

**AGREEMENT BETWEEN THE CITY OF SAN JOSE
AND
CENTURY TOW
FOR CITY GENERATED ZONE TOWING,
ZONE 3**

This Agreement is entered into as of April 1, 2009 between the City of San José, a municipal corporation ("City"), and Century Tow ("Contractor").

RECITALS

1. City has issued a Request for Proposal ("RFP") for City-Generated Zone Towing.
2. Contractor has the necessary expertise and skill to and Contractor's proposal can best meet City's needs.
3. The purpose of this Agreement is to retain Contractor to perform those services specified in Exhibit A of this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Contractor shall consist of this Agreement including:

Exhibit A	Scope of Services
Exhibit B	Fee Schedule for Tow Service Agreements
Exhibit C	Compensation
Exhibit D	Zone Tow Map
Exhibit E	Insurance Requirements
Exhibit F	Labor Compliance Addendum
Exhibit F-1	Living Wage Determination
Exhibit G	Subcontractor List
Exhibit H	CHP Vehicle Code and Civil Code Sections
Exhibit I	Tow Services Audit Form

In the event any discrepancies or inconsistencies between the provisions of this Agreement and any of the above-referenced documents arise, the provisions of this Agreement will prevail.

This Agreement and the Exhibits set forth above, contain all of the agreements, representations and understandings of the parties hereto, and supersede and replace any previous understandings, commitments, or agreements, whether oral or written.

2. SCOPE OF SERVICES

Contractor shall perform those services specified in detail in the attached Exhibit A, entitled "Scope of Services." Time is of the essence in the performance of these services.

3 TERM OF AGREEMENT

3.1 Initial Term

The term of this Agreement is from April 1, 2009 to March 31, 2014 inclusive, subject to the provisions of subsection 3.2 and Section 9.

3.2 Options

City has the right to extend the term of this Agreement for two (2) additional one-year periods (the "Additional Terms"), based upon the same conditions of the Initial Term, subject to adjustments for compensation as set forth in Exhibit C. City shall notify Contractor in writing of its exercise of its option for an Additional Term no less than thirty (30) days prior to the end of the then current Term.

3.3 No Waiver

City's agreement to extend the term of this Agreement is not a waiver of the "time is of the essence" provision in Section 2.

4 FEE SCHEDULE

In the performance of this Agreement Contractor shall not charge any fees to any member of the public in excess of the fees allowable under the City Council Resolution adopting the Fee Schedule for Tow Service Agreements in effect at the time of the tow. A copy of the Resolution in effect at the beginning of the term of the Agreement is attached hereto as Exhibit B.

5 COMPENSATION

City shall pay Contractor according to the provisions of the attached Exhibit C, entitled "Compensation."

6 TAXES AND CHARGES

Contractor shall be responsible for payment of all taxes, fees, contributions or charges applicable to the conduct of Contractor's business.

7 LABOR COMPLIANCE

This Agreement is subject to City's Living Wage Policy and the applicable implementing regulations (collectively, the "Policy"). Contractor shall comply with the provisions of the attached Labor Compliance Addendum (Exhibit F), which sets forth Contractor's obligations under the Policy.

8 ASSIGNED ZONE

Contractor shall perform all services required by City for Zone 3 as designated in Exhibit D "Zone Tow Map." City reserves the right to redefine the boundaries of the zones upon Thirty (30) days written notification.

9. TERMINATION

9.1 Termination for Convenience

City shall have the right to terminate this Agreement, without cause, by giving not less than thirty (30) days' written notice of termination.

9.2 Termination for Default

If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.

9.3 Termination Authority

The Director of Finance ("Director") is empowered to terminate this Agreement on behalf of City.

9.4 Consequences of Termination

In the event of termination, Contractor shall deliver to City copies of all reports, documents, and other work performed by Contractor under this Agreement.

10 INDEMNIFICATION

Contractor shall defend, indemnify and hold harmless City, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this Agreement due to the willful or negligent acts (active or passive) or omissions by Contractor's officers, employees or agents. The acceptance of said services and duties by City should not operate as a waiver of such right of indemnification.

11 INSURANCE REQUIREMENTS

Contractor agrees to have and maintain the policies set forth in Exhibit E, entitled "Insurance Requirements," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City of San Jose as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. Contractor agrees to provide City with a copy of said policies, certificates and/or endorsements before work commences under this Agreement.

12 WAIVER

Contractor agrees that City's waiver of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver of any other provision or a waiver of any subsequent breach or violation of the same or any other provision. City's acceptance of the performance of any of Contractor's services will not be a waiver of any provision of this Agreement.

13 INDEPENDENT CONTRACTOR

Contractor, in the performance of this Agreement, is an independent contractor. Contractor shall maintain complete control over all of Contractor's employees, any subcontracting subcontractors, and Contractor's operations. Neither Contractor nor any person retained by Contractor may represent, act, or purport to act as the agent, representative or employee of

City. Neither Contractor nor City is granted any right or authority to assume or create any obligation on behalf of the other.

14 COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws, ordinances, codes and regulations (collectively, "laws") of the federal, state and local governments, including without limitation, any and all laws specified elsewhere in this Agreement.

15 CONFLICT OF INTEREST

Contractor shall avoid all conflict of interest or the appearance of conflict of interest in performance of this Agreement.

16 NONDISCRIMINATION

Contractor agrees that there shall be no discrimination against, or segregation of, any person, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, marital status, or family status, in connection with or related to the performance of this Agreement.

17 GIFTS

17.1 Prohibition on Gifts

Contractor acknowledges that Chapter 12.08 of the San Jose Municipal Code prohibits City's officers and designated employees from accepting gifts as defined in Chapter 12.08.

17.2 No Offer

Contractor agrees not to offer any City officer or designated employee any gift prohibited by Chapter 12.08.

17.3 Breach of Agreement

Contractor's offer or giving of any gift prohibited by Chapter 12.08 will constitute a material breach of this Agreement. In addition to any other remedies City may have in law or equity, City may terminate this Agreement for such breach as provided in Section 9 of this Agreement.

18 DISQUALIFICATION OF FORMER EMPLOYEES

Contractor is familiar with Chapter 12.10 of the San Jose Municipal Code ("Revolving Door Ordinance") relating to the disqualification of City's former officers and employees in matters which are connected with their former duties or official responsibilities. Contractor shall not utilize either directly or indirectly any officer, employee, or agent of Contractor to perform services under this Agreement, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

19 CONFIDENTIAL INFORMATION

All data, documents, discussions or other information developed or received by or for Contractor in performance of this Agreement are confidential and must not be disclosed to any person except as authorized by City, or as required by law.

20 OWNERSHIP OF MATERIALS

All reports, documents or other materials developed or discovered by Contractor or any other person engaged directly or indirectly by Contractor to perform Contractor's services are City's property without restriction or limitation upon their use.

21 CONTRACTOR'S BOOKS AND RECORDS

21.1 Maintenance during Term

Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor pursuant to this Agreement.

21.2 Maintenance after Term

Contractor shall maintain all documents which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

21.3 Inspection

Any documents required to be maintained pursuant to this Agreement must be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Contractor shall provide copies of such documents to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement.

21.4 Custody of Records

Where City has reason to believe that any of Contractor's documents relating to this Agreement may be lost or discarded due to dissolution, disbandment or termination of Contractor's business, City may, by written request by any of the above-named officers, require that custody of the Contractor's documents be given to City and that these documents be maintained in City Hall. City agrees to grant access to Contractor's documents to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

22 ASSIGNABILITY

The parties agree that the expertise and experience of Contractor are material considerations for this Agreement. Unless specifically authorized by this Agreement, Contractor may not assign the performance of any obligation or interest under this Agreement without the prior written consent of City. Any attempt by Contractor to assign this Agreement, in violation of this Section, will be voidable at City's sole option.

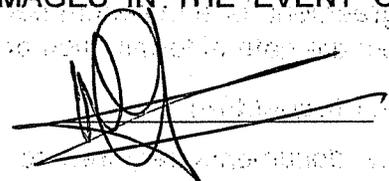
23 LIQUIDATED DAMAGES FOR PERFORMANCE STANDARD BREACHES

23.1 Liquidated Damages for Failure to Attain Performance Standards

Contractor understands and agrees that one of the City's primary goals in granting this agreement is to ensure that the customer service provided is of the highest caliber and consistent with the image that the City. Contractor further agrees that City will suffer damage if Contractor fails to meet these standards and that, due to the nature of certain breaches, the actual damage to the City would be impractical or very difficult to fix.

CONTRACTOR AND CITY AGREE THAT THE AMOUNTS SET FORTH BELOW, SHALL BE PAID TO CITY AS LIQUIDATED DAMAGES IF CONTRACTOR BREACHES THAT PERFORMANCE STANDARD SPECIFIED. CONTRACTOR AND CITY ACKNOWLEDGE THAT CITY'S ACTUAL DAMAGES IN THE EVENT OF A BREACH OF SUCH PERFORMANCE STANDARDS WOULD BE IMPRACTICAL TO DETERMINE. THEREFORE, BY PLACING THEIR SIGNATURES BELOW, CITY AND CONTRACTOR ACKNOWLEDGE THAT THE AMOUNTS SET FORTH HAVE BEEN AGREED UPON AS THE PARTIES' REASONABLE ESTIMATE OF CITY'S DAMAGES IN THE EVENT OF SUCH BREACH.

CITY: _____ CONTRACTOR: _____



23.2 Performance Standard Breaches

The following specified items shall be referred to as "Performance Standard Breaches". Contractor agrees to pay to the City the amount specified below as liquidated damages for the applicable breach.

Failure to respond within 25 minutes	\$35.00 per occurrence
Lack of yard staffing during required hours	\$35.00 per occurrence
Failure to answer calls from City Dispatch within four (4) rings	\$70.00 per occurrence
Failure to provide required equipment	\$50.00 per occurrence
Failure to respond to customer complaints within the required time	\$50.00 per occurrence
Failure of employee to wear name badge	\$50.00 per occurrence
Failure of sub-contractor to display magnetic sign	\$50.00 per occurrence
Failure to maintain storage facility standards	\$50.00 per occurrence

23.3 Procedure for Declaring Performance Standard Breaches

Upon determining the existence of a Performance Standard Breach, the Director shall issue a written notice to Contractor of the occurrence of such breach and the City's claim for liquidated damages.

24 SUBCONTRACTORS

24.1 Authorized Subcontractors

Contractor may use designated subcontractors approved in advance by City in performing Contractor's services. Contractor must obtain City's prior written consent in order to change or add subcontractors. Contractor shall be responsible for directing the work of the approved subcontractors and for any compensation due to subcontractors. City assumes no responsibility whatsoever concerning such compensation.

24.2 Compliance with Agreement

Contractor shall ensure that Contractor's subcontractors comply with this Agreement. At City's request, Contractor shall require any or all of Contractor's subcontractors to sign an agreement with Contractor requiring compliance with this Agreement.

25 GOVERNING LAW

This Agreement must be construed -- and its performance enforced--under California law.

