

CITY CLERK ORIGINAL

C-6266-3
12/11/2012

TOWING AGREEMENT

This Towing Agreement is made this 11 day of December, 2012 ("Agreement"), with an effective date of January 1, 2013, by and between the City of Glendale, an Arizona municipal corporation ("City") and DV Towing, LLC, an Arizona limited liability company, authorized to do business in Arizona ("Contractor").

RECITALS

- A. City and Contractor previously entered into a Towing Agreement, Contract No. C-6266, dated November 27, 2007, ("Original Agreement"); and
- B. City and Contractor entered into a Settlement Agreement dated February 23, 2009 and extended the term of the Original Agreement through December 31, 2010 and provided for two additional one-year renewals; and
- C. City and Contractor previously renewed the Original Agreement for a one-year period from January 1, 2011 to December 31, 2011 pursuant to Contract Amendment No. One (1) dated October 6, 2010; and
- D. City and Contractor previously renewed the Original Agreement for a one-year period from January 1, 2012 to December 31, 2012 pursuant to Contract Amendment No. Two (2) dated December 30, 2011; and
- E. City and Contractor wish to enter into a month-to-month agreement for towing services for a period of up to twelve (12) months, subject to and strictly in accordance with the terms of the Original Agreement, as it may have been amended pursuant to the Settlement Agreement and subsequent amendments identified above, all of which are attached hereto as Exhibit A and incorporated herein.

AGREEMENT

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Contractor hereby agree as follows:

- 1. **Recitals.** The recitals set forth above are not merely recitals, but form an integral part of this Agreement and are incorporated into the Agreement.
- 2. **Term.** The term of the Agreement shall be month to month beginning January 1, 2013 for a period not to exceed twelve (12) months.
- 3. **Agreement.** City and Contractor hereby agree that, except for the Term, which is set forth above, the terms and conditions of the Original Agreement, as they may have been amended, constitute the terms and conditions of this Agreement and shall remain in full force and effect during the term of this Agreement.

CITY OF GLENDALE, an Arizona
municipal corporation

Horatio Skeete
Horatio Skeete, Acting City Manager

ATTEST:

Darcie McCracken
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Craig Tindall
Craig Tindall, City Attorney

DV TOWING, LLC, an Arizona limited
liability company, authorized to do business
in Arizona

Ronald L. McClure
By: RONALD L. MCCLURE
Its: Managing Member

EXHIBIT A
Towing Agreement

Original Agreement (Contract No. C-6266), Settlement Agreement, and Amendments

This Towing Agreement (the "Contract") is dated November 27, 2007, with an effective date of January 1, 2008, by and between the City of Glendale (the "City"), an Arizona municipal corporation, and DV Towing (the "Contractor"), an Arizona limited liability corporation.

RECITALS

I. WHEREAS, the City and the Contractor are parties to this Contract and desire to enter into this Contract which provides for towing services for both abandoned and non-abandoned vehicles, as well as City vehicles that have become disabled, including the provision of flat tire changing services to City vehicles under 10,000 G.V.W; and

II. 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; and

III. WHEREAS, Title 28 of the *Arizona Revised Statutes* (A.R.S.) and Title 13, Chapter 3, of the *Arizona Administrative Code* are made a part of and fully incorporated into this Contract.

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

AGREEMENT

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 Include both abandoned and non-abandoned vehicles and City vehicles that have become disabled, including the provision of flat tire changing services to City vehicles; 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 Incorporate 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 as it now exists as part of this Contract.
- 1.6 Define the scope of services of this Contract to include actions up and to:
 - (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) until the Contractor takes title by reason of abandonment.

2.1 IDENTIFICATION. The Contractor's tow trucks shall have the Contractor's name painted on sides and shall display the Arizona Department of Public Safety Inspection seal. All drivers shall carry business cards in order that City Police may provide the contractor's business card to the owner or driver of the towed vehicle.

2.2 The Contractor shall also display an appropriate permanent facility sign with the proper name and address of the business. The sign must be visible from the public street and made of weatherproof material and comply with applicable codes.

2.3 The Contractor shall supply City Police and Equipment Management with a single 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.

2.4 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.

