

STATE OF TEXAS

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**MUNICIPAL WRECKER
SERVICES AGREEMENT
FOR THE NORTH, CENTRAL
AND SOUTH ZONES**

COUNTY OF BEXAR

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City") acting by and through its City Manager, pursuant to Ordinance No. 2008-10-09-0896 passed and approved on the 9th day of October, 2008 and by TXTOW CORPORATION d/b/a TEXAS TOWING through its President (hereinafter referred to as "Contractor"), both of which may be referred to herein collectively as the "Parties."

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings as set out below:

"Chief" shall mean the Chief of Police of the San Antonio Police Department.

"City" is defined in the preamble of this Agreement as the City of San Antonio, Texas, a Municipal Corporation incorporated in accordance with the laws of the State of Texas.

"City-Owned Vehicles" shall mean a vehicle owned or leased by the City of San Antonio. Such vehicles may be operated during all times of the day or night.

"City's Dispatch System" shall mean the City's Computer Aided Dispatching (CAD) system – Mainframe and Police Department Dispatch/Communication System.

"City's Information Technology" shall mean Oracle version 10g; SQL Server version 2005 SP2; SAP R/3 version ECC6 (2004s); SAP BW version 7.0 (2004s); SAP Kernel version 700; Business Objects/Crystal version XI R2; Solaris version 10; Windows version Server 2003 EE; Mainframe z/OS version 1.6; Natural version 4.1.4; Adabas version 7.4.4.

"City's Request for Proposal" shall mean the Request for Proposal for Towing Services Contract issued by the City on Tuesday, May 27, 2008.

"City's Vehicle Storage Facility or VSF" shall mean 3625 Growdon Road, San Antonio, TX 78227 or any other location that may be designated by the Chief, including the City's secondary Vehicle Storage Facility located at 442 9th Street, San Antonio, TX 78215. Both locations are specifically shown in Exhibit IV.

"Consent tow" shall mean any tow of a motor vehicle initiated by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle. The term does not include a tow of a motor vehicle initiated by a peace officer investigating a traffic accident or a traffic incident that involves the vehicle.

"Contractor" is defined in the preamble of this Agreement as TXTOW CORPORATION d/b/a TEXAS TOWING and includes its successors.

"Contractor's Dispatch System" shall mean the automated system as generally described in Exhibit II that allows Contractor to receive requests for Wrecker Services from City and to dispatch Equipment to the designated location.

"Contractor's Operations Plan" shall mean the written plan submitted by Contractor to City in accordance with City's Request for Proposal.

"Courtesy Tow" shall mean the towing of legally parked vehicles, at no charge to the vehicle owner and at the direction of City, for the purpose of clearing an area for special events, construction or other occasions as determined by City.

"Dispatched Location" shall mean the location provided by City to Contractor where Wrecker Services are to be initiated under this Agreement.

"Equipment" shall mean vehicles, associated tools and materials needed to perform Wrecker Services in accordance with this Agreement.

"Heavy Tows" shall mean the towing of a vehicle with a GVWR of over 26,000 pounds and may include large buses, trucks, trailers, and heavy construction equipment.

"Light Tows" shall mean the towing of a vehicle with a GVWR of 8600 to 10,000 pounds and may include automobiles, pickup trucks and small vans.

"Medium Tows" shall mean the towing of a vehicle with a GVWR of 10,001 to 26,000 pounds and may include medium sized pickup trucks, buses, and Recreation Vehicles.

"Nonconsent tow" shall mean any tow of a motor vehicle that is not a consent tow.

"Personnel" shall mean employees and subcontractors of Contractor who are performing services under this Agreement.

"Response Time" shall mean the time in which the City requests "Wrecker Services" as defined below to a specified location, either through the City's Dispatch System or other resource, and the time Contractor's personnel arrives at that location with the requested equipment and prepared to perform "Wrecker Services." The agreed upon Response Time for this Agreement is thirty (30) minutes.

"Response Time Performance Rating" shall mean the monthly percentage of dispatched calls arriving at the directed location within thirty (30) minutes. A satisfactory Response Time Performance Rating is ninety-eight percent (98%) and is calculated by dividing the number of Response Time Violations in the month by the number of requests by City for Wrecker Services in that month.

"Response Time Violation" shall mean instances in which City requests "Wrecker Services" as defined below to a specified location and Contractor fails to arrive at the location prepared to perform "Wrecker Services" as defined below within thirty (30) minutes. Response Time Violations are subject to liquidated damages.

"Towing Operations" shall mean the detailed manner in which Contractor performs "Wrecker Services" as defined below including towing and recovery services (including heavy-duty recovery), impounding and releasing of vehicles to City's Vehicle Storage Facility. Such operations are generally described in Exhibit II. In all cases, Contractor shall ensure that it abides by detailed procedures accepted within the industry that result in no damage to the property of City or a third-party.

"Wrecker Services" shall mean all labor, equipment (including tools) and material necessary for the prompt, reliable and efficient removal of motor vehicles from public streets, ways or other public property which are: 1) abandoned; 2) involved in a collision; 3) parked in violation of law; and/or 4) are to be checked for evidence (including recovered stolen vehicles and vehicles belonging to individuals in the custody of the police). "Wrecker Services" includes all associated administrative services and the associated clean-up and/or containment of debris and materials, with the exception of hazardous materials, from accident scenes, City/State Rights of Way and private property. "Wrecker Services" explicitly excludes the towing of junked vehicles, pursuant to the City's nuisance abatement program contained in Chapter 19 of the City Code.

"Zones" shall mean the area within the city limits of the City of San Antonio commonly referred to as the NORTH, CENTRAL AND SOUTH Zones and as more specifically described in Exhibit III.

II. TERM

2.1 Initial Term. Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall be three (3) years commencing on December 1, 2008 and terminating on December 31, 2011 (the "Initial Term").

2.2 Renewal Term. At the end of the Initial Term, City, in its sole discretion, may renew this Agreement for an additional one (1) year period (the "Renewal Term") commencing on January 1, 2012 and terminating on December 31, 2012. This Agreement shall be deemed to continue in full force and effect during the Renewal Term.

2.2.1 Notice of Renewal. Contractor shall give City written notice of its desire to have City exercise the Renewal Term at least sixty (60) days prior to the

expiration of the Initial Term. City, in its sole discretion, may negotiate terms for such renewal.

III. SCOPE OF SERVICES

3.1 Contractor's Rights. City hereby grants to Contractor the right to provide and Contractor hereby commits to provide Wrecker Services at City's direction to the areas commonly described as the North, Central and South Zones, located within the city limits of the City of San Antonio and more specifically described in Exhibit III. City reserves the right to change the boundary lines of the Zones. Such change shall be at the discretion of the City. Contractor's right to provide Wrecker Services in the Zones is at the direction of City and is initiated through City's Police Department Dispatch Communication System or other means. The granting of this right by City does not guarantee Contractor any quantity of work or monetary gain.

3.2 Contractor's Responsibilities. In addition to those services that may encompass "Wrecker Services," as defined in this Agreement, Contractor is specifically responsible for the services described below:

3.2.1 Towing Management. Contractor shall manage all nonconsent towing services and operations for the Zones in accordance with Exhibit II and ensure that Wrecker Services are performed to industry accepted procedures that achieve safety, reliability and the preservation of personal property in the possession or care of Contractor. City may direct amendment or alteration of Contractor's towing operations.

