

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
RSQU TOWING, INC.
dba
RESCUE TOWING & RECOVERY
for
TOWING SERVICE ROTATION LIST
AGREEMENT NO. 70-2018KC**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and RSQU TOWING, INC. dba RESCUE TOWING & RECOVERY, a California Corporation (Service Provider). The parties agree to the following:

1. **SCOPE OF SERVICES.** Service Provider shall furnish all technical and professional labor, and materials to satisfactorily comply with Attachment A, Scope of Services, and Exhibit A, Tow Policy Guidelines and Requirements, attached hereto and incorporated herein, as requested by District. Service Provider shall keep the Executive Director of the District or their designated representative informed of the progress of said services at all times.
2. **TERM OF AGREEMENT.** This Agreement shall commence on June 1, 2018 and shall terminate on June 30, 2023, subject to earlier termination as provided below.
3. **COMPENSATION.** Service Provider shall be responsible for collecting the District's Vehicle Release Fees, on behalf of the District, as reflected in Attachment B, Compensation & Reporting. Service Provider must remit the collected fees monthly within **20 calendar days** of receiving the Approval Notice, in the format as shown in the attached Exhibit B attached hereto and incorporated herein, each month. Payments must be made by check, payable to the District. The District has a right to request an audit at any time. If the audit is performed and errors are found, the District may charge the Service Provider for the audit costs.

4. **RECORDS**

- a. Service Provider shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to inspection of District at all reasonable times in the City of San Diego and such records shall be kept for at least three (3) years after the termination of this Agreement.
- b. Such records shall be maintained by Service Provider for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.
- c. Service Provider understands and agrees that District, at all times under this Agreement, has the right to review project documents and work in progress and to audit financial records, whether or not final, which Service Provider or anyone else associated with the work has prepared or which relate to the work which Service Provider is performing for District pursuant to this Agreement regardless of whether such records have previously been provided to District. Service Provider shall provide District at Service Provider's expense a copy of all such records within five (5) working days of a written request by District. District's right shall also include inspection at reasonable times of the Service Provider's office or facilities, which are engaged in the performance of services pursuant to this Agreement. Service Provider shall, at no cost to District furnish reasonable facilities and assistance for such review and audit. Service Provider's failure to provide the records within the time requested may result in Service Provider's suspension on the rotation list.

5. **COMPLIANCE**

- a. In performance of this Agreement, Service Provider and Service Provider's sub-contractors shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all

other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.

- b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.
6. **INDEPENDENT ANALYSIS.** Service Provider shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring provided, however, Service Provider shall possess no authority with respect to any District decision.
7. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of Executive Director (President/CEO) of District in each instance.
8. **INDEMNIFY, DEFEND, HOLD HARMLESS**
 - a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Service Provider agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost (including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the

performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.

- b. The Service Provider further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.a, requires that Service Provider pay all reasonable attorneys' fees and costs District incurs associated with or related to enforcing the indemnification provisions, and defending any Claim arising from the services of the Service Provider provided for in this Agreement.
- c. The District may, at its own election, conduct its defense, or participate in the defense of any Claim related in any way to this Agreement. If the District chooses at its own election to conduct its own defense, participate in its own defense or obtain independent legal counsel in defense of any Claim arising from the services of Service Provider provided for in this Agreement, Service Provider agrees to pay all reasonable attorneys' fees and all costs incurred by District.

9. **INSURANCE REQUIREMENTS**

- a. Service Provider shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:
 - (1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars

(\$2,000,000) Aggregate for bodily injury, personal injury and property damage.

- (a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.
 - (b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit C, Certificate of Insurance, attached hereto and incorporated herein).
 - (c) The coverage provided to the District, as an additional insured, shall be primary and any insurance or self-insurance maintained by the District shall be excess of the Service Provider's insurance and shall not contribute to it.
 - (d) The Commercial General Liability policy shall be endorsed to include a waiver of transfer of rights of recovery against the District ("Waiver of Subrogation").
- (2) Garagekeepers Legal Liability with limits no less than two million dollars (\$2,000,000) per Occurrence.
 - (3) Commercial Automobile Liability including On-hook (Owned, Scheduled, Non-Owned, or Hired Automobiles) written at least as broad as Insurance Services Office Form Number CA 0001 with limits of no less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
 - (4) Workers' Compensation, statutory limits, is required of the Service Provider and all sub-consultants (or be a qualified self-insured)

under the applicable laws and in accordance with “Workers’ Compensation and Insurance Act”, Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Employer’s Liability, in an amount of not less than one million dollars (\$1,000,000) each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee. This policy shall be endorsed to include a waiver of subrogation endorsement, where permitted by law.

- (5) Umbrella or Excess Liability insurance with limits no less than one million dollars (\$1,000,000) per occurrence and aggregate. This policy must provide excess insurance over the same terms and conditions required above for the General Liability, Automobile Liability and Employer’s Liability policies.

- b. Service Provider shall furnish District with certificates of insurance coverage for all the policies described above upon execution of this Agreement and upon renewal of any of these policies. A Certificate of Insurance in a form acceptable to the District, an exemplar Certificate of Insurance is attached as Exhibit C and made a part hereof, evidencing the existence of the necessary insurance policies and endorsements required shall be kept on file with the District. Except in the event of cancellation for non-payment of premium, in which case notice shall be 10 days, all such policies must be endorsed so that the insurer(s) must notify the District in writing at least 30 days in advance of policy cancellation. Service Provider shall also provide notice to District prior to cancellation of, or any change in, the stated coverages of insurance.
- c. The Certificate of Insurance must delineate the name of the insurance company affording coverage and the policy number(s) specifically referenced to each type of insurance, either on the face of the certificate or on an attachment thereto. If an addendum setting forth multiple insurance companies or underwriters is attached to the certificate of

insurance, the addendum shall indicate the insurance carrier or underwriter who is the lead carrier and the applicable policy number for the CGL coverage.

- d. Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on Service Provider or Service Provider's sub-contractors or any tier of Service Provider's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.
10. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies. Service Provider shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Service Provider or its agents, employees, or subcontractors.
 11. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider acknowledges that it is aware that because it is an independent contractor, District is not contributing to any fund on its behalf. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.
 12. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and

conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

13. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.
14. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.
15. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Service Provider shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized

in writing by District. Said materials and documents prepared or acquired by Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

16. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider of such termination and specifying the effective date thereof. The District may terminate this agreement for cause, as defined in Section 17 of Exhibit A, Tow Policy Guidelines and Requirements, five (5) days after written notice is given. In that event, all finished or unfinished documents and other materials shall at the option of District be delivered by Service Provider to the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101).

17. **DISPUTE RESOLUTION**

- a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.
- b. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may

be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, sub-contractor and all parties bound by this arbitration provision agree to join in and become parties to the arbitration proceeding.

- c. The foregoing mediation and arbitration procedures notwithstanding, all claim filing requirements of the Agreement documents, the California Government Code, and otherwise, shall remain in full force and effect regardless of whether or not such dispute avoidance and resolution procedures have been implemented, and the time periods within which claims are to be filed or presented to the District Clerk as required by said Agreement, Government Code, and otherwise, shall not be waived, extended or tolled thereby. If a claim is not timely filed or presented, such claim shall be time barred and the above dispute avoidance and resolution procedures, whether or not implemented or then pending, shall likewise be time barred as to such claims.
18. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.
19. **EXECUTIVE DIRECTOR'S SIGNATURE.** It is an express condition of this Agreement that said Agreement shall not be complete nor effective until signed by either the Executive Director (President/CEO) or Authorized Designee on behalf of the District and by Authorized Representative of the Service Provider.
- a. Submit all correspondence regarding this Agreement to:

Investigations Section
Lieutenant
Harbor Police Department
3380 North Harbor Dr.
San Diego, CA 92101
(619) 686-6570
investigations@portofsandiego.org

- b. The Service Provider's Authorized Representative assigned below has the authority to authorize changes to the scope, terms and conditions of this Agreement:

Orlando Sylvia
RSQU Towing, Inc.
dba Rescue Towing & Recovery
1640 Logan Ave.
San Diego, CA 92113
(619) 292-6518
Info.rescuetowing@gmail.com

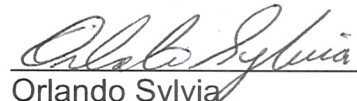
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- c. Written notification to the other party shall be provided, in advance, of changes in the name or address of the designated Authorized Representative.

