

2024 - 2026 TOWING SERVICES AGREEMENT

THIS 2024 – 2026 TOWING SERVICES AGREEMENT (“TSA”) contains the terms and conditions a tow operator (“OPERATOR”) agrees to comply with in order to receive and maintain a tow rotation listing (the “LIST”) with the City of Lincoln (“CITY”), and Lincoln Police Department (“LPD”). Participation in the LIST is voluntary and is not intended to be a main source of income for participants. An OPERATOR, by agreeing to participate in the LIST, does not establish a contractual relationship with the CITY or the LPD, and the operator is not acting as an agent for the CITY or the LPD when performing services under the TSA. Exception to compliance with the TSA shall not be authorized by any verbal agreement. Any exceptions shall be documented as a written addendum to the TSA, with justification, and shall have the approval of the LPD Public Safety Chief.

A. TERM OF AGREEMENT:

1. This AGREEMENT shall be effective for two (2) years from the date last set forth on the signature page of this AGREEMENT.
2. The term of this AGREEMENT may be extended from year to year at the discretion of LPD Public Safety Chief. Such extension shall be in a writing executed by the Public Safety Chief.
3. This AGREEMENT may be terminated without cause upon fifteen (15) days prior written notice by the CITY or OPERATOR. If OPERATOR fails to perform any of its material obligations under this AGREEMENT, the CITY may terminate this AGREEMENT immediately upon written notice to the OPERATOR.
4. This AGREEMENT pertains to general towing services utilizing Class A - D tow trucks only. However, nothing in this AGREEMENT shall limit or prohibit CITY, in its sole discretion, from retaining the services or extending the terms of this AGREEMENT to a person or company providing specialized equipment or services.

B. AUTHORITY

1. CITY has the sole discretion to determine OPERATOR’s ability to comply with the minimum requirements to qualify to be an eligible provider of tow services from the LIST.
2. CITY has the sole discretion to determine the number of OPERATORS needed for the LIST based on the current needs of the CITY.
3. CITY has the sole discretion to approve or reject an application for a driver’s permit as required pursuant to this AGREEMENT.
4. CITY has the sole discretion to suspend or revoke a driver’s permit as required pursuant to this AGREEMENT.

5. CITY has the sole discretion to determine the reasonableness of OPERATOR's submitted rates for tow services and storage fees.
6. CITY has the sole discretion to determine whether OPERATOR's storage facilities are adequate and provide adequate security for vehicles and property stored in the facility.

C. MINIMUM REQUIREMENTS

1. OPERATORS

- a. OPERATORS on the LIST shall have a minimum of three (3) years verifiable for-hire towing experience as an owner of a towing company or service.
- b. Towing operators who do not meet the three (3) years verifiable for-hire experience as an owner of a towing company or service may be considered if a full-time manager is employed by the towing operator who possesses three (3) years verifiable for-hire experience, as an owner or full-time manager. For the purposes of this subsection, the term "manager" shall mean any person who supervises, manages, directs, organizes, controls or in any other way is responsible for or in charge of the overall operation, conduct or activities of the towing company. If such manager ceases to be employed by the towing company, this AGREEMENT shall be suspended until a new manager is approved by CITY.
- c. Operators who do not meet the above requirements may demonstrate experience as an operator to qualify. 6-years of experience as an employee in good standing of a tow company, or a combination of employment, ownership, and management experience will be evaluated on a case-by-case basis as acceptable qualification for selection to the rotation at the sole discretion of CITY.

2. TOW EQUIPMENT

- a. All tow trucks used hereunder by OPERATOR shall comply with all provisions of the California Vehicle Code and shall meet or exceed the standards set forth in the CHP 234B Tow Truck Inspection Guide. At all times during the term of this AGREEMENT, OPERATOR shall have a minimum of one (1) serviceable tow trucks.
- b. Signs: All tow vehicles shall display signs on both sides of the vehicle specifying the OPERATOR's company name, business address, and telephone number. The signs shall be permanently affixed to the vehicle. The letters and numbers of the sign shall not be less than two (2) inches in height and shall be of a contrasting color to the background upon which they are placed as required by California Vehicle Code Section 27907.
- c. Color: Vehicles shall be uniformly painted with the same company color and logotype. OPERATOR may have tow trucks in its fleet with specialty detail paint, however, the copy logotype on any such vehicle must be readily identifiable and visible to the public.

3. DRIVERS AND PERSONNEL

- a. OPERATOR's tow truck drivers shall be properly licensed by the State of California, shall be at least eighteen (18) years of age and shall have a minimum of six (6) months experience as a towing operator or, alternatively, not less than three (3) months of such experience plus successful completion of the "Light Duty Level 1" training certificate issued by the California Tow Truck Association, or comparable training provided by the California State Automobile Association, TRAA, Prometric or other training program meeting the standards established by the California Highway Patrol.
- b. OPERATOR shall ensure that tow truck drivers responding to calls initiated by CITY are qualified and competent employees of the company. OPERATOR shall ensure that tow truck drivers are trained and proficient in the use of the tow truck and related equipment, including, but not limited to, the procedures necessary for the safe towing and recovery of the various types of vehicles serviced through CITY's LIST.
- c. OPERATOR shall ensure its tow truck drivers and other personnel responding to CITY-generated calls for service shall present an image and personal appearance that instills confidence in the general public. This shall include, but not be limited to:
 - 1) Tow truck drivers and other personnel must wear jackets or shirts bearing their company's logotype or name. The logotype or name shall be of a size and in a location that is clearly visible to the public. T-shirts, long sleeve shirts, button up or zip up jackets or short-sleeve shirts are acceptable. Shirts shall not be worn unbuttoned or unzipped. Tow truck drivers and other personnel shall present a neat and clean personal appearance consistent with good grooming and personal hygiene standards.
 - 2) Tow truck drivers and other personnel must wear clothing appropriate for the job being performed. LPD personnel shall have the discretion to determine if the individual's clothing and appearance satisfies these minimum standards of appearance.
- d. OPERATOR shall maintain a current list of tow truck drivers and shall provide such list to LPD. OPERATOR shall have at least one (1) full-time/part-time employees who are qualified as provided in Section 3(a), above, and who have been issued an annual driver's permit by LPD.
 - 1) At the time of execution of this AGREEMENT, OPERATOR shall provide a current list of its tow truck drivers to LPD. Thereafter, OPERATOR shall notify LPD of any change in driver status, including the addition or deletion of any driver(s). An updated written list shall be provided to LPD within seven (7) calendar days of any change in driver status.

