

WRECKER AND TOWING SERVICES AGREEMENT

This Agreement for Wrecker and Towing Services (“Agreement”) is made and entered into on July 1, 2024, by and between Lake Havasu City, Arizona, a municipal corporation (“City”) and _____ (“Towing Company”), both individually referenced as the “Party” and collectively referenced as the “Parties.” The Parties agree as follows:

SECTION 1: DEFINITIONS

- A. Business Hours – hours of the day when business is normally conducted.
- B. Evidentiary (“HOLD”) Vehicle - Vehicle required for evidence in traffic violations or other legal actions requiring such evidence and impound pursuant to Arizona Revised Statutes.
- C. Extraordinary Service - Vehicles requiring retrieval from locations where extraordinary means are necessary. Examples of these situations may include, but not be limited to, recovery from a river bottom, off road area, mountainous area, swimming pool, canal, lake, wash, etc. Also, any vehicle struck, impaled and or not removable through ordinary towing methods involving such items as hydrants, fences, trees, utility pole, large bushes, semi-trucks and trailers or crashing into a building. Also, if any major removal of debris is required before a tow can be accomplished such as crashing into a block fence where blocks cover the vehicle.
- D. LHCPD – the Lake Havasu City Police Department
- E. LHCVMD – the Lake Havasu City Vehicle Maintenance Division
- F. Maximum Allowed Fees – Maximum rates charged as listed in Exhibit A for towing and storage of any vehicle towed at the direction of the City. The Towing Company may charge less than the fees identified in Exhibit A, but may not charge more than the Maximum Allowed Fees.
- G. Owner - person entitled to legal possession thereof upon proper proof of ownership or right to possession as provided by law. The determination of the owner or person entitled to legal possession shall be made by the Towing Company.
- H. Owner Preference – the right of the Owner, person entitled to legal possession, vested party acting in the Owner's best interest, or person in possession of any Vehicle to request some responsible and reasonable person, gratuitous bailee, or bailee for hire of his or her choosing to take charge and care of said Vehicle.
- I. Rate – a monetary amount charged for a service provided. The term “rate” is synonymous with the terms “fee” and “charge” and shall be used interchangeably.
- J. Rotation Schedule – any person, firm, partnership or corporation which has been approved by the Lake Havasu City Police Department as being authorized to respond for wrecker or towing service and to participate in the police rotation. The rotation of coverage schedule shall be the

responsibility of the LHCPD and may be revised at the police chief or designee's discretion. The police chief's decision shall be final. The term "rotation schedule" is synonymous with the terms "rotation list" and shall be used interchangeably.

- K. Traffic Incident Management (TIM) – a planned and coordinated multi-disciplinary process to detect, respond to, and clear traffic incidents and restore traffic flow as safely and quickly as possible.
- L. Towing – the moving or removing or the preparation of a Vehicle for which a service charge is made, either directly or indirectly of a Vehicle.
- M. Vehicle – every motor vehicle, recreational vehicle, trailer, tractor-trailer combination, motorcycle, motor scooter, tractor, mower or other industrial equipment which is self-propelled by which any person or property is or may be transported or drawn upon a highway, except vehicles used exclusively upon stationary rails or tracks.
- N. Wrecker Service – any truck operation used for the purpose of towing, winching, carrying or otherwise removing another Vehicle from a given location.

SECTION 2: SERVICES TO BE PERFORMED BY TOWING COMPANY

- A. The Towing Company agrees to provide the following services:
 - 1. Towing, wrecker service, and storage, when required, of Vehicles from public or private property lying within the corporate limits of Lake Havasu City when so authorized by a representative of the City.
 - 2. When authorized by a representative of the City, provide for the towing and storage of any Vehicle which is towed under the provisions of the Lake Havasu City Code or State law or are otherwise required to be moved by or at the direction of the LHCPD or an authorized City representative, from the point of origin to the place of business of the Towing Company and provide for the towing and storage of any Vehicle from the scene of an accident to a location within the City, as designated by the Owner, other than the place of business of the Towing Company.
 - 3. When authorized by a representative of the City, provide for the towing of any City-owned, confiscated, or leased Vehicle from hook-up to its principal business location or to any location within City limits and billed to the requesting City department. Towing Company may be contacted by representatives from City, LHCPD, or LHCVMMD.
 - 4. Answer all calls from the City for on-scene service at accidents in accordance with this Agreement and immediately remove all obstructions caused by accidents and provide for cleanups even if actual towing is not required.
 - 5. Promptly clean all debris off the public streets, ways, sidewalks, parks, avenues, and property of the City, and remove the same to a proper place away from the scene of any Vehicle accident if the accident scene is to be, is being, or has been serviced by the Towing Company, or the agent, servants, or employees of the Towing Company, at no additional cost to City.