SAN DIEGO UNIFIED PORT DISTRICT

**RSQU TOWING, INC. DBA
RESCUE TOWING & RECOVERY**

Mark G. Stainbrook
Vice President, Public Safety
Chief of Harbor Police



Orlando Sylvia
Manager

Approved as to form and legality:
GENERAL COUNSEL

By: Assistant/Deputy

A manually signed copy of this Agreement transmitted by email or any other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**ATTACHMENT A
SCOPE OF SERVICES**

San Diego Unified Port District

1. Service Provider will be required to impound, store, remove vehicles from a traffic collision, clean-up as required, attend to disabled vehicles and generally provide towing and storage service on a twenty-four (24) hour, seven (7) days a week, three hundred sixty-five (365) days a year basis.
2. It shall be the responsibility of the Service Provider to respond immediately and promptly provide towing services for vehicles to be taken into custody, when such service is called for by the San Diego Unified Port District's Harbor Police (HP). The towing services to be performed by the Service Provider shall include, but are not limited to, towing services for vehicles involved in accidents or disabled by other causes, impeding the flow of traffic, impound for evidence, abandoned in public places or on private property, and for any other reason as requested by the Harbor Police.
3. The detailed scope of work is defined in **Exhibit A**, Tow Policy Guidelines and Requirements.

**ATTACHMENT B
COMPENSATION & REPORTING
San Diego Unified Port District**

1. DISTRICT VEHICLE RELEASE FEE

- a. Service Provider shall charge the Vehicle Release Fee to the owner whose vehicle is towed and impounded as requested by the San Diego Unified Port District's Harbor Police (HP).

Description	Fee
District Vehicle Release Fee *	\$232

***Fee is subject to change in accordance with Port Code Section 2.01 throughout the term of the Agreement. An Amendment requiring no further Board action shall be executed to adjust the Vehicle Release Fee.**

2. TOWING SERVICE FEES

- a. Service Provider shall be allowed to charge (service) fees for towing services to the owner whose vehicle is towed and impounded as requested by HP in accordance with the following Rate Schedules:

TOWING	
Type	Fee
Basic / Flatbed	\$210
Medium Duty	\$250
Heavy Duty	\$300
Motorcycle	\$210

STORAGE	
Type	Fee (Per Day)
Car / Truck / Motorcycle	\$50
Heavy Duty Truck / Trailer / Bus	\$75

LABOR	
Type	Fee
General Labor	\$50/hour
R&R Linkage/Driveshaft	\$50/hour
Winching (No Tow)	\$100/hour
After Hours Release (Before 8:00 a.m. and after 5:00 p.m.)	\$105.00
Street Clean Up After Accident (No Tow)	\$50.00/hour
Drop Fee / In-Scene Release	\$50.00
Lockouts/Extrication	\$50.00

3. **TOW LOG & REPORT**

- a. **Tow Log/Invoices.** Service Provider shall maintain a record of each and every impounded vehicle for which District Vehicle Release Fees are due to the District under the Agreement, to include at a minimum:

- (1) the nature of the call;
- (2) the tow truck driver's name & truck used;
- (3) the date & start/stop times of the call;
- (4) the location of the call;
- (5) the year, make, model, and color of vehicle;
- (6) the vehicle identification number (VIN) & license plate state & number;
- (7) Name and identification number of police employee that requested the tow;
- (8) the date/time the vehicle was released;
- (9) the name, address and phone of the person vehicle released to;
- (10) the description of proof of identity provided;
- (11) the HP case number;
- (12) the name of employee that released vehicle; and
- (13) cost breakdown of fees collected.

- b. **Monthly Report.** Service Provider shall provide a monthly report to the Harbor Police to include the Tow Log or Invoices, as described above in Section 3.a, and a brief status update for each impound/release. The following information shall also be included on each report submitted:

- (1) Agreement No. 70-2018KC
- (2) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

"I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. _____."

- (3) Dates of service provided
- (4) Date of log
- (5) A unique report number

- c. Monthly Report shall also include the following documents attached:

- (1) itemized statement of all vehicles sold through lien sale procedures under the Agreement; and
- (2) for each vehicle that is lien sold, Service Provider shall submit a complete copy of the "Certification of Lien Sale", DMV form REG 168A.

- d. Service Provider shall email the Monthly Report and attachments to the District (HP) by the 10th of every month to hp_records@portofsandiego.org.

4. **APPROVAL NOTICE**

- a. Upon review and approval of the Monthly Report, the District (HP) will send an Approval Notice to the Service Provider and to the District's Finance Department, in the format as shown in attached Exhibit B, signed by the Chief of Harbor Police, authorizing the Service Provider's submittal of payment for the approved amount.
- b. If an error is found in the Monthly Report, the Service Provider will be notified. Service Provider will then have 7 calendar days to make their corrections and resubmit their report for approval.

5. **PAYMENT**

- a. Upon receipt of the Approval Notice, Service Provider shall submit their payment to the District for all District Vehicle Release Fees collected on vehicles that have been released, per the following requirements:
 - (1) Payment shall be submitted within **20 calendar days** of receiving the Approval Notice.
 - (2) All payments shall be made by check, payable and mailed to the District as follows:

San Diego Unified Port District
Attention: Financial Services
P.O. Box 120488
San Diego, CA 92112-0488
 - (3) Any untimely payment (i.e., payment received beyond 20 calendar days from the Approval Notice date) without prior written approval of the District (HP) may result in Service Provider's suspension on the rotation list. Multiple late payments shall be considered non-payment that may result in the termination of Agreement.

EXHIBIT A
TOW POLICY GUIDELINES AND REQUIREMENTS
San Diego Unified Port District
Revised: March 20, 2018

PORT OF SAN DIEGO
HARBOR POLICE DEPARTMENT



TOW POLICY GUIDELINES AND REQUIREMENTS
March 20, 2018

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1. PURPOSE

- a. The purpose of the San Diego Unified Port (District) Tow Policy Guidelines and Requirements (Policy) is to establish guidelines and requirements to efficiently manage and provide police-initiated towing service that will be of mutual benefit to the public, the San Diego Unified Port District's Harbor Police (HP), and the Tow (Service Provider) providing that service.

2. GOALS

- a. To provide the highest level of service to the motoring public at a fair and low cost to the person(s) who require(s) the services of a Service Provider.
- b. To provide a workable and comprehensive policy regarding towing and/or storage of abandoned, disabled, stored or impounded vehicles from public or private property.
- c. To provide grounds for addressing relevant matters pertaining to the administration of a rotational tow list and any other pertinent matters including procedures governing disciplinary action, up to removal from the rotational tow list for the Service Providers violating the agreement.

3. TOWING SERVICES - DEFINITIONS

- a. A call for towing service, which is initiated by a HP employee, for the purpose of storing or impounding a vehicle.
- b. A call for towing service, which is initiated by a HP employee, for the purpose of removing a vehicle which has been involved in a collision and the owner or driver has not specified a tow service or garage.
- c. A call for towing service, which is initiated by a HP employee, at the request of the driver of a disabled vehicle and the towing service or garage is unspecified.
- d. A call for clean-up service, which is initiated by a HP employee, for the purpose of removing fluids or solid materials from the highway, including sidewalks and parkways.
- e. The Policy shall apply to all Service Providers that have an agreement with the District.

4. RESPONSE TO CALLS

- a. Upon request by HP, the Service Provider shall respond promptly and provide towing services for vehicles to be taken into custody by HP. Such towing services shall include, but not be limited to, towing vehicles which are involved in accidents, disabled by other causes, impeding the flow of traffic, impounded for

evidence, abandoned in public places or on private property or for any other reason as requested by HP.

