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C-9152
08/12/2014

AGREEMENT FOR TOWING SERVICES
(RFP 14-04)

This Towing Agreement ("Contract") is dated August 12, 2014, with an effective date of August 12, 2014 by and between the City of Glendale (the "City"), an Arizona municipal corporation, and Western Towing of Phoenix, Inc. (the "Contractor"), a Delaware corporation, authorized to do business in Arizona.

RECITALS

- A. WHEREAS, the City and the Contractor are parties to this Contract and desire to enter into this Contract which provides for towing services for abandoned and non-abandoned vehicles; City vehicles that have become disabled, including the provision of flat tire changing services and tows to repair facilities for City vehicles; vehicle storage; and auctioning services; and
- B. WHEREAS, the *Glendale City Code* Chapter 19, Motor Vehicle and Traffic, Article III Impoundment of Vehicles as it now exists or may be amended, authorizes the City of Glendale Police Department to remove wrecked vehicles from collision scenes, vehicles which constitute a traffic hazard, those vehicles where the driver has been placed under arrest, and those declared abandoned.

The parties now desire to enter into this Contract pursuant to the terms and conditions as stated below:

AGREEMENT

In consideration of the Recitals, which are confirmed as true and correct and incorporated by this reference, the mutual promises and covenants contained in this Contract, and other good and valuable consideration, City and Contractor agree as follows:

- 1.0 INTENT.** It is the intent of this Contract to:
- 1.1 Assist in maintaining the safe condition of city streets by promptly clearing roadways of accidents, disabled and abandoned vehicles.
 - 1.2 Release police officers from the scene in a timely manner to return to other duties.
 - 1.3 Provide citizens with an option for their towing needs.
 - 1.4 Provide towing services for both abandoned and non-abandoned vehicles and City vehicles that have become disabled, including the provision of flat tire changing services; tows of City vehicles to repair facilities and to ensure that City vehicles will not be towed to the Contractor's storage yard.
 - 1.5 Provide for vehicle storage.
 - 1.6 Provide for auctioning services.
- 2.0 TERM OF AGREEMENT.**
- 2.1 Initial Term. The initial term of the contract shall be one (1) year beginning October 1, 2014 and ending September 30, 2015.

- 2.2 Option to Extend. The City, through the City Manager, may, at its option and with the approval of the Contractor, extend the term of this Contract four (4) additional years in one (1) year increments based on satisfactory Contractor performance. Contractor shall be notified in writing by the City Materials Manager of the City's intention to extend the contract period at least thirty (30) days calendar days prior to the expiration of the current contract period. Price adjustments will only be reviewed during contract renewal.

3.0 SCOPE OF SERVICES.

- 3.1 This is a performance based, all-inclusive, towing and auctioning services ("Services") Contract. Services are required to be performed in strict conformance with the terms of this Contract and the specifications contained in RFP 14-04 without regard to number of hours needed to perform these duties. Contractor shall perform its obligations with minimal monitoring by the City. The City is the sole judge of the quality and required frequency of services.
- 3.2 Towing services must be available twenty-four (24)-hours a day, seven (7) days a week, 365 days a year. All work performed under this Contract will be pursuant to a specific request for service by a member of the GPD and/or designee or City's Equipment Management Department ("Equipment Management").
- 3.3 Contractor shall provide all supervision, labor, equipment and supplies for towing and auctioning services required under this Contract.
- 3.4 All work shall be performed in strict accordance with the terms of this Contract and specifications in RFP 14-04, which is incorporated and made a part hereof.
- 3.5 The City does not guarantee a minimum number of tows during the term of this Contract. Tow service will be used on an "as needed" basis. If a citizen does not request a specific towing service, the Contractor will be called by the Glendale Police Department ("GPD"). Contractor will be utilized for tows of City-owned vehicles.
- 3.6 The scope of services of this Contract includes actions up and to the time: (a) the insurance company, customer, or customer's agent takes possession of the vehicle; or, (b) the Contractor is instructed by the insurance company, customer, or customer's agent to tow the vehicle to another location; or, (c) the Contractor takes title by reason of abandonment and fulfills its obligation to share sales proceeds with the City.

- 4.0 INCORPORATED PROVISIONS.** The following are incorporated herein and made part of this Contract: Title 28 of the Arizona Revised Statutes (A.R.S.); Title 13, Chapter 3, of the Arizona Administrative Code; and Glendale City Code, Chapter 19, Motor Vehicle and Traffic, Article III Impoundment of Vehicles, which authorizes the GPD to remove wrecked vehicles from collision scenes, vehicles which constitute a traffic hazard, those vehicles where the driver has been placed under arrest, and those declared abandoned, all as they now exist and as they from time to time may be amended.

5.0 IDENTIFICATION.

- 5.1 Contractor's tow vehicles shall be clearly marked with the company name and/or logo and shall display the Department of Public Safety Inspection seal. All drivers shall carry business cards. The business cards will be provided to the GPD whom may provide the Contractor's business card to the owner or driver of the towed vehicle.

- 5.2 All Contractor employees shall maintain and have in their possession a picture identification at all times. The picture identification must be made available upon request. All employees must wear a company uniform (shirt or vest), identified with the company name at all times.
- 5.3 Contractor shall display an appropriate permanent facility sign with the proper name and address of the business. It must be visible from the public street. Sign must be made of weatherproof material and must comply with applicable codes.

6.0 PRE-CONTRACT REQUIREMENTS

- 6.1 Vehicle and Equipment Identification. Contractor shall provide a complete list of all vehicles (specify capacity), equipment and supplies that will be used in the performance of the contract to the GPD/Contract Administrator prior to beginning any work under this Contract.
- 6.2 Conference Meeting. Contractor's representatives as determined by the GPD are required to attend a conference prior to performing any work pursuant to this Contract for the purpose of ensuring a complete understanding of the requirements of the Contract.
- 6.3 Performance Surety. Prior to beginning any work under this Contract, Contractor shall furnish a performance surety in the form of a bond, money order or certified or cashier's check in the amount of \$50,000 guaranteeing the faithful performance of the Contract by the Contractor.

If a bond is submitted, it shall be written on the form provided by the City as an attachment to the proposal documents. The attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the power of attorney. The bond must be written by a responsible corporate surety with a Best Rating no less than an A:VII and must be authorized and licensed to issue bonds in this State by the Arizona Department of Insurance. Individual sureties and letters of credit are not acceptable.

- 6.4 Insurance. Prior to beginning any work under this Contract, Contractor shall furnish the certifications and any other documentation of insurance, as required by Section 31, "Insurance," of this Contract.
- 6.5 Key Personnel Identification. Contractor shall provide a complete list of all key personnel assigned to this Contract pursuant to Section 13 to the GPD/Contract Administrator prior to beginning any work under this Contract.
- 6.6 Company Policies And Procedures. Contractor shall provide its company policies and procedures for receiving and resolving complaints from customers to GPD/Contract Administrator. Contractor shall provide the name, qualifications, and contact information for the person(s) responsible for receiving and resolving complaints. No changes to such policies and procedures are allowed without the written consent of the Contract Administrator or designee.
- 6.7 Any other requirement or submission identified in this Contract.

7.0 TWENTY-FOUR HOUR OPERATIONS AND CONTACT INFORMATION. Contractor shall supply the GPD and Equipment Management with a single twenty-four (24) hour telephone number for requests for towing and flat tire service. The Contractor shall

have the telephone number prominently posted at the storage location for after-hour release of vehicles and the Contractor shall provide for after-hour release of vehicles. There shall be only one phone number used to contact the Contractor. Contractor is responsible for any coordination and communications with a Sub-Contractor.