2) OPERATOR shall, at a minimum, maintain and provide to LPD the following information for each employee, which shall be maintained confidentially by LPD:

- Full name
- Date of birth
- California Driver License Number
- Job title/description
- Current home address
- Current home phone number

- e. LPD may conduct a background investigation of each applicant for a driver's permit. If an application is approved, LPD may issue a permit to the applicant, which shall bear the applicant's name, photograph, company name, and such other information deemed appropriate by LPD.
- f. If an application is rejected, the applicant shall be given written notice of the rejection and be notified of the opportunity to meet with LPD Public Safety Chief or his/her authorized designee to prove his/her fitness, willingness, ability, and qualifications to perform such services. The applicant's request shall be delivered to the LPD by 5 p.m. on the seventh (7th) calendar day following the date of mailing or personal service of such notice. Should the applicant fail to submit a written request for such meeting within the seven (7) day period, the applicant's right to a meeting is waived.
- g. Should a request for a meeting be timely filed by the applicant, the meeting shall be conducted within a reasonable time after CITY's receipt of the applicant's request for a meeting. Following the meeting, the applicant shall be notified in writing of the Public Safety Chief's or his/her authorized designee's decision within thirty (30) calendar days from the meeting, unless otherwise extended by CITY for good cause. The CITY's decision shall be final.
- h. Every tow truck driver who is issued a permit under this subsection shall have the permit in his or her possession whenever providing towing services under this AGREEMENT, and shall present the permit upon demand by any law enforcement officer or individual receiving towing service. Such permit shall remain in effect for the term of this AGREEMENT, subject to revocation of the permit by the LPD.
- i. LPD shall have the authority to revoke a driver's permit issued hereunder at any time should LPD determine that the individual to whom the permit is issued is not fit, willing, able or qualified to perform the towing services required hereunder.

4. STORAGE FACILITIES

- a. OPERATOR's storage facility should ideally be located within 15 miles of the city limits of Lincoln. Qualifying storage locations beyond 15 miles of the city limits will be considered on a case-by-case basis at the sole discretion of the CITY.

- b. OPERATOR's storage facility shall provide adequate storage space for vehicles that are towed pursuant to this AGREEMENT for the term of this AGREEMENT.
- c. OPERATOR shall be responsible for the security of stored vehicles and property at OPERATOR's place of storage. Provisions for the security of vehicles and property at the place of storage shall be provided to the satisfaction of LPD.
- d. OPERATOR shall be responsible for the reasonable care, safekeeping and control of any personal property contained in towed or stored vehicles.
- e. OPERATOR shall maintain an outdoor storage facility which shall be enclosed by a permanently secured fence or wall measuring not less than six (6) feet in height, which shall be topped with barbed wire or similar security device conforming to local ordinances, rules, and regulations.
- f. OPERATOR shall also maintain an indoor locked storage facility with adequate security devices conforming with local ordinances, rules, and regulations.
- g. OPERATOR shall prepare a written record of any property removed from a stored vehicle prior to taking the vehicle to another place for storage. OPERATOR shall maintain the original record with its business records and shall place a true and correct copy of the record in a safe location in the stored vehicle.
- h. OPERATOR shall not change the location of its storage facility(ies) specified in its application for inclusion on the LIST without first notifying and obtaining prior written approval from LPD.

5. BUSINESS OFFICE

- a. OPERATOR's business office shall have a sign that clearly identifies to the public that the business is a towing service provider. The letters, numbers, symbols, or words on the sign identifying the business shall be clearly visible from the street and shall be illuminated to be visible after daylight.
- b. OPERATOR should maintain the business office within 15 miles of the city limits of Lincoln. Qualifying business office locations beyond 15 miles of the city limits will be considered on a case-by-case basis at the sole discretion of the CITY.
 - 1) The office shall be equipped with a telephone having a separate telephone number/line for the towing business.
 - 2) The office shall be sufficiently staffed to answer the telephone and to allow customers to talk face-to-face with a tow company's owner, manager, or employee during normal business hours.
 - 3) The office shall be operated in a way that permits vehicle owners or their agents to pay and arrange for the recovery of their towed vehicle such that after making payment, the owner or agent can go directly to OPERATOR's tow facility without delay to reclaim the vehicle. OPERATOR acknowledges the provisions of Section 22651.1 of the California Vehicle Code and agrees to comply with the provisions

thereof, which includes the requirement to accept a valid bank credit card for payment for towing and storage fees.

- 4) OPERATOR shall immediately notify LPD in writing of any change of address or location of OPERATOR's business office.
 - 5) In the event the business office is located in excess of 15 miles of the city limits, the OPERATOR shall offer options for conducting business in the field. This can be accomplished via remote payment systems or other technology systems approved by the CITY.
- c. For the purpose of this AGREEMENT, "normal business hours" shall be, at a minimum, 8 a.m. to 5 p.m., Mondays through Fridays, except for the following holidays:
- 1) New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, day after Thanksgiving Day, and Christmas Day.
 - 2) OPERATOR's business hours shall be posted in plain view to the public at OPERATOR's business office.
 - 3) If OPERATOR's place of business shall be sufficiently staffed so as to remain open during the lunch hour.
 - 4) OPERATOR's employees shall be properly trained to conduct business transactions related to towing, storage and release of vehicles/property.

