 The web-based solution shall be at no cost to the City, the public and to private non-consent tow companies reporting to SAPD.

3.42 Financial Management, Records, and Audit – Contractor shall:

3.42.1 Reconcile daily monies collected to daily vehicle release activities;

3.42.2 Reconcile monies collected on each auction sales activities;

3.42.3 Deposit all revenue collected on a daily basis using an armored transport service;

3.42.4 Maintain a separate bank account for all revenue and expenses related to the performance of the scope of services;

3.42.5 Not commingle funds from any other activity of Contractor;

3.42.6 Establish and maintain adequate records to accurately and easily reflect chain of custody of all received vehicles and property and all information pertinent to the receipt, impoundment, release, and auction of vehicles and/or property delivered to the City's VSF; and

3.42.7 At the end of each contract year during the term of this contract and upon termination of this contract, Contractor shall engage an independent certified public accountant, agreed to by City, to audit the accuracy of reported VSF fees and sales for the preceding contract year, during the term of the contract, and the current year, at the termination of this contract, in accordance with the Statement on Standards for Attestation Engagements, as well as any other standards that may apply.

3.42.8 Said CPA shall furnish, within ninety calendar days of the end of the contract year, a written report on agreed-upon procedures to City. The CPA must state in his report an opinion whether the VSF fees and sales collected, as defined in the contract, and the amounts paid to City during the preceding year of the agreement are accurately stated.

3.42.9 Financial Audit Report. As a service provider of City, Contractor's and Subcontractor's financial condition is pertinent to City's ability to serve the public at large. Within twenty (20) days of City's request, Contractor shall submit the financial statement audited by an independent certified public accountant in accordance with generally accepted auditing standards for the most recently completed fiscal year-end of its subcontractor. Contractor shall submit the audited financial statements and any management letter prepared by the independent Certified Public Accountant to both the City's Finance Department at P.O. Box 839966, San Antonio, Texas 78238-3966, and to the San Antonio Police Department at 315 S. Santa Rosa, San Antonio, Texas 78207. The City acknowledges Contractor deems Contractor's and Subcontractor's financial statements and other financial information submitted by Contractor pursuant to this section (the "Confidential Information") as confidential, private and that disclosure of the Confidential Information to the public would cause substantial competitive harm to Contractor. To the extent permitted by law, City agrees not to release or otherwise disclose the Confidential Information. In the event the City receives a request to release information that may include release of the Confidential Information pursuant to the Texas Public Information Act or other State, municipal or federal freedom of information act or law, City agrees to decline to release the Confidential Information for the purpose of requesting an attorney general decision in accordance with Government Code Section 552.305 of the Texas Public

Information Act or similar provision in any other applicable ordinance or law. The City shall notify Contractor of the request for the attorney general decision within ten (10) business days after the City received the request for information and provide Contractor a copy of the applicable written request for information.

3.43 Provide and Maintain a Database for VSF Operations

3.43.1 Impound Contractor shall provide and maintain a secure database for comprehensive weekly and monthly reporting to the City, which includes reports on numbers of tows by type (impound, abandoned, junked and no-charge) that can be downloaded for user-selected time periods, and shall track total storage times per vehicle.

3.43.2 The database shall be configured to allow sorting on variables including, at a minimum, the impounded or abandoned/ junked status of vehicles, dates of arrival, release, auction, and identifying information on vehicles.

3.43.3 The database shall include but is not limited to the following information for each vehicle processed:

- a) Make, model (including year, color, body style);
- b) Vehicle Identification Number (VIN);
- c) License Plate Number (LPN);
- d) When available, Owner's name, driver's license number, date of birth, address, and phone number;
- e) Reference to videotape index and footage, as appropriate to document any damage to and condition of the vehicle;
- f) Location where the vehicle was picked up, date (year, month, and day) and time of impoundment;
- g) Employee number of clerks performing impounds and release functions, date (year, month, and day) and time of release;
- h) Employee number of impounding tow truck operator;
- i) Employee number of officer requesting the impound, or employee number of abandoned vehicle unit employee requesting impoundment of Abandoned/Junked vehicle;
- j) Complete description of all unsecured property in the vehicle (to include passenger and cargo spaces);
- k) Vehicles sold at auction, including auction date, buyer's name, and sale price;
- l) Vehicles scheduled for sale at next auction, and auction date; and
- m) Offense report or incident number.

3.43.4 Database of information on towed vehicle data shall allow for real-time remote access.

3.43.5 Database information must be protected and in compliance with the Texas Business and Commerce Act, Section 521 in accordance with Sec. 521.052 of the Act.

3.43.6 All data and information collected or generated by Contractor in connection with this Agreement, stored in whatever fashion, shall be the property of City and may not be sold or distributed without City's prior written approval.

3.44 Auction

3.44.1. Contractor shall provide and maintain a reconciliation report the day after each public auction to include, at a minimum, the following information for each item sold:

- a) Vehicle description and vehicle identification number;
- b) The corresponding sales price;
- c) State tax owed and paid; and
- d) Buyer's information, including, name, address, and phone number.

