



City Clerk Document No. _____

City Council Meeting Date: _____

**CITY OF CHANDLER SERVICES AGREEMENT
POLICE TOWING
CITY OF CHANDLER AGREEMENT NO. PD5-968-4833**

THIS AGREEMENT (Agreement) is made and entered into by and between the City of Chandler, an Arizona municipal corporation (City), and ACT Towing, INC dba All City Towing, (Contractor), (City and Contractor may individually be referred to as Party and collectively referred to as Parties) and made _____, 2024 (Effective Date).

RECITALS

A. City proposes to provide towing services as more fully described in Exhibit A, which is attached to and made a part of this Agreement by this reference.

B. Contractor is ready, willing, and able to provide the services described in Exhibit A for the compensation and fees set forth and as described in Exhibit B, which is attached to and made a part of this Agreement by this reference.

C. City desires to contract with the Contractor to provide these services under the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual promises contained in this Agreement, City and Contractor agree as follows:

SECTION I: DEFINITIONS

For purposes of this Agreement, the following definitions apply:

Agreement means the legal agreement executed between the City and the Contractor

City means the City of Chandler, Arizona

Contractor means the individual, partnership, or corporation named in the Agreement

Days means calendar days

May, Should means something that is not mandatory but permissible

Shall, Will, Must means a mandatory requirement

SECTION II: CONTRACTOR'S SERVICES

Contractor must perform the services described in Exhibit A to the City's satisfaction within the terms and conditions of this Agreement and within the care and skill that a person who provides

similar services in Chandler, Arizona exercises under similar conditions. All work or services furnished by Contractor under this Agreement must be performed in a skilled and workmanlike manner. Unless authorized by the City in writing, all fixtures, furnishings, and equipment furnished by Contractor as part of the work or services under this Agreement must be new, or the latest model, and of the most suitable grade and quality for the intended purpose of the work or service.

SECTION III: PERIOD OF SERVICE

Contractor must perform the services described in Exhibit A for the term of this Agreement.

The term of the Agreement is two (2) year (s), and begins on January 1, 2025 and ends on December 31, 2026 unless sooner terminated in accordance with the provisions of this Agreement. The City and the Contractor may mutually agree to extend the Agreement for up to 2 additional terms of two (2) year (s) each, or portions thereof. The City reserves the right, at its sole discretion, to extend the Agreement for up to 60 days beyond the expiration of any extension term.

SECTION IV: PAYMENT OF COMPENSATION AND FEES

4.1 Unless amended in writing by the Parties, Contractor's compensation and fees as more fully described in Exhibit B for performance of the services approved and accepted by the City. Contractor must submit requests for payment for services approved and accepted during the previous billing period and must include, as applicable, detailed invoices and receipts, a narrative description of the tasks accomplished during the billing period, a list of any deliverables submitted, and any subcontractor's or supplier's actual requests for payment plus similar narrative and listing of their work. Payment for those services negotiated as a lump sum will be made in accordance with the percentage of the work completed during the preceding billing period. Services negotiated as a not-to-exceed fee will be paid in accordance with the work completed on the service during the preceding month. All requests for payment must be submitted to the City for review and approval. The City will make payment for approved and accepted services within 30 days of the City's receipt of the request for payment.

4.2 Applicable Taxes. The Contractor will pay all applicable taxes. The City is subject to all applicable state and local transaction privilege taxes. To the extent any state and local transaction privilege taxes apply to sales made under the terms of this Agreement, it is the responsibility of the Contractor to collect and remit all applicable taxes to the proper taxing jurisdiction of authority.

4.3 Tax Indemnification. The Contractor and all subcontractors will pay all Federal, state, and local taxes applicable to its operation and any persons employed by the Contractor. The Contractor will and require all subcontractors to hold the City harmless from any responsibility for taxes, damages, and interest, if applicable, contributions required under Federal, state, and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security, and Worker's Compensation.

4.4 All prices offered herein shall be firm against any increase for the initial term of the Agreement. Prior to commencement of subsequent renewal terms, the City may approve a fully documented request for a price adjustment. The City shall determine whether any requested price increases for extension terms is acceptable to the City. If the City approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon by

the Parties a written Agreement Amendment shall be approved and executed by the Parties.

SECTION V: GENERAL CONDITIONS

5.1 Records/Audit. Records of the Contractor's direct personnel payroll, reimbursable expenses pertaining to this Agreement and records of accounts between the City and Contractor must be kept on the basis of generally accepted accounting principles and must be made available to the City and its auditors for up to three years following the City's final acceptance of the services under this Agreement. The City, its authorized representative, or any federal agency, reserves the right to audit Contractor's records to verify the accuracy and appropriateness of all cost and pricing data, including data used to negotiate this Agreement and any amendments. The City reserves the right to decrease the total amount of Agreement price or payments made under this Agreement or request reimbursement from the Contractor following final contract payment on this Agreement if, upon audit of the Contractor's records, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data. The Contractor will include a similar provision in all of its contracts with subcontractors providing services under the Agreement Documents to ensure that the City, its authorized representative, or the appropriate federal agency, has access to the subcontractors' records to verify the accuracy of all cost and pricing data. The City reserves the right to decrease Contract price or payments made on this Agreement or request reimbursement from the Contractor following final payment on this Agreement if the above provision is not included in subcontractor agreements, and one or more subcontractors refuse to allow the City to audit their records to verify the accuracy and appropriateness of all cost and pricing data. If, following an audit of this Agreement, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data, and the cost discrepancies exceed 1% of the total Agreement billings, the Contractor will be liable for reimbursement of the reasonable, actual cost of the audit.

