# REQUEST FOR PROPOSALS
# POLICE ORDERED TOWING & STORAGE SERVICES

**RFP Release Date**
Monday, April 29, 2024

**Proposal Submittal Deadline**
***Thursday, May 16, 2024, at 4:00pm***

**Contact Person:**
Lieutenant Rigoberto Barrios
City of Bell Gardens
7100 Garfield Avenue
Bell Gardens, CA 90201
rbarrios@bgpd.org
(562) 806-7687

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# I. INTRODUCTION

The City of Bell Gardens ("City") is located approximately 15 miles southeast of Los Angeles. The City contains 2.4 square miles of land area. The City has a population of 37,927. The City was incorporated in 1961. The City is governed by a five-member City Council, elected at large to serve alternating four-year terms. The Council elects one Council Member annually to serve as the Mayor. The City operates under the Council and City Manager form of Government. The City Manager is appointed by the City Council to administer municipal affairs.

In 2023, the City and the Bell Gardens Police Department ("Police Department") stored or impounded approximately 1,005 vehicles. These vehicles were stored for a variety of reasons, including, illegal parking, public nuisance, evidence, and enforcement of the California Vehicle Code provisions requiring impounding vehicles driven by unlicensed drivers.

The Police Department requires tow service in the exercise of its Police Powers necessary or appropriate for the general welfare of its residents. The City and the Police Department invite all qualified service providers to respond to this Request for Proposals ("RFP").

Operator shall furnish towing and secure storage for vehicles seized, impounded or otherwise caused to be removed from public or private property by the Police Department. Towing services shall include, but not limited to, removal of wrecked vehicles and debris resulting from accidents, preliminary work necessary to towing, including removal of vehicles from ditches or separation of entangled vehicles, removal of vehicles for criminalistics and/or purposes as directed by the Police Department personnel, other impoundment of vehicles as directed by the Police Department.

The City desires to enter into a three (3)-year agreement with the option of two (2) one (1)-year extensions, subject to City Manager approval.

The City reserves the right to accept or reject any or all responses received in response to this RFP. The City also reserves the right to waive any informality, technical defect or clerical error or irregularity in any response. The City's potential award of an agreement will not be based on any single factor, nor will it be based solely or exclusively on the lowest cost proposal. If an agreement is awarded, it will be awarded to the Service Provider who in the judgment of the City has presented an optimal balance of relevant experience, price, quality of service, work history and other factors which the City may consider relevant and important in determining which proposal is best for the City. Additionally, the City may, for any reason, decide not to award an agreement based on this RFP. The City reserves the right to cancel this RFP. The City shall not be obligated to respond to any responses submitted, nor be legally bound in any manner by the submission of the response. The City reserves the right to negotiate deliverables and associated costs.

## II. SUBMITTAL PROCEDURES/DEADLINE

Proposals must be submitted electronically via email to cityclerkdesk@bellgardens.org no later than ***4:00 p.m. on Thursday, May 16, 2024***. The subject line should read **"Towing & Storage Services Proposal"** Late proposals will not be considered. If the proposal includes any comments over and above the specific information requested in this RFP, such information should be included as a separate appendix and placed at the end of the proposal.

## III. SCHEDULE

The tentative schedule for this RFP is as follows:

| SCHEDULE | |
|---|---|
| RFP Available Online | Monday, April 29, 2024 |
| Proposal Due Date | Thursday, May 16, 2024, 4:00 P.M. |
| Evaluation Period | May 20, 2024 – June 6, 2024 |
| Council Action/ Approval of Contract | Monday, June 10, 2024 |

*The schedule above is tentative and subject to change at the discretion of the City, with appropriate notice to prospective proposers. Please check the Bell Gardens website for the latest updates at https://www.bellgardens.org/i-want-to/view-bids-rfps/rfps-and-bids. All times are in pacific standard time (PST).

## IV. TERMS AND CONDITIONS

### TOWING SERVICES NON-EXCLUSIVE FRANCHISE AGREEMENT

Upon conclusion of the RFP process, the Police Department will recommend a proposer to the City Council. The successful Service Provider will be required to enter into a Towing Services Non-Exclusive Franchise Agreement (hereinafter "Agreement") with the City. A copy of the City's Agreement is attached and incorporated as **Exhibit "A"** as a sample for proposers to review the terms and conditions prior to submitting a proposal. The proposal

process, agreement negotiations and execution, and subsequent actions will be conducted by the City in accordance with applicable law. Proposers should carefully review this document, which constitutes the formal RFP, to ensure a clear understanding of the City's needs and objectives and scope of work. The sample Agreement (**Exhibit "A")** is not to be completed by proposers.

## GENERAL INSTRUCTIONS, TERMS AND CONDITIONS

A. Proposals shall be prepared to simply and economically provide a straightforward, concise description of the Service Provider's ability to meet the requirements of this RFP. Emphasis shall be on the quality, completeness, clarity of content, responsiveness to the requirements, and an understanding of City's objectives.

B. Proposers shall carefully read the information contained in this RFP and shall submit complete responses to all requirements and questions as directed. Incomplete proposals may be considered non-responsive and may be rejected in the City's discretion. The submission of a response to this RFP shall be deemed a representation and certification by the Service Provider that it has read and understood the RFP, has investigated all aspects of the RFP, and is aware of the applicable facts pertaining to the RFP process, its procedures and requirements. No request for modification of the responses to this request shall be considered after its submission on grounds that the Service Provider was not fully informed as to any facts or condition.

C. Proposers should be aware that the RFP and the contents of the successful proposal will become a part of any subsequent contractual documents that may arise from this RFP. Following the Proposal Submission Deadline, the City, pursuant to the California Public Records Act (Govt. Code Section 7920.000 et seq.) reserves the right to make copies of all submitted proposals available for inspection and copying by any interested member of the public, except to the limited extent the City determines that any information contained in a proposal is legally privileged under the California Public Records Act. By submission of a proposal, proposers acknowledge and agree that their proposal and any information contained therein may be disclosed by the City to interested members of the public, including other proposers. All responses to the RFP received become a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are defined by the Service Provider as business or trade secrets and plainly marked as "Confidential," "Trade Secret," or "Proprietary." The City shall not in any way be liable or responsible for the disclosure of any such proposal or portions thereof, if they are not plainly marked as "Confidential," "Trade Secret," or "Proprietary" or if disclosure is required under the Public Records Act. Any proposal which contains language purporting to render all or significant portions of the proposal "Confidential," "Trade Secret," or "Proprietary" shall be regarded as nonresponsive.

D. Proposer shall be solely and exclusively responsible for all costs incurred in connection with the preparation and submission of the proposals; demonstrations;

interviews; preparation of responses to questions and requests for additional information; for contract discussions; or for anything in any way related to this RFP. The City is not liable for any costs incurred by a proposer in response to this RFP, including attorney costs. Whether or not a proposer is awarded an Agreement pursuant to this RFP, no proposer shall be entitled to reimbursement for any costs or expenses associated with the proposer's participation in this RFP process. Proposals will become the property of the City and may be used by the City in any way deemed appropriate. Received proposals will not be returned to the proposer, except that proposals that are untimely submitted to the City shall be returned to the proposer. Failure to comply with all requirements contained in this RFP may result in the rejection of a proposal.

E. The City operates and is funded on a fiscal year basis. Accordingly, the City reserves the right to terminate, without any liability, any Agreement for which funding is not available.

F. The City shall not be responsible for any verbal communication between any employee of the City and any proposer. Only written requirements and qualifications will be considered. No oral statement of any person shall modify or otherwise change, or affect the terms, conditions, or specifications stated in the resulting contract.

G. Receipt of an addendum of the RFP by a proposer must be acknowledged by submitting the signed addendum with the proposal.

H. A proposal may be modified or withdrawn in person at any time before the scheduled due date, provided a receipt for the withdrawn proposal is signed by the proposer's authorized representative. The City reserves the right to request proof of authorization to withdraw a proposal. Proposals may not be withdrawn after the proposal closing date and each proposer agrees to this stipulation upon submittal of its proposal. However, all proposals are subject to negotiation before an agreement is awarded as further described below.

I. The City may, in the evaluation of proposals, request clarification from proposers regarding their proposals, obtain additional material or literature, and pursue other avenues of research as necessary to ensure that a thorough evaluation is conducted.

J. By submitting a proposal in response to this RFP, the proposer accepts the evaluation process and acknowledges and accepts that determination will require subjective judgments by the City.

K. Negotiations may be conducted with responsible proposers who submit proposals that are reasonably selected for consideration. All proposers reasonably selected for consideration based on criteria set forth in this RFP may be given an opportunity to make a presentation and/or interview. Although this process will ultimately result in

the award of a single agreement, the City reserves the right to negotiate an agreement with more than one proposer.

L. The City expects the highest level of ethical conduct from Service Providers, including adherence to all applicable laws and local ordinances regarding ethical behavior.

M. The City reserves the right to reject any and all proposals received as a result of this RFP. The City's potential award of an Agreement will not be based on any single factor, nor will it be based solely or exclusively on the lowest cost proposal. If an Agreement is awarded, it will be awarded to the Service Provider who in the judgment of the City, has presented an optimal balance of relevant experience, price, quality of service, work history and other factors which the City may consider relevant and important in determining which proposal(s) is best for the City. The City reserves the right to cancel or modify this RFP. There is no guarantee that the City will award an agreement.

N. If an agreement cannot be reached with the highest ranked Service Provider, City reserves the right to terminate negotiations with that party and enter negotiations with the next highest ranked Service Provider.

O. Factors such as, but not limited to, any of the following may be considered just cause to disqualify a response to the RFP without further consideration:
    - Evidence of collusion, directly or indirectly, among proposers in regard to the amount, terms, or conditions of this proposal;
    - Any attempt to improperly influence any member of the selection staff;
    - Existence of any lawsuit, unresolved contractual claim or dispute between proposer and the City;
    - Evidence of incorrect information submitted as part of the RFP;
    - Evidence of proposer's inability to successfully complete the responsibilities and obligations of the proposed scope of work; and
    - Proposer's default under any agreement, which results in termination of the Agreement.

P. Acceptance of any proposal is contingent upon the proposer's certification and agreement by submittal of its offer, to comply and act in accordance with all provisions of the City's Municipal Code.

Q. The successful Service Provider shall not discriminate, in any way, against any person based on race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, or any other protected classification in connection with or related to the performance of the Agreement.

R. Any questions or clarification related to the contents of the RFP must be submitted to Lieutenant Rigoberto Barrios at least five (5) calendar days prior to the due date

of proposals. Oral explanations or instructions given prior to the opening of the offer shall not be binding. The City shall issue any official Addendums in writing or via https://www.bellgardens.org/i-want-to/view-bids-rfps/rfps-and-bids to all proposers.

## V. SCOPE OF SERVICES

The selected Service Provider will provide the services as described in the Scope of Services identified below. Modifications of the Scope of Services through negotiation and/or by written addendum will be made a part of the future agreement.

The selected Service Provider agrees to provide the following services in accordance with industry standards and standards set by City needs.