IV. PERFORMANCE GUARANTEES

4.1 Fees to City. Contractor acknowledges and agrees that strict adherence to all terms and conditions of this Agreement and the laws of the City, County and State is material to this Agreement. The Parties agree that the actual damages that might be sustained by City as a result of Contractor's failure to meet any of the following requirements are uncertain and would be difficult to ascertain, and that the sums indicated below would be reasonable compensation for breaches of this Agreement. Contractor hereby promises to pay, and City hereby agrees to accept, such sums as liquidated damages, and not as a penalty, in the event of the particular breach listed below:

4.1.1 Response Time Performance Rating. Failure to maintain a monthly Response Time Performance Rating of ninety-five percent (95%) shall result in Contractor being assessed the following fees for each category and each month Contractor's Response Time Performance Rating falls below ninety-five percent (95%):

TABLE 1

Area	Response Time	94%
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Major Highways	20	\$3,000
City Streets	20	\$100
Heavy Duty	45	\$100

(a) In the event of an emergency such as declared disasters, evacuations, severe inclement weather, or construction zones as applicable, or any other event deemed by the City, the City's Emergency Operations Coordinator, or the City Manager, Contractor shall not be subject to any response time performance fees per this Agreement. However, such instances must be documented and reported to City by Contractor in Contractor's monthly reporting in order to be exempted.

4.1.2 Use of Safety Chains. The improper use of safety chains and/or wheel straps shall result in a fee of FIFTY-DOLLARS (\$50.00) being assessed to Contractor per occurrence.

- Safety chains and wheel straps should be used to secure vehicles in tow. When using wheel lifts, two safety chains connected from the rear of the wrecker to the vehicle being towed along with two wheel straps should be used.
- Rollback/Flatbed Wreckers should use two safety chains on the rear of their bed and two safety chains on the front of their bed securing the vehicle to prevent movement in any direction should the driver be involved in an accident. The loading device does not count as or take place of the safety chains as the wench may fail.
- Dollies should be secured to the towed vehicle using wheel straps to secure the wheels being carried to the dollies.

4.1.3 Reflective Apparel. Failure to wear reflective apparel shall result in a fee of FIFTY-DOLLARS (\$50.00) being assessed to Contractor per occurrence.

- Wrecker drivers should wear reflective apparel to include vest or reflective jacket at all times while working outside of the tow vehicle. Reflective apparel must meet the ANSI 107-2015 TYPE R - CLASS 3 requirements for high visibility safety apparel. During daylight hours, a fluorescent shirt may be worn instead of the reflective vest or jacket, however, the fluorescent shirt must meet the ANSI 107-2015 TYPE R - CLASS 3 requirements for high visibility safety apparel.

4.1.4 Improper Use of Tow Lights. The improper use of tow lights shall result in a fee of TWENTY-FIVE DOLLARS (\$25.00) being assessed to Contractor per occurrence.

- Tow lights should be placed on top of and at the outer edges of the end of the vehicle being towed which is the furthest from the wrecker, no more than four feet from the trailing edge. Should the vehicle be made of a material that will not hold the magnetic light, the vehicle should be towed using a rollback wrecker.

4.1.5 Failure to Clean Debris. Failure to properly clean and clear debris from roadways and pedestrian ways shall result in a fee of FIFTY DOLLARS (\$50.00) being assessed to Contractor per occurrence.

4.1.6 Twelve Hour Limit. Failure to adhere to the 12 hour limit shall result in a fee of TWENTY-FIVE DOLLARS (\$25.00) being assessed to Contractor per occurrence.

- No wrecker driver shall work beyond his/her scheduled twelve hour shift unless deemed an emergency by the Chief of Police or his/her designee.

4.1.7 Light Duty Status. Failure to adhere to light duty status shall result in a fee of TWENTY-FIVE DOLLARS (\$25.00) being assessed to Contractor per occurrence.

- A wrecker driver who has been placed on light duty status by a licensed physician shall not perform tow operations until released to full duty status.

4.1.8 TDLR. Any violation of State towing laws and/or Rules as posted by the Texas Department of License and Regulations shall result in a fee of TWENTY-FIVE DOLLARS (\$25.00) being assessed to Contractor per occurrence.

4.1.9 Use of Unauthorized Driver. Any use of a driver that has not been authorized by the City of San Antonio shall result in a fee of TWENTY-FIVE DOLLARS (\$25.00) being assessed to Contractor per occurrence.

4.1.10 Use of Unauthorized Equipment. Any use of an equipment that has not been authorized by the City of San Antonio shall result in a fee of TWENTY-FIVE DOLLARS (\$25.00) being assessed to Contractor per occurrence.

4.1.11 Improper Display of City TDLR Badge. Failure to display City and/or TDLR badge shall result in a fee of TWENTY-FIVE DOLLARS (\$25.00) being assessed to Contractor per occurrence.

4.1.12 Uniform. Failure to wear a uniform while performing services under this Agreement shall result in a fee of TWENTY-FIVE DOLLARS (\$25.00) being assessed to Contractor per occurrence.

4.2 Appeals. Fees assessed for violations in accordance with 4.1.1 may be appealed per the Contract Towing Office's policy and procedures, which shall be provided to Contractor prior to the commencement of the contract.

4.3 Submission of Fees. Once notified in writing by City of violations by Contractor and fees assessed to Contractor for such violations under this Article IV, Contractor shall submit payment of fees along with City's commission payment in accordance with Article VII of this Agreement for the month immediately following the month in which the fee was assessed.