8.0 TOWING SERVICES

- 8.1 Vehicles, Equipment and Supplies. Contractor shall provide sufficient tow trucks, equipment, and supplies for operation of the tow service to adequately handle the volume and variety of calls.
- 8.1.1 Contractor's tow trucks shall have a two-way radio system, or mobile phones, with twenty-four (24) hour dispatching.
- 8.1.2 All such vehicles shall be equipped, maintained and operated in accordance with the laws of the State of Arizona and rules and regulations of the Department of Public Safety of the State of Arizona. All such vehicles shall have a current inspection and certification by the Arizona Department of Public Safety, per A.R.S. § 28-1108.
- 8.1.3 The Contractor must have a telephone answering machine, or voice mail, to receive customer phone calls when the business office is vacant and for calls received outside of normal business hours.
- 8.2 Response Time. Response time shall be calculated from the time the City completes its notification to the Contractor of a request for service to the time the Contractor arrives at the scene of the request for service.
- 8.2.1 Upon receiving a telephone request for towing or flat tire service or a tow to a vehicle repair facility; Contractor shall be responsible for dispatching its own trucks and Sub-Contractor's trucks. The City may request separate tow trucks in specific situations.
- 8.2.2 For tows within the City, Contractor shall respond and arrive at the service site within thirty (30) minutes of receipt of a request for tow of vehicles under 26,000 lbs. GVW or flat tire service within the City. Contractor shall respond and arrive at the service site within sixty (60) minutes of receipt of a request for tow of vehicles exceeding 26,000 lbs. GVW.
- 8.2.3 For tows of City vehicles to repair facilities, Contractor shall respond and arrive at the service site within four (4) hours of receipt of a request for tow of vehicle.
- 8.2.4 The Contractor shall respond within a reasonable length of time not to exceed twenty-four (24) hours of receipt of a request for tow out of the metropolitan Phoenix area but within the State of Arizona. Contractor shall respond within sixty (60) minutes of a request outside of the City, but within the metropolitan area.
- 8.2.5 Requests to tow abandoned vehicles will normally be done during business hours of 8:00 am and 5:00 pm, Monday through Friday.
- 8.2.6 If the Contractor is unable to provide tow services or when the response time limits cannot be met, the Contractor shall immediately call GPD dispatcher (623-930-3000) concerning a non-abandoned or abandoned vehicle or the

Equipment Management Coordinator (6:30am to 3:00pm 623 930-2624, 3:00pm to 12:00 am 623-930-2623) for a disabled city vehicle, or flat repair or tow to a repair facility.

8.2.7 The officer in charge of the scene, or other responsible City employee if the tow does not involve an on-scene officer, may declare Contractor nonresponsive and call any other tow service if Contractor has not arrived at the requested location within twenty (20) minutes after the required response time or after Contractor notifies the City that the required response time will not be met.

8.2.8 In the event that a substitute tow service is called pursuant to this section, the citizen will be charged the contract rate. Contractor shall pay the substitute tow company, citizen, or City, as applicable, the difference between the Contractor's tow and storage fees and those of the substitute tow company within ten (10) days after invoice.

8.3 Response Time Evaluation.

8.3.1 The City may conduct response time evaluations to determine compliance. The City's tow request log will be the appropriate documentation for response audits and complaint issues.

8.3.2 Upon request by the City, the Contractor shall prepare a written explanation for any incident in which the Contractor's response time is not in compliance with requirements of this contract. The explanation of the Contractor shall include a full discussion of the circumstances of the incident and any corrective action required to comply with the provisions of this contract during the remainder of the terms of this contract.

8.3.3 In addition to the foregoing, the City may in its discretion periodically survey to determine level of public satisfaction with towing service rendered pursuant to this contract. The Contractor may be allowed an opportunity to respond to any unfavorable responses from users.

8.4 Storage Facilities.

8.4.1 Contractor shall provide a properly zoned, fenced, lighted storage area (primary and secondary lot) that shall provide adequate security. This must include a monitoring system, or an electronic alarm monitoring system, with 24/7 monitoring and adequate security fencing.

8.4.2 Vehicles shall not be stored at any location other than as recorded with and approved in writing by the GPD.

8.4.3 The primary storage lot will be located at 7333 West Carole Lane, Glendale, Arizona. The secondary storage lot will be located at 6221 North 55th Avenue, Glendale, Arizona.

8.4.4 Contractor must have as its primary storage lot location, an existing lot operating as a towed vehicle lot, and such lot must be owned or under Contractor's possession and control no later than September 1, 2014.

8.4.5 The Contractor must provide adequate, available lot storage area to the City. An available lot storage area is an area in which City tows will take priority

over any other towed vehicles regarding storage needs. This restriction also applies to temporary storage of non-City tows. If a primary and secondary lot are utilized, the primary storage lot must have a minimum of four (4) acres of lot storage area available to City tows and the secondary storage lot must have adequate storage capacity available for City tows.

- 8.4.6 The Contractor shall have a business office at the location of the primary storage facility, suitable for conducting business with customers. Customer's records must be retained electronically or manually on-site in this office.
- 8.4.7 The Contractor shall be responsible and is liable for the safekeeping of vehicles towed and for items left stored in the vehicles.
- 8.4.8 If Contractor finds drugs or weapons inside a vehicle after it has been towed from the scene, Contractor shall call the GPD immediately so an officer can respond and impound the items. If Contractor finds personal property valued at \$200 or more, collectively, inside a vehicle after it has been towed from the scene, Contractor shall call the GPD immediately so an officer can respond and impound the items.
- 8.4.9 Persons whose vehicles are stored or have been impounded for reasons other than evidentiary or inventory purposes shall have the right to remove any personal property not attached or affixed to the vehicle including perishables, or valuables, prior to the release or payment of impound fees of vehicles stored in Contractor's storage facilities. Prior to the removal of any property from any stored vehicle, the person removing the property must provide proof of identification as well as ownership, or authority from the owner of the vehicle to remove property from the vehicle. Contractor is responsible for and liable for wrongful release of property.
- 8.4.10 As part of safekeeping, Contractor shall ensure that the interior areas of accident vehicles are protected from rain and other elements by closing all operating windows. In the event the window(s) are broken, Contractor will seal the window(s) with plastic material to help prevent regular weather damage to the vehicles interior.
- 8.4.11 At a minimum, Contractor's primary and secondary storage lot facility shall have a security system that includes operable monitoring system, or an operable electronic alarm monitoring system. The system used by Contractor must be monitored at all times outside normal business hours.
- 8.4.12 Contractor will release the customer's vehicles within thirty (30) minutes of completing the identification transaction and financial arrangements for the specific tow and storage. A customer's vehicle will not be subject to an extra day's storage charge due to excessive customers or slow business transactions. Customer lines at the end of a normal business day will not qualify charging for after hours or an extra day of storage, providing the customer was present prior to the close of business.
- 8.4.13 If the Contractor cannot provide or conduct a transaction within thirty (30) minutes, all storage fees will stop and the Contractor shall adjust charges reflecting the time frame that the customer was present.

- 8.5 Storage Charge. A storage charge may only be imposed for each 24 hour period or portion thereof for which the towed vehicle remains in the Contractor's storage lot. The 24 hour period begins for each vehicle at the time the vehicle is off hook at the storage lot.
- 8.5.1 The storage charge is to include, but not limited to:
- (a) 24 hour storage periods.
 - (b) Customer, customer's agent or insurance company access to the vehicle.
 - (c) Movement of the vehicle within the yard for the Contractor's yard management.
 - (d) Movement of the vehicle within the yard in preparation for towing of the vehicle out of the lot by customer or customer's agent, insurance company or contractor.
- 8.5.2 There is to be no additional charge or fee imposed on the City for the services provided while the vehicle remains unclaimed.
- 8.5.3 The only authorized charges are as described in section "Authorized Prices." The only exception is, with the authorization of the customer, minor repairs to make the vehicle drivable. Examples include, but are not limited to, repairing or replacing the radiator, tires, batteries, steering column, straightening fenders and taping windows for interior protection.
- 8.5.4 A line item listing of repair service and agreed upon cost must appear on the invoice.
- 8.6 Release Of Vehicle – Outside Normal Business Hours. Contractor shall charge a flat rate fee for opening the storage lot for vehicle removal by a customer during other than normal business hours, which rate must be given to customer prior to making after-hour pick up arrangements.
- 8.7 Storage. Vehicles shall not be removed from the primary storage lot to which the vehicle is first towed for a period of five (5) calendar days unless it is claimed by the owner, or the owner's authorized agent directs that it be moved to another location. After a period of five (5) calendar days, if Contractor has not received instructions from an owner or authorized agent, Contractor may move the vehicle to an alternate storage lot. Contractor shall not charge an additional towing fee when vehicles are moved to an alternate storage lot.
- 8.7.1 If a towed vehicle is a thirty (30) day seizure, it shall not be removed from the primary storage lot without written approval by the GPD.
- 8.8 Destination. Vehicles shall be taken directly to Contractor's storage facility unless Contractor is advised differently by the GPD, or the owner/driver of the vehicle. Any tow requested by the GPD, or Equipment Management or customer to a location other than the storage lot, but within the City limits, shall be towed at the contract rate. Requests for a location outside the city limits, Contractor is to provide the service at a fixed rate per mile.
- 8.9 GPD Vehicle Release and Holds. Upon request of an officer, investigator or an authorized agent of the GPD, Contractor shall not release any vehicle that is held for

evidentiary information as indicated in A.R.S. Title 28. The authorized person of the GPD will indicate this by requesting that a "HOLD" be placed on the vehicle. During this time, no one shall enter or disturb the vehicle being held unless they are an authorized person of the GPD. Once a "HOLD" has been placed on a vehicle, Contractor shall contact and inform the GPD Tow Liaison (Contract Administrator) as soon as possible on the following business day. The vehicle shall not be released until an authorized representative from the GPD contacts the Contractor. Permission to release will not be required for any vehicle that is routinely towed from an accident scene if the Contractor is satisfied that it is being released to the owner or his authorized agent.