26 VENUE

In the event that suit is brought by either party to this Agreement, the parties agree that venue must be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

27 NOTICES

All notices and other communications required or permitted to be given under this Agreement must be in writing and must be personally served, or mailed, postage prepaid via U. S. mail, or sent via courier service, addressed to the respective parties as follows:

To City: Director of Finance
City of San Jose
200 E. Santa Clara Street
San Jose, CA 95113

Jamie Matthews
Contract Administrator
City of San Jose Code Enforcement
200 E. Santa Clara Street
San Jose, CA 95113

To Contractor: William G. Spencer
Century Tow.
215 Leo Avenue
San Jose, CA 95112

Notice will be effective on the date personally delivered or if sent by courier service, on the date of receipt. If mailed, notice will be effective three (3) days after deposit in the mail.

The parties may change their respective addresses in accordance with the provisions of this Section.

28 MISCELLANEOUS

28.1 Survival of Provisions

If any part of this Agreement is for any reason found to be unenforceable, all other parts nevertheless remain enforceable.

28.2 Assignment

Subject to the provisions of Section 22, this Agreement binds and inures to the benefit of the parties and their respective successors and assigns.

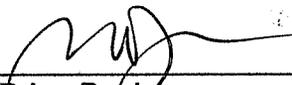
28.3 Headings

The headings of the sections and exhibits of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and are not to be used in its construction.

28.4 Authority of City Manager

Where this Agreement requires or permits City to act and no officer of the City is specified, City's Manager or the designated representative of City's Manager has the authority to act on City's behalf.

APPROVED AS TO FORM:



Brian Doyle
Senior Deputy City Attorney

City of San José
a municipal corporation
By _____
Name: Mark Giovannetti
Title: Purchasing Officer
Date: _____

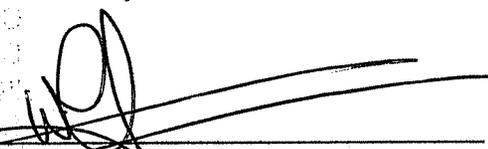
Century Tow
a California corporation
By 
Name: William G. Spencer
Title: President and CEO
Date: 3-MARCH 2009

EXHIBIT A
SCOPE OF SERVICES

Contractor shall perform the following services:

1. DEFINITIONS

1.1. "Bundling" shall mean the practice of removing several vehicles from an Area, as in the conducting of a special project or sweep, and storing them as a group.

1.2. "Business Hours" shall mean the hours of the City of San Jose Police Auto Desk plus one (1) hour after its close. Police Auto Desk hours are currently between 8 AM and 6 PM; Monday through Friday and between 10 AM and 3 PM, Saturday and Sunday.

1.3. "Central Communications Center" shall mean the City of San Jose communications facility located at 855 N. San Pedro or a dispatch service designated by the City of San Jose.

1.4. "Chief of Police" shall mean the Chief of Police of the City of San Jose, or The Chief's designee.

1.5. "City-Generated Tows" shall mean the towing of vehicles requested by the City to include, but not limited to, the following:

1.5.1. Tows of vehicles impounded by the City which said vehicles are held for investigation or as evidence in a criminal case;

1.5.2. Emergency tows of vehicles involved in accidents, and/or stalled

1.5.3. Vehicles obstructing traffic, and/or vehicles illegally parked, and/or tows of vehicles whose driver is incapacitated or physically unable to drive said vehicle, and/or tows of vehicles whose driver has been arrested and/or detained and cannot drive the vehicles, and/or tows of vehicles under the mandatory 30-day impound (i.e., Vehicle Code § 14602.6);

1.6. "VIN Tows" means vehicles necessitating special procedures to ascertain vehicle identification numbers in compliance with requirements of the California Vehicle Code; or tows of abandoned and/or unattended vehicles left standing for periods of time greater than permitted under applicable state laws or municipal ordinances, and which vehicles have been tagged and marked by the San Jose Police Department, Department of Transportation, Airport Department, and the Department of Planning, Building and Code Enforcement for removal from public streets or property or from private property in accordance with law.

1.7. "Contract Administrator" shall mean the individual designated by the City Manager of the City of San Jose or his or her designee to administer the Agreement.

1.8. "Contractor" shall mean the Tow Company.

1.9. "Council" shall mean the Council of the City of San Jose.

1.10. "Gross Vehicle Weight Rating (GVWR)" means the weight specified by the manufacturer as the loaded weight of a single vehicle.

1.11. "Hazardous Material" means any substance, material, or device posing an unreasonable risk to health, safety, or property during transportation, as defined by regulations adopted pursuant to Section 2402.7. "Hazardous Material" includes explosives, and hazardous wastes or substances as defined by regulations adopted pursuant to Section 25141 of the Health and Safety Code and medical wastes, as defined in Section 117690 of the Health and Safety Code.

1.12. "Motorcycle" means any motor vehicle having a seat or saddle for the use of the rider, designed to travel on not more than three wheels in contact with the ground, and weighing less than 1,500 pounds.

1.13. "Owner" means the person having all the incidents of ownership including the legal title of a vehicle whether or not such person lends, rents, or creates a security interest in the vehicle; the person entitled to the possession of a vehicle as the purchaser under a security agreement; or the State, or any county, city, district or political subdivision of the State, or the United States, when entitled to possession and use of a vehicle under a lease, lease-sale, or rental-purchase agreement for a period of 30 consecutive days or more.

1.14. "Passenger Vehicle" means any motor vehicle, other than a motor truck, truck tractor, or a bus, as defined in Section 233 of the California Vehicle Code, and used or maintained for the transportation of persons. The term "passenger vehicle" shall include a housecar.

1.15. "Private Property Towing" shall mean towing a vehicle without the consent of the owner from privately owned parking lots, parking garages, or private streets located within the City of San Jose.

1.16. "Tow Truck" means a truck as defined in Section 615 of the California Vehicle Code. Also includes slide back carriers and wheel lift vehicles. "Tow Truck" means a motor vehicle which has been altered or designed and equipped for, and primarily used in the business of, transporting vehicles by means of a crane, hoist, tow bar, tow line, or dolly or is otherwise primarily used to render assistance to other vehicles. "Tow Truck" does not include an automobile dismantler's tow vehicle or a reposessor's tow vehicle.

1.17. "Trailer" shall mean a vehicle designed for carrying persons or property on its own structure and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon any other vehicle. "Trailer" includes a semi-trailer when used in conjunction with an auxiliary dolly, if the auxiliary dolly is of a type constructed to replace the function of the drawbar and the front axle or axles of a trailer.

1.18. "Class 'A' Vehicle" means any vehicle or combination of vehicles, being towed that has a gross vehicle weight rating of less than 10,000 pounds.

1.19. "Class 'A' Tow Truck," means a tow truck, which has a manufacturer's GVWR of at least 14,001 lbs. and is certified by the city, the California Highway Patrol and the Department of Motor Vehicles.

1.20. "Class 'B' Vehicle" means any vehicle or combination of vehicles, being towed that has a gross vehicle weight rating of less than 26,000 pounds.

1.21. "Class 'B' Tow Truck" means a tow truck that has a manufacturer's GVWR of at least 19,501 lbs. and is certified by the city, the California highway patrol and the Department of Motor Vehicles.

1.22. "Class 'C' Vehicle" means any two-axle vehicle, being towed that has a gross vehicle weight rating of 26,000 pounds or less, including when the vehicle is towing a trailer or semi-trailer with a GVWR rating of 26,001 pounds or more.

1.23. "Class 'C' Tow Truck" means a three-axle tow truck which has a manufacturer's GVWR of at least 33,001 lbs. and is equipped with air brakes and capable of providing and maintaining continuous air to a towed vehicle, and is certified by the City, the California Highway Patrol and the Department of Motor Vehicles.

1.24. "Class 'D' Tow Truck" means a three-axle tow truck which has a manufacturer's GVWR of at least 50,000 lbs. and is equipped with air brakes and capable of providing and maintaining continuous air to a towed vehicle, and is certified by the City, the California Highway Patrol and the Department of Motor Vehicles.

1.25. "Non-Business Hours" means all hours not included in "Business Hours" as defined in Section 1.2.

1.26. "Tow Authorization Form" means a written authorization by a Police Officer or other authorized employee of the City of San Jose in a form as set forth in Exhibit A-4 "Tow Authorization Form".

1.27. "Large Sweeps" means there is an expectation of twelve (12) vehicles or more to be towed.

1.28. "VIN or Vehicle Identification Number" means the motor number, serial number, or other distinguishing number, letter, mark, character, or datum, or any combination thereof, required or employed by the manufacturer or the Department of Motor Vehicles for the purpose of uniquely identifying a motor vehicle or motor vehicle part or for the purpose of registration.

1.29. "Vehicle" means a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

2. SERVICES TO BE PROVIDED

2.1. Contractor agrees to provide to the City, upon City's request, City-generated tow services.

2.2. Contractor shall be available to respond with sufficient operational equipment to handle any tow call twenty-four (24) hours a day, seven (7) days a week, including holidays.

2.3. The City places no maximum on the number of City-generated tows that Contractor may be required to provide in any time period.

2.4. There shall be no obligation upon City to provide Contractor with any minimum number of City-generated tows during any time period.

2.5. Contractor shall comply with all local, state, and federal laws, rules and regulations at all times during the term of the Agreement including all applicable permit requirements. This includes, but is not limited to, those requirements as set forth in Exhibit A-5 "Applicable California Vehicle Code and Civil Code Laws". Non-compliance shall constitute a material breach of the Agreement.

2.6. Subcontractors shall be approved by Contract Administrator prior to beginning of this Contract. Any changes after commencement of Contract shall be submitted to Contract Administrator for approval. The subcontractors included in Exhibit G of the Agreement may be used.

2.7. No private property towing shall be allowed under the Agreement except where Contractor may be in contract with a dismantling facility under contract with the City, for removal of vehicles from private property as authorized by the City of San Jose Municipal Code or the California Vehicle Code.

2.8. The towing services include responses at the request of the Police Department for accident and vehicle violations, the Department of Transportation for abandoned, inoperable and illegally parked or stored vehicles on the public right-of-way, and the Code Enforcement Division for the Neighborhood Clean-up Program.

2.9. The towing of City fleet vehicles is not included in this Scope of Work.

3. REQUIRED EQUIPMENT

3.1. For each Tow Zone, the Contractor shall own at least five (5) power operated tow trucks equipped with two-way radios, GPS, and hand-held radios. In addition, Contractor shall own, lease or sub-contract at least one (1) Class "B" tow truck, one (1) Class "C" tow truck or one (1) Class "D" tow truck.

3.2. Contractor shall equip and maintain tow trucks covered under the Agreement in accordance with the provisions set forth in the California Vehicle Code, Title 13 of the California Code of Regulations, the specifications contained in the Agreement, and consistent with industry standards and practices.

3.3. Notwithstanding Section 615 of the California Vehicle Code, all tow trucks shall have recovery capabilities, wheel lift capabilities, and a boom meeting the specifications contained in this Agreement. Class "D" tow trucks used exclusively for salvage and recovery operations are not required to possess under lift capabilities. For the purpose of the Agreement, no sub-contracted tow truck shall qualify as one of the five primary tow trucks.

3.4. Contractor shall be in compliance with all California Vehicle Code requirements pertaining to the operation and maintenance of tow trucks.

4. STANDARDS OF SERVICE

4.1. The ability of Contractor to provide the highest levels of customer service is of utmost importance to the City of San Jose and is the main reason for awarding the Agreement.