V. VEHICLE STORAGE FACILITIES

5.1 City's Vehicle Storage Facility. The City currently owns a Vehicle Storage Facility located at 3625 Growdon Road, San Antonio, TX 78227 and as more specifically described in Exhibit I. This location shall be the primary location for vehicle storage under this Agreement. The City may also instruct Contractor to tow vehicles to 442 Ninth St, San Antonio, TX 78215 as City's Evidence Processing Facility. During the term of the Agreement, the location of the VSF may change.

5.2 City Operation. City or a City designee is responsible for the operation of City's Vehicle Storage Facility. Contractor shall comply with any and all policies and procedures mandated by City or City's designee for the conduct, vehicle delivery and vehicle storage at City's Vehicle Storage Facility.

5.3 Payment of Fees to Contractor. Payment of fees to Contractor shall be limited to instances whereby vehicles are towed by Contractor at the direction of City or the vehicle's owner to the City's VSF. In such cases, the City shall provide towing fees to Contractor in the amounts authorized under the terms of this Agreement within thirty (30) days of receiving payment from City's VSF operator.

5.4 City-approved Location. City must approve the Downtown Storage Facility.

5.5 Operation of Facility. Contractor shall operate the Downtown Storage Facility in compliance with Texas Occupations Code, Title 14, Chapter 2303 and all laws, rules, regulations and orders of the Federal Government, the State of Texas, the County of Bexar, and the ordinances, resolutions, safety and health codes of the City of San

Antonio.

- 5.6 Inspection of Facility. Contractor's Downtown Vehicle Storage Facility is subject to inspection by state, city, and county authorized health department officials, fire department, and other agencies relative to safety requirements.

5.6.1 Contractor shall immediately notify Chief, in writing, of any notices of violations which are received during or in connection with inspections performed under Section 5.6 above. A copy of any such report received by Contractor shall be immediately sent to the Chief, unless the notice or report was generated by the San Antonio Police Department.

5.6.2 City shall have the option to be present at all inspections and shall be given prior notice of inspections whenever possible within two (2) business days of inspection date.

- 5.7 Notice to City. If Contractor becomes aware of any condition in the Downtown Vehicle Storage Facility that is unsafe or unhealthy, Contractor shall immediately notify the Chief in writing. City shall also be notified within two (2) days by Contractor of any accident or safety hazard that occurs on the premises of the Downtown Vehicle Storage Facility. Contractor shall also advise City, in writing, of action Contractor has taken to remedy any safety hazard or other violation.

- 5.8 OSHA Compliance. Contractor shall provide access to the Downtown Vehicle Storage Facility to authorized representatives of the Secretary of Labor for the purpose of inspecting or carrying out any of the Secretary's duties under the Occupational Safety and Health Act (hereinafter referred to as "the Act") of 1980, as amended. Contractor is responsible for any violation of the Act or any regulation issued hereunder related to Contractor's activities under this Agreement and shall immediately remedy any conditions giving rise to such a violation. Contractor shall give City prompt written notice of any such violation. **CONTRACTOR SHALL DEFEND AND HOLD HARMLESS CITY FROM ANY FINE, PENALTY, OR LIABILITY IN CONNECTION WITH ANY VIOLATION OF THE OCCUPATIONAL SAFETY AND HEALTH ACT UNLESS SUCH FINE, PENALTY, OR LIABILITY SHALL ARISE FROM THE EXISTENCE OF A PREMISES DEFECT OVER WHICH CONTRACTOR HAS NO CONTROL OR DUTY UNDER THIS AGREEMENT.**

- 5.9 City's Access to Facility. In addition to any rights of access granted to City in this Agreement, City may at any time during the term of this Agreement, have access to Contractor's Downtown Storage Facility and any other newly established VSF established pursuant to the terms of this Agreement for the purposes of inspection and to ensure compliance with the terms of this Agreement.

VI. RATES FOR SERVICE AND ADMINISTRATIVE FEE

6.1 **Rates.** Contractor shall charge the following rates for Wrecker Services performed under the terms of this Agreement:

6.1.1 **Light Tows.** For Light Tows, as deemed in this Agreement, Contractor shall charge a towing rate of TWO HUNDRED AND TEN DOLLARS AND 0 CENTS (\$210.00). An additional fee of THIRTY DOLLARS AND 0 CENTS (\$30.00) may be charged for the required or requested use of a dollie to include vehicle dollies, Go-jak dollies and motorcycle dollies to perform Wrecker Services.

6.1.2 **Medium Tows.** For Medium Tows, as defined in this Agreement, Contractor shall charge a towing rate of THREE HUNDRED AND FIFTY DOLLARS AND 0 CENTS (\$350.00). An additional fee of THIRTY- FIVE DOLLARS AND 0 CENTS (\$35.00) may be charged for the required or requested use of a dollie to perform Wrecker Services.

6.1.3 **Heavy Tows.** For Heavy Tows, as defined in this Agreement, Contractor shall charge a towing rate of FOUR HUNDRED AND TEN DOLLARS and 0 CENTS (\$410.00) per hour, with a two (2) hour minimum charge. Additionally, should Contractor be required to utilize special equipment or procedures necessary to perform a Heavy Tow, Contractor may utilize those charges approved in Exhibit III.