**REQUIREMENTS**

A. Service Provider must be qualified to operate as a business within the State of California.

B. Service Provider must have a current towing contract with the California Highway Patrol.

C. Service Provider must have a history and record of community involvement and support within their areas of service.

D. Service Provider, its officers, key managers and employees of their firm, including drivers, must demonstrate knowledge and familiarity with the California Vehicle Code, specifically, provisions relating to the services contemplated under this RFP, including but not limited to provisions of the California Vehicle Code relating to the safe and lawful towing, impoundment and secure storage of motor vehicles and the lawful operation of facilities where impounded vehicles are stored.

E. Service Provider must demonstrate its knowledge of City codes and procedures.

F. Service Provider must furnish towing and secure storage for vehicles seized, impounded or otherwise caused to be removed from public or private property by the Police Department. Towing services shall include, but not limited to, removal of wrecked vehicles and debris resulting from accidents, preliminary work necessary to towing, including removal of vehicles from ditches or separation of entangled vehicles, removal of vehicles for criminalistics and/or purposes as directed by the Police Department personnel, other impoundment of vehicles as directed by the Police Department.

G. Service Provider must obtain and maintain all necessary licenses, permits, and certificates required by law for the conduct of the Service Provider's activities, including a business license issued by the City.

H. Service Provider shall, at no charge to the City, provide emergency services for City vehicles within 50 miles of the City limits. This service shall be provided at all times including weekends and holidays. Emergency services shall include but are not limited to, tire changes, battery jump starts and towing of inoperable vehicles.

**SPECIFICATIONS:**

A. Tow Vehicle Classifications/Equipment:

1. Service Provider shall use only tow vehicles that have been approved by the Police Department.
2. At its expense, Service Provider must have the following equipment that conforms to California Highway Patrol's Classification (CHP Class) for the gross vehicle weight ratings (GVWR) of truck chassis[1]. The Service Provider's vehicles must also be in compliance with the applicable provisions of the California Vehicle Code, applying to tow trucks (615 CVC), including but not limited to Sections 615, 21711, 24606, 25100, 27700, 27907, and all other regulations pertaining to lighting and safety equipment. Service Provider shall equip and maintain tow trucks in accordance with the provisions set forth in the California Vehicle Code and consistent with industry Standards & Practices.
3. Service Provider must have a minimum of three (3) standard tow vehicles, 1-ton rating or greater with dual rear wheels and one flat bed tow vehicle always available.
4. None of the vehicles shall be converted pick up trucks or vehicles not specifically built by manufacturer for towing other vehicles.
5. Service Provider shall have access to either, through a sub-contract, or as an owner of equipment, a tow vehicle capable of towing large trucks (semi type).
6. All tow vehicles shall have necessary communications equipment for radio transmission and reception and shall comply with FCC regulations and requirements. City frequencies shall not be used. Equipment shall be purchased and maintained solely at Service Provider's expense.
7. Each tow vehicle shall have a cable of sufficient size and capacity to retrieve vehicles that may have gone over embankments or off traveled portions of roadways and into inaccessible locations.
8. The Police Department shall have the right to inspect all tow trucks annually.. The Chief of Police or his designee may conduct additional inspections without notice to the Service Provider during regular business hours.

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[1] GVWR Range (lbs.) CHP Class
10,000 - 19,500 A
19,501- 33,000 B
33,001 – 49,999 C
50,000 or more D

B. Tow Drivers:

1. Service Providers shall ensure that only qualified and competent tow drivers respond to calls initiated by the Police Department. Tow drivers shall be at least 18 years of age and possess the appropriate minimum class Drivers' License and qualifications.
2. All tow drivers shall be thoroughly trained in the proper and safe use of all equipment used in the performance of their duties.
3. All drivers shall be uniformed with the name of the towing company and their individual name.
4. All personnel acting on behalf of the operator shall be finger printed and photographed by the Police Department. The City may at its own discretion, conduct a background check as part of the proposal evaluation process of any employee that may include, but is not limited to: fingerprinting; a check of criminal convictions; credit history; driving history; and civil liens and judgments. If the City determines, through a background check, that an employee is not qualified to provide services to the City as specified in the RFP, the City will notify the Service Provider in writing as to the City's findings. Although the Service Provider may retain the disqualified employee, the Service Provider must not use or dispatch the disqualified employee for a service that Service Provider provides to the City pursuant to the Agreement.
5. The Service Provider shall as a minimum, maintain the following information for each employee:
    i. Full name of the driver;
    ii. Date of birth;
    iii. California Driver's License number;
    iv. Copy of valid medical certificate (if required);
    v. Job title and description;
    vi. Current home address and phone number; and
    vii. Types of vehicles the driver has been trained and instructed to operate.

C. Hours of Operation.

1. Service Provider shall have tow services available 24 hours a day, 7 days a week, 365 days a year.
2. Service Provider may be requested periodically to provide the deployment of trucks for special events such as sobriety check points, streets fairs and parades.
3. Service Provider's officer hours shall be at a minimum from 8:00 a.m. to 7:00 p.m., Monday through Friday. Service Provider shall also maintain an after-hours telephone number for use during non-normal working hours.

D. Storage Facility.

1. All vehicles shall be stored in a building or in an area, that is in the opinion of the City, secure and enclosed by a substantial wall or walls, or other City approved enclosures.

2. The entire storage facility must be illuminated to such a degree that a clear visual observation of the area may be made during hours of darkness.
3. Storage facilities must be capable of holding a minimum of 50 parked vehicles and must provide accessibility and prevent damage to such vehicles.
4. The Service Provider shall maintain a separate and enclosed structure that can house a minimum of 3 vehicles ordered to be impounded by the Police Department for involvement in the commission of crimes or as evidence.

E. Response Time and Requirements.

1. After receipt of a request to response, the response time for arrival shall not exceed 20 minutes.
2. Service Provider shall notify the Police Department Communications Center when a tow unit cannot respond within the 20-minute time period. Service Provider will be required to provide a reason and an estimated time of arrival.
3. In the event that the tow vehicle does not arrive within 30 minutes from the time of call, the Police Department reserves the right to request towing services from another tow company.
4. Service Provider shall agree, except for private impounds or storages, not to remove any vehicle without first being instructed to do so by an authorized Police Department officer.

F. Charges/Fees.

1. Charges/fees for towing, storage and other services required shall be in line with the industry standard and shall not be revised unless approved by the City Council. The towing charges shall also include the services of the tow driver and any other required personnel. The towing charges shall also include cleaning up and clearing of any accident site.
2. Approved storage charges shall be made for the following categories for which Service Provider must provide their proposed fees:
    i. Passenger cars.
    ii. Trucks and trailers over 1 ton.
    iii. Motorcycles.
    iv. All other vehicles.
3. Approved miscellaneous charges shall be made for the following categories for which Service Provider must provide their proposed fees:
    i. Opening locked vehicles.
    ii. Disconnecting and reconnecting drive shaft.
    iii. Up righting overturned vehicles.
    iv. All other services other than towing and storage.
4. City shall not be responsible or liable for payment of towing services in the event that vehicle owner refuses or is unable to pay for the services rendered.
5. Neither City or vehicle owner shall be responsible for any fees/charges for any vehicle that is towed or impounded, or both, through any error of the City or the Service Provider. Service Provider shall agree to immediately release any vehicle, without charge, upon the request of the Police Department on-duty

Watch Commander. The Service Provider may later appeal the decision of the Police Department on-duty Watch Commander in writing to the Chief of Police.

G. Storage Fees.

1. Service Provider must submit their proposed storage fees for inside and outside storage. Once the fees have been approved by the City Council, the approved storage fees, must be posted near the cashiers' station as described in California Civil Code Section 3070, disclosing all storage fees and charges in-force, including the maximum storage rate.
2. Owners of vehicles stores for less than 24 hours shall be charged no more than one day of storage fees. Each day thereafter shall be calculated by calendar days.
3. The schedule of rates charged by Service Provider shall be available in the tow vehicles and shall be presented upon demand of people, or their agent, to who the tow services were provided to as well as Police Department officers on the scene.

H. Assessment Fee.

1. Service Provider must agree to pay the City an "Assessment Fee" of 25% of Gross Receipts for each City generated tow and impound storage. Gross Receipts shall mean all revenues received from towing, impound/storage and related services; plus, incidental receipts of any kind earned by the Service Provider as a result of business conducted under the Agreement. Payments shall be made monthly to the City's Department of Finance and shall be due no later than the tenth ($10^{th}$) day of the following month. Service Provider shall forward a copy of the payment check and payment report to the Chief of Police at the time of payment. Assessment Fee payment will not be required for vehicles the Police Department elects to release at no charge.
2. Service Provider shall keep accurate records of all Gross Receipts as a result of business conducted under the Agreement. Such records shall be available for audit by the City or an outside auditing firm contracted by the City. Failure to provide all Gross Receipts within 20 business days, shall constitute cause for termination of the Agreement. All records shall be maintained for a minimum of 5 years.

I. Franchise Fees.

1. Service Provider shall agree to pay an annual franchise fee in the amount of $12,000 ("Annual Franchise Fee"). The year 1 Annual Franchise Fee shall be due from the Service Provider within 30 days of execution of the Agreement.
2. Commencing in year 2 of the Agreement, and continuing through the term of the Agreement, the Annual Franchise Fee shall be paid to the City on the first day of August of each year.

3. Should the City elect to extend the term of the Agreement for the additional two (2) one (1)-year extensions, Service Provider shall pay City the Annual Franchise Fee for each additional year on the first day of August of each year.

J. Record Keeping.

1. Each month, Service Provider shall furnish to the Police Department a written report of all vehicles that have been towed by Service Provider under the terms of the Agreement, for the previous month. Such report shall indicate the storage location of each vehicle, and shall include the vehicle make, license number and VIN and total itemized costs of towing and storage. Such report shall include the number of days stored for each vehicle. Written reports shall be due no later than 10th of each month.
2. Service Provider must obtain records related to release of vehicles which shall include: date of release, party release to, total charges and cash received. The Chief of Police or his designee may inspect without notice the operator's records during business hours.

## VI. INSURANCE REQUIREMENTS

Without limiting Service Provider's indemnification of the City, and prior to commencement of work, Service Provider shall obtain, provide, and maintain at its own expense during the term of the Agreement, policies and procedures of the type and amounts described below and in a form satisfactory to the City:

A. General Liability Insurance.

1. Service Provider shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in amount not less than $1,000,000 per occurrence, $2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

B. Commercial Automobile Liability Insurance.

1. Service Provider shall maintain automobile insurance at least as broad as Insurance Service Office CA 00 01 covering bodily injury and property damage for all activities of the Service Provider arising out of or in connection with work to be performed under the Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than $1,000,000 combined single limit for each accident.

C. Professional Liability (Errors and Omissions).

1. Service Provider shall maintain professional liability insurance that covers the services to be performed in connection with the Agreement, in the minimum amount of $1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of the Agreement and Service Provider agrees to maintain continuous coverage through a period of no less than three (3) years after completion of services required by the Agreement.