- b. The Service Provider shall maintain sufficient numbers of trucks and equipment to be able to respond to a HP tow request, within their designated areas, within fifteen (15) minutes. Heavy Duty (Class C) and Super Heavy Duty (Class D) tow trucks shall respond within forty-five (45) minutes of HP tow requests within the District's member Cities' limits.
- c. When dispatched by HP, the Service Provider shall not remove any vehicle involved in a collision until authorized by HP.
- d. In addition to removal of vehicles, the Service Provider shall remove, transport and dispose of all debris and fluids, including oil and gasoline, resulting from accidents in compliance with all applicable federal, state and local regulations concerning hazardous materials. In the event a call to remove a disabled vehicle is received by the Service Provider, necessitating response prior to completion of site clean-up, the Service Provider shall clear the current site sufficiently to restore normal traffic movement before proceeding to the subsequent request. Any vehicles remaining shall be towed to the storage facility at the earliest opportunity.
- e. In the event the Service Provider receives an additional call to remove a disabled vehicle that is interrupting traffic flow while an earlier call is being processed, the Service Provider shall clear the site specified in the prior call sufficiently to restore normal traffic movement and immediately proceed to the site specified in the additional call. Any disabled vehicle deposited or parked by the Service Provider at the site specified in any call shall be towed to storage at the earliest opportunity after the Service Provider has complied with the above provisions for restoring traffic movement at all specified sites.
- f. On any private property tows, the Service Provider shall observe and notify HP of any damage to any property.

5. ABANDONED VEHICLES

- a. Abandoned vehicles and private property tows shall comply with all provisions of California Vehicle Code sections 22650 et seq. Failure to comply may result in disciplinary action up to or including termination of the agreement.

6. TOWING SERVICE REQUIREMENTS

- a. Each Service Provider shall render 24-hour, 7-day a week towing service. Service Provider shall respond to the scene within fifteen (15) minutes from the time when called by the HP Communications Center. The response time for a Heavy Duty (Class C) & Super Heavy Duty (Class D) vehicle tow may be up to forty-five (45) minutes.

- b. The Service Provider agrees that its service, including the releasing of vehicles, will be available on a 24-hour, 7 days-a-week basis and that it will provide HP with a complete description of its towing operation for the District at the time it signs its Agreement with the District. For any vehicle release during business hours, the Service Provider shall ensure that a person wait no longer than twenty (20) minutes to take possession of his/her vehicle after payment of fees. After business hours, the tow service provider shall ensure a person waiting to take possession of his/her vehicle wait no longer than thirty (30) minutes for response from the Service Provider.
- c. Each Service Provider shall have dispatching capability to their trucks/drivers 24 hours per day. Each Service Provider shall maintain a minimum of one driver on-duty at all times. In addition, at least one driver will be on stand-by at all times.
- d. The Service Provider, its employees, or agents shall not have any financial interest in any repair shop(s) to which private parties are referred by that Service Provider, employee, or agent. The Service Provider is prohibited from requiring a tow to any particular repair shop(s) and is prohibited from requesting or receiving a fee from any repair shop(s) for towing a vehicle to that facility or for a referral to that facility.
- e. The Service Provider or its employees, or agents shall not engage in practices commonly referred to in the tow services business as "soliciting", "cruising", or "poaching."

6.1 Service Provider Requirements

- a. All Service Providers shall conduct their business in an orderly, ethical, business-like manner and use every means to obtain and keep the confidence of the motoring public.
- b. All Service Providers shall be responsible for the acts of their employees while on duty and for damage to vehicles while in their possession.
- c. All Service Providers shall be responsible for the protection of police-impounded vehicles, regardless of the location of storage, until the vehicles have either been released to their owners or disposed of through a legal process.
- d. Each Service Provider shall keep current on, and ensure compliance with, all laws and regulations associated with being a tow Service Provider.
- e. No Service Provider shall be directly involved in the towing related business of any other Service Provider that has an active Agreement with the District or with a company providing private security services which have the power or duty to patrol or enforce parking regulations on private or public property.
- f. All Service Providers shall comply with sections 9880.1 through 9884.17 of the California Business and Professions Code with regard to unauthorized charges or repair work on the vehicle in its charge and posting of notices.

- g. The Service Provider shall maintain a current/valid motor carrier permit and provide HP with a current copy. Failure to maintain a valid permit may result in automatic suspension of all activity until a valid motor carrier permit is obtained.
- h. The Service Provider shall maintain current registration on all vehicles. Each Service Provider must provide HP with a copy of valid registration for each vehicle in his/her/its fleet. Failure to maintain current registration on any vehicle will result in removing the vehicle from towing services for the District until valid registration is obtained.
- i. The Service Provider must maintain the standard current/valid insurance as required by the District, as defined in the Agreement. Auto insurance must be maintained for each vehicle. The insurance certificates must be provided to the District. Failure to maintain current/valid insurance may result in suspension of all towing activity until current/valid insurance is obtained.
- j. The Service Provider is responsible for complying with all applicable federal, state, and local laws and regulations pertaining to a drug and alcohol free workplace. The Service Provider is required to have a drug and alcohol policy in writing, which must be distributed and made easily accessible to all of their employees. The Service Provider is required to provide a copy of their drug and alcohol free workplace policy to HP, and any changes to that policy shall be submitted in writing to HP. Failure to comply with the requirements of this policy and the requirements set forth in the agreement will be handled on a case by case basis and may result in suspension and/or termination from providing tow services for the District.
- k. The Service Provider shall notify HP of any vehicles being towed or stored within the District pursuant to private party requests where the registered owner is not present, prior to leaving the District limits or within thirty (30) minutes of vehicle storage, whichever occurs first.
- l. Notwithstanding any provision or language that might indicate to the contrary, in responding to a call from HP, the Service Provider shall have no claim against the District for the cost of its service rendered, but shall look solely to the owner of the vehicle transported. The District makes no representation that such person will be financially responsible.
- m. All personal property located within towed or stored vehicles shall be surrendered to the vehicle owner upon request and upon presentation of proper identification, unless the vehicle is to be held for evidence.
- n. Any change in operating locations of a towing service provider shall be reported, in writing, to HP at least thirty (30) days prior to such change.
- o. Each Service Provider shall comply with section 27907 of the California Vehicle Code regarding signs on tow trucks. Service Providers shall only dispatch to the scene of the need tow trucks bearing the name of the towing service.

- p. All vehicles stored or impounded as a result of a tow ordered by HP shall be towed directly to a towing service storage lot unless HP or other person legally in charge of the vehicle requests that it be taken to some other location.

7. TOW YARD REQUIREMENTS

- a. Harbor Police Jurisdiction is concurrent with the member cities. Below is a list of the designated areas and the corresponding HP/District Facilities and addresses. The Service Provider's tow yard or office must be within five (5) miles of all HP/District locations. The mileage shall be straight line from the address to the HP/District Facility.

San Diego/Coronado

Harbor Police Headquarters
3380 North Harbor Dr. San Diego 92101

National City

Port of San Diego General Services
1400 Tidelands Ave National City 91950

Chula Vista/Imperial Beach

Harbor Police Sub-Station
950 Marina Parkway Chula Vista 91910

- b. All stored vehicles shall be stored and released from the Service Provider's office, which shall be located within five (5) miles from all HP facilities.
- c. Towing service storage lots shall be adequately fenced with gates locked and secured and reasonably well-lighted to maintain a maximum of security for stored and impounded vehicles. All storage lots may be inspected and approved by HP.
- d. Open area storage yard(s) shall comply with all requirements of the zoning and building codes of the jurisdiction of the facility. Perimeter gates and fencing shall be maintained to ensure security and discourage unauthorized access.
- e. There shall be adequate lighting to illuminate the entire storage/impound lot as well as all structures thereon. Evidence of compliance may be provided through photo metrics on a site plan. This compliance shall be presented to HP, if requested. Lighting shall be directed so as not to interfere with neighboring uses.
- f. Sign(s) identifying the tow service business to the public shall be visible and legible from the street during daylight and evening hours. A ring down line shall be provided at the tow yard/business office for direct ring to the Service Provider after hours.
- g. Adequate open storage space shall be provided to accommodate stored, impounded, and disabled vehicles resulting from HP calls for towing services. Service Providers may have more than one lot. All storage lots shall be located

within five (5) miles from all HP facilities.