3.1 VEHICLES, EQUIPMENT AND SUPPLIES. The Contractor shall provide sufficient tow trucks, equipment, and supplies for operation of the tow service to adequately handle the volume and variety of calls.

3.2 The Contractor shall provide a heavy-duty tow truck for vehicles over 23,500 lbs GVW.

3.3 The Contractor's tow trucks shall have a two-way radio system, or mobile phones, with 24 hour dispatching.

3.4 All tow vehicles shall be equipped, maintained and operated in accordance with A.R.S. and the rules and regulations of the Arizona Department of Public Safety. All such vehicles shall have a current inspection and certification by the Arizona Department of Public Safety, in accordance with A.R.S. 28-1108.

3.5 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.

4.1 FACILITIES. The Contractor shall provide a properly zoned, fenced, lighted storage area (primary and/or secondary lot) that shall provide adequate security. Security must include a monitoring system, or an electronic alarm monitoring system, with 24 hour, 7 day a week monitoring and adequate security fencing.

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

4.3 The lot(s) must be appropriately zoned.

4.4 The primary storage lot must be located within the geographical boundaries of the City or a maximum of two (2) miles outside of the geographical boundaries of the City. Any secondary storage lot may be located beyond the physical limitation imposed above for the primary storage lot.

4.5 The Contractor must provide a minimum of ten (10) acres of lot storage area dedicated for City tows. A dedicated lot storage area is considered an area in which no vehicles may be stored in other than City tows. 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 five (5) acres of lot storage area dedicated to City tows and the secondary storage lot must have a minimum of five (5) acres of lot storage area dedicated to City tows.

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.

4.7 The Contractor shall be responsible and is liable for the safekeeping of vehicles towed and for items left stored in the vehicles.

4.8 At a minimum, the 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 the contractor must be monitored at all times outside normal business hours.

4.9 The Contractor will release the customer's vehicles within 30-minutes of completing the identification transaction and financial arrangements for the specific tow and storage. A customer 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.

4.10 If for some reason, the Contractor cannot provide or conduct a transaction within thirty (30) minutes, all storage fees will stop and tow fees will adjust to charges reflecting the time frame that the customer was present.

5.1 PERSONNEL. The Contractor shall staff the vehicle storage facility with qualified staff during normal business hours for the purpose of vehicle release or appraisal.

5.2 The Contractor shall have available sufficiently trained and qualified personnel for the operation of the required tow trucks, office and dispatching staff.

5.3 The Contractor shall hire, train and supervise all drivers in accordance with A.R.S. and the rules and regulations of the Arizona Department of Public Safety.

5.4 All drivers used/supplied by the Contractor shall be employees of the Contractor. As circumstances necessitate, the Contractor may utilize the services of another qualified towing provider upon written approval of the City. Contractor is not authorized to acquire individual drivers/operators as independent contractors to the Contractor.

5.5 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.

6.1 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.

6.2 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.

6.3 Towing services shall be available twenty-four (24) hours a day every day of the year.

7.0 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.

8.0 CONTINUATION DURING DISPUTES. The 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.

9.0 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.

10.0 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.

11.0 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.

12.1 HOURLY RATE. All charges for towing services shall be based on the stated hourly rate. Towing services include, but are not limited to, the following:

- (a) travel time to and from scene/service site (anywhere in State of Arizona)
- (b) hook-up
- (c) dollies
- (d) winching
- (e) stand-by time
- (f) change tire(s)
- (g) drop drive line
- (h) flatbed use
- (i) towing to a location at owner's request
- (j) site clean-up
- (k) other services not mentioned

12.2 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 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.

12.3 In the event dispatched equipment is not appropriate, there shall be no charge by the Contractor for the equipment initially dispatched. In addition, provided the Contractor is properly notified by City Police 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.

13.1 STORAGE CHARGE. 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.

13.2 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.

13.3 There is to be no additional charge or fee imposed on the City for the services provided while the vehicle remains unclaimed.

13.4 The only authorized charges are as described in paragraph "Authorized Prices". The only exception would be, with the authorization of the customer, to make a minor repair to make the vehicle drivable. Examples would be, but are not limited to repairing or replacing a radiator, tires, batteries, steering column, straightening fenders and taping windows for interior protection.