D. Workers' Compensation Insurance.

1. Service Provider shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least $1,000,000.

E. Garage Keepers Legal Liability.

1. Service Provider shall maintain coverage with a limit of not less than One Million Dollars ($1,000,000) per occurrence, $2,000,000 aggregate. The coverage must be inclusive of "Auto" and "Other Than Auto" coverages. The Other Than Collision coverage shall include "Comprehensive" (all perils) coverage. Coverage shall include Comprehensive and Collision. This requirement can be satisfied by either a separate Garage Keepers Legal Liability policy or through a modification to the Commercial Automobile Liability policy. Evidence of either must be provided. The City of Bell Gardens shall be included as an Additional Insured for Vicarious Liability. This shall be documented using ISO Insurance Services Office CA endorsement CA 00 005 or an equivalent form. Coverage shall include a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the City of Bell Gardens. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds $100,000, it must be approved in advance by City. Service Provider is responsible for any deductible or self-insured retention and shall fund it upon City's written request, regardless of whether Service Provider has a claim against the insurance or is named as a party in any action involving the City. The policy definition of "insured contract" shall include assumptions of liability arising out of work performed for a municipality (Definition #5 of the ISO Garage Coverage form, or its equivalent).

F. Umbrella or Excess Liability.

1. Service Provider shall maintain Umbrella or Excess Liability policies with limits that will provide bodily injury, personal injury, and property damage liability coverage, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions: a drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectable in whole or in part for any reason, other than bankruptcy or insolvency of said primary insurer; "pay on behalf of" wording as opposed to "reimbursement"; concurrency

of effective dates with primary policies. Should an excess liability policy be obtained and maintained, such policy shall be excess over commercial general liability, automobile liability, and employer's liability policies. Such policy or policies shall include wording that the excess liability policy follows the terms and conditions of the underlying policies.

G. Other Provisions or Requirements.

1. Proof of Insurance. Service Provider shall provide certificates of insurance and required endorsements to the City as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with the City for the contract period and any additional length of time required thereafter. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.
2. Duration of Coverage. Service Provider shall procure and maintain for the Agreement period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by Service Provider, their agents, representatives, employees, or subconsultants.
3. Primary/Noncontributing. Coverage provided by Service Provider shall be primary and any insurance or self-insurance procured or maintained by the City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
4. City's Rights of Enforcement. In the event any policy of insurance required under the Agreement does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by the City will be promptly reimbursed by Service Provider or the City will withhold amounts sufficient to pay premium from Service Provider payments. In the alternative, the City may cancel the Agreement.
5. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
6. Licenses. Service Provider shall hold at all times the appropriate licenses (Local, State, or Federal) to operate within the City of Bell Gardens. Service Provider shall also be solely responsible for any parking and traffic violations of vehicles operated by its employees.

7. Compliance. Service Provider understands the various governing agencies and laws that have or may have jurisdiction and / or requirements that must be met under the Agreement, including but not limited to: The Federal Transit Authority, ADA, CARB, AQMD, LACMTA, and others.

## VII. INDEMNIFICATION

A. Service Provider agrees to indemnify, defend and hold harmless the City, its elected officials, officers, employees, attorneys, agents and volunteers (collectively, the "Indemnitees"), at Service Provider's sole expense, from and against any and all lawsuits or other legal proceedings, claims, causes of action, losses, liabilities, penalties, forfeitures or actions of any kind asserted against any or all of the Indemnities arising out of the performance of Service Provider, its officers, employees, representatives, agents and/or subcontractors under in the performance of the Agreement, excepting only such claims or actions which may arise out of sole or active negligence of the Indemnitees. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Service Provider, its employees, and/or authorized sub operators, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents, and employees based upon the work performed by the Service Provider, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Service Provider's proposal, which shall be of no force and effect. The indemnification requirements set forth herein are a material term of this RFP and the inability or failure of a Service Provider's insurance carrier(s) to provide coverage for liabilities covered by the indemnification requirements of this RFP shall not serve as a basis for waiving or limiting the scope of the indemnification requirement.

B. Service Provider's obligation to defend, hold harmless, and indemnify shall not be excused because of the Service Provider's inability to evaluate liability or because the Service Provider evaluates liability and determines that the Service Provider is not liable to the claimant. The Service Provider must respond within thirty (30) days to the tender of a claim for defense and indemnity by the City, unless this time has been extended by the City. If the Service Provider fails to accept or reject a tender of defense and indemnity within thirty (30) days, in addition to any other remedy authorized by law, so much of the money due to the Service Provider by virtue of the Agreement as shall reasonably be considered necessary by the City may be retained by the City until final disposition has been made or the claim or suit for damages, or until the Provider accepts or rejects the tender of defense, whichever occurs first.

C. With respect to third party claims against the Service Provider, the Service Provider waives any and all rights of any type to express or implied indemnity against the Indemnities.

D. Separate Counsel: The City may elect to have separate legal counsel from Service Provider at any time at its sole discretion, and in such case Service Provider will pay all fees, costs and charges for such separate legal counsel as such costs and charges are invoiced by City's separate legal counsel, not at the conclusion of any litigation or settlement.

E. Subcontractors: The Service Provider shall require all subcontractors to enter into an Agreement containing the provisions set forth in this section in which Agreement the subcontractor fully indemnifies the City in accordance with this RFP and the Agreement.

F. Damage by Service Provider: If the Service Provider or its officers, employees, agents, volunteers or subcontractors cause any injury, damage or loss to City property, including by not limited to City streets or curbs, Service Provider shall reimburse City for City's cost of repairing such injury, damage or loss. Such reimbursement is not in derogation of any right of the City to be indemnified by Service Provider for any such injury, damage or loss. With the prior written approval of City, Service Provider may repair the damage at Service Provider's sole cost and expense.

G. Tort Claims Act: This RFP and the Agreement shall in no way act to abrogate or waive any immunities available to the City under the Tort Claims Act of the State of California.

## VIII. PROPOSAL FORMAT AND CONTENT REQUIREMENTS

The following instructions describe the form in which proposals should be submitted.

Responses to the following items will be used for proposal evaluation. Proposals that do not contain responses to each of the required items may be considered incomplete and may be rejected.

Proposal documents should provide a straightforward, concise description of the proposer's capabilities to satisfy the requirements of this RFP. Emphasis should be on completeness, clarity of content, and conveyance of the information requested by the City. The requirements stated do not preclude a proposer from furnishing additional reports, functions, and costs as deemed appropriate.

A. The proposal should contain the following six (6) elements describing how the proposer will perform the assignment:

1. Table of Contents:
    i. All proposals must include a table of contents that identifies all sections, appendices, attachments, exhibits and their page numbers.

2. Transmittal Letter:
    i. A letter of transmittal signed by an individual authorized to bind the proposer stating the proposer has read and will comply with all terms and conditions of the RFP. The transmittal letter will contain, at a minimum: a) company name and address; b) an executive summary briefly describing the proposer's ability to perform the work requested, a history of the proposer's background and experience providing services; and c) the proposer's approach to meeting and/or exceeding the services and equipment requirements of the RFP. Proposer should describe in specific detail the background and experience of its' business's principals, officers and key managerial staff as relates to the provision of vehicle towing and secure storage services in general and for public agencies in particular. Proposer should also provide the business contact information of all of the foregoing, the address of the specific business location from which each will work as well as their address, phone and e-mail addresses.
    ii. Conflict of Interest Statement: The proposer shall disclose any financial, business, or other relationship with the City that may have an impact upon the outcome of the Agreement. Particular attention should be paid to compliance with Government Code section 1090.

3. Management and Staffing:
    i. Describe the management and staffing configuration to be utilized to complete the scope of services. Describe the qualifications of staff, their title, and types and amount of equivalent experience. The proposal must indicate who will have primary responsibility for this service.

4. Additions or Exceptions:
    i. A single and separate section with the heading "ADDITIONS OR EXCEPTIONS TO THE CITY'S REQUEST FOR PROPOSAL" containing a complete and detailed description of all the proposer's additions or exceptions to the provisions and conditions of the attached City Agreement.

5. References:
    i. Proposer must provide a minimum of three (3) references and must include the name of the organization, address, phone numbers and names of the contact persons.
    ii. Reference letters may also be included as part of the proposal.

6. Forms:
    i. Insurance Requirements Checklist attached as Attachment 1.

ii. Civil Litigation History/Civil Litigation Certification attached as Attachment 2.
iii. Criminal Convictions Certification attached as Attachment 3.
iv. False Claims/ False Claims Act Certification attached as Attachment 4.
v. Non-Collusion Affidavit attached as Attachment 5.
vi. Campaign Contribution Disclosure Form Attached as Attachment 6.

## IX. EVALUATION CRITERIA

The award of the Agreement will be made to the most qualified Service Provider whose proposal complies with the prescribed requirements. The City reserves the right to reject any or all proposals and to waive any technical errors, irregularities, or discrepancies, if to do so is deemed to serve the best interests of the City. In no event will an award be made until all necessary investigations are made as to the responsibility and qualifications of the Service Provider to whom it is proposed to make such an award.

Proposals will be reviewed and evaluated by the Police Department and City staff and ranked based on qualifications, expertise, and cost-effectiveness. If further clarifications or negotiations are required, on-site or virtual interviews may be conducted. Participation in these interviews will be at the expense of the proposer(s). The interview panel will be made up of Police Department staff members and/or representatives from the City. Recommendations will be forwarded to the City Council based on the results of the reviews of proposal packets and, if scheduled, the interviews. Police Department Staff may recommend to the City Council that more than one tow provider be awarded the Agreement to provide tow services to the City.

Following Police Department Staff's presentation, public comment and the receipt of any other public testimony the City Council may request, the City Council will be given an opportunity to deliberate on the matter and then take action to determine which proposer, if any, will be awarded an Agreement. The City Council may accept, reject or reevaluate the recommendation made. The City Council's final decision shall not be decided on the basis of any single factor listed above but on the basis of the City Council's independent determination as to which proposal(s) provide(s) the best value and offers the optimal combination of factors. The City Council reserves the right to further negotiate the specific requirements and compensation structure with selected proposer(s) in the interest of securing the best terms for the City and the public.

Proposals failing to provide sufficient information and assurances of performance to adequately assess each category of the required services and/or failing to comply with the requirements and conditions of this RFP may not be given further consideration.

Each proposal will be considered along with those of other responding proposers, with respect to ability to perform effectively and efficiently those Scope of Services outlined above.

Close coordination with the City is required to assure that all requirements will be met. The City reserves the right to withdraw this RFP at any time without any prior notice. Further, the City makes no representations that any Agreement will be awarded to any proposer responding to this RFP. The City expressly reserves the right to postpone reviewing the proposals for its own convenience and to reject any or all proposals responding to this RFP without indicating any reasons for such rejection(s).

## X. SELECTION PROCESS

All proposals submitted by the required deadline will be reviewed for adequacy, completeness, content, approach to service delivery, qualifications and other criteria developed during the review process.

The Agreement will be awarded to the proposer deemed by the City to be the best qualified for the scope of services. Proposers are encouraged to elaborate on their qualifications, performance data, and staff expertise relevant to the proposed project.

A. Criteria to be used as a guide in the evaluation of proposals shall include, but will not be limited to the follow evaluation factors:

    1. Thoroughness and quality of content of the response to the RFP as well as completed and satisfactory responses to the RFP.
    2. Proposer's overall experience with engagements of similar scope.
    3. Proposer's technical experience.
    4. Technical background, experience, tenure and availability of the assigned members.
    5. Management of the Proposer's company, impression of principals and quality of staff.
    6. The ability to effectively communicate and work with City officials and staff members in a highly professional capacity.
    7. References provided and satisfactory responses from prior references for the Proposer's company.
    8. Acceptability of proposed fee, cost structure(s).
    9. Community involvement.