4.2. Contractor shall arrive at the site where the vehicle to be towed is located within twenty-five (25) minutes of receiving the dispatch from the Central Communications Center or an authorized agent of the City.

4.3. Contract Administrator shall provide Contractor with a forty-eight (48) hour notice on large sweeps. No bundling shall be permitted on sweeps.

4.4. In the event Contractor fails to respond to a call and furnish a tow car at the designated point of tow within twenty-five (25) minutes, City shall have the right by whatever means it deems appropriate, to have the vehicle towed by another Contractor. The procedure in Section C, "Failure to Perform (Liquidated Damages)" shall be followed in such instances. Repeated failure to meet the response standards set forth above shall constitute a material breach of the Agreement.

4.5. All of Contractor's officers, agents, or employees who engage in performance of the Agreement with City on behalf of Contractor shall be neat in appearance and courteous to the public. Contractor shall control and supervise the conduct, demeanor and appearance of its employees and shall train its employees to render a high degree of courteous and efficient service to the public.

4.6. Contract Administrator may examine a copy of Contractor's Employee Training Manual upon request. Contractor shall hold at least one (1) Contract Administrator approved employee conflict resolution training session per year. Contractor shall permit Contract Administrator to attend "conflict resolution training" for the purpose of monitoring the training.

4.7. Contractor's tow drivers shall be required to carry and wear their City-issued (SJPD) approved tow drivers permit (I.D. badges) at all times while on duty. This badge will be worn face forward in full view, on or over the outermost garment, at or above the waist, at all times. Contractor shall supply its tow truck drivers either with shirts upon which the name of the employee has been stitched on the left pocket or a pin-on name tag to be affixed to the left hand pocket and worn at all times.

4.8. Contractor shall comply with Section 22651.1 "Towing or Storage Charges: Payment" of the California Vehicle Code with respect to acceptance of payment. In addition, Contractor shall accept personal checks. Contractor may require verification from a bank or credit reference service prior to acceptance of a credit/debit card.

4.9. Contractor shall have and maintain and post a valid City of San Jose tow operator's permit at all times during the term of the Agreement.

4.10. Contractor shall provide Contract Administrator with a copy of Contractor's annual vehicle inspection reports from the California Highway Patrol or SJPD Commercial Unit for all of Contractor's tow trucks and the tow vehicles used by sub-contractors to provide City-generated tow services or submit to a City tow vehicle inspection of all tow trucks and the tow vehicles used by sub-contractors to provide City-generated tow services.

4.11. Contractor shall have and maintain and post a City of San Jose business license at all times during the term of the Agreement.

4.12. Contractor shall provide Contract Administrator with its formal written customer complaint process and complaint form. This process and form shall be subject to approval by the Contract Administrator and shall provide the Contract Administrator with sufficient information to document and account for customer claims for damage, theft, or other complaints, and to show the status or resolution of such complaints. Contract Administrator may from time to time establish or modify complaint process requirements. Contract Administrator, at his sole discretion, may direct Contractor to amend their customer complaint process and/or complaint form.

4.13. Contractor shall, upon receipt of a completed customer complaint form, fax the completed form to the Contract Administrator by 5:00 P.M. on the business day that it was received, or by 5:00 P.M. of the following business day, if the form was received on a non-business day.

4.14. Contractor shall respond to a completed Customer complaint form within ten (10) days and fax or mail, by U.S. mail, the response and completed Complaint Form to the Contract Administrator within one (1) business day.

4.15. Contractor shall post the following documents, printed in a minimum of 12-point type, at each storage facility in a conspicuous location easily visible to the public:

4.15.1. Complete copy of the Agreement;

4.15.2. Name and address of Contractor's insurance broker handling the insurance coverage required pursuant to the Agreement;

4.15.3. Schedule of all approved towing, storage and additional charges as specified in this Agreement;

4.15.4. A notice explaining the procedure by which unclaimed vehicles are sold at public auction, including the locations of such auctions and publications in which such auctions are advertised, and stating that all attendance at such auction shall have an equal opportunity to bid;

4.15.5. "Vehicle Impound Rights and Obligations" informing the public of their rights pursuant to California Vehicle Code, Section 22852.

4.15.6. Complete copy of Contractor's San Jose Business License.

4.15.7. Complete copy of Contractor's San Jose tow operator permit.

4.15.8. Written customer complaint process.

4.16. Tow Services Audit Form, Exhibit A-4, shall be prepared for each tow and shall be kept on file at Contractor's place of business for the length of this Agreement. These forms shall be made available to the Contract Administrator or any designated agent of the City of San Jose during normal business hours. The City shall have the right to change this form at any time during the duration of this Contract.

4.17. In the event Contractor discovers that a vehicle, which has been towed, has Vehicle Identification Number (VIN) which is different than the VIN showing on the California Highway Patrol Form 180, Contractor will notify the Police Department Auto Desk forthwith, and in any event within three (3) days from date of discovery.

5. FAILURE TO PERFORM

5.1. For minor breaches the Liquidated Damages in Section 23.2 of the Agreement will apply.

5.2. Material breaches of the Agreement including successive assessments of liquidated damages may result in termination of Agreement.

6. CENTRAL COMMUNICATIONS CENTER

- 6.1. City shall maintain and operate a Central Communications Center that shall be used to dispatch Contractor to render the tow services required pursuant to the Agreement.
- 6.2. City may from time to time designate a dispatch service to dispatch contractor to render tow services required pursuant to the Agreement.
- 6.3. Contractor shall utilize the Central Communications Center or a dispatch service designated by the City. Contractor shall pay for said dispatch service.
- 6.4. Contractor shall provide the Contract Administrator with one (1) phone number to be used for the dispatch of tows twenty-four (24) hours a day, seven (7) days a week. This phone number shall not include pagers and must be answered by an employee or authorized agent of the contractor within four (4) rings.
- 6.5. Contractor shall notify Contract Administrator of any change in this phone number forty-eight hours prior to the change in phone number.
- 6.6. The City of San Jose may choose to install a computerized dispatch and communication system at the Central communication center. The purpose of such a system would be to provide automated dispatch, electronically linking the city with its contracted tow companies.
- 6.7. Contractor and Sub-Contractors may be required to house the appropriate hardware, software, and communications that are compatible with any system installed by the City and to make staff available for any necessary training. This system may include installations at both storage facilities and in tow vehicles.
- 6.8. Contractor and Sub-Contractors may be required to cooperate and coordinate with the City, and its authorized system vendor(s), in meeting the necessary and on-going requirements of the system.

7. STORAGE FACILITIES

7.1. GENERAL

Contractor shall maintain storage facilities for vehicles towed pursuant to this agreement within the limits of the City of San Jose. Storage facilities need not be within the Contractor's zone. The facilities shall be maintained to the reasonable satisfaction of the Contract Administrator, who may cause them to be inspected from time to time to ensure that they meet the following requirements:

- 7.1.1. Contractor shall maintain paved lots sufficiently large to store vehicles with at least two (2) feet of clearance between the sides of all vehicles, and at least one (1) foot clearance between the front or rear end of any vehicle and the front or rear end of another vehicle.
- 7.1.2. Storage facilities shall be available twenty-four (24) hours a day, seven (7) days a week including holidays for storage of vehicles towed pursuant to the Agreement.
- 7.1.3. Contractor shall maintain facilities sufficiently large to store a minimum of one hundred fifty (150) vehicles for each zone awarded to Contractor.
- 7.1.4. Storage facilities shall be enclosed by fencing that complies with all applicable City ordinance and regulations including applicable zoning regulations and permits.
- 7.1.5. Contractor shall provide an outside telephone, in a well-lit area, that is available twenty-four (24) hours per day to contact contractor's staff. The telephone number shall be posted in a prominent place. The hours of release of a vehicle shall be posted in this area.

7.1.6. Outdoor and/or indoor storage shall be monitored by closed circuit TV. Areas monitored shall include at a minimum all points of vehicle ingress, egress, Police impound, and general storage. Tapes are to be retained for no less than two (2) months and shall be made available to the Contract Administrator within forty-eight (48) hours of request.

7.1.7. Storage facilities shall be adequately lighted during hours of darkness, but said lighting shall be designed, controlled, and maintained so that no light source is visible from outside the property. Electroliers shall not exceed twelve feet (12') above grade unless specifically identified within the approved development plan on file.

7.1.8. Contractor shall provide security at storage facilities that is to be to the reasonable satisfaction of the Contract Administrator. At a minimum all points of ingress and egress shall be secured, procedures shall be in place to prevent theft of valuables left in vehicles, and access to vehicles shall be restricted to authorized employees of Contractor and City.

7.1.9. Storage facilities shall be maintained in accordance with all applicable City ordinances, codes, and / or regulations. All of Contractor's storage facilities shall have valid land use and other regulatory permits. Contract Administrator shall have the sole discretion to interpret these standards when in question.

7.1.10. All City-impounded vehicles, vehicles held for investigation, and recovered vehicles shall not be moved until authorized by the Chief of Police, Contract Administrator or their designee. Vehicles with holds placed on them by the Police Department shall not be lien sold; however, Contractor may file for a lien but not complete the sale of the vehicle until such time as the hold is removed.

7.1.11. Contractor shall be responsible for the protection of City-impounded vehicles in its possession until the vehicles have been released to their owners, or disposed of through legal process, and shall be responsible for safeguarding all articles left in the impounded vehicles. Contractor shall comply with police regulations regarding the inventory or removal of property found in Police-impounded vehicles.

7.1.12. All of Contractor's storage facilities shall be in compliance with all environmental regulations. Disposal of hazardous materials shall be done in compliance with local, state, and federal environmental regulations.

7.2. PRIMARY STORAGE FACILITY

Contractor shall maintain a primary storage facility that meets the following requirements:

7.2.1. The primary storage facility shall be sufficiently large to store at least seventy-five (75) vehicles per City zone. The primary storage facility must be located in the City of San Jose. Contractor may operate multiple primary storage facilities to service multiple zones. However, there shall be no more than one (1) primary service yard designated per City zone.

7.2.2. All vehicles towed pursuant to this Agreement shall be stored at a primary facility for three days, unless released to the vehicle owner or cleared by the Police Department, Contract Administrator, or other designated City employee in writing.

7.2.3. VIN Tow vehicles shall be stored in the primary lot until checked and cleared by the Police Department or the Contract Administrator, and may be stored in a secondary lot after such vehicles have been cleared. City re-tows for any Police impounded vehicle shall be done at "No Charge".

7.2.4. Contractor shall maintain a customer service office at the primary storage facility. The following requirements shall apply to the customer service office:

7.2.4.1. Contractor shall have an employee at the primary customer service office during business hours, and have an employee available who can arrive at the primary customer service office within twenty-five (25) minutes of a City or citizen request during non-business hours, in order to assure that a citizen may claim his or her vehicles at any time and to properly protect City-impound vehicles. City may with 48 hours written advance notice change the hours of the Police Auto Desk. Contractor shall adjust the hours of the customer service office accordingly.

7.2.4.2. The primary customer service office shall, during regular business hours, afford the public shelter during rain or bad weather, shall have sufficient space to accommodate members of the public who have business with Contractor, and shall have a restroom and telephone available for public use.