6. Guarantee that towing/wrecker service shall be rendered at any and all times, as required by this Agreement, twenty-four (24) hours a day, seven (7) days a week, including holidays, and that Towing Company personnel will be subject to call at any and all times. The Towing Company further guarantees that it will be at the requested location within the City limits within forty-five (45) minutes from the time the Towing Company receives a call requesting that a wrecker be dispatched.
7. Upon request by City, provide the City with reasonable assistance in the examination of Vehicles stored by the Towing Company. Such assistance shall include the availability and use of a wrecker at the storage facility for the moving of Vehicles to be examined by the law enforcement authorities.
- B. All services rendered by the Towing Company under this Section shall be at no expense to the City, unless specifically provided for City Vehicles or otherwise agreed upon by the parties. This shall not prevent the Towing Company from charging the Owner of the Vehicle for such services according to the rates provided in Exhibit A.
- C. Right to Cancel Service Call. The City shall have the right to cancel a request for Towing Company services until the time the wrecker arrives on the scene, and there shall be no charge to the City or the Vehicle Owner, or person in possession of the Vehicle. When a wrecker is to be canceled, it must be canceled over the law enforcement radio prior to the wrecker's arrival on the scene. The term "arrival on the scene" means that the responding wrecker has arrived within the close physical proximity of the Vehicle to be towed and the wrecker has stopped in preparation to perform the towing service.

SECTION 3: TERM

The term of this Agreement commences on July 1, 2024, and terminates as of June 30, 2026.

SECTION 4: RATES CHARGED

- A. In consideration for the services to be provided by the Towing Company under the terms of this Agreement, the Towing Company may charge the Owner of the Vehicle receiving services up to the Maximum Allowed Fees listed in Exhibit A, provided that:
 1. The City shall not be liable in the event of nonpayment by the Owner of the Vehicle being towed.
 2. The Maximum Allowed Fees to be charged the Owner for towing and storage of any Vehicle towed at the direction of the City shall be as listed in Exhibit A.
 3. No other charges, rates or fees, other than those specified and authorized in this Agreement, are allowed for services provided under this Agreement.
 4. The service provided for City-owned or leased Vehicles shall be as outlined in Section 2 and according to the rates provided in Exhibit A.

SECTION 5: POSTING CHARGES.

- A. The Towing Company shall prominently post a sign at the storage facility, in such a manner that it is conspicuous to the public, which lists the charges to be imposed upon Owners whose Vehicles are towed pursuant to this Agreement.
- B. The Towing Company shall not display any sign or engage in any advertisement indicating an official connection with the City or the LHCPD.

SECTION 7: TOWED IN ERROR.

The services in Section 2 shall be provided at no cost to the Owner of the towed Vehicle whenever the City determines that the Vehicle was towed in error at the request of the City. In such a case, the City will be responsible for payment for services rendered in accordance with Exhibit A.

SECTION 8: SALVAGE RIGHTS.

In consideration for the services to be provided by the Towing Company, under the terms of this Agreement, the City hereby grants the Towing Company all salvage rights that may be permitted by law on any Vehicle which may be towed pursuant to this Agreement and as specifically outlined herein excluding those Vehicles seized and held for possible forfeiture by the City.

NOTE: The filing of a ten (10) day report is required by Arizona Revised Statutes (A.R.S.) § 28-4838.

SECTION 9: STORAGE FACILITIES.

- A. The Towing Company shall maintain a storage garage or outside storage facility as follows:
 - 1. Contain a minimum of twenty-five (25) spaces in an area which is completely fenced with a fence of at least six feet in height, constructed from masonry, chain link or equivalent as permitted or required by the appropriate building and zoning regulations.
 - 2. Be located within the geographic boundaries of Lake Havasu City, including county land surrounded or partially surrounded by the Lake Havasu City limits.
 - 3. Comply with Lake Havasu City Zoning Regulations. Storage facilities must meet all applicable City zoning requirements and other State, County and City laws and requirements. The storage facility may be located within a wrecking yard that is in the business for dismantling vehicles.
- B. Vehicles which have been marked Evidentiary "HOLD" Vehicle for investigative or forfeiture purposes by the City shall be held at the storage facility, unless indicated otherwise, for whatever period of time necessary to properly process the Vehicle and finish the investigation, at no charge to the City. LHCPD personnel shall be permitted access to such Vehicles at any time. Vehicles stored in enclosed areas shall be secured from access by unauthorized persons. The Towing Company shall take reasonable steps to protect all stored Vehicles and their

contents from theft and damage. No Vehicle designated as an Evidentiary "HOLD" Vehicle by the LHCPD shall be moved from the storage facility without LHCPD's prior authorization. This does not prevent the Towing Company from charging the Vehicle Owner storage fees as allowed by this Agreement in Exhibit A.

SECTION 10: WRECKER EQUIPMENT AND WRECKER COMPANY PERSONNEL.

- A. The Towing Company name shall be permanently and prominently displayed on its vehicles. Magnetic signs are not acceptable. The tow trucks of the Towing Company shall have current inspection and certification by the Arizona Department of Public Safety and shall maintain the same throughout the term of the Agreement.
- B. Each driver shall be properly licensed (with correct class license) as required by the Motor Vehicle Division of the State of Arizona. It shall be the Towing Company's responsibility to ensure that all drivers maintain current Arizona drivers' licenses during the term of this Agreement. The Towing Company is required to provide LHCPD with the name and Arizona driver's license number for all new drivers within three (3) days of being hired by the Towing Company.
- C. All employees of the Towing Company who respond to a call for service shall be required to wear reflective vests meeting ANSI/SEA 107 Standard Performance for Class 2 or Class 3.
- D. The Towing Company acknowledges the Chief of LHCPD or designee shall determine the suitability of the Towing Company. The Towing Company owner must provide, prior to execution of this Agreement and upon renewal, a properly completed Towing Service Application (Exhibit C). Copies of TIM certification for each employee shall also be provided.
- E. No owner of the Towing Company shall have been:
 - 1. Convicted of any felony, misdemeanor, or municipal ordinance violation directly related to the business of operating a wrecker, regardless of whether civil rights have been restored. For the purpose of this Section, any offense involving perjury, false statement, or dishonesty shall also be considered to be directly related to the business of operating a wrecker.
 - 2. For the purposes of this Section, a conviction shall mean an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or nolo contendere; or a verdict of guilty when adjudication is withheld and the accused is placed on probation.