8.10 Impounding. Contractor shall not release any vehicles impounded by the GPD as evidence, without written or verbal authorization from the GPD.

8.10.1 The City reserves the right to impound into City owned storage areas any vehicle required for evidence in traffic violations or other legal actions requiring such evidence. Vehicles towed for impounding shall be towed at contract rates.

8.10.2 Impounding Error - GPD will be the sole judge of any impounding error.

9.0 AUCTIONING SERVICES. If Contractor obtains title to an unclaimed vehicle or property as applicable by law, Contractor shall use its best efforts to sell the vehicle or property in a manner that achieves the greatest residual value for the City. At a minimum, such sales shall include auctioning (in-person or online) and disposal services. All sales, including general sales, auctions or disposal services, shall comply with the following requirements as applicable:

9.1 Sales Proceeds. Contractor shall remit to the City the percent of the gross proceeds resulting from any sale based on the rates set forth on Exhibit B "Sales Proceeds," attached and incorporated herein. "Gross proceeds" means the total amount received by the Contractor for the sale, auction or disposal of the vehicle or property, including any handling or other fees that may be added to the auction price.

9.2 Condition. All vehicles or property to be sold must be as clean as the condition of the vehicle or property permits. Contractor may not take any action to in any way lessen or impair the condition or cosmetic appearance of the vehicle or property.

9.3 Inventory Control. Contractor shall use the stock/inventory/storage report number as the unique number for the vehicles and property sold.

9.4 Storage. Contractor shall store all vehicles or property prior to their sale to ensure their condition does not deteriorate.

9.5 Proceeds Reports. Contractor must provide accurate accounting of all vehicles and property sold no later than thirty (30) calendar days after the date of sale ("Proceeds Report"). Contractor's accounting documentation available to the City shall at a minimum include the following:

9.5.1 Date of sale, auction or disposal;

9.5.2 Inventory/stock/storage report number;

9.5.3 Property description, including serial number and, for vehicles, Vehicle Identification Number;

- 9.5.4 Make, model;
 - 9.5.5 Year and color;
 - 9.5.6 Gross Proceeds;
 - 9.5.7 Buyer information;
 - 9.5.8 Amount required to be paid to the City;
 - 9.5.9 Amount paid to the City.
- 9.6 Payment to the City. Contractor shall remit the City's proportion of all sales proceeds with submission of the Proceeds Report. City sales proceeds shall be remitted via company check, cashier's check or money order drawn on a local bank. Contractor shall submit City sales proceeds to the City on a monthly basis. Payment shall be made payable to "City of Glendale" and delivered to the GPD Tow Liaison.
- 9.7 City Auditing. The City has the right to audit the Contractor's sales, auction and disposal records at any time upon one (1) calendar day notice.
- 9.8 Online Auctions.
- 9.8.1 Auction Website. When providing auctioning services via online auctioning service, Contractor shall ensure the reasonable availability of the auctioning service's website and its accessibility to public visitors.
 - 9.8.2 Property Viewing. Contractor shall create a photograph or photographs of the property for viewing on the auction website, along with an adequate description of the property sufficient to effectively complete the auction.
 - 9.8.3 Security. Contractor shall ensure the auctioning service website provides adequate security concerning the property information, the Contractor information and the auction information.
 - 9.8.4 Costs. All reasonable costs incurred in the preparing and performing online auctions shall be included in Contractor's auction split and shall not be charged to the City separately from this amount.
- 9.9 In-Person Auctions.
- 9.9.1 Auction Facilities. Contractor shall provide all facilities necessary to conduct the auction. The facilities must be in compliance with the Americans with Disabilities Act (ADA) Title III covering public accommodations and commercial facilities. The facilities must have adequate restroom facilities for the public.
 - 9.9.2 Location. Auctions will be conducted at 3401 South 43rd Avenue, Phoenix, Arizona.
 - 9.9.3 Property Viewing. Contractor shall provide all potential bidders an opportunity to inspect the property for a minimum of two (2) hours prior to the start of each auction. The interior of all motor vehicles must be made accessible to the potential bidder during this time period. Contractor will turn the ignition and start the motor of an operable vehicle, if requested by potential bidder during the property viewing period.

- 9.9.4 Security. Contractor shall provide adequate crowd control and security at the auction.
- 9.9.5 Transportation. Contractor shall transport all property to and as necessary, from the auction site.
- 9.9.6 Costs. All costs incurred in the preparing and performing in-person auctions shall be included in Contractor's auction split and shall not be charged to the City separately from this amount.
- 9.10 Bidder Assistance. Contractor shall provide a phone number on its website that is answered by a person who can provide complete information as to the operation of the auction and potential bidder qualifications. Calls to this phone number shall be answered by such persons Monday through Friday, from 8:00 am to 5:00 pm.
- 9.11 Advertising. Contractor is responsible for advertising auctions in a manner that will maximize auction attendance and revenue. At a minimum, auctions must be advertised no less than two (2) and no more than four (4) weeks prior to the auction. The advertisement shall list the date, time and location of the auction, the general nature of the items to be auctioned, and the Contractor web site address. The web site shall contain all of the information necessary to participate as a bidder and shall identify the specific items to be auctioned, including a picture. Contractor shall advertise property to be auctioned for a period of time not more than thirty (30) calendar days after the Contractor obtains title to the property.

10.0 RECORDS.

- 10.1 The Contractor shall maintain a master log of all vehicles towed and a record of each vehicle towed under this Contract showing the following:
 - 10.1.1 Location where the vehicle was picked up;
 - 10.1.2 Location where the vehicle was taken;
 - 10.1.3 The date and time of the pick up;
 - 10.1.4 Date and time of release;
 - 10.1.5 Make, model, color and year of vehicle;
 - 10.1.6 License plate number and state issue;
 - 10.1.7 Vehicle identification number;
 - 10.1.8 Name of individual that vehicle was released to;
 - 10.1.9 Notice of charges;
 - 10.1.10 Identity of the Contractor's driver providing towing service;
 - 10.1.11 Detail of all services and related charges assessed on the vehicle, including any owner/agent requested services;
 - 10.1.12 DR Number. The DR is not provided for towing of city vehicles or flat repair.
- 10.2 The Contractor shall maintain a record, either electronically or manually, that is easily separated from all other records the Contractor may keep, of each vehicle towed under this Contract. The customer record file is to include the master log, signed

invoice and service fee listing and must be maintained alphabetically by last name or the Vehicle Identification Number. The invoice shall be presented to the customer upon the customer's request for the invoice.