(a) Staffing Plan. Contractor shall be responsible for implementing a staffing plan in accordance with Exhibit II, to adequately service the Zones and meet the Response Time as defined in this Agreement. Such staffing plan must include adequate labor to undertake the management, operation and administration of Wrecker Services for the Zones.

(b) Uniforms. All employees or subcontractors of Contractor performing services under this Agreement shall be uniformed including identification badges, well-groomed, clean, prompt and courteous in order to provide services under this Agreement.

(c) Safety Plan. Contractor shall establish a safety plan, as generally described in Exhibit II, which provides a safe and healthy workplace and that minimizes on-the-job injuries by implementing safety standards based on applicable legal and voluntary codes, rules and standards.

(d) OSHA, Training, Certifications, Registrations and Continuing Education. In addition to the safety plan implemented by Contractor in accordance with this Agreement, Contractor shall comply with the Occupational Safety and Health Act (OSHA) and ensure that all wrecker

operators/drivers are permitted to perform Wrecker Services by the Texas Department of Licensing and Regulation (TDLR).

(e) Incident Management Towing Operator's License. All wrecker drivers performing services under this Agreement shall possess an Incident Management Towing Operator's License in accordance with Texas Occupations Code, Title 14, Section 2308.103, and shall maintain the required level of Continuing Education to renew such license annually. Upon request of City, Contractor shall provide proof of compliance which may include copies of such Incident Management Towing Operator's Licenses.

(f) Labor Relations. Contractor shall be responsible for labor relations with any trade or union represented among Contractor's Personnel and shall negotiate and be responsible for resolving all disputes between itself and Contractor's Personnel or any union representing such Personnel. Contractor shall ensure that in any agreement that Contractor has with any of its subcontractors that there be a similar provision whereby the subcontractors will **indemnify and hold City harmless** for any damages or losses including attorney's fees resulting from labor relation disputes.

(g) Parking Violations. If applicable, Contractor shall implement a plan in accordance with Exhibit II, to remit Parking Enforcement Hearing appearance bond money from any third-party retrieving a vehicle towed due to outstanding parking citations. Such remittance shall be to the Municipal Court Director of City and shall be made with commissions to City and in accordance with Article VIII of this Agreement.

(h) Acquiring Uncollected Towing Fees. All fees owed to Contractor in relation to the performance of Wrecker Services under this Agreement shall be the responsibility of and be collected by Contractor. Regardless of the collection of towing fees, Contractor is responsible for paying City its commission as required under Section 7.1 of this Agreement. Contractor shall refrain from discounting Wrecker Services or providing Wrecker Services at no cost under this Agreement without City's prior written consent.

(i) Complaint Resolution Process. Contractor shall have in place and make available to City prior to the commencement of this Agreement a Complaint Resolution Process as further described in Exhibit II. Such process shall be used to address third-party complaints against the manner in which Contractor has provided services under this Agreement. Contractor shall provide a copy of any written complaints and any information and/or documentation relating to any individual complaint to the City. Contractor shall use its best efforts to minimize complaints and resolve disputes with third-parties. Should a complaint involve monetary

damages in an amount less than FIVE HUNDRED DOLLARS (\$500.00), City's Police Chief may direct a resolution of the complaint.

(j) Information and Technology. Contractor shall use automated systems that shall be preapproved by City prior to the commencement date of this Agreement and which shall be implemented during a transition period determined by City that shall immediately precede the commencement date. Said automated system shall be compatible and interface with the City's Information Technology in the performance of Wrecker Services under this Agreement. All generated data, reports and invoices shall be capable of being submitted to City electronically via real time downloads. Such information may be requested by City on a daily, weekly, monthly, quarterly or annual basis.

(k) Contractor's Reporting Requirements. Contractor shall report to City monthly activity of Wrecker Services performed under this Agreement to include the number of requests for Wrecker Services made by City, the number of dispatched vehicle responses by Contractor to City's requests, Response Times to City's request, the number of Response Time Violations by Contractor and any additional information as requested by City. All reporting shall be made electronically unless otherwise directed by City. Additionally, Contractor is required to inform City immediately of any vehicle accident involving a towing vehicle operated by Contractor. City may consider the accident, and the surrounding circumstances, in reviewing Contractor's performance under this Agreement.

(i) City's Performance Review. At any time, including weekly, monthly, quarterly or annually City may conduct a performance review of this Agreement. The information used in assessing Contractor's performance may include the information submitted by Contractor and any other information deemed pertinent by City.

3.2.2 Equipment. Contractor shall provide all Equipment necessary to perform Wrecker Services in the Zones. All Equipment shall be in good working order for the duration of this Agreement. Contractor shall supply, upon request by City, a list of Contractor Equipment inventory dedicated to performance of this Agreement. In addition, Contractor shall ensure that Contractor's Equipment meet the following minimum criteria:

(a) Vehicles. Contractor shall have immediate access to a sufficient number of light duty tow trucks, medium duty tow trucks and heavy duty tow trucks necessary to perform under this Agreement. All of Contractor's vehicles shall be equipped with automated vehicle locator (AVL) devices and "real-time" global positioning systems (GPS) that will allow Contractor and City to monitor the location and direction of vehicles

used to perform Wrecker Services. Such AVL and GPS systems shall be on and operational at all times that a wrecker driver is on-duty. No vehicles used to perform Wrecker Services under this Agreement shall be older than ten (10) years and Contractor shall allow City access to inspect Contractor's vehicles or other Equipment upon request. All vehicles shall be equipped, at a minimum, with the following:

(i) Permanent labeling on each side door of the vehicle with the Tow Contractor's name and affiliation with City under this Agreement;

(ii) A four-way emergency flashing system and at least one flashing amber light (or other color permitted by State law) at least five (5) inches in diameter, capable of emitting light in a 360 degree radius, mounted high on the tow truck;

(iii) A light mounted behind the cab of the tow truck capable of illuminating the area of the tow scene under dark or foggy conditions;

(iv) Portable auxiliary brake lights, emergency flasher, turn signal, and taillight with protective pads/covers on the bottom, for use on towed vehicles;

(v) A warning alarm, clearly audible above the surrounding noise in the vicinity and designed to sound when the tow vehicle is shifted into reverse to signify that the vehicle is backing;

(vi) A fire extinguisher with an Underwriter's Laboratory rating of at least 5B:C. Class B and C trucks shall carry fire extinguishers with a cumulative UL rating of at least 10B:C;

(vii) A broom, shovel, container for accident debris, ten (10) pounds of grease and fluid absorbent material, and any other equipment necessary to clean up an accident scene in accordance with state and local law;

(viii) At least six (6) flares or other emergency reflective devices;

(ix) Tires, adequate in size and rating for the size and weight of the tow truck, with not less than 3/32nds inch of tread and mounted on rims secured with the manufacturer's recommended number of lug nuts;

(x) Two-way radio equipment capable of communicating with the Tow Contractor's dispatcher at all times. Such equipment shall be approved and licensed in accordance with federal law;

(xi) Any other equipment required by state law.

(b) Portable Data Collection/Handheld Mobile Computer Device. Within a time specified by City not to be less than sixty (60) days after the execution date of this Agreement, Contractor shall, at its own expense, procure handheld mobile computer devices which shall be approved by City and which shall act as a portable data collector terminal capable of capturing a signature and printing a receipt at the Dispatched Location. Contractor shall ensure that such mobile device is compatible and capable of interfacing with City's Information Technology. All information collected on the mobile computer devices, including response time, shall be downloaded at the end of each shift and made accessible to City electronically on a daily basis.