D. SCOPE OF WORK

1. STANDARD OF PERFORMANCE

- a. OPERATOR shall perform all services required pursuant to this AGREEMENT in the manner and according to the standards observed by a competent practitioner of the business in which OPERATOR is engaged in the geographical area in which OPERATOR practices including, but not limited to, safe practices in the recovery and towing of vehicles, and appropriate use of all equipment.
- b. OPERATOR's failure to comply with these requirements and/or any laws, ordinances, codes or regulations of the federal, state, or local governments applicable to OPERATOR's business shall be a material breach of this AGREEMENT and grounds for immediate termination of this AGREEMENT by CITY.
- c. OPERATOR shall devote such time, energy, and expense as may be reasonably necessary for the satisfactory performance of OPERATOR's obligations required by this AGREEMENT.

- d. OPERATOR shall provide the best quality service possible to all customers and to CITY.

2. ROTATION LIST:

- a. Requests for towing services shall be made from the LIST on a rotational basis. A call for towing services by LPD to OPERATOR shall constitute one (1) turn and OPERATOR will then be moved to the bottom of the LIST.
- b. A call to an OPERATOR who fails to or is unable to respond to a call for any reason, such as failure to answer telephone, unable to respond, unable to perform the requested service, or call is canceled due to excessive response time will be considered a turn on the LIST.
- c. If LPD determines that OPERATOR's services are not needed and cancels a call for service up to and including arrival at the scene and stand-by time if hook-up or service has not begun by OPERATOR, there shall be no charges assessed by OPERATOR and OPERATOR will be retained at the top of the LIST until called again.
- d. Following arrival at the scene or incident, if hook-up or service has begun by OPERATOR and is canceled by the vehicle owner or his/her agent, OPERATOR's charge to the vehicle owner shall be no more than one half (1/2) of the normal towing charge.
- e. If additional tow operators are called to the same scene or incident, distribution of the vehicles to be towed shall be made at the sole discretion of OPERATOR.
- f. There may be times when the tow operator/driver assigned the initial call require assistance from an additional operator/driver. Such a request should be routed through CITY.
- g. The CITY will request a specific tow operator when, in CITY's sole discretion, the necessary resources to clear a hazard are not available or other factors warrant a deviation from the tow operator currently at the top of the LIST. In such an instance, the selected tow operator would then go to the bottom of the LIST and those tow operator(s) that were bypassed would remain in the same LIST order.
- h. CITY's representative at the scene may direct OPERATOR to move vehicles in order to clear a roadway or to facilitate emergency operations. OPERATOR agrees to promptly comply with such direction and will provide the requested assistance. OPERATOR is prohibited from responding to a call assigned by CITY to another tow operator, or reassigning a call to another operator, unless requested to do so by CITY's authorized representative.

3. TOW SERVICES

- a. OPERATOR shall be available on a twenty-four (24) hour, seven (7)- days-a-week basis. OPERATOR shall have a minimum of one (1) complete towing

vehicle or units in operating condition at all times during the term of this AGREEMENT. OPERATOR shall have at least one (1) tow vehicle assigned to serve CITY at all times. Response time shall not exceed twenty five (25) minutes from receipt of a call for service under normal circumstances between the hours of 7 a.m. to 7 p.m. and thirty (30) minutes from receipt of a call for service under normal circumstances between the hours of 7 p.m. to 7 a.m. If OPERATOR is unable to immediately dispatch a towing vehicle or unit in response to a CITY-generated call, OPERATOR shall immediately notify LPD dispatcher of such inability. In the event OPERATOR exceeds the times required, CITY may cancel the requested OPERATOR and move to next available.

- b. OPERATOR shall only use tow vehicles or units that have passed safety inspections conducted by LPD or the California Highway Patrol when responding to a CITY-generated call for service. Such vehicles shall also comply with the provisions of Sections 24605, 25253, 25300, 27700, and 27907 of the California Vehicle Code and all other applicable safety laws, rules and regulations.
- c. Only authorized tow truck personnel and equipment shall respond to a CITY call (e.g., tow truck driver bringing girlfriend, children, their dog or other pet, is not allowed). There shall be no additional charge for any personnel or equipment that is not necessary to perform the required service.
- d. OPERATOR's failure to respond within the maximum response time requirements of this AGREEMENT shall be a material breach of this AGREEMENT and grounds for immediate termination of this AGREEMENT by CITY.
- e. LPD may take immediate action for any failure by OPERATOR to respond within the maximum response times specified in this AGREEMENT.
- f. When OPERATOR knows it will be temporarily unavailable to provide towing services due to a preplanned/scheduled activity (e.g., vacation, maintenance, medical leave, etc.), OPERATOR shall notify LPD of such unavailability and the duration thereof not less than twenty-four (24) hours prior to the commencement of such unavailability.
- g. OPERATOR and/or its employees(s) responding to a CITY-generated call for towing service shall provide such service. However, a law enforcement officer at the scene may waive this requirement if such officer determines that OPERATOR's equipment cannot adequately provide the needed service.
- h. OPERATOR shall be responsible for the removal of any debris and/or fluids from the scene of a CITY-generated call for service. Hazardous wastes shall be removed, handled, and disposed of in the manner prescribed by state and local law. Normal household wastes, however, such as paint, pesticides, automotive fluids (e.g. brake, transmission, and power steering fluids) and tires may be disposed of pursuant to procedures established by CITY's Public

Works Department, if any. OPERATOR's failure or refusal to comply with this provision shall be a material breach of this AGREEMENT and grounds for immediate termination of this AGREEMENT by CITY.

