

**AGREEMENT FOR SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
LIMA TOWING**

PREAMBLE

This Agreement is entered into between Lima Towing, a California corporation, ("Contractor"), and the City of Santa Clara, California, a chartered California municipal corporation ("City"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City requires the services of Contractor for the purpose of providing tow services for the removal of disabled, abandoned, and illegally parked motor vehicles, as well as a variety of police initiated vehicle tow requirements; and,
- B. Chapter 10.10 of "The Code of the City of Santa Clara, California" ("Code") provides for the removal of abandoned, wrecked, dismantled or inoperative vehicles, or parts thereof; and,
- C. City requires the establishment of a clear and concise tow policy to alleviate controversy among tow company operators and to minimize the complaints made to the City from members of the public at large and the owners of the specific motor vehicles involved; and,
- D. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- E. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Contractor shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Police Department Initiated Tows

Exhibit B – Non-Police Initiated Tow Services

Exhibit C – Schedule of Fees, Tow Rates and Charges

Exhibit D – Insurance Requirements

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

2. TERM OF AGREEMENT.

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on January 1, 2019 and terminate on December 31, 2023.

3. VEHICLE TOWING BY CONTRACTOR.

As material consideration to City for entering into this Agreement, Contractor shall provide:

- (a) prompt tow service for vehicles involved in collisions or disabled by any other cause, or abandoned in public places or on private property, regardless of the type or condition of the vehicle;
- (b) removal from the street of all debris resulting from collisions;
- (c) safety and security of vehicles towed and the contents thereof;
- (d) lawful conduct of lien sales or other disposal of such vehicles.

City is interested only in the results obtained by Contractor in the performance of Services hereunder. The manner and means of conducting tow service will be under the sole control of Contractor, so long as Contractor abides by the provisions of this Agreement and any applicable local, state and federal legislation.

Contractor agrees to tow any or all vehicles as requested by City, to conduct lien sales, and to dispose of said vehicles pursuant to all applicable local, state and federal laws, at Contractor's sole cost and expense. CONTRACTOR SHALL ACCEPT ANY AND ALL REQUESTS FOR SERVICE. It shall tow the vehicle assigned to it by the Public Safety Officer or Public Safety employee at the scene and is responsible for providing prompt service and/or removal of any vehicle regardless of age, size, value, or condition.

City shall have the right to require Contractor to tow vehicles from any location within the City subject to the procedures set forth in this Agreement. Contractor shall be fully responsible for conducting all categories of service set forth below. City reserves the right to make any contractual or other arrangements concerning vehicle tows as City deems necessary without incurring any liability or obligation to Contractor.

4. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

Contractor represents and maintains that it has, and its individual employees or agents have, the expertise in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor's representations regarding its skills and knowledge. This includes all applicable licenses and certifications; Contractor and its employees shall maintain in good standing all applicable licenses and certifications during the term of this Agreement. Contractor shall perform such Services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

5. COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Contractor's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally, Contractor has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

6. MONITORING OF SERVICES.

City may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accord with applicable City, county, state, and federal requirements. If any action of Contractor constitutes a breach, City may terminate this Agreement pursuant to the provisions described herein.

7. CATEGORIES OF TOWING SERVICES.

By entering into this Agreement, Contractor shall be placed on the City Tow Service List ("City Tow Service List") maintained by City for various types of towing services. City shall have absolute discretion in initially determining, and subsequently modifying, its Tow Service List. City shall not be required to dispatch Contractor to any minimum number of tow calls per month, or during any other period, during the term of this Agreement. As a result of being placed on City Tow Service List, Contractor shall provide the tow service activities set forth under this Agreement including police-initiated tows, abandoned vehicle tows, voluntary tows and debris removal, as follows:

A. Police-Initiated Tows

Police-initiated tow services may result from a variety of police activities, including accident investigations and cleanup, impounds, criminal investigations, and other law enforcement activities. Contractor shall be placed on two City of Santa Clara Police Department ("S.C.P.D.") rotating schedules and shall be held to strict response time standards. Rotation Schedule A is for the towing of

Recreational Vehicles (RV's), Cab-Over Campers, Motor Homes (on wheels), and open trailers. Rotation Schedule B is for all other vehicle tows. The terms and conditions of this Agreement, which apply to the contractors listed on the City Tow Service List, are set forth in Exhibit A, attached hereto and incorporated herein by reference. Any contractor that responds to police-initiated tow services requests shall also be required to provide service required for abandoned vehicle tow services and City's "Voluntary Tow Program," as defined in this Agreement.

B. Abandoned Vehicle Tows

This service category includes tow contractors that must be available to provide tow services within the jurisdictional limits of City resulting from tow service requests originating from City's Police Department on a rotating basis. Excluding weekends, tow contractors shall provide tow service to remove abandoned, wrecked, dismantled, or inoperative vehicles that are located in the jurisdictional limits of City within a 25-minute period of time. Regular hours of operations for this service would be Monday through Friday 8:00 AM to 5:00 PM. Tow contractors whose names are on the City Tow Service List shall be placed on the S.C.P.D. rotating schedules. The terms and conditions of this Agreement, which apply to the contractors that provide tow service to remove abandoned, wrecked, dismantled, or inoperative vehicles are set forth in Exhibit B, attached hereto and incorporated herein by reference.

C. Voluntary Tow Program

In an effort to assist City's citizens in the abatement of unwanted vehicles, City has established a "Voluntary Tow Program." S.C.P.D. will manage the program and notify Contractor for the removal and disposal of vehicles relinquished by parties holding title or proof of ownership accepted by S.C.P.D. Contractor agrees to provide tow services on a rotational basis for this program, as set forth in Exhibit B.