6.2 **City-Owned Police Vehicles.** Wrecker Services shall be provided by Contractor to City at no cost for all City-Owned Police Vehicles, as defined in this Agreement. Such services include tows, jump starts and tire changes.

6.3 **Drop Fee.** Except when instructed by police, when Contractor has arrived at the location of a requested tow and has attached equipment for towing as the first action of performing Wrecker Services, the Contractor may require payment of a reasonable Drop Fee before releasing the vehicle to the owner/owner's agent or operator. City shall receive its compensation in accordance with Section 7.1 of this Agreement for tows subject to a Drop Fee. A "reasonable" Drop Fee should not exceed the following:

6.3.1 Light Tow..... \$94.00

6.3.2 Medium Tow\$176.00

6.3.3 HeavyTow\$190.00

6.4 **Special Equipment.** In the event that circumstances require Contractor to use specialized equipment in the performance of Wrecker Services, Contractor may charge those rates as prescribed in Exhibit III. Should Contractor be required to utilize special equipment not identified in Exhibit III, Contractor shall charge a reasonable amount consistent with industry rates and standards for such equipment. The assessment of such additional amount requires Contractor to

submit documentation of the necessity for such equipment and rate verification.

6.5 Relocation. \$75.00 per hour; if not a full hour, will be billed to the nearest quarter of an hour.

6.6 Stand-by. \$75.00 per hour which will include relocations if needed while on stand-by status. The fee will be billed to the nearest quarter of an hour.

6.7 Police Special Vehicles. Rates will be based on the Heavy Duty and Special Equipment Rate. All rates will be approved by the Department.

6.8 Types of Payment. Contractor shall accept cash, check, credit card and debit card, but shall not trade or barter for service.

6.9 Rate Reviews and Adjustments. The Rates described in Section 6.1.1, 6.1.2 and 6.1.3 will be reviewed by City every three (3) years of this Agreement if Contractors response time is in compliance with set categories. Rate adjustments may be given based upon changes in the Consumer Price Index (CPI) Bureau of Labor Statistics CUUR0000SAT index. Such adjustments shall be at City's sole discretion and shall be reflected in writing by an addendum, executed by the Chief of Police, which shall be attached hereto and incorporated herein for all purposes. If the tow fee increases, City will maintain its current reimbursement share. For example, the current tow fee is \$210 for Light Tows. City gets \$50 per tow that is towed to the VSF. If we raise the tow fee to \$225, and pay the towers \$170/tow then the City would receive \$55/tow that is towed to the VSF. City has some flexibility in increasing its revenue.

6.10 Fuel Adjustments. The formula for fuel adjustments is described in Exhibit IV.

6.11 Hazmat Rates. Rates will be submitted and approved by the Department. The rates will be included in the Contractor's Hazmat Operations Process.

Administrative Fee

6.12 City will pay Contractor a monthly administrative fee of \$820,000 monthly paid within 30 calendar days from receipt of invoice.

6.13 City agrees to increase the administrative fee by 5% at the start of Agreement year 4, 2028, 3 % at the start of year 6, 2030, and 2% at the start of year 8, 2032.

6.14 Upon City reconciliation and review, City will allocate funds to URVMS for payment to subcontractors.

6.15 City and Contractor agree that the administrative fee will be reviewed at Agreement renewal periods in year 11 and 16. City reserves right during renewal review to return to a revenue model if City determines it is in best interest of City if mutually agreed between Contractor and City.

6.16 City and Contractor agree to review administrative fee if and when Contractor is responsible for two simultaneously operational VSF locations. City and Contractor also agree to review administrative fee if and when there is a 25% change in volume up or down. Any change in administrative fee would have to be mutually agreed and based upon documented cost and demonstrated need.

CPI

6.17 City agrees to CPI for Agreement year 11, 2035, will be calculated based on the percent change in the CPI from years 8 to 11, beginning March 1, 2032 to March 1, 2035 not to exceed 6.0%.

6.18 CPI based increases will be authorized and calculated every 3 years, capped at 6.0% starting in year 11, March 1, 2035.

6.19 CPI will be calculated using Bureau of Labor Statistics CUUR0000SAT index.
<https://data.bls.gov/timeseries/CUUR0000SAT>

Compensation Reimbursement Process

6.20 Contractor will remit all funds to City, including but not limited to impound, storage, notification, auction, and collected towing fees, bimonthly within two business days of the 15th and last day of each month or the next business day.

6.21 Upon City reconciliation and review of the remitted funds referenced in section 6.20, City will allocate funds to Contractor in a Net 30 payment for previous bi-monthly towing activity for subcontractors by 16^h and the end of month of the following month.

6.22 The City Manager has authority to pay anything owed pursuant to the terms of this Agreement. Likewise, the City Manager has authority to receive all revenue pursuant the terms of this Agreement without further need for City Council action.

