

## **TOW SERVICE PRICE AGREEMENT**

This Tow Service Price Agreement (hereinafter, the “Agreement”) entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, between the City of St. Joseph, Missouri, (hereinafter, the “City”) and R&W Towing & Recovery, LLC, having a business address at 1214 S. 9<sup>th</sup>, St. Joseph, Missouri (hereinafter, the “Contractor”), is entered into for the purpose of providing towing and storage services for the City.

### **SECTION 1. SCOPE OF AGREEMENT**

- A. Generally. This Agreement governs the towing, storage, and disposal of motorized and non-motorized vehicles, trailers, motorcycles and similar large portable devices (hereinafter, collectively “Vehicles”) from property both within and outside the corporate limits of the City of St. Joseph, Missouri, when towing, storage, and disposal is directed by City officials.
  
- B. Authorization Required. All services described herein shall be performed only when authorized by the City or the departments thereof as listed herein. Before performing the Services for any Vehicle, the Contractor, upon arriving at the scene where such Services were requested, shall sign the City tow form provided by the City employee in charge of the tow, thereby accepting possession of the Vehicle as described in the form.
  
- C. Performance. The Contractor shall provide the following towing, storage, and disposal services (hereinafter, collectively the “Services”) consistent with the City’s Code of Ordinances and the terms and requirements of this Agreement:
  - 1. Police Ordered. When ordered by the City’s Police Department (hereinafter, the “Police Department”) and in accordance with the City’s Code of Ordinances and the terms of this Agreement, the Contractor shall tow and, when required, impound and store (i) all Vehicles which the City’s Code of Ordinances states that the City or a department thereof may tow or otherwise remove (including, but not limited to Section 28-261 through Section 28-264, Vehicle Towing and Tow Trucks; Section 2-1246 through Section 1251, Impoundment, Redemption, Storage and Sale of Abandoned, Stolen or Lost Property and Motor Vehicles) and (ii) all immobilized Vehicles when two prior contractors on the City’s “Next-up Tow List” fail to confirm that they will perform the towing or other removal for such Vehicles.
  
  - 2. City-Owned Vehicles. When ordered by any City department, the Contractor shall tow City-owned and operated Vehicles, including all fire apparatus, which must be towed with wheel lift equipment, and City buses, which must be towed with a flatbed trailer.
  
  - 3. Nuisance Vehicles. When ordered by the Director of Planning and Community Development, or his or her designee, the Contractor shall tow Vehicles that have been declared a nuisance.

## SECTION 2. SERVICES AND COSTS

- A. Generally. All fees and other consideration described herein shall be payable only for those Services which are ordered by the City and performed in accordance with the terms of this Agreement.
- B. Unit Price Per Tow. For each Vehicle towed pursuant to this Agreement, the Contractor shall be entitled to collect payment in the amount of the “Unit Price Per Tow” charges listed as Items 1 through 6 on the attached “Attachment A-Schedule of Charges” based upon the type of Vehicle towed. Such “Unit Price Per Tow” charges shall include all charges for preparation, towing, and storage of Vehicles except those charges explicitly listed as Items 7 through 11 on the Schedule of Charges. The “Unit Price Per Tow” charge includes, but is not limited to, unlocking doors, freeing the steering column, disconnecting the drive-line, winching and dollying, delivering the Vehicle to a location specified by the City or by the Vehicles’ owners, and performing other services required by this Agreement, and, in the case of motorcycles, towing on a motorcycle trailer.
- a. Police Department Processing. In the event the Contractor tows a Vehicle to the Law Enforcement Center in St. Joseph at the request of the City and then subsequently tows the Vehicle to a second location, the towing to the second location shall be deemed a second towing, independent from the first towing to the Law Enforcement Center, and may be billed as a separate tow.
- C. Cancelled Tows. The Contractor shall be entitled to receive payment in the amount listed as Item 7 in the attached Schedule of Charges for tow services that are properly authorized by the City but subsequently cancelled either after (i) towing equipment has proceeded to, or arrived at, the location at which the towing services were ordered to be performed or (ii) the tow is cancelled after the amount of time specified in Item 7 of the attached Schedule of Charges passes following dispatch of the tow, provided the Contractor does not fail to arrive within one (1) hour of being dispatched.
- D. Mileage. The Contractor will provide required towing services within and outside the City limits at the direction of the City. The Contractor shall not be entitled to payment for any distance traveled to tow any Vehicle if the towing services performed for that Vehicle are capable of being performed entirely within the corporate limits of the City. If the towing services performed for a Vehicle require that the Vehicle be taken outside the City’s corporate limits, then the Contractor shall be entitled to receive payment per mile traveled outside the City’s corporate limits in the per-mile amount listed as Item 8 on the attached Schedule of Charges, but only for that portion of the towing services that were actually performed outside the City’s corporate limits.
- E. Extraordinary and Heavy-Duty Towing. In addition to other payment amounts to which the Contractor may be entitled, if the Contractor notifies the City representative who orders the performance of towing services and receives approval from that representative to charge an hourly rate for extraordinary or heavy-duty towing or related services, the Contractor shall be entitled to payment for the extraordinary or heavy-duty services described Item 9 of the attached Attachment A-Schedule of Charges provided that such services are reasonably necessary and are performed in accordance with the requirements of this Agreement. Such payment may only be received if the Vehicle on which the services are performed weighs in excess of three-quarters of a ton. These extraordinary or heavy-duty services will include the winching of Vehicles and/or non-Vehicle items more than three (3) feet; removing articles other than Vehicles off the roadway, hoisting and transporting camper bodies, or dollying a Vehicle prior to transporting. The hourly rates charged