5.2 Alteration in Character of Work. Whenever an alteration in the character of work results in a substantial change in this Agreement, thereby materially increasing or decreasing the scope of services, cost of performance, or Project schedule, the work will be performed as directed by the City. However, before any modified work is started, a written amendment must be approved and executed by the City and the Contractor. Such amendment must not be effective until approved by the City. Additions to, modifications, or deletions from this Agreement as provided herein may be made, and the compensation to be paid to the Contractor may accordingly be adjusted by mutual agreement of the Parties. It is distinctly understood and agreed that no claim for extra work done or materials furnished by the Contractor will be allowed by the City except as provided herein, nor must the Contractor do any work or furnish any materials not covered by this Agreement unless such work is first authorized in writing. Any such work or materials furnished by the Contractor without prior written authorization will be at Contractor's own risk, cost, and expense, and Contractor hereby agrees that without written authorization Contractor will make no claim for compensation for such work or materials furnished.

5.3 Termination for Convenience. The City and the Contractor hereby agree to the full performance of the covenants contained herein, except that the City reserves the right, at its discretion and without cause, to terminate or abandon any service provided for in this Agreement, or abandon any portion of the Project for which services have been performed by the Contractor. In the event the City abandons or suspends the services, or any part of the services as provided in this Agreement, the City will notify the Contractor in writing and immediately after receiving such notice, the Contractor must discontinue advancing the work

specified under this Agreement. Upon such termination, abandonment, or suspension, the Contractor must deliver to the City all drawings, plans, specifications, special provisions, estimates and other work entirely or partially completed, together with all unused materials supplied by the City. The Contractor must appraise the work Contractor has completed and submit Contractor's appraisal to the City for evaluation. The City may inspect the Contractor's work to appraise the work completed. The Contractor will receive compensation in full for services performed to the date of such termination. The fee shall be paid in accordance with Section IV of this Agreement, and as mutually agreed upon by the Contractor and the City. If there is no mutual agreement on payment, the final determination will be made in accordance with the Disputes provision in this Agreement. However, in no event may the payment exceed the payment set forth in this Agreement nor as amended in accordance with Alteration in Character of Work. The City will make the final payment within 60 days after the Contractor has delivered the last of the partially completed items and the Parties agree on the final payment. If the City is found to have improperly terminated the Agreement for cause or default, the termination will be converted to a termination for convenience in accordance with the provisions of this Agreement.

5.4 Termination for Cause. The City may terminate this Agreement for Cause upon the occurrence of any one or more of the following events: in the event that (a) the Contractor fails to perform pursuant to the terms of this Agreement, (b) the Contractor is adjudged a bankrupt or insolvent, (c) the Contractor makes a general assignment for the benefit of creditors, (d) a trustee or receiver is appointed for Contractor or for any of Contractor's property (e) the Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, (f) the Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or (g) the Contractor fails to cure default within the time requested. Where Agreement has been so terminated by City, the termination will not affect any rights of City against Contractor then existing or which may thereafter accrue.

5.5 Indemnification. The Contractor (Indemnitor) must indemnify, defend, save and hold harmless the City and its officers, officials, agents and employees (Indemnatee) from any and all claims, actions, liabilities, damages, losses or expenses (including court costs, attorneys' fees and costs of claim processing, investigation and litigation) (Claims) caused or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of the Contractor or any of its owners, officers, directors, agents, employees, or subcontractors in connection with this Agreement. This indemnity includes any claim or amount arising out of or recovered under workers' compensation law or on account of the failure of the Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Contractor must indemnify Indemnatee from and against any and all Claims, except those arising solely from Indemnatee's own negligent or willful acts or omissions. The Contractor is responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Agreement, the Contractor agrees to waive all rights of subrogation against Indemnatee for losses arising from or related to this Agreement. The obligations of the Contractor under this provision survive the termination or expiration of this Agreement.

5.6 Insurance Requirements. Contractor must procure insurance under the terms and conditions and for the amounts of coverage set forth in Exhibit C against claims that may arise from or relate to performance of the work under this Agreement by Contractor and its agents, representatives, employees, and subcontractors. Contractor and any subcontractors must

maintain this insurance until all of their obligations have been discharged, including any warranty periods under this Agreement. These insurance requirements are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits stated in Exhibit C are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Agreement by the Contractor, the Contractor's agents, representatives, employees, or subcontractors. Contractor is free to purchase such additional insurance as may be determined necessary.

5.7 Cooperation and Further Documentation. The Contractor agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this Agreement.

5.8 Notices. Unless otherwise provided, notice under this Agreement must be in writing and will be deemed to have been duly given and received either (a) on the date of service if personally served on the party to whom notice is to be given, or (b) on the date notice is sent if by electronic mail, or (c) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified, postage prepaid and properly addressed as follows:

For the City

Name: Purchasing Division
 Title: Purchasing Officer
 Address: 175 S. Arizona Ave
Chandler, AZ 85225
 Phone: 480-782-2400
 Email: purchasing@chandleraz.gov

For the Contractor

Name: Jeffrey Dunn
 Title: General Manager
 Address: 2031 W. 1st Street
Tempe, Arizona 85281
 Phone: 480-833-7287
 Email: jdunn@allcitytowing.com

5.9 Successors and Assigns. City and Contractor each bind itself, its partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Agreement. Neither the City nor the Contractor may assign, sublet, or transfer its interest in this Agreement without the written consent of the other party. In no event may any contractual relation be created between any third party and the City.

5.10 Disputes. In any dispute arising out of an interpretation of this Agreement or the duties required not disposed of by agreement between the Contractor and the City, the final determination at the administrative level will be made by the City Purchasing and Materials Manager.

5.11 Completeness and Accuracy of Contractor's Work. The Contractor must be responsible for the completeness and accuracy of Contractor's services, data, and other work prepared or compiled under Contractor's obligation under this Agreement and must correct, at Contractor's expense, all willful or negligent errors, omissions, or acts that may be discovered. The fact that the City has accepted or approved the Contractor's work will in no way relieve the Contractor of any of Contractor's responsibilities.

5.12 Withholding Payment. The City reserves the right to withhold funds from the Contractor's payments up to the amount equal to the claims the City may have against the Contractor until such time that a settlement on those claims has been reached.