D. Debris Removal Service

This service is specifically for vehicle debris removal from scenes not related to police-initiated tows pursuant to Section 7(A). Contractor agrees to provide this service on a rotational basis at the request of the S.C.P.D., as set forth in Exhibit A.

8. PERFORMANCE OF SERVICES.

Contractor shall perform all requested services in an efficient and expeditious manner. Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it. Contractor will perform all services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

9. FEES, TOW RATES AND CHARGES.

In consideration for entering into this Agreement with City, Contractor agrees to accept the payments, and to charge rates and charges no greater than the SCHEDULE OF FEES, TOW RATES AND CHARGES for any of the various tow services provided under this Agreement, as set forth in Exhibit C attached hereto and incorporated herein by reference. The maximum compensation paid to Contractor under this Agreement shall not exceed fifty thousand (\$50,000.00) dollars, subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance without a fully executed Amendment, as described in this Agreement.

Any charges that are billed to the City must be submitted no later than thirty days (30) days from the day the vehicle is towed by the tow company. The City will not be responsible for any billings which occur after this time frame.

Contractor shall be responsible for the collection of payment from a customer of any charge for services rendered. Requests for payments shall be made to the registered owner of the vehicle or legal representative, and no cost or expense, or any part thereof, shall be charged against the City, unless otherwise explicitly set forth in this Agreement.

10. ACCEPTANCE OF ADDITIONAL TOW COMPANIES.

- A. In its sole discretion, the City may add tow operators to the City Tow Service List at any time during the term of this Agreement, subject to the same terms and conditions.

11. WAIVER OF CLAIMS.

- A. Contractor, as a material part of the consideration to be rendered to City under this Agreement, hereby waives all claims or causes of action against City, its officers, agents, or employees which it may now or hereafter have for any loss or damage to the property of, or injury or damage to Contractor, its officers, employees, agents, contractors or any other person, from any cause or causes arising at any time because of any activity carried on pursuant to this Agreement, except as may arise from the sole active negligence or sole willful act of City, its officers, agents, or employees.
- B. Contractor also agrees to waive any claim or cause of action against other tow operators who, at City's request or direction, conduct any type of police-initiated tow.

12. STANDARDS OF SERVICE.

- A. All of Contractor's officers, agents, or employees who engage in performance of this Agreement with City on behalf of Contractor shall conduct themselves in a courteous and professional manner to City personnel and to members of the public.
- B. Contractor shall require that all of Contractor's employees who serve the public wear an identifiable uniform and/or company shirt or jacket that includes, but is not limited to, Contractor's name, logo, and employee's name. Contractor shall also require that drivers maintain acceptable personal hygiene and regular maintenance of their uniform. Nothing in this Agreement shall preclude Contractor from establishing a dress code or similar rules to regulate the appearance of their employees.
- C. Contractor agrees to accept, from any party whose vehicle has been towed pursuant to this Agreement, any of the following means of payment for the tow service charges: United States currency or credit cards. Appropriate credit card equipment must be located on the premises and available for immediate processing from each tow truck. In addition, a person operating or in charge of the storage facility shall have sufficient funds on the premises to accommodate and make change for a reasonable monetary transaction.

13. RECORDS/REPORT TO CITY.

Contractor shall at all times make all reasonable efforts to maintain accurate and complete records of each City-initiated tow received. These records shall contain all of the following information:

- A. Name, address, and phone number of person whose vehicle was towed;
- B. Vehicle identification number, license plate number, make, year, model, and color of each vehicle towed;
- C. Date and time tow request was received and date and time of response;
- D. Location from which vehicle was towed, and name or number of driver assigned to each tow;
- E. Reason for tow, whether accident, impound, or other reason;
- F. Date and time of release for each vehicle;
- G. Name, address, and identification (i.e., driver's license) of party to whom vehicle was released;

- H. All fees or charges connected with each tow, showing specifically tow, storage, use of dolly or drive-line labor, and lien sale in addition to the total of such charges or fees;
- I. Date that charges were paid; and
- J. Date and time vehicle was placed in tow storage facility.

Contractor shall, at a minimum, maintain the following information for each Employee: (a) Full legal name; (b) Date of birth; California driver's license number; (c) Copy of valid medical certificate (if required); (d) Job title/description; (e) Current home address; (f) Current home phone number; (g) Type(s) of truck(s) the driver(s) has/have been trained to operate; (h) Current Pull Notice as required by California Vehicle Code section 1808.1.

14. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR.

City, through its authorized employees, representatives or agents, shall have the right, during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor and all revenue and income arising out of Contractor's operation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Contractor shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's services hereunder.

15. TERMINATION / SUSPENSION OF CONTRACTOR.

- A. In addition to all other remedies provided by law, and except as set forth in paragraph C below, if Contractor fails to perform any of its obligations under this Agreement City shall have the right to suspend or terminate this Agreement as follows:

1st violation: Written warning.

2nd violation: One-week suspension from all rotation lists.

3rd violation in a twelve-month period following the first violation: Two-week suspension from all rotation lists.

4th violation: in a twelve-month period following the first violation: Four-week suspension from all rotation lists.