pursuant to this paragraph include the fee for all the Contractor's equipment and employees utilized during that hour and must be charged in quarter-hour increments.

- F. Traffic Clearing. The Contractor shall tow Vehicles short distances, usually approximately two hundred (200) yards or less, in order to clear traffic lanes and intersections where such towing services do not involve any further towing. The Contractor shall be entitled to receive payment on a per-Vehicle basis in the amount listed as Item 10 in the attached Schedule of Charges.
- G. Storage. The Contractor shall provide secure storage for Vehicles towed at the per-day rate identified in Item 11 of the attached Schedule of Charges. Charges will be assessed at 12:01 A.M. on the day following the tow of the Vehicle at 12:02 A.M. on each day thereafter until the Vehicle is removed.

### **SECTION 3. PAYMENT FOR SERVICES**

- A. Responsibility for Payment. The City shall be responsible for payment for the Services performed by the Contractor pursuant to this Agreement only when such Services are performed on Vehicles that are owned or leased by the City. Collection for all other Services performed pursuant to this Agreement may not be in excess of the amounts authorized by this Agreement, but must be made from the person on whose behalf the Services were performed. The Contractor maintains the sole responsibility for verifying its authority to collect amounts due pursuant to this Agreement based upon applicable law, including the City's Code of Ordinances.
- B. Invoices. The Contractors shall submit invoices on at least a monthly basis for all Services performed for which payment is sought from the City. Such invoices shall be submitted in accordance with the (i) requirements of the City's Code of Ordinances and (ii) the rules and policies established by the City's Purchasing Agent.

### **SECTION 4. EQUIPMENT, FACILITIES, AND LICENSES**

- A. Trucks. At all times during the term of this Agreement, the Contractor must have available a minimum of two (2) properly operating trucks, each with a GVWR of at least 10,000 lbs. and with maximum braking capacity to sufficiently handle any towing requirements under this Agreement. At least one such truck must be a tandem axle truck.
- B. Other Required Equipment. At all times during the term of this Agreement, the Contractor must maintain the following equipment in properly operating condition: (1) wheel lift, (2) motorcycle trailer, (3) dolling equipment, (4) radio-dispatching equipment, and (5) winching equipment.
- C. Available Resources. Although this Agreement specifies certain trucks and equipment that must be maintained, the Contractor acknowledges that the City has entered into this Agreement with the Contractor, in significant part, as a result of the equipment and licensed drivers listed on the attached "Attachment B" as being available to the Contractor. The Contractor hereby certifies that such equipment is owned or leased by it and such licensed drivers are available to it. The Contractor agrees to maintain substantially the same (or more) equipment, or its functional equivalent, and substantially the same (or a greater) quantity of similarly licensed drivers as those reflected in the attached "Attachment B." All equipment required by this Agreement or listed on the attached "Attachment B" and the licenses for the employees who perform the Services pursuant to this Agreement shall be made available to for review, upon request, by the City during the term of this Agreement.