5.13 City's Right of Cancellation. The Parties acknowledge that this Agreement is subject to cancellation by the City under the provisions of Section 38-511, Arizona Revised Statutes (A.R.S.).

5.14 Independent Contractor. For this Agreement the Contractor constitutes an independent contractor. Any provisions in this Agreement that may appear to give the City the right to direct the Contractor as to the details of accomplishing the work or to exercise a measure of control over the work means that the Contractor must follow the wishes of the City as to the results of the work only. These results must comply with all applicable laws and ordinances.

5.15 Project Staffing. Prior to the start of any work under this Agreement, the Contractor must assign to the City the key personnel that will be involved in performing services prescribed in the Agreement. The City may acknowledge its acceptance of such personnel to perform services under this Agreement. At any time hereafter that the Contractor desires to change key personnel while performing under the Agreement, the Contractor must submit the qualifications of the new personnel to the City for prior approval. The Contractor will maintain an adequate and competent staff of qualified persons, as may be determined by the City, throughout the performance of this Agreement to ensure acceptable and timely completion of the Scope of Services. If the City objects, with reasonable cause, to any of the Contractor's staff, the Contractor must take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with new personnel agreed to by the City.

5.16 Subcontractors. Prior to beginning the work, the Contractor must furnish the City for approval the names of subcontractors to be used under this Agreement. Any subsequent changes are subject to the City's written prior approval.

5.17 Force Majeure. If either party is delayed or prevented from the performance of any act required under this Agreement by reason of acts of God or other cause beyond the control and without fault of the Party (financial inability excepted), performance of that act may be excused, but only for the period of the delay, if the Party provides written notice to the other Party within ten days of such act. The time for performance of the act may be extended for a period equivalent to the period of delay from the date written notice is received by the other Party.

5.18 Compliance with Laws. Contractor understands, acknowledges, and agrees to comply with the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. All services performed by Contractor must also comply with all applicable City of Chandler codes, ordinances, and requirements. Contractor agrees to permit the City to verify Contractor's compliance.

5.19 No Israel Boycott. By entering into this Agreement, Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of the Agreement, not to engage in a boycott of Israel as defined by state statute.

5.20 Legal Worker Requirements. A.R.S. § 41-4401 prohibits the City from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A. A breach of this warranty will be deemed a material breach of the Agreement and may be subject to penalties up to and including termination of the Agreement. City retains the legal right to inspect the papers of any Contractor's or subcontractor's employee who provides services under this Agreement to ensure that the Contractor and subcontractors comply with the warranty under this provision.

5.21 Lawful Presence Requirement. A.R.S. §§ 1-501 and 1-502 prohibit the City from awarding a contract to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. This requirement does not apply to business organizations such as corporations, partnerships, or limited liability companies.

5.22 Forced Labor of Ethnic Uyghurs Prohibited. By entering into this Agreement, Contractor certifies and agrees Contractor does not currently use and will not use for the term of this Agreement: (i) the forced labor of ethnic Uyghurs in the People's Republic of China; or (ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (iii) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

5.23 Covenant Against Contingent Fees. Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the Chandler City Council, or any City employee has any interest, financially, or otherwise, in Contractor's firm. For breach or violation of this warrant, the City may annul this Agreement without liability or, at its discretion, to deduct from the Agreement price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

5.24 Non-Waiver Provision. The failure of either Party to enforce any of the provisions of this Agreement or to require performance of the other Party of any of the provisions hereof must not be construed to be a waiver of such provisions, nor must it affect the validity of this Agreement or any part thereof, or the right of either Party to thereafter enforce each and every provision.

5.25 Disclosure of Information Adverse to the City's Interests. To evaluate and avoid potential conflicts of interest, the Contractor must provide written notice to the City, as set forth in this Section, of any work or services performed by the Contractor for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice must be given seven business days prior to commencement of the services by the Contractor for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure must be sent to the City's Purchasing and Materials Manager. An adverse action under this Agreement includes, but is not limited to: (a) using data as defined in the Agreement acquired in connection with this Agreement to assist a third party in pursuing

administrative or judicial action against the City; or (b) testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; or (c) using data to produce income for the Contractor or its employees independently of performing the services under this Agreement, without the prior written consent of the City. Contractor represents that except for those persons, entities, and projects identified to the City, the services performed by the Contractor under this Agreement are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the City's interests. Contractor's failure to provide a written notice and disclosure of the information as set forth in this Section constitute a material breach of this Agreement.

5.26 Data Confidentiality and Data Security. As used in the Agreement, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by, obtained by, or transmitted to the Contractor or its subcontractors in the performance of this Agreement. The Parties agree that all data, regardless of form, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Contractor or its subcontractors in connection with the Contractor's or its subcontractor's performance of this Agreement is confidential and proprietary information belonging to the City. Except as specifically provided in this Agreement, Contractor or its subcontractors must not divulge data to any third party without the City's prior written consent. Contractor or its subcontractors must not use the data for any purposes except to perform the services required under this Agreement. These prohibitions do not apply to the following data provided to the Contractor or its subcontractors have first given the required notice to the City: (a) data which was known to the Contractor or its subcontractors prior to its performance under this Agreement unless such data was acquired in connection with work performed for the City; or (b) data which was acquired by the Contractor or its subcontractors in its performance under this Agreement and which was disclosed to the Contractor or its subcontractors by a third party, who to the best of the Contractor's or its subcontractors knowledge and belief, had the legal right to make such disclosure and the Contractor or its subcontractors are not otherwise required to hold such data in confidence; or (c) data which is required to be disclosed by virtue of law, regulation, or court order, to which the Contractor or its subcontractors are subject. In the event the Contractor or its subcontractors are required or requested to disclose data to a third party, or any other information to which the Contractor or its subcontractors became privy as a result of any other contract with the City, the Contractor must first notify the City as set forth in this Section of the request or demand for the data. The Contractor or its subcontractors must give the City sufficient facts so that the City can be given an opportunity to first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure. Unless prohibited by law, within ten calendar days after completion or termination of services under this Agreement, the Contractor or its subcontractors must promptly deliver, as set forth in this Section, a copy of all data to the City. All data must continue to be subject to the confidentiality agreements of this Agreement. Contractor or its subcontractors assume all liability to maintain the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this Section are violated by the Contractor, its employees, agents or subcontractors. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Section must be deemed to cause irreparable harm that justifies injunctive relief in court. Contractor agrees that the requirements of this Section must be incorporated into all subcontracts entered into by Contractor. A violation of this Section may result in immediate termination of this Agreement without notice.