7.2.4.3. Contractor shall maintain a closed circuit TV with audio in the primary customer service office. Tapes shall be retained for a minimum of two (2) months and shall be made available to the Contract Administrator within forty-eight (48) hours of request.

7.3. SECONDARY STORAGE FACILITY

Contractor may operate secondary storage facilities. Secondary storage facilities must be located in the City of San Jose. Contractor may operate multiple secondary storage facilities. As an alternate to the maintenance of a secondary storage facility, Contractor may provide space for vehicles at Contractor's primary storage facility, for a total minimum storage capacity of one hundred fifty (150) vehicles per zone. Facilities shall be maintained to the reasonable satisfaction of the Contract Manager or his designee, who may cause them to be inspected from time to time.

7.4. POLICE INVESTIGATIVE HOLDS/DROPS

Contractor shall not release vehicles or property in vehicles which have been impounded or put on investigative hold. Only the San Jose Police Department may, in writing, authorize the release of impounded vehicles, personal property from vehicles with Police Investigative holds.

8. LIEN SALES

Contractor may conduct lien sales and may sell vehicles for parts. Contractor may sell components and materials for recycling, crushing and sell the remaining vehicle shells to scrap metal processors. These activities must comply with all local, state and federal regulations.

RESOLUTION NO. 74303

**RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE
ADOPTING A FEE SCHEDULE
FOR TOW SERVICES AGREEMENTS**

WHEREAS, on December 3, 2002, the City Council adopted Resolution No. 71324 establishing a Fee Schedule for Tow Services Agreements; and

WHEREAS, on March 25, 2008 a hearing was held to consider a report from City staff recommending changes to the Fee Schedule;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Effective as of 12:01 am on April 1, 2008, the following maximum charges are hereby established for services or materials furnished by the Contractor engaged in the tow-car business in connection with any vehicle tow pursuant to an Agreement for Tow Services entered into by the City of San Jose. (All charges shall include any charge for unlocking a vehicle when necessary):

1. Basic Tow - For any tow of a disabled vehicle from the scene of an accident; or of an unattended or abandoned vehicle from a public street when authorized by a police officer or other authorized employee of City; or of a driverless vehicle from a public street or private property, when authorized by a police officer, or other authorized employee of City, and when required on account of the disability of the driver. For any tow of a vehicle from a public street or private property when authorized by the person lawfully entitled to the possession of the vehicle; or of a vehicle parked without authorization on private property by the person lawfully entitled to the possession of the real property. For any tow of a vehicle authorized by a San José police or other authorized City employee from a location on a freeway within the city limits of the City of San José \$140.00

2. Service call - response by a tow truck to a request by or on behalf of the person in lawful possession of a vehicle, or by a police officer, but towing is found not to be necessary, for each period of fifteen (15) minutes, or portion thereof, required to be spent from the time of departure to return to the customary tow-car location or to release to another assignment: \$70.00
per hr

Class "A" regular duty tow-trucks \$19.25 per quarter hour
Class "B" medium duty tow-trucks \$50.00 per quarter hour
Class "C" heavy duty tow-trucks \$75.00 per quarter hour
Class "D" heavy duty tow-trucks \$75.00 per quarter hour

3. Extraordinary Services Tows

Where one or more of the following conditions is met:

- a. tow services authorized in writing by the City as requiring more than the use of one Class A tow truck for more than one hour from the time of dispatch to the time of departing the scene
- b. vehicles that have been driven off of embankments;
- c. accidents where a vehicle is overturned, burned, or imbedded in a structure or another vehicle;
- d. vehicles which must be recovered over six feet from the roadway.
- e. Heavy Vehicle Tows (Special Tows):
 - Class B -- for towing vehicles which are under 6000 lbs. (empty) which require Class B truck recovery, e.g. fifth wheel trailers, small motor homes, horse trailers and heavily loaded one-ton trucks; and for towing vehicles which exceed 6000 lbs. (empty), e.g. medium to large motor homes, commercial trucks and trailers and trailers less than 26,000 lbs. (empty);
 - Class C & D - for towing vehicles where weight or complex recovery requires the use of a Class C or D Tow Trucks (e.g. vehicles with a weight exceeding 26,000 lbs. (empty) such as a very as a very large motor home bus or semi-truck and trailer rig;
- f. Vehicles which are in more than one piece as a result of a collision;

and it has been documented by requiring the written authorization of the impounding officer on the CHP 180 form (impounds only) or Tow Authorization Form when the CHP 180 form is not required, then the following rates are applicable as authorized:

Class "A" regular duty tow-trucks	\$70 per hour
Class "B" medium duty tow-trucks	\$200 per hour
Class "C" heavy duty tow-trucks	\$300 per hour
Class "D" heavy duty tow-trucks	\$300 per hour

The foregoing rates shall be charged as a one hour minimum charge plus a prorata charge for each quarter hour as authorized.

4. Storage fee:

Passenger vehicles, motorcycles, vans and light trucks (per day) \$40.00
Per Space

5. After Hours Gate Fee - for the release of a vehicle between 9pm and 6 am \$70.00

SECTION 2. During the term of the Agreement April 1, 2008 – March 31, 2009, each Contractor shall pay City, as consideration for the right to perform City-generated tows pursuant to the Agreement the following fees:

RD:BD
3/25/08

RES. NO. 74303

CITY OF SAN JOSE
CITY CLERK'S OFFICE

3/25/08
10:00 AM

Contract Compensation Rate - per tow (all-tows including motorcycles) \$60.00
Dispatch Rate - per dispatch \$6.00

SECTION 4. Resolution No. 71324 is superseded as of date and time set forth in Section 1 above.

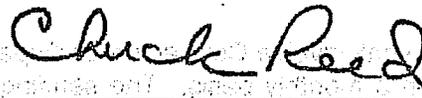
ADOPTED this 25th day of March, 2008, by the following vote:

**AYES: CAMPOS, CHIRCO, CHU, CORTESE, LICCARDO,
NGUYEN, OLIVERIO, PYLE, REED**

NOES: NONE

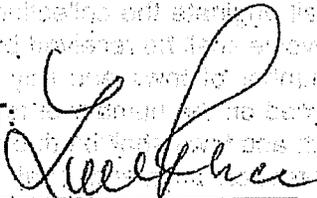
ABSENT: CONSTANT; WILLIAMS.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



LEE PRICE
City Clerk

EXHIBIT C COMPENSATION

A. GENERAL

For each vehicle Contractor tows on or after April 1, 2009, Contractor shall pay to the City the fees as set forth below in Section B "Rate of Compensation to City".

B. RATE OF COMPENSATION TO CITY

During the term of the Agreement, Contractor shall pay City, as consideration for the right to perform City-generated tows and for Central Communications Center dispatch services, the fees set forth in Section 2 of the "Fee Schedule for Tow Services Agreements" (Exhibit B). For all types of tows, the initial flat rate fee per vehicle tow paid to the City shall be \$60.00. For each dispatch performed by the Central Communications Center, the initial flat rate per dispatch paid to the City shall be \$6.00. In the event that the rates in the resolution are revised, Contractor agrees to pay the rates as set. These fees shall be due to the City regardless of the amount collected by Contractor. At the discretion of authorized City employees a drop of a vehicle may be made prior to hookup and no charges shall be assessed to the vehicle owner. In such instances the dispatch fee shall be paid to the City but not the flat rate per tow. Instead Contractor may charge the City for the appropriate increment of Service Call time.

C. METHOD OF PAYMENT

1. The City shall invoice Contractor for dispatch services performed by the Central Communications Center on a monthly basis. The sending of this invoice shall originate the collection of fees for both dispatch services and flat rate per tow fees. The first invoice shall be received by Contractor no later than May 15, 2009. Contractor shall track the number of tows and pay the City for consideration for the right to perform City-generated tows based on the number of tows recorded during the prior month. Contractor's first payment for dispatch and tows shall be due and payable to the City within thirty (30) days from May 15, 2009. Thereafter, payments shall be due and payable monthly. Contractor shall remit the following information with their payment:
 - a. The number of tows for the prior month
 - b. A copy of Form 180 for "Public Safety Tows" and/or "Tow Authorization Forms" completed for the prior month
 - c. The number of dispatches received during the prior month
 - d. A detailing of any Liquidated Damages being paid
 - e. The number of vehicles claimed, sold at lien sale, and junked during the prior one month period
 - f. A detailing of the services, outlined in Section D "Payments to Contractor", performed during the prior month for which Contractor is invoicing the City.
2. In the event Contractor fails to make payments to the City for this contract on or before the due dates as hereinabove provided, Contractor will pay as additional consideration both of the following amounts:

a. A sum of money equal to ten percent (10%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by the City by reason of the delinquent payment, including, but not limited to, the cost of administering, accounting and collecting said delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving revenue.

b. A sum of money equal to one percent (1%) of the amount due per month as interest and for loss of use of the money due.

c. Payments shall be made to the City's Director of Finance.

d. Payment made to the City by Contractor pursuant to this Agreement shall be in addition to any other license fees, business license tax, or other fees or taxes required by the City.

e. Each payment shall be accompanied by a statement, in duplicate, verified by Contractor, or by a general officer or other duly authorized representative of Contractor, showing in such form and detail as the City's Director of Finance may require the facts material to a determination of the amount due.

3. Contractor shall at all times maintain accurate and complete records of each City-generated tow provided, which shall contain the following information:

- a. Name, address, and phone number of person, if available, whose vehicle was towed;
- b. Vehicle identification number, license plate number, make, year and model, or each vehicle towed;
- c. Date and time request for tow was received;
- d. Location from which vehicle was towed, and name or number of driver assigned to said tow;
- e. Reason for tow, whether accident, impound, or other reason;
- f. Date of release of each vehicle;
- g. Name of party to whom vehicle was released;
- h. All fees or charges connected with said tow, showing specifically tow, storage, hazardous material, immobilized vehicle premium, or drive line labor, and lien sale in addition to the total of such charge or fees;
- i. All proceeds from the sale of towed vehicles that are unclaimed, and
- j. Date that said charges were paid.

4. Contractor shall retain a CHP 180 form or copy and shall prepare an invoice and/or wreckers receipt for all lien sale transactions.

D. SECURITY DEPOSIT

1. **Letter of Credit.** Contractor shall deposit with City prior to the commencement of this Agreement, and shall maintain throughout the term of this Agreement and for a period of at least ninety (90) days beyond the schedule expiration date of the Agreement, a security deposit (the "Security Deposit") in the form of an irrevocable letter of credit (the "Letter of Credit") in the face amount of \$40,000.00 (Forty Thousand Dollars).

The City's Director of Finance shall review the amount of the security deposit on an annual basis and may adjust the amount.

The irrevocable letter of credit shall be on a form and issued by a financial institution shall be a bank or trust company doing business and having an office in the State of California; and be subject to supervision or examination by federal or State authority. The City Treasurer shall hold and be trustee of the Security Deposit. The Security Deposit shall guarantee faithful performance by Contractor of all terms, covenants, and conditions of the Agreement including, but not limited to, all monetary obligations set forth herein.