SECTION 11. COMMUNICATIONS.

The Towing Company shall provide a communication system between its office and all tow trucks operated by the Towing Company.

SECTION 12. ROTATION SCHEDULE.

- A. A call to the Towing Company shall constitute one turn on the rotation schedule and the Towing Company shall be moved to the bottom of the list. This includes when the Towing Company fails to answer the phone, is unable to respond, is unable to perform the required service, refuses to respond or provide service, fails to show, or is canceled due to excess response time.
- B. If it is determined the Towing Company is not needed and is cancelled by the LHCPD, up to and including arrival on scene and standby time which does not result in a tow, there shall be no charges and the Towing Company shall be placed back at the top of the list.
- C. If the Towing Company responds to a LHCPD call and is canceled by the Vehicle Owner, prior to the Towing Company taking possession of the Vehicle, there shall be no charge and the Tow Company shall be placed back at the top of the list.
- D. Nothing in this Agreement shall prohibit LHCPD from requesting a specific towing company when the necessary resources to clear a hazard are not available from the tow company currently at the top of the rotation list. In such an instance, the selected towing company would then go to the bottom of the list and those towing companies which were by-passed, would remain in the same list order.
- E. The Rotation Schedule does not apply to services requested by the City for City-owned or leased Vehicles.

SECTION 13. NON-EXCLUSIVENESS OF SERVICE.

The Towing Company agrees that the Owner, Owner's Preference, or person in possession of any Vehicle, which has been incapacitated, shall have the opportunity of contacting a wrecker or tow company of Owner's choice if the disabled Vehicle does not create a hazardous condition and a reasonable response time can be expected. LHCPD shall give said person, at the accident or place of incapacity, the opportunity of having such Vehicle towed to a location other than the storage facility of the Towing Company.

SECTION 14. BENEFITS FROM REPAIRS.

The Towing Company shall not benefit directly or indirectly, without the express written consent of the Owner of the Vehicle from any Vehicle repair or painting with respect to Vehicles towed or stored by the Towing Company under this Agreement.

SECTION 15. LIABILITY OF TOWING COMPANY.

The liability of the Towing Company for any towed Vehicle and all property contained therein shall commence at the time a wrecker is hooked to any vehicle to be towed. The Towing Company or its employee, representative, or agent shall inventory all personal property contained in the Vehicle to be towed or endorse the inventory prepared by the law enforcement authority in charge.

SECTION 16. PERSONAL PROPERTY IN VEHICLE.

To the extent provided by law, the Towing Company shall be accountable and liable for damage or loss to all personal property in the Vehicles towed and for all vehicle accessories. Personal property situated in a Vehicle stored by the Towing Company shall not be disposed of to defray any charges for storage or towing of the Vehicle, except as provided by law. All such personal property must be returned at once to the Owner, unless directed otherwise by the City. The determination of the Owner shall be made by the Towing Company. Should the Towing Company release any personal property, the Owner thereof shall provide a receipt to the Towing Company for the same.

SECTION 17. RELEASE OF THE VEHICLE.

The Towing Company agrees to release any Vehicle which has not been marked Evidentiary "HOLD" Vehicle to the proper Owner of the Vehicle. Any Vehicle which has been marked Evidentiary "HOLD" Vehicle by LHCPD cannot be released without prior written authority from LHCPD. The Towing Company shall require proper proof of ownership or right to possession before releasing a Vehicle.

SECTION 18. ITEMIZED STATEMENTS.

Should any Owner or person entitled to possession of a towed or stored Vehicle seek to reclaim the same from the Towing Company, the Towing Company shall provide the Owner with an itemized statement of all charges relating to the towing and storage of the Vehicle.

SECTION 19. INDEMNIFICATION.

To the fullest extent permitted by law, the Towing Company agrees to indemnify, defend, save, and hold harmless the City and its departments, agencies, boards, commissions, agents, officers, officials, volunteers, and employees for, from, and against any and all claims, actions, liabilities, damages, costs, losses and expenses (including, but not limited to, court costs, attorney's fees, and costs of claim processing, investigation, and litigation) to which any indemnitee may become subject, under any theory of liability ("Claims") to the extent that Claims are caused by the negligent acts, recklessness, or intentional misconduct of the Towing Company, its officers, employees, agents, or any tier of subcontractor in connection with Towing Company's work or services in the performance of this Agreement. This Indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation law or arising out of the failure of Towing Company to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. Towing Company agrees it will be responsible for primary loss investigation, defense, and judgement costs where this indemnification is applicable. The amount and type of insurance coverage requirements of this Agreement will in no way be construed as limiting the scope of the indemnity in this Section.

SECTION 20. INSURANCE.

The Towing Company shall purchase and maintain, at its own expense, for the duration of this Agreement the minimum insurance required in the attached Exhibit B.