VII. COMPENSATION TO CITY

7.1 Towing - City's Revenue Reimbursement.

As consideration for the right to provide Wrecker Services in accordance with the terms and conditions of this Agreement, Contractor shall pay to City FIFTY DOLLARS AND O CENTS (\$50.00) per nonconsent tow, including instances when an owner or operator of a vehicle arrives

prior to a vehicle being removed and Contractor receives a fee for releasing the vehicle. Such payment shall be due to City in accordance with Article VIII of this Agreement and shall be due regardless of Contractor's actual receipt of payment from a third-party. The amount of FIFTY DOLLARS AND CENTS (\$50.00) is incorporated in the rate for Wrecker Services as described in Article VI and Contractor shall not seek to receive any additional amounts from any third-party receiving Wrecker Services to cover City's revenue reimbursement.

7.2 Impound

7.2.1 Pursuant to San Antonio Municipal Code, Chapter 19, Impounding, Article II, Sections 19-51.1, 19-53 and 19-53.1, Customers/Lien-holders are required to pay an Impound Fee, a Notification Fee and a Storage Fee (per day held in impound) (collectively "Released Vehicle Fees") and applicable sales tax. Contractor shall receive these fees, amounts collected from the sale of unclaimed vehicles ("Auction Sales Price"), amounts collected as service fees related to the Auction Sales Price and Other Services Fees (as defined herein), excluding tax amounts (collectively defined as "Total Adjusted Gross Sales").

7.2.2 Amounts received from Customers/Lien-holders for Towing Fees for redeemed vehicles (including but not limited to, hook-up, mileage, dollies and/or special equipment) are to be remitted to the City and are not included in Total Adjusted Gross Sales.

7.2.3 City agrees to utilize a portion of prior funds to fund capital expenditures based on criteria set by the City and as authorized by City to implement future capital expenditures related to a second VSF.

7.2.4 City shall not be obligated or liable under this Agreement to any party other than Contractor for payment of any monies or provision of any goods or services.

7.2.5 Contractor shall be responsible for all expenses incurred by Contractor in completing the work required by this contract, except as otherwise expressly provided. City shall not be obligated or liable to any third party under this Agreement for any fees or costs associated with the provision of any goods or services provided pursuant to this Agreement.

7.2.6 It is agreed that all scrap metal revenue will belong to the City and will be paid to City.

VIII. PAYMENT TERMS

8.1 **Payment Date.** Contractor shall submit to City the fees as specified in Article VII. Contractor shall have two (2) business days from the receipt of notice to submit the required

fees unless the time period is extended in writing at the sole discretion of the City. Failure by Contractor to submit fees within two (2) business days' notice shall subject Contractor to a fee of an additional ten percent (10%) of the amount due and owing by Contractor to City and shall make Contractor in default of this Agreement. City Manager has authority to receive revenue from this contract and to make any payments due.

IX. RECORDS RETENTION

9.1 Records Retention Period. Contractor shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of this Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Contractor to return said documents to City prior to or at the conclusion of said retention period.

9.2 Specified Records. Contractor shall retain all records, including but not limited to tow invoice copies, inventory and condition reports for Contractor's Equipment and any facilities inspection records and within twenty-four (24) hours of the City's request, Contractor shall make available such records for inspection, audit or copying by City or its authorized representative.

9.3 Notification. Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Contractor understands and agrees that City will process and handle all such requests. Notwithstanding anything to the contrary, in the event Contractor must comply with a subpoena or court order, Contractor's compliance with any such court order or subpoena is not a breach of or default under this Agreement.

X. SUSPENSION/TERMINATION

10.1 Suspension. City may summarily suspend this Agreement should there be reason to believe that Contractor has breached this Agreement, including violation of any City, State or Federal laws. Such suspension shall remain in effect until such time as the City determines appropriate measures to ensure Contractor's future compliance. Grounds for such suspension include, but are not limited to the following:

- (a) Failure to abide by any terms or conditions of this Agreement;

- (b) Failure to keep and maintain adequate proof of insurance or bond as required by this Agreement;
- (c) Use of substandard, unauthorized or dangerous equipment;
- (d) Failure to maintain any equipment required under this Agreement;
- (e) Failure to pay city's commission or any other fees collectible under this Agreement;
- (f) Failure to maintain a Response Time Performance Rating of ninety-eight percent (98%) for two (2) consecutive months;
- (g) The commission of any crime by Contractor, or any owner, part owner, partner, business associate, principal party, officer, or director.

Termination Defined. For purposes of this Agreement, "termination" shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

10.2 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article XI. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (I) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XVII. Assignment and Subcontracting.

10.3 Defaults With Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this section, same shall be considered an Event of Default. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article XI. Notice, to cure such default. If Contractor fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice or adoption of an ordinance, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another Contractor to complete the work required in this Agreement. Should City exercise its option to terminate this Agreement for Contractor's failure to cure any default, City may, at its discretion, seek to recover any and all costs or expenses it may incur as a result of Contractor's inaction through the Performance Bond required under Article XIII. The following actions are defaults which may be cured by Contractor:

- (a) Performing unsatisfactorily in the sole discretion of City;
- (b) Failing to perform or failing to comply with any covenant herein required as determined by the City;

- (c) Bankruptcy or selling substantially all of company's assets; and/or
- (d) Failure to comply with the terms and conditions stated in Article XVIII. SBEDA.