- 11.0 SOLICITATION OF REPAIR BUSINESS FOR VEHICLES TOWED.** The Contractor shall not solicit business for any vehicle repair shop(s), or other repair services, prior to or during the towing services provided pursuant to this Contract. The towing portion of this Contract is deemed completed when the vehicle has been towed and is "off-hook."
- 12.0 OSHA GUIDELINES.** Contractor warrants that it is familiar with and shall operate within the guidelines set forth by the Occupational Safety and Health Act.
- 13.0 CONTRACTOR'S EMPLOYEES.**
- 13.1 Contractor shall have available throughout the term of the Contract sufficiently trained and qualified personnel for the operation of the required tow trucks, office, and dispatching functions.
- 13.2 Contractor shall hire, train and supervise all drivers in accordance with the laws of the State of Arizona and rules and regulations of the Department of Public Safety of the State of Arizona, per A.R.S. § 28-1108. Driver must carry at all times the necessary Driver's license as issued by the State of Arizona.
- 13.3 Contractor shall staff their vehicle storage facility with qualified staff during normal business hours 8:00 a.m. - 5:00 p.m. Monday-Friday and 8:00 a.m. - noon Saturday, except for the following holidays: New Year's Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas Day for the purpose of vehicle release or appraisal.
- 13.4 All drivers used/supplied by the Contractor shall be employees of the Contractor. Contractor is not authorized to acquire individual drivers/operators as independent contractors to the Contractor.
- 13.5 It is essential that the Contractor provides adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under the contract.
- 13.6 The Contractor's drivers, office and dispatching staff shall provide services in a polite and courteous manner and shall refrain from using profane or vulgar language.
- 13.7 Key Personnel. Contractor shall assign specific individuals to the key positions in support of the Contract and shall provide the GPD/Contract Administrator with the names of such persons prior to beginning work under this Contract. Key personnel shall not be removed or replaced without the prior written approval of the City. Upon the replacement of any key personnel, Contractor shall submit the name(s) and qualifications of any new key personnel to the GPD/Contract Administrator. Upon any unplanned departure of key personnel, Contractor shall immediately notify the Contract Administrator or Designee.
- 13.8 English Speaking Requirements. All personnel assigned to this contract must be literate and fluent in the English language. There is to be at least one (1) person or more, as directed by the City, on each shift on site, who can speak, read and write English. This is not meant to require that all of Contractor's personnel speak, read, and write English. Most tasks may require only the job Supervisor or crew leader, to

speak, read, and write English. This requirement is necessary due to the following reasons, which include but are not limited to:

- 13.8.1 Warnings of emergencies and hazards;
- 13.8.2 Preparation of reports as specified;
- 13.8.3 Communication with City Personnel and Vehicle Owners.

14.0 ASSIGNS AND SUB-CONTRACTS.

- 14.1 Sub-contractors must be approved by GPD/Materials Manager.
- 14.2 Contractor will remain fully responsible for Sub-contractor's services.
- 14.3 The City's approval shall not be construed as making the City a party of or to such sub-contract.
- 14.4 In the event a sub-contractor is approved, the City will continue to work through Contractor, and Contractor is responsible for contract performance and compliance.
- 14.5 All drivers utilized by any sub-contractor must be employees, not independent contractors, of the sub-contractor.
- 14.6 Contractor shall certify by letter that contracts with Sub-contractors have been executed incorporating all requirements and standards as set forth in this Agreement.
- 14.7 Any attempted assignment, subletting or transfer of the interests of the Contractor either in whole or in part, without such consent, shall be null and void and in such event, the City will have the right to immediately terminate this contract for default.

15.0 BUSINESS HOURS. Normal business hours for lot(s) are defined as 8:00 a.m. to 5:00 p.m., Monday through Friday, and 8 a.m., to noon Saturday, except the following holidays: New Year's, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas Day.

- 15.1 The Contractor shall provide for release of vehicles outside of normal business hours, at customer's request. The fee shall be a flat rate per vehicle.
- 15.2 Towing services shall be available twenty-four (24) hours a day every day of the year.

16.0 COMPENSATION. Contractor's compensation for the Project, including for furnished by its Sub-contractors will not exceed \$55,000 annually.

17.0 HOURLY RATE.

- 17.1 All charges for towing services shall be based on the stated hourly rate as set forth in Exhibit A. Towing services include, but are not limited to, the following:
 - 17.1.1 Travel time to and from scene/service site (anywhere in State of Arizona);
 - 17.1.2 Hook-up;
 - 17.1.3 Dollies;
 - 17.1.4 Winching;
 - 17.1.5 Stand-by time;
 - 17.1.6 Change tire(s);
 - 17.1.7 Drop drive line;

- 17.1.8 Flatbed use;
- 17.1.9 Towing to a location at owner's request;
- 17.1.10 Site clean-up.
- 17.2 No charges shall be imposed for time expended in preparation of any report required by any provision of Title 28, A.R.S. Hourly rate for services pursuant to the prior Section may be charged beginning at time of dispatch and ending at the time the vehicle is off hook at the storage lot. Minimum charge shall be a one hour time period. Any subsequent charges after the first hour shall be imposed after the expiration of each fifteen (15) minute (1/4 hour) period or portion thereof.
- 17.3 In the event dispatched equipment is not appropriate, there shall be no charge by the Contractor for the travel time and equipment initially dispatched. In addition, provided the Contractor is properly notified by the GPD of vehicle sizes and or conditions, the response time (for tracking purposes only) will still begin from the time of original notification by the City. Tows by the Contractor shall be charged at the Contractor's established hourly rate, beginning at the Contractor's dispatch and ending at the time the vehicle is off hook at the storage lot.
- 17.4 Customer Requested Tow Outside City. Any tow requested by the customer to a location out of the Glendale city limits (other than the Contractor's storage facility) shall be towed at the contract rate as set forth in Exhibit A.
- 17.5 On-Site Standby.
 - 17.5.1 For events at the Sportsman's Park Stadium and the Glendale Arena, the Contractor, upon seventy-two (72) hour notice from the GPD, shall provide on-site standby tow truck service. The GPD notice will provide the number and capacity of tow vehicles to standby. Minimum standby time will be seven (7) hours. Any requested towing services during the standby time shall be billed to the customer at the contract rates and the City shall receive a credit for the hourly fee charged to the customer. The invoice for the on-site standby fees for the event will be sent to the GPD/Contract Administrator.
 - 17.5.2 During the assignment of on-site standby service, the designated tow trucks are to be dispatched only to tows corresponding to the event. The tow trucks are to be staged at a location to be determined by GPD dependent on the event. The normal on-site standby requirement is two (2) hours prior to the start of an event, and two (2) hours after the completion of an event. Should the standby time be extended beyond the seven (7) hour minimum, the trucks are to continue to remain dedicated and available for service. The trucks will be released from on-site standby service by the GPD.

18.0 TOWING (NON-ABANDONED VEHICLES)

- 18.1 Citizen(s) whose vehicles are disabled or who have been arrested have the options of (1) using the Contractor, (2) using the services of any other towing operator, or (3) using any other form of tow service.
- 18.2 The City does not guarantee that a minimum number of tows will occur. Contractor is aware that the tow service will be used on an "as needed" basis. The only

assurance the City makes is that if the citizen does not request a specific towing service, the Contractor will be called by City police.

- 18.3 Site cleanup is mandatory. Contractor's tow truck driver must clean the scene of all debris, glass, oil, fluids, vehicle parts or other road hazards present at the collision scene. Site cleanup must be performed prior to towing the vehicle(s) from the scene. The tow driver may not depart the scene unless the tow driver receives approval from City Police at the scene. Site cleanup does not constitute an extraordinary situation.
- 18.4 The Contractor shall provide quick dry absorbent. The contractor shall handle and dispose of all absorbent, hazardous materials, solid, medical and universal wastes in compliance with all applicable laws, including the Federal Resource, Conservation and Recovery Act and the regulations promulgated there under.
- 18.5 The Contractor shall not release any vehicles impounded by City Police as evidence, without written or verbal authorization from City Police. The City reserves the right to impound into City-owned storage areas any vehicle required for evidence. Vehicles towed for impounding shall be towed at the Contract rates set forth in Exhibit A.

19.0 TOWING (ABANDONED VEHICLES). Abandoned vehicles are towed immediately if they are a traffic hazard. If the vehicle is not a hazard, they are marked by City Police and the owner is allowed 48 hours from the time of tagging to move the vehicle. After the 48-hour time period has passed, vehicles may then be declared abandoned by the City and subject to removal by towing to the Contractor's storage or impound area.