(c) Maintenance. Contractor shall ensure that all of Contractor's Equipment is subject to a Maintenance Plan, as further described in Exhibit II that includes daily, weekly, monthly and annual maintenance to support the safe and reliable operation of such Equipment.

3.2.3 Contractor's Personnel. Contractor shall supply all personnel as may be necessary to perform the required services of this Agreement. All personnel working under this Agreement shall be fully qualified and legally capable of performing their individual job duties, including possessing any necessary licenses or specialized training mandated by federal, state or local laws or regulations.

(a) City Badging. Wrecker drivers performing services under this Agreement, including subcontractors must be badged by the City's Wrecker Services Unit prior to providing services. The City requires the submission of an application for badge processing and shall coordinate with Contractor to ensure a timely badging process. The City's current fee for badging is fifteen dollars (\$15.00) and Contractor is responsible for all costs associated with meeting such badging requirements.

(b) TDLR. Contractor shall ensure that all wrecker drivers meet the criteria set forth by the Texas Department of Licensing and Regulation (TDLR) and shall provide proof of such compliance to City upon request by City.

(b) Employee Criminal Background Check Plan. Contractor shall ensure that all employees performing under this Agreement are subject to criminal background and history checks, including fingerprint verification by the San Antonio Police Department. Prior to commencing employment, all drivers shall be required to produce a statement from the San Antonio Police Department certifying that the driver is not a sex offender registered with the Texas Department of Public Safety and that the driver has never been convicted of any sexual offense or any offense

against a child. Any costs associated with the performance of a criminal background check or the issuance of a permit in accordance with Section 2308.201(d) of the Texas Occupations Code, Title 14, shall be paid by Contractor.

(c) Permission to Operate. Additionally, Contractor shall not allow a wrecker driver to operate under this Agreement if the wrecker driver:

- is under indictment or has been convicted or granted deferred adjudication that has not resulted in a dismissal for the offense of criminal homicide including murder, capital murder, manslaughter, but excluding criminally negligent homicide;

- during the seven years immediately preceding the application for employment, the applicant was convicted or granted deferred adjudication for the offense of criminal homicide, including murder, involuntary manslaughter, criminally negligent homicide, rape, sexual abuse, sexual assault, sale or possession of illegal drugs, robbery or felony theft;

- is under indictment or charged by information or complaint or convicted or granted deferred adjudication that did not result in dismissal for any offense involving fraud or theft, the unauthorized use of a vehicle, violation of any state or federal laws regulating firearms, violence to any person except conduct classified as no greater than a Class C misdemeanor offense under state law prostitution or the promotion of prostitution, sexual assault, sexual abuse, lewdness or indecency, for use, sale or possession of drugs, driving while intoxicated, or any job related offense;

- is on probation, parole, or mandatory supervision for an offense noted herein;

- has falsified or materially altered or omitted pertinent information in any governmental record, including an application for wrecker driver;

- has been convicted of four (4) or more moving violations of the traffic laws of this or any other state within the twelve (12) month period immediately preceding the date of the application;

- has two (2) suspensions pursuant to the provisions of this contract within any twelve (12) month period; has not met the requirements set forth in this Agreement or as set forth by federal, state and local rules and regulations;

- was suspended from operating pursuant to the prior contract with the City within three (3) years preceding the date of application;

- does not provide all the required information in the application or renewal and any documentation required to be provided with the application or renewal, including the statements requested above specific to sex offender registration and sexual abuse of a child;

(d) Twelve Hour Work Rule. Contractor shall establish a twelve (12) hour work rule requiring that no wrecker driver is on-duty for more than twelve (12) hours within any eighteen (18) hour period. Contractor shall document the implementation and compliance of such rule and upon the request of City, provide such documentation to City.

(e) Daily-List of Drivers. Contractor shall provide a list of on-duty wrecker drivers to City on a daily basis for the period beginning at 12:01 a.m. and terminating at midnight. Such list shall be submitted electronically to City and shall be updated immediately if changes occur during the twenty-four (24) hour period. City shall provide contractor with the email address for submission of the daily list.

3.2.4 Contractor's Towing Operations. Contractor shall operate and be capable of providing Wrecker Services in accordance with this Agreement twenty-four (24) hours a day, 365 days a year including weekends and holidays. Contractor shall perform Wrecker Services under the laws, regulations, orders, ordinances and guidelines of the State of Texas, Bexar County and the City of San Antonio. Contractor shall substantially comply with the Towing Operations described in Exhibit II. Such operations shall include, but are not limited to, the following:

(a) Dispatching. Contractor shall be capable of receiving requests for Wrecker Services from City through City's Dispatch System or other means as required by City, on a 24 hour basis, 365 days a year and immediately dispatch the appropriate Equipment and Personnel to the directed location to perform Wrecker Services within the Response Time of thirty (30) minutes.

(i) Contractor's Dispatch System. Contractor's Dispatch System, as generally described in Exhibit II, shall be automated and shall enable Contractor to receive requests for Wrecker Services directly from City's Dispatch System or other resource that City deems necessary, including but not limited to telephones, cell phones or other similar devices. Contractor shall ensure that Contractor's Dispatch System is seamlessly integrated to receive requests directly from City's Dispatch System and that Contractor's Dispatch System is compatible with City's Information Technology. Contractor is solely responsible for any costs incurred to achieve compatibility between Contractor's Dispatch System and City's Dispatch System and City's Information Technology. Contractor's

Dispatch System shall be capable of dispatching Contractor's Equipment to an identified location promptly and efficiently. Contractor's Dispatch System shall not utilize pagers and/or cellular phones.

(ii) Dispatched Call Monitoring. Contractor's Dispatch System shall allow City personnel to view and monitor, through City's existing Information Technology, active dispatch requests, the location of Contractor's Equipment and the direction such Equipment is heading. This information shall be updated every thirty (30) seconds providing up-to-the-minute status of dispatched calls.

(iii) Backup Dispatch. Contractor shall have in place a dispatch system or procedure approved by City that will act as a backup system for such circumstances as when Contractor's primary Dispatch System is inoperable by no fault of the Contractor.

(b) Response Time and Response Time Performance Rating. City and Contractor agree that the required Response Time for Wrecker Services performed under this Agreement is thirty (30) minutes. Contractor shall maintain a monthly Response Time Performance Rating of ninety-eight percent (98%) throughout the Term of this Agreement. Contractor shall report all Response Times, Response Time Performance Ratings and Response Time Violations to City by the third business day of succeeding month. Contractor shall submit documentation along with Response Time Violations indicating the reasons for the violation and preventive measures that have been taken to correct Response Time violations.

(i) Staging Plan. Contractor shall submit a staging plan to City within thirty (30) days prior to the commencement of the Initial Term of this Agreement that ensures Contractor's ability to arrive at any scene within Contractor's Zones in thirty (30) minutes. Such plan must receive City's written approval prior to implementation. Any deviation from the Contractor's submitted and approved staging plan shall be considered a breach of this Agreement.

(ii) Traffic Laws. Contractor shall obey all traffic laws while performing under this Agreement.

(iii) Multiple Towing Vehicles Required. When multiple towing vehicles are required to perform Wrecker Services, the Response Time of the second vehicle shall be no later than thirty (30) minutes from the time a second wrecker is requested.