*Notwithstanding anything to the contrary in this Agreement, in the event there is an inconsistency or conflict between TDLR rules, regulations, guidelines, policies, and/or similar requirements of TDLR ("TDLR Rules") and other authority, to the extent Contractor complies with, implements, enforces or otherwise follows TDLR Rules, it shall not be an Event of Default and is not cause for the City to exercise any option or right to terminate this Agreement.

10.4 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

10.5 Termination By Notice. The Agreement may be canceled by written notice by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than Two Hundred Fifty (250) calendar days from the date such notice is received by the other. If the notice does not specify a date of termination, the effective date of termination shall be not less than Two Hundred Fifty (250) calendar days after receipt of the notice by the other party.

10.6 Ceasing Operations. Upon the effective date of expiration or termination of this Agreement, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Agreement.

10.7 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.

10.8 Transition Period. Regardless of the method by which this Agreement is terminated, Contractor agrees to provide a transition period of termination for a period not to exceed two (2) months upon City's request. During such transition period, Contractor may continue to provide Wrecker Services as provided for under this Agreement.

XI. NOTICE

11.1 Notice. Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt

acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Attn: Chief
San Antonio Police Department
315 S. Santa Rosa
San Antonio, 78207
City of San Antonio
Attn: Contract Manager
San Antonio Police Department
315 S. Santa Rosa
San Antonio, 78207

If intended for Contractor,
to:

URT United Road Towing, Inc.
Vehicle Management Solutions, LLC
7851 W. 185th St., Suite 200
Tinley Park, IL 60477
Attn: Legal

URT United Road Towing, Inc.
Vehicle Management Solutions, LLC
7851 W. 185th St., Suite 200
Tinley Park, IL 60477
Attn: Kevin Corcoran

XII. DOCUMENTS, REPORTS, AUDITS

12.1 Documents. Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the Wrecker Services rendered hereunder (hereafter referred to as "documents"), and shall make such documents available to the City at their respective offices or through electronic delivery, at all reasonable times and as often as City may deem necessary during the Initial Term, Renewal Term and any extension hereof, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

12.2 Reports. Upon the request of City, Contractor shall provide all reports relating to the performance of Wrecker Services under this Agreement. Contractor shall provide such reports to City within five (5) business days after Contractor receives City's written requests, unless the Parties agree in writing on a longer period of time.

12.2.1 City may require Contractor to submit reports in a format that is reasonably requested by the City. Contractor may seek approval of the City by proposing a format in which information shall be provided to City.

12.2.2 Contractor shall be required to submit quarterly financial reports to City no later than the thirtieth calendar day following the end of the quarter.

12.3 Performance Audit. Periodical performance audits will be performed during the Term of this Agreement. Such audits may be performed by City or a designated representative of City and may include, but not be limited to, a comprehensive review of towing operations, dispatching services, response time, equipment, personnel and safety. After the completion of such performance audit, Contractor shall be notified by the Chief of conditions needing correction or improvement. Contractor shall promptly comply with any such notice.

XIII. PERFORMANCE BOND REQUIREMENTS

13.1 Performance Bond. Contractor shall cause to be made, executed and furnished to the City upon the effective date of this Agreement a Performance Bond made payable to the City of San Antonio in a form acceptable to City in the amount of TWO MILLION DOLLARS (\$2,000,000.00). Such bond shall be executed by a corporate surety licensed pursuant to the Texas Insurance Code and listed on the U.S. Department of Treasury's Listing of Approved Sureties and conditioned on the faithful performance of all conditions and covenants of this Agreement. The Performance Bond is to be renewable on each anniversary date of this Agreement or extension hereto.

XIV. INSURANCE

14.1 No later than 30 days before the scheduled event, contractor must provide a completed Certificate(s) of Insurance to city's San Antonio Police Department Contract Division. The certificate must be:

- clearly labeled with the legal name of the service "Tow Management and Impound" in the Description of Operations block;
- completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (city will not accept Memorandum of Insurance or Binders as proof of insurance); properly endorsed and have the agent's signature, and phone number,

14.2 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. city shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by city's San Antonio Police Department. No officer or employee, other than city's Risk Manager, shall have authority to waive this requirement.

14.3 If the city does not receive copies of insurance endorsement, then by executing this Agreement, contractor certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.

14.4 The city's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.

14.5 Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, at contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A-(VII), in the following types and for an amount not less than the amount listed below. If the contractor claims to be self-insured, they must provide a copy of their declaration page so the city can review their deductibles:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000 /\$1,000,000 /\$1,000,000
3. Broad form Commercial General Liability Insurance (or Garage Liability) to include coverage for the following: a. Premises/Operations	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability

b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Environmental Impairment	Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>C</u> ombined <u>S</u> ingle <u>L</u> imit for <u>B</u> odily <u>I</u> njury and <u>P</u> roperty <u>D</u> amage of \$1,000,000 per occurrence
5. Garage Liability (or Commercial General Liability above) a. On-Tow Coverage b. Non-owned vehicles c. Garage Keepers Coverage on a direct primary basis d. Each towing vehicle must carry a sublimit of at least \$300,000.00 liability limit and a property damage deductible of \$2,500.00 or less e. Comprehensive Loss Coverage f. Specific Causes of Loss Coverage g. Collision Coverage	For bodily injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
6. Pollution Liability Coverage a. MCS-90 endorsement b. Hazmat/Environmental Services	\$1,000,000.00 per occurrence

14.6 Contractor must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of contractor and provide a certificate of insurance and endorsement that names contractor and city as additional insureds. Contractor shall provide city with subcontractor certificates and endorsements before the subcontractor starts work.