SECTION 21. SUSPENSION

- A. When circumstances warrant, Towing Company will be immediately suspended from the Rotation Schedule and remain on suspension until the situation can be thoroughly investigated.
- B. Actions that result in an immediate suspension or a suspension for non-compliance include, but are not limited to:
 - 1. Operating unsafe tow trucks
 - 2. Serious operator error
 - 3. Charging unauthorized fees such as a processing fee, or Business Hours' gate fee
 - 4. Threats, foul language, unprofessional conduct
 - 5. Vehicle damage sustained during the towing process
 - 6. Operating in violation of law
 - 7. Expiration or non-compliance of insurance requirements
 - 8. Using unauthorized tow trucks on rotation calls
 - 9. Failure to maintain complete and accurate records of rotation towed Vehicles
 - 10. Storage facility does not have an office on site
 - 11. Magnetic signs being used on the tow trucks
 - 12. Using a storage facility other than those approved and included in this Agreement
 - 13. Requesting or demanding Vehicle Owner sign any financial responsibility disclaimers
- C. Towing Company will be suspended from the Rotation Schedule for practices determined by the LHCPD to be unlawful, unreasonable, or otherwise not in the best interest of the public.
- D. A violation of any part of this Agreement may be cause for suspension from the Rotation Schedule.
- E. If the LHCPD deems a suspension is appropriate, the Towing Company will be notified in writing.
- F. The LHCPD will determine the length of any suspension. Suspension may result in Towing Company being denied participation for thirty (30) days, sixty (60) days, ninety (90) days, the remainder of a rotation year, the remainder of Agreement term, or longer.
- G. The Towing Company may appeal any suspension from the rotation by writing to the -Chief of Police or designee within seven (7) business days of the suspension.

SECTION 22. TERMINATION; CANCELLATION

- A. For City's Convenience. This Agreement is for the convenience of the City and may be terminated without cause by the City by giving Towing Company 30 calendar days' written notice. Upon termination for convenience, Towing Company shall be paid for all undisputed services performed up to the termination date.
- B. For Cause. If either Party fails to perform any obligation under this Agreement and such Party fails to cure its nonperformance within thirty (30) calendar days after notice of nonperformance

is given by the non-defaulting Party, such Party will be in default. In the event of such default, the non-defaulting Party may terminate this Agreement immediately after the thirty (30) day cure period for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting Party's nonperformance is such that it cannot reasonably be cured within thirty (30) calendar days, then the defaulting Party will have such additional period of time as may be reasonably necessary under the circumstances, provided the defaulting Party immediately (a) provides written notice to the non-defaulting Party and (b) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed ninety (90) days. In the event of such termination for cause, payment shall be made by the City to the Towing Company for the undisputed portion of its fee due as of the termination date.

- C. Conflict of Interest. This Agreement may be cancelled in accordance with Arizona Revised Statutes (A.R.S.) § 38-511.
- D. Agreement Subject to Appropriation. The City is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the City's then current fiscal year. The City's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the City concerning budgeted purposes and appropriation of funds. Should the City elect not to appropriate and budget funds to pay its Agreement obligation, this Agreement shall be deemed terminated at the end of then-current fiscal term for which such funds were appropriated and budgeted for such purpose and the City shall be relieved of any subsequent obligation under this Agreement. The Parties agree that the City has no obligation or duty of good faith to budget or appropriate the payment of the City's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. This City shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The City shall keep Towing Company informed as to the availability of funds for this Agreement. The obligation of the City to make any payment under this Agreement is not a general obligation or indebtedness of the City. Towing Company hereby waives any and all rights to bring any claim against the City from or related in any way to the City's termination of this Agreement under this subsection.

SECTION 23. RECORDS, BOOKS AND PAYMENT.

- A. The City reserves the right, during normal Business Hours to inspect and audit the Towing Company's records pertaining to services provided under this Agreement. All records must be maintained at one central location as provided hereinafter. Copies of all Towing Company paid invoices for services provided each month as a result of this Agreement shall be submitted with the monthly payment, if requested by the City. Such invoices may be in the form of a computer printout.
- 1. The Towing Company shall maintain for at least one (1) year, following the towing of any vehicle towed under authority of a representative of the City, the following records of such tow:
 - a. Where the Vehicle was towed from; officer's name and badge number authorizing

tow; the date towed; the driver who towed the Vehicle; where it was towed to; a complete description of the Vehicle; the name and address of the registered Owner; the disposition of the Vehicle; the date and time the Vehicle was released or disposed of; and all correspondence sent or received concerning said Vehicle.

b. The Towing Company shall submit a report of all Vehicles towed under authority of the City on or before the 10th day of each month. The monthly report must include:

- i. Itemized list of tows, from the first through the last day of the preceding month, including Extraordinary Services, if ordered
- ii. Date of Tow
- iii. Time Dispatched, Arrival Time
- iv. Make, Model, Year, License number and state of issue
- v. LHCPD Officer Name and Badge Number
- vi. Invoice number
- vii. Disposition of vehicle (e.g. sold, released to Owner, insurance pick-up, etc.)

c. The records shall be submitted electronically if it proves logistically feasible, upon approval of the City.

2. Towing Company and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Towing Company and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (a) evaluation and verification of any invoices, payments or claims based on Towing Company's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (b) evaluation of the Towing Company's and its subcontractors' compliance with the Arizona employer sanctions laws referenced below. To the extent necessary for the City to audit Records as set forth in this subsection, Towing Company and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Towing Company pursuant to this Agreement. Towing Company and its subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this subsection. The City shall give Towing Company or its subcontractors reasonable advance notice of intended audits. Towing Company shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

SECTION 24. MISLEADING, DISHONEST AND ILLEGAL PRACTICES.