5th violation in a twelve-month period following the first violation: Termination of agreement

- B. The Chief of Police may suspend Contractor for any period of time, or terminate the Agreement entirely, effective immediately, if the Chief determines that there is a threat to public safety.
- C. During the time period of temporary suspension from the rotation schedules, City shall not make any tow requests to Contractor. Upon expiration of the time period of suspension or upon satisfaction of the conditions set for the termination of the suspension, Contractor shall again be placed on the City Tow Service List rotation schedule and all the terms and conditions of this Agreement shall remain in effect and unchanged.
- D. A written notice of suspension or termination shall be personally served upon Contractor, or on any person employed in the place where the business in question, or activity, is maintained. If personal service cannot be accomplished as provided herein, a copy of such notice may be served by certified mail. Service shall be deemed complete when personal service is made or when the U.S. Postal Service delivers the certified letter.

16. REQUIRED LICENSE AND EQUIPMENT.

- A. At all times during this Agreement, Contractor shall maintain a current City business license to operate in the City of Santa Clara, and at least five (5) tow trucks equipped with operable two-way radios with the capability of communicating with their own dispatching service. The tow trucks must be registered in the name of the tow company owner. Each tow truck must be equipped as required by the California Vehicle Code. City reserves the right to inspect all tow vehicles for required equipment without notice.
- B. The tow trucks shall display, in lettering directly affixed to each door by painting, decal, or other permanent lettering, Contractor's business name and address, and the phone number of the primary office facility and storage lot referred to in Section 16, below. Contractor shall not, while conducting any police-initiated tow, display any other magnetic sign or other temporary sign at any place on a tow truck utilized in the conducting of police-initiated tows with the intent to deceive any party whose vehicle is being towed.

17. VEHICLE REMOVAL WITHOUT AUTHORITY.

If, upon an investigation as to the validity of S.C.P.D.'s removal of a vehicle, it is determined that a vehicle was towed in error or without cause, City will be responsible for the full tow charges.

18. STORAGE FACILITIES

- A. At all times during the performance of this Agreement, Contractor shall maintain, construct, and utilize vehicle storage facilities in compliance with all applicable

City zoning and land use ordinances, codes, and regulations, and with all conditions set forth in all permits as may be required by City.

- B. Contractor shall maintain its primary storage lot within the jurisdictional limits of the City of Santa Clara. During the term of this Agreement, Contractor may request re-location of its primary lot outside the jurisdictional limits of the City of Santa Clara. Such requests shall be made in writing, and in accordance with Vehicle Code 22658, and consent shall be granted at the sole discretion of the Chief of Police. Primary storage facilities shall be maintained to the satisfaction of the Chief of Police, or his/her designee, who may cause them to be inspected from time to time to ensure that they meet the following requirements:
- i. Contractor's primary lot must be sufficiently large to store at least twenty-five (25) automobiles. The primary lot must be enclosed by fencing that complies with all applicable City ordinances and regulations. The primary lot must be available twenty-four (24) hours a day, seven (7) days a week for storage of vehicles towed pursuant to this Agreement. Vehicles requiring special handling or held for investigation shall be stored in an enclosed area if requested by the investigating officer and will not be removed until authorized by the concerned investigator. The primary lot shall include an enclosed building large enough to store at least four (4) vehicles. Contractor shall provide security at the primary lot to the reasonable satisfaction of the Chief of Police. Reasonable security shall include a minimum of (a) adequate lighting during hours of darkness; (b) full security camera coverage of the yard; and (c) security camera coverage of the interior of the office. Resultant security videos shall be maintained by Contractor for a time period of up to sixty (60) days and, upon request, access made available for the Chief of Police or designee.
 - ii. Contractor must maintain a primary office facility at the primary storage lot. Contractor shall have an employee at the primary office facility twenty-four (24) hours a day, seven (7) days a week, or have an employee available who can arrive at the primary office facility within sixty (60) minutes of a police or citizen request, in order to assure that a citizen may claim his or her vehicle at any time and to properly protect police impounded vehicles.
 - iii. Contractor shall provide the company's policy and procedure regarding the removal, inventory, storage, and notification to owner of personal property to the Chief of Police for his or her approval.
- C. All police-impounded vehicles, stored vehicles, vehicles held for investigation, and recovered vehicles shall be stored in the primary lot and shall not be moved until authorized by the Chief of Police, or designee. City shall pay storage fees as set forth in Exhibit C. After fifteen (15) days, Contractor shall notify the City that the vehicle is still in impound/storage. Vehicles with holds placed on them by S.C.P.D. shall not be lien sold; however, Contractor may file for a lien but not complete the lien until the hold is removed.

- D. Contractor may maintain secondary lots outside the jurisdictional limits of the City of Santa Clara. The secondary lots shall be maintained to the satisfaction of the Chief of Police or designee, who may cause them to be inspected from time to time. Contractor may tow and store abandoned vehicles at such a secondary lot. Said storage facilities shall be subject to compliance with the applicable City codes and regulations of the City in which said facilities are located. The towing and storage of vehicles under this Agreement at any such storage facilities outside the jurisdictional boundaries of the City must comply with all applicable laws and regulations.

19. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City. Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it.

20. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

21. INDEPENDENT CONTRACTOR.

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights to manage its employees in their performance of Services under this Agreement.

22. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall Contractor have the authority or power to pledge the credit of City or incur any obligation in the name of City. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Contractor under this Agreement.

23. USE OF CITY NAME OR EMBLEM.

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

24. FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

25. HOLD HARMLESS/INDEMNIFICATION.

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.
- D. Contractor shall be obligated to defend any action relating to any claims covered by this Indemnification Agreement through counsel approved by the City in writing. If, within fifteen (15) days prior to such time as may be required for a response to a claim, tow operator does not deliver written notice to the City of Contractor's intent to defend an action relating to such claim and identifying selected defense counsel, the City shall have the right to defend such action through counsel of the City's choice at Contractor's expense, and the City may settle such action without Contractor's consent at Contractor's sole expense. However, Contractor may not settle any claim without the consent of the City.