20.0 AUTHORIZED PRICES

- 20.1 The Contractor shall only charge prices which are specifically described and provided for in Exhibit A attached hereto. All prices shall be firm and fixed for the specified Contract term. The Contractor shall not require payment from vehicle owners for any charges that may result from errors committed by the City. The Contractor may charge the purchase of an abandoned vehicle to the Department of Motor Vehicle fee related to the processing of an abandoned vehicle.
- 20.2 The Contractor shall assure that tow services arising from this Contract are billed the correct and applicable price. Prices shall include applicable taxes. Failure to accurately bill for tow services is a material breach of this Contract and is subject to penalties up to and including termination of this Contract.
- 20.3 Any tow requested by the customer to a location out of the City limits (other than the Contractor's storage facility) shall be towed at the Contract rate to the City limit. Beyond that point, the Contractor is to provide the service at a fixed rate per mile.
- 20.4 The Contractor shall charge a flat rate fee for opening the storage lot for vehicle removal by a customer during other than normal business hours, as set forth on Exhibit A.

21.0 NOTICE OF PRICING. Notice to persons receiving towing and storage service under this contract will be provided in two ways:

- 21.1 City. The Police Officer and collision investigator may deliver to the person in charge of the vehicle, a copy of the prices authorized in this contract.

21.2 Contractor Invoice. An invoice listing separately all services performed and their individual cost, is to be signed by customer and a copy issued when vehicle is released. The service fees appearing on the invoice are to be described and priced in the same manner as they appear on the proposal's price schedule. Customer is to sign and receive a copy of the invoice and receive a copy of the "City of Glendale, Contract Price List" form when invoiced. Customer is to receive only one invoice for all charges.

21.2.1 The invoice is to include the following statement: "All prices for towing and storage are regulated by an Agreement with the City of Glendale and are not to exceed these stated amounts or include any additional costs not on this listing. The listed fees are the only allowable charges under the Agreement. The Agreement covers all towing services beginning from dispatch, towing, storage and ending at the physical release of the vehicle from the storage lot."

21.2.2 The invoice must also include:

- (a) Date and time vehicle is released;
- (b) Name of towing firm to which vehicle is released from the storage lot;
- (c) Name of insurance company the towing firm is contracted by; and
- (d) DR Number.

21.3 Contract Price List. A listing of all towing and service prices as set forth in Exhibit A to this Contract, shall be issued to the customer at pick-up and a copy issued when invoiced, at time of vehicle release from storage lot. A copy of the signed listing shall be maintained in the customer record file with the invoice.

21.4 Extraordinary Situations. Extraordinary situations are burned vehicles, mountainside vehicles, vehicles in lakes, canals, or pools, or vehicles in desert areas requiring a four wheel drive tow truck or special equipment. Burned vehicles mean vehicles burned beyond the engine compartment, and/or with at least three (3) tires lost as a result of the fire. Extraordinary situations charges shall be pro-rated in fifteen (15) minute increments and shall only encompass the time spent on recovery of the vehicle to a towable position. In the event of an extraordinary situation, Contractor shall document their invoice describing the situation with specific details. The GPD Towing Contact Administrator, or designee, shall have sole discretion in determining extraordinary situations for each individual vehicle.

22.0 BILLING AND PAYMENTS. The Contractor shall have sufficient equipment and personnel at the storage lot to promptly complete the invoicing and payment process and release of the vehicle within 30 minutes of the owner's, insurance companies or owner's agents' initial appearance to claim the vehicle, with appropriate documentation for release.

22.1 Fees for services provided under this contract will be paid directly to the Contractor by the individual(s) who own or are otherwise responsible for the towed vehicle. The City will not be responsible for non-payment of bills tendered to persons other than the City, including individual(s) involved in the collision(s) or owners of abandoned vehicles. For the citizen's convenience, the Contractor must accept cash and credit card as methods of payment.

- 22.2 Prices for the towing of impound vehicles requiring the Contractor to tow to a City-owned storage area, or disabled City vehicles, or flat tire repair or tows to a repair facility shall be paid to the Contractor by the City. The Contractor shall submit invoice to the GPD/Contract Administrator for impounds.
 - 22.3 Invoices for City-owned vehicles shall be submitted to the Equipment Management Supervisor, at 6210 West Myrtle Avenue, Glendale, Arizona 85301. Invoices must include information as outlined in Section 21.0.
 - 22.4 The DR Number shall be written or printed on every invoice prepared by the Contractor for all tows provided under this contract. The City police dispatcher will provide the contractor with the DR (departmental report) Number at the time of the call with a description (manufacturer's name, model and year) of the vehicle to be towed. A DR number is not required for towing of disabled city vehicles, flat tire repairs or tows to a repair facility.
- 23.0 CONTRACTOR'S WORK.** Contractor must perform services in accordance with the standards of due diligence, care, and quality prevailing among contractors having substantial experience with the successful furnishing of services for Services that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.
- 24.0 LICENSES AND PERMITS.**
- 24.1 Contractor warrants that:
 - 24.1.1 Contractor and Sub-contractors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of Services ("Approvals"); and
 - 24.1.2 Neither Contractor nor any Sub-contractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
 - 24.2 City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments or to examine Contractor's contracting ability.
 - 24.3 Contractor must notify City within two (2) working days if any Approvals or Debarment changes, including any suspension, revocation or renewal, during the Contract's duration and the failure of the Contractor to notify City as required will constitute a material default under the Contract and is subject to penalties up to and including termination of this Contract.
 - 24.4 Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.
- 25.0 ORGANIZATIONAL STATUS.** This Contract is not intended to and shall not constitute, create, give rise to or otherwise recognize a joint venture, partnership agreement or any other formal business organization or association of any kind between the parties and the rights and obligations of the parties shall be only those expressly stated in this Contract. The parties hereby agree that no person supplied by the Contractor in the performance of this Contract shall be an employee of the City and further agree that no right of the City's Civil Service, retirement or personnel rules shall accrue to such persons. The Contractor shall have the total responsibility for all salaries, wages, bonuses, retirement, withholdings, Workmen's

Compensation and occupational disease compensation insurance, all unemployment compensation, other benefits and all taxes and premiums pertinent thereto concerning any person(s) supplied by the Contractor in the performance of this Contract, and Contractor shall indemnify and hold the City harmless with respect thereto.

- 26.0 CONTINUATION DURING DISPUTES.** Contractor and the City hereby agree that, notwithstanding the existence of any dispute between the parties or any other provisions of this Contract and insofar as is possible under the terms of the Contract, each party shall continue to perform the obligations imposed on it under this Contract during the continuation of any such dispute unless enjoined or prohibited by any court of competent jurisdiction.
- 27.0 BOUNDARY OF CITY.** Any reference in this Contract to the geographical boundaries of the City, any use of the phrase “within City”, or similar terms shall in all respects be deemed to refer to the geographical area lying within the corporate boundaries of the City such as those boundaries may be changed from time to time during the term of this Contract. For the purpose of towing City-owned vehicles, the geographical boundary of the City includes all areas within the City’s strip zoning, which may include unincorporated areas within Maricopa County, Arizona.
- 28.0 ATTORNEYS’ FEES.** In the event of any litigation or other proceeding concerning this Contract, the prevailing party shall be entitled to its reasonable costs and attorney’s fees.
- 29.0 ASSIGNS AND SUBCONTRACTS.** Subcontracts by the Contractor to other towing providers are prohibited unless expressly authorized in writing by the City. Any attempted assignment, subletting or transfer of the interests of the Contractor either in whole or in part, without City consent, shall be null and void and in such event, the City will have the right to immediately terminate this Contract for default.
- 30.0 LIABILITY.** Except for the sole negligence of the City, its officers, managers, employees, or agents, Contractor shall be liable to the City for any physical damage to City property or for the death of, or personal injury to, City personnel arising out of Contractor's occupancy, maintenance, repair, replacement, installation and/or any other work performed pursuant to the contract. Contractor agrees to indemnify, defend and hold the City harmless from any claim or loss arising from such damage or injury as stated in Section 33, General Indemnification.
- 31.0 INSURANCE.**
- 31.1 Contractor, performing as an independent Contractor hereunder, shall be fully responsible for providing Workers’ Compensation and Employer’s Liability insurance coverage for itself and its employees and the City shall have no responsibility of liability for such insurance coverage.
- 31.2 Contractor and Sub-Contractor, if any, shall provide to the City a certification by the insurance carrier along with the applicable endorsements showing the Contractor to have in effect during the term of this contract, insurance coverage as further described herein, including Garagekeepers and Automobile Liability Insurance. All insurance coverage provided herein shall be the primary and non-contributory to any insurance or self-insurance coverage maintained by the City. The coverage limits of such insurance shall not be less than those listed below.
- 31.3 Contractor shall provide Professional liability (Errors and Omissions) insurance with limits no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. The

Retroactive Date must be before the date of the contract or the beginning of contract work. If claims made policy, insurance be maintained for at least five years after completion of the contract work.