- D. Reflective Vests. All persons performing the Services on the Contractor's behalf must wear reflective vests all time times during which they are on any traveled portion of any City road, street, or other similar-traveled public way.
- E. Storage Lot. Throughout the duration of this Agreement, the Contractor must maintain a secured, well-lighted, and fenced lot within the corporate limits of St. Joseph, Missouri, which is sufficient in size to store Vehicles which the Contractor tows pursuant to the terms of this Agreement. The size of the lot must be sufficient to handle the number of Vehicles requiring storage; the estimated minimum quantity is the greater of (i) one hundred fifty (150) full-size Vehicles on a monthly basis or (ii) the number of vehicles listed on the attached Schedule of Charges; however, should it be more, the Contractor is responsible for obtaining additional space. At all times, the lot(s) provided to fulfill the requirements of this paragraph shall comply with the City's Code of Ordinances.
- F. Licensing. To the extent allowed by state law, the Contractor must maintain a current occupation license and obtain all licenses and pay all required license fees for its equipment.

#### **SECTION 5. PERSONNEL**

The Contractor must provide competent and properly licensed drivers for its towing equipment. The Contractor must further provide the City with the names, addresses, and State chauffeurs' and other applicable license numbers for such drivers. Such information, as it exists at the time of execution of this Agreement, is stated in "Attachment B". This information must be routinely updated and kept current throughout the term of this Agreement. The Contractor must also provide a sufficient number of personnel on duty to operate the required number of Vehicles under this Agreement. At no time will such personnel be considered employees of the City.

#### **SECTION 6. RESPONSE TIME**

- A. Response Time Requirement. The Contractor shall have personnel and equipment readily available at all times during the term of this Agreement and, upon being notified of need for Services, the Contractor must respond to the location where such Services are required within thirty (30) minutes.
- B. Liquidated Damages. The parties agree that time is of the essence in regard to the Contractor's response time when notified by the City of the need for the Services. In the event the Contractor fails to respond within the time periods specified herein, it agrees to pay, as liquidated damages and not as a penalty, thirty dollars (\$30.00) per hour for each hour that the Contractor fails to arrive to perform the Services. Notwithstanding the foregoing, the Contractor will not be required to pay liquidated damages during times of inclement weather or during an emergency where the conditions make it extremely difficult for the Contractor to respond within the required time limits.

## **SECTION 7. VEHICLE STORAGE, RELEASE, AND DISPOSAL**

- A. Storage Lot Business Hours. The Contractor will be open and have representatives available to the public at the storage lot from 8:00 a.m. through 5:00 p.m., Monday through Friday, and 8:00 a.m. to Noon on Saturday during all times that it is storing any Vehicle which it has towed pursuant to the terms of this Agreement. The Contractor shall abide by all release procedures established by the City to ensure that Vehicles it maintains in storage as a result of the Services are released to the proper owners. Notwithstanding the foregoing, the Contractor may refrain from being open and making representatives available on all nationally-recognized holidays.
- B. Sale and Disposal. To the extent allowed by State and Federal law and regulation, and to the extent allowed by the City's Code of Ordinances, all Vehicles which are towed by the Contractor pursuant to the terms of this agreement which remain unclaimed for at least thirty (30) days, may be sold, salvaged, or destroyed in any legal manner; however, activities related to such sale, salvage, or disposal must be completed by the Contractor and at the expense of the Contractor.
- C. Lien, Release, and Disposal Requirements. The Contractor shall comply with all State statutes and regulations relating to the establishment and enforcement of liens, the release of Vehicles from storage, and the titling and disposal of unclaimed Vehicles. To the extent that the City is required to perform any duties relating to such activities, and to the extent that the Contractor is allowed by law and by this Agreement, the Contractor shall perform such duties on behalf of the City. In no event, however, may the Contractor sign any document on the City's behalf or submit any filing declaring it has the City's authority without the written consent of the City's Purchasing Agent.
- D. Monthly Inventory. On a monthly basis, the Contractor shall submit inventory records as required by the City, including all Vehicles in its possession as a result of the Services.
- E. Errant Towing/Release. When the City determines that a Vehicle has been towed by the Contractor in error, it shall notify the Contractor and the Contractor shall release Vehicles to the Vehicle owner at no cost to such owner or to the City. The City will take reasonable steps to avoid allowing Vehicles to be towed in error; however, the parties expressly acknowledge that the such errors may occur and, as a result of those errors, the Contractor may not be able to collect fees for Services performed although the Contractor may not be at fault.
- F. Personal Property. Upon payment of all storage charges incurred pursuant to the terms of this Agreement, the Contractor shall release personal property contained within any Vehicle taken into its possession pursuant to the terms of this Agreement to the bearer of the proper release form provided by the City. This requirement to release personal property shall not apply to any item affixed to the Vehicle as an accessory.
- G. Vehicle Inspections. The Contractor shall permit inspection of any Vehicle in its possession pursuant to the terms of this Agreement by the owner, owner's attorney or insurance representative, or any other party bearing authorization for inspection issued by the City. Such inspection must be permitted during normal business hours and any additional time during with the Contractor may allow such inspections.