13.5 A line item listing of repair service and agreed upon cost must appear on the invoice.

14.0 LIABILITY. The Contractor shall indemnify, defend, save and hold harmless the City and its officers, officials, agents, and employees (collectively hereafter "City") 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 sub-contractors. 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 City shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the City, 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. 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

15.1 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.

15.2 Upon receiving a telephone request for towing or flat tire service or a tow to a vehicle repair facility, the Contractor shall be responsible for dispatching its own trucks and any authorized subcontracted services. The City may request separate tow trucks in specific situations.

15.3 The Contractor shall respond and arrive at the service site within thirty (30) minutes of receipt of a request for tow of vehicles under 23,500 lbs. GVW or flat tire service within the City. The Contractor shall respond and arrive at the service site within sixty (60) minutes of receipt of a request for tow of vehicles exceeding 23,500 lbs. GVW.

15.4 Tow time for City vehicles to a repair facility is four (4) hours.

15.5 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. The Contractor shall respond within sixty (60) minutes of a request outside of the City, but within the metropolitan area.

15.6 The scheduling of requests to tow abandoned vehicles will normally be done between the hours of 8:00a.m. and 5:00p.m. Monday through Friday.

15.7 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.

15.8 Upon request by the City, the Contractor shall prepare a written explanation for any incident in which the Contractor 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.

15.9 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.

15.10 If the Contractor is unable to provide tow services, or when the response time limits cannot be met the Contractor shall immediately call the City Police dispatcher (623-930-3000) concerning a non-abandoned or abandoned vehicle or the Equipment Management dispatcher (623-930-2622 from 7:00 a.m., to 3:00 p.m., and 623-930-2623, 3:00 p.m., to 12:00 a.m.) for a disabled city vehicle, or flat repair or tow to a repair facility.

16.0 REPORTING. The Contractor shall submit all necessary reports to the Arizona Department of Transportation and to City Police in accordance with A.R.S. Title 28.

17.1 RECORDS. The Contractor shall maintain a master log of all vehicles towed and a record of each vehicle towed under this Contract showing the following:

- (a) Location where the vehicle was picked up.
- (b) Location where the vehicle was taken.
- (c) The date and time of the pick up.
- (d) Date and time of release.
- (e) Make, model, color and year of vehicle.
- (f) License plate number and state issue.
- (g) Vehicle identification number.
- (h) Name of individual that vehicle was released to.
- (i) Notice of charges.
- (j) Identity of the contractor's driver providing towing service.
- (k) Detail of all services and related charges assessed on the vehicle, including any owner/agent requested services.
- (l) DR Number. The DR is not provided for towing of city vehicles or flat repair.

17.2 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.

18.0 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."

19.1 STORAGE. Vehicles shall not be removed from the primary storage lot to which the vehicle was first towed for a period of five (5) calendar days unless it is not claimed by the owner, or the owner's authorized agent directs that it be moved to another location. If the Contractor has not received instructions from an owner or authorized agent, after a period of five (5) calendar days, the Contractor may move the vehicle to an alternate storage lot. The Contractor shall not charge an additional towing fee when vehicles are moved to an alternate storage lot.

19.2 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 City Police.

20.0 DESTINATION. Vehicles shall be taken directly to Contractor's storage facility unless the Contractor is advised differently by City Police, or the owner/driver of the vehicle. Any tow requested by City Police, Equipment Management or a customer to a location other than the storage lot, but within the City limits, shall be towed at the Contract rate. On requests for a location outside City limits the Contractor is to provide the service at a fixed rate per mile.

21.0 VEHICLE RELEASE AND HOLDS. Unless requested by an officer, investigator or an authorized agent of City Police, the Contractor shall not release any vehicle that is held for evidence under A.R.S. Title 28. The authorized City Police representative will indicate this status by requesting that a "HOLD" be placed on the vehicle. During this time, no one shall enter or disturb the vehicle being held unless authorized person by City Police. Once a "HOLD" has been placed on a vehicle, the Contractor shall contact and inform the City Police Tow Liaison as soon as possible on the following business day. The vehicle shall not be released until an authorized representative from the City Police 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 an authorized agent.