(c) Courtesy Tows. Upon direction of City through its police officers or employees, Contractor shall tow vehicles for accommodations of public utility work, parades or street closures, street construction, for actual or threatened riot or civil disorder and/or emergency situations. Courtesy Tows are exempted from the City's compensation under Article VII.

(d) Police Directed Tows. Contractor shall perform a tow at the direction of any City police officer. Contractor shall obey the directions of police officers in performing such tows and shall ensure that such tow is performed with all due care to avoid interference with police activities and police information.

(e) Towing to City's VSF. Contractor shall develop and implement Standard Operating Procedures, which shall include the transfer of vehicle and tow detail data to City's Vehicle Storage Facility (VSF) operator, for towing of vehicles from the Dispatched Location to City's VSF when directed by City. Such Standard Operating Procedures must be approved by City prior to implementation.

(i) City's VSF Policies and Procedures. Upon arrival at City's VSF, Contractor agrees to comply with all instructions, policies, procedures and directions of City's VSF operator.

3.2.5 Emergency Contingency Plan. In the event of an emergency such as declared disasters, evacuations, severe inclement weather or any other event deemed by the City, the City's Emergency Operations Coordinator, or the City Manager, Contractor shall ensure continued operations by coordinating with one (1) or more designated backup Wrecker Service provider(s) whose purpose is to assist Contractor in meeting the requirements of this Agreement. Such backup Wrecker Service provider shall be designated by the City through its Chief at the time of the declared or deemed emergency. Contractor shall ensure that the backup Wrecker Service provider is utilized to appropriately cover a high volume of calls generated by the emergency.

(a) Wrecker Services performed under Section 3.2.5 above shall not be calculated in Contractors Response Time Performance Ratings and shall not subject the Contractor to any fees under Article IV of this Agreement. However, such instances must be documented and reported to City by Contractor in Contractor's monthly reporting in order to be exempted.

3.2.6 Contractors Prohibitions. In the performance of this Agreement, Contractor shall be prohibited from the following:

(a) causing damage to the persons or property of others;

(b) acting or inferring that Contractor's vehicles are emergency vehicles;

- (c) operating overhead emergency lights while en route to or from a tow scene;
- (d) disobeying traffic control devices (traffic lights, stop signs, etc.);
- (e) using any type of siren;
- (f) soliciting of any kind related to vehicles towed under this Agreement;
- (g) requiring the performance of repair work on a vehicle involved in an accident or breakdown in connection with providing Wrecker Services for such vehicle or limiting, in any way, a vehicle owner/operator's ability to have the vehicle towed to a destination of their choice;
- (h) making any repairs or alterations to a vehicle;
- (i) towing any vehicle which is occupied by any person, except as specifically directed by a police officer;
- (j) charging for services not performed or making duplicate charges for the same service or charge any fee in excess of those permitted under state law or this Agreement;
- (k) using profane or obscene language which offends a customer or any other person;
- (l) being verbally or physically offensive, abusive, disrespectful or discourteous to any customer, motorist, City employee or any other person;
- (m) touching any customer, motorist, City employee or any other person;
- (n) performing services under this Agreement while consuming, or while under the influence of drugs or alcohol;
- (o) operating any vehicle or other equipment in the performance of this Agreement in a careless, reckless, or negligent manner;
- (p) requiring any vehicle owner/owner's agent to make any statement or sign any document relieving the Contractor from responsibility for the condition of the vehicle or its personal effects prior to the owner's/owner's agent's inspection of vehicle or personal effects.

3.3 Contractor's Performance. All work performed by Contractor hereunder shall be performed to the satisfaction of the City. The determination made by the City shall be final, binding and conclusive on all Parties hereto. City shall have the right to terminate this Agreement, in accordance with Article X. Termination, in whole or in part, should Contractor's work be deemed unsatisfactory, based upon recommendations made

by the Chief and City Manager to the City Council and upon the passage of a duly authorized City ordinance directing the termination.

IV. FEE SCHEDULE

4.1 Fees to City. Contractor acknowledges and agrees that strict adherence to all terms and conditions of this Agreement and the laws of the City, County and State is material to this Agreement. The Parties agree that the actual damages that might be sustained by City as a result of Contractor's failure to meet any of the following requirements are uncertain and would be difficult to ascertain, and that the sums indicated below would be reasonable compensation for breaches of this Agreement. Contractor hereby promises to pay, and City hereby agrees to accept, such sums as liquidated damages, and not as a penalty, in the event of the particular breach listed below:

(a) Response Time Performance Rating. Failure to maintain a monthly Response Time Performance Rating of ninety-eight percent (98%) shall result in Contractor being assessed a fee in the amount of FIVE HUNDRED DOLLARS AND 0 CENTS (\$500.00) per month for each month falling below a ninety-eight percent (98%) Response Time Performance Rating. Additionally, Contractor shall be assessed an additional ONE HUNDRED DOLLARS (\$100.00) for each percentage point below ninety-eight percent (98%). Fractions of a percent shall be rounded to the nearest whole percent;

(b) Thirty Minute Response Time. Failing to respond within thirty (30) minutes of a request shall result in a fee of FIFTY DOLLARS (\$50.00) being assessed to Contractor per occurrence;

(c) Use of Safety Chains. The improper use of safety chains and/or wheel straps shall result in a fee of FIFTY DOLLARS (\$50.00) being assessed to Contractor per occurrence.

(i) Safety chains and wheel straps should be used to secure vehicles in tow. When using wheel lifts, two safety chains connected from the rear of the wrecker to the vehicle being towed along with two wheel straps should be used.

(ii) Rollback/Flatbed Wreckers should use two safety chains on the rear of their bed and two safety chains on the front of their bed securing the vehicle to prevent movement in any direction should the driver be involved in an accident. The loading device does not count as or take place of the safety chains as the wench may fail.

(iii) Dollies should be secured to the towed vehicle using wheel straps to secure the wheels being carried to the dollies.

(d) Reflective Vests or Jackets. Failure to wear Reflective/Safety Vest shall result in a fee of FIFTY DOLLARS (\$50.00) being assessed to Contractor per occurrence.

(i) Wrecker drivers should wear a reflective vest or reflective jacket at all times while working outside of the tow vehicle. Reflective vests or jackets must meet the ANSI/ISEA 207-2006 requirements for high visibility safety apparel. During daylight hours, a fluorescent shirt may be worn instead of the reflective vest or jacket, however, the fluorescent shirt must meet the ANSI/ISEA 207-2006 requirements for high visibility safety apparel.

(e) Improper Use of Tow Lights. The improper use of tow lights shall result in a fee of TWENTY FIVE DOLLARS (\$25.00) being assessed to Contractor per occurrence.

(i) Tow lights should be placed on top of and at the outer edges of the end of the vehicle being towed which is the furthest from the wrecker, no more than four feet from the trailing edge. Should the vehicle be made of a material that will not hold the magnetic light, the vehicle should be towed using a rollback wrecker.

(f) Failure to Clean Debris. Failure to properly clean and clear debris from roadways and pedestrian ways shall result in a fee of FIFTY DOLLARS (\$50.00) being assessed to Contractor per occurrence.

(g) Twelve Hour Limit. Failure to adhere to the 12 hour limit shall result in a fee of TWENTY FIVE DOLLARS (\$25.00) being assessed to Contractor per occurrence.