The Towing Company warrants that it will not engage in any misleading, dishonest or illegal practices with regard to the vehicles towed pursuant to this Agreement. Engaging in misleading,

dishonest or illegal practices shall be deemed a violation and breach of this Agreement. The City shall promptly notify the Towing Company of an alleged violation and breach. If a satisfactory explanation is not received by the City within twenty-four (24) hours from the Towing Company, or the violation is not otherwise remedied and assurances given that similar violations will not occur in the future within the twenty-four (24) hour period, then other appropriate action as provided in Sections 21 and 22 shall be imposed. The City reserves the right to terminate this Agreement as it determines such action to be in the public interest.

SECTION 25. GRATUITIES.

The City may, by written notice to the Towing Company, cancel this Agreement if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts, or otherwise, were offered or given by the Towing Company or any agent or representative of the Towing Company to any officer, agent, or employee of the City for the purpose of securing this Agreement. In the event this Agreement is cancelled by the City under this subsection, the City shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Towing Company an amount equal to 150% of the gratuity.

SECTION 26. MISCELLANEOUS.

- A. It is mutually understood and agreed that nothing contained in this Agreement is intended, or shall be construed, as in any way creating or establishing the relationship of copartners or joint ventures between the parties hereto or as constituting the Towing Company as agent or representative of the City for any purpose or in any manner whatsoever.
- B. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Mohave County, Arizona. In the event of litigation in a U.S. District Court, exclusive venue shall be in the U.S. District Court located in Phoenix, Arizona.
- C. Laws and Regulations. Towing Company shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Towing Company is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (a) existing and future Rules of the LHCPD, (b) existing and future City and County ordinances and regulations, (c) existing and future State and Federal laws and (d) existing and future OSHA standards.
- D. Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Towing Company. The Towing Company shall notify City in writing within 15 days of any changes in this Agreement, i.e., change in storage yards, phone numbers, etc. Any new storage yards are not to be placed into service for this Agreement until the Amendment has been approved and executed. If the Tow Company is found to make any modifications that have not been approved by the City, Tow Company will be notified of noncompliance and can be considered as cause for suspension from the rotation schedule.

- E. Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, this Agreement will promptly be physically amended to make such insertion or correction.
- F. Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of this Agreement which may remain in effect without the invalid provision or application.
- G. Entire Agreement; Interpretation; Parole Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the Party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.
- H. Assignment; Delegation. No right or interest in this Agreement shall be assigned or delegated by Consultant without prior, written permission of the City, signed by the City Manager. Any attempted assignment or delegation by Towing Company in violation of this provision shall be a breach of this Agreement by Towing Company.
- I. Subcontracts. No subcontract shall be entered into by the Towing Company with any other Party to furnish any of the material or services specified herein without the prior approval of the City. The Towing Company is responsible for performance under this Agreement whether or not subcontractors are used.
- J. Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release the Towing Company from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.
- K. Attorneys' Fees. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing Party shall be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

- L. Liens. All materials or services shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.
- M. Offset.
1. Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Towing Company any amounts Towing Company owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.
 2. Offset for Delinquent Fees or Taxes. The City may offset from any money due to the Towing Company any amounts Towing Company owes to the City for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.
- N. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered to the Party at the address set forth below, (b) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (c) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City: Lake Havasu City
Attn: City Manager
2330 McCulloch Boulevard North
Lake Havasu City, Arizona 86403

With copy to: Lake Havasu City
Attn: City Attorney
2330 McCulloch Boulevard North
Lake Havasu City, Arizona 86403

If to Towing Company: Tow company
Attn: Representative
Address

or at such other address, and to the attention of such other person or officer, as any Party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (a) when delivered to the Party, (b) three (3) business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (c) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

- O. Confidentiality of Records. The Towing Company shall establish and maintain procedures and controls to ensure that information contained in its records or obtained from the City or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it,

its agents, officers, or employees, except as required to perform Towing Company's duties under this Agreement. Persons requesting such information should be referred to the City. Towing Company also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Towing Company as needed for the performance of duties under this Agreement.

- P. E-Verify Requirements. To the extent applicable under A.R.S. § 41-4401, the Towing Company and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-Verify requirements under A.R.S. § 23-214(A). Towing Company or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.
- Q. Israel. The Towing Company certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.
- R. Conflicting Terms. In the event of any inconsistency, conflict, or ambiguity among the terms of this Agreement, the Exhibits, any City-approved Purchase Order, the Proposal, and the RFQ, if applicable, shall govern in the order listed herein.
- S. Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods and services from another source when necessary.
- T. Section Headings. The headings of sections contained in this Agreement are provided for convenience only. They form no part of this Agreement and shall not affect its construction or interpretation. All references to sections or subsections refer to the corresponding sections and subsections of this Agreement. All words used herein shall be construed to be of such gender or number as the circumstances require. This "Agreement" means the Agreement and the Exhibits hereto as a whole and as the same may, from time-to-time hereafter, be amended, supplemented or modified. The words "herein," "hereby," "hereto," and words of similar import, refer to this Agreement as whole and not to any particular section, subsection, paragraph, clause or other subdivision hereof, unless otherwise specifically noted.
- U. Independent Contractor. Towing Company shall at all times during Contractor's performance of the services retain Towing Company's status as an independent Contractor. Towing Company's employees shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes, or provide workers' compensation or unemployment insurance for or on behalf of them or Towing Company. Towing Company shall supervise and direct the delivery of the materials using its best skill and attention. Except as provided in this Agreement, Towing Company shall be solely responsible for all means, methods, techniques, sequences and procedures, and for coordinating all portions of the work required by the contract documents. Towing Company shall be responsible to City for the acts and omissions of its employees.
- V. Forced Labor of Ethnic Uyghurs Certification. Towing Company certifies that it does not currently, and agrees for the duration of the Agreement that it will not, use: (1) the forced labor

of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (3) any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Towing Company becomes aware it is not in compliance with this certification, it shall notify the City within five business days after becoming aware. This Agreement will terminate upon failure to remedy the noncompliance within 180 days of the notification. (A.R.S. § 35-394)