22.0 TOWING (NON-ABANDONED VEHICLES)

22.1 Citizen(s) whose vehicles are disabled or who have been arrested have the options of (a) using the Contractor or (b) using the services of any other towing operator.

22.2 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.

22.3 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.

22.4 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 the Federal Resource, Conservation and Recovery Act and the regulations promulgated there under.

22.5 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 in traffic violations or other legal actions requiring such evidence. Vehicles towed for impounding shall be towed at Contract rates.

22.6 The City Police will be the sole judge of any impounding error.

22.7 For events at the Sportsman's Park Stadium and the Glendale Arena, the Contractor, upon 72-hour notice from City Police, shall provide on site standby tow truck service. Two (2) tow trucks capable of towing vehicles under 23,500 lbs. GVW, shall be provided at an hourly on site standby rate. The 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. No additional hourly fees are to be charged for the towing services provided by these dedicated trucks. The hourly on site standby rate shall be applicable whether the trucks are used or not. The total of the hourly on site standby rate for the event is to be billed to the City. Other events may be added in addition to the events identified above. The City may require more than two (2) tow trucks for an event and the City will determine the minimum hours of the standby services.

22.8 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 the City's airport, in an area designated by City Police. 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. If 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 City Police.

23.0 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 mvner is allowed 48 hours from the time of tagging to move the vehicles. Vehicles may then be declared abandoned by the City and subject to removal by towing to the Contractor's storage or impound area.

24.0 PRICES

24.1 The Contractor shall only charge prices which are specifically described and provided for in Exhibit A attached hereto. The Contractor shall not require payment from vehicle owners for any charges that may result from errors committed by the City. All prices quoted shall be firm and fixed for the specified Contract period. The Contractor may charge the

owner of an abandoned vehicle the Department of Motor Vehicle fee related to the processing of an abandoned vehicle.

24.2 The Contractor is fully responsible for assuring that all tow services arising from this Contract are billed the correct and applicable price. Prices shall include applicable taxes.

24.3 A fuel surcharge is authorized for fluctuating fuel prices. The fuel surcharge shall appear as per cent(%) of the total fees on an invoice.

24.4 Prices made pursuant to this Contract shall be for a one-year period.

24.5 Extraordinary situations shall be defined as 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 are described as 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 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, the Contractor shall document the invoice describing the situation in sufficient detail. The City Police Towing Administrator, or designee, shall have sole discretion in granting payment for extraordinary situations, for each individual vehicle.

24.6 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.

24.7 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.

24.8 The Contractor will have sufficient equipment and personnel at the storage lot to promptly complete the invoicing and payment process and release the vehicle.

24.9 Fees for services provided under this Contract will be paid directly to the Contractor by the individual(s) receiving the service. The City will not be responsible for non-payment of bills tendered to the individual(s) involved in the collision(s) or owners of abandoned vehicles. For the citizen's convenience, the Contractor must be able to accept cash and credit card as methods of payment.

24.10 Prices for the towing of impounded vehicles to a City owned storage area, or disabled city vehicles, or flat repair or tows to a repair facility, shall be paid to the Contractor by the City. The Contractor shall submit invoice to the City Police Towing Administrator for impounds.

24.11 Invoices for City owned vehicles shall be submitted to the Equipment Management Supervisor, at 6210 West Myrtle Ave. Glendale, AZ 85301.

24.12 The DR Number shall be written or printed on every invoice prepared by the Contractor for all tows provided under this Contract except for towing of disabled city vehicles or flat repairs to a repair facility.

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

25.1 CITY. Every City Police officer and collision investigator may deliver to the person in charge of the vehicle, a copy of the prices authorized in this contract.

25.2 CONTRACTOR INVOICE. An invoice listing separately all services performed and the 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 Exhibit A. 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.

(a) 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."

(b) The invoice must also include:

- i. Date and time vehicle is released.
- n. Name of towing firm to which vehicle is released from the storage lot.
- iii. Name of insurance company the towing firm is contracted by.
- iv. DR Number.

25.3. CONTRACT PRICE LIST. A listing of all towing and service prices as contracted, 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.

26.0 LICENSES. The Contractor shall maintain current State and City licenses for the operation of the Contractor's towing business.