This section shall survive termination or expiration of this Agreement.

26. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit D, Contractor shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit D.

27. AMENDMENTS.

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

28. SEVERABILITY CLAUSE.

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

29. WAIVER.

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments for any of the Services required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

30. NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent or served to City addressed as follows:

City of Santa Clara
Attention: Field Operations Division Commander
601 El Camino Real
Santa Clara, California 95050
or by facsimile at (408) 296-1346

And to Contractor addressed as follows:

Contractor's notice address:

Name: Lupe Lima

Address: 3591 Thomas Road, Santa Clara, CA 95054

or by email at: l.lima@sbcglobal.net

If notice is sent via email, a signed, hard copy of the material shall also be mailed. An email transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

31. CAPTIONS.

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

32. LAW GOVERNING CONTRACT AND VENUE.

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

33. CONFLICTS OF INTEREST.

To prevent a conflict of interest, Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

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The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

Dated: _____

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager
1500 Warburton
Santa Clara, CA 95050
Telephone: (408) 615-4894
Fax: (408) 261-9165

“CITY”

LIMA TOWING

[A CALIFORNIA CORPORATION]

Dated: NOVEMBER 7th 2018

By: [Signature]
(Signature of Person executing the Agreement on behalf of Contractor)

Name: Wupe Lima

Title: OWNER

Local Address: 3591 THOMAS RD
SANTA CLARA CA 95054

Email Address: l.lima@sbcglobal.net

Telephone: (408) 986 8267

Fax: (408) 986 8651

“CONTRACTOR”

**AGREEMENT FOR SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
LIMA TOWING**

**EXHIBIT A
ALL CITY TOWS ARISING FROM
POLICE DEPARTMENT INITIATED TOWS**

In addition to the general provisions of this Agreement, Contractor agrees to the following terms and conditions.

1. CITY POLICY REGARDING TOW SERVICES

Contractor's accountability for tow service and vehicle removals under this Agreement is of paramount concern to City. The terms and conditions of this Agreement comprise the policy of the S.C.P.D. with regard to tow companies, which by signing this Agreement, have requested to be placed on the City Tow Service List. This policy is established to alleviate controversy among the tow company operators and to settle complaints made by owners of vehicles involved in tow service activities. The City shall be the final authority in the settlement of any disputes arising out of tow services provided by tow companies included on the City Tow Service List. City shall provide Contractor with the name of the City liaison between the Contractor and the S.C.P.D.

2. CONTRACTOR'S OBLIGATIONS AND NOTIFICATIONS.

Contractor shall provide tow service to City on a 24-hour basis, 7 days a week. Contractor shall also comply with the following requirements.

- A. Contractor shall release stored or impounded vehicles on a 24-hour basis, 7 days week. During normal business hours, Monday through Friday 8am to 5pm (excluding Holidays), an employee of Contractor must be available on the premises to release stored vehicles or papers necessary to obtain a release. Outside of normal business hours and on Holidays, the response time for such a release shall be within 60 minutes from initial contact.
- B. Between the hours of 5:00 p.m. and 8:00 a.m., Monday through Friday, and on weekends and State holidays, a gate fee may be charged, to the extent allowed by State law, by Contractor for access to the vehicle and/or to claim or to release said vehicle subject to the requirements set forth in Exhibit C. However, Contractor shall not charge a gate fee if an employee of Contractor is onsite when release and/or access to the vehicle is requested. S.C.P.D. shall be exempt from such gate fee. Notice of gate fee hours and charges shall be given.
- C. Contractor's accountability for removals is of paramount concern to City. Excluding weekends, Contractor shall respond to the scene within 30 minutes for

all abandoned, wrecked, dismantled or inoperative vehicles or parts thereof as “public nuisances” upon authorization of City from private and/or public property. Upon the arrival of the vehicle at the storage facility, the Contractor shall immediately contact the S.C.P.D. by telephone to advise the S.C.P.D. of the vehicle removal information relating to the towing of that vehicle. As soon as the Abandoned Vehicle Section is open for business, Contractor is to call that section and relay the information given previously to the S.C.P.D., along with the time the information was given, and the badge number of the person at the S.C.P.D. to whom Contractor gave the removal information.

3. RATES AND CHARGES

- A. All fees charged by Contractor shall not exceed the rates and service charges approved by City as set forth in Exhibit C. The tow rates and charges shall be posted at all tow facilities in plain view. A copy of the schedule of rates charged by the Contractor shall be available in each of the tow trucks, and shall be presented upon demand to the person(s), or his/her agent, for whom the tow services were provided, or to any City employee at the scene.
- B. Additional charges will not be made except in unusual cases when other than normal conditions exist. Additional charges will not exceed rates as set forth in Exhibit C for such extra service and will be subject to the approval of S.C.P.D. Contractor will conform to all procedures required by City to maintain adequate tow service at reasonable rates.
- C. No part of any tow service cost or expense or any other cost or expense shall be charged against City, and its officers or employees will not be responsible for the collection or payment of any charges or service rendered by reason of its having dispatched the tow service. All such charges for services rendered shall be made to the owner of the vehicle or other lawful claimant of possession.
- D. Contractor shall release personal property from an impounded vehicle at the request of the vehicle owner or his/her agent. There shall be no charge for the release of personal property during normal business hours. Contractor may charge an “after hours” release fee for property released after normal business hours as set forth in Exhibit C. The fees charged shall be consistent with the “after hours” vehicle release provisions, and shall not charge more than one-half the hourly rate, as provided in California Vehicle Code section 22851(B). Contractor shall not charge City for any “after hours” access to any vehicle impounded or stored. Personal property is considered to be items located within the stored vehicle that are not affixed to the vehicle, including but not limited to, papers, transportable cellular telephones, , portable radios, clothes, luggage, tools, etc. Anything that is attached to the vehicle (i.e. wheels, tires, stereo (including hardwired GPS systems), added gauges, or car battery) is not considered personal property. Contractor shall provide a receipt, with a copy placed in the stored vehicle and a

copy to City, whenever any item is removed from a stored vehicle and taken to another place of storage.