# EXHIBIT “A”

## SAMPLE AGREEMENT

# TOWING SERVICES
# NON-EXCLUSIVE FRANCHISE AGREEMENT

**FOR**

**VEHICLE TOWING AND STORAGE SERVICES**

**BETWEEN**

**THE CITY OF BELL GARDENS**

**AND**

**ENTER NAME**

**DATED ENTER DATE**

2024
FRANCHISE AGREEMENT FOR
POLICE ORDERED TOWING AND STORAGE SERVICES

THIS FRANCHISE AGREEMENT (hereinafter, "Agreement") is made and entered into this _____ day of _____ 2024 (hereinafter, the "Effective Date") by and between the CITY OF BELL GARDENS, a municipal corporation (hereinafter, "City") and INSERT CONSULTANT NAME (hereinafter, "Franchisee"). For the purposes of this Agreement, City and Franchisee may be referred to collectively by the capitalized term "Parties." The capitalized term "Party" may refer to City or Franchisee interchangeably, as appropriate.

## SECTION 1. GRANT OF FRANCHISE

A. **Purpose.**

City regularly requires motor vehicle towing and storage services, including the removal of abandoned, stolen and damaged vehicles, occasional towing and storage of City owned vehicles and special security for vehicles held for the investigation of crimes, pursuant to various provisions of the California Vehicle and other Codes.

This Agreement is intended to provide for the operation and administration of the City's towing services and is in the vital interest of the City and is necessary for the health and welfare of its citizens.

B. **Grant of Non-Exclusive Franchise; Exclusions.**

This Agreement grants to Franchisee a non-exclusive Tow Service Franchise, which entitles Franchisee to the right and privilege to provide towing services to the City. Franchisee shall furnish all personnel, equipment and supplies necessary to provide the Towing Services required by this Agreement and by the Request for Proposals.

City reserves the right to enter into Tow Service Franchise Agreements with other entities for additional Towing Services at the sole and absolute discretion of the City.

## SECTION 2. AWARD OF AGREEMENT

A. **Award.**

City hereby awards Franchisee the non-exclusive right to provide Towing Services, pursuant to the terms set forth in this Agreement and any and all applicable provisions of the Bell Gardens Municipal Code (the "BGMC"). Franchisee shall have, throughout the term of this Agreement, the non-exclusive right to provide Towing Services to City within the corporate boundaries of City as the same now exist, and within any territory City hereafter annexes during such term, except to the extent that Towing Services within such annexed territory would be unlawful or violate the legal rights of another person.

Franchisee warrants that it will comply with all applicable federal, state and local laws and regulations, as they, from time to time, may be amended, specifically including, but not limited to all requirements of the California Vehicle Code, all requirements of the California Highway Patrol Tow Service Agreement and attachments, and all other applicable laws and regulations of the State of California, the County of Los Angeles, ordinances of the City of Bell Gardens and the requirements of Local Enforcement Agencies and other agencies with jurisdiction.

B. **Scope of Work.**

Subject to the terms and conditions of this Agreement, Franchisee agrees to provide City with Towing Services. The various tasks and related services to be performed by Franchisee are more specifically described in the City's "Request for Proposals Police Ordered Towing & Storage Services" (hereinafter the "City RFP") dated April 29, 2024, and the written proposal of Franchisee entitled "_____" (hereinafter, the "Franchisee Proposal") dated ____ _____. The City RFP and the Franchisee Proposal are attached and incorporated hereto as **Exhibit "A" and "B"** respectively. The term "Scope of Work" shall be a collective reference to the City RFP and the Franchisee Proposal. The capitalized term "Work" shall be a collective reference to all the various services and tasks referenced in the Scope of Work. The capitalized term "Work" or "Towing Services" may be used interchangeably. In the event of any conflict or inconsistency between the provisions of the document entitled City RFP and the provisions of the document entitled Franchisee Proposal, the requirements of the document entitled City RFP shall govern and control but only to the extent of the conflict or inconsistency and no further. In the event of any conflict or inconsistency between the provisions of the Scope of Work and the provisions of this Agreement to which the Scope of Work is attached, the provisions of this Agreement shall govern and control but only to the extent of the conflict or inconsistency and no further.

C. **Term.**

This Agreement shall have a term of three (3) years commencing as of the Effective Date (hereinafter "Term"). The Term of the Agreement may be extended by the City subject to its same terms and conditions for a maximum of two (2) one-year extensions, provided the City Manager issues written notice of its intent to extend the Term of the Agreement prior to the expiration of the initial Term. Nothing in this Section shall operate to prohibit or otherwise restrict the City's ability to terminate this Agreement at any time for convenience or for cause as provided under Section E, below.

D. **Suspension and Termination of Agreement.**

1. Termination without Cause. City may immediately terminate this Agreement at any time for convenience and without cause by giving prior written notice of City's intent to terminate this Agreement which notice shall specify the effective date of such termination. Upon receipt of the notice of termination, the

Franchisee must immediately cease all Work except as may be specifically approved by the City. Franchisee will be entitled to compensation for all Work rendered prior to the effectiveness of the notice of termination and for additional Work specifically authorized by the City. The City will be entitled to reimbursement for any expenses that have been paid for but not rendered.

2. Termination for Cause. In the event Franchisee, or any of its officers, directors, shareholders, employees, agents, subsidiaries, or affiliates is convicted:
    i. of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract;
    ii. under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or contractor;
    iii. under state or federal antitrust statutes arising out of the submission of bids or proposals; or
    iv. of violation of the conflict of interest provision of this Agreement, or for any other cause the City determines to be so serious and compelling as to affect Franchisee's responsibility as a public contractor, including but not limited to, disbarment by another governmental agency, then the City reserves the unilateral right to terminate this Agreement upon providing Franchisee with ten (10) days' written notice of termination, or to impose such other sanctions (which may include financial sanctions, temporary suspensions, or any other condition deemed appropriate short of termination) as it deems proper. In the event that the City terminates the Agreement for cause, Franchisee shall be entitled to the hearing and appeal rights applicable to disciplinary procedures above. However, termination for cause pursuant to this paragraph shall be effective upon expiration of the ten (10) days' notification period set forth above.

3. Notwithstanding the foregoing, City may not exercise its rights pursuant to this paragraph unless and until City provides Franchisee written notice of such default in accordance with the procedures set forth in Section 4(H) herein, and Franchisee fails to cure such default within thirty (30) days of receipt of said notice.

**SECTION 3. GENERAL CONDITIONS OF FRANCHISE.**

The Franchisee shall conduct business in an ethical, lawful and orderly manner so as to maintain the confidence of the community. While Franchisee is an independent contractor, each contact it has with the public may reflect upon the City. For that reason, and the inherent potential for conflict in vehicle removal and storage, Franchisee and its employees must maintain a fair, impartial, and reasonable attitude, and perform its duties

in a courteous manner. Statements and actions of the Franchisee and its employees must be the result of considered judgment and absent of personal opinion or bias.

The Franchisee, when notified by the Chief of Police of any complaint of discourtesy by the Franchisee's employee(s), shall investigate and respond in writing to the Chief of Police within ten (10) calendar days of receipt of notification of the complaint. Franchisee's response shall include the results of its investigation and, if the complaint is found to be true, what measures the Franchisee took to address said complaint and prevent future complaints on the same issue.

A. Franchisee shall:
    1. Maintain a sign listing the rates and charges of all towing and storage services offered. Such sign shall be conspicuously placed in the office or other places where customer financial transactions take place.

    2. Have no more than two (2) telephone numbers listed with the Police Department.

    3. Use business-brand two-way radios and shall not use a short-waive police scanner or CB radio to answer police calls.

    4. Affix temporary markings on the windshield of all cars ordered impounded by the Police Department. Additionally, Franchisee may post a tag on the windshield of the car.

    5. Not release any vehicle in its possession for which a storage form was completed until all State and City requirements are met. This does not apply to vehicles legally obtained through lien sale or for which ownership is transferred to the Franchisee for payment of towing and storage fees.

    6. Furnish each owner of an automobile impounded by the tow truck operator with a fully itemized billing.

    7. Implement a written policy for lien fees, whereby a lien cannot be placed upon a vehicle until after 72 hours of impoundment in accordance with State law. The policy shall comply with all requirements of California Vehicle Code, §§ 22581 through 22851.12, or their successor provisions and shall be posted with the sign listing the tow rates.

    8. Have a schedule of rates available upon demand in all vehicles at all times.

    9. Not charge rates in excess of those fees that have been presented and approved by City Council.

B. Should there be any dispute between the Franchisee and owner of the vehicle over charges made for services rendered under the Agreement, such dispute shall be

decided by the Chief of Police and the Franchisee shall make no demands upon the owner of the vehicle for a sum in excess of the amount determined to be reasonable by the Chief of Police. The Chief of Police may hold an administrative hearing if any party to the dispute so requests.

C. City shall not be responsible to the Franchisee for payment of towing, removal, or storage charges. The Franchisee shall look to the owner of the vehicle for payment of applicable fees.

D. City personnel who are requesting that a vehicle be impound shall be responsible for establishing that "probable cause" exists to impound the vehicle in question. When "probable cause" is lost prior to a vehicle being removed to a Franchisee facility, no lien shall be attached, and no fee shall be charged for the field release of a vehicle to a properly interested person.

E. The Chief of Police has the authority to settle all disputes arising from actions by the Franchisee. The decision of the Chief of Police shall be binding on all parties involved. Inquiries pertaining to the conduct, practices, and regulation of the Franchisee may be referred to the City of Bell Gardens Police Department.

**SECTION 4. FRANCHISE FEES; PAYMENT; WAIVER.**

A. Franchisee shall pay to City an annual franchise fee of **TWELVE THOUSAND DOLLARS ($12,000)** (hereinafter, "Annual Franchise Fee") for the Term of the Agreement.

B. The year one (1) Annual Franchise Fee shall be due from the Franchisee within thirty (30) days of execution of the Agreement.

C. Commencing in year two (2) of the Agreement, and continuing through the Term of the Agreement, the Annual Franchise Fee shall be submitted to City on annual basis, on the first day of August of each year.

D. Should City elect to extend the Term of the Agreement for the additional two (2) one (1)-year extensions, Franchisee shall pay City the Annual Franchise Fee for each additional year, in accordance with Section 4(C).

E. Franchisee shall further pay City an Assessment Fee of Twenty-Five Percent (25%) of the Gross Receipts for each City generated tow and impound/storage (hereinafter, "Assessment Fee"). Gross Receipts shall mean all revenues received from towing, impound/storage and related services; plus, incidental receipts of any kind earned or received by the Franchisee as a result of business conducted under this Agreement. Excluded from "Gross Receipts" shall be any receipts generated by Franchisee from lien sales on unclaimed vehicles. These excluded receipts shall not be subject to any Assessment Fee by the City. Assessment Fee payment will not be required for vehicles the Police Department elects to release at no charge.