DRAFT

IN WITNESS WHEREOF, the parties hereto have subscribed their names.

LAKE HAVASU CITY

BY: _____
Jess Knudson, City Manager

Date

APPROVED AS TO FORM:
Lake Havasu City Attorney's Office

BY: _____

TOWING COMPANY

BY: _____

Date

TITLE: _____

ATTEST:
(if corporation)

_____, *Secretary*

PRINTED NAME

WITNESS:
(if individual or partnership)

PRINTED NAME

EXHIBIT A

MAXIMUM ALLOWED FEES

The Towing Company may charge less than the fees identified herein,
but may not charge more than the maximum allowed fees.

TOWING/STORAGE SERVICES

Open Lot – After Business Hours \$60.00

SERVICE	LIGHT TOW	MEDIUM TOW	HEAVY TOW
Storage pursuant to ARS 28-3512 H	\$25.00/day	\$25.00/day	\$25.00/day
Storage Charges	\$50.00/day	\$55.00/day	\$60.00/day
Non-Accident/Call-Out and/or Hook-Up	\$70.00/hour	\$90.00/hour	\$130.00/hour
LHCPD Abandoned directed/Call-Out and/or Hook-Up	\$80.00/hour	\$100.00/hour	\$140.00/hour
LHCPD Arrest directed/Call-Out and/or Hook-Up	\$85.00/hour	\$110.00/hour	\$140.00/hour
LHCPD Accident directed/Call-out and/or Hook-Up	\$105.00/hour	\$120.00/hour	\$155.00/hour
Mileage – Loaded (under 50 miles)	\$6.00/mile	\$7.00/mile	\$9.50/mile
Mileage – Loaded (over 50 miles)	\$6.00/mile	\$7.00/mile	\$9.50/mile
Driver Premium & Holiday Hourly Rate	\$50.00/hour	\$52.50/hour	\$55.00/hour
Water Recovery Partial Submerge	\$350.00/hour	\$450.00/hour	\$550.00/hour
Water Recovery Full Submerge	\$500.00/hour	\$550.00/hour	\$650.00/hour
Winch to Upright/Over 75 Ft. Cable Required	\$150.00/tow	\$300.00/tow	\$500.00/tow
Additional/Stand-by Manpower	\$70.00/per hour	\$85.00/per hour	\$100.00/per hour
Recreational Vehicle – Flat Rate			\$2,000.00 *
Extraordinary Services – Percentage mark-up above sub-contractors pricing	10%	10%	10%

*If additional expenses for recreational vehicles are incurred, the Towing Company may submit a request for compensation to the Traffic Unit Sergeant for review. If approved, reimbursement will be made pursuant to the Extraordinary Services rates on Exhibit A.

PERMISSIBLE FEES

The following permissible fees are based on the Maximum Allowed Fees listed in Exhibit A. Fees to re-tow vehicles to a repair facility or other secondary location are included in this Agreement.

- A. **Motorist Assist Fee:** This fee shall be the maximum to include all costs to jump start, change tire, lockout, provide two gallons of gasoline to assist a motorist in serving a vehicle to move off of a traffic corridor for safety.
- B. **Tow / Transport Fees:** These fees shall be the maximum to include all costs for hookups, winching, preparation to tow, cleanup of debris, stand by time, use of dollies when necessary, drive line dropping, first hour of labor, mileage to storage facility, seal the windows if necessary, the first 24 hours of storage, and delivery to the public roadway for subsequent tow.
 - 1. **Flat Rate Per Tow Fee:** Shall be for vehicles up to 10,000 lbs. (Light Tow) GVWR, and 23,000 lbs. (Medium Tow) GVWR, and 35,000 lbs. (Heavy Tow) GVWR.
 - 2. **Flat Rate Transport Fee:** Shall be for vehicles up to 56,000 lbs. (Heavy Transport) GVWR, 80,000 lbs. (Super Heavy Transport) GVWR, Over 80,000 lbs. (X Super Heavy Transport) GVWR
- C. **Hourly Rate:** The Tow Company may charge a pro-rated hourly rate after the first hour from the initial request for service, the first hour's labor being included in the Fee as submitted. Billing time commences at the time the Tow Company is requested for service. Beginning one hour after the initial request for service and subsequent arrival at the pick-up point or scene, if applicable, the pro-rated hourly rate may be applied and charged.

If, after being called to the scene of an accident, the tow truck is used solely to separate vehicles or make other repairs, but the towing service is not required, then the Tow Company may charge the hourly rate. A one (1) hour minimum charge is allowed.