In the event the City receives notice from the issuer of the Letter of Credit that the Letter of Credit will be terminated, not renewed or otherwise allowed to expire for any reason prior to the date ninety (90) days beyond the scheduled expiration date of the Agreement, and contractor fails to provide the City with a replacement letter of credit (in a form and issued by a financial institution acceptable to the City) within ten (10) days following the City's receipt of such notice, such occurrence shall be a material event of default under this Agreement, and, in addition to any other remedies the City may have due to such default (including the right to terminate this Agreement), the City shall be entitled to draw down the entire amount of the Letter of Credit (or any portion thereof) and hold such funds in an account with the City Treasurer. In the form of a cash security deposit guaranteeing Contractor's obligations under this Deposit shall accrue interest to the Contractor at a rate equal to the average yield of Treasury Notes with on year maturity, as determined by the City Treasurer. In the event the Security Deposit is converted into cash pursuant to this paragraph, upon termination of this Agreement by either party thereto, Contractor shall be entitled to a full refund of the Security Deposit (less any demands made thereon by the City pursuant to Section D.3. below) within ninety (90) days after the termination date, including interest accrued through the termination date.

2. **Security Deposit in the Form of a Certificate of Deposit (CD).** The Security Deposit may be in made by depositing with the City a Certificate of Deposit which meets all of the following requirements:

- a. CD must be assigned for payment to the City of San Jose
- b. CD must be non-negotiable
- c. CD maturity date must be at least 90-days and contain a 90-day automatic renewal provision
- d. CD interest rate must be shown on the certificate
- e. CD must show Contractor as depositor
- f. CD will pay interest directly to Contractor at maturity (not added to principal)
- g. CD must be issued by a bank or savings association within Santa Clara County or a bank or savings association with a local branch
- h. CD must be insured by the FDIC

Principal plus interest on the CD will not exceed \$100,000.

3. **Demands Upon Security Deposit.** If Contractor is in breach of any provision of the Agreement, City may use all or any portion of the Security Deposit to compensate City for any loss or damage, which it may have incurred by reason of Contractor's breach. Such loss or damage may include without limitation any claim for liquidated damages. Should the City terminate this Agreement due to a breach by Contractor, the City shall have the right to draw from the Security Deposit those amounts necessary to pay the fees described in Section B and perform the towing and storage services described in this Agreement until such time as the City procures another contractor and the agreement between the City and that contractor becomes effective.
4. **Exhaustion of Security Deposit.** If any portion of the Security Deposit is used by City, Contractor shall, within ten (10) business days after such use by city; provide written proof that the Security Deposit has been restored to its initial value, which shall require a replacement letter of credit in the face amount of the required Security Deposit. Contractor's failure to do so shall constitute a material breach of this Agreement.
5. **Disputes Concerning Security Deposit.** In the event that a dispute arises between the City and Contractor concerning this Agreement or the use or maintenance of the Security Deposit, each party reserves its remedies in equity and law. No decision – by the City concerning the Security Deposit shall prevent Contractor from seeking restoration of the funds by appropriate legal action.

E. PAYMENTS TO CONTRACTOR

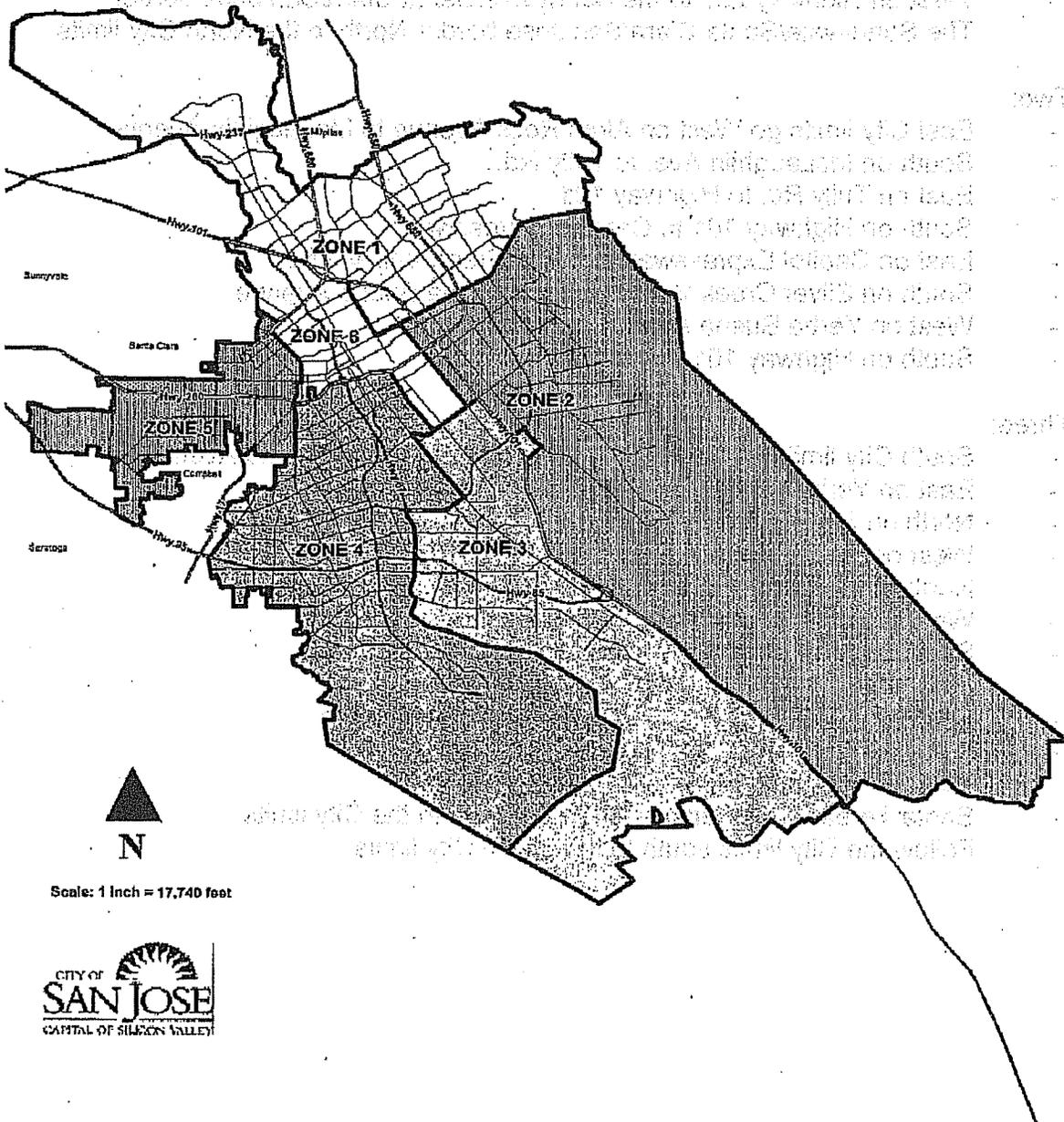
City shall make payments to Contractor within thirty (30) days of receiving a monthly invoice for payment for the following services:

1. **Payments for Charges for an Invalid Tow prior to release.** In the event that a customer who has not paid for the release of a vehicle which the City has subsequently determined by hearing to be an invalid tow, and the City has determined that a payment of the charges is warranted, City shall pay such charges as are authorized on the Tow Authorization Form or the tow slip attached to the Form 180.
2. **Public Safety Tows.** City shall pay Contractor for services performed at the request of Police, Code Enforcement or other designated City Officials, where the reason for the tow does not arise out of the conduct of the owner or operator of the vehicle. City shall pay such charges as are authorized on the Tow Authorization Form or the tow slip attached to the Form 180. Such instances include:
 - a. Disaster scenes where the vehicles are in the way of relief or rescue operations.
 - b. National Defense as in maneuvers by State or Federal Military units requiring vehicles be relocated if not impounded and where no 180 form is used due to the exigency of the situation or the scope of the operation.
 - c. Presidential or high ranking Dignitary visits to locations not previously signed for no parking or where signage was removed or destroyed and the Secret Service or Field Commander declares a safety issue exists and authorizes towing of the vehicles.
 - d. Other contingencies where Contract Administrator, Police Department, Fire Department, Code Enforcement, or Department of Transportation employees request Contractor to perform a necessary assignment that does not fall within the normal tow operation.

e. In each case the Contractor should obtain a 180 Form or, "Tow Authorization Form" signed by Contractor Administrator or an authorized employee of the City of San Jose within forty-eight (48) hours of the tow. In the event that the Contract Administrator or authorized employee of the City of San Jose fails to sign a 180 Form or Tow Authorization Form before leaving the scene, Contractor shall notify the Contract Administrator and submit the 180 Form or Tow Authorization Form together with a report of circumstances regarding the incident.

F. AUDIT During the term of the Agreement, City shall audit Contractor on an annual basis. City shall give two (2) weeks advance notice prior to such an audit. In the event of discrepancies, City may conduct further follow-up audits.

EXHIBIT D
ZONE TOW MAP
City of San Jose Tow Zone Boundaries Map and Written Boundaries



Written Boundaries

Zone One:

- East City limits go West on Alum Rock Ave.
- North on Thirteenth St. to Highway 101
- North on Highway 101 to Trimble Rd.
- East on Tremble Rd. to Guadalupe River
- North on the Guadalupe River to Highway 237
- West on Highway 237 to the Sunnyvale/Santa Clara/San Jose border
- The Sunnyvale/Santa Clara/San Jose border North to the North City limits.

Zone Two:

- East City limits go West on Alum Rock Avenue to McLaughlin Avenue
- South on McLaughlin Ave. to Tully Rd.
- East on Tully Rd. to Highway 101
- South on Highway 101 to Capitol Expressway
- East on Capitol Expressway to Silver Creek Valley Road
- South on Silver Creek Valley Road to Yerba Buena Avenue
- West on Yerba Buena Avenue to Highway 101
- South on Highway 101 to the City limits

Zone Three:

- South City limits go North on Highway 101 to Yerba Buena Avenue
- East on Yerba Buena Avenue to Silver Creek Valley Road
- North on Silver Creek Valley Road to Capitol Expressway
- West on Capitol Expressway to Highway 101
- North on Highway 101 to Tully Rd.
- West on Tully Rd. /Curtner Ave. to Monterey Highway
- South on Monterey Highway to Capitol Expressway
- West on Capitol Expressway to Highway 87
- South on Highway 87 to the Highway 85 interchange
- Highway 87/85 interchange south on Santa Teresa
- Santa Teresa to Coleman Ave.
- Santa Teresa/Coleman interchange South to the City limits
- Follow the City limits south to the South City limits

Zone Four:

- South City limits go North on Highway 17 to Camden Ave.
- East on Camden Ave. to Curtner Ave.
- North on Curtner Ave. Leigh Ave.
- North on Leigh Ave. to Hamilton Ave.
- East on Hamilton Ave. to Meridian Ave.
- South on Meridian Ave. to Highway 280
- East on Highway 280 to Lincoln Ave.
- North on Lincoln Ave. to Auzerais St.
- East on Auzerais St to Sunol St.
- South on Sunol St to Highway 280
- East on Highway 280 to Tenth St.
- South on Tenth St. to Tully Rd./Curtner Ave.
- West on Tully Rd. to Monterey Highway
- South on Monterey Highway to Capitol Expressway
- West on Capitol Expressway to Highway 87
- South on Highway 87 to the south City limits

Zone Five:

- West City limits go East on Hamilton Avenue to Meridian Avenue
- North on Meridian Avenue to San Carlos Street
- East on San Carlos Street to Race Street
- North on Race St. to The Alameda
- North on The Alameda to Highway 880
- North on Highway 880 to the Railroad tracks
- North on the Railroad tracks to the North City limits
- South from North City limits to West City limits

Zone Six:

- North City limits go south on the Railroad tracks to Highway 880
- South on Highway 880 to The Alameda
- South on The Alameda to Race St.
- South on Race St. to San Carlos St.
- West on San Carlos St. to Meridian Ave.
- South on Meridian Ave to Highway 280
- East on Highway 280 to Lincoln Ave.
- North on Lincoln Ave. to Auzerais St.
- East on Auzerais St to Sunol St.
- South on Sunol St. to Highway 280
- East on Highway 280 to Tenth St.
- South on Tenth St. to Tully Rd.
- East on Tully Rd. to McLaughlin Ave.
- North on McLaughlin Ave. to Santa Clara St.
- West on Santa Clara St. to Thirteenth St.
- North on Thirteenth St. to Highway 101
- North on Highway 101 to the North City limits

EXHIBIT E Insurance Requirements

CONTRACTOR, at CONTRACTOR'S sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONTRACTOR, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Garagekeepers Legal Liability including On Hook/Cargo

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

B. Minimum Limits of Insurance

CONTRACTOR shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of \$1,000,000 per accident.
4. A Garagekeeper's Legal Liability policy with a minimum limit of not less than \$100,000 per occurrence for storage &/or on hook/cargo.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officer, employees, agents and contractors; or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. **Commercial General Liability and Automobile Liability Coverages**

a. The City of San Jose, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONTRACTOR; products and completed operations of CONTRACTOR; premises owned, leased or used by CONTRACTOR; and automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.

b. CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of CONTRACTOR's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by CONTRACTOR shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

d. Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Coverage shall contain a waiver of subrogation in favor of the city, its officials, employees, agents and contractors.

2. **Workers' Compensation**

Coverage shall contain a waiver of subrogation in favor of the city, its officials, employees, agents and contractors.

3. **All Coverages**

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Acceptability of Insurers

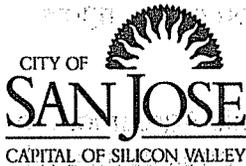
Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. Verification of Coverage

CONTRACTOR shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

EXHIBIT F



LABOR COMPLIANCE ADDENDUM

AGREEMENT TITLE:	AGREEMENT FOR TOWING SERVICES, ZONE 3
CONTRACTOR Name and Address:	Century Tow 215 Leo Avenue San Jose, CA 95112

By executing this Addendum, Contractor acknowledges and agrees that the work performed pursuant to the above referenced Agreement or Service Order is subject to all applicable provisions.

Payment of Minimum Compensation to Employees. Contractor shall be obligated to pay not less than the General Prevailing Wage Rate and/or Living Wage Rate as indicated in the attached Exhibit (F-1) titled **Work Classification and/or Living Wage Determination**.

A. Prevailing Wage Requirements. California Labor Code and/ or Resolutions of the San Jose City Council require the payment of not less than the general prevailing rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement. Notwithstanding any other provision of this Agreement, Contractor shall not be entitled to any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.

B. Living Wage Requirements. Any person employed by Contractor or subcontractor or City financial recipient or any sub recipient whose compensation is attributable to the City's financial assistance, who meets the following requirements is considered a covered employee. The employee: 1) is not a person who provides volunteer services, that are uncompensated except for reimbursement of expenses such as meals, parking or transportation; 2) spends at least half of his or her time on work for the City [4 hours a day or 20 hours a week]; 3) is at least eighteen (18) years of age; and 4) is not in training for the period of training specified under training standards approved by the City.

C. Reports. Contractor shall file a completed and executed copy of this Addendum with the Department of Finance. Upon award the Department of Finance shall provide the contractor with compliance documents to be completed and returned (with supporting documentation) to the Office of Equality Assurance. **These documents must be returned within 10 days of receipt.** Contractor shall not perform on site work on this contract until labor compliance documents are filed. Contractor shall also report additional information, including certified payrolls, as requested by Director of Equality Assurance to assure adherence to the Policy.

D. Coexistence with Any Other Employee Rights. These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any rights of the employee.

E. Audit Rights. All records or documents required to be kept pursuant to this Agreement to verify compliance with the Wage Requirement shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Contract.

F. Enforcement.

1. **General.** Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Agreement, it is required to comply with the Wage Requirement and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") Contractor further acknowledges the City has determined that the Wage Requirement promotes each of the following (collectively "Goals"):

- a. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
- b. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
- c. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
- d. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

2. **Remedies for Contractor's Breach of Prevailing Wage/Living Wage Provisions.**

- a. **WITHHOLDING OF PAYMENT:** Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Requirement, is an express condition of City's obligation to make each payment due to the Contractor pursuant to this Agreement. **THE CITY IS NOT OBLIGATED TO MAKE ANY PAYMENT DUE THE CONTRACTOR UNTIL CONTRACTOR HAS PERFORMED ALL OF ITS OBLIGATIONS UNDER THESE PROVISIONS. THIS**

PROVISION MEANS THAT CITY CAN WITHOLD ALL OR PART OF A PAYMENT TO CONTRACTOR UNTIL ALL REQUIRED DOCUMENTATION IS SUBMITTED. Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Requirement or the Documentation Provision.

- b. **RESTITUTION:** Require the employer to pay any amounts underpaid in violation of the required payments and City's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.
- c. **SUSPENSION OR TERMINATION:** Suspend and/or terminate Agreement for cause;
- d. **DEBARMENT:** Debar Contractor or subcontractor from future City contracts and/or deem the recipient ineligible for future financial assistance.
- e. **LIQUIDATED DAMAGES FOR BREACH OF WAGE PROVISION:** Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City's damage would not be remedied by Contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Requirement would be impracticable and/or extremely difficult. **THEREFORE, THE PARTIES AGREE THAT, IN THE EVENT OF SUCH A BREACH, CONTRACTOR SHALL PAY TO THE CITY AS LIQUIDATED DAMAGES THE SUM OF THREE (3) TIMES THE DIFFERENCE BETWEEN THE ACTUAL AMOUNT OF WAGES PAID AND THE AMOUNT OF WAGES THAT SHOULD HAVE BEEN PAID.**

City

Contractor

By

Name: Mark Giovannetti

Title: Purchasing Officer

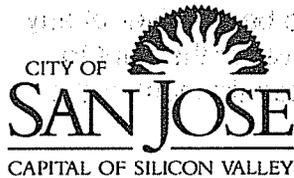
Date:

By

Name: W. G. Spencer

Title: PRESIDENT

Date: 2/11/09



City of San José Wage Determination

Exhibit F-1

CONTRACT SCOPE: City-Generated Zone Towing Services

For contracts governed by the City of San Jose's Living Wage Policy (Resolution No. 68900), the Living Wage rate identified below shall be used.

Classification	Basic Hourly Pay Rate	Medical Benefit	Total Hourly Pay*
Tow Truck Driver	\$12.83	\$1.25	\$14.08

*The full amount of the total hourly wage must be paid directly to the worker, UNLESS the Contractor is making payments to a benefit plan.

Hours and Days of Work

(Industrial Welfare Commission Order No. 16-2001)

City of San Jose agreements subject to City prevailing wage or living wage policies will use the same guidelines for all covered classifications/employees.

Employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh (7th) consecutive day of work in a workweek.

RATES WILL BE SUBJECT TO ADJUSTMENT ON THE ANNIVERSARY DATE OF THE AGREEMENT

**EXHIBIT G
SUBCONTRACTOR LIST**

09/09
08:11:39

Company Name:	Campbell's Towing
Address:	1461 Terminal Avenue, San Jose, CA 95112
Contact Person:	Joe Scharff
Telephone Number:	408-295-7490
Tow Vehicle Quantity and Class:	2/Ea Class B, 3/Ea Class C, 1/Class D, 1/Ea Low Bed Trailer w/3-axle tractor
City of San Jose Tow Permit Number:	00404
Company Name:	
Address:	
Contact Person:	
Telephone Number:	
Tow Vehicle Quantity and Class:	
City of San Jose Tow Permit Number:	
Company Name:	
Address:	
Contact Person:	
Telephone Number:	
Tow Vehicle Quantity and Class:	
City of San Jose Tow Permit Number:	

EXHIBIT H

Applicable California Vehicle Code and Civil Code Laws

Note: The laws which govern a tow operator's business and vehicle operations are included in, but not limited to, this Attachment. The list of laws included herein is intended as a general guide only. It is the tow operator's responsibility to know and comply with all federal and state statutes and all local ordinances relating to the operator's business operations; including those which are and are not listed in this document, both new statutes or ordinances subsequently adopted, as well as, amendments, repeals, or modifications of existing statutes and ordinances including but not limited to those described in this attachment.

1. General

- A. The operator shall be able to properly conduct a lien sale as outlined in Division 11, Chapter 10, Article 2, beginning with Section 22851 of the California Vehicle Code (CVC).
- B. The operator and/or the operator's agents who drive tow trucks shall be properly licensed in accordance with Section 12804.9 of the CVC.
 - 1) Commercial driver licenses must be endorsed to allow operation of special vehicle configurations and/or special cargoes. The following table shows the correct license class and endorsement for the vehicle or cargo being transported:

Vehicle Type or Cargo	Class License	Endorsement Code
Pulling more than one trailer	A	T
Transporting passenger for hire	A or B	P
Tank vehicle	A or B	N
Hazardous materials	B or C	H
Tank vehicle with hazardous materials	B or C	X

- a) Tow truck drivers shall have the proper class of license and endorsements for the vehicle and cargo being transported, as shown above.
 - (1) Whenever tank vehicles, double trailers, and/or hazardous materials carriers are towed or driven, the driver is required to possess the appropriate class of license and endorsement.
 - (2) Empty buses can be towed without the passenger transport endorsement but the tow truck driver must have the passenger transport endorsement if driving the bus, even without passengers.
- b) Tow truck drivers may obtain a Class A driver license which is restricted to towing other vehicles.
 - (1) The actual driving of damaged vehicles or vehicles being serviced requires that the Class A license not be restricted to towing vehicles.

2) Commercial vehicle operators or operators of vehicles requiring a special certificate must possess both the appropriate license and certificate, and be in possession of a valid medical card.

C. The operator shall comply with the provisions contained in Division 4, Chapter 2 (Reports of Stored Vehicles) CVC.

D. The operator shall comply with the provisions of Section 10854 CVC.

E. The operator shall comply with the provisions of Section 12110 CVC.

F. The operator shall comply with the provisions of Division 11, Chapter 9 CVC, relating to stopping, standing, or parking, and Chapter 10 CVC, relating to the removal and disposition of vehicles.

G. Tow trucks shall comply with appropriate lighting and equipment requirements for motor vehicles as contained in the CVC.

H. Tow trucks towing disabled legal vehicles or legal combination of vehicles shall comply with the vehicle size and weight limitations contained in Division 15 of the CVC.

1) Tow operators may obtain transportation permits, which allow specific variances on these vehicle length and weight limitations, through the California Department of Transportation (Caltrans) or local authorities with respect to highways under their respective jurisdictions.

a) Caltrans issues permits to requesting operators on an annual basis.