- i. OPERATOR shall provide the services specified in this AGREEMENT whenever requested to do so by CITY's representative or agent. All services performed under this AGREEMENT are considered to be of an emergency nature and must be promptly provided by OPERATOR. When responding to a call for service, OPERATOR shall take the quickest route to the location where the service is to be performed. "Dry runs," charges for unclaimed abandoned vehicles, and charges for disposal of trailers or campers shall be absorbed by OPERATOR.
- j. CITY's representative at the scene may direct an OPERATOR to move vehicles in order to clear a roadway or to facilitate emergency operations. OPERATOR agrees to promptly comply with such direction and will provide the requested assistance. OPERATOR is prohibited from responding to a call assigned by CITY to another tow operator, or reassigning a call to another operator, unless requested to do so by CITY's authorized representative.
- k. OPERATOR shall comply with the instructions of Form CHP 180 issued at the time of the tow. CITY, through its officers, agents or employees, shall insert in form CHP 180 the appropriate California Vehicle Code Sections and shall include in the "remarks" portion of said form instructions to the OPERATOR written in plain, simple English.
- l. OPERATOR will provide towing services for CITY police vehicles for LPD at no cost to the CITY.

4. JUNK SLIPS:

- a. LPD Patrol Division will be responsible for issuing junk slips for tows requested by LPD. Upon receipt of a form CHP 180 by the Records Division, a Records Clerk will analyze the CHP 180 form and, if he/she determines that a junk slip is warranted, will complete and mail the junk slip to OPERATOR's address as provided in this AGREEMENT.
- b. LPD Patrol Division will be responsible for issuing and delivering junk slips to OPERATOR for tows requested by CITY. Values placed on junked vehicles will be determined by the Designated Towing Officer at the time of the tow.
- c. Any attempt by OPERATOR, its employees, agents, or representatives to persuade, influence, intimidate or become argumentative towards a CITY officer, agent or employee responsible for issuing a junk slip shall be a material breach of this AGREEMENT and grounds for immediate termination of this AGREEMENT by CITY.

5. BUSINESS AND RECORDS:

- a. The release of vehicles shall be conducted in accordance with LPD procedures. Vehicles towed by the Police Department pursuant to the provisions of the California Vehicle Code when a CHP 180 and report number has been issued shall not be released until the appropriate release form has been issued by LPD.
- b. OPERATOR shall possess a valid City of Lincoln business license throughout the term of this AGREEMENT and shall post such license in plain view to the public at OPERATOR's business office.
- c. OPERATOR's business office shall maintain records of all tow services furnished under this AGREEMENT, including a description of the towed vehicle, nature of the service provided, amount billed and collected, and the time, date and location of the service provided. Invoices shall contain the required itemization and notice pursuant to California Vehicle Code Section 22651.07. OPERATOR's business office shall additionally maintain records related to personnel, lien sale actions, non-CITY tows, and insurance. Such records shall be open to inspection by representative(s) of CITY without notice at any time during normal business hours and shall be maintained for a minimum of three (3) years from the expiration or termination date of this AGREEMENT. OPERATOR shall permit CITY to make copies of such records at OPERATOR's place of business, or to remove the records for the purpose of reproduction. CITY shall provide a receipt for any record removed from OPERATOR's place of business. OPERATOR's failure to comply with these retention or inspection requirements shall be a material breach of this AGREEMENT and grounds for immediate termination of this AGREEMENT by CITY.
- d. Lien sales will be the sole responsibility of OPERATOR and all such sales shall be conducted in accordance with the applicable provisions of California law. Any liability related to said lien sales shall be borne solely and exclusively by OPERATOR.

6. RATES:

- a. Fees charged for responding to calls for service initiated by CITY shall be reasonable and shall not exceed those fees charged by OPERATOR for similar services provided to other public agencies and other private entities and individuals.
 - (1) OPERATOR shall submit his/her rate schedule to the CITY's inspector at the time of CITY's initial inspection of OPERATOR's storage facility and office. The rate schedule may be modified as provided herein.
 - (2) Reasonableness shall be determined as compared to the rates of other towing operators doing business in Placer County. If CITY's inspector determines that a rate is excessive, OPERATOR shall be allowed to resubmit a revised rate schedule.
- b. OPERATOR may lower its approved rates upon seven (7) days prior written notice to LPD. When OPERATOR lowers its rates, these rates shall become the rates for the remaining term of this AGREEMENT. OPERATOR may seek to increase rates by notifying LPD in writing not less than thirty (30) days prior to the effective date of the proposed increase. This provision does not apply to non-CITY generated calls for service.
- c. Fees charged for after-hours release of a towed vehicle shall be no more than one-half (1/2) OPERATOR's CITY-approved rate and shall only be charged if no person is available at OPERATOR's storage facility to release the vehicle and a call back of OPERATOR's personnel is required.
- d. Rates in excess of the CITY-approved rates for CITY-generated calls for service shall be a material breach of this AGREEMENT and grounds for immediate termination of this AGREEMENT by CITY.

7. STORAGE FEES:

- a. Fees charged for indoor and outdoor storage of vehicles and property resulting from calls for service initiated by CITY shall be reasonable and shall not exceed those fees charged by OPERATOR for similar services provided to other public agencies and other private entities and individuals.
 - (1) OPERATOR shall submit his/her storage fee schedule to the CITY's inspector at the time of CITY's initial inspection of OPERATOR's storage facility and office.
 - (2) Reasonableness shall be determined as compared to the rates of other towing operators doing business in Placer County. If CITY's inspector determines that a rate is excessive, OPERATOR shall be allowed to resubmit a revised rate schedule.