14.7 If a loss results in litigation, then the city is entitled, upon request and without expense to the city, to receive copies of the policies, declaration page and all endorsements. Contractor must comply with such requests within 10 days by submitting the requested insurance documents to the city at the following address:

City of San Antonio
Attn: Police Department
P.O. Box 839966
San Antonio, Texas 78283-3966

14.8 Contractor's insurance policies must contain or be endorsed to contain the following provisions:

- Name city and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with city. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
- Endorsement that the "other insurance" clause shall not apply to city where city is an additional insured shown on the policy. City's insurance is not applicable in the event of a claim.
- Contractor shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of city; and
- Provide 30 days advance written notice directly to city of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

14.9 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, contractor shall provide a replacement certificate of insurance and applicable endorsements to city. City shall have the option to suspend contractor performance should there be a lapse in coverage at any time during this agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this agreement.

14.10 In addition to any other remedies city may have upon contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, city may order contractor to stop work and/or withhold any payment(s) which become due to contractor under this agreement until contractor demonstrates compliance with requirements.

14.11 Nothing contained in this agreement shall be construed as limiting the extent to which contractor may be held responsible for payments of damages to persons or property resulting from contractor or its subcontractors' performance of the work covered under this agreement.

14.12 Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by city for liability arising out of operations under this Agreement.

14.13 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of city shall be limited to insurance coverage provided.

14.14 Contractor and any subcontractor are responsible for all damage to their own equipment

and/or property result from their own negligence.

XV. INDEMNIFICATION

15.1 CONSULTANT COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO CONSULTANT'S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF THE RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, ITS OFFICERS OR EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

15.2 THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. CONSULTANT SHALL ADVISE THE CITY IN WRITING WITHIN TWENTY-FOUR HOURS OF ANY CLAIM OR DEMAND AGAINST CITY OR CONSULTANT KNOWN TO CONSULTANT RELATED TO OR ARISING OUT OF CONSULTANT'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT CONSULTANT'S COST. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING CONSULTANT OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

15.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Contractor shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Contractor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

15.4 Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor under worker's compensation or other employee benefit acts.

XVI. INDEPENDENT CONTRACTOR

16.1 Independent Contractor. The parties agree that Contractor is an independent Contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, Contractors, subcontractors and Contractors; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, Contractors, subcontractors and Contractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal- agent, partners or joint venturers between City and Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Agreement and that the Contractor has no authority to bind the City.

XVII. ASSIGNMENT, SUBCONTRACTING AND CHANGE OF CONTROL

17.1 No Assignment. Contractor shall not assign, transfer, convey, or otherwise dispose of any part of, or all of its right, title or interest in this Agreement, nor shall Contractor assign, transfer, convey or dispose of any agreement made with City covering the subject matter of this Agreement without first obtaining the written consent of City through a duly authorized City Ordinance of City's governing board. Any references in this Agreement to an assignee or transferee indicate only such an entity as has been approved by the City Council.

17.2 Subcontracting. Contractor is not prohibited from subcontracting for specific services related to this Agreement where Contractor retains full responsibility for acts of the

subcontractor and such subcontracting is approved in writing by the City prior to the use of the subcontractor. Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees.

17.3 **Breach.** Should Contractor assign, transfer, convey, or otherwise dispose or attempt to dispose of its right, title or interest in this Agreement or any agreement made with City covering the subject matter of this Agreement, City may, at its option and through an action of its City Council, terminate this Agreement, and all rights, titles and interests of Contractor shall thereupon cease and terminate, notwithstanding any other remedy available to City under this Agreement or by law. The violation of this provision by Contractor shall in no event release Contractor from any obligations under the terms of this Agreement, nor shall it relieve or release said Contractor from the payment of any damages to City which City sustains as a result of such violation.

17.4 **Change of Control.** Contractor agrees to notify the City of a change of control of Contractor's business entity not less than thirty (30) calendar days in advance of the effective date of such change. Notwithstanding any other remedies that are available to City under this Agreement, any change of control of its business entity without City notification and consent may be grounds for the termination of this Agreement at the sole discretion of City. City agrees to confidentiality of any pending change of control notification and will execute a nondisclosure agreement regarding pending change of ownership.

XVIII. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

18.1 **SBEDA Program.** The City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development Department (EDD) website page and is also available in hard copy format upon request to the City. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of the SBEDA Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the City pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

18.2 **Commercial Nondiscrimination Policy Compliance.** As a condition of entering into this

Agreement, the Contractor represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. I. of the SBEDA Ordinance. As part of such compliance, Contractor shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation: to, any third party. Contractor's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Contractor shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to city contracts.