- h. HP reserves the right to require any other security devices it deems reasonably necessary.
- i. Any damage to wall structures shall be repaired within 24 hours to ensure proper protection for the stored/impounded vehicles.
- j. Prior to the utilization of a new storage facility, the Service Provider shall obtain the approval of the Chief of Police or his/her designee and furnish the new address thirty (30) days in advance for inspection prior to its use for vehicles towed for HP.

7.1 Storage Security Responsibility

- a. The Service Provider shall store all vehicles, together with all accessories and equipment on said vehicles and all personal property in each vehicle, in storage facilities approved by HP for official police tow storage. Facilities utilized by the Service Provider for HP tow storage must be located within five (5) miles from all HP facilities.
- b. The Service Provider shall be held accountable for all personal property and vehicle accessories, together with the vehicle stored within its storage facility. The District, its officers, agents, and employees shall be relieved of all responsibility.
- c. The Service Provider shall not remove personal property from a stored vehicle. If the registered owner removes personal property from a stored vehicle, the Service Provider shall maintain documentation of such and will require a signed receipt from the registered owner for property released. The Service Provider shall immediately notify HP if any contraband, weapons or hazardous materials are found in the vehicle(s).
- d. No vehicle impounded at the direction of HP shall be released, sold or dismantled without written approval (signed release) from HP.
- e. Upon taking possession of the towed vehicle, the Service Provider assumes full responsibility for the vehicle and its contents.

7.2 Evidence Hold Or Special Handling Requirements (OPTIONAL)

- a. The secured "evidence hold" area must be within the confines of the Service Provider's primary storage facility, which shall be located within five (5) miles from all HP facilities.
- b. The Service Provider shall be able to provide an enclosed evidence hold area. The hold area must contain four walls, a solid roof, and a door with a locking device for protection from the elements of weather and other forms of

contamination.

- c. The evidence hold area should be closed to all employees of the Service Provider other than management. This area should have the capability to be locked and sealed by HP personnel, if necessary, and be accessible 24-hours, 7-days per week by members of HP.
- d. The bottom edge of the enclosed structure shall not be more than two (2) inches above the finished parking surface of the enclosed area.
- e. This space must be adequate to contain at least one (1) full-sized passenger vehicle.
- f. This space must be at least 1,000 square feet or more and within the Service Provider's main storage area.
- g. Vehicles impounded by HP for special investigation shall be stored in evidence hold until cleared by the investigating officers, at which time the owners shall be permitted a forty-eight (48) hour grace period at no charge in which to remove the vehicles from storage. Under no circumstances shall contents of vehicles with a "Police Hold" be removed.
- h. The area shall provide ample room for vehicle inspection, free of restriction from other vehicles, equipment, structures, or other objects.
- i. Structures shall have a hard floor of either concrete or asphalt.
- j. Only items being held as police evidence shall be kept in the evidence hold storage area. The evidence hold storage area and floor shall be kept in a clean condition.
- k. There must be adequate lighting and electrical power immediately available to the area.
- l. The area shall be free of pedestrian and vehicle traffic during the inspection.
- m. Vehicles with "evidence holds" shall not be touched, moved, or tampered with in any manner without HP's written consent.
- n. Protection shall also be provided to preclude evidence contamination by employees and other individuals during normal business hours.
- o. A log shall be maintained to document date, time, name and purpose of all person(s) entering the storage area for vehicles with "evidence holds."
- p. The Service Provider shall not charge the District for storage of vehicles that involve evidence holds.

8. BUSINESS OFFICE

- a. Service Provider must have one business office location within five (5) miles from all HP facilities, at which vehicles are released. Service Provider must be able to demonstrate experience and expertise in providing towing services to public agencies and have been in the towing business within the County of San Diego for a minimum of two (2) years prior to the start of agreement. If telephones are the means of communication for receipt of calls from HP, Service Provider shall provide a list of telephone numbers to be called in order of priority, and immediately upon any change in such telephone numbers, or in the priority thereof, shall notify HP in writing with the effective date of the change.
- b. The office shall be staffed with employees that can release vehicles, file and maintain documents, and answer questions from the public, both in person and on the phone, and/or electronically by e-mail.
- c. The business office shall include either the owner or a person who has the authority to conduct business and make decisions on behalf of the company for administrative purposes and release of vehicles.
- d. The office shall be staffed and open for business Monday through Friday, 8:00 a.m. to 5:00 p.m. Hours and charges shall be posted for public view in an unobstructed area inside the office.
- e. During business hours, the tow service office staff shall release any vehicle, upon payment of fees, within twenty (20) minutes. After business hours, tow service staff shall ensure that a person waiting to take possession of his/her vehicle shall wait no longer than thirty (30) minutes for response from the Service Provider. A ring down line shall be provided at the business office for direct ring to the Service Provider after hours.
- f. The tow service office may be closed on District recognized holidays; however, those days will be posted in the tow office and visible to the public at least five (5) business days in advance, provided, however, that the Service Provider must still comply with the requirement that no person waiting to take possession of his/her vehicle shall wait longer than thirty (30) minutes for response from the Service Provider.
- g. The towing service office shall possess a valid Business License authorizing them to do business in the jurisdiction(s) they are applying for.

8.1 Business Office Staff

- a. Employees of the Service Provider shall provide good customer service at all times.
- b. Employees shall refrain from any acts of misconduct including, but, not limited to, any of the following:

- (1) Rude or discourteous behavior.
- (2) Lack of service, selective service, or refusal to provide service which the Service Provider is or should be capable of performing.
- (3) Any act of sexual harassment or sexual impropriety, gender, racial, or religious discrimination.

c. Service Provider shall comply with the following non-discrimination policy:

- (1) Non-discrimination. In performing tow services pursuant to the Police Tow Policy Guidelines and Requirements, the Service Provider shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Labor Code section 1735.

8.2 Charges for Towing and Related Services

- a. Initial Towing Fee and Daily Storage Charges shall be in compliance with California Vehicle Code section 22658 and in accordance with the rates established in the executed Service Agreement with the District.
- b. Tow and storage rates shall be posted conspicuously in public view, in accordance with California Civil Code section 3070 (17 inches x 22 inches, with letters at least 1 inch in height).
- c. The Service Provider agrees to provide the following services to the District at or below the rates established in accordance with the executed Service Agreement:
 - (1) Basic Tow/Flat Bed Tow
 - (2) Heavy Duty Tow (over $\frac{3}{4}$ ton)
 - (3) Super Heavy Duty (over 1 ton)
 - (4) Inside Storage
 - (5) Outside Storage
 - (6) Storage of Trucks, Trailers, Buses
 - (7) Storage of Motorcycles
 - (8) Tow Dolly
 - (9) Dropped Drive Line
 - (10) Winching/Recovery
 - (11) Labor
 - (12) After Hours Release
 - (13) Street Clean Up After Accident (No Tow) – Hourly Rate
 - (14) Lock outs/Extrication
- d. With the exception of the basic tow rate, the preceding services are based on a 24-hour period. No charge or other fee shall be collected for a dry-run (i.e., when none of the above chargeable services is rendered by the Service Provider). It

will be the Service Provider's responsibility to collect its fees for services rendered pursuant to this Policy and its Agreement with the District, and the District shall not be responsible in any way for such charges.

- e. If clean up at collision locations is requested and no vehicle tow is being requested, the towing service provider may charge the District for clean up at the agreed upon rate based upon hours verified by HP on site.

8.3 District Vehicle Release Fee

- a. Service provider must collect the District's Vehicle Release Fee, on behalf of the District, in the prescribed amount established by the District. Service Provider must remit the collected fees monthly within 20 calendar days of receiving the Approval Notice from the District each month. Payments must be made by check, payable to the District. The District has a right to request an audit at any time. If the audit is performed and errors are found, then the District may charge the Service Provider for the audit costs.