- b. OPERATOR shall submit his/her proposed indoor and outdoor storage fees to LPD for review and approval.
- c. Vehicles stored twenty four (24) hours or less shall be charged no more than OPERATOR's rate for one (1) day storage. Each day thereafter, or portion thereof, may be charged as a full calendar day.
- d. Storage fees in excess of the CITY-approved rates for CITY-generated calls for service shall be a material breach of this AGREEMENT and grounds for immediate termination of this AGREEMENT by CITY.

8. DISPLAY OF RATES AND FEES

- a. OPERATOR shall display in plain view to the public at all tow offices a sign displaying all towing, storage and release fees and charges then in effect, including, but not limited to, OPERATOR's maximum storage rate.
- b. The CITY-approved schedule of rates charged by OPERATOR shall be kept in each tow truck, and shall be presented upon demand to person(s) requiring towing services or his/her agent, or any law enforcement officer at the scene of the tow.

9. INSPECTIONS:

- a. LPD may conduct one (1) annual inspection of OPERATOR's tow trucks or units used in connection with providing the services hereunder, at no charge to OPERATOR. LPD may conduct additional inspections of OPERATOR's tow trucks and units during normal business hours without prior notice to OPERATOR. Tow trucks and units that have not been inspected and approved by LPD shall not be used to respond to a CITY-generated call for towing services.
- b. LPD may conduct one (1) annual inspection of OPERATOR's business office and storage facility(ies) at no charge to OPERATOR. The Police Department may conduct additional inspections of OPERATOR's business office and storage facility(ies) during normal business hours without prior notice to OPERATOR. OPERATOR's failure to provide access to its business office and storage facility(ies) for inspection shall be a material breach of this AGREEMENT and grounds for immediate termination of this AGREEMENT by CITY.
- c. If OPERATOR's tow trucks or units, storage facility(ies), or business office do not pass the inspections specified above, LPD shall conduct one (1) re-inspection at no charge to OPERATOR. OPERATOR's failure to pass any such re-inspection shall be a material breach of this AGREEMENT and grounds for immediate termination of this AGREEMENT by CITY.

10. DEMEANOR AND CONDUCT:

- a. When providing the services required under this AGREEMENT, OPERATOR and its employee(s) shall refrain from any act(s) of misconduct, including, but not limited to, any of the following:
 - (1) Rude or discourteous behavior;
 - (2) Lack of service, selective service, or refusal to provide service that OPERATOR or its employees are/should be capable of performing;
 - (3) Any act of sexual harassment or sexual impropriety;
 - (4) Unsafe driving practices;
 - (5) Exhibiting any objective symptoms of alcohol or drug use;
 - (6) Appearing at the scene of a CITY rotation tow call with the odor of alcohol emitting from his/her breath; and
 - (7) Accepting or offering any gratuity pursuant to California Vehicle Code Section 12110.
- b. All CITY-related tow service complaints received by CITY concerning OPERATOR or its employee(s) will be investigated by CITY in a fair and impartial manner. OPERATOR will be notified of the results of any investigation. Following the investigation, CITY may initiate any action deemed appropriate by CITY in its sole discretion.
- c. Should criminal charges be filed against OPERATOR, CITY may conduct its own investigation of such charges or assist the lead investigating agency in such investigation and, if deemed warranted by CITY, request prosecution of such charges.
- d. OPERATOR's failure to comply with these requirements shall be a material breach of this AGREEMENT and grounds for immediate termination of this AGREEMENT by CITY.
- e. Records of any breach of this AGREEMENT shall be retained by LPD for not less than thirty-six (36) months from the date of the incident giving rise to the breach.

E. COMPLIANCE WITH AGREEMENT

- 1. OPERATOR's failure to perform or comply with any term or condition of this AGREEMENT shall be cause for termination of this AGREEMENT by CITY.

F. DISQUALIFICATION

1. An OWNER or MANAGER of a towing company who is under investigation, awaiting trial, or having a felony conviction within the previous five (5) years of the date of its Application for inclusion on the LIST or a misdemeanor conviction within the previous three (3) years of such date shall not be eligible for inclusion on the LIST.

The following terms shall apply for the purposes of this Section F:

- a. OWNER shall mean any of the following persons:
 - (1) The sole proprietor of a towing company.
 - (2) Any general partner of a partnership that owns a towing company.
 - (3) Any person who has a twenty percent (20%) or greater interest in a corporation that owns a towing company.
 - b. MANAGER shall mean any person who supervises, manages, directs, organizes, controls or in any other way is responsible for or in charge of the overall operation, conduct or activities of OPERATOR's towing company.
2. An OWNER or MANAGER of OPERATOR's towing company who is under investigation, awaiting trial, or convicted of a felony or misdemeanor during the term of this AGREEMENT shall disqualify OPERATOR from inclusion on the LIST and shall be grounds for immediate termination of this AGREEMENT by CITY.
 3. A tow truck driver having a felony conviction within the previous five (5) years of the date of this AGREEMENT or a misdemeanor conviction within the previous three (3) years of the date of this AGREEMENT or who is convicted of a felony or a misdemeanor during the term of this AGREEMENT shall not be allowed to perform or participate in the services to be provided by OPERATOR under this AGREEMENT.
 4. The following criminal offenses shall be deemed disqualifying: any offense involving a stolen or embezzled vehicle, fraud, stolen or embezzled property, a crime of violence, a drug-related offense, driving while under the influence of alcohol or drugs, or an offense involving moral turpitude.
 5. In the event an OWNER, MANAGER or driver of OPERATOR's towing company is arrested and/or charged for a violation involving any of the within-enumerated offenses, the OPERATOR (in the case of the arrest or charge of an owner or manager), or driver, as the case may be, shall not be allowed to perform or participate in services under this AGREEMENT until the case is adjudicated. OPERATOR shall notify CITY of any disqualifying arrest and/or conviction prior to the beginning of the next work shift. Failure to comply with this requirement shall be considered a material breach of this AGREEMENT and grounds for immediate termination of this AGREEMENT by CITY.
 6. An exception to the rules set forth in this AGREEMENT may be granted by CITY under extenuating circumstances whereby CITY determines, in its sole discretion, an exemption is appropriate under the circumstances, and OPERATOR can

demonstrate to CITY's satisfaction that OPERATOR's OWNER, MANAGER or driver is not a threat to public safety nor a potential liability to CITY. The burden of proof for establishing an exemption shall be borne by OPERATOR. For the purpose of this Section, a termination of probation that results in a dismissal of charges or a dismissal of charges pursuant to Section 1203.4 of the California Penal Code shall not mean that a conviction did not occur.