27.1 TERM OF AGREEMENT. The term of this Contract shall be from January 1, 2008 through December 31, 2008.

27.2 The City may, at its option and with the approval of the Contractor, extend the term of this Contract an additional four (4) year(s), renewable on an annual basis. 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) calendar days prior to the expiration of the original contract period. Price adjustments will only be reviewed during Contract renewal.

28.1 INSURANCE. Contractor, performing as an independent contractor hereunder, shall be fully responsible for providing applicable insurance coverage for itself and its employees and the City shall have no responsibility of liability for such insurance coverage.

28.2 Contractor shall provide to the City a copy of the policy or a certification by the insurance carrier, showing the Contractor to have in effect during the term of this Contract, insurance coverage as further described herein, which shall be the primary coverage, and non-contributory with respect to all other available sources. The coverage limits of such insurance shall not be less than those listed below.

28.3 The insurance company(ies) issuing the policy(ies) shall have a "BB" financial rating, or better, in the current edition of A.M. Best Company and be authorized by the State of Arizona, Department of Insurance to transact business within the State. The certificate and policy(ies) shall name the City as an additional insured with the exception of Workers' Compensation insurance.

28.4 The City reserves the right to terminate any contractor agreement if the Contractor fails to maintain such insurance coverage.

28.5 Contractor must provide certification of insurance compliance as stated below within 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 thirty (30) days written notice to the City. Certification shall be submitted to: Materials Management, 6829 North 58th Drive, Suite 202, Glendale, Arizona 85301-2599.

<u>Type of Insurance</u> (Minimum)	<u>Limits of Liability</u>
Workers' Compensation	Statutory
Employer's Liability	\$100,000
Commercial General Liability	
Bodily Injury	\$1,000,000 each occurrence
Contractor(s) Protective	\$500,000 each accident
Property damage	\$500,000 aggregate
Contractual Bodily Injury	\$1,000,000 each occurrence
Contractual property damage	\$500,000 each accident
Contractual property damage	\$500,000 aggregate
Automobile Liability	
Bodily injury & property damage	\$1,000,000 each occurrence

28.6 Contractor shall be in full compliance with the provisions of the Arizona Worker's 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. The Contractor and insurance carrier waive their right of subrogation against the City.

28.7 Contractor further agrees that any and all sub-contractors performing work under the agreement shall be required to comply with the above Insurance requirements and Worker's Compensation Law. It is expressly understood and agreed that all persons employed directly or indirectly by the Contractor, shall be considered the employees of such Contractor or any authorized sub-contractor(s), and not the employees or agents of the City.

29.1 TERMINATION. The City may terminate this Contract for convenience, without cause, upon giving the Contractor thirty (30) calendar days written notice. The City shall have no obligation to the Contractor for costs or damage, it may incur, upon termination for convenience.

29.2 The City reserves the right to terminate the Contract if the Contractor fails to carry out any term, promise, or condition of the contract.

29.3 In the event that this Contract is terminated for convenience or cause, the City reserves the right to award an interim Contract to any qualified firm without issuing an additional invitation for bid.

30.1 NOTICE. 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 shall be in writing, signed by the party or officer, agent or attorney of the party giving such notice, demand, disclosure, acknowledgment, consent, approval, statement, request, response and/or invoice, and shall be deemed effective (a) upon receipt if hand delivered or sent by telecopy or overnight courier service, or (b) upon delivery or date of refusal if sent by U.S. mail, postage prepaid, certified mail, return receipt requested, in either case addressed to the following:

30.2 City: **Sabrina Matthews, Management Aide**
Glendale Police Department
6835 N 57th Drive
Glendale, AZ 85301
Phone: 623-930-3255
Fax: 623-931-2103
smattbews@glendaleaz.com

William E. Brewer, Materials Manager
Materials Management
6829 N. 58th Street, Suite 202
Glendale, AZ 85301
623-930-2865
bbrewer@glendaleaz.com

City Attorney's Office
5850 W. Glendale Ave., Suite 450
Glendale, AZ 85301
Phone: 623-930-2930
Fax: 623-915-2391