8.4 Payment

- a. Payment of cash or credit card with proper identification shall be accepted by the Service Provider on calls for any services provided. The Service Provider, when responding to other HP-ordered tows, shall accept payment in the manner consistent with California Vehicle Code section 22651.1, as set forth below:

22651.1. Payment of towing and storage costs by credit card or cash. Persons operating or in charge of any storage facility where vehicles are stored pursuant to Section 22651 shall accept a valid bank credit card or cash for payment of towing and storage by the registered owner, legal owner, or the owner's agent claiming the vehicle. A credit card shall be in the name of the person presenting the card. "Credit card" means "credit card" as defined in subdivision (a) of Section 1747.02 of the Civil Code, except, for the purposes of this section, credit card does not include a credit card issued by a retail seller. A person operating or in charge of any storage facility who refuses to accept a valid bank credit card shall be liable to the owner of the vehicle or the person who tendered the fees for four times the amount of the towing and storage charges, but not to exceed five hundred dollars (\$500). In addition, persons operating or in charge of the storage facility shall have sufficient funds on the premises to accommodate and make change in a reasonable monetary transaction.

- b. Credit charges for towing and storage services shall comply with Section 1748.1 of the Civil Code.

9. TOW TRUCK DRIVERS

- a. Drivers shall perform all towing and recovery services in the safest and most

expedient manner possible.

- b. The Service Provider shall ensure that drivers assigned to respond to HP service calls are qualified employees, trained and proficient in the use of the tow truck and all related tow equipment, and able to apply the procedures necessary to safely tow and recover vehicles serviced under the Service Provider's agreement with the District.
- c. All Drivers assigned to respond to HP service calls will be:
 - (1) Awake and alert
 - (2) Punctual
 - (3) Able to speak and write English fluently and clearly
 - (4) Subject to a criminal history background records check to the reasonable satisfaction of the District's background requirements
 - (5) Possess a valid California Driver's License (CDL)
 - (6) Not under the influence of alcohol, marijuana or any controlled substance
 - (7) Not have DUI convictions
 - (8) Neat, clean and well-groomed in appearance
- d. Drivers shall possess the proper class license(s) and certificate(s) required for the class of tow vehicle driven and for the type of tow service performed. Class A licenses must be endorsed by the Department of Motor Vehicles (DMV) to allow for operation of special vehicle configurations and/or special cargo.
- e. All drivers may be required to submit to a HP criminal history records check. Felony and misdemeanor convictions may be disqualifying.

9.1 Driving Infractions of Employees

- a. The Service Provider and employees shall, at all times, comply with federal, state, and local laws and ordinances.
- b. In the event of a traffic infraction by a rotational tow truck driver, the Service Provider will be advised of the violation by HP. The Service Provider will be granted the opportunity to take necessary steps to ensure that the driver complies with the law. Any subsequent traffic violations may be cause for disciplinary action against the Service Provider and/or the involved employees.
- c. Any misdemeanor traffic violations may be cause for immediate disciplinary action against the Service Provider and/or the involved employees.
- d. Any conviction of the Service Provider or an employee involving a stolen or embezzled vehicle, fraud related to the towing business, stolen or embezzled property, a crime of violence, a drug-related offense, felony driving while under the influence of alcohol and/or a drug, misdemeanor driving while under the influence of alcohol and/or a drug, or moral turpitude may be cause for suspension or removal of the employee or Service Provider or termination of the Service Provider's agreement.

- e. A Service Provider or employee arrested/charged for a violation involving any of the crimes listed above, may be suspended from the rotation list until the case is adjudicated.
- f. HP may take appropriate enforcement or administrative action for any violations of law. Complaints for violations of the law not normally investigated by HP will be referred to the agency with investigative jurisdiction.
- g. Nothing herein shall be deemed to prohibit HP from immediately suspending, terminating, or denying a proposal of any Service Provider or employee whose conduct, in the opinion of the Chief of Police or his/her designee, is deemed to be a danger to the motoring public or who has engaged in conduct constituting a flagrant violation of the agreement.
- h. Service Providers shall not employ tow truck drivers with poor driving records or with traffic-related felonies. To do so knowingly or negligently would be grounds for suspension or termination.

Examples:

- (1) A driving record reflecting four (4) or more points in twelve (12) months constitutes a poor driving record. Five (5) or more points in twenty-four (24) months constitutes a poor driving record.
- (2) A driving record reflecting a conviction for driving while under the influence of intoxicating liquor or narcotic/drugs or both, within the preceding seven (7) years constitutes a poor driving record.
- (3) A driver with a commercial license reflecting three (3) or more points in twelve (12) months constitutes a poor driving record. Four (4) or more points in twenty-four (24) months constitutes a poor driving record.
- (4) For a driver with a commercial license reflecting a conviction for driving while under the influence of intoxicating liquor or narcotic/drugs or both, within the preceding seven (7) years constitutes a poor driving record.

9.2 Driver Training

- a. The Service Provider is solely responsible for the training of its employees. The Service Provider shall ensure tow truck drivers responding to calls initiated by HP have completed the training, as required by section 2436.5 of the California Vehicle Code, within the past five (5) years. The Service Provider shall provide proof of said training for every driver on staff.
- b. The training shall include, but not be limited to, all of the following:
 - (1) Tow truck driver and motorist safety.
 - (2) Vehicle operation.

- (3) Traffic control and scene management.
- (4) Communication procedures.
- (5) Demeanor and courtesy.

9.3 Driver Licensing

- a. The towing company shall ensure that only qualified and competent tow drivers respond to calls initiated by HP. Tow truck drivers shall be at least twenty-one (21) years old (in compliance with California Vehicle Code section 12515) and possess the following minimum class driver's license:

- (1) Class A tow trucks
valid Class C license or valid Class A license with a valid medical certificate
- (2) Class B tow trucks
valid Class A license with a valid medical certificate
- (3) Class C tow trucks
valid Class A license with a valid medical certificate
- (4) Class D tow trucks
valid Class A license with a valid medical certificate

- b. The Class A licenses must be endorsed to allow operation of special vehicle configurations and/or special cargoes. Tow truck drivers shall have the proper class of license and endorsement(s) for vehicle and cargo being transported as shown below:

<u>VEHICLE TYPE OR CARGO</u>	<u>CLASS LICENSE</u>	<u>ENDORSE/CODE</u>
Pulling more than one trailer	A	T
Transporting passenger for hire	A or B	P
Tank vehicle	A or B	N
Hazardous materials	A, B or C	H
Tank vehicle with hazardous materials	A, B or C	X

- c. Whenever tank vehicles, double trailers, and hazardous materials carriers are towed or driven, the driver needs to possess the appropriate class of license and endorsement.
- d. Empty buses can be towed without the passenger transport endorsement, but the tow truck driver must have the passenger transport endorsement if the bus is driven by him/her, even without passengers.
- e. Tow truck drivers may obtain a Class A driver's license which is restricted to towing other vehicles. The actual driving of damaged vehicles or vehicles being serviced requires that the Class A license not be restricted to towing vehicles.
- f. All tow truck drivers must be proficient in unlocking locked vehicles with minimal

damage, when so requested by HP.

9.4 Employee Uniforms

- a. Each Service Provider shall be required to furnish their employees with a distinctive company uniform. Minimum requirements for uniforms include a shirt, pants, and appropriate safety shoes.
- b. All drivers shall be in uniform before any towing or service operation begins.
- c. Each employee shall have sufficient uniforms so as to maintain a neat, clean appearance at all times.
- d. Each uniform shall have the company name as well as the employee's name in a conspicuous place. The tow company name and driver's first name shall be easily visible at all times; protective or inclement weather outer garments must also meet this standard.
- e. No wording, designs, photos, gestures, or anything that could be considered offensive or obscene to the general public shall be displayed by the tow truck drivers or on any part of the uniform.
- f. These dress standards are required in order to project a professional and positive image to the motoring public, of the tow company representing the District.
- g. Drivers shall wear appropriate warning garments (e.g., vests, jackets, shirts, retroreflective clothing) as required by section 1598 of the California Code of Regulations. Drivers shall further comply with all applicable requirements for warning garments set forth by the Occupational Safety and Health Administration (OSHA).