7. OPERATOR may reapply for inclusion or re-inclusion on the LIST and OPERATOR's owner, operator or driver, as the case may be, may perform or participate in the services to be provided by OPERATOR under this AGREEMENT if the applicable felony or misdemeanor conviction is reversed on appeal by a court of law. In no event shall OPERATOR's re-inclusion on the LIST extend the term of this AGREEMENT as to such OPERATOR.

G. COLLUSION

OPERATOR shall not conspire or attempt to conspire or commit any act of collusion, with any other towing operator or company on the LIST for the purpose of secretly, or otherwise, establishing an unfair understanding regarding rates, services, or obligations under this AGREEMENT that would be harmful or prejudicial to CITY, the public, or other towing OPERATORS. Examples of "collusion" include, but are not limited to: conspiracy by OPERATOR to establish artificially high or low rate(s) for services performed pursuant to this AGREEMENT, conspiring to circumvent LPD's annual review process, etc. Any violation of this prohibition shall be a material breach of this AGREEMENT and grounds for immediate termination of this AGREEMENT by CITY and the exclusion of OPERATOR from the LIST for the balance of the term of this AGREEMENT, plus an additional three (3) years.

H. PROHIBITED INTERESTS

1. No CITY officer, official or employee shall have any direct financial interest in this AGREEMENT nor in OPERATOR's business.
2. OPERATOR shall not be directly involved in the towing-related business of any other towing operator or company doing business within CITY, or share or jointly use with any other towing operator or company doing business within CITY any of the following: (i) towing equipment, (ii) personnel, (iii) insurance, or (iv) business license.
3. Any violation of these prohibitions shall be a material breach of this AGREEMENT and grounds for immediate termination of this AGREEMENT by CITY.

I. LICENSES, PERMITS, STATE LAWS:

1. OPERATOR represents and warrants to CITY that OPERATOR possesses all licenses, permits, qualifications, and approvals legally required for OPERATOR to engage in and practice his/her profession required under Section 12804.9 of the California Vehicle Code and any other laws, statutes, or regulations. OPERATOR represents and warrants to CITY that OPERATOR shall, at OPERATOR's sole cost and expense, keep in effect at all times during the term of this AGREEMENT, any licenses,

permits, qualifications, and approvals legally required for OPERATOR to engage in and practice his/her profession.

2. OPERATOR shall comply with all California state laws pertaining to OPERATOR's business or trade including, but not limited to, the following California Codes:

- a. Vehicle Code Section 10854 (Unlawful Use or Tampering by Bailee).
- b. Vehicle Code Section 22513 (Stopping on Highways).
- c. Vehicle Code Section 21718 (Stopping on Freeways).
- d. Vehicle Code Section 22651.1 (Acceptance of Credit Card or Cash by Storage Facility).
- e. Vehicle Code Sections 22851, 22851.1, 22851.4, 22851.6, 22851.8, 22851.10, 22851.12, and 22856 (Liens).
- f. Chapter Two of Division 4 of the Vehicle Code (Reports of Stolen Vehicles).
- g. Division 15 of the Vehicle Code (Size, Weight, and Load Limitations).
- h. Civil Code Sections 3067-3074 (Liens on Vehicles).

J. INSURANCE REQUIREMENTS:

OPERATOR agrees to have and maintain the policies of insurance set forth in EXHIBIT A of this AGREEMENT, which is attached hereto and incorporated herein by reference. All policies, endorsements, certificates and/or binders shall be subject to approval by CITY's Risk Management as to form and content. These requirements are subject to amendment or waiver if so approved in writing by CITY's Risk Management. OPERATOR agrees to provide CITY with a copy of said policies, endorsements, certificates and/or binders before commencing with the services under this AGREEMENT. The policies shall include a waiver of subrogation endorsement by which OPERATOR's insurer agrees to waive all rights of subrogation against CITY, its officers, officials, employees and volunteers for losses arising from work performed by OPERATOR for CITY. OPERATOR's failure to maintain the minimum insurance requirements shall be a material breach of this AGREEMENT and grounds for immediate termination of this AGREEMENT by CITY.

K. DISCRIMINATION:

OPERATOR shall not discriminate, in any way, against any person on the basis of age, sex, race, color, creed, sexual orientation, marital status, disability, or national origin in connection with or related to the performance of this AGREEMENT. Any violation of this prohibition shall be a material breach of this AGREEMENT and grounds for immediate termination of this AGREEMENT by CITY.

L. ENFORCEABILITY OF AGREEMENT:

Any provision of this AGREEMENT that is determined to be invalid, void, or illegal by a court of competent jurisdiction shall in no way affect, impair, or invalidate any other provision of this AGREEMENT, and such other provisions shall remain in full force and effect.

M. INDEPENDENT OPERATOR STATUS:

1. At all times during the term of AGREEMENT, OPERATOR shall be an independent contractor and shall not be an employee or agent of CITY.
2. Except as CITY may otherwise specify in writing, OPERATOR shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent, officer, or employee of CITY and OPERATOR shall have no authority, express or implied, to bind CITY to any obligation whatsoever.