4. RESPONSE TIME

- A. Contractor agrees to respond to a tow scene within twenty-five (25) minutes after receiving a call requesting tow services from the S.C.P.D. If Contractor has an extended estimated time of arrival or feels it cannot reach the scene in time, Contractor agrees to notify the S.C.P.D. as soon as possible. Failure to notify the S.C.P.D. within that time period may result in Contractor being placed at the bottom of the list and missing one additional tow service call.

In the event a Contractor is unable to respond or will be delayed in responding, the requesting City communications operator shall be notified immediately. When a Contractor will be temporarily unavailable to provide services due to a preplanned or scheduled activity, the Contractor shall notify the liaison, in writing, at least 24 hours prior to the date that services will be unavailable noting the times and dates of unavailability.

Note: Telephone answering services are deemed agents of the tow service operator and are required to comply with all provisions contained in this policy. Contractor or its answering service is responsible for informing the Public Safety Dispatcher of the unavailability of equipment or driver to render an immediate response. Contractor shall not accept a referral and, in turn, assign the referral to another tow company.

- B. Failure to reach the scene within twenty-five (25) minutes without the notification described in Section A above may, in addition to the suspension/termination provisions of the Agreement, result in a call to the next Tow Company on the rotation list. The tow company called first will then be entered at the bottom of the list. When dispatched by S.C.P.D. to abandoned vehicle tows, tow provider will respond within 25 minutes of notification for vehicle removal.

5. ACCESS TO VEHICLE

It shall be the responsibility of tow company personnel to unlock and/or gain entry when necessary for the purposes of towing a vehicle that has been ordered removed by S.C.P.D. Any claims for damage or loss arising from such entry shall be the responsibility of the tow company removing the vehicle. No parts or personal effects shall be removed by anyone from an impounded vehicle without authorization in writing from S.C.P.D. The removal of parts shall be limited to those parts that can be removed safely in accordance with safety standards common to similar business operations subject to S.C.P.D. approval.

6. REQUIREMENTS FOR TOW TRUCK OPERATORS

- A.** Contractor shall not operate or permit anyone to operate a tow truck for the purposes of removing a vehicle at the request of City until the following requirements are fulfilled:

Every tow truck operator shall:

- i. Obtain his/her City of Santa Clara tow truck permit before taking any police related tows. All operators must complete an application for tow driver as provided by S.C.P.D. Such application will include a police background check and fingerprinting. The cost of the application is to be borne by either the applicant or tow company;
 - ii. Have a valid California Driver's License in accordance with section 12500 of the California Vehicle Code, and comply with all other requirements of state, federal and local laws;
 - iii. Possess a tow truck operator identification card issued by the S.C.P.D.;
 - iv. Provide a certificate of proof of controlled substance and alcohol testing (CSAT) that conforms to the requirements of Part 40 of Title 49 of the Code of Federal Regulations with the application for driver's permit.
- B.** The Contractor shall provide on an annual basis a current list of all drivers and proof of enrollment in a CSAT and/or program consistent with the requirements as outlined in Item 6A.v (above).
- C.** Tow truck operators who are found to have been convicted in a court of competent jurisdiction of any of the following offenses will not be assigned by Contractor to drive a tow truck to any police initiated calls:
- v. Any offenses included in Division 4, Chapter 3 (commencing with California Vehicle Code section 10750 and which pertains to alteration or removal of vehicle's numbers) and Chapter 4 (commencing with California Vehicle Code section 10850 and which pertains to theft and injury to vehicles) of the California Vehicle Code; or,
 - vi. Any offenses as outlined in California Penal Code, including but not limited to, violations of any of the following California Penal Code sections:
 - 459 P.C. (burglary);
 - 466 P.C. (possession of burglary tools);
 - 466.5 P.C. (unlawful possession of master key);

466.7 P.C. (unlawful possession of unauthorized key);

484 P.C. (petty theft);

487 P.C. (grand theft); or,

211 P.C. (robbery).

vii. Any violations of the requirements set forth in this paragraph, misconduct, failure to respond to accidents or other tow assignments, or any other act or omission adversely affecting City, its Police Department operation, or relationship with the public may be considered grounds for disciplinary action against Contractor and/or removal of Contractor from the towing list(s);

viii. Any of the above referenced crimes, or convicted of any such crimes after the issuance of the tow operate permit, City, at its sole discretion, may revoke said permit. Falsification of any information included in a tow driver's application shall be grounds for refusal to issue, or revocation of the tow driver permit.

ix. Any conviction of reckless driving or driving under the influence of any drug or intoxicating liquor regardless of whether the incident resulted in bodily injury or death within five (5) years prior to the date of application.

x. Any registered sex offenders under Penal Code section 290, or registered drug offenders under Health and Safety Code section 11590.

xi. For purposes of this Agreement a plea of "nolo contendere" may also serve as the basis for revocation, suspension or termination of this Agreement because the listed underlying offenses bear a substantial relationship to the qualifications, functions or duties of the tow truck driver.