5.27 Personal Identifying Information-Data Security. Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times by Contractor and any of its subcontractors. At a minimum, Contractor must encrypt or password-protect electronic files. This includes data saved to laptop computers, computerized devices, or removable storage devices. When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed. In the event that data collected or obtained by Contractor or its subcontractors in connection with this Agreement is believed to have been compromised, Contractor or its subcontractors must immediately notify the City contact. Contractor agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach. Contractor agrees that the requirements of this Section must be incorporated into all subcontracts entered into by Contractor. It is further agreed that a violation of this Section must be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice. The obligations of Contractor or its subcontractors under this Section must survive the termination of this Agreement.

5.28 Jurisdiction and Venue. This Agreement is made under, and must be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Agreement or to obtain any remedy with respect hereto must be brought in the courts located in Maricopa County, Arizona, and for this purpose, each Party hereby expressly and irrevocably consents to the jurisdiction and venue of such court.

5.29 Survival. All warranties, representations, and indemnifications by the Contractor must survive the completion or termination of this Agreement.

5.30 Modification. Except as expressly provided herein to the contrary, no supplement, modification, or amendment of any term of this Agreement will be deemed binding or effective unless in writing and signed by the Parties.

5.31 Severability. If any provision of this Agreement or the application to any person or circumstance may be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application will not be affected and will be enforceable to the fullest extent permitted by law.

5.32 Integration. This Agreement contains the full agreement of the Parties. Any prior or contemporaneous written or oral agreement between the Parties regarding the subject matter is merged and superseded.

5.33 Time is of the Essence. Time of each of the terms, covenants, and conditions of this Agreement is hereby expressly made of the essence.

5.34 Date of Performance. If the date of performance of any obligation or the last day of any time period provided for should fall on a Saturday, Sunday, or holiday for the City, the obligation will be due and owing, and the time period will expire, on the first day after which is not a Saturday, Sunday or legal City holiday. Except as may otherwise be set forth in this Agreement, any performance provided for herein will be timely made if completed no later than 5:00 p.m. (Chandler time) on the day of performance.

5.35 Delivery. All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. The Contractor will retain title and control of all goods until they are delivered and accepted by the City. All risk of transportation and all related charges will be the responsibility of the Contractor. All claims for visible or concealed damage will be filed by the Contractor. The City will notify the Contractor promptly of any damaged goods and will assist the Contractor in arranging for inspection.

5.36 Third Party Beneficiary. Nothing under this Agreement will be construed to give any rights or benefits in the Agreement to anyone other than the City and the Contractor, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of City and the Contractor and not for the benefit of any other party.

5.37 Conflict in Language. All work performed must conform to all applicable City of Chandler codes, ordinances, and requirements as outlined in this Agreement. If there is a conflict in interpretation between provisions in this Agreement and those in the Exhibits, the provisions in this Agreement prevail.

5.38 Document/Information Release. Documents and materials released to the Contractor, which are identified by the City as sensitive and confidential, are the City's property. The document/material must be issued by and returned to the City upon completion of the services under this Agreement. Contractor's secondary distribution, disclosure, copying, or duplication in any manner is prohibited without the City's prior written approval. The document/material must be kept secure at all times. This directive applies to all City documents, whether in photographic, printed, or electronic data format.

5.39 Exhibits. The following exhibits are made a part of this Agreement and are incorporated by reference:

- Exhibit A - Project Description/Scope of Services
- Exhibit B - Compensation and Fees
- Exhibit C - Insurance Requirements
- Exhibit D - Special Conditions

5.40 Special Conditions. As part of the services Contractor provides under this Agreement, Contractor agrees to comply with and fully perform the special terms and conditions set forth in Exhibit D, which is attached to and made a part of this Agreement.

5.41 Cooperative Use of Agreement. In addition to the City of Chandler and with approval of the Contractor, this Agreement may be extended for use by other municipalities, school districts and government agencies of the State. Any such usage by other entities must be in

accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

If required to provide services on a school district property at least five times during a month, the Contractor will submit a full set of fingerprints to the school of each person or employee who may provide such service. The District will conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public Law 92-544 of all Contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the District. Additionally, the Contractor will comply with the governing body fingerprinting policies of each individual school district/public entity. The Contractor, sub-contractors, vendors and their employees will not provide services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City will not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

5.42 Non-Discrimination and Anti-Harassment Laws. Contractor must comply with all applicable City, state, and federal non-discrimination and anti-harassment laws, rules, and regulations.

5.43 Licenses and Permits. Beginning with the Effective Date and for the full term of this Agreement, Contractor must maintain all applicable City, state, and federal licenses and permits required to fully perform Contractor's services under this Agreement.

5.44 Warranties. Contractor must furnish a one-year warranty on all work and services performed under this Agreement. Contractor must furnish, or cause to be furnished, a two-year warranty on all fixtures, furnishings, and equipment furnished by Contractor, subcontractors, or suppliers under this Agreement. Any defects in design, workmanship, or materials that do not comply with this Agreement must be corrected by Contractor (including, but not limited to, all parts and labor) at Contractor's sole cost and expense. All written warranties and redlines for as-built conditions must be delivered to the City on or before the City's final acceptance of Contractor's services under this Agreement.

5.45 Emergency Purchases. City reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the Contractor.

5.46 Non-Exclusive Agreement. This agreement is for the sole convenience of the City of Chandler. The City reserves the right to obtain like goods or services from another source when necessary.