30.3 DV Towing: **Nathan Larkin**
DV Towing, LLC
23881 N. 7th Ave.
Phoenix, AZ 85085
Phone: 623-516-8700
Fax: 623-582-1012

dvtowing@aol.com

Nathan Larkin
DV Towing, LLC
21830 N 20th Street, Suite C
Phoenix, AZ 85024
Phone: 623-516-8700
Fax: 623-582-1012
dvtowing@aol.com

31.0 ENTIRE AGREEMENT. This Contract constitutes the full and complete understanding and agreement of the parties hereto with respect to the matters that are subject to this Contract. This Contract replaces any and all other previous representations, understandings, proposals, and agreements, written or oral, relating to its subject matter. This Contract and its terms may not be modified, changed or waived except in writing signed by both parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands to be effective as of January 1, 2008.

DV TOWING, LLC
an Arizona limited liability company

By: [Signature] 11-13-07
Nathan Larkin, Director Date

CITY OF GLENDALE
an Arizona municipal corporation

By: [Signature] 11-14-07
Ed Beasley, City Manager Date

ATTEST

[Signature]
Pam Hanna
City Clerk

APPROVED AS TO FORM:

[Signature]
Craig Tindall
City Attorney

EXHIBIT A

1.0 Pricing for Standard Services:

Prices to include all applicable taxes

CATEGORY	Vehicles less than 14,000 lbs. GVW	Vehicles 14,000 lbs. or more GVW, and less than 23,500 lbs. GVW	Vehicles 23,500 lbs. or more GVW
	Price	Price	Price
Hourly Rate, prorated every 15 minutes after the first complete hour.	\$29.00	\$55.00	\$85.00
See section 12.2 Storage Charge, for each 24 hour period or portion thereof.	\$15.00	\$15.00	\$30.00
See section 13.1 Opening Lot, after normal business hours at customer request, flat rate.	\$40.00	\$40.00	\$40.00
See section 24.7 Extraordinary Situations, hourly rate, prorated every 15 minutes after the first complete hour.	\$85.00	\$85.00	\$150.00
See section 24.5 Rate per mile, for out-of-city Lmileage. See section 24.6	\$5.00	\$5.00	\$7.00

2.0 Prices for Non-Abandoned Vehicles Less Than 14,000 lbs GVW.

7.500 (1 hour tows) X \$29.00 (Hourly rate bid amount)	\$217,500.00
14,000 (days of storage) X \$15.00 (24 hour period bid amount)=	\$225,000.00
100 (open lot after hours) X \$40.00 (Opening bid amount)	\$ 4,000.00
10 (1 hour Extraordinary Situ) X \$85.00 (Hourly rate bid amount)	\$ 850.00
100 (Miles out of city) X \$5.00 (Mile bid amount)	\$ 500.00
SECTION TOTAL	\$447,850.00

3.0 Prices for Non-Abandoned Vehicles More Than 14,000 lbs GVW, Less than 23,500 lbs GVW.

360 (1 hour tows) X \$55.00 (Hourly rate bid amount)=	\$ 19,800.00
<u>720 (days of storage)</u> X \$15.00 (24 hour period bid amount)=	\$ 10 800.00
<u>50 (open lot after hours)</u> X \$40.00 (Opening bid amount)=	\$ 2 000.00
<u>10 (1 hour Extraordinary Situ)</u> X \$85.00 (Hourly rate bid amount)=	\$ 850.00
100 (Miles out of city) X \$5.00 (Mile bid amount)=	\$ 500.00
SECTION TOTAL	\$33 950.00

4.0 Prices for Non-Abandoned Vehicles More Than 23,500 lbs GVW.

<u>90 (1 hour tows)</u> X \$85.00 (Hourly rate bid amount)=	\$ 7,650.00
<u>110 (Days of storage)</u> X \$30.00 (24 hour period bid amount)=	\$ 5 400.00
<u>5 (Open lot after hours)</u> X \$40.00 (Opening bid amount)=	\$ 200.00
<u>10 (1 hour Extraordinary Situ)</u> X \$150.00 (Hourly rate bid amount)=	\$ 1 500.00
100 (Miles out of city) X \$7.00 (Mile bid amount)=	\$ 700.00
SECTION TOTAL	\$ 15 450.00