(i) No wrecker driver shall work beyond his/her scheduled twelve hour shift unless deemed an emergency by the Chief of Police or his/her designee.

(h) Light Duty Status. Failure to adhere to light duty status shall result in a fee of TWENTY FIVE DOLLARS (\$25.00) being assessed to Contractor per occurrence.

(i) A wrecker driver who has been placed on light duty status by a licensed physician shall not perform tow operations until released to full duty status.

(i) TDLR. Any violation of State towing laws and/or Rules as posted by the Texas Department of License and Regulations shall result in a fee of TWENTY FIVE DOLLARS (\$25.00) being assessed to Contractor per occurrence.

4.2 Appeals. Fees assessed for violations in accordance with 4.1(a) or 4.1(b) may be appealed to the City's Wrecker Service Unit. The process for such an appeal is as follows:

(a) Contractor shall provide written notice to the City's Wrecker Service Unit of its intent to appeal within five (5) business days of receiving a violation.

(b) The City's Wrecker Service Unit shall render an opinion on the validity of such violation within 30 to 45 days of receiving Contractors appeal.

(c) The City's Police Chief shall finalize the appeal, if necessary.

4.3 Non-Exclusive Remedy. The assessment of fees in this Article IV is in addition to City's right to terminate under Article X of this Agreement.

4.4 Submission of Fees. Once notified in writing by City of violations by Contractor and fees assessed to Contractor for such violations under this Article IV, Contractor shall submit payment of fees along with City's commission payment in accordance with Article VIII of this Agreement for the month immediately following the month in which the fee was assessed.

V. VEHICLE STORAGE FACILITIES

5.1 City's Vehicle Storage Facility. The City currently owns a Vehicle Storage Facility located at 3625 Growdon Road, San Antonio, TX 78227 and as more specifically described in Exhibit IV. This location shall be the primary location for vehicle storage under this Agreement. The City may also instruct Contractor to tow vehicles to 442 Ninth St, San Antonio, TX 78215 as City's secondary Vehicle Storage Facility.

5.2 City Operation. City or a City designee is responsible for the operation of City's Vehicle Storage Facility. Contractor shall comply with any and all policies and procedures mandated by City or City's designee for the conduct, vehicle delivery and vehicle storage at City's Vehicle Storage Facility.

5.3 Payment of Fees to Contractor. No fees are payable to Contractor from City under this Agreement. In instances where a payment is due to Contractor for towing vehicles to City's VSF, Contractor shall be paid under the policies and procedures of the operator of City's VSF.

5.4 Downtown Vehicle Storage Facility. As a condition of providing Wrecker Services in the Central Zone, Contractor is required to keep and maintain a licensed vehicle storage facility approved by the City within the City's downtown district, as defined in the City's Unified Development Code, that is capable of holding seventy-five (75) City dispatched vehicles at all times. Such facility must be maintained for the duration of this Agreement. This location shall be the primary location for Central Zone

parking violations and must be staffed and operated by Contractor 24 hours a day. Contractor shall take all City dispatched vehicles towed for parking violations to this location to be held for a seventy-two (72) hour period. If vehicles are not recovered by the owner/operator of the stored vehicle within the seventy-two (72) hour period, Contractor shall tow such vehicle to City's VSF.

5.5 City-approved Location. City has approved Contractor's Central Zone Storage Facility located at 422 Steves Ave., San Antonio Tx 78204 and as further described in Exhibit IV-B. Should Contractor desire to change this location Contractor must first seek City's approval through a written and duly executed amendment of this Agreement. This amendment may be signed by City's Chief of Police without additional action by the City Council.

5.6 Operation of Facility. Contractor shall operate the Central Zone Vehicle Storage Facility in compliance with Texas Occupations Code, Title 14, Chapter 2303 and all laws, rules, regulations and orders of the Federal Government, the State of Texas, the County of Bexar, and the ordinances, resolutions, safety and health codes of the City of San Antonio.

5.7 Inspection of Facility. Contractor's Central Zone Vehicle Storage Facility is subject to inspection by state, city, and county authorized health department officials, fire department, and other agencies relative to safety requirements.

5.7.1 Contractor shall immediately notify Chief, in writing, of any notices of violations which are received during or in connection with inspections performed under Section 5.7 above. A copy of any such report received by Contractor shall be immediately sent to the Chief, unless the notice or report was generated by the San Antonio Police Department.

5.7.2 City shall have the option to be present at all inspections and shall be given prior notice of inspections whenever possible within two (2) business days of inspection date.

5.8 Notice to City. If Contractor becomes aware of any condition in the Central Zone Vehicle Storage Facility that is unsafe or unhealthy, Contractor shall immediately notify the Chief in writing. City shall also be notified within two (2) days by Contractor of any accident or safety hazard that occurs on the premises of the Central Zone Vehicle Storage Facility. Contractor shall also advise City, in writing, of action Contractor has taken to remedy any safety hazard or other violation.

5.9 OSHA Compliance. Contractor shall provide access to the Central Zone Vehicle Storage Facility to authorized representatives of the Secretary of Labor for the purpose of inspecting or carrying out any of the Secretary's duties under the Occupational Safety and Health Act (hereinafter referred to as "the Act") of 1980, as amended. Contractor is responsible for any violation of the Act or any regulation issued hereunder related to Contractor's activities under this Agreement and shall immediately

remedy any conditions giving rise to such a violation. Contractor shall give City prompt written notice of any such violation. **CONTRACTOR SHALL DEFEND AND HOLD HARMLESS CITY FROM ANY FINE, PENALTY, OR LIABILITY IN CONNECTION WITH ANY VIOLATION OF THE OCCUPATIONAL SAFETY AND HEALTH ACT UNLESS SUCH FINE, PENALTY, OR LIABILITY SHALL ARISE FROM THE EXISTENCE OF A PREMISES DEFECT OVER WHICH CONTRACTOR HAS NO CONTROL OR DUTY UNDER THIS AGREEMENT.**

5.10 City's Access to Facility. In addition to any rights of access granted to City in this Agreement, City may at any time during the term of this Agreement, have access to Contractor's Central Zone Storage Facility for the purposes of inspection and to ensure compliance with the terms of this Agreement.

VI. RATES FOR SERVICE

6.1 Rates. Contractor shall charge the following rates for Wrecker Services performed under the terms of this Agreement:

6.1.1 Light Tows. For Light Tows, as defined in this Agreement, Contractor shall charge a towing rate of ONE HUNDRED AND TWENTY DOLLARS AND 0 CENTS (\$120.00). An additional fee of TWENTY-FIVE DOLLARS AND 0 CENTS (\$25.00) may be charged for the required or requested use of a Dollie to perform Wrecker Services.

6.1.2 Medium Tows. For Medium Tows, as defined in this Agreement, Contractor shall charge a towing rate of TWO HUNDRED AND FORTY DOLLARS AND 0 CENTS (\$240.00). An additional fee of THIRTY DOLLARS AND 0 CENTS (\$30.00) may be charged for the required or requested use of a Dollie to perform Wrecker Services.

6.1.3 Heavy Tows. For Heavy Tows, as defined in this Agreement, Contractor shall charge a towing rate of ONE HUNDRED AND FORTY-FIVE DOLLARS per hour, with a two (2) hour minimum charge. Additionally, should Contractor be required to utilize special equipment or procedures necessary to perform a Heavy Tow, Contractor may utilize those charges approved in Exhibit VI.