5.47 Budget Approval Into Next Fiscal Year. This Agreement will commence on the Effective Date and continue in full force and effect until it is terminated or expires in accordance with the provisions of this Agreement. The Parties recognize that the continuation of this Agreement after the close of the City's fiscal year, which ends on June 30 of each year, is subject to the City Council's approval of a budget that includes an appropriation for this item as expenditure. The City does not represent that this budget item will be actually adopted. This determination is solely made by the City Council at the time Council adopts the budget.

This Agreement shall be in full force and effect only when it has been approved and executed by the duly authorized City officials.

FOR THE CITY

By: _____

Its: Mayor

FOR THE CONTRACTOR

Jeffrey D. Dunn

By: _____

Its: General Manager

APPROVED AS TO FORM:

By: _____

City Attorney *JMB*

ATTEST:

By: _____

City Clerk

EXHIBIT A TO AGREEMENT SCOPE OF WORK

1. SCOPE OF WORK. CONTRACTOR shall provide vehicle towing, storage and impounding services for all vehicles when so requested by the City of Chandler. Many of the vehicles to be towed will have become disabled due to motor vehicle accidents. There will also be a number of service calls relating to stolen vehicle recoveries, the arrest of the vehicle driver, abandoned vehicles, vehicles required for evidentiary purposes and others. The CONTRACTOR shall be available twenty-four (24) hours a day every day of the year to provide service pursuant to this AGREEMENT.

2.1. No guarantee of volume of work. Estimated volume based on historical information ranges from approximately 400 to 500 vehicles per month. This figure is an estimate only. CITY makes no guarantees regarding actual volume to be expected under the Contract.

2.2. Response Time. Except for off road or out of City limits vehicle recoveries CONTRACTOR shall respond, with the proper equipment to the subject location within 30 minutes after receiving CITY'S request for service. The CONTRACTOR must respond to a minimum of 95 percent of the calls referred within the 30-minute period.

2.3. Site Cleanup. The CONTRACTOR shall promptly and thoroughly clean up debris at the scene of accidents, including all vehicle parts and any other matter left in the roadway as a result of the accident. All clean up shall be to the satisfaction of any officer on scene.

2.4. Release of Vehicles. Prior to releasing any vehicle, CONTRACTOR shall require the person or company requesting possession to present a copy of a picture identification verifying ownership of the vehicle as indicated on the police report. An agent of the owner must also present a written statement authorizing the release, with a notarized signature of the vehicle owner and picture ID of the agent. If the owner is incapacitated, the written authorization from the owner's adult next of kin may be substituted for the notarized signature of the vehicle owner. The contractor will accept release documentation by Fax, mail or hand delivery. If requested by CITY, CONTRACTOR shall verify the presence of an ignition interlock or other device. Release of vehicles to insurance companies shall be in accordance with ARS 28-4847 Insurance Companies; release; fees and definition.

2.5. Early Release of Impounded Vehicles. For vehicles ordered impounded by the City Police Officer at the scene, in accordance with ARS 28-3511 et seq, CONTRACTOR shall not release the vehicle prior to the expiration of the 20-day impound period without permission from the Chandler Police Legal Unit. If requested by CITY, CONTRACTOR shall verify the presence of an ignition interlock or other device.

2.6. Release of Personal Property. Upon presentation of a picture identification verifying ownership of the vehicle or written notarized authorization from the owner and picture identification of the agent if the property is being sought by an agent of the owner, CONTRACTOR shall allow vehicle owners or their agents access to the vehicle to recover personal property from the vehicle (allow them to enter the yard, walk to their vehicle and physically remove items themselves) at any time during normal business hours and shall not require payment of any fee or charge prior to or as a condition of such release. If the owner is incapacitated, the written authorization from the owner's adult next of kin may be substituted for the notarized signature of the vehicle owner.

2.7. Timely Release Of Vehicles. CONTRACTOR shall make vehicle available to owner or owners agent within a reasonable time (not more than 30minutes) from the time the owner or owner's agent arrives at storage facility during the time specified in section 3.3.7 Storage Lot Availability.

2.8. No Other Conditions of Release. Except as listed herein or as required by law, CONTRACTOR shall not require any other documentation as a condition of or prior to release of vehicles or personal property nor impose any other requirements to prevent owners or their agents from obtaining possession of their vehicle or personal property.

2.9. Use of Another Tow Service. CONTRACTOR agrees and understands that requests by motorists for another tow service will be honored if the officer determines that the request is reasonable. The purpose of this contract is to provide towing service for those motorists who do not have a specific request for another tow service, or are incapable of making such a request due to injuries or for other reasons.

2.10. Expansion of Boundaries. City boundaries may expand during the period of the contract due to annexations by the City of Chandler. If annexations occur CONTRACTOR shall provide tow services to the annexed area for the term of the contract under the same terms and conditions as set forth in the Agreement. CITY may occasionally request service outside the City limits for stolen vehicle recoveries or other reasons. When such service is requested, CONTRACTOR is permitted to add the "per mile" rate for the distance from the recovery site and back to the City limits.

2.11. Future Technology: Ability and willingness to work with the City of Chandler on technology improvements, to include, but not limited to direct tow request form a web based platform to improve efficiencies and allow the City to provide a better service to the community.

3. REQUIRED EQUIPMENT, PERSONNEL AND FACILITIES

3.1. Equipment. The tow trucks shall have current inspection and certification by the Arizona Department of Public Safety and shall maintain the certification throughout the term of the Contract. CONTRACTOR must be capable of responding and providing service for any vehicle up to a maximum gross vehicle weight of 25,000 pounds.

3.1.1 Minimum Equipment Requirements. CONTRACTOR will be required to have a minimum of six (6) tow vehicles, one of which must be capable of towing a vehicle up to 25,000 GVW. The tow trucks shall be equipped with the proper complement of dollies, chains, slings, bumpers and other equipment necessary to prevent damage to towed vehicles. Tow trucks shall also be equipped with brooms, shovels, oil absorbent material, and other necessary equipment to clean up the site after removal of the vehicles. CONTRACTOR will be required to add equipment if necessary to meet the terms of the AGREEMENT.