10. TOW TRUCK CLASSIFICATIONS AND EQUIPMENT

- a. All tow trucks and their equipment shall be in good working condition. Once a tow truck has arrived at a scene, the driver shall, without undue delay, move vehicles to a location where they do not impede or obstruct traffic, and remove any debris and fluids (except clear water) on the ground originating from the vehicles. Undue delay includes, but is not limited to, delays caused by lack of knowledge or training of the tow truck driver to effectively operate the tow truck or its equipment, faulty equipment, and the lack of necessary equipment or supplies to remove a vehicle and/or clean the scene.
- b. The Service Provider agrees to maintain all of its tow vehicles in compliance with all applicable provisions of the California Vehicle Code, including, but not limited to, sections 24605, 25253, 25300, 27700, and all Vehicle Code sections regarding smog equipment requirements, consistent with industry standards and practices. Said equipment requirements shall be maintained throughout the

term of the agreement. The Service Provider also agrees that all tow vehicles and tow trucks shall be maintained in a clean and neat manner and in sound mechanical condition at all times, and that on all accident calls the Service Provider will clean up and remove all debris from the accident scene as required by HP.

- c. The Service Provider must comply with all federal, state, and local air pollution control laws and regulations applicable to tow services.
- d. The equipment and performance of each Service Provider shall be subject to periodic review and/or inspection by the Chief of Police or his/her designee.
- e. Each tow truck shall be equipped with:
 - (1) Two-way radio or "hands free" telephone, or other acceptable communications equipment. Citizen's Band Class D is not acceptable.
 - (2) Two (2) covered buckets, each having a minimum capacity of three (3) gallons. One bucket shall contain at least three (3) gallons of absorbent material (such as sand or similar material in keeping with Environmental Protection Agency (EPA) guidelines) capable of soaking fluids. The second bucket shall be used for placement of debris and other materials cleaned from an incident site.
 - (3) One (1) broom.
 - (4) One (1) shovel.
- f. All State and Federal EPA Guidelines shall be followed.
- g. Control/Safety Labels - All controls shall be clearly marked to indicate proper operation, as well as any special warnings or cautions.
- h. All tow trucks under the District Agreement shall clearly display, in contrasting colors, the name of the Service Provider, address, telephone number and truck number.
- i. Tow trucks shall not display the words "Official Police Tow" or words to that effect, without prior written approval from HP.

10.1 Classes of Tow Trucks

- a. Tow Truck and Car Carrier Classifications: Tow truck and car carrier classifications are based on the truck chassis gross vehicle weight rating (GVWR) and the classification system used by the American Trucking Association (ATA) and truck manufacturers. Tow truck and car carrier classifications shall meet all applicable state and/or federal standards.
- b. There will be four (4) classes of tow trucks covered under this Policy.
 - (1) **Class A - Light Duty:**

- (a) Service Provider shall maintain a minimum of two (2) trucks with a manufacturer's GVWR of 14,000 to 19,500 pounds with wheel lift capability, and may have a car carrier. Class A equipment must include a 4-ton recovery equipment rating and 100 feet of 3/8 inch 6x19 cable or original equipment manufacturer (OEM) specifications.
- (b) A Service Provider that has a car carrier may be exempted from the wheel lift capability requirements; however, the car carrier must be an additional unit. A Class A one vehicle car carrier must be equipped with 14,000 to 16,000 GVWR chassis. Class A one vehicle must be equipped with a 16,001 to 19,500 GVWR chassis. Both must be equipped with a 3/8 inch 6x19 cable or OEM specifications.

(2) **Class B - Medium Duty:**

- (a) Service Provider shall maintain at least one (1) tow truck with a manufacturer's GVWR of 19,501 to 33,000 pounds. The truck shall be capable of providing air to the towed vehicle. Class B equipment must include a 19,501 to 33,000 GVWR chassis and 150 feet of 7/16 inch 6x19 cable or OEM specifications.
- (b) Service Provider may also have a car carrier; however, the car carrier must be an additional unit. A Class B car carrier must be equipped with a 19,501 + GVWR chassis and 50 feet of 3/8 inch 6x19 cable or OEM specifications.

(3) **Class C - Heavy Duty:**

- (a) Service Provider shall maintain access to at least one (1) three (3) axle tow truck with a manufacturer's GVWR of at least 33,000 pounds. The truck shall be equipped with air brakes and must be capable of providing air to the towed vehicle. Class C equipment must include a 33,000 to 50,000 GVWR chassis, 25-ton recovery equipment rating, and 200 feet of 5/8 inch cable or OEM specifications.

(4) **Class D - Super Heavy Duty:**

- (1) Service Provider shall maintain access to at least one (1) three (3) axle tow truck with a manufacturer's GVWR of at least 50,000 pounds. The truck shall be equipped with air brakes and must be capable of providing air to the towed vehicle. Class D equipment must include a 50,000 GVWR chassis, 30-ton recovery equipment rating, and 250 feet of 3/4 inch 6x19 cable or OEM specifications.

10.2 Inspections

- a. Tow trucks - An annual inspection may be conducted to determine if the Service Provider's tow vehicles comply with sections 24605, 25253, 27700, and 27907 of the California Vehicle Code.
 - (1) This inspection may be done by enforcement officers as directed by HP and may be done on an annual basis. Tow trucks found in violation of the Vehicle Code equipment sections shall be repaired, then inspected by HP before returning to service.
 - (2) Failure to correct deficiencies or equipment violations shall result in the tow service being suspended from the HP rotation list without further notice until the deficiency or violation is corrected.
 - (3) The inspection shall consist of a Level One inspection conducted by an enforcement officer, or any other officer assigned to the task, and a tow truck inspection (as set forth in the State of California CHP Tow Truck Inspection Guide). Evidence of a valid CHP inspection and current sticker will also be acceptable.
- b. Tow Facility - HP reserves the right to conduct an inspection at any time of the tow service facilities and/or its equipment.
 - (1) If any deficiencies and/or violations are discovered during inspection, the tow service will be so advised in writing. The Service Provider will be given five (5) business days to rectify the deficiency or violation(s).
 - (2) Exception: Any damage to walls and/or fence structures in the tow yard facility shall be repaired within twenty-four (24) hours.

11. CHARGES AND LIEN SALES

- a. Service Provider must be familiar with all applicable DMV regulations and have the expertise to handle the paperwork for the Abandoned Vehicle Abatement (AVA) Program, including lien sales, invoices and billing for each individual abated vehicle.
- b. Service Provider shall comply with California Vehicle Code section 10652 in reporting vehicles that have been stored for 30 days.
- c. Towing service providers shall, when disposing of unclaimed vehicles, abide by all California Code sections pertaining thereto. Vehicles flagged by HP for destruction may not be sold by lien sale, but must be destroyed and a certificate of destruction must be provided to HP.
- d. After seventy-two (72) hours, the Service Provider may bill the registered owner for lien sale charges, not to exceed the amount actually expended by the Service Provider. The Service Provider shall not bill the District for such charges.

- e. If hook-up or service has begun and is canceled by the vehicle owner/agent, or HP, charges owed (drop fee) shall be no more than one-half of the regular towing charge.
- f. The registered owner of any vehicle that spills a fluid requiring a Service Provider to use absorbent may be charged the current clean-up rate by the tow service provider.

11.1 Charges for “Evidence Hold” Vehicles

- a. The initial towing fee shall be billed to the registered owner of the vehicle.
- b. Storage for evidence hold shall commence only upon notification by an authorized HP officer.
- c. All such vehicles shall be released from evidence as soon as practicable. HP will provide formal notification to the Service Provider as to the effective date of release. Any storage occurring after such effective date shall be charged to the vehicle’s owner(s) in accordance with scheduled rates.
- d. Whenever a vehicle is held for evidence, the Service Provider will contact HP by the third (3rd) calendar day of storage to confirm its status. Notification will be made to Harbor Police Records Section.
- e. All lien sale proceedings for stored/impounded vehicles shall be in accordance with California Vehicle Code sections 9800 through 9808, 22851 through 22856, and Civil Code sections 3067 through 3074.
- f. The Service Provider shall comply with all provisions of California Vehicle Code Section 22850.3(b) for vehicles impounded pursuant to Vehicle Code Section 22850.