6.1.4 City-Owned Vehicles. Wrecker Services shall be provided by Contractor to City at no cost for all City-Owned Vehicles, as defined in this Agreement. Such services include tows, jump starts and tire changes.

6.2 Drop Fee. Except when instructed by police, when Contractor has arrived at the location of a requested tow and has attached equipment for towing as the first

action of performing Wrecker Services, the Contractor may require payment of a reasonable Drop Fee before releasing the vehicle to the owner/owner's agent or operator. City shall receive its compensation in accordance with Section 7.1 of this Agreement for tows subject to a Drop Fee. A "reasonable" Drop Fee should not exceed the following:

- 6.2.1 Light Tow\$35.00
- 6.2.2 Medium Tow.....\$50.00
- 6.2.3 Heavy Tow.....\$80.00

6.3 Special Equipment. In the event that circumstances require Contractor to use specialized equipment in the performance of Wrecker Services, Contractor may charge those rates as prescribed in Exhibit VI. Should Contractor be required to utilize special equipment not identified in Exhibit VI, Contractor shall charge a reasonable amount consistent with industry rates and standards for such equipment. The assessment of such additional amount requires Contractor to submit documentation of the necessity for such equipment and rate verification.

6.4 Types of Payment. Contractor shall accept cash, check, credit card and debit card, but shall not trade or barter for service.

6.5 Rate Reviews and Adjustments. The Rates described in Section 6.1.1, 6.1.2 and 6.1.3 will be reviewed by City in Years 3 and 5 of this Agreement. Rate adjustments may be given based upon changes in the Consumer Price Index (CPI) -- South Urban Transportation Index. Such adjustments shall be at City's sole discretion and shall be reflected in writing by an addendum, executed by the Chief of Police, which shall be attached hereto and incorporated herein for all purposes.

6.6 Fuel Adjustments. The formula for fuel adjustments is described in Exhibit VII.

VII. COMPENSATION TO CITY

7.1 City's Commission. As consideration for the right to provide Wrecker Services in accordance with the terms and conditions of this Agreement, Contractor shall pay to City SIX DOLLARS AND 0 CENTS (\$6.00) per nonconsent tow, including instances when an owner or operator of a vehicle arrives prior to a vehicle being removed and Contractor receives a fee for releasing the vehicle. Such payment shall be due to City in accordance with Article VIII of this Agreement and shall be due regardless of Contractor's actual receipt of payment from a third-party. The amount of SIX DOLLARS AND 0 CENTS (\$6.00) is incorporated in the rate for Wrecker Services as described in Article VI and Contractor shall not seek to receive any additional amounts from any third-party receiving Wrecker Services to cover City's commission.

VIII. PAYMENT TERMS

Within ten (10) calendar days following the close of each month, Contractor shall submit to City the commission fees as specified in Article VII. In the event Contractor does not submit the commission fees by the tenth calendar day following the close of the month, City shall give Contractor written notice and Contractor shall have two (2) calendar days from the receipt of notice to submit the required commission fees unless the time period is extended in writing at the sole discretion of the City. Failure by Contractor to submit commission fees within two (2) calendar days notice shall subject Contractor to a fee of an additional ten percent (10%) of the amount due and owing by Contractor to City and shall make Contractor in default of this Agreement.

IX. RECORDS RETENTION

9.1 Records Retention Period. Contractor shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of this Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Contractor to return said documents to City prior to or at the conclusion of said retention period.

9.2 Specified Records. Contractor shall retain all records, including but not limited to tow invoice copies, inventory and condition reports for Contractor's Equipment and any facilities inspection records and within twenty-four (24) hours of the City's request, Contractor shall make available such records for inspection, audit or copying by City or its authorized representative.

9.3 Notification. Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Contractor understands and agrees that City will process and handle all such requests.

X. SUSPENSION/TERMINATION

10.1 Suspension. City may summarily suspend this Agreement should there be reason to believe that Contractor has breached this Agreement, including violation of any City, State or Federal laws. Such suspension shall remain in effect until such time as the City determines appropriate measures to ensure Contractor's future compliance. Grounds for such suspension include, but are not limited to the following:

- (a) Failure to abide by any terms or conditions of this Agreement;

- (b) Failure to keep and maintain adequate proof of insurance or bond as required by this Agreement;
- (c) Use of substandard, unauthorized or dangerous equipment;
- (d) Failure to maintain any equipment required under this Agreement;
- (e) Failure to pay city's commission or any other fees collectible under this Agreement;
- (f) Failure to maintain a Response Time Performance Rating of ninety-eight percent (98%) for two (2) consecutive months;
- (g) The commission of any crime by Contractor, or any owner, part owner, partner, business associate, principal party, officer, or director.

10.2 Termination Defined. For purposes of this Agreement, "termination" shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

10.3 Termination Without Cause. This Agreement may be terminated by either party upon sixty (60) calendar day's written notice, which notice shall be provided in accordance with Article XI. Notice. Should Contractor exercise its option to Terminate Without Cause, City may, at its discretion, seek to recover any and all costs or expenses it may incur as a result of Contractor's action through the Performance Bond required under Article XIII.

10.4 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article XI. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

10.4.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XVII. Assignment and Subcontracting.

10.5 Defaults With Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this section, same shall be considered an Event of Default. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article XI. Notice, to cure such default. If Contractor fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice or adoption of an ordinance, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another Contractor to complete the work required in this Agreement. Should City exercise its option to terminate this Agreement for Contractor's failure to cure any default, City may, at its

discretion, seek to recover any and all costs or expenses it may incur as a result of Contractor's inaction through the Performance Bond required under Article XIII. The following actions are defaults which may be cured by Contractor:

10.5.1 Performing unsatisfactorily in the sole discretion of City.

10.5.2 Failing to perform or failing to comply with any covenant herein required as determined by the City.

10.5.3 Bankruptcy or selling substantially all of company's assets

10.5.4 Failure to comply with the terms and conditions stated in Article XVIII. SBEDA.

10.6 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

10.7 Ceasing Operations. Upon the effective date of expiration or termination of this Agreement, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Agreement.

10.8 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.

10.9 Mediation/Arbitration. The Parties may agree to resolve any disputes that may arise under this Agreement through mediation and/or non-binding arbitration as follows:

- (a) The party seeking resolution of a matter shall provide the other party with a written request for non-binding mediation. If the party receiving notice agrees to such non-binding mediation such shall be held within 30 days of the date of receipt of the request.
- (b) A mediator shall be jointly selected, or if a mediator cannot be agreed upon, the parties will submit a request to the American Arbitration Association to administer the mediation and select a neutral.
- (c) If the dispute is not resolved at mediation, either party may request non-binding arbitration. Such arbitration shall be conducted in accordance with the commercial arbitration rules of the American Arbitration Association. The arbitration need not be administered by the American

Arbitration Administration, however, if the parties agree in writing to alternative administration.

10.10 Transition Period. Regardless of the method by which this Agreement is terminated, Contractor agrees to provide a transition period of termination for a period not to exceed two (2) months upon City's request. During such transition period, Contractor may continue to provide Wrecker Services as provided for under this Agreement.