5.0 Prices for Abandoned Vehicles Less Than 14,000 lbs GVW.

120 (1 hour tows) X \$5.00 (Hourly rate bid amount)=	\$ 600.00
<u>240 (Days of storage)</u> X \$5.00 (24 hour period bid amount)=	\$ 1 200.00
<u>10 (Open lot after hours)</u> X \$5.00 (Opening bid amount)=	\$ 50.00
<u>5 (1 hour Extraordinary Situ)</u> X \$5.00 (Hourly rate bid amount)=	\$ 25.00
<u>5 (Miles out of city)</u> X \$5.00 (Mile bid amount)=	\$ 25.00
SECTION TOTAL	\$ 1 900.00

6.0 Prices for Abandoned Vehicles More Than 14,000 lbs GVW, Less than 23,500 lbs GVW.

10 (1 hour tows) X \$5.00 (Hourly rate bid amount)	\$ <u>50.00</u>
20 (<u>Days of storage</u>) X \$5.00 (24 hour period bid amount)	\$ <u>100.00</u>
1 (<u>Open</u> lot after hours) X \$5.00 (Opening bid amount)	\$ <u>5.00</u>
1 (1 hour <u>Extraordinary Situ</u>) X \$5.00 (Hourly rate bid amount)	\$ <u>5.00</u>
5 (Miles out of city) X \$5.00 (<u>Mile</u> bid amount)	\$ <u>25.00</u>
SECTION TOTAL	\$ <u>185.00</u>

7.0 Prices for Abandoned Vehicles More Than 23,500 lbs GVW.

5 (1 hour tows) X \$5.00 (Hourly rate bid amount)	\$ <u>25.00</u>
10 (<u>days of storage</u>) X \$5.00 (24 hour period bid amount)	\$ <u>50.00</u>
1 (<u>open lot after hours</u>) X \$5.00 (Opening bid amount)	\$ <u>5.00</u>
1 (<u>hour Extraordinary Situ</u>) X \$5.00 (Hourly rate bid amount)	\$ <u>5.00</u>
5 (<u>Miles out of city</u>) X \$5.00 (Mile bid amount)	\$ <u>25.00</u>
SECTION TOTAL	\$ <u>110.00</u>

8.0 Quick Dry Absorbent

See section 22.4

<u>12,000 pounds</u> X <u>\$0.50 (Per pound)</u> =	\$ 6,000.00
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9.0 ON SITE STANDBY

See sections 22.7-22.8

<u>168 hours</u> X \$29.00 (Hourly standby rate per truck)=	\$ 4,872.00
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SUBTOTAL	\$510,317.00
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(Sub Total equals the totals of sections 2, 3, 4, 5, 6, 7, 8 and 9)

10.0 Fuel Surcharge

See section 24.3

Sub Total \$510,317.00 X Fuel surcharge 7% = \$ 35,722.19

GRAND TOTAL \$546,039.19

(GRAND TOTAL equals the Sub Total plus section 10.0)

END OF EXHIBIT A

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into this ~~23rd~~ day of February, 2009 by and between The City of Glendale, Arizona (the "City"), an Arizona Municipal Corporation, and DV Towing, LLC (the "Contractor"), an Arizona Limited Liability Company.

RECITALS:

WHEREAS, on or about November 27, 2007, the City and the Contractor entered into a Towing Agreement whereby the Contractor agreed to provide towing services for both abandoned and non-abandoned vehicles, as well as City vehicles that have become disabled, also known as Towing Agreement No. C-6266 (the "Contract"); and

WHEREAS, the Contractor recently initiated litigation in connection with the Contract in the United States District Court for the District of Arizona under case No. CV 09-00117-PHX-SRB (the "Litigation"); and

WHEREAS, both the City and the Contractor desire to resolve certain issues related to the Contract and the Litigation, as more fully set forth below.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Contractor hereby agree as follows:

1. Recitals. The Recitals set forth above are incorporated herein by this reference.

2. Term of Agreement. Pursuant to Section 27.1 of the Contract, the term of the Contract is from January 1, 2008 through December 31, 2008. Pursuant to Section 27.2 of the Contract, the City and the Contractor agree to extend the term of the Contract through and until December 31, 2010.