F. Payment of the Assessment Fee shall be made to the City's Finance Department along with full assessment fee payment report generated by Franchisee providing a detailed accounting of the Gross Receipts and calculation of the Assessment Fee no later than the tenth ($10^{th}$) day of the following month. Franchisee shall forward a copy of the payment check and payment report to the Chief of Police at the time of payment.

G. Any Franchise Fees or Assessment Fees, which remain unpaid for more than ten (10) calendar days after the date specified in subsection (B) and (C) above, shall be delinquent, and shall result in a penalty equal to ten percent (10%) per year, compounded daily, until fully paid.

H. By entering into this Agreement, the Franchisee irrevocably waives the defenses of any statute of limitation, laches, waiver or other legal or equitable doctrine of similar import or effect in any action brought by City to recover any Franchise Fee, interest or penalties due under this Agreement.

I. By entering into this Agreement, Franchisee agrees that if it challenges the right of City to collect the Franchise Fee, any relief requested by Franchisee and awarded to it by virtue of such challenge shall be prospective only, and only from the date of the filing of the initial pleading seeking such relief in a court of competent jurisdiction. Franchisee hereby waives any and all claims or rights to collect back from City, or obtain credit against future payment obligations, any amounts collected by City prior to the filing of the initial pleading seeking such relief. In the event that Franchisee's challenge to any Franchise Fee payments should result in an initial judgment in its favor, Franchisee shall continue to make all Franchise Fee payments in accordance with this Agreement pending an appeal by City. In the event the court of appeal, or trial court, if City elects not to appeal, determines that City is not entitled to collect any or all of the Franchise Fees, City shall refund to Franchisee those portions of the Franchise Fee which the court deems City was not entitled to collect, and which were made subsequent to the filing of the initial action by Franchisee, exclusive of interest on such amount.

J. City shall retain the right to impose alternative forms of taxes and/or fees in the event that the Franchise Fee or Assessment Fees provided for in this Agreement are no longer assessable due to a subsequent change in Federal, State, or local law.

K. **Notices**.

1. Designation of Representatives**.** Each party shall designate a representative to serve as that party's primary contact for the administration of this Agreement at all times during the term hereof. City hereby designates the Chief of Police and City Manager as the City Representatives. Franchisee hereby designates _____, as the Franchisee Representative.

2. Franchisee Representative. The Franchisee Representative shall be principally responsible for Franchisee's obligations under this Agreement and

shall serve as the principal liaison between Franchisee and City. The Franchisee Representative shall be authorized to act in Franchisee's behalf with respect to the Work specified herein. The Franchisee Representative shall remain responsible during the Term of this Agreement for directing all activities of Franchisee and devoting sufficient time to personally supervise the Work hereunder. Designation of another representative by Franchisee shall not be made without the prior written consent of City. Unless otherwise specified herein, approval of the Franchisee Representative required hereunder shall be deemed the approval of the Franchisee.

3. City Representative**.** The City Representative shall be the primary Agreement administrator for City. It shall be the responsibility of the Franchisee Representative to assure that the City Representative is kept informed of the progress of the performance of Towing Services, and Franchisee shall refer any decisions which must be made by City to the City Representative. Unless otherwise specified herein, approval of the City Representative required hereunder shall be deemed the approval of the City.

**SECTION 5. GENERAL CONDITIONS RELATING TO TOW SERVICE LOTS.**

Franchisee shall comply with all of the following conditions:

A. The Franchisee shall possess a lot able to hold a minimum of fifty (50) vehicles on its lot. Lighting shall be sufficient to afford easy visibility to all areas of the lot. The lot must be in a commercial or industrial area in a zone for which the business use is permitted and located within seven (7) miles of the City. The business must comply with all City, County and/or State standards and must at all times possess a valid and current City business license in accordance with BGMC.

B. The Franchisee's lot must be completely enclosed with a minimum of a six-foot high fence equipped with a security device, as approved by the City's Community Development Department. Security in the lot shall be adequate to preclude theft, vandalism or damage by activity while in the carrier establishment. No stored vehicles shall be visible from any adjacent roadway. No vehicles shall be parked or stored on the public streets at any time. Franchisee must provide off-street parking for its equipment and must be able to accommodate at least four (4) additional customer parking spaces. In addition to the four (4) customer parking spaces, at least one (1) additional customer parking space shall be provided for disabled parking purposes. Said disabled parking space shall be van accessible. Storage vehicles should be secured away from customer parking and the office area.

C. The Franchisee must have an office and lot in the same location within seven (7) miles of the City, with a sign posted that includes the company name, address, phone number and hours of operation, to be clearly visible from the roadway and shall have been operating out of an office and a storage yard, meeting the requirements of this

ordinance, within seven (7) miles of the City for at least two full calendar years prior to applying for and obtaining a Franchise pursuant to this Agreement.

D. It is the responsibility of the Franchisee to protect all vehicles, vehicle parts and/or attached accessories impounded by peace officers or City law enforcement personnel until such time the vehicles have either been released to properly interested persons or have been disposed of through legal process.

E. Vehicle parts and/or attached accessories shall not be removed from an impounded vehicle with a criminalistics/evidentiary hold on the vehicle without the prior approval of the concerned law enforcement personnel. The Franchisee's garage employees may remove vehicle parts and/or attached accessories for safekeeping. When the Franchisee's employee removes vehicle parts and/or attached accessories for safekeeping from a vehicle it shall:

    1. Record a description of the removed vehicle parts and/or attached accessories on the corresponding copy of the garage impound report.

    2. Implement controls to inform the Franchisee's office personnel responding to public inquiries that vehicle parts and/or attached accessories have been removed from a vehicle.

    3. Cause the vehicle parts and/or attached accessories to be individually packaged and identified.

    4. Provide a secure location for the storage of the vehicle parts and/or attached accessories to preclude loss, theft or damage.

    5. Inform properly interested persons that parts and/or attached accessories have been removed and how they may obtain possession of that property.

F. Charges/fees for towing, storage and other services required shall be in line with the industry standard and shall not be revised unless approved by the City Council. The towing charges shall also include the services of the tow driver and any other required personnel. The towing charges shall also include cleaning up and clearing of any accident site.

G. City Council approved storage fees must be posted near the cashiers' station as described in California Civil Code 3070, disclosing all storage fees and charges in-force, including the maximum storage rate.

H. Owners of vehicles stored for less than 24 hours shall be charged no more than one day of storage fees. Each day thereafter shall be calculated by calendar days.

I. The schedule of rates charged by Franchisee shall be available in the tow vehicles and shall be presented upon demand of people to who the tow services were provided, or their agent, or the police officer at the scene.

**SECTION 6. OPERATING HOURS; AFTER HOURS CHARGES; RESPONSE TIMES.**

A. The Franchisee business must be open to the public at least between the hours of 8:00 a.m. 7:00 p.m., Monday through Friday. Franchisee shall also maintain an after-hours telephone number for use during non-normal working hours.

B. Franchisee shall have tow services available 24 hours a day, 7 days a week, 365 days a year.

C. Franchisee shall not charge an after-hours fee to persons who appear to claim a stolen vehicle on a Saturday between the hours of 8:00 a.m. and 12 p.m. Upon approval of the Police Department, the operator may release personal property from an impound vehicle at the request of the vehicle owner or their agent. There shall be no charge for the release of personal property during normal business hours. Operators may charge an afterhours release fee for property released after normal business hours.

D. Franchisee shall, at no charge to the City, provide emergency services for City vehicles within 50 miles of the City limits. This service shall be provided at all times including weekends and holidays. Emergency services shall include but are not limited to, tire changes, battery jump starts and towing of inoperable vehicles.

E. The Franchisee must provide on their lot, to the Bell Gardens Police Department, free of charge, storage for four (4) vehicles in an inside garage for Vehicle Identification Number (V.I.N.) and mechanical inspections, as requested.

F. After receipt of a request to respond, the response time for arrival shall not exceed 20 minutes.

G. Franchisee shall notify the Police Department Communications Center when a tow unit cannot respond within the 20-minute time period. Franchisee will be required to provide a reason and an estimated time of arrival.

H. In the event that the tow vehicle does not arrive within 30 minutes from the time of call, the Police Department reserves the right to request towing services from another tow company.

I. Franchisee shall furnish such services as requested by the BGPD and noted in the Agreement at any time during the day or night and shall:

    1. Give priority to City calls when requested;

2. Maintain sufficient personnel and equipment to provide for a maximum response time of fifteen (15) minutes, except as otherwise provided herein;

3. Notify the BGPD upon receipt of request for tow when a tow unit cannot respond immediately and give an estimated time of arrival;

4. Franchisee shall provide immediate response whenever requested to respond to the scene where a child is locked in a car or other emergency of such type.

**SECTION 7. EQUIPMENT.**

A. **General.**

At its expense, Franchisee must have the following equipment that conforms to California Highway Patrol's Classification (CHP Class) for the gross vehicle weight ratings (GVWR) of truck chassis. Franchisee's vehicles must also be in compliance with the applicable provisions of the California Vehicle Code, applying to tow trucks (615 CVC), including but not limited to Sections 615, 21711, 24606, 25100, 27700, 27907, and all other regulations pertaining to lighting and safety equipment. Franchisee shall equip and maintain tow trucks in accordance with the provisions set forth in the California Vehicle Code and consistent with industry Standards & Practices.

B. **Vehicles.**

1. Franchisee must have a minimum of three (3) standard tow vehicles, 1 ton rating or greater with dual rear wheels and one flat bed tow vehicle always available.

2. None of the vehicles shall be converted pick-up trucks or vehicles not specifically built by manufacturer for towing other vehicles.

3. Franchisee shall have access to either, through a sub-contract, or as an owner of equipment a tow vehicle capable of towing large trucks (semi type).

4. All tow vehicles shall have necessary communications equipment for radio transmission and reception & shall comply with FCC regulations and requirements. City frequencies shall not be used. Equipment shall be purchased and maintained solely at Franchisee's expense.

5. Each tow vehicle shall have a cable of sufficient size & capacity to retrieve vehicles that may have gone over embankments or off traveled portions of roadways and into inaccessible locations.

6. All towing vehicles shall be equipped with the auxiliary equipment required for vehicles towing for the California Highway Patrol, in accordance with

Attachment "C" of the State of California, Department of California Highway Patrol Tow Service Agreement (CHP 234 (REV. 1-98) OPI 061), or any successor Agreement.

7. City also reserves the right to require that all towing vehicles be inspected by an automotive professional certified by the State of California Bureau of Automotive Repair, and selected by the City. All vehicle inspection fees shall be borne solely by the Franchisee and shall be due and payable upon presentation of the vehicle for inspection. A yearly inspection of all vehicles is required and the Franchisee shall not interfere in any way with any such inspections. The Franchisee is responsible for arranging the annual vehicle inspection with the City. Any towing vehicle that fails an inspection shall not be used to provide towing service in the City until it is repaired and passes re-inspection. In lieu of the aforementioned inspection procedures, the Chief of Police may deem the inspection procedures of the California Highway Patrol, that are in effect at the time, to be sufficient to meet the requirements of this section.

C. **Tow Drivers.**

1. Franchisee shall ensure that only qualified and competent tow drivers respond to calls initiated by the Police Department. Tow drivers shall be at least 18 years of age and possess the appropriate minimum class Drivers' License and qualifications.