I. The permit allows the movement of disabled legal vehicles under the following conditions:

1) Disabled legal vehicles or legal combination of vehicles may be towed on state highways to the nearest appropriate place of repair, or nearest secure storage area that is appropriate for the vehicle or load, whichever is closest and most accessible. It is not the intent of this permit to allow these combinations to be towed to their ultimate destination for convenience, unless that destination meets the foregoing criteria.

2) Disabled legal vehicles or combination of vehicles, when connected to a tow truck, may exceed legal gross weight limitations. When one end of a truck or truck tractor of legal weight is elevated by a tow truck, the drive axles, the tow truck and/or the drive axles of the disabled vehicle may exceed legal axle or axle group weight limitations. If any axle or axle group exceeds legal weight, movement will be limited to specific routes.

a) Disabled vehicles or combination of vehicles whose movement is authorized by a transportation permit, or any disabled vehicle or any combination of vehicles which, because of damage, has incurred distortion in width or height, causing the vehicle to be in excess of legal dimensions; may be moved at the direction of a peace officer or single trip permit issued by the Caltrans.

b) The driver of a tow truck operating under a transportation permit shall comply with all the terms and conditions of the permit.

J. The operator shall comply with the provisions of Sections 3068 through 3074 of the California Civil Code.

K. The operator shall comply with Sections 182, 470, and 532 of the California Penal Code relating to fraud and conspiracy to commit fraud.

L. The operator shall comply with the provisions of Sections 17200 and 17500 of the California Business and Professions Code relating to fraudulent or unfair business practices or false or misleading statements.

2. California Vehicle Code Requirements Relating to Tow Trucks -Summarized

A. **Unlawful Advertising (25).** It is unlawful for any person to display any sign, mark, or advertisement indicating an official connection with either the Department of Motor Vehicles or the Department of California Highway Patrol unless such person has lawful authority, permission, or right to make such display.

B. **Tow Truck (615).** (a) A "tow truck" is a motor vehicle which has been altered or designed and equipped for and primarily used in the business of towing vehicles by means of a crane, hoist, tow bar, tow line, or dolly or is otherwise primarily used to render assistance to other vehicles. A "roll-back carrier" designed to carry up to two vehicles is also a tow truck. A trailer for hire that is being used to transport a vehicle is a tow truck. "Tow truck" does not include an automobile dismantler's vehicle.

NOTE: A vehicle which is not primarily used in the business of towing vehicles nor used to render assistance to other vehicles is not a "tow truck" as defined above and need not comply with the requirements of the California Vehicle Code Sections cited in this attachment. Such a vehicle shall not be equipped with the flashing amber warning lights permitted on "tow trucks," and is not entitled to special parking privileges under Section 22513.

C. **Portable Dolly (4014).** Any portable or collapsible dolly carried in a tow truck or in a truck used by an automobile dismantler and used upon a highway exclusively for towing disabled vehicles is exempt from registration.

D. **License Plates (5201).** (a) The rear license plate on a tow truck may be mounted on the left-hand side of the mast assembly at the rear of the cab of the vehicle, not less than 12 inches nor more than 90 inches from the ground.

E. **Tow Service Unlawful Acts (12110).** (a) Except as provided in subdivision (b), no towing service shall provide and no person or public entity shall accept any direct or indirect commission, gift, or any compensation whatever from a towing service in consideration of arranging or requesting the services of a tow truck. As used in this section, "arranging" does not include the activities of employees or principals of a provider of towing services in responding to a request for towing services.

F. **Stopping or Parking (22513).** Section 22513 prohibits a tow truck operator or owner from stopping at the scene of an accident or near a disabled vehicle for the purpose of soliciting an engagement for services, or furnishing any towing services unless summoned to that accident scene or disabled vehicle, or flagged down by the owner or operator of the disabled vehicle or by a peace officer. The tow truck driver or owner is also prohibited from removing any vehicle from a highway or public property, without the express written authorization of the vehicle's owner or operator, or a law enforcement officer or agency, when the vehicle has been left unattended or when there is an injury as a result of an accident.

G. Stopping on Freeway (21718). (a) No person shall stop, park, or leave standing any vehicle upon a freeway which has full control of access and no crossings at grade except:

- (1) When necessary to avoid injury or damage to persons or property.
 - (2) When required by law or in obedience to a peace officer or official traffic control device.
 - (3) When any person actually engaged in maintenance or construction on freeway property or any employee of a public agency actually engaged in the performance of official duties.
 - (4) When any vehicle is so disabled that it is impossible to avoid temporarily stopping and another vehicle has been summoned to render assistance to the disabled vehicle or driver of the disabled vehicle. This paragraph applies when the vehicle summoned to render assistance is a vehicle owned by the donor of free emergency assistance, that has been summoned by display upon or within a disabled vehicle of a placard or sign given to the driver of the disabled vehicle by the donor for the specific purpose of summoning assistance, other than towing service, from the donor.
 - (5) Where stopping, standing or parking is specifically permitted; However, buses may not stop on freeways unless sidewalks are provided with shoulders of sufficient width to permit stopping without interfering with the normal movement of traffic and without the possibility of crossing over fast lanes to reach the bus stop.
 - (6) Where necessary for any person to report a traffic accident or other situation or incident to a peace officer or any person specified in subdivision (3), either directly or by means of an emergency telephone or similar device.
 - (7) When necessary for the purpose of rapid removal of impediments to traffic by the owner or operator of a tow truck operating under an agreement with the Department of the California Highway Patrol.
- (a) A conviction of a violation of this section is a conviction involving the safe operation of a motor vehicle upon the highway if a notice to appear for the violation was issued by a peace officer described in Section 830.1 or 830.2 of the Penal Code.

H. Towing or Storage Charges: Payment (22651.1). Persons operating or in charge of any storage facility where vehicles are stored pursuant to Section 22651 shall accept a valid bank credit card or cash for payment of towing and storage by the registered owner, legal owner, or the owner's agent claiming the vehicle. A person operating or in charge of any storage facility who refuses to accept a valid bank credit card shall be liable to the registered owner of the vehicle for four times the amount of the towing and storage charges, but not to exceed five hundred dollars (\$500). In addition, persons operating or in charge of the storage facility shall have sufficient funds on the premises to accommodate and make change in a reasonable monetary transaction. Credit charges for towing and storage services shall comply with Section 1748.1 of the Civil Code. Law enforcement agencies may include the costs of providing for payment by credit when agreeing with a towing or storage provider on rates.

I. Release of the Vehicle (22850.3). (a) A vehicle placed in storage pursuant to Section 22850 shall be released to the owner or person in control of the vehicle only if the owner or person furnishes to the law enforcement agency or employee who placed the vehicle in storage, satisfactory proof of current registration. The agency which caused the vehicle to be stored may, in its discretion, issue a notice to appear for the registration violation, if the two days immediately following the day of impoundment are weekend days or holidays.

a) At every storage facility there shall be posted in a conspicuous place a notice to the effect that a vehicle placed in storage pursuant to Section 22850 may be released only on proof of current registration or, at the discretion of the impounding agency, upon the issuance of a notice to appear for the registration violation by the local agency which caused the vehicle to be stored, specifying the name and telephone number of that local agency.

J. Stoplamps, Taillamps, Reflectors (24600,24603,24607). In addition to required lighting equipment, tow trucks may be equipped with additional stop lamps, taillamps, and rear reflectors which may be mounted not lower than 15 inches nor higher than the maximum allowable vehicle height and as far forward as the rearmost portion of the driver's seat in the rearmost position. Such additional taillamps shall be lighted whenever the headlamps are lighted.

K. Tow Trucks and Towed Vehicles (24605). (a) A tow truck or an automobile dismantler's tow vehicle used to tow a vehicle shall be equipped with and carry a taillamp, a stoplamp, turn signal lamps, and a portable electric extension cord for use in displaying the lamps on the rear of the towed vehicle.

a) Whenever a tow truck or an automobile dismantler's tow vehicle is towing a vehicle and a stoplamp and turn signal lamps cannot be lighted and displayed on the rear of the towed vehicle, the operator of the tow truck or the automobile dismantler's tow vehicle shall by means of an extension cord display to the rear a stoplamp and turn signal lamps mounted on the towed vehicle, except as provided in subdivision (c). During darkness, if a taillamp on the towed vehicle cannot be lighted, the tow truck or the automobile dismantler's tow vehicle operator shall by means of an extension cord display to the rear a taillamp mounted on the towed vehicle. No other lighting equipment need be displayed on the towed vehicle.

b) Whenever any motor vehicle is towing another motor vehicle, stoplamps and turn signal lamps are not required on the towed motor vehicle, but only if a stoplamp and turn signal lamp on each side of the rear of the towing vehicle is plainly visible to the rear of the towed vehicle. This subdivision shall not apply to drive away-tow away operations.

L. Utility Flood Lights (25110). Tow trucks that are used to tow disabled vehicles may be equipped with utility flood or loading lamps mounted on the rear, and sides, which project a white light illuminating an area to the side or rear of the vehicle for a distance not to exceed 75 feet at the level of the roadway. Tow trucks may display such utility floodlights only during the period of preparation for towing at the location from which a disabled vehicle is to be towed. The flood lamps shall not be lighted during darkness, except while the vehicle is parked, nor project any glaring light into the eyes of an approaching driver.

M. Warning Lamps on Tow Trucks (25253). Tow trucks used to tow disabled vehicles shall be equipped with flashing amber warning lamps. Tractor-trailer combinations are exempt from this requirement. Tow trucks may display flashing amber warning lamps while providing service to a disabled vehicle. A flashing amber warning lamp upon a tow truck may be displayed to the rear when such tow truck is towing a vehicle and moving at a speed slower than the normal flow of traffic.

Note: Vehicles used by automobile dismantlers to tow disabled vehicles may be equipped with flashing amber warning lights. Vehicles used by service stations or garages to occasionally render assistance to disabled vehicles are not tow trucks and are not permitted to be equipped with flashing amber warning lamps.

N. Use of Flashing Amber Warning Light (25268). No person shall display a flashing amber warning light on a vehicle as permitted by this code except when an unusual traffic hazard exists:

O. Warning Devices on Disabled or Parked Vehicles (25300). (a) Every vehicle which, if operated during darkness, would be subject to the provisions of Section 25100, and every truck tractor irrespective of width, shall be equipped with at least three red emergency reflectors. The reflectors need be carried by only one vehicle in a combination. All reflectors shall be maintained in good working condition.

a) When any such vehicle is disabled on the roadway during darkness, reflectors of the type specified in subdivision (a) shall be immediately placed as follows:

(1) One at the traffic side of the disabled vehicle, not more than 10 feet to the front or rear thereof;

(2) One at a distance of approximately 100 feet to the rear of the disabled vehicle in the center of the traffic lane occupied by such vehicle;

(3) One at a distance of approximately 100 feet to the front of the disabled vehicle in the center of the traffic lane occupied by such vehicle;

(4) If disablement of any such vehicle occurs within 500 feet of a curve, crest of a hill or other obstruction to view, the driver shall so place the reflector in that direction as to afford ample warning to other users of the highway, but in no case less than 100 nor more than 500 feet from the disabled vehicles.