7. NO DROP OR RELEASE CHARGE.

A. Prior to transit or prior to any movement of the vehicle after hook-up, any vehicle being towed upon S.C.P.D. orders shall, upon the appearance of the car's owner, or at the request of any S.C.P.D. officer, be released and no "drop" or "release" fee shall be charged. Under such circumstances, Contractor shall be replaced to the top position on the City Tow List from which they were called.

B. After transit or after any movement of the vehicle after hook-up, any vehicle being towed upon S.C.P.D. orders shall, upon the appearance of the car's owner or at the request of any S.C.P.D. officer, be released and a "drop" or "release" fee of the tow rate shall be charged.

8. ROTATION SCHEDULE.

City shall maintain two rotational tow lists as follows:

- Rotation schedule "A" shall be for towing Recreational Vehicles, Motor Homes (with wheels), Cab-Over campers, box trucks, and open trailers.
- Rotation schedule "B" shall be maintained for all other towing assignments as described in this agreement.

City agrees to place Contractor on its rotational tow schedules with other tow operators to provide vehicle towing and storage services upon the request of the City. City shall have absolute discretion in initially determining, and subsequently modifying, its rotation dispatch system. City shall not be required to dispatch Contractor any minimum number of tow calls per month, or during any other period, during the term of this Agreement. The position of names of the tow companies on the City Tow Service Lists will change following every tow in the City of Santa Clara. Contractor agrees to assume the responsibility of towing all vehicles in any one accident.

9. SPECIAL REQUESTS BY VEHICLE OWNER.

The tow list rotation schedules will be used at all times. If the vehicle is not a hazard to traffic and the owner requests a tow service other than one the City has a tow service agreement with, it shall be the responsibility of that owner to arrange their own tow service.

10. TOW TRUCK CLASSIFICATIONS

- A. An operator shall equip and maintain tow trucks covered under this agreement in accordance with the provisions set forth in the CVC, Title 13 of the CCR, the specification contained in this agreement, and in a manner consistent with the industry standards and practices.
- B. Contractor agrees to provide Class A and B tow trucks, as applicable, upon request by the City, pursuant to the terms set forth in the Agreement and Exhibits. If Contractor does not own and operate a Class C truck, then Contractor shall contact one of the other towing operators under contract with the City to provide such a truck. However, this contact should be made immediately and should not extend the response time to the scene. Class D is desirable, but not required as a condition of this agreement.
- C. There are four (4) classes of tow trucks covered under this agreement:
 1. Class A- Light Duty/ Per the CHP definition, a tow truck with a manufacturer's GVWR of at least 14,000 pounds.
 2. Class B-Medium Duty/ Per the CHP definition, a tow truck with a GVWR of at least 33,000 pounds and equipped with air brakes and a tractor protection valve or

device and capable of providing and maintaining continuous air to the towed vehicle.

3. Class C-Heavy Duty/ Per the CHP definition, a three-axle tow truck with a GVWR of at least 52,000 pounds. The truck shall be equipped with air brakes and must be capable of providing and maintaining continuous air to the towed vehicle.

4. Class D-Super Heavy Duty/ Per the CHP definition, a three-axle tow truck with a GVWR of at least 54,000 pounds. The truck shall be equipped with air brakes and must be capable of providing and maintaining continuous air to the towed vehicle.

11. CLEANUP REQUIREMENTS.

In requesting that Contractor be placed on the City Tow Service List, Contractor agrees to provide prompt service, taking any vehicle regardless of age and condition, and clearing the location of debris, fluids, and glass before leaving the location of the vehicle to be towed.

12. TOWING OF VEHICLES TO S.C.P.D. IMPOUND FACILITY.

- A. Any vehicle ordered to be towed by S.C.P.D. and taken to the City Corporation Yard, or the S.C.P.D. evidence garage shall be removed after impound by the tow company that originally towed the vehicle, to the extent that is under the City's control.
- B. S.C.P.D. shall have the responsibility of assuring that all charges due the towing company by the City are satisfied prior to any release made at the vehicle impound facility.
- C. No storage fees shall accrue while a vehicle is stored at a City facility.

13. TOWING AND ROAD SERVICING OF CITY VEHICLES.

- A. Contractor agrees to provide tow and road service of City vehicles on a 24-hour basis. Vehicles towed or serviced by contractor shall be towed or serviced at the service charge, as set forth in Exhibit C. Contractor shall remain at the top of the rotation list.
- B. In each instance where a commercial tow is requested, permission to do so must be granted by the on-duty watch commander or his/her designee.

14. MISCELLANEOUS ITEMS.

- A. Tow trucks that have been dispatched by owners or operators of garages when radio messages have been monitored are in violation of laws of the Federal Communications Commission, which prohibit the solicitation of services at the scene of a collision.

- B. Contractor shall be responsible for the driving and behavior of their employees. It shall be a violation of this Agreement if tow trucks arrive at a scene when they have not been called with the explanation that they happened to be driving by or were in the neighborhood or received a phone call not from the S.C.P.D., or when it becomes evident that the call was not made by the owner or representative.
- C. Each tow unit shall have the capability of communicating by 2-way radio with their own dispatching service.
- D. Tow vehicles will be maintained in compliance with the California Vehicle Code. Tow vehicles may be inspected by S.C.P.D.
- E. City agrees to utilize Contractor as a provider of tow services in the City of Santa Clara and may, at its sole discretion, refer any and all types of tows to Contractor for performance. City may also refer any and all types of police initiated tows to Contractor outside of the City's jurisdictional boundaries if City determines it necessary to do so or for City's convenience.