2. All tow drivers shall be thoroughly trained in the proper and safe use of all equipment used in the performance of their duties.

3. All drivers shall be uniformed with the name of the towing company and their individual name.

4. All personnel acting on behalf of Franchisee shall be finger printed and photographed by the City's Police Department. The City may, at its discretion, conduct a background check as part of the proposal evaluation process of any employee that may include, but is not limited to: fingerprinting, a check of criminal convictions, credit history, driving history, and civil liens and judgments. If the City determines, through a background check, that an employee is not qualified to provide services to the City as specified in the City RFP and Agreement, the City will notify the Franchisee in writing as to the City's findings. Although the Franchisee may retain the disqualified employee, Franchisee must not use or dispatch the disqualified employee for a service that Franchisee provides to the City pursuant to this Agreement.

5. Franchisee shall as a minimum, maintain the following information for each employee:
    i. Full Name of the driver

ii. Date of birth
iii. California Drivers' License Number
iv. Copy of valid Medical certificate (if required)
v. Job title and description
vi. Current home address and phone number, and
vii. Types of vehicles the driver has been trained and instructed to operate

**SECTION 8. GENERAL PROVISIONS.**

A. **Insurance.** Without limiting Franchisee's indemnification of the City, and prior to commencement of work, Franchisee shall obtain, provide, and maintain at its own expense during the Term of this Agreement, policies and procedures of the type and amounts described below and in a form satisfactory to the City:

1. General Liability Insurance: Franchisee shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in amount not less than $1,000,000 per occurrence, $2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

2. Commercial Automobile Liability Insurance: Franchisee shall maintain automobile insurance at least as broad as Insurance Service Office CA 00 01 covering bodily injury and property damage for all activities of the Franchisee arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than $1,000,000 combined single limit for each accident.

3. Professional Liability (Errors and Omissions): Franchisee shall maintain professional liability insurance that covers the Work to be performed in connection with this Agreement, in the minimum amount of $1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement and Franchisee agrees to maintain continuous coverage through a period of no less than three (3) years after completion of Work required by this Agreement.

4. Workers Compensation Insurance: Franchisee shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least $1,000,000.

5. Garage Keepers Legal Liability: Franchisee shall maintain coverage with a limit of not less than One Million Dollars ($1,000,000) per occurrence, $2,000,000 aggregate. The coverage must be inclusive of "Auto" and "Other Than Auto" coverages. The Other Than Collision coverage shall include "Comprehensive" (all perils) coverage. Coverage shall include Comprehensive and Collision.

This requirement can be satisfied by either a separate Garage Keepers Legal Liability policy or through a modification to the Commercial Automobile Liability policy. Evidence of either must be provided. The City shall be included as an Additional Insured for Vicarious Liability. This shall be documented using ISO Insurance Services Office CA endorsement CA 00 005 or an equivalent form. Coverage shall include a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the City. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds $100,000, it must be approved in advance by City. Franchisee is responsible for any deductible or self-insured retention and shall fund it upon City's written request, regardless of whether Franchisee has a claim against the insurance or is named as a party in any action involving the City. The policy definition of "insured contract" shall include assumptions of liability arising out of work performed for a municipality (Definition #5 of the ISO Garage Coverage form, or its equivalent).

6. Umbrella or Excess Liability: Franchisee shall maintain Umbrella or Excess Liability policies with limits that will provide bodily injury, personal injury, and property damage liability coverage, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions: a drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectable in whole or in part for any reason, other than bankruptcy or insolvency of said primary insurer; "pay on behalf of" wording as opposed to "reimbursement"; concurrency of effective dates with primary policies. Should an excess liability policy be obtained and maintained, such policy shall be excess over commercial general liability, automobile liability, and employer's liability policies. Such policy or policies shall include wording that the excess liability policy follows the terms and conditions of the underlying policies.

7. Other Provisions or Requirements:

    i. Proof of Insurance. Franchisee shall provide certificates of insurance and required endorsements to the City as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with the City for the contract period and any additional length of time required thereafter. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.
    ii. Duration of Coverage. Franchisee shall procure and maintain for the Agreement period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by Franchisee, their agents, representatives, employees, or subconsultants.

iii. Primary/Noncontributing. Coverage provided by Franchisee shall be primary and any insurance or self-insurance procured or maintained by the City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

iv. City's Rights of Enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by the City will be promptly reimbursed by Franchisee or the City will withhold amounts sufficient to pay premium from Franchisee payments. In the alternative, the City may cancel this Agreement.

v. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

vi. Licenses. Franchisee shall hold at all times the appropriate licenses (Local, State, or Federal) to operate within the City. Franchisee shall also be solely responsible for any parking and traffic violations of vehicles operated by its employees.

vii. Compliance. Franchisee understands the various governing agencies and laws that have or may have jurisdiction and / or requirements that must be met under the Agreement, including but not limited to: The Federal Transit Authority, ADA, CARB, AQMD, LACMTA, and others.

B. **Indemnification.**

1. Franchisee agrees to indemnify, defend and hold harmless the City, its elected officials, officers, employees, attorneys, agents and volunteers (collectively, the "Indemnitees"), at Franchisee's sole expense, from and against any and all lawsuits or other legal proceedings, claims, causes of action, losses, liabilities, penalties, forfeitures or actions of any kind asserted against any or all of the Indemnities arising out of the performance of Franchisee, its officers, employees, representatives, agents and/or subcontractors under in the performance of the Agreement, excepting only such claims or actions which may arise out of sole or active negligence of the Indemnitees. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Franchisee, its employees, and/or authorized

sub operators, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents, and employees based upon the work performed by the Franchisee, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Franchisee's proposal, which shall be of no force and effect.

2. Franchisee's obligation to defend, hold harmless, and indemnify shall not be excused because of Franchisee's inability to evaluate liability or because the Franchisee evaluates liability and determines that Franchisee is not liable to the claimant. Franchisee must respond within thirty (30) days to the tender of a claim for defense and indemnity by the City, unless this time has been extended by the City. If Franchisee fails to accept or reject a tender of defense and indemnity within thirty (30) days, in addition to any other remedy authorized by law, as much of the money due Franchisee by virtue of this Agreement as shall reasonably be considered necessary by the City may be retained by the City until final disposition has been made or the claim or suit for damages, or until Franchisee accepts or rejects the tender of defense, whichever occurs first.

3. With respect to third party claims against Franchisee, Franchisee waives any and all rights of any type to express or implied indemnity against the Indemnities.

4. Separate Counsel: City may elect to have separate legal counsel from Franchisee at any time at its sole discretion, and in such case Franchisee will pay one-half (1/2) of all fees and costs and charges for such separate legal counsel.

5. Subcontractors: Franchisee shall require all subcontractors to enter into an Agreement containing the provisions set forth in this subsection in which the subcontractor fully indemnifies the City in accordance with this Agreement.

6. Damage by Franchisee: If Franchisee's employees or subcontractors cause any injury, damage or loss to City property, including by not limited to City streets or curbs, Franchisee shall reimburse City for City's cost of repairing such injury, damage or loss. Such reimbursement is not in derogation of any right of the City to be indemnified by Franchisee for any such injury, damage or loss. With the prior written approval of City, Franchisee may repair the damage at Franchisee's sole cost and expense.

7. Tort Claims Act: This Agreement shall in no way act to abrogate or waive any immunities available to the City under the Tort Claims Act of the State of California.

C. **Assignment or Transfer Prohibited.**

The reputation, capability and identity of Franchisee are important and material factors in the award of this Agreement. Accordingly, Franchisee shall not assign, sell, subcontract, or otherwise transfer any of its obligations, rights, benefits, or other interests it may have under this Agreement to any other person or entity without the prior written consent of City to such transfer or assignment. City may, in its sole discretion, withhold consent to any sale, assignment, or other transfer of this Agreement with or without cause, and may solicit new proposals for the Towing Services. City's consent to a transfer or assignment shall neither relieve Franchisee of its obligations under, nor alter the terms of, this Agreement. For the purposes of this section, the sale, assignment, or other transfer from any person or group of persons collectively having an interest of fifty percent (50%) or more in Franchisee (whether by means of ownership of stock, partnership interests, tenancy, or otherwise) to any other person or entity shall be deemed an assignment subject to the provisions of this section. Any attempted or purported assignment, sale or other transfer by Franchisee without the prior written consent of City shall be null, void and of no effect.

D. **Notices.**

Any notice authorized or required to be given by this Agreement shall, unless otherwise specified in this Agreement, be served by personal delivery or by depositing such notice in the United States mail with first-class postage prepaid, addressed to the person and addresses listed below for each party, unless written notice is provided by either party as to a change of address for that party:

**City:** City Manager and Chief of Police
City of Bell Gardens City Hall
7100 South Garfield Avenue
Bell Gardens, CA 90201

**Franchisee:**

For the purposes of this Agreement, notices shall be deemed communicated as follows: (i) Notices delivered personally shall be deemed communicated as of the date of actual receipt; (ii) Notices sent via regular mail (whether by first class mail, registered mail or certified mail) shall be deemed communicated as of three (3) days after deposit thereof in the United States mail, addressed as shown on the addressee's registry or certificate of receipt; and (iii) Notices sent via Federal Express or similar courier service shall be deemed communicated two (2) days after deposit of such notices with Federal Express or similar courier or one of its agents

E. **Authority to Enter Agreement.**

City and Franchisee warrant that the individuals who have signed this Agreement have the legal power, right, and authority to enter into this Agreement so as to bind each

respective party to perform the obligations and conditions imposed upon each party herein.

F. **Audit of Franchisee's Books and Accounts.**

Franchisee shall maintain the books and records of each tow or storage as required by Vehicle Code section 10650 and any other state law or regulation and this Agreement. All records, equipment, and storage facilities shall be open to periodic inspection by the City. Any deficiencies shall be corrected as soon as practicable upon request of the City. Franchisee shall permit and facilitate any inspections or audits that City may require.

Franchisee acknowledges, understands and agrees that any and all records provided to the City or otherwise maintained in compliance with Vehicle Code section 10650 may be subject to production to third-parties under the California Public Records Act (Government Code section 7920.000 et seq) and City reserves right to produce such records to the extent City, in its discretion, determines that such records are subject to disclosure. Franchisee shall make its books and records available to City during regular business hours, upon 24-hours written notice from City, for the purpose of auditing and verifying Franchisee's payment of Franchise Fees and compliance with this Agreement.

G. **Severability.**

Whenever possible, each and every provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision, or portion thereof, of this Agreement, or the application of the same to any person or circumstances, is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, such provision, or portion thereof, shall be severed from this Agreement and shall not affect the validity of the remaining portions of this Agreement. City and Franchisee expressly declare that each would have entered into this Agreement, and each and every section and provision herein, irrespective of the fact that any one or more provisions may be declared invalid or unconstitutional.

H. **Independent Contractor.**

Franchisee is, and shall at all times remain as to City, a wholly independent contractor. Franchisee shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Franchisee shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Franchisee or any of Franchisee's employees, except as set forth in this Agreement. Franchisee agrees to pay all required taxes on amounts paid to Franchisee under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Franchisee shall fully comply with the workers' compensation laws regarding Franchisee and its employees. Franchisee further agrees to indemnify

and hold City harmless from any failure of Franchisee to comply with applicable workers' compensation laws. City shall have the right to offset against the amount of any compensation due to Franchisee under this Agreement any amount due to City from Franchisee as a result of Franchisee's failure to promptly pay to City any reimbursement or indemnification arising under this Section 8(H).