XI. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Attn: Chief
San Antonio Police Department
214 W. Nueva
San Antonio, Tx 78207

If intended for Contractor, to:

Texas Towing
Attn: Buddy Ford
422 Steves Ave.
San Antonio, TX 78204

XII. DOCUMENTS, REPORTS, AUDITS

12.1 Documents. Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the Wrecker Services rendered hereunder (hereafter referred to as "documents"), and shall make such documents available to the City at their respective offices or through electronic delivery, at all reasonable times and as often as City may deem necessary during the Initial Term, Renewal Term and any extension hereof, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

12.2 Reports. Upon the request of City, Contractor shall provide all reports relating to the performance of Wrecker Services under this Agreement. Contractor shall provide such reports to City within five (5) business days after Contractor receives City's written requests, unless the Parties agree in writing on a longer period of time.

12.2.1 City may require Contractor to submit reports in a format that is reasonably requested by the City. Contractor may seek approval of the City by proposing a format in which information shall be provided to City.

12.3 Performance Audit. Periodical performance audits will be performed during the Term of this Agreement. Such audits may be performed by City or a designated representative of City and may include, but not be limited to, a comprehensive review of towing operations, dispatching services, response time, equipment, personnel and safety. After the completion of such performance audit, Contractor shall be notified by the Chief of conditions needing correction or improvement. Contractor shall promptly comply with any such notice.

12.4 Financial Audit Report. As a service provider of City, Contractor's financial condition is pertinent to City's ability to serve the public at large. Within twenty (20) days of City's request, Contractor shall submit a financial statement audited by an independent certified public accountant in accordance with generally accepted auditing standards. The audited financial statement shall include a detailed schedule of receipts and expenditures by budgeted cost category. Contractor shall submit the audited financial statements and any management letter prepared by the independent Certified Public Accountant to both the City's Finance Department at P. O. Box 839966, San Antonio, Texas 78238-3966, and to the San Antonio Police Department at 214 W Nueva, San Antonio, Texas, 78207.

XIII. PERFORMANCE BOND REQUIREMENTS

Contractor shall cause to be made, executed and furnished to the City upon the effective date of this Agreement a Performance Bond made payable to the City of San Antonio in a form acceptable to City in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00). Such bond shall be executed by a corporate surety licensed pursuant to the Texas Insurance Code and listed on the U.S. Department of Treasury's Listing of Approved Sureties and conditioned on the faithful performance of all conditions and covenants of this Agreement. The Performance Bond is to be renewable on each anniversary date of this Agreement or extension hereto. The performance bond is subject to annual review by the City and the amount of the bond may be increased at the sole discretion of the City as it deems necessary.

XIV. INSURANCE

14.1 Certificate of Insurance. Prior to the commencement of any work under this Agreement, Contractor shall furnish an original completed Certificate(s) of Insurance to the San Antonio Police Department and the City Clerk's Office, and which shall be clearly labeled "Wrecker Services Contract" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to the San Antonio Police Department and the Clerk's Office, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

14.2 Right to Review. The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance will City allow modification whereupon City may incur increased risk.

14.3 Coverage. A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII). If mutually agreeable to the parties herein, Contractor may elect to add any or each Subcontractor as an additional named insured to its policy or policies in lieu of separate policies for each party. The Contractor and each Subcontractor shall maintain the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance (or Garage Liability) to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

d. Personal Injury e. Contractual Liability f. Environmental Impairment/Impact – sufficiently broad to cover disposal liability.	
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit for Bodily Injury and Property Damage</u> of \$1,000,000 per occurrence
5. Garage Liability (or Commercial General Liability above) a. On-Tow Coverage b. Non-owned vehicles c. Garage Keepers coverage on a direct primary basis d. Each towing vehicle must carry a sublimit of at least \$300,000.00 liability limit and a property damage deductible of \$2,500.00 or less e. Comprehensive loss coverage f. Specific causes of loss coverage g. Collision coverage	For <u>Bodily Injury and Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
6. Pollution Liability coverage a. MCS-90 endorsement b. Hazmat/Environmental Services	\$1,000,000.00 per occurrence

14.4 Copies Upon Request. The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Police Department
P.O. Box 839966
San Antonio, Texas 78283-3966

14.5 Incorporated Provisions. Contractor agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of City-owned vehicles under the Auto Coverage, workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for non-payment of premium.

14.6 Suspension, Cancellation or Non-Renewal. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

14.7 Stop Work Order. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder until such time as Contractor demonstrates compliance with the requirements of this Article XIV.

14.8 No Limitation. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.

14.9 Primary and Non-Contributory. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

14.10 Separate Obligation. It is understood and agreed that the insurance required is

in addition to and separate from any other obligation contained in this Agreement.

14.11 Liability for Equipment. Contractor and any Subcontractors are responsible for all damages to their own equipment.

XV. INDEMNIFICATION

15.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR's activities under this AGREEMENT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, Contractor or subcontractor of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT.

It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by CONTRACTOR to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. CONTRACTOR further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

15.2 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Contractor shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Contractor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

15.3 Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor under worker's compensation or other employee benefit acts.

XVI. INDEPENDENT CONTRACTOR

Contractor covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and Contractors; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and Contractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Agreement and that the Contractor has no authority to bind the City.

XVII. ASSIGNMENT, SUBCONTRACTING AND CHANGE OF OWNERSHIP

17.1 No Assignment. Contractor shall not assign, transfer, convey, or otherwise dispose of any part of, or all of its right, title or interest in this Agreement, nor shall Contractor assign, transfer, convey or dispose of any agreement made with City covering the subject matter of this Agreement without first obtaining the written consent of City through a duly authorized City Ordinance of City's governing board. Any references in this Agreement to an assignee or transferee indicate only such an entity as has been approved by the City Council.

17.2 Subcontracting. Contractor is not prohibited from subcontracting for specific services related to this Agreement where Contractor retains full responsibility for acts of the subcontractor and such subcontracting is approved in writing by the City prior to the use of the subcontractor. Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees.

17.3 Breach. Should Contractor assign, transfer, convey, or otherwise dispose or attempt to dispose of its right, title or interest in this Agreement or any agreement made with City covering the subject matter of this Agreement, City may, at its option and through an action of its City Council, terminate this Agreement, and all rights, titles and interests of Contractor shall thereupon cease and terminate, notwithstanding any other remedy available to City under this Agreement or by law. The violation of this provision by Contractor shall in no event release Contractor from any obligations under the terms of this Agreement, nor shall it relieve or release said Contractor from the payment of any damages to City which City sustains as a result of such violation.

17.4 Change of Ownership. Contractor agrees to notify the City of any changes of ownership interest or control of Contractor's business entity not less than thirty (30) calendar days in advance of the effective date of such change. Notwithstanding any other remedies that are available to City under this Agreement, any change of ownership interest or control of its business entity may be grounds for the termination of this Agreement at the sole discretion of City.

XVIII. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

18.1 SBEDA Program. The City has adopted a Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the City.

18.2 Definitions. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Agreement:

SBEDA Enterprise ("SE") – A corporation, Limited Liability Company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.

Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.

Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE's participation does not count toward the SE utilization goal.

SBEDA Plan – The Good Faith Effort Plan ("GFEP"), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with Contractor's bid for this Agreement, attached hereto and incorporated herein as "Exhibit V".

18.3 Incorporation of Ordinance. The terms of the CITY's SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the "SBEDA Program") are incorporated into this Agreement by reference.

18.3.1 The failure of Contractor or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Agreement.

18.3.2 Failure of Contractor or any applicable SE to provide any documentation or written submissions required by the City or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.