This copy is not intended to be a contract and is not to be used as evidence in any legal proceeding.

**AGREEMENT FOR SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
LIMA TOWING**

EXHIBIT B

**ALL CITY REQUESTED TOWS ARISING FROM
NON-POLICE INITIATED TOW SERVICE REQUESTS**

In addition to the general provisions of this Agreement, Contractor agrees to the following terms and conditions which shall apply to all contractors which have agreed to be included on the City Tow Service List, as set forth in this Agreement:

1. CITY POLICY REGARDING TOW SERVICES.

Contractor's accountability for tow service and vehicle removal under this Agreement is of paramount concern to City. The terms and conditions set forth in the City Tow Service List comprises the policy of the City of Santa Clara Police Department with regard to tow companies, which by signing this agreement have requested to be placed on the City Tow Service List. This policy is established to alleviate controversy among the tow company operators and to settle complaints made by owners of vehicles involved in tow service activities. The City shall be the final authority in the settlement of any disputes arising out of tow services provided by tow companies included on the City Tow Service List.

2. CONTRACTOR'S OBLIGATIONS AND NOTIFICATIONS.

- A. Contractor shall release stored vehicles from 8:00 a.m. to 5:00 p.m., Monday through Friday, except State holidays. Outside of these normal hours, the response must be within 60 minutes after notification.
- B. As part of the City's "Voluntary Tow Program," Contractor shall agree, upon the request and supervision of the S.C.P.D., to remove and take possession of any vehicle abandoned, wrecked, dismantled, or inoperative, which is voluntarily relinquished by the registered owner. Contractor agrees to take and dispose of relinquished vehicles without any cost to the registered owner or the City. Contractor agrees to transport vehicles directly to a licensed dismantler without the use of any subcontractors to transport or store vehicles. Excluding weekends, vehicles must be transported at the request of the S.C.P.D. within one 24-hour business day upon notification.

3. RATES AND CHARGES.

- A. All fees charged by Contractor shall not exceed City approved rates and service charges set forth in Exhibit C. These tow rates and charges shall be posted at all tow facilities in plain view.

- B. Additional charges will not be made except in unusual cases when other than normal conditions exist. Any additional charge will be subject to prior written approval of City's Police Department. Contractor shall conform to all procedures required by City to maintain adequate Abandoned Vehicle Abatement service at reasonable rates.
- C. Any unauthorized deviation from the rates and charges listed in Exhibit C shall be interpreted as an intentional breach of this Agreement and shall constitute grounds, at the discretion of City, for immediate termination of this Agreement with Contractor.
- D. No part of any towing and/or storage expense or any other cost or expense shall be charged against City, its officers or employees. Contractor shall be responsible for the collection and/or payment of any charge or service rendered by Contractor pursuant to this Agreement.

4. MISCELLANEOUS ITEMS.

- A. Towed vehicles will be maintained in compliance with the provisions of the California Vehicle Code.
- B. The value of such abandoned vehicles will be estimated by City in accordance with State Requirements for vehicles valued under \$500, under \$4,000, and over \$4,000.
- C. Contractor shall maintain, under direct control, a storage area large enough to park at least five (5) tow trucks for storage purposes per week.

5. DEBRIS REMOVAL SERVICE.

- A. Contractor agrees to provide roadway debris removal services on a rotational basis, upon request by S.C.P.D. The debris removal service is for situations not involving Police initiated tows. This service is to be provided from 4:00 p.m. to 8:00 a.m. weekdays and twenty-four (24) hours a day on weekends.
- B. City shall be responsible for labor fees for debris removal services as set forth in Exhibit C. The labor fees will be charged as specified in Exhibit C. Separate Hazardous Materials Disposal Fee shall not be charged as specified in Exhibit C.
- C. Each service request shall not exceed the capacity of one tow truck operator to remove and transport the debris.

**AGREEMENT FOR SERVICES
BY AND BETWEEN THE
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AND
LIMA TOWING**

EXHIBIT C

SCHEDULE OF FEES, TOW RATES AND CHARGES

ROTATION SCHEDULE A:

For rotation schedule A, City shall reimburse Contractor Fifteen Hundred Dollars and Zero Cents (\$1500.00) for each Recreational Vehicle, Motor Home (on wheels), and Cab-Over Camper towed, Open Trailers, and Box Trucks. Contractor shall submit to City a properly completed invoice within 30 days after the end of the month in which the tow occurred. The invoice shall itemize each vehicle towed by vehicle type, and include a photograph of the vehicle. Invoices are to be remitted to:

**Santa Clara Police Department,
601 El Camino Real
Santa Clara, CA 95050
Attention: Field Operations Division Commander**

ROTATION SCHEDULE B:

SCHEDULE OF TOW RATES AND CHARGES FOR ROTATION SCHEDULE B:

1. Basic Tow - For any tow of a disabled vehicle from the scene of an accident; or of an unattended or abandoned vehicle from a public street when authorized by a police officer or other authorized employee of City; or of a driverless vehicle from a public street or private property, when authorized by a police officer, or other authorized employee of City, and when required on account of the disability of the driver. For any tow of a vehicle from a public street or private property when authorized by the person lawfully entitled to the possession of the vehicle (except Voluntary Tow Program); or of a vehicle parked without authorization on private property by the person lawfully entitled to the possession of the real property. For any tow of a vehicle authorized by a Santa Clara Police Officer other authorized City employee from a location on a freeway within the city limits of the City of Santa Clara.	\$225.00 per tow
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2. Service call - response by a Tow Truck to a request by or on behalf of the person in lawful possession of a vehicle, or by a police officer, but towing is found not to be necessary, for each period of fifteen (15) minutes, or portion thereof, required to be spent from the time of departure to return to the customary tow car location or to release to another assignment in accordance with, and subject to the limitations of, the provisions of the "No Drop or Release Charge" section of Exhibit A:	
Class "A" regular duty tow-trucks:	\$56.25 per quarter hour
Class "B" medium duty tow-trucks:	\$107.50 per quarter hour
Class "C" heavy duty tow-trucks:	\$137.50 per quarter hour
Class "D" heavy duty tow-trucks:	\$150.00 per quarter hour
3. Extraordinary Services Tows	
Where one or more of the following conditions is met:	
a. Tow services authorized in writing by the City as requiring more than the use of one Class A Tow Truck for more than one hour from the time of dispatch to the time of departing the scene	
b. Vehicles that have been driven off of embankments;	
c. Accidents where a vehicle is overturned, burned, or imbedded in a structure or another vehicle	
d. Vehicles which must be recovered over six feet from the roadway	
e. Heavy Vehicle Tows (Special Tows): Class B - for towing vehicles which are under 6,000 pounds (empty) which require Class B truck recovery, (e.g. fifth wheel trailers, small motor homes, horse trailers and heavily loaded one-ton trucks); and for towing vehicles which exceed 6,000 pounds (empty) (e.g. medium to large motor homes, commercial trucks and trailers, and trailers less than 26,000 pounds (empty)); Class C & D - for towing vehicles where weight or complex recovery requires the use of a Class C or D Tow Trucks (e.g. vehicles with a weight exceeding 26,000 pounds (empty), such as a very large motor home bus or semi-truck and trailer rig).	
f. Vehicles which are in more than one piece as a result of a collision and it has been documented by requiring the written authorization of the impounding officer on the CHP Form 180 (impounds only) or Tow Services Audit Form when the CHP Form 180 is not required, then the following rates are applicable as authorized.	
Class "A" regular duty tow-trucks:	\$225/hr.

Class "B" medium duty tow-trucks:	\$430/hr.
Class "C" heavy duty tow-trucks:	\$550/hr.
Class "D" heavy duty tow-trucks:	\$550/hr.
The foregoing rates shall be charged as a one-hour minimum charge plus a pro rata charge for each quarter hour as authorized	
4. Storage fee:	
Passenger vehicles, motorcycles, vans and light trucks (per day).	
Per Space, Outside	\$90.00
Per Space, Indoors	\$95.00
5. After Hours Gate Fee - for the release of a vehicle one hour after SCPD desk closes until the desk reopens.	\$112.50

ADDITIONAL TOW RATE AND CHARGE REQUIREMENTS

- A. "Rates and Charges for Rotation Schedule B only may be adjusted annually, on January 1, subject to approval by City. Rate increases shall not exceed the annual percentage increase in the Consumer Price Index for All Urban Consumers (Current Series) for the San Francisco-Oakland-Hayward, CA region, not seasonally adjusted. The annual percentage increase shall be calculated from the month of June of the current year, to June of the previous year.
- B. Storage and gate fees (if applicable) will be in addition to the basic tow fees listed above.
- C. The labor rate is to be applied in quarter (1/4) hour increments and shall be logged accurately on the receipt. Extra labor fees are subject to approval by S.C.P.D.
- D. Debris Removal Service will be charged at the Service Call rates. In addition, assigned Contractor will retain spot on top of the rotation list.
- E. Vehicles towed to the S.C.P.D. impound facility and subsequently towed to Contractor's storage lot may be subject to an additional fee of **one-half the tow fee** over and above the original tow rate.
- F. The towing and servicing of City vehicles as described in Exhibit A will be charged at **one-half the tow and related fees for Rotation B, Rates and Charges**. Extra labor fees are subject to approval by S.C.P.D.
- G. Separate Hazardous Materials Disposal Fee shall not be charged. Fees for such disposal are included in the fees established for tows under the Agreement.

- H. Contractor shall strictly conform to all applicable local, state and federal laws and regulations with regard to disposal of vehicles, whether by lien sale or otherwise.
- I. Contractor shall display in its place of business in clear view of all patrons and in language acceptable to the Chief of Police, the following:
 - i. A listing of the Tow Rates and Fees;
 - ii. A listing of the Gate Fee and when it can be charged;
 - iii. A listing of the Lien Sale Application Fee and when it can be charged;
 - iv. A copy of the Contractor's current Santa Clara Business License;
 - v. A copy of Contractor's insurance policy (with financial data redacted if applicable) or, the Contractor's insurance company's name, address, policy number, including the name, address and telephone number of Contractor's insurance agent;
 - vi. Forms for complaints by patrons; and,
 - vii. The name and telephone number of the S.C.P.D. Tow Liaison.

**AGREEMENT FOR SERVICES
BY AND BETWEEN THE
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AND
LIMA TOWING**

EXHIBIT D

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.
4. ON HOOK/CARGO POLICY with a minimum limit of not less than fifty thousand dollars (\$50,000).

5. GARAGE KEEPERS LEGAL LIABILITY POLICY with a minimum limit of not less than one hundred thousand dollars (\$100,000).

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance

Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.

2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation.
 - (a) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - (b) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. **ADDITIONAL INSURANCE RELATED PROVISIONS**

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be submitted as follows:

Email (**preferred**): ctsantaclara@ebix.com
Mailed: EBIX Inc.
City of Santa Clara
P.O. 12010-S2
Hemet, CA 92546-8010
Fax number: 770-325-0409 Telephone number: 951-766-2280

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.