I. **No Third Party Beneficiaries.**

This Agreement, its provisions, and its covenants, are for the sole and exclusive benefit of City and Franchisee. No other parties or entities are intended to be, nor shall be considered, beneficiaries of the performance by either party of any of the obligations under this Agreement.

J. **No Waiver.**

Any failures or delays by City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by City in asserting any of its rights and remedies shall not deprive City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies

K. **Time is of the Essence.**

Time is of the essence in the performance of this Agreement.

L. **Modification and Amendment.**

This Agreement may not be modified, supplemented, or amended, except by written agreement signed by each of the parties hereto.

M. **Binding on Successors and Assigns.**

This Agreement, and each and every covenant, obligation, and condition herein, shall be binding on and shall inure to the benefit of the successors and assigns of City and Franchisee.

N. **Institution of Legal Actions.**

In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Los Angeles, State of California, in any other appropriate court in that County, or in the Federal District Court in the Central District of California.

O. **Attorney's Fees.**

In the event either party brings an action at law or in equity, including any action for declaratory relief, to enforce the provisions of this Agreement against the other party, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled under law

P. **Applicable Law.**

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

Q. **Use of Caption.**

The use of captions to identify the various articles and paragraphs of this Agreement are solely for reference and as a matter of convenience, and in no way bind, emit, or describe the scope or intent of any provision.

R. **Interpretation.**

City and Franchisee acknowledge that this Agreement is the product of mutual, arms-length negotiation and drafting, and each party expressly represents and warrants to the other that it has been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction which provides that all ambiguities in the document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of the provisions of this Agreement.

S. **Cooperation and Further Acts.**

City and Franchisee hereby agree to execute such other instruments and to do such further acts as may be reasonably required by, or necessary to carry out, the provisions of this Agreement.

T. **Reservation of Rights.**

City and Franchisee expressly reserve all rights that they may possess under the law unless expressly waived herein. By entering into this Agreement, neither City nor Franchisee waives any rights which it now or may later enjoy under applicable law, and City and Franchisee specifically reserve their rights to take full advantage of any changes in the law during the term of the Franchise.

U. **Force Majeure.**

If either City or Franchisee is unable to perform its duties under this Agreement due to strikes, lock-outs, labor disputes, inability to obtain labor, governmental restrictions, regulations or controls, civil commotion, fire or other casualty, emergency, or any other cause beyond the reasonable control of either City or Franchisee, such non-performing party shall be excused from the performance of its obligation by the other Party, and shall not be in breach of this Agreement, for a period equal to any such prevention, delay or stoppage.

V. **Incorporation by Reference.**

All exhibits attached to this Agreement or documents expressly incorporated by reference shall be deemed incorporated into this Agreement by the individual reference to each such exhibit or document, and all exhibits and documents shall be deemed part of this Agreement as though set forth in full. In the event of any conflict between the express provisions of this Agreement and the provisions of any exhibit or document incorporated herein by reference, the provisions of this Agreement shall prevail.

W. **Integration.**

This Agreement represents the entire and integrated agreement between City and Franchisee and supersedes any prior negotiations, representations, or agreements, whether written or oral, with respect to the subject matter hereof.

X. **Use of City Name.**

Franchisee shall not use the words "BELL GARDENS" or "CITY" or like words in its corporate names, style of business, or on its equipment, nor shall Franchisee utilize the state words in any publication, promotion, program, etc., without the prior expressed written consent of the City.

## SECTION 9. FRANCHISEE'S REPRESENTATIONS AND OBLIGATIONS.

A. **Personnel.**

Franchisee represents that it has, or shall secure at its own expense, all personnel required to perform the Work contemplated by this Agreement. Franchisee may associate with or employ associates or subcontractors in the performance of the Work upon obtaining the prior written approval of City to such association or subcontract, but shall remain, at all times, primarily responsible for the performance of the Work.

B. **Governing Requirements.**

Franchisee shall operate its tow service and shall perform all Work required of it under the terms of this Agreement in full compliance with the regulations set forth in this Agreement, including all applicable Federal, State and local laws.

C. **Performance and Operational Standards.**

Franchisee shall perform the Work in accordance with the standards set forth under Federal, State and local law. Franchisee shall at all times comply with such operating standards, noticing requirements and service requirements mandated under Article 1 of Chapter 10 of Division 11 of the California Vehicle Code (Vehicle Code section 22650 et seq.) including but not limited to those operating standards, noticing requirements and service requirements set forth under Vehicle Code sections 22655.5(c), 22658, and 22699. The failure to abide by such operating standards, noticing requirements and/or service requirements shall constitute an Event of Default under this Agreement.

D. **Rates and Charges.**

Franchisee may charge for the removal and storage of vehicles towed by Franchisee in the performance of the Towing Services contemplated by this Agreement. Rates and charges shall be in line with the industry standard and shall not be revised unless approved by the City Council. The towing charges shall also include the services of the tow driver and any other required personnel. The towing charges shall also include cleaning up and clearing of any accident site.

E. **Prohibited Employment.**

In addition to all other conditions of approval, the City Council of the City of Bell Gardens has also conditioned approval of this Agreement on Franchisee's compliance with the following: To the fullest extent permitted by law, under no circumstances may Franchisee do any of the following during the Term of this Agreement: (i) employ or offer employment to any person who is currently employed by the City; (ii) employ or offer employment to any former employee of the City whose employment ended or was otherwise terminated (for whatever reason) less than one year from the date the former employee is employed or offered employment by Franchisee; (iii) engage any employee of the City or offer to engage any employee of the City as an independent contractor or agent of Franchisee; and/or (iv) engage or offer to engage any former employee of the City as an independent contractor or agent of Franchisee where such engagement or offer to engage is made less than one year from the date the former employee's employment with the City of Bell Gardens ended or was otherwise terminated (for whatever reason).

**SECTION 10. SIGNATURES**

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

**CITY OF BELL GARDENS:**

By:_____

Name:_____

Title:_____

Date:_____

APPROVED AS TO FORM:

By:_____
Stephanie Vasquez, City Attorney

**FRANCHISEE NAME:**

By:_____

Name:_____

Title:_____

Date:_____

**EXHIBIT “A”**
**CITY RFP**

**EXHIBIT “B”**
**FRANCHISEE PROPOSAL**

ATTACHMENT 1

CITY OF BELL GARDENS
CITY HALL
7100 GARFIELD AVENUE
BELL GARDENS, CA 90201

# INSURANCE REQUIREMENTS CHECKLIST

(POLICE ORDERED TOWING & STORAGE SERVICES RFP)

**TOW OPERATOR:** _____

Minimum Insurance Requirements. As of the date of proposal submission, proposers must demonstrate insurance coverage amounts which meet or exceed the insurance coverage requirements specified in Section VI of the RFP and Section 8(A) of the sample agreement attached as Exhibit A of this RFP. City reserves the right to reject any proposal which does not demonstrate that the proposer meets the minimum insurance requirements of the RFP.

**I. General Liability Insurance** – minimum requirements met?

___ yes ___ no

notes:

_____

_____

**II. Commercial Automobile Liability Insurance** – minimum requirements met?

___ yes ___ no

notes:

_____

_____

**III. Professional Liability (Errors & Omissions)** – minimum requirements met?

___ yes ___ no

notes:

_____

_____

**IV. Workers' Compensation Insurance – minimum requirements met?**

___ yes ___ no

notes:

_____

_____

ATTACHMENT 1

**V. Garage Keepers Legal Liability** – minimum requirements met?

___ yes ___ no
notes:

**VI. Umbrella or Excess Liability** – minimum requirements met?

___ yes ___ no

notes:

**VII. Acceptability of Insurers** –

___ yes ___ no

notes:

**Reviewer's Notes:** (Typed on additional page or hand written below)

**Review Completed by:**

_____ Date/Time_____

ATTACHMENT 2

CITY OF BELL GARDENS
CITY HALL
7100 GARFIELD AVENUE
BELL GARDENS, CA 90201

# CIVIL LITIGATION HISTORY/ CIVIL LITIGATION CERTIFICATION

(POLICE ORDERED TOWING & STORAGE SERVICES RFP)

Proposer shall provide either the certification requested below or information requested on the next page. **Failure to provide such certification or information may result in a determination that the Proposer is nonresponsive. Failure to fully and accurately provide the requested certification or information may result in a determination that the Proposer is not responsible and City may reject the proposal on this basis as well.** For the five (5) years preceding the date of submittal of this Proposal, identify any civil litigation arising out of the performance of a towing and storage services within the State of California in which any of the following was a named plaintiff or defendant in a lawsuit brought by or against the entity soliciting Proposals: the Proposer submitting the instant Proposal, including any person who is an officer of, or in a managing position with, or has an ownership interest in the entity submitting the Proposal. Do not include litigation which is limited solely to enforcement of mechanics' liens or stop notices. Provide on the following page labeled "Civil Litigation History Information:" (i) the name and court case identification number of each case, (ii) the jurisdiction in which it was filed, and (iii) the outcome of the litigation, e.g., whether the case is pending, a judgment was entered, a settlement was reached, or the case was dismissed.

## CIVIL LITIGATION CERTIFICATION

**If the Proposer has no civil litigation history to report as described above, complete the following:**

I, _____, am the _____
(Print name of person responsible for submitting Proposal) (Title with Proposing Entity)

of_____ (hereinafter, "Proposer").
(Print Name of Proposing Entity)

In submitting a Proposal to the City of Bell Gardens for Police Ordered Towing & Storage Services, I, hereby certify that neither Proposer nor any person who is an officer of, in a managing position with, or has an ownership interest in Proposer has been involved in civil litigation as described, above.

**I declare under penalty of perjury that the foregoing is true and correct.**

Executed this _____ day of _____at _____
(month and year) (city and state)

by_____
(Signature of Person Responsible for Submitting Proposal on behalf of Proposer)

ATTACHMENT 2

**CIVIL LITIGATION HISTORY INFORMATION**

(1A) Name of Case: _____

_____

Court case identification number: _____

(1B) Jurisdiction in which case was filed: _____

_____

(1C) Outcome of the case: _____

_____

_____

_____

(2A) Name of Case: _____

_____

Court case identification number: _____

(2B) Jurisdiction in which case was filed: _____

ATTACHMENT 2

(2C) Outcome of the case: _____

DECLARATION

I, _____, the _____
(Print name of person responsible for submitting Proposal) (Title with Proposing Entity)

of _____ (hereinafter, "Proposer")
(Print Name of Proposing Entity)

declare under penalty of perjury that the above information is true and correct.