## **SECTION 8. LIABILITY**

- A. Liability to Vehicle Owner. The Contractor shall accept all responsibility and liability for Vehicles, and the contents thereof, taken into their possession.
- B. Indemnification. The Contractor shall indemnify, defend, and hold harmless the City and all its agents, officials, officers, and employees from and against all claims, damages, liability, losses, costs, injury, and expenses, including costs of reasonable attorneys' fees, caused by acts, errors, or omissions of the Contractor in its performance of the Services.

## **SECTION 9. INSURANCE**

The Contractor shall maintain in full force and effect throughout the term of this Agreement, general liability insurance covering bodily injury liability and property damage and automobile liability insurance for all owned, hired, or non-owned Vehicles, both in amounts of not less than One Million Dollars (\$1,000,000.00). A certificate of such policies of insurance shall be furnished to the City prior to execution of this Agreement. The City shall be named as an additional insured on said insurance policies. The Contractor shall further provide the City with evidence of insurance coverage for Workers' Compensation in accordance with the requirements of State statutes and regulations relating to Workers' Compensation insurance coverage, if applicable. The Contractor shall provide the City at least ten (10) days' written notice of cancellation of any insurance policy required by this Agreement prior to the cancellation of such insurance policy.

## **SECTION 10. PERFORMANCE BOND**

The Contractor shall furnish a bond, or its equivalent, to the City in such form and terms as may be provided by the City in the sum of One Thousand Dollars (\$1,000.00) to guarantee that the provisions of this Agreement are fully and faithfully performed by the Contractor, its agents, and employees.

## **SECTION 11. MISCELLANEOUS**

- A. Term. This Agreement shall be valid for a period of one (1) year from the date of execution. The City will have the option to renew this Agreement for up to two (2) additional one (1) year terms upon the same terms, conditions, and prices stated herein.
  - 1. Termination of Storage Provisions. The City may, upon thirty (30) days' written notice, terminate the provisions of this Agreement relating to storage of Vehicles. In the event such termination occurs, the parties agree that all other provision of this Agreement will otherwise remain valid and enforceable until the Agreement is terminated or expires.
- B. Termination. This Agreement may be canceled with or without cause, by the City at any time by providing five days written notice.
- C. Assignment. The Contractor may not assign its rights or duties under this Agreement without the written consent of the City.

- D. Entire Agreement. The parties declare that the terms of this Agreement have been completely read and are fully understood and voluntarily accepted. This Agreement contains the entire agreement between the parties hereto and the terms of this Agreement are contractual and not a mere recital.
- E. Severance. The invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other provision of this Agreement.
- F. Choice of Law and Venue. The rights and remedies of the City and the Contractor shall be cumulative and in addition to any other rights and remedies provided by law or equity. The laws of the State of Missouri shall govern this Agreement. In the event of any dispute or controversy between the parties, each party agrees that the Circuit Court of Buchanan County, Missouri, shall have exclusive jurisdiction to determine all issues between them.
- G. Non-Exclusive. The parties agree that this Agreement is not an exclusive agreement and the City may contract with other parties to have the Services performed by such other parties. The parties further agree that the City does not guarantee that any amount of the Services will be requested pursuant to the terms of this Agreement and nothing in this Agreement will prevent individual Vehicle owners from making their own agreement for services with the Contractor or other towing service companies.
- H. Compliance with Federal Transit Administration Clauses. The Contractor agrees to comply with the Federal Transit Administration Clauses listed in the "Federal Transit Administration Clauses" attached hereto as "Attachment C", as such clauses may be updated.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed pursuant to proper legal action authorizing same to be done, the date first above written.