12. FINANCIAL INTEREST

- a. No Service Provider or proposer shall be directly involved in the towing related business of any other tow Service Provider or proposer within the District. Directly involved shall mean any of the following in common between Service Providers or proposers:
 - (1) Business license
 - (2) Insurance
 - (3) Tow truck or equipment ownership
 - (4) Employees
- b. Storage facilities sharing property with other businesses or services must be separated by conditions or barriers.

- c. No Service Provider may transfer or assign its agreement with the District without the express written consent of the District.
- d. District personnel shall not be offered gratuities, and requests for gratuities shall not be honored by Service Providers, employees or associates of each Service Provider. A violation of this section shall be cause for suspension or termination of the Agreement.

13. ROTATION RULES

- a. Whenever a vehicle owner is unable to specify a particular tow service, the Service Provider called shall be the next Service Provider from the rotation list, in a rotational order. The rotational order shall be under the control of HP's Dispatch Center to ensure equitable distribution of calls. The current method used by the District is to maintain a list of providers and for each call for service, to move down the list in sequential order in a circular fashion. When more than one vehicle is to be towed from an incident, the Service Provider on current rotation shall have preference on service to all vehicles at an incident. If that tow service provider cannot handle service for all vehicles, then the next Service Provider up on rotation shall be called to assist and shall not lose their position on the rotation list.
- b. The tow service provider shall advise HP, at the time of notification, if they are either unable to respond or unable to meet the required response time. If, after accepting the call, the Service Provider is unable to respond or will be delayed in responding, the Service Provider shall immediately notify HP's Dispatch Center.
- c. There may be times when a Service Provider that was not called to a scene comes upon a collision scene where a vehicle or vehicles are blocking a roadway or a vehicle is a hazard in the roadway and a HP officer requests their assistance in clearing the roadway. In such a case, the Service Provider may be requested to move the vehicle to a safe location, as directed by the HP officer, and leave it. There shall be no charge for this assistance, and the assistance provided shall not change the Service Provider's place in the rotation.
- d. Service Provider shall not respond to a HP call assigned to another Service Provider unless requested to do so by HP.

14. RECORDS & REPORTING

- a. The Service Provider shall maintain an accurate record of all vehicles towed pursuant to its agreement with the District.
- b. **Tow Log/Invoices:** Service Provider shall maintain a tow log of all tow services furnished. The log shall be maintained at the Service Provider's place of business. Log shall, at a minimum, include the following:

- (1) the nature of the call;

- (2) the tow truck driver's name & truck used;
 - (3) the date & start/stop times of the call;
 - (4) the location of the call;
 - (5) the year, make, model, and color of vehicle;
 - (6) the vehicle identification number (VIN) & license plate state & number;
 - (7) Name and identification number of police employee that requested the tow;
 - (8) the date/time the vehicle was released;
 - (9) the name, address and phone of the person vehicle released to;
 - (10) the description of proof of identity provided;
 - (11) the HP case number;
 - (12) the name of employee that released vehicle; and
 - (13) cost breakdown of fees collected.
- c. The Service Provider shall file required reports and notifications with the DMV in the manner required by law.
 - d. The Service Provider's record keeping system must allow the Service Provider to quickly and efficiently locate records and information.
 - e. All records for tow services, impounds and storage requested by HP shall be maintained in segregated files from the files of other law enforcement agencies.
 - f. Reports submitted shall contain information concerning services provided under the Agreement only.
 - g. At the Service Provider's primary office, business records shall also be maintained relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, lien sale actions, Federal Communication Commission licensing (if applicable), and non-police tows.
 - h. The records of all vehicles impounded or stored at the direction of the District shall be available for inspection only to authorized officials of the District and/or Harbor Police.
 - i. HP may inspect all Service Provider records without notice during normal business hours.
 - j. Service Provider shall permit the HP to make copies of business records at their place of business, or to remove business records for the purpose of reproduction. HP shall provide a receipt for any original record removed from the place of business.
 - k. Records shall be maintained and available for inspection for three (3) years from the date that the current agreement commences.
 - l. Failure of the Service Provider to comply with inspection requirements shall be cause for suspension.
 - m. Service Provider shall maintain a current list of drivers. This list shall contain

current information on owner(s) and drivers. Specific information furnished shall include:

- (1) Name
- (2) Residence address
- (3) City
- (4) Zip code
- (5) Telephone numbers
- (6) Date of birth
- (7) Driver's license number
- (8) Vehicle unit number
- (9) Tow Service Provider's permit number
- (10) Date of permit
- (11) Date of hire
- (12) Date of current list
- (13) Any other personnel information that may be requested by HP

Upon request, this information shall be supplied on a towing service personnel report form. This form must be signed and dated by an authorized representative of the Service Provider. False and/or misleading information is cause for termination.

- n. Service Provider shall record its time start and time stop on every official assignment. Such records shall be made available and open to examination by the District.
- o. HP may contact the Service Provider via telephone daily to compare the Service Provider's list of towed vehicles with HP's list of towed vehicles.
- p. **Monthly Report:** Service Provider shall submit a Monthly Report of released vehicles to HP. The report shall include the Tow Log, as described above in Section 14.b.
- q. Monthly Report to HP shall also include the following totals:
 - (1) Total number of police impounds
 - (2) Total number of times dispatched by HP
 - (3) Total number of HP calls resulting in impounds
 - (4) Total number of calls answered in which time beyond one (1) hour was required to handle
 - (5) Total number of Vehicle Release Fees collected on behalf of the District
- r. Records for each vehicle shall be maintained for a period of not less than three (3) years from the date of each tow. Records shall conform to generally accepted accounting principles.
- s. Service Provider shall maintain a list of all vehicles towed under this agreement during each calendar day. A calendar day begins at 12:00 AM and ends at 11:59 PM the same day. The list shall include the following information:

- (1) Vehicle year
- (2) Vehicle make
- (3) Vehicle model
- (4) License plate state and number
- (5) Vehicle identification number
- (6) Case number

15. COMPLAINTS

- a. Complaints against Service Providers will be documented on a Harbor Police Complaint form. Complaints will be received and investigated for allegations of, but not limited to:
 - (1) Discourteous service
 - (2) Unethical business practices
 - (3) Unsafe or improper handling of stored or impounded vehicles
 - (4) Over-charging for services
 - (5) Excessive delay in responding to calls
 - (6) Unsafe towing equipment
 - (7) Violations of State laws
 - (8) Violations of City ordinances
 - (9) Deficient facility security
 - (10) Deficient facility storage conditions
 - (11) Failure to comply with District Tow Policy
 - (12) Failure to perform according to the Towing Agreement
 - (13) Failure to keep required records
- b. Complaints will be assigned to the HP Captain or his/her designee for investigation. Staff will endeavor to, within thirty (30) days, send a copy of the complaint and a letter requiring a response to the affected towing company's owner(s).
- c. No notice shall be sent or delivered if it is determined that notification will impede or interfere with police investigations.
- d. The Service Provider shall respond in writing to the complaint within ten (10) business days from the date of HP's letter. Failure to respond within ten (10) business days will result in the investigating officer making a decision to the complaint based on the information available.
- e. The investigating officer will consider all the evidence available and assign a disposition to the complaint. The disposition categories are:
 - (1) Unfounded - Incident did not occur or did occur but was lawful and within Policy.
 - (2) Inconclusive - Unable to determine if the incident did or did not occur, or unable to determine if the Service Provider or its employee(s) are responsible.

- (3) Sustained - Incident occurred and was either contrary to the Tow Policy, Towing Agreement, State laws, or District's member Cities' and/or District ordinances.

- f. Service Provider and complainant will then be notified of the disposition of the complaint in writing.