- 31.4 Contractor shall provide Fidelity Bond or Crime Insurance issued with limits based on the amount of cash being handled by the Contractor. The bond or policy shall include coverage for all directors, officers, agents and employees of Contractor, coverage for extended theft and mysterious disappearance and shall not contain a condition requiring an arrest and conviction.
- 31.5 The insurance company issuing the policy required above shall have an AM Best financial rating of "A- VII" or better and be authorized by the State of Arizona Department of Insurance to transact business within the State. The certificate and policy shall name the City, its officers, directors, employees, agents and assignees as an additional insured and shall be primary and non-contributory for any insurance and/or self-insurance coverage maintained by the City. The City shall also be an additional insured to the full limits of the liability insurance purchased by the Contractor even if those limits are in excess of those required by this contract.
- 31.6 The City reserves the right to terminate this Contract if the Contractor fails to maintain the required insurance. Failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them.
- 31.7 Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
- 31.8 Contractor must provide certification of insurance and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required below. All certificates and endorsements are to be received and approved by the City within ten (10) calendar days after notification of award. Certification must include: name and address of insurance company; policy number; liability coverage amounts; a statement the policy will not be canceled or failed to be renewed without ten (10) days written notice to the City.
- 31.9 Certification to be submitted to: Materials Management, 5850 West Glendale Avenue, Suite 317, Glendale, Arizona 85301.

31.10	<u>Type of Insurance</u>	<u>Limits of Liability</u> <u>(Minimum)</u>
	Workers' Compensation	Statutory
	Employer's Liability	
	Each Accident	\$1,000,000
	Disease-Each Employee	\$1,000,000
	Disease-Policy Limit	\$1,000,000

Garage (General) Liability shall cover liability arising from bodily injury, property damage, products-completed operations, personal and advertising injury, independent

Contractors, and broad form contractual coverage and towing operations including vehicle under your care, custody and control and safekeeping.

Each Occurrence	\$1,000,000
Personal and Advertising	\$1,000,000
General Aggregate	\$2,000,000
Products-Completed Operations	\$1,000,000
Garagekeepers Liability:	
Each Auto	\$ 100,000
Each Occurrence	\$1,000,000

Automobile Liability – Including bodily injury and property damage for any owned, hired and non-owned vehicles used in the performance of the services. The policy shall be endorsed to include coverage for towing operations.

Combined Single Limit (CSL)	\$1,000,000
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32.0 WORKERS' COMPENSATION.

- 32.1 Contractor shall be in full compliance with the provisions of the Arizona Workers' Compensation Law (Title 23, Chapter 6, Arizona Revised Statutes) as amended, and all rules and regulations of the Industrial Commission of Arizona made in pursuance thereof. Contractor shall secure payment of compensation to employees by insuring the payment of such compensation authorized by the Insurance Department of Arizona to transact business in the State of Arizona.
- 32.2 Contractor further agrees that he shall require any and all subcontractors performing work under the agreement to comply with said Workers' Compensation Law. It is expressly understood and agreed that all persons employed directly or indirectly by the Contractor, or any of his subcontractors, shall be considered the employees of such Contractor, or his subcontractor(s), and not the employees of the City.

33. GENERAL INDEMNIFICATION.

- 33.1 Contractor shall indemnify, defend, save and hold harmless the City of Glendale and its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any Federal, State or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is

applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the City, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the City. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

- 33.2 This indemnity and hold harmless provision applies even if a Claim(s) is in part due to the Indemnified Party's negligence or breach of a responsibility under this Contract, but in that event, Contractor shall be liable only to the extent the Claim(x) results from the negligence or breach of a responsibility of Contractor or of any person or entity for whom Contractor is responsible.
- 33.3 Contractor is not required to indemnify any Indemnified Parties for, from, or against any Claim(s) resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.
- 34.0 REPORTING.** The Contractor shall submit all necessary reports to the Arizona Department of Transportation and to GPD in accordance with A.R.S. Title 28.
- 35.0 CONFLICT.** Contractor acknowledges this Contract is subject to A.R.S. § 38-511, which allows for cancellation of this Contract in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on City's behalf is also an employee, agent, or consultant of any other party to this Contract.
- 36.0 COOPERATIVE USE OF CONTRACT.** This contract may be extended for use by other governmental agencies and political subdivisions of the State, including all members of SAVE (Strategic Alliance for Volume Expenditures). Any such usage by other entities must be in accord with the ordinances, charter, rules and regulations of the respective entity and the approval of the Contractor and City. A list of SAVE members, can be found on the following link: <http://www.maricopa.gov/Materials/save.aspx>.
- 37.0 FUND APPROPRIATION CONTINGENCY.** Contractor and City recognize that the continuation of this Contract after the close of any given fiscal year of the City, which ends on June 30, shall be subject to the approval of the budget of the City providing the Contract is an expenditure therein. The City does not guarantee that the budget item will be actually adopted, as it is the determination of the City Council at the time of the adoption of the budget.
- 38.0 EMERGENCY BUSINESS SERVICES.** During a natural disaster, or homeland security event, there may be a need for the City to access your business for products or services twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year. The need could be for a pick up or a delivery.

For this purpose, a primary and secondary emergency contact name and phone number are required. It is critical to the City that the Contractor's emergency contact information remains current. Contact Materials Management by E-mail with any change to a contact name or phone number.

All products or services provided to meet an emergency phone request are to be supplied as per the contract prices, terms and conditions. In general, the order will be placed using a City Procurement Card.

39.0 EMERGENCY TWENTY-FOUR HOUR SERVICE CONTACT.

Name Wesley Graff
Telephone Number 602-725-4032
Alternate Contact Casey Cousino
Telephone Number 602-725-0581

40.0 IMMIGRATION LAW COMPLIANCE Contractor, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program. Any breach of warranty described above is considered a material breach of this Contract and is subject to penalties up to and including termination of this Contract. City retains the legal right to inspect the papers of Contractor or subcontractor employee who performs work under this Contract to ensure that Contractor or any subcontractor is compliant with the warranty described above. City may conduct random inspections, and upon request of the City, Contractor shall provide copies of papers and records demonstrating continued compliance with the warranty described above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section. Contractor agrees to incorporate into any subcontracts under this Contract the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Contract the same obligations above and expressly accrue those obligations to the benefit of the City. Contractor's warranty and obligations under this section to the City is continuing throughout the term of this Contract or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

41.0 NOTICE.

41.1 Except as otherwise expressly provided in this Contract, all notices, demands, disclosures, acknowledgments, consent, approvals, statements, requests, responses and invoices to be given under this Contract (each a "Notice") will be effective only if:

41.1.1 The Notice is in writing; and

41.1.2 Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested); and

41.1.3 Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:

(a) Received on a business day, or before 5:00 p.m., at the address for Notices identified for the Party in this Contract by U.S. Mail, hand delivery, or overnight courier service on or before 5:00 p.m.; or

- (b) As of the next business day after receipt, if received after 5:00 p.m.
- 41.1.4 The burden of proof of the place and time of delivery is upon the Party giving the Notice; and
- 41.1.5 Digitalized signatures and copies of signatures will have the same effect as original signatures.

41.2 Representatives.

- 41.2.1 Contractor. Contractor's representative (the "Contractor's Representative") authorized to act on Contractor's behalf with respect to this Contract and Services, and his or her address for Notice delivery is:

Western Towing of Phoenix, Inc.
 c/o Wesley Graff, President
 7333 West Carole Lane
 Glendale, Arizona 85303

- 41.2.2 City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale
 c/o Glendale Police Department
 Assistant Police Chief Rick St. John
 6835 North 57th Drive
 Glendale, Arizona 85301
 Phone: 623-930-3210

Materials Manager
 City of Glendale - Materials Management
 5850 West Glendale Avenue
 Glendale, AZ 85301
 Phone: 623-930-2480

With required copy to:

City Manager
 City of Glendale
 5850 West Glendale Avenue
 Glendale, Arizona 85301

City Attorney
 City of Glendale
 5850 West Glendale Avenue
 Glendale, Arizona 85301

- 41.2.3 Concurrent Notices.