\_\_\_\_\_  
BRYAN CARTER, City Manager

ATTEST:

\_\_\_\_\_  
PAULA HEYDE, City Clerk

Jared K Innis  
R&W Towing & Recovery, LLC

By: \_\_\_\_\_  
Title: Sole member

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**TOW SERVICE AGREEMENT  
ATTACHMENT A  
SCHEDULE OF CHARGES**

ITEM	DESCRIPTION	
1.	Unit Price Per Tow, Trucks 3/4 Ton and Under Passenger Vehicles, Motorcycles and All- Terrain Vehicles	<u>75</u>
2.	Unit Price per Tow, City Owned Vehicles, Trucks 3/4 Ton and Under, Passenger Vehicles, Motorcycles and All-terrain Vehicles	<u>Ø</u>
3.	Unit Price Per Tow, Fire Apparatus, City Buses and other City owned or leased vehicles over 3/4 Ton	<u>100</u>
4.	Unit Price Per Tow, Boats 25' and Under with Trailer	<u>75</u>
5.	Unit Price Per Tow, Boats 25' and Under without a Trailer	<u>75</u>
6.	Unit Price Per Tow, Tractors, Trailers and Wagons	<u>100</u>
7.	Unit Price Per Tow Cancelled either: a. After Contractor arrival or b. Unit Price Per Tow Cancelled after _____ minutes (and Contractor arrives within one (1) hour).	<u>Ø</u>
8.	Per Mile Charge (One Way) Outside City Limits	<u>1<sup>00</sup></u>
	Per Mile Charge (One Way) Outside City Limits for vehicles 12,000 GVWR and above	<u>1<sup>25</sup></u>
9.	Hourly Price for Extraordinary Towing and Winching Over 3/4 Ton and Non-Vehicle Items	<u>100</u>
	Hourly Price for Heavy Duty Recovery, Winching & Lifting of Vehicles, Equipment & Other Items Requiring 50 Ton Rotator	<u>500</u>



10. Unit Price to Move Vehicle Approximately 200 Yards  
or Less if One (1) Hour or Less is Required

40

11. Storage Charge per Day

40

12. Storage Spaces (must be at least 150 on a monthly basis)

225

**ATTACHMENT B**

**DRIVERS**

<u>Aaron Clark</u> Name	<u>19504 St R + W</u> Address Coshy mo	<u>V620194002</u> Driver's License #	<u>A</u> Class
<u>Jared Jones</u> Name	<u>9285 N Corant</u> Address Platt City mo	<u>T026127007</u> Driver's License #	<u>A</u> Class
<u>David Petty</u> Name	<u>2901 Olive</u> Address St Joseph	<u>+206638018</u> Driver's License #	<u>A</u> Class
<u>Leo Beckles</u> Name	<u>20627 Corp 386</u> Address St Joseph	<u>M13434002</u> Driver's License #	<u>A</u> Class
<u>Gary Cunningham</u> Name	<u>40 Platt</u> Address Dearborn mo	<u>N206064003</u> Driver's License #	<u>A</u> Class
<u>Ryan Hingst</u> Name	<u>Faucett mo</u> Address	<u>K02-01-6797</u> Driver's License #	<u>A</u> Class
<u>Robby Elkins</u> Name	<u>115 E Cliff</u> Address St Joseph	<u>L206173008</u> Driver's License #	<u>A</u> Class

**EQUIPMENT**

<u>See</u> Year, Make, Model	<u>Attachment</u> Capacity	 License #
 Year, Make, Model	 Capacity	 License #
 Year, Make, Model	 Capacity	 License #