N. ANNUAL MEETING:

CITY may, at its discretion, conduct one (1) or more meetings of the towing operators or companies on the LIST during each year of this AGREEMENT to discuss matters relating to this AGREEMENT. OPERATOR's attendance at this meeting shall be mandatory. CITY shall provide OPERATOR with not less than seven (7) calendar days' prior written notice of such meeting. OPERATOR's failure to attend any such meeting shall be a material breach of this AGREEMENT and grounds for immediate termination of this AGREEMENT by CITY.

O. INDEMNIFICATION AND HOLD HARMLESS:

1. To the greatest extent allowed by law, OPERATOR shall indemnify, defend, and hold harmless CITY, its officers, agents, elected officials, volunteers and employees from and against any and all claims, suits, or actions of any kind or description brought forth on account of injuries to or death of any person or damage to property in connection with the performance of this AGREEMENT by OPERATOR or any person directly or indirectly employed by or acting as agent for OPERATOR, unless caused by the sole negligence or willful misconduct of CITY.
2. Acceptance of insurance policies, certificates, endorsements, or binders required under this AGREEMENT does not relieve the parties from liability under this indemnification and hold harmless provision. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

P. ASSIGNMENT PROHIBITED

1. OPERATOR shall not transfer or assign any right or obligation under this AGREEMENT. Any attempted or purported transfer or assignment of any right or obligation shall be void and of no effect.

2. This AGREEMENT shall automatically terminate upon the transfer or sale of a majority interest in OPERATOR's business or company. This limitation, however, shall not prevent the new owner(s) from seeking to be included on the LIST by entering into a new towing services agreement with CITY for the remaining term of the AGREEMENT, which CITY may enter into at its sole discretion.

Q. NOTICES

All notices and other communications required to be given in writing under this AGREEMENT shall be personally served upon or mailed to the respective parties as follows:

TO OPERATOR: _____

TO CITY: Lincoln Police Department
770 7th Street
Lincoln, CA 95648

Except as otherwise provided herein, notice shall be deemed effective on the date personally served, or if mailed, three (3) days after deposit in the mail.

R. GOVERNING LAW

OPERATOR agrees that the law governing this AGREEMENT shall be that of the State of California, County of Placer.

S. WAIVER

OPERATOR agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by OPERATOR shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

T. INTERPRETATION

OPERATOR has reviewed this AGREEMENT and any question of doubtful interpretation shall not be resolved by any rule or interpretation providing for interpretation against the drafting party. The captions and headings contained herein are for convenience only and shall not affect the meaning or interpretation of this AGREEMENT.

U. SIGNATOR'S WARRANTY

OPERATOR warrants and represents that he/she/it is fully authorized and competent to enter into this AGREEMENT and agrees to be bound by this AGREEMENT.

V. PRIOR AGREEMENTS AND AMENDMENTS

This AGREEMENT, including all exhibits attached hereto, represents the entire understanding as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may only be modified by a written amendment duly executed by the parties to this AGREEMENT.

EXECUTED at Lincoln, California as of the date last stated below.

AGREED:

Dated: _____

OPERATOR:

By: _____

Company Name: _____

Its: _____

Dated: _____

CITY:

By: _____

Sean Scully

Its: City Manager

Dated: _____

LPD:

By: _____

Matt Alves

Its: Public Safety Chief

Approved as to form:

Kristine L. Mollenkopf, City Attorney

EXHIBIT A

CITY OF LINCOLN

INSURANCE REQUIREMENTS

The OPERATOR shall maintain at least the following minimum levels of insurance from an insurance carrier admitted in California, or admitted in a state in which the operator's business is located, and is authorized to do business in California:

1. Minimum Level of Financial Responsibility (as required by Section 34631.5 of the California Vehicle Code) – Bodily injury and property damage with a combined single limit of not less than \$750,000 for Class A tow trucks. The combined single limits for Class B, C, and D shall not be less than \$1,000,000. These minimum standards are to include non-owned and hired auto coverage.
2. Uninsured Motorist – Legal minimum, combined single limit.
3. On-Hook Coverage/Cargo – Insuring the vehicle in tow with limits based on the size of the tow truck:
 - a. Class A tow truck..... \$ 50,000
 - b. Class B tow truck..... \$100,000
 - c. Class C tow truck..... \$200,000
 - d. Class D tow truck..... \$250,000
4. Garage Liability – Includes premises and operations. Coverage for bodily injury and property damage with a combined single limit of not less than \$500,000.
5. Garage Keeper's Liability – Shall be the same minimum as on-hook coverage for vehicles in the care, custody, and control of the OPERATOR in the storage yard.
6. Workers' Compensation insurance limits as required by the Labor Code of the State of California and Employer's Liability limits of \$1,000,000 per accident.

Deductibles and Self-Insurance Retentions:

Any deductibles or self-insured retention's must be declared to and approved by CITY's Risk Manager. At the option of CITY's Risk Manager, either: the insurer shall reduce or eliminate such deductibles or self-insured retention's as respect the CITY, its officers, officials, employees and volunteers; or the OPERATOR shall provide a financial guarantee satisfactory to CITY's Risk Manager guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions and Requirements:

1. General liability/garage liability policy:

The general liability/garage liability policy is to contain, or be endorsed to contain, the following provisions:

- a. The CITY, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the OPERATOR, using standard ISO endorsement No. CG2010 with an edition prior to 1992, or its exact equivalent; products and completed operations of the OPERATOR; premises owned, occupied or used by the OPERATOR; or automobiles owned, leased, hired or borrowed by the OPERATOR. Defense costs must be paid in addition to limits. There shall be no cross-liability exclusion for claims or suits by one insured against another.
- b. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.
- c. The OPERATOR's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

No liability insurance coverage provided to comply with this AGREEMENT shall prohibit OPERATOR or OPERATOR's employees or agents, from waiving the right of subrogation prior to a loss. OPERATOR agrees to waive subrogation rights against CITY regardless of the applicability of any insurance proceeds, and to require all OPERATORS and sub-OPERATORS to do likewise.