Executed this _____ day of _____ at _____
(month and year) (city and state)

by _____
(Signature of Person Responsible for Submitting Proposal on behalf of Proposer)

END OF DOCUMENT

ATTACHMENT 3

CITY OF BELL GARDENS
CITY HALL
7100 GARFIELD AVENUE
BELL GARDENS, CA 90201

# CRIMINAL CONVICTIONS CERTIFICATION

(POLICE ORDERED TOWING & STORAGE SERVICES RFP)

Proposer shall provide either the certification requested below or information requested on the next page. **Failure to provide such certification or information may result in a determination that the Proposer is nonresponsive. Failure to fully and accurately provide the requested certification or information may result in a determination that the Proposer is not responsible.**

For the five (5) years preceding the date this Proposal is due, identify on the following page any criminal conviction in any jurisdiction of the United States for a violation of law arising out of towing and storage services by the Proposer submitting this Proposal, including any person who is an officer of, or in a management position with, or has an ownership interest in the contracting entity which is submitting this Proposal. Provide on the following page labeled "Criminal Convictions Information:" (1) the date of conviction, (2) the name and court case identification number, (3) the identity of the law violated, (4) the identity of the prosecuting agency, (5) the contract or project involved, (6) the punishment imposed, and (7) any exculpatory information of which the City should be aware.

## CRIMINAL CONVICTIONS CERTIFICATION

If the Proposer has no criminal convictions to report as described above, complete the following:

I, _____, hereby certify that neither
(print name of owner, officer, manager, or licensee responsible for submission of Proposal)

_____
(Proposer name as shown on Proposal)

has been convicted of a criminal violation as described above.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____day of _____at _____
(month and year) (city and state)

by _____
(signature of owner, officer, manager, or licensee responsible for submission of Proposal)

ATTACHMENT 3

**CRIMINAL CONVICTIONS INFORMATION**

(1) Date of conviction: _____

(2) Name of case: _____

Court case identification number: _____

(3) Identity of the law violated: _____

_____

(4) Identity of the prosecuting agency: _____

_____

(5) Contract or project involved: _____

_____

(6) Punishment imposed: _____

_____

_____

(7) Exculpatory information: _____

_____

_____

_____

_____

Declaration: I declare under penalty of perjury that the above information is true and correct.

Executed this _____ day of _____ at _____
(month and year) (city and state)

by _____
(signature of owner, officer, manager, or licensee responsible for submission of Proposal)

ATTACHMENT 4

CITY OF BELL GARDENS
CITY HALL
7100 GARFIELD AVENUE
BELL GARDENS, CA 90201

# FALSE CLAIMS/FALSE CLAIMS ACT CERTIFICATION

(POLICE ORDERED TOWING & STORAGE SERVICES RFP)

Proposer shall provide either the certification requested below or the information requested on the next page. **Failure to certify or provide the requested information may result in a determination that the Proposer is non-responsive and City may reject the proposal on this basis. Failure to fully and accurately provide the requested certification or information may result in a determination that the Proposer is not responsible and City may reject the proposal on this basis as well.** "False Claims Act", as used herein, is defined as either or both the Federal False Claims Act, 31 U.S.C. Sections 3729 et seq., and the California False Claims Act, Government Code Sections 12650 et seq.

## FALSE CLAIMS ACT CERTIFICATION

If the Proposer has no False Claims Act violations as described above, complete the following:

I, _____, am the _____
(Print name of person responsible for submitting proposal) (Title with proposing entity)

of_____ (hereinafter, "Proposer").
(Print Name of Proposing Entity)

In submitting a proposal to the City of Bell Gardens, I, hereby certify that neither Proposer nor any person who is an officer of, in a managing position with, or has an ownership interest in Proposer has been determined by a court or tribunal of competent jurisdiction to have violated the False Claims Act as defined above.

**I declare under penalty of perjury that the foregoing is true and correct.**

Executed this _____ day of _____at _____
(month and year) (city and state)

By _____
(Signature of Person Responsible for Submitting Proposal on behalf of Proposer)

ATTACHMENT 4

FALSE CLAIMS ACT VIOLATIONS INFORMATION

(1) Date of Determination of Violation: _____

_____

(2) Identity of tribunal or court and case name or number, if any: _____

_____

(3) Government Contract or project involved: _____

_____

(4) Government agency involved: _____

(5) Amount of fine imposed: _____

_____

(6) Exculpatory Information: _____

_____

_____

_____

DECLARATION

I, _____, the _____
(Print name of person responsible for submitting proposal) (Title with proposing entity)

of _____ (hereinafter, "Proposer")
(Print Name of Proposing Entity)

declare under penalty of perjury that the above information is true and correct.

Executed this _____ day of _____ at _____
(month and year) (city and state)

By _____
(Signature of Person Responsible for Submitting Proposal on behalf of Proposer)

END OF DOCUMENT

ATTACHMENT 5

CITY OF BELL GARDENS
CITY HALL
7100 GARFIELD AVENUE
BELL GARDENS, CA 90201

# NON-COLLUSION AFFIDAVIT

(POLICE ORDERED TOWING & STORAGE SERVICES RFP)

State of California )
) SS:
County of Los Angeles )

_____being first duly sworn, deposes and says that he or she
(print name of person)

is_____ of_____, the party
(print title of person) (print name of firm)

submitting a proposal for the award of a Towing Services Non-Exclusive Franchise Agreement for the City of Bell Gardens, that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that the proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the terms of the proposal, including the amount to paid to the City of Bell Gardens in the form of franchise fees, permit fees and other forms of compensation, or to fix any overhead, profit or cost element of the proposal, or of that of any other proposer, or to secure any advantage against the public body awarding the franchise agreement to anyone interested in being awarded a towing and vehicle storage services franchise; that all statements contained in the proposal are true; and, further, that the proposer has not, directly or indirectly, submitted its proposal or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization or to any member or agent thereof to effectuate a collusive or sham proposal.

_____
(Signature of Proposer)

[NOTARY ACKNOWLEDGEMENT TO FOLLOW]

ATTACHMENT 5

STATE OF CALIFORNIA )
) SS:
COUNTY OF LOS ANGELES )

Subscribed and sworn to (or affirmed) before me this _____ day of _____, 2024.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL OF NOTARY)

_____
(Signature of Notary)

_____
(Printed Name of Notary)

END OF DOCUMENT

ATTACHMENT 6

CITY OF BELL GARDENS
CITY HALL
7100 GARFIELD AVENUE
BELL GARDENS, CA 90201

# CAMPAIGN CONTRIBUTION DISCLOSURE FORM

(POLICE ORDERED TOWING & STORAGE SERVICES RFP)

*Cities are subject to the campaign disclosure provisions detailed in Government Code § 84308*

California Government Code § 84308, commonly referred to as the "Levine Act," precludes an Officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than $250 in the 12 months preceding the pendency of the contract award, and for 12 months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the Officer, or received by the Officer on behalf of any other Officer, or on behalf of any candidate for office or on behalf of any committee. The Levine Act also requires disclosure of such contributions by a party to be awarded a specified contract. Please refer to the attachment for the complete statutory language.

1. Application for:

   □ License

   □ Permit

   □ Franchise

   □ Mills Act or Development Agreement

   □ Contract (Professional Services, Construction Services, Maintenance, Public Works, etc.)

   □ Lease

   □ Other Entitlement[1]

2. Have you or your company, or any participant or agent on behalf of you or your company, made any political contributions of more than $250 to any City Councilmember or Commissioner within the preceding 12 months?

   YES ☐ NO ☐

3. Date of the City Council or Commissioner Meeting when proceeding will be considered? (if known and if applicable):

4. Is this a supplement to a previously submitted Campaign Contribution Disclosure Form for the proceeding?

   YES ☐ NO ☐

[1] "License, permit or other entitlement for use" means all business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts) and all franchises.

If yes, what is the date of the previously submitted form: _____

5. Is this a correction to a previously submitted Campaign Contribution Disclosure Form for the proceeding?

   YES ☐ NO ☐

   If yes, what is the date of the previously submitted form: _____

   Provide a brief explanation of correction: _____

6. CONTRIBUTIONS

Name of City Councilmember or Commissioner receiving contribution: _____

***Submit separate forms for any contributions made to other City Councilmembers or Commissioners. Only one (1) City Councilmember or Commissioner may be listed per form.***

Complete the table below with all contributions made by the party, participant or their agent with whom contributions must be aggregated of more than $250. If you have more than five contributions to report, please submit a supplemental form.

| | Name of Party | Name of Participant or Agent Making Contribution | Date of Contribution | Amount of Contribution |
|---|---|---|---|---|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| | **Total Contributions** | | | **0.00** |

By signing below, I certify under penalty of perjury that the statements made herein are true and correct to the best of my knowledge.

Name: _____ Date: _____

Email: _____

Phone: _____ Signature: _____

Answering yes to the questions above does not preclude the City of Bell Gardens from awarding an application or contract to your firm. It may, however, preclude the identified City Councilmember or Commissioner from participating in the application or contract award process for this contract.

# California Government Code Section 84308

(a) The definitions set forth in this subdivision shall govern the interpretation of this section.

(1) “Party” means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.

(2) “Participant” means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if that person lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.

(3) “Agency” means an agency as defined in Section 82003 except that it does not include the courts or any agency in the judicial branch of government, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.

(4) “Officer” means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.

(5) “License, permit, or other entitlement for use” means all business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.

(6) “Contribution” includes contributions to candidates and committees in federal, state, or local elections.

(b) While a proceeding involving a license, permit, or other entitlement for use is pending, and for 12 months following the date a final decision is rendered in the proceeding, an officer of an agency shall not accept, solicit, or direct a contribution of more than two hundred fifty dollars ($250) from any party or a party’s agent, or from any participant or a participant’s agent if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution on the officer’s own behalf, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

(c) Prior to rendering any decision in a proceeding involving a license, permit, or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars ($250) from a party or from any participant shall disclose that fact on the record of the proceeding. An officer of an agency shall not make, participate in making, or in any way attempt to use the officer’s official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars ($250) within the preceding 12 months from a party or a party’s agent, or from any participant or a participant’s agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7.

(d) (1) If an officer receives a contribution which would otherwise require disqualification under this section, and returns the contribution within 30 days from the time the officer knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, the officer shall be permitted to participate in the proceeding.

(2) (A) Subject to subparagraph (B), if an officer accepts, solicits, or directs a contribution of more than two hundred fifty dollars ($250) during the 12 months after the date a final decision is rendered in the proceeding in violation of subdivision (b), the officer may cure the violation by returning the contribution, or the portion of the contribution in excess of two hundred fifty dollars ($250), within 14 days of accepting, soliciting, or directing the contribution, whichever comes latest.

(B) An officer may cure a violation as specified in subparagraph (A) only if the officer did not knowingly and willfully accept, solicit, or direct the prohibited contribution.

(C) An officer’s controlled committee, or the officer if no controlled committee exists, shall maintain records of curing any violation pursuant to this paragraph.

(e) (1) A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars ($250) made within the preceding 12 months by the party or the party’s agent.

(2) A party, or agent to a party, to a proceeding involving a license, permit, or other entitlement for use pending before any agency or a participant, or agent to a participant, in the proceeding shall not make a

contribution of more than two hundred fifty dollars ($250) to any officer of that agency during the proceeding and for 12 months following the date a final decision is rendered by the agency in the proceeding.

(3) When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in this section.

(f) This section shall not be construed to imply that any contribution subject to being reported under this title shall not be so reported.

**For more information, contact the Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814, (916) 322-5660.**