XIX. CONFLICT OF INTEREST

19.1 City's Ethics Code. Contractor acknowledges that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code 2-52 (e), from having a financial interest in any contract with the City or any City agency such as a City-owned utility. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

19.2 Contractor's Certification. Pursuant to the subsection above and excluding any other agreements Contractor may have with City, Contractor warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents performing under this Agreement are neither officers nor employees of the City as defined in Section 2-52(e) of the City's Ethics Code. Contractor further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XX. AMENDMENTS

20.1 Amendments. Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be by mutual agreement of the parties effected by an amendment, in writing, executed by both City and Contractor. City Manager shall have the authority to effectuate amendments without return to Council.

XXI. SEVERABILITY

21.1 Severability. If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXII. CERTIFICATIONS/LICENSES/PERMITS

22.1 Certifications. Contractor warrants and certifies that Contractor and any other person authorized or designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competency standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

22.2 License and Permits. Contractor and any subcontractor involved in the provision of any services under this Agreement, shall, at its own expense and cost, procure and keep in force during the term of this Agreement, all permits and licenses required by law to provide such services, and shall provide copies of such permits and licenses upon request to the City within ten (10) business days after receiving a request from City.

22.3 Nothing contained herein shall be construed as binding the City to the issuance of any license or permit needed by Contractor or any of Contractor's subcontractors to enable anyone to provide services hereunder.

XXIII. OWNERSHIP AND LICENSES

23.1 No Copyright. In accordance with Texas law, Contractor acknowledge and agrees

that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government record produced by or on behalf of Contractor pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Contractor.

23.2 Government Record. The term "local government record" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

23.3 Property of City. Contractor acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Agreement will belong to and be the property of City and Contractor will be required to turn over to City, all such records. Contractor shall not, under any circumstances, release any records created during the course of performance of this Agreement to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.

23.4 Applicable Law. Contractor and the City agree to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

XXIV. INTELLECTUAL PROPERTY

24.1 Royalties and Fees. Contractor agrees to pay any third-party royalties and licensing fees associated with intellectual property implemented by and used by Contractor pursuant to this Agreement and shall hold the City harmless and indemnify the City from the payment of any such royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods implemented by and used by Contractor pursuant to this Agreement. Contractor shall defend any such suits for infringement of any Intellectual Property rights implemented by and used by Contractor pursuant to this Agreement. Further, if Contractor has reason to believe that the design,

service, process or product specified is an infringement of an intellectual Property right, it shall promptly give such information to the City.

24.2 **Infringement.** Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware implemented by and used by Contractor pursuant to this Agreement, and not otherwise used by the City independent of Contractor or having been used by the City prior to this Agreement, infringe upon any United States patent or copyright, Contractor shall immediately commence one or more of the following options and the choice of option is solely at Contractor's discretion:

a) Seek to obtain, at Contractor's sole expense, the necessary license(s) or rights that would allow the Contractor to continue using the programs, hardware, or both the programs and hardware, as the case may be; or,

b) Seek to alter the Contractor's programs, hardware, or both the Contractor's programs and hardware so that the alleged infringement is eliminated; or, and

c) Contractor will cease use of the programs, hardware, or both, so the alleged infringement is eliminated.

In no case shall Contractor's action disrupt the performance of the required services to be provided by Contractor under this Agreement or result in the City incurring any costs or liabilities due to Contractor's use or misuse of licensed property.

XXV. COMPLIANCE

25.1 **Compliance.** Contractor and City shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XXVI. NONWAIVER OF PERFORMANCE

26.1 **Non-Waiver.** Unless otherwise specifically provided for in this Agreement, a waiver by either party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option.

In fact, no waiver, change, modification or discharge by either party of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by both parties. Such changes must be approved by the City Council, as described in Article XX. Amendments. No act or omission by a party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXVII. LAW APPLICABLE

27.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

27.2 Venue. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas, or in the federal court that has jurisdiction over San Antonio.

XXVIII. LEGAL AUTHORITY

28.1 Authority. The signer of this Agreement for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained.

XXIX. PARTIES BOUND

29.1 Bound. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein. No provision within this Agreement is intended to benefit a third party and thus no provision of this Agreement shall be interpreted to benefit or otherwise create any right or interest in favor of a third party.

XXX. CAPTIONS

30.1 Captions. The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXXI. INCORPORATION OF EXHIBITS

31.1 Exhibits. Each of the Exhibits and Attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all exhibits and attachments:

Exhibit I.	City's Vehicle Storage Facilities
Exhibit II.	Contractor's Towing Operations Plan
Exhibit III.	Special Equipment List
Exhibit IV.	Fuel Adjustment Schedule
Exhibit V.	HazMat Operations
Exhibit VI.	Environmental Assessment
Exhibit VII.	City's RFP Solicitation
Exhibit VIII.	IT Statement of Work

XXXII. NONDISCRIMINATION

32.1 As a party to this Agreement, CONTRACTOR understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XXXIII. ENTIRE AGREEMENT

33.1 Agreement. This Agreement, together with its authorizing ordinance and its exhibits constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same is in writing, dated subsequent to the date hereto and duly executed by the parties, in accordance with Article XX. Amendments.

CITY OF SAN ANTONIO

Erik Walsh, City Manager

**URT UNITED ROAD TOWING INC.
d/b/a UR VEHICLE
MANAGEMENT SOLUTIONS**



Frank Mecklenburg, Chief Operating Officer

Approved as to Form:

Krista Cover
Assistant City Attorney