No liability policy shall contain any provision or definition that would serve to eliminate coverage for so-called "third party action over" claims, including any exclusion for bodily injury to an employee of OPERATOR or any sub-OPERATOR.

2. Workers' Compensation and Employers Liability Coverage:

The OPERATOR's insurer shall agree to waive all rights of subrogation against the CITY, its officers, officials, employees and volunteers for losses arising from work performed by the OPERATOR for or behalf of CITY.

The provisions of any workers' compensation or similar act will not limit the obligations of OPERATOR under this AGREEMENT. OPERATOR expressly agrees not to use any statutory immunity defenses under such laws with respect to CITY, its officers, officials, employees and volunteers.

3. All coverages:

OPERATOR acknowledges that the insurance coverage and policy limits set forth in this exhibit constitute the minimum amount of coverage required. Any insurance proceeds available to CITY in excess of the limits and coverage required in this AGREEMENT and which is applicable to given loss, will be available to CITY.

OPERATOR's liability to CITY shall not be limited or affected by the amount of insurance set forth above, and the insurance limits required hereunder shall not be reduced by the wasting, collectability or availability of any policy of insurance. The full amount of the limits set forth above shall be available to CITY and all third parties from the respective insurers, notwithstanding any terms or conditions of any policy procured by OPERATOR, which diminishes or reduces such limits, for any reason, including costs and fees incurred in defending any claims, as well as any other claims(s) against the same policy(ies).

All insurance coverage required to be provided by OPERATOR is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self-insurance available to CITY.

All insurance coverage and limits provided by OPERATOR and available or applicable to this AGREEMENT are intended to apply to the full extent of the policies. Nothing contained in this AGREEMENT or any other agreement relating to the CITY or its operations limits the application of such insurance coverage.

None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to the CITY's Risk Manager and received approval in writing.

All coverage types and limits required are subject to approval, modification and additional requirements by CITY, as the need arises. OPERATOR shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect CITY's protection without CITY's express prior written consent.

Certificate(s) are to reflect that the insurer will provide not less than thirty (30) day notice to CITY of any cancellation of coverage. OPERATOR agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor"(as opposed to being required) to comply with the requirements of the certificate.

CITY reserves the right at any time during the term of this AGREEMENT to change the amounts and types of insurance required by giving OPERATOR not less than ninety (90) days' advance written notice of such change. If such change results in substantial additional cost to OPERATOR, CITY will negotiate additional compensation proportional to the increased benefit to CITY.

For purposes of applying insurance coverage only, this AGREEMENT will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this AGREEMENT.

OPERATOR acknowledges and agrees that any actual or alleged failure on the part of CITY to inform OPERATOR of non-compliance with any insurance requirement in no way imposes any additional obligations on CITY nor does it waive any rights hereunder in this or any other regard.

OPERATOR will renew the required coverage annually as long as CITY, or its employees or agents face an exposure from operations of any type pursuant to this AGREEMENT. This obligation applies whether or not this AGREEMENT is canceled or terminated for any reason. Termination of this obligation is not effective until CITY executes a written

statement to that effect.

Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements, nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

The requirements in this section supersede all other sections and provisions of this AGREEMENT to the extent that any other section or provision conflicts with or impairs the provisions of this section.

OPERATOR agrees to be responsible for ensuring that no contract used by any party involved in any way with this AGREEMENT reserves the right to charge CITY or OPERATOR 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.

OPERATOR agrees to provide written notice to CITY within five (5) business days of any claim or loss against OPERATOR arising out of the work performed under this AGREEMENT. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise deemed acceptable by CITY's Risk Manager.

Verification of Coverage:

OPERATOR shall furnish CITY with proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages and any additional insured or other endorsements as required. All certificates and endorsements must be received and approved by CITY at or prior to the execution of this AGREEMENT. CITY's acceptance of any such certificates is intended in no way to change the limits of coverage required herein unless any such changes are specifically authorized in writing by CITY. Documents shall be sent to:

All insurance documents are to be sent to:

Lincoln Police Department
770 7th Street
Lincoln CA 95648

City of Lincoln
Risk Manager
600 6th Street
Lincoln, CA 95648

OPERATOR shall provide proof that policies of insurance required herein expiring during the term of this AGREEMENT have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from OPERATOR's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to CITY within thirty (30) days' of the expiration of the coverage.

In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, CITY has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other AGREEMENT and to pay the premium. Any premium so paid by CITY shall be charged to and promptly paid by OPERATOR or deducted from sums due OPERATOR, at CITY's option.

Sub-OPERATORS:

OPERATOR shall include all sub-OPERATORS as insured under its policies or shall furnish certificates and endorsements for each sub-OPERATOR. All coverage for sub-OPERATORS shall be subject to all of the provisions stated herein.

OPERATOR CERTIFICATION

I certify that all drivers operating under this AGREEMENT are qualified and competent. I further that I have read and understand the attached AGREEMENT and agree to abide and be bound by all of its terms, conditions, and obligations. I further agree, to the greatest extent allowed by law, to indemnify, defend, and hold harmless CITY, its officers, agents, elected officials, employees, and volunteers from and against any and all claims and losses accruing or resulting in connection with the performance of this AGREEMENT, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by my employees, agents, or me in the performance of this AGREEMENT. I further represent and understand that, in the performance of this AGREEMENT that my company and I act in an independent capacity and not as an officer, employee, representative, or agent of CITY.

Dated: _____

OPERATOR:

By: _____

Company Name: _____

Its: _____