3.1.2 Substitute Equipment Requirements. If any of CONTRACTOR'S equipment is out of service, CONTRACTOR shall be responsible for acquiring substitute equipment sufficient to provide timely service on demand under this Contract. Such substitute equipment shall be considered CONTRACTOR'S equipment for the purposes of this Agreement and be operated by personnel of CONTRACTOR.

3.1.3 Truck Identification. Tow trucks shall have CONTRACTOR's name and telephone number and comply with applicable law regarding truck identification as the law may be amended.

3.1.4 Communications Equipment Requirements. CONTRACTOR shall have the ability to communicate with drivers via radio, mobile telephone, or other like equipment, so that the City of Chandler Police Department Communications Section will have the ability to pass on information to the driver through CONTRACTOR'S dispatch center as the driver responds to a call. CONTRACTOR must be available by phone to the police department 24 hours a day, 7 days a week. CONTRACTOR shall 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.

3.1.5 CONTRACTOR shall be responsible for and is liable for the safekeeping of vehicles towed and/or stored and for items left in stored vehicles.

3.2. Personnel Minimum Requirements. CONTRACTOR shall have available at all times sufficient qualified personnel to operate the number of tow trucks necessary to provide timely service. Such personnel shall be employees of CONTRACTOR. Each driver shall be properly licensed with correct class license as required by the Motor Vehicle Division of the State of Arizona. It shall be CONTRACTOR's responsibility to ensure that all drivers maintain current Arizona licenses during the contract term. 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, pursuant to A.R.S. 28-1108.

3.2.1 Driver Conduct. All drivers shall operate the tow trucks in a safe and prudent manner and shall refrain from using profane or vulgar language in a public area while performing work under this agreement. CONTRACTOR will agree to prohibit the use of intoxicating substances by all tow truck drivers and ensure that they do not either use or possess illegal drugs while in the course of performing their duties under this contract. Employees of CONTRACTOR who normally and regularly come into direct contact with the public shall be in a reasonably clean uniform that at a minimum identifies the name of the tow company and the individual. CONTRACTOR shall be fully responsible for drivers' actions.

3.3.Storage Facilities

3.3.1 Lot Location. Storage facility shall be located within a 8.5-mile radius of the intersection of Arizona Ave. and Chandler Blvd. The storage facility must meet all applicable zoning and other requirements of the City, County, State and Federal Government. Vehicles shall be stored in the storage facility offered until released to the owner or other authorized agent.

3.3.2 Location Prohibition. The storage facility shall not be located within a wrecking yard that is in the business of dismantling vehicles.

3.3.3 Fencing. A fence of a minimum of six (6) feet in height is required. The fence may be constructed from chain link, masonry, wood or equivalent as permitted by the appropriate building and zoning regulations. Barbed wire or razor wire may be provided at the top of the fence if permitted by law.

3.3.4 Lighting. The storage area shall be sufficiently lit with overhead lighting that illuminates the entire storage facility.

3.3.5 Security. The fenced storage facility shall be locked when unattended. The CONTRACTOR shall be responsible for the safe keeping of vehicles towed and for items left in stored vehicles. All vehicles shall be kept within the fenced storage area until released to the owner or authorized agent. Access to the

storage facility shall be limited to the CONTRACTOR'S employees or individuals with a legitimate interest in vehicles being stored. All individuals must be accompanied by an employee of CONTRACTOR. The storage lot shall be dedicated to the storage of vehicles towed and stored by CONTRACTOR.

3.3.6 Size. The minimum storage space required will be 45,000 square feet dedicated to vehicles stored pursuant to this Contract. Vehicles towed under the resultant Contract shall be stored in one location. If additional space is required during the term of the contract, the contractor will be required to provide such additional space.

3.3.7 Storage Lot Availability. CONTRACTOR shall staff its vehicle storage facility between the hours of **8 a.m. and 6 p.m.** Monday through Friday except the following holidays: New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. CONTRACTOR shall have a telephone number and company name prominently posted at the storage location for after-hour release of vehicles.

3.3.8 Zoning. Storage facilities must meet the appropriate zoning/permit requirements of the appropriate government entity where the facility is located.

3.3.9 Overflow Storage Lot. CONTRACTOR may use an overflow storage lot to store vehicles that have been stored in the primary storage facility for over 35 days. CONTRACTOR shall make provision for release of vehicles from overflow storage lot at no additional charge and without any additional delay. Overflow storage lot shall be within a 15 mile radius of Arizona Avenue and Chandler Blvd. The overflow storage lot shall meet requirements set forth in sections 3.3.2, 3.3.3, 3.3.4, 3.3.5, 3.3.7 and 3.3.8.

4. DOCUMENTATION

4.1. Reports to Department of Transportation. CONTRACTOR shall submit all necessary reports to the Arizona Department of Transportation in accordance with A.R.S. Sections 28-1401 through 28-1411 and subsequent amendments thereto, when the statutes are applicable to vehicles towed and stored under this contract.

4.2. Required Records. CONTRACTOR shall maintain adequate records of every vehicle towed at the request of the City of Chandler under the contract showing the following:

- a) Location of vehicle pick up.
- b) Location where vehicle taken.
- c) Date and time of the tow.
- d) Make, model and year of the vehicle.
- e) License number and state.
- f) Vehicle identification number.
- g) Name of person or business to whom vehicle released.
- h) Itemized tow and storage billing statements.

CONTRACTOR shall maintain a record, either electronically or manually, that is easily separated from all other records CONTRACTOR may keep, of each vehicle towed under this Agreement. The customer record file is to include the master log, signed invoice and service fee listing and must be maintained alphabetically by the last

name of the customer or the Vehicle Identification Number. The invoice shall be presented to the customer upon the customer's request for the invoice.

4.3. Inspection of Facility and Equipment. CONTRACTOR shall permit and make available for inspection all of its facilities and equipment by CITY upon reasonable notice and during normal business hours.