Unit #	Yr, Make, Model	Vin	Plate	State	GVW	Truck Type	Licensed	Capacity (bed)
601	2020 Freightliner M2(White/Grey)	1FVACWFC0LHLD3854	192737	KS	26000	Med Duty Rollback	26000	12K
650	2020 Peterbuilt 389	1NPXX4TX2LD672920	195488	KS		Hvy Duty Wrecker	48000	50 ton
652	2020 Kenworth T880	1NKZX4TX8LJ391608	195487	KS		Hvy Duty Rotator	74000	50 ton rotator
653 DTU	2022 Peterbuilt 389 Red(W/DTU)	1X9XD40X4ND807689	218731	KS	36,000	Hvy Wrecker	36000	80K
700	2020 Freightliner m2 (Silver)	1FVACWFC4LHLR8193	192735	KS	26000	LT Duty Rollback	26000	12K
701	2022 Freightliner M2 (Maroon)	3ALACWFC3NDMV2771	206247	KS	2600	LT Duty Rollback	2600	12K
705	2020 Kenworth T370	2NKHHJ7X3LM401441	193502	KS	36000	Med/Hvy Rollback	36000	16K
711	2021 Freightliner M2	3ALACXFE4MDML6438	197260	KS	36000	Med Duty Rollback	36000	16K
715	2020 Dodge Ram 5500 4x4	3C7WRNEL2LG197773	202351	KS	2400	Med Duty Wrecker		8 ton
725	2020 Freightliner M2 (Cream)	1FVACWFC0LHLR8188	192736	KS	26000	LT Duty Rollback	26000	12K
735A	2022 Freightliner M2 (Blue)	3ALACWFC1NDMV2770	206249	KS	26000	LT Duty Rollback	26000	12K
736	2020 Freightliner M2 (Mocha)	1FVACWFC2LHLR8192	192738	KS	26000	LT Duty Rollback	26000	12K
750	2020 Freightliner M2 (Tandem)	3ALHC5FE9LDLV0723	190069	KS		Hvy Duty Rollback	66000	20K
751	2022 Petebuilt 567 Model	1XPCD40X0ND774883	205011	KS	85500	Semi Tractor	85500	80K
752	2020 Peterbuilt 389 (Grey/Maroon)	1XPXP4EXXL656032	189905	KS	76000	Semi Tractor	85500	80K
752B	2023 Petebuilt 389 (Grey/Maroon)	1XPXP4EX6PD868240	218913	KS	85500	Semi Tractor	85500	80K
753 A	2022 Peterbuilt 389	1XPXD40X0ND802098	214715	KS	60320	Semi Tractor	85500	80K
754	2020 Kenworth T880 (Red)	1XKZD40X3LJ397173	190071	KS	60320	Semi Tractor	85500	80K
754A	2023 Petebuilt 389 (Marron/Black)	1XPXD40X6PD868206	218912	KS	85500	Semi Tractor	85500	80K
755A	2022 Pertebuilt 389	1XPXP4EX9ND802097	208149	KS	76000	Semi Tractor	85500	80K
756 DTU	2006 Peterbuilt 379 (DTU)	1XP5DB9X76D885514	167353	KS	perm	Semi Tractor	85500	80K
760	2021 Kenworth T880 (Heavy)	1NNKZX4TX6MJ453797	205010	KS	48000	Hvy Duty Wrecker	48000	50 ton sidepuller
762Rotator	2021 Peterbuilt 389 Rotator	1NPXX4TX3MD716067	197259	KS	perm	Hvy Duty Rotator	74000	50 ton rotator
805	2018 International (Red) R&W	1HTEUMML0KH397349	184524	KS	26000	LT Duty Flatbed	26000	12K
815	2007 Chevy 3500 Wrecker R&W	1GBJK34D97E135833	184521	KS	24000	LT Duty Wrecker	24000	8 ton
860	2009 Peterbilt 367 (Blue/White) R&W	1XPTD49X99D773479	184522	KS	36000	Hvy Wrecker	36000	30 ton
950	2023 Peterbilt 567 Blue (HD Flatbed)	1NPCX4EX2PD865067	218732	KS	80,000	Hvy Flatbed	80,000	30K