- (a) All notices to City's representative must be given concurrently to City Manager and City Attorney.
- (b) A notice will not be deemed to have been received by City's representative until the time that it has also been received by City Manager and City Attorney.
- (c) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Contractor identifying the designee(s) and their respective addresses for notices.

41.2.4 Changes. Contractor or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

42.0 Financing Assignment. City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.

43.0 Entire Agreement; Survival; Counterparts; Signatures.

43.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Contractor and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

43.1.1 Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.

43.1.2 Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.

42.1.3 The solicitation, any addendums and the response submitted by the Contractor are incorporated into this Agreement as if attached hereto. Any Contractor response modifies the original solicitation as stated. Inconsistencies between the solicitation, any addendums and the response or any excerpts attached as Exhibit A and this Contract will be resolved by the terms and conditions stated in this Contract.

43.2 Interpretation.

43.2.1 The parties fairly negotiated the Contract's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.

43.2.2 The parties are of equal bargaining position and this Contract must be construed equally between the parties without consideration of which of the parties may have drafted this Contract.

43.2.3 The Contract will be interpreted in accordance with the laws of the State of Arizona.

43.3 Survival. Except as specifically provided otherwise in this Contract, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Contract.

43.4 Amendment. No amendment to this Contract will be binding unless in writing and executed by the parties. Any amendment may be subject to City Council approval. Electronic signature blocks do not constitute execution.

43.5 Remedies. All rights and remedies provided in this Contract are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Contract or applicable law.

43.6 Severability. If any provision of this Contract is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be deemed reformed to conform to applicable law.

43.7 Counterparts. This Contract may be executed in counterparts, and all counterparts will together comprise one instrument.

44.0 Dispute Resolution. Each claim, controversy and dispute (each a “Dispute”) between Contractor and City will be resolved in accordance with Exhibit C. The final determination will be made by the City.

45.0 Exhibits. The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

Exhibit A Authorized Pricing

Exhibit B Sales Proceeds

Exhibit C Dispute Resolution

(Signatures appear on the following page.)

The parties enter into this Agreement as of the effective date shown above.

WESTERN TOWING OF PHOENIX, INC.,
a Delaware corporation

By: W. Graff
Wesley Graff
President

Date: 8-11-2014

CITY OF GLENDALE
an Arizona municipal corporation

By: B. Fischer
Brenda S. Fischer
City Manager

Date: 8/18/14

ATTEST:

Pam Hanna
Pam Hanna (SEAL)
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
Michael D. Bailey
City Attorney

EXHIBIT A

TOWING SERVICES - BEST AND FINAL OFFER WESTERN TOWING

RFP 14-04 TOWING SERVICES		WESTERN TOWING - ORIGINAL PROPOSAL RESPONSE			WESTERN TOWING - BEST AND FINAL OFFER		
5.1							
Category Number	Category Name	Vehicles less than 15,000 lbs. GVW	Vehicles 15,000 lbs. or more GVW, and less than 26,000 GVW	Vehicles 26,000 lbs. or more GVW	Vehicles less than 15,000 lbs. GVW	Vehicles 15,000 lbs. or more GVW, and less than 26,000 GVW	Vehicles 26,000 lbs. or more GVW
5.1.1	Hourly Rate, prorated every 15 minutes after the first complete hour.	\$25.00	\$45.00	\$100.00	\$20.00	\$45.00	\$95.00
5.1.2	Storage Charge, for each 24 hour period or portion thereof.	\$15.00	\$15.00	\$30.00	\$15.00	\$15.00	\$15.00
5.1.3	Opening Lot, after normal business hours at customer request, flat rate.	\$25.00	\$25.00	\$30.00	\$20.00	\$20.00	\$20.00
5.1.4	Extraordinary Situations, hourly rate, prorated every 15 minutes after the first complete hour.	\$40.00	\$45.00	\$100.00	\$25.00	\$30.00	\$95.00
5.1.5	Rate per mile, for out-of-city mileage. See section 1.25.4	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00

5.2 PRICES FOR NON-ABANDONED VEHICLES LESS THAN 15,000 LBS GVW.

Category Number	Category Name	Rate	Total	Rate	Total
5.2.1	7,500 (1 hour tows) X \$ (Hourly rate bid amount) =	\$25.00	\$187,500.00	\$20.00	\$150,000.00
5.2.2	15,000 (days of storage) X \$ (24 hour period bid amount) =	\$15.00	\$225,000.00	\$15.00	\$225,000.00
5.2.3	100 (open lot after hours) X \$ (Opening bid amount) =	\$25.00	\$2,500.00	\$20.00	\$2,000.00
5.2.4	10 (1 hour Extraordinary Situ) X \$ (Hourly rate bid amount) =	\$40.00	\$400.00	\$25.00	\$250.00
5.2.5	100 (Miles out of city) X \$ (Mile bid amount) =	\$2.00	\$200.00	\$2.00	\$200.00
5.2.6	SECTION SUBTOTAL (5.2.1 through 5.2.5 above)		\$415,600.00		\$377,450.00

5.3 PRICES FOR NON-ABANDONED VEHICLES MORE THAN 15,000 LBS GVW, LESS THAN 26,000 LBS GVW.

TOWING SERVICES - BEST AND FINAL OFFER WESTERN TOWING

RFP 14-04 TOWING SERVICES	WESTERN TOWING - ORIGINAL PROPOSAL RESPONSE	WESTERN TOWING - BEST AND FINAL OFFER
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5.1

Category Number	Category Name		Vehicles less than 15,000 lbs. GVW	Vehicles 15,000 lbs. or more GVW, and less than 26,000 GVW	Vehicles 26,000 lbs. or more GVW	Vehicles less than 15,000 lbs. GVW	Vehicles 15,000 lbs. or more GVW, and less than 26,000 GVW	Vehicles 26,000 lbs. or more GVW
Category Number	Category Name		Rate	Total		Rate	Total	
5.3.1	360 (1 hour tows) X \$ (Hourly rate bid amount) =		\$45.00	\$16,200.00		\$30.00	\$10,800.00	
5.3.2	720 (days of storage) X \$ (24 hour period bid amount) =		\$15.00	\$10,800.00		\$15.00	\$10,800.00	
5.3.3	50 (open lot after hours) X \$ (Opening bid amount) =		\$25.00	\$1,250.00		\$20.00	\$1,000.00	
5.3.4	10 (1 hour Extraordinary Situ) X \$ (Hourly rate bid amount) =		\$45.00	\$450.00		\$30.00	\$300.00	
5.3.5	100 (Miles out of city) X \$ (Mile bid amount) =		\$2.00	\$200.00		\$2.00	\$200.00	
5.3.6	SECTION SUBTOTAL (5.3.1 through 5.3.5 above)			\$28,900.00			\$23,100.00	

5.4 PRICES FOR NON-ABANDONED VEHICLES MORE THAN 26,000 LBS GVW.

Category Number	Category Name		Rate	Total		Rate	Total	
5.4.1	90 (1 hour tows) X \$ (Hourly rate bid amount) =		\$100.00	\$9,000.00		\$95.00	\$8,550.00	
5.4.2	180 (Days of storage) X \$ (24 hour period bid amount) =		\$30.00	\$5,400.00		\$15.00	\$2,700.00	
5.4.3	5 (Open lot after hours) X \$ (Opening bid amount) =		\$30.00	\$150.00		\$20.00	\$100.00	
5.4.4	10 (1 hour Extraordinary Situ) X \$ (Hourly rate bid amount) =		\$100.00	\$1,000.00		\$95.00	\$950.00	
5.4.5	100 (Miles out of city) X \$ (Mile bid amount) =		\$2.00	\$200.00		\$2.00	\$200.00	
5.4.6	SECTION SUBTOTAL (5.4.1 through 5.4.5 above)			\$15,750.00			\$12,500.00	

TOWING SERVICES - BEST AND FINAL OFFER WESTERN TOWING

RFP 14-04 TOWING SERVICES	WESTERN TOWING - ORIGINAL PROPOSAL RESPONSE	WESTERN TOWING - BEST AND FINAL OFFER
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5.1

Category Number	Category Name	Vehicles less than 15,000 lbs. GVW	Vehicles 15,000 lbs. or more GVW, and less than 26,000 GVW	Vehicles 26,000 lbs. or more GVW	Vehicles less than 15,000 lbs. GVW	Vehicles 15,000 lbs. or more GVW, and less than 26,000 GVW	Vehicles 26,000 lbs. or more GVW
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5.5 PRICES FOR ABANDONED VEHICLES LESS THAN 15,000 LBS GVW.