4.4. Required Reports. On or before the fifteenth of each month, CONTRACTOR shall provide a report for all vehicles towed and released pursuant to the contract. The report shall be in Excel format unlocked, in the form shown in Exhibit A.1, A.2 and A.3. The report shall be provided in electronic and hard copy.

4.5. Confidentiality of Records. CONTRACTOR shall establish and maintain procedures and controls that are acceptable to CITY to assure that no information contained in CONTRACTOR'S records or obtained from CITY or from others in carrying out CONTRACTOR'S functions under this Contract is used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract. Persons requesting such information shall be referred to CITY. CONTRACTOR also agrees that any such information shall not be divulged other than to employees or officers of CONTRACTOR as needed for the performance of duties under the contract, unless otherwise agreed to in writing by CITY.

5. ALLOWED CHARGES. For all services provided under this Agreement, CONTRACTOR may charge vehicle owners only those fees set forth herein at the rates and in the amounts listed in the Price Sheet attached hereto as Exhibit B and incorporated herein by reference.

5.1. Flat Rate Per Tow Fee. CONTRACTOR shall charge vehicle owners the Flat Rate Per Tow Fee listed in Exhibit B. This fee covers all towing services 24 hours per day including weekdays, weekends and holidays. The flat rate per tow fee includes all costs for hookups, winching, preparation to tow, cleanup of debris, stand by time, use of dollies when necessary, drive line dropping, all labor incurred, mileage, sealing of windows if necessary, and delivery to the public roadway for subsequent tow if necessary. The allowable flat rate per tow fee is listed in Exhibit B and is a flat rate for vehicles up to and including 25,000 lb. GVW.

5.2. Unit Price for Storage. CONTRACTOR may charge the full daily storage charge shown on Exhibit B for any part of a 24-hour period. The Rate set forth in Exhibit B shall apply to all vehicles stored pursuant to this contract excluding those vehicles impounded pursuant to A.R.S. 28-3511 et. seq. The time period for billing for storage shall commence from the time the vehicle arrives at the storage lot. The unit price for storage is for vehicles up to and including 25,000 lb. GVW.

5.3. Extraordinary Recoveries. With prior written approval from the officer on the scene, CONTRACTOR may charge an additional hourly fee for extraordinary recoveries, i.e. lake recoveries, recoveries from canals with water in them, recoveries from swimming pools, etc. This fee will be in addition to the flat rate per tow fee.

5.4. After Hours Opening. CONTRACTOR may charge the fee shown on Exhibit B to open the lot after normal business hours, as defined in Paragraph 3.3.7 Storage Lot Availability. Contractor shall make vehicle available within 60 minutes from the time owner or owner's agent notifies the contractor of request for afterhours opening.

5.5. Mileage. CONTRACTOR shall not charge a "cost per mile" charge when the tow is made to the CONTRACTOR'S storage facility or any location within the City of Chandler. CONTRACTOR may charge the

Mileage charge shown on Exhibit B only when (1) the owner or agent requests that the vehicle be towed to a location other than CONTRACTOR'S storage facility located outside the City of Chandler and then only for the additional actual mileage beyond the mileage to the nearest City of Chandler border based on the most direct route or (2) when a vehicle is towed from outside the City limits and then only for the actual mileage from the point of pick up to the nearest City or Chandler border based on the most direct route .

5.6. Device Verification. When requested by CITY to verify installation of an interlock or other device, CONTRACTOR shall not charge any fee for such verification.

5.7. Incidental Services. CONTRACTOR shall perform related services such as inflating tires, jump starting, opening of locked vehicles and other incidental services requested by the owner of a towed vehicle without charge from the time the contractor is dispatched to the time vehicle is released.

5.8. Filing Fee. CONTRACTOR may charge a filing fee at the rate set forth by state law for reimbursement of any filing fee paid by CONTRACTOR pursuant to state law.

5.9. Re-tows. CONTRACTOR shall provide vehicle owners or their agents a choice to use CONTRACTOR or another source for re-towing. CONTRACTOR may not charge any re-tow fee nor any other fee to allow the vehicle owner or agent to use another source for re-towing,

5.10. Outside Contracted Services. With approval from the officer on scene, CONTRACTOR may charge actual expenses in cases where it is necessary to hire outside services or lease additional equipment for vehicle recoveries, i.e. hiring divers, crane rental, etc.

5.11. Business Card and Rate Sheet. CONTRACTOR shall provide a business card and Contract Rate Sheet to the owner or agent of each vehicle towed. If unable to do so because the owner or agent has been transported to a hospital or otherwise left the scene, CONTRACTOR will provide the business card and rate sheet to the officer investigating the accident. The Contract Rate Sheet will be provided to CONTRACTOR by CITY. CONTRACTOR shall notify CITY if additional rate sheets are needed.

5.12. Additional Fees. Under no circumstances shall CONTRACTOR charge any fees not authorized herein and listed in the Price Sheet, Exhibit B, for services by reason of this Contract. This Contract covers all services, charges and fees from the time CONTRACTOR receives a request from the City of Chandler to respond until possession of the vehicle is released from CONTRACTOR and passes to the vehicle's owner or owner's agent.

5.13. Compensation, Taxes and Workman's Compensation. CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Agreement. CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR. 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 persons(s) supplied by the CONTRACTOR in the performance of this Agreement and CONTRACTOR shall indemnify and hold harmless with respect thereto.

6. RESPONSIBILITY FOR PAYMENT

6.1. Payment by Vehicle Owners. All payments, except for vehicles towed for evidentiary purposes and City owned vehicles will be the responsibility of the vehicle owner and not CITY. For vehicles owned by the City or vehicles towed or stored for evidentiary purposes, CITY shall pay CONTRACTOR at the rates shown on Exhibit B.

6.2. Method of Payment. CONTRACTOR shall and hereby agrees to accept all reasonable forms of payment from vehicle owners, including but not limited to, cash, credit cards, and debit cards.