**TOW SERVICE AGREEMENT  
ATTACHMENT B  
(CONTINUED)**

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Year, Make, Model

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Year, Make, Model

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Year, Make, Model

In addition to the hours required by the Agreement, Contractor also agrees to have personnel on duty for releasing impounded vehicles during the following hours:

**Monday – Friday: 8:00 A.M. – 5:00 P.M.**  
(Note: Must be at least 8:00 a.m. through 5:00 p.m.)

**Saturday: 8:00 A.M. – 12:00 P.M.**  
(Note: Must be at least 8:00 a.m. through 12:00 p.m.)

**AFTER HOURS:** For emergency items such a prescription meds, glasses, etc.

Contractor agrees to release vehicles at other times requested by the City or the Owner of the vehicles:

Yes – If driver can access ticket or information for duplicate and only if prior arrangement is made but not 10:00 P.M. - 8:00 A.M. unless emergency

No

Storage Lot Locations:

1214 S, 9<sup>th</sup>  
1214 S, 8<sup>th</sup>  
1215 S, 8<sup>th</sup>

## Attachment C Federal Clauses

### **No Federal Government Obligation to Third Parties**

The Recipient and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

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### **Program Fraud and False or Fraudulent Statements or Related Acts**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

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### **Access to Third Party Contract Records**

Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of

termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

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### **Changes to Federal Requirements**

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

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### **Civil Rights and Equal Opportunity**

The AGENCY is an Equal Opportunity Employer. As such, the AGENCY agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the AGENCY agrees to comply with the requirements of 49 U.S.C. § 5323(h)(3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment

advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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#### **Incorporation of FTA Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any AGENCY requests which would cause AGENCY to be in violation of the FTA terms and conditions.

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#### **Termination**

Termination for Convenience. The AGENCY may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the AGENCY's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to AGENCY to be paid the Contractor. If the Contractor has any property in its possession belonging to AGENCY, the Contractor will account for the same, and dispose of it in the manner AGENCY directs.

Termination for Default. If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the AGENCY may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the AGENCY that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the AGENCY, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure. The AGENCY, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to AGENCY's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from AGENCY setting forth the nature of said breach or default, AGENCY shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude AGENCY from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waivers for Remedies for any Breach. In the event that AGENCY elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by AGENCY shall not limit AGENCY's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

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#### **Disadvantage Business Enterprise (DBE)**

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the AGENCY deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the AGENCY makes to the Contractor per 49 C.F.R. § 26.29(a).

The DBE participation goal for this contract is set at 0%.



## **VIOLATION AND BREACH OF CONTRACT**

Rights and Remedies of the AGENCY. The AGENCY shall have the following rights in the event that the AGENCY deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

Rights and Remedies of Contractor. Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the AGENCY, the Contractor expressly agrees that no default, act or omission of the AGENCY shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the AGENCY directs Contractor to do so) or to suspend or abandon performance.

Remedies. Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the AGENCY will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the AGENCY takes action contemplated herein, the AGENCY will provide the Contractor with sixty (60) days written notice that the AGENCY considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

Disputes. The AGENCY and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the AGENCY and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the AGENCY's direction or decisions made thereof.

Performance during Dispute. Unless otherwise directed by AGENCY, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Claims for Damages.** Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Remedies.** Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the AGENCY and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the AGENCY is located.

**Rights and Remedies.** The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the AGENCY or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

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#### **CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

The Contractor agrees:

- 1) It will not use any violating facilities;
- 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities";
- 3) It will report violations of use of prohibited facilities to FTA; and
- 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

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#### **Energy Conservation**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**Lobbying Restrictions**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of the City of St. Joseph, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any the City of St. Joseph, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

  
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Signature of Potential Bidder's Authorized Official

*Said h. Davis* *Sole member*  
\_\_\_\_\_  
Name and Title of Potential Bidder's Authorized Official

*3/15/23*  
\_\_\_\_\_  
Date

**Debarment, Suspension, Ineligibility and Voluntary Exclusion**

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its proposal, the bidder certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder agrees to comply with the requirements of C.F.R. 2 part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder further agrees to include a provision requiring compliance in its lower tier covered transactions.

  
Signature of Potential Bidder's Authorized Official

Jared H. Evans, Sole member  
Name and Title of Potential Bidder's Authorized Official

3/15/23  
Date