Category Number	Category Name	Rate	Total	Rate	Total
5.5.1	120 (1 hour tows) X \$ (Hourly rate bid amount) =	\$5.00	\$600.00	\$5.00	\$600.00
5.5.2	240 (Days of storage) X \$ (24 hour period bid amount) =	\$5.00	\$1,200.00	\$5.00	\$1,200.00
5.5.3	10 (Open lot after hours) X \$ (Opening bid amount) =	\$5.00	\$50.00	\$5.00	\$50.00
5.5.4	5 (1 hour Extraordinary Situ) X \$ (Hourly rate bid amount) =	\$5.00	\$25.00	\$5.00	\$25.00
5.5.5	5 (Miles out of city) X \$ (Mile bid amount) =	\$0.00	\$0.00	\$0.00	\$0.00
5.5.6	SECTION SUBTOTAL (5.5.1 through 5.5.5 above)		\$1,875.00		\$1,875.00

5.6 PRICES FOR ABANDONED VEHICLES MORE THAN 15,000 LBS GVW, LESS THAN 26,000 LBS GVW.

Category Number	Category Name	Rate	Total	Rate	Total
5.6.1	10 (1 hour tows) X \$ (Hourly rate bid amount) =	\$5.00	\$50.00	\$5.00	\$50.00
5.6.2	20 (Days of storage) X \$ (24 hour period bid amount) =	\$5.00	\$100.00	\$5.00	\$100.00
5.6.3	1 (Open lot after hours) X \$ (Opening bid amount) =	\$5.00	\$5.00	\$5.00	\$5.00
5.6.4	1 (1 hour Extraordinary Situ) X \$ (Hourly rate bid amount) =	\$5.00	\$5.00	\$5.00	\$5.00
5.6.5	5 (Miles out of city) X \$ (Mile bid amount) =	\$0.00	\$0.00	\$0.00	\$0.00
5.6.6	SECTION SUBTOTAL (5.6.1 through 5.6.5 above)		\$160.00		\$160.00

TOWING SERVICES - BEST AND FINAL OFFER WESTERN TOWING

RFP 14-04 TOWING SERVICES	WESTERN TOWING - ORIGINAL PROPOSAL RESPONSE	WESTERN TOWING - BEST AND FINAL OFFER
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5.1

Category Number	Category Name			Vehicles less than 15,000 lbs. GVW	Vehicles 15,000 lbs. or more GVW, and less than 26,000 GVW	Vehicles 26,000 lbs. or more GVW	Vehicles less than 15,000 lbs. GVW	Vehicles 15,000 lbs. or more GVW, and less than 26,000 GVW	Vehicles 26,000 lbs. or more GVW
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5.7 PRICES FOR ABANDONED VEHICLES MORE THAN 26,000 LBS GVW.

Category Number	Category Name			Rate	Total			Rate	Total
5.7.1	5 (1 hour tows) X \$ (Hourly rate bid amount) =			\$5.00	\$25.00			\$5.00	\$25.00
5.7.2	10 (days of storage) X \$ (24 hour period bid amount) =			\$5.00	\$50.00			\$5.00	\$50.00
5.7.3	1 (open lot after hours) X \$ (Opening bid amount) =			\$5.00	\$5.00			\$5.00	\$5.00
5.7.4	1 (1 hour Extraordinary Situ) X \$ (Hourly rate bid amount) =			\$5.00	\$5.00			\$5.00	\$5.00
5.7.5	5 (Miles out of city) X \$ (Mile bid amount) =			\$0.00	\$0.00			\$0.00	\$0.00
5.7.6	SECTION SUBTOTAL (5.7.1 through 5.7.5 above)				\$85.00				\$85.00

5.8 QUICK DRY ABSORBENT

Category Number	Category Name			Rate	Total			Rate	Total
5.8.1	12,000 pounds X \$ (Per pound) =			\$0.00	\$0.00			\$0.00	\$0.00

5.9 ON SITE STANDBY

Category Number	Category Name			Rate	Total			Rate	Total
5.9.1	168 hours X \$ (Hourly standby rate per truck) =			\$40.00	\$6,720.00			\$30.00	\$5,040.00

TOWING SERVICES - BEST AND FINAL OFFER WESTERN TOWING

RFP 14-04 TOWING SERVICES	WESTERN TOWING - ORIGINAL PROPOSAL RESPONSE	WESTERN TOWING - BEST AND FINAL OFFER
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5.1

Category Number	Category Name	Vehicles less than 15,000 lbs. GVW	Vehicles 15,000 lbs. or more GVW, and less than 26,000 GVW	Vehicles 26,000 lbs. or more GVW	Vehicles less than 15,000 lbs. GVW	Vehicles 15,000 lbs. or more GVW, and less than 26,000 GVW	Vehicles 26,000 lbs. or more GVW

5.10 GRAND TOTAL

Category Number	Category Name	GRAND TOTAL	GRAND TOTAL
	(Grand Total equals the section subtotals of 5.2.6 plus 5.3.6 plus 5.4.6 plus 5.5.6 plus 5.6.6 plus 5.7.6 plus 5.8.1 plus 5.9.1)	\$469,090.00	\$420,210.00

5.11 Additional Costs

5.11.1	Contractor shall present additional costs as estimated annual dollar amounts for each item listed as an additional cost.						
5.11.2	Contractor shall explain additional cost calculations used to obtain the estimated additional cost dollar amounts.						
	Additional Costs Submitted: YES/NO			NO			

5.12 TAX AMOUNT

	Tax %			2.9%			
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5.13 Delivery

	Bidder states that all items will be delivered calendar days after receipt of order.			n/a			
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TOWING SERVICES - BEST AND FINAL OFFER WESTERN TOWING

RFP 14-04 TOWING SERVICES	WESTERN TOWING - ORIGINAL PROPOSAL RESPONSE	WESTERN TOWING - BEST AND FINAL OFFER
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5.1

Category Number	Category Name	Vehicles less than 15,000 lbs. GVW	Vehicles 15,000 lbs. or more GVW, and less than 26,000 GVW	Vehicles 26,000 lbs. or more GVW	Vehicles less than 15,000 lbs. GVW	Vehicles 15,000 lbs. or more GVW, and less than 26,000 GVW	Vehicles 26,000 lbs. or more GVW

5.14 Procurement Card Ordering Capability

YES/NO			YES				
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5.15 Discount/Payment Terms The City standard is 2% 20 days

Comply: YES/NO			YES				
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EXHIBIT B

SALES PROCEEDS				
RFP 14-04 TOWING SERVICES			WESTERN TOWING ORIGINAL PROPOSAL RESPONSE	WESTERN TOWING BEST AND FINAL OFFER
6.0 SALES PROCEEDS				
Category Number	ITEM	UNIT	PERCENT OF SALES SPLIT	PERCENT OF SALES SPLIT
A	Auction Sales Split Percentage auction sales proceeds to be shared with City of Glendale	PERCENT	40%	42%
B	Disposal Sales Split Percentage of disposal sales proceeds to be shared with City of Glendale	PERCENT	40%	50%
C	Other Sales Split Percentage of any other form of sales proceeds to be shared with City of Glendale	PERCENT	40%	50%

EXHIBIT C

EXHIBIT C

DISPUTE RESOLUTION

1. Disputes.

- 1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.
- 1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.
- 1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- 1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
 - a. The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
 - b. The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
 - c. The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the parties may agree, in writing, that the Dispute will be decided by binding arbitration in accordance with Commercial Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
 - a. The parties will exercise best efforts to select an arbitrator within 5 business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - b. The arbitrator selected must be an attorney with at least 10 years experience, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within ten (10) days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.
- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.

2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.

2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.

2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party shall pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.

3. **Services to Continue Pending Dispute**. Unless otherwise agreed to in writing, Contractor must continue to perform and maintain progress of required services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Contractor in accordance with this Agreement.

4. **Exceptions**.

4.1 Third Party Claims. City and Contractor are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third-party who is not obligated by contract to arbitrate disputes with City and Contractor.

4.2 Liens. City or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.

4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.