Driver Premium Hourly Rate: The Towing Company may charge an additional driver premium pay up to the rate set for in Exhibit A – Maximum Allowed Fees, premium pay may be charged during the hours of 5:00 p.m. to 8:00 a.m. Monday to Friday, all day Saturday and Sunday, and all City recognized holidays.
- D. **Daily Price for Storage:** The daily charge for storage shall be set forth in Exhibit A. Storage charges will commence upon arrival of vehicle to storage facility. The first 24 hours of storage shall be included in the initial Rate. Storage charges may commence 24 hours after the time the vehicle arrives at the storage facility. There shall be no additional fee to move a stored vehicle from the Towing Company's yard to a safe location on the public right of way or street.
- E. **Abandoned Vehicle Tow:** Abandoned vehicles shall become the responsibility of the Towing Company. Contract rates for storage and opening the storage lot after hours may be charged

to any Vehicle Owners to *reclaim* abandoned vehicles. Unless claimed by the Owner, the Tow Company may apply for title under State of Arizona abandoned vehicle regulations, after any necessary waiting period specified by law. Vehicles that become disabled in the roadway are not considered Abandoned Vehicles for this part or for the purposes of determining the proper fee. Tow Company will have 24-hours to respond and tow the abandoned vehicle unless it is a public hazard, then the Police Officer will be waiting with the vehicle once a tow is called, the 45-minute response time requirement will apply.

- F. Open Lot after Hours: A fee to open the lot after hours may be charged as provided for in Exhibit A.
- G. Cost Per Mile: There shall be no "cost per mileage" fee for any tow truck to reach pick-up point/scene. Mileage will be allowed at the rates submitted after subject vehicle is under tow or Owner requests the vehicle be towed to a location other than the Tow Company's storage facility.
- H. Extraordinary Services: Vehicles requiring retrieval from locations where extraordinary means are necessary may have the Extraordinary Services billed at the Tow Company's normal commercial rate, if approved by the LHCPD's on-scene supervisor. The name and badge number of the on scene LHCPD's supervisor who authorized the Extraordinary Services shall appear on the invoice.

Cost of time at the scene, labor, or equipment needed within thirty (30) minutes of arrival at the scene shall be included in the basic fee, unless the LHCPD's on scene supervisor authorizes Extraordinary Services. If, and only if, such time at the scene consumes more than thirty (30) minutes, will the extra waiting time charge per fifteen (15) minutes or any fraction thereof, be assessed by the Tow Company commencing thirty (30) minutes after arrival at the scene. Any assessment of extra time on the scene must be fully verified by the Tow Company's records including, but not limited to time stamps, etc. Assessment of Extraordinary Services will be per fifteen (15) minutes or any fraction thereof from the time the additional Tow Company staff or equipment arrives at the scene and until the vehicle is towed from the scene, or the additional Tow Company staff or equipment leaves the scene, whichever occurs first. The Extraordinary Services per fifteen-minute increments shall be all inclusive and include all necessary staff or equipment required to complete the recovery, and the Tow Company shall be limited to a 10 percent mark-up fee over the sub- contractors pricing, with a copy of the sub-contractors invoice provided to the City. The Tow Company agrees that any extra waiting time or complications charge shall be authorized by the LHCPD's supervising officer on the scene, and so indicated in writing on the vehicle storage receipt.

- I. Liability for Fees. Unless a vehicle is being seized for evidentiary purpose by the LHCPD, the Owner of the Vehicle is responsible for any and all payments for all towing services rendered hereunder. The City shall not be liable to the Tow Company for any payment, loss, claim for damages of whatever nature that the Tow Company might suffer from its performance of any towing service under this Agreement, except for those towing services provided for evidentiary

purposes. LHCPD will generally direct the Tow Company to tow impounded vehicles that may be evidence of a crime to the LHCPD's own storage facility. When this occurs, the Tow Company will be paid only the Fee as described in this section B above.

- J. Gone on Arrival. In the event the Tow Company arrives at the tow scene and is unable to tow the vehicle due to erroneous information provided by LHCPD, the Tow Company will note the location, arrival and departure time, reason for non-performance of service, and bill the City accordingly, as specified in Exhibit A. This condition shall be known as, "Gone on Arrival" (GOA). In the event the City cancels a towing assignment due to the LHCPD requiring a vehicle to be immediately removed for public safety, the towing company cannot charge the City a GOA charge.
- K. Additional Tows. An additional non-accident towing fee may be applied along with the loaded mileage charge to a repair facility or other designated location upon request for service by an Owner. Owner requesting service must be informed and authorize the additional charges prior-to tow.
- L. Evidentiary ("HOLD") Vehicles.
 - a. The City reserves the right to impound in the Tow Company's storage facility or in the City-owned storage area any vehicle required for evidence in traffic violations or other legal actions requiring such evidence and impound pursuant to Arizona Revised Statutes.
 - b. Upon request of an officer, investigator or an authorized agent of the City, the Tow Company shall not release any vehicle that is held for evidentiary information. The authorized person of the LHCPD will indicate this evidentiary hold by requesting that a "HOLD" be placed on the vehicle. During this "HOLD" time, no one shall enter or disturb the vehicle being held unless they are an authorized person of the LHCPD. If an inquiry is made regarding the vehicle, the Tow Company shall notify LHCPD as soon as possible on the following business day. Such vehicles will not be released until the Tow Company receives written authorization by the LHCPD or the Owner shows the Tow Company a paid receipt and authorized release from the LHCPD. Permission to release will not be required for any vehicle that is routinely towed from an accident scene if Tow Company is satisfied that it is being released to the Owner.
 - c. The City reserves the right to remove "HOLD" vehicles from Tow Companies storage facility at any time.