7. Solicitation of Business Prohibited. In connection with any vehicle towed pursuant to this agreement, CONTRACTOR may not solicit business for, or contact the vehicle owner or owner's agent on behalf of, any body shop, towing company, wrecking yard, health care provider, lawyer, or other person or business of any description. This prohibition does not prohibit the contractor's employees from answering questions from a vehicle owner or owner's agent. In addition, CONTRACTOR shall not accept any referral fees or commission from any body shop, towing company, wrecking yard, health care provider, lawyer, or other person or business in connection with this contract. In addition, CONTRACTOR is prohibited from receiving a commission, referral fee or other compensation from any body shop, insurance company, legal firm, attorney or others in exchange for referring business from this contract to said parties.

**EXHIBIT B TO AGREEMENT
COMPENSATION AND FEES**

<i>Description</i>	<i>Unit</i>	<i>Unit Price</i>
Flat rate per tow	Each	\$ 20.00
Storage (non 28-3511)	Day	\$ 32.50
Storage (28-3511)	Day	\$ 25.00
Extraordinary Recovery	Hour	\$ 50.00
After hours opening	Each	\$ 65.00
Mileage	Mile	\$ 5.00

Outside Contracted Services at actual cost may also be charged upon written approval from the officer at the scene.

A listing of all towing and service prices as contracted shall be issued to the owner, agent of the owner, or the owner's insurance representative at pick-up and a copy shall be issued when invoiced at the time of vehicle release.

EXHIBIT C TO AGREEMENT INSURANCE

INSURANCE

General.

- A. At the same time as execution of this Agreement, the Contractor shall furnish the City a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to City. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Workers' Compensation coverage.
- B. The Contractor and any of its subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.
- C. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
- D. The City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect Contractor from liabilities that might arise out of the performance of the Agreement services under this Agreement by Contractor, its agents, representatives, employees, subcontractors, and the Contractor is free to purchase any additional insurance as may be determined necessary.
- E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the Contractor from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.
- F. Use of Subcontractors: If any work is subcontracted in any way, the Contractor shall execute a written contract with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the Contractor in this Agreement. The Contractor is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

Minimum Scope and Limits of Insurance. The Contractor shall provide coverage with limits of liability not less than those stated below.

- A. *Commercial General Liability-Occurrence Form.* Contractor must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 aggregate. Said insurance must also include coverage for products

and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

- B. *Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles*
Vehicle Liability: Contractor must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on Contractor owned, hired, and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

- C. *Workers Compensation and Employers Liability Insurance:* Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee.

Additional Policy Provisions Required.

- A. *Self-Insured Retentions or Deductibles.* Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.
 - 1. The Contractor's insurance must contain broad form contractual liability coverage.
 - 2. The Contractor's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the Contractor and must not contribute to it.
 - 3. The Contractor's insurance must 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.
 - 4. Coverage provided by the Contractor must not be limited to the liability assumed under the indemnification provisions of this Agreement.
 - 5. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the Contractor for the City.
 - 6. The Contractor, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of three

years following completion and acceptance of the Work. The Contractor must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this three year period containing all the Agreement insurance requirements, including naming the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.

7. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.

B. *Insurance Cancellation During Term of Contract/Agreement.*

1. If any of the required policies expire during the life of this Contract/Agreement, the Contractor must forward renewal or replacement Certificates to the City within ten days after the renewal date containing all the required insurance provisions.
2. Each insurance policy required by the insurance provisions of this Contract/Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after 30 days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then ten days prior notice may be given. Such notice shall be sent directly to Chandler Law-Risk Management Department, Post Office Box 4008, Mailstop 628, Chandler, Arizona 85225. If any insurance company refuses to provide the required notice, the Contractor or its insurance broker shall notify the City of any cancellation, suspension, non-renewal of any insurance within seven days of receipt of insurers' notification to that effect.

A. *City as Additional Insured.* The policies are to contain, or be endorsed to contain, the following provisions:

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the Contractor including the City's general supervision of the Contractor; Products and Completed operations of the Contractor; and automobiles owned, leased, hired, or borrowed by the Contractor.
2. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Agreement.

EXHIBIT D TO AGREEMENT SPECIAL CONDITIONS

CITY'S CONTRACTUAL REMEDIES

1. **Right to Assurance.** If the City in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Agreement, the Agreement Administrator may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Agreement in addition to any other rights and remedies provided by law or this Agreement.
2. **Assessment for failure to provide Required Reports.** In addition to other remedies available to CITY for a violation of any term of this contract, CITY may assess, and CONTRACTOR agrees to pay to CITY, fifty dollars (\$50) per day that any report is late.
3. **Assessment for Failure to Meet Response Time.** In addition to other remedies available to CITY for a violation of any term of this contract, CITY may assess, and CONTRACTOR agrees to pay to CITY, for violation of the response time requirements herein, one thousand dollars (\$1,000) per percentage point below 95 percent that CONTRACTOR fails to respond within the time required during each calendar month.

Compliance Rate	Assessment
94%	\$1,000
93%	\$2,000
92%	\$3,000
91%	\$4,000
90%	\$5,000
89%	\$6,000
88%	\$7,000
87%	\$8,000
86%	\$9,000
85%	\$10,000

4. **Stop Work Order.** The City may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Agreement for period(s) of days indicated by the City after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Agreement Administrator shall make an equitable adjustment in the delivery schedule or Agreement price, or both, and the Agreement shall be amended in writing accordingly.

5. Non-exclusive Remedies. The rights and the remedies of the City under this Agreement are not exclusive.

6. Nonconforming Tender. Services and materials supplied under this Agreement shall fully comply with Agreement requirements and specifications. Services or materials that do not fully comply constitute a breach of agreement.

7. Right of Offset. The City shall be entitled to offset against any sums due Contractor, any expenses or costs incurred by the City, or damages assessed by the City concerning the Contractor's non-conforming performance or failure to perform the Agreement, including expenses to complete the work and other costs and damages incurred by City.