(5) If disablement of the vehicle occurs upon any roadway of a divided or one-way highway, the driver shall place one reflector at a distance of approximately 200 feet and one such reflector at a distance of approximately 100 feet to the rear of the vehicle in the center of the lane occupied by the stopped vehicle, and one such reflector at the traffic side of the vehicle not more than 10 feet to the rear of the vehicle.

(a) When any such vehicle is disabled or parked off the roadway but within 10 feet thereof during darkness, warning reflectors of the type specified in subdivision (a) shall be immediately placed by the driver as follows: One at a distance of approximately 200 feet and one at a distance of approximately 100 feet to the rear of the vehicle, and one at the traffic side of the vehicle not more than 10 feet to the rear of the vehicle. The reflectors shall, if possible, be placed between the edge of the roadway and the vehicle, but in no event less than 2 feet to the left of the widest portion of the vehicle or load thereon.

(b) Until the reflectors required by this Section can be placed properly, the requirements of this Section may be complied with temporarily by either placing lighted red fuses in the required locations or by use of turn signal lamps, but only if front turn signal lamps at each side are being flashed simultaneously.

(c) The reflectors shall be displayed continuously during darkness while the vehicle remains disabled upon the roadway or parked or disabled within 10 feet thereof.

(d) Subdivisions (b), (c), (d), and (e) do not apply to a vehicle under either of the following circumstances:

- (1) Parked in a legal position within the corporate limits of any city.
- (2) Parked in a legal position upon a roadway bounded by adjacent curbs.

(a) In addition to the reflectors specified in subdivision (a), an emergency warning sign or banner may be attached to a vehicle which is disabled upon the roadway or which is parked or disabled within 10 feet of a roadway.

P. Use of Fuses (25305). (a) No person shall place, deposit, or display upon or adjacent to any highway any lighted fuses, except as a warning to approaching vehicular traffic or railroad trains, or both, of an existing hazard upon or adjacent to the highway or highway-railroad crossing.

(a) It is unlawful to use any fuse which produces other than a red light.

Q. Brakes (26453,26454,26458). Disabled motor vehicles equipped with power brakes are exempt from the provisions of Vehicle Code Section 26458 which require a single control on the towing vehicle to operate the brakes on the towed vehicle. Such combinations must meet the stopping distance requirement of 50 feet from an initial speed of 20 miles per hour. The service brakes on the tow truck shall be adequate to control the movement of and stop and hold the combination of vehicles under all conditions and on any grade on which they are operated. Brakes are required to be maintained in good working order at all times.

R. Broom, Shovel and Extinguisher (27700). (a) Tow trucks shall be equipped with and carry all of the following:

(1) One or more brooms, and the driver of the tow truck engaged to remove a disabled vehicle from the scene of an accident shall remove all glass and debris deposited upon the roadway by the disabled vehicle which is to be towed.

(2) One or more shovels, and whenever practical the tow truck driver engaged to remove any disabled vehicle shall spread dirt upon that portion of the roadway where the oil or grease has been deposited by the disabled vehicle.

(3) One or more fire extinguishers of the dry chemical or carbon dioxide type with an aggregate rating of at least 4-B, C units and bearing the approval of a laboratory nationally recognized as properly equipped to make such approval.

(a) A person licensed as a repossession agency pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code is exempt from this section.

S. Signs, Tow Trucks (27907). There shall be displayed in a conspicuous place on both the right and left side of a tow truck or an automobile dismantler's tow vehicle used to tow vehicles a sign showing the name of the company or the owner or operator of the tow truck or the automobile dismantler's tow vehicle. The sign shall also contain the business address and telephone number of the owner or driver. The letters of the sign shall be not less than 2 inches in height and the lettering shall be in contrast to the color of the background upon which they are placed.

NOTE: California Vehicle Code Section 25 prohibits the display of any sign, mark, or advertisement indicating an official connection between any tow service and the California Highway Patrol.

T. Safety Chains (29004).

(a) (1) Except as required under paragraph (2), every towed vehicle shall be coupled to the towing vehicle or tow truck by means of a safety chain, cable, or equivalent device in addition to the regular draw bar, tongue or other connection.

(2) Any vehicle towed by a tow truck shall be coupled to the tow truck by means of at least two safety chains in addition to the primary restraining system. The safety chains shall be securely affixed to the truck frame, bed, or towing equipment, independent of the towing sling, wheel lift, or under-reach towing equipment.

(3) Any vehicle transported on a slide back carrier or conventional trailer shall be secured by at least four tie down chains, straps, or an equivalent device, independent of the winch or loading cable. This subdivision shall not apply to vehicle bodies that are being transported in compliance with Sections 1340 to 1344, inclusive of Title 13 of the California Code of Regulations.

(a) All safety connections and attachments shall be of sufficient strength to control the towed vehicle in event of failure of the regular hitch, coupling device, draw bar, tongue or other connection. All safety connections and attachments also shall have a positive means of ensuring that the safety connection or attachment does not become dislodged while in transit.

(b) No more slack shall be left in a safety chain, cable or equivalent device than is necessary to permit proper turning. When a draw bar is used as the towing connection, the safety chain, cable or equivalent device shall be connected to the towed and towing vehicle and to the drawbar so as to prevent the draw bar from dropping to the ground if the draw bar falls.

(c) Subdivision (a) does not apply to a semi trailer having a connecting device composed of a fifth wheel and kingpin assembly, and it does not apply to a towed motor vehicle when steered by a person who holds a license for the type of vehicle being towed.

(d) For purposes of this section, a "tow truck" includes both of the following:

(e) A reposessor's tow vehicle, as defined in subdivision (b) of Section 615.

(f) An automobile dismantler's tow vehicle, as defined in subdivision (c) of subdivision (c) of section 615.

(g) Vehicles towed by a reposessor's tow vehicle, as defined in subdivision (b) of section 615, are exempt from the multiple safety chain requirement of paragraph (2) of subdivision (a) so long as the vehicle is not towed more than one mile from the point of repossession and is secured by one safety chain.

(h) This section shall become operative only if Senate Bill 378 of the 1999-2000 Regular Session is enacted and becomes operative and amends Section 615 of the California Vehicle Code.

EXHIBIT I
2009-02-11

**EXHIBIT I
TOW SERVICES AUDIT FORM**

Tow Company: _____	Police Case #: _____			
Date: _____	Start Time: _____	End Time: _____	Call # _____	
Location: _____	VIN: _____			
Vehicle License # _____	Color: _____	Year: _____	Make: _____	Model: _____

Responding Officer: _____

This form is used to document when services are necessary to safely and effectively respond to a call for tow services. Your completion of this form places no obligation on you or the City of San Jose. Please verify that this tow service call required the use of the following services. You must complete this form for each vehicle towed and sign it before leaving the tow scene. Please note unusual circumstances. Select one type of tow service from below:

- A. **Basic Tow:** (Select any of the following as applicable)
- Immobilized Vehicle** – Vehicles with more than one flat tire or missing wheel; 2-wheel trailers with flat or missing wheel; vehicles with unsecured engines.
 - Special Handling** - For providing flatbed tow equipment at the request of the City, owner, insurance company, or other person lawfully entitled to possession of the vehicle for the purpose of minimizing damages as a result of the tow.
 - Hazardous material** – For the clean up and disposal of oil, fluids.
- B. **Service Call:** (Call authorized but no tow performed).
Total time from dispatch to release: _____ (Please state in fifteen minutes increments)
- C. **Extraordinary Services Tows:** (Select one from below)
- Tow services requiring more than the use of one Class A tow truck for more than one hour from the time of dispatch to the time of departing the scene.
 - Vehicles that have been driven off of embankments.
 - Accidents where a vehicle is overturned, burned, or imbedded in a structure or another vehicle.
 - Vehicles, which must be, recovered over six feet from the roadway.
 - Vehicles, which are in more than one piece as a result of a collision.
- Heavy Vehicle Tows:**
- Vehicles which are less than 6,000 Lbs. (empty) and require class B tow truck recovery. (e.g. fifth wheel trailers, small motor homes, horse trailers and heavily loaded one-ton trucks).
 - Vehicles which are more than 6,000 Lbs. (empty) but less than 26,000 Lbs. (empty) (e.g. medium to large motor homes, commercial trucks and trailers).
 - Vehicles which are more than 26,000 Lbs. (empty) (e.g. very large motor homes, bus or semi-truck and trailer)

Total Extraordinary Service Time: _____(Please state in fifteen minutes increments)

Responding Officer Notes: CHP 180 Form Completed Yes _____ No _____

Tow Operator: _____ Tow Permit # _____ Signature _____

Responding Officer _____ Badge # _____ Signature _____

Officer left scene before signing Officer refused to sign

Explain below:

Property Report

Tow Company _____

Date: _____ Police File Number: _____ Call Number: _____

Location: _____ VIN: _____

Vehicle License #: _____ State: _____ Month/Year: _____

Year: _____ Make: _____ Model: _____ Body Type: _____ Color: _____

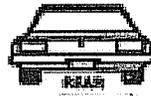
Vehicle Condition

Condition	Y	N	Item	Y	N	Item	Y	N	Item	Y	N	Item	Y	N	Condition
Wrecked			Seal (Front)			Registration			Camper			Left Front			
Burned			Seal (Rear)			Air Generator			Visual			Right Front			
Vandalized			Radio			Battery			Other			Left Rear			
Eng Strip			Tape Player			Differential						Right Rear			
Parts Strip			CD Player			Transmission						Seat			
Body Strip			Speakers			Automatic						High Caps			
Windows			Ignition Key			Manual						Special Wheels			

Property

Property	Y	N	Property	Y	N	Tools	Y	N	Power Tools	Y	N	Clothing	Y	N
Cell Phone			Camera											
Radio														
Firearm														
Tapes#														
CD's#														

Notes: _____



Tow Driver: _____ ID#: _____ Date: _____ Time: _____

Yard Staff / Supervisor Review: _____ ID #: _____ Date: _____ Time: _____

Notes: _____

INSTRUCTIONS: For insurance approval forward the following to:
RISK MANAGEMENT
 200 E. Santa Clara St., San Jose, CA 95113-1905
 1. Completed original of Form 149-7
 2. Copy of face page of Contract
 3. Copy of insurance requirements included in contract

NOTIFICATION OF CONTRACT BEING PROCESSED

Date: 2/7/2009

Insurance Type: Garage Keepers With Auto

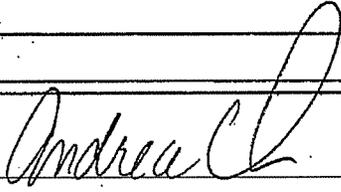
Contractor Century Tow		Contractor's Phone # 408-271-5031	
Project City Generated Zone Towing (Zone 3) - Revenue Generating		Project Amount \$0.00	
Estimated Start Date	<u>4/1/2009</u>	Estimated Completion	<u>3/31/2014</u>

Scope of Work
 Provide tow services in Zone 3 as required.

Department Purchasing Division: Purchasing
 Department Contact Gordon Extension 57049

PR/PO: _____ **COMPLIANCE WITH INSURANCE REQUIREMENTS**

Comments

Signature: 
 Risk Management

Date: 2/10/09

FOR RISK MANAGEMENT USE ONLY

 Date forwarded to Purchasing: 2/10/09

COMPLIANCE WITH BOND REQUIREMENTS

Signature _____ Date: _____
 City Clerk

Form 149-7 (4/06)