16. DISCIPLINARY ACTION

- a. If a complaint is determined to be sustained, and the circumstances or prior records show cause for a suspension or termination of the Service Provider's service, the officer investigating the complaint will present the facts to the Captain, or his/her designee, with a recommendation for disciplinary action.
- b. The Captain, or his/her designee, will review the facts and the recommendations. Upon doing so, the Captain will either concur with the recommendation or determine another course of action.
- c. Suspension: If the Captain arrives at a decision to suspend the services of a Service Provider, the decision will be forwarded, as a recommendation, to the Chief, whose decision will be final.
 - (1) Service Provider shall receive a copy of the recommendation at the time it is forwarded to the Chief, and shall have ten (10) calendar days to respond in writing to the Chief.
 - (2) After consideration of the recommendation and any timely written submission of the Service Provider, the Chief shall issue a written determination of whether he/she concurs with the decision to suspend an agreement with a Service Provider. The Service Provider will be promptly notified in writing of the impending disciplinary action.
- d. Termination: If the Captain arrives at a decision to terminate the services of a Service Provider, the decision will be forwarded, as a recommendation, to the President/CEO, whose decision will be final.
 - (1) Service Provider shall receive a copy of the recommendation at the time it is forwarded to the President/CEO.

17. TERMINATION

- a. The District may terminate any agreement during its term without cause by providing a thirty (30) day written notice to the Service Provider. The District may terminate this agreement for cause five (5) days after written notice is given. The agreement may be terminated for cause by the District upon the occurrence of any one or more of the following events:

- (1) Failure of the Service Provider to comply with any of the provisions of this Policy.
- (2) Repeated and/or flagrant violations of the Vehicle Code by the Service Provider.
- (3) Failure of the Service Provider to maintain clean, orderly, and secure storage facilities.
- (4) Failure of the Service Provider to obtain and maintain a current valid license to do business in the jurisdiction(s) they agreed to do business in.
- (5) Repeated failure of the Service Provider to answer service calls within the agreed upon fifteen (15) minute response time.
- (6) Commission, by the Service Provider, its employees or agents, of any unlawful, false, fraudulent, deceptive or dangerous act while conducting its towing operation business.
- (7) Removal by the Service Provider, prior to police arrival, of a vehicle involved in a collision where, as a result of such collision, a person suffered death or injury; or where the driver of one of the vehicles involved in the collision, or any of the passengers of a vehicle involved in the collision, was under the influence of an intoxicant of any nature; or where there is evidence that the vehicle to be towed was involved in a hit-and-run collision.
- (8) Insurance coverage as required herein has either been withdrawn or lapsed, or is not in force for any reason.
- (9) Dissolution of business or bankruptcy.
- (10) For assignment of its agreement with the District, or any right or interest stated therein, without the prior written consent of the District.
- (11) For any substantial or recurring deviation from the District's approved schedule of rates.
- (12) Failure of the Service Provider to maintain satisfactory service to the public or for failure to keep any towing vehicle in a safe condition and good repair.
- (13) Failure to comply with any requirement of HP.

EXHIBIT B
APPROVAL NOTICE
San Diego Unified Port District



HARBOR POLICE
San Diego Unified Port District
 3380 n. Harbor Drive
 San Diego, CA 92101
 (619) 686-6570

Approval Notice

(Date)

(Name)

(Title)

(Name of Company)

(Address)

(City, State, Zip)

Email:

Subject: Agreement No. 70-2018KC for Towing Service Rotation List
Approval Notice for Monthly Report No. xxx

You are authorized to proceed with the payment for the amount of \$_____.
 Approval Notice is in accordance with the terms of the subject agreement. **Please cite Agreement No. 70-2018KC** on all documents that are submitted with your payment.

DESCRIPTION

1.	Monthly Report No.:	
2.	Number of Vehicles Towed:	
3.	Number of Vehicles Released:	
4.	Number of Release Fees Waived by District:	
4.	Approved Amount:	\$

APPROVAL

Chief of Harbor Police:

Signature:

Name: Mark G. Stainbrook

Date:

EXHIBIT C
CERTIFICATE OF INSURANCE
San Diego Unified Port District

By signing this form, the authorized agent or broker **certifies** the following:

- (1) The Policy or Policies described below have been issued by the noted Insurer(s) [Insurance Company(ies)] to the Insured and is (are) in force at this time.
- (2) As required in the Insured's agreement(s) with the District, the policies include, or have been endorsed to include, the coverages or conditions of coverage **noted on page 2 of this certificate**.
- (3) Signed copies of **all** endorsements issued to effect require coverages or conditions of coverage are attached to this certificate.

Return this form to: **San Diego Unified Port District**
c/o Ebix BPO
P.O. Box 100085 – 185
Duluth, GA 30096 – OR –
Email: portofsandiego@ebix.com
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)			SDUPD Agreement Number: _____ This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.	
CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability ☐ Occurrence Form ☐ Claims-made Form Retro Date _____ ☐ Liquor Liability Deductible/SIR: \$ _____		Commencement Date: Expiration Date:	Each Occurrence: \$ _____ General Aggregate: \$ _____
	Commercial Automobile Liability ☐ All Autos ☐ Owned Autos ☐ Non-Owned & Hired Autos		Commencement Date: Expiration Date:	Each Occurrence: \$ _____
	Workers Compensation – Statutory Employer's Liability		Commencement Date: Expiration Date:	E.L. Each Accident \$ _____ E.L. Disease Each Employee \$ _____ E.L. Disease Policy Limit \$ _____
	Professional Liability ☐ Claims Made Retro-Active Date _____		Commencement Date: Expiration Date:	Each Claim \$ _____ \$ _____
	Excess/Umbrella Liability		Commencement Date: Expiration Date:	Each Occurrence: \$ _____ General Aggregate: \$ _____
CO LTR	COMPANIES AFFORDING COVERAGE		A. M. BEST RATING	
A				
B				
C				
D				
A. M. Best Financial Ratings of Insurance Companies Affording Coverage Must be A-VII or better unless approved in writing by the District.				
Name and Address of Authorized Agent(s) or Broker(s)			E-mail Address:	
			Phone: _____ Fax Number: _____	
			Signature of Authorized Agent(s) or Broker(s)	
			Date: _____	

SAN DIEGO UNIFIED PORT DISTRICT**REQUIRED INSURANCE ENDORSEMENT**

<u>ENDORSEMENT NO.</u>	<u>EFFECTIVE DATE</u>	<u>POLICY NO.</u>
NAMED INSURED:		
GENERAL DESCRIPTION OF AGREEMENT(S) AND/OR ACTIVITY(IES): All written agreements, contracts and leases with the San Diego Unified Port District and any and all activities or work performed on district premises		

Notwithstanding any inconsistent statement in the policy to which this endorsement is attached or in any endorsement now or hereafter attached thereto, it is agreed as follows:

1. The San Diego Unified Port District, its officers, agents, and employees are additional insureds in relation to those operations, uses, occupations, acts, and activities described generally above, including activities of the named insured, its officers, agents, employees or invitees, or activities performed on behalf of the named insured.
2. Insurance under the policy(ies) listed on this endorsement is primary and no other insurance or self-insured retention carried by the San Diego Unified Port District will be called upon to contribute to a loss covered by insurance for the named insured.
3. This endorsement shall include a waiver of transfer of rights of recovery against the San Diego Unified Port District ("Waiver of Subrogation").
4. The policy(ies) listed on this endorsement will apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.
5. As respects the policy(ies) listed on this endorsement, with the exception of cancellation due to nonpayment of premium, thirty (30) days written notice by certified mail, return receipt requested, will be given to the San Diego Unified Port District prior to the effective date of cancellation. In the event of cancellation due to nonpayment of premium, ten (10) days written notice shall be given.

Except as stated above, and not in conflict with this endorsement, nothing contained herein shall be held to waive, alter or extend any of the limits, agreements or exclusions of the policy(ies) to which this endorsement applies.

(NAME OF INSURANCE COMPANY)

(SIGNATURE OF INSURANCE COMPANY AUTHORIZED REPRESENTATIVE)

MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:

San Diego Unified Port District
 c/o Ebix BPO
 P.O. Box 100085 – 185
 Duluth, GA 30096 – OR –
 Email to: portofsandiego@ebix.com
 Fax: 1-866-866-6516