EXHIBIT B

INSURANCE REQUIREMENTS

- A. Towing Company shall at all times maintain in force at Towing Company's expense, each insurance noted below:
1. Workers' Compensation Insurance in compliance with A.R.S. Title 23, Chapter 6, together with Employer's Liability Insurance with coverage limits of not less than \$1,000,000. No class of employee, including the Towing Company itself, if an individual, shall be excluded from the Workers' Compensation coverage.
 2. Commercial General Liability Insurance, on an occurrence basis, with a combined single limit of not less than \$1,000,000, each occurrence for bodily injury and property damage, with an annual aggregate limit of \$2,000,000. This insurance shall include contractual liability coverage.
 3. Automobile Liability Insurance with a combined single limit, or the equivalent of not less than \$1,000,000, each occurrence for bodily injury and property damage, including coverage for owned, hired, or non-owned vehicles.
 4. Garage Liability Insurance: Garage liability coverage shall be required for the minimum limits of \$1,000,000 combined single limit for bodily and property damage for the garage operation. Garage keeper's legal liability coverage is required including comprehensive, collision, towing (on-hook), with a minimum limit of \$100,000 per location.
- B. Proof of Insurance: The Towing Company shall furnish proof of insurance acceptable to the City prior to the award of a towing agreement and the Towing Company shall not commence work under this Agreement until it has obtained all the insurance required under this Agreement and such insurance has been filed with and approved by the City. The Towing Company shall furnish evidence of all required insurance in the form of certificates of insurance which shall clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, the expiration dates, and shall contain the following language:
1. All policy lines shall contain a waiver of subrogation against Lake Havasu City, its departments, agencies, boards, commissions, and its officers, officials, agents, volunteers and employees for losses arising from work performed by or on behalf of the Towing Company.
 2. Additional Insurance Requirements: The policies shall include, or be endorsed to include, the following provisions:
 - a. Lake Havasu City, its departments, agencies, boards, commissions and its officers, officials, agents, volunteers and employees wherever additional insured status is required. Such additional insured shall be covered to the full limits of liability purchased by the Towing Company, even if those limits of liability are in excess of those required by this Agreement.

- b. The Towing Company's insurance coverage shall be primary insurance with respect to all other available sources.
 - c. Coverage provided by the Towing Company shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
3. Coverage must be provided by an insurance company admitted to do business in Arizona and rated A-VII or better by AM Best's Insurance Rating. Towing Company's coverage will be primary in the event of loss. Towing Company shall pay all deductibles and retentions. A cross-liability clause or separation of insured's condition will be included in all commercial general liability policies required by this Agreement.
4. Notice of Cancellation: Each insurance policy required by the insurance provisions of this Agreement shall not be suspended, voided, cancelled, reduced in coverage or in limits without ten (10) business days' written notice to:

City Attorney's Office/Contracts
Lake Havasu City
2330 McCulloch Blvd. N.
Lake Havasu City, AZ 86403

The Towing Company shall file replacement certificates thirty (30) days prior to expiration or termination of the required insurance occurring prior to the expiration of this Agreement. Failure to maintain the insurance policies as required by this Agreement, or to provide evidence of renewal, is a material breach of contract. City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

EXHIBIT C**LAKE HAVASU CITY POLICE DEPARTMENT
TOWING SERVICE APPLICATION**

Company Name:	Address:	Telephone Number:
Owner Name:	Address:	Telephone Number:
Insurance Company:	Policy Number:	Expiration Date:
Business License Number:		Date Issued:
DRIVER NAME	ARIZONA LICENSE NUMBER	

VEHICLE INFORMATION

VEHICLE NUMBER 1		VEHICLE NUMBER 2	
Make:	Model:	Make:	Model:
Year:	VIN:	Year:	VIN:
Inspection Date:	Class:	Inspection Date:	Class:
Co. Name on Truck:	DPS Inspection Sheet Submitted:	Co. Name on Truck:	DPS Inspection Sheet Submitted:

VEHICLE NUMBER 3		VEHICLE NUMBER 4	
Make:	Model:	Make:	Model:
Year:	VIN:	Year:	VIN:
Inspection Date:	Class:	Inspection Date:	Class:
Co. Name on Truck:	DPS Inspection Sheet Submitted:	Co. Name on Truck:	DPS Inspection Sheet Submitted:
VEHICLE NUMBER 5		VEHICLE NUMBER 6	
Make:	Model:	Make:	Model:
Year:	VIN:	Year:	VIN:
Inspection Date:	Class:	Inspection Date:	Class:
Co. Name on Truck:	DPS Inspection Sheet Submitted:	Co. Name on Truck:	DPS Inspection Sheet Submitted:
VEHICLE NUMBER 7		VEHICLE NUMBER 8	
Make:	Model:	Make:	Model:
Year:	VIN:	Year:	VIN:
Inspection Date:	Class:	Inspection Date:	Class:
Co. Name on Truck:	DPS Inspection Sheet Submitted:	Co. Name on Truck:	DPS Inspection Sheet Submitted:

I declare that the statements contained in this application are true and complete to the best of my knowledge and belief. These entries are made in good faith. I understand a willful false statement on this form will subject me and my company to not being considered for the Towing Service Rotation List.

Applicant's Signature:	Date:
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