18.3.3 During the Initial Term of this Agreement, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in Contractor's SBEDA Plan ("Exhibit V") shall constitute a material breach of the SBEDA Program and this Agreement.

18.3.4 Contractor shall pay all suppliers and subcontractors identified in its SBEDA Plan ("Exhibit V") in a timely manner for satisfactory services, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by Contractor to the City. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this Agreement.

18.4 Material Breaches of SBEDA. The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this Agreement.

18.4.1 Failure of Contractor to utilize an SE that was originally listed at bid opening or proposal submission to satisfy SBEDA Program goals in order to be awarded this Agreement, or failing to allow such SE to perform a Commercially Useful Function shall constitute a material breach.

18.4.2 Modification or elimination by Contractor of all or a portion of the scope of services attributable to an SE upon which the Agreement was awarded shall constitute a material breach.

18.4.3 Termination by Contractor of an SE originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the Agreement without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so shall constitute a material breach.

18.4.4 Participation by Contractor in a Conduit relationship with an SE scheduled to perform services that are the subject of this Agreement shall constitute a material breach.

18.5 Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any other remedies the City may have at law or in equity, or under this Agreement for material breach, including the specified remedies available under the SBEDA Program for Alternative Construction Delivery Method, the City shall be entitled, at its election, to exercise any one or more of the following remedies if the Contractor materially breaches the requirements of the SBEDA Program:

- (a) Terminate this Agreement for default;

- (b) Suspend this Agreement for default;
- (c) Withhold all payments due to the Contractor under this Agreement, if any, until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or
- (d) Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the City pursuant to the Agreement, or from any other amounts that may be due to the Contractor under the Agreement.
- (e) Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for services in a particular area, or if it becomes apparent that the SE is not qualified to perform services in a particular area.

18.6 Qualification of SE. Nothing in the SBEDA Program or any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform services in a particular area for the purposes of this Agreement.

18.7 Remedies Cumulative. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

18.8 City Process For Exercising SBEDA Program Remedies. The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the City to exercise in the event a contractor violates the SBEDA Program. The Chief shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the Agreement. If the recommended remedy is to terminate the Agreement, then the Chief or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

18.9 Special Provisions for Extension of Agreements. In the event the City extends this Agreement without a competitive bid or proposal process, the Chief shall establish the following, subject to review and approval by the SBEDA Program Manager:

- (a) a SBEDA Utilization Goal for the extended period; and
- (b) a modified version of the Good Faith Efforts (“Modified Good Faith Efforts Plan”) set forth in the SBEDA Program Ordinance, as amended, if Contractor does not meet the SBEDA Utilization Goal; and
- (c) the required minimum Good Faith Efforts outreach attempts that Contractor shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the Agreement extension document. The Contractor entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall subject Contractor to any of the remedies listed above and/or result in a new bid or proposal request of the Agreement that was considered for extension.

XIX. CONFLICT OF INTEREST

19.1 City’s Ethics Code. Contractor acknowledges that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as a City-owned utility. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

19.2 Contractor’s Certification. Pursuant to the subsection above, Contractor warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Contractor further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

XX. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by an amendment,

in writing, executed by both City and Contractor, and subject to the approval of the City Council, as evidenced by the passage of duly authorized City ordinance.

XXI. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXII. CERTIFICATIONS/LICENSES/PERMITS

22.1 Certifications. Contractor warrants and certifies that Contractor and any other person authorized or designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competency standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

22.2 License and Permits. Contractor and any subcontractor involved in the provision of any services under this Agreement, shall, at its own expense and cost, procure and keep in force during the term of this Agreement, all permits and licenses required by law to provide such services, and shall provide copies of such permits and licenses upon request to the City within ten (10) business days after receiving a request from City.

22.2.1 Nothing contained herein shall be construed as binding the City to the issuance of any license or permit needed by Contractor or any of Contractor's subcontractors to enable anyone to provide services hereunder.

XXIII. OWNERSHIP AND LICENSES

23.1 No Copyright. In accordance with Texas law, Contractor acknowledge and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government record produced by or on behalf of Contractor pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Contractor.

23.2 Government Record. The term "local government record" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

23.3 Property of City. Contractor acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Agreement will belong to and be the property of City and Contractor will be required to turn over to City, all such records. Contractor shall not, under any circumstances, release any records created during the course of performance of this Agreement to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.

23.4 Applicable Law. In accordance herewith, Contractor agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

XXIV. INTELLECTUAL PROPERTY

24.1 Royalties and Fees. Contractor agrees to pay all royalties and licensing fees associated with intellectual property and shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in this Agreement. Contractor shall defend all suits for infringement of any Intellectual Property rights. Further, if Contractor has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

24.2 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Contractor shall immediately:

- a) obtain, at Contractor's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,
- b) alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and
- c) reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is

pending.

24.3 Contractor further agrees to:

- a) assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement,
- b) assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and
- c) indemnify the City against any monetary damages and/or costs awarded in such suit;

XXV. COMPLIANCE

Contractor shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XXVI. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by City of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of City to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by City of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the City. Such changes must be approved by the City Council, as described in Article XX. Amendments. No act or omission by City shall in any manner impair or prejudice any right, power, privilege, or remedy available to City or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXVII. LAW APPLICABLE

27.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

27.2 Venue. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXVIII. LEGAL AUTHORITY

The signer of this Agreement for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained.

XXIX. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXX. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXXI. INCORPORATION OF EXHIBITS

Each of the Exhibits and Attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all exhibits and attachments:

<u>Exhibit I:</u>	City's RFP
<u>Exhibit II:</u>	Contractor's Operations Plan
<u>Exhibit III:</u>	Zone(s) Description
<u>Exhibit IV:</u>	City's Vehicle Storage Facility Description/Policies
<u>Exhibit V:</u>	Contractor's Good Faith Effort Plan
<u>Exhibit VI:</u>	Special Equipment Rate List
<u>Exhibit VII:</u>	Fuel Adjustment Formula

XXXII. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same is in writing, dated subsequent to the date hereto and duly executed by the parties, in accordance with Article XX. Amendments.

Signatures appear on next page.

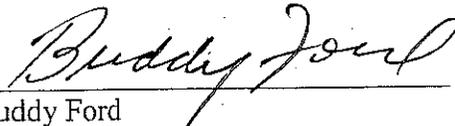
EXECUTED and AGREED to this the 24th day of November, 2008.

CITY:
CITY OF SAN ANTONIO

CONTRACTOR:
TXTOW CORPORATION
d/b/a TEXAS TOWING



Sheryl L. Sculley
City Manager

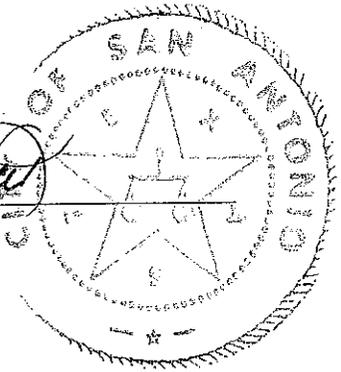


Buddy Ford
President

ATTEST:

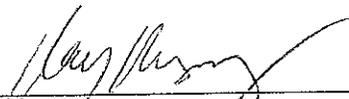


Leticia Vacek



ATTEST:

Approved as to Form:



Michael D. Bernard
City Attorney