The City agrees to renew the Contract on or before December 31, 2010 for an additional year, from January 1, 2011 to December 31, 2011, unless the City in good faith, in evaluating the Contractor's performance, finds good cause that the Contractor has failed to perform the terms of this Contract. The provisions in paragraph 27.1 of the Contract concerning review of price adjustments shall apply during this renewal. In the event of any notice from the City claiming good cause exists that the Contractor has failed to perform the terms of the Contract, and the Contractor reasonably disputes the notice, the City and the Contractor hereby agree that the provisions of Section 8 shall dictate the parties conduct during the continuation of any dispute resolution.

The City further agrees to renew the Contract on or before December 31, 2011 for an additional year, January 1, 2012 to December 31, 2012, unless the City in good faith, in evaluating the Contractor's performance, finds good cause that the Contractor has failed to perform the terms of the Contract. The provisions in paragraph 27.1 of the Contract concerning review of price adjustments shall apply during this renewal. In the event of any notice from the City claiming good cause exists that the Contractor has failed to perform the terms of the Contract, and the Contractor reasonably disputes the notice, the City and the Contractor hereby agree that the provisions of Section 8 shall dictate the parties conduct during the continuation of any dispute resolution.

3. Consideration by Contractor. As consideration for this Agreement the Contractor agrees to dismiss with prejudice the Litigation pending in the United States District Court, upon execution of this Agreement. The Contractor also agrees to forego: (i) seeking to recover from the City attorneys fees in the amount of approximately \$50,000 incurred in the Litigation and, (ii) file a Satisfaction of Judgment in connection with the Order re: Attorney's Fees dated January 9, 2009 in Cause LC2006-00822-001

4. The Contract. Except as revised herein, the original terms of the Contract will remain in effect, and the City and Contractor hereby affirm the Contract. The individuals signing below have full legal authority to bind the City and the Contractor to this Agreement.

Dated this 23rd day of February, 2009.

THE CITY OF GLENDALE

DV TOWING, LLC

By: Horacio Skuit

By: _____

Its: Deputy City Manager

Its: _____

The City further agrees to renew the Contract on or before December 31, 2011 for an additional year, January 1, 2012 to December 31, 2012, unless the City in good faith, in evaluating the Contractor's performance, finds good cause that the Contractor has failed to perform the terms of the Contract. The provisions in paragraph 27.1 of the Contract concerning review of price adjustments shall apply during this renewal. In the event of any notice from the City claiming good cause exists that the Contractor has failed to perform the terms of the Contract, and the Contractor reasonably disputes the notice, the City and the Contractor hereby agree that the provisions of Section 8 shall dictate the parties conduct during the continuation of any dispute resolution.

3. Consideration by Contractor. As consideration for this Agreement the Contractor agrees to dismiss with prejudice the Litigation pending in the United States District Court, upon execution of this Agreement. The Contractor also agrees to forego: (i) seeking to recover from the City attorneys fees in the amount of approximately \$50,000 incurred in the Litigation and, (ii) file a Satisfaction of Judgment in connection with the Order re: Attorney's Fees dated January 9, 2009 in Cause LC2006-00822-001

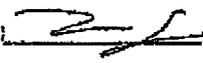
4. The Contract. Except as revised herein, the original terms of the Contract will remain in effect, and the City and Contractor hereby affirm the Contract. The individuals signing below have full legal authority to bind the City and the Contractor to this Agreement.

Dated this ___ day of February, 2009.

THE CITY OF GLENDALE

DV TOWING, LLC

By: _____

By:  _____

Its: _____

Its: Director



Contract Amendment No. One (1)

IFB 06-32

Towing Services

CITY OF GLENDALE
Materials Management
6829 N. 58th Dr., Suite 202
Glendale, Arizona 85301

In accordance with the Special Terms and Conditions, the above referenced contract is amended as follows:

The option to extend the term of the agreement is exercised this 6th, day of October, 2010. The term of the contract is hereby extended from January 1, 2011 through December 31, 2011, unless terminated, canceled or extended as provided within the contract. All other provisions of the contract shall remain in their entirety.

All other provisions of the solicitation shall remain the same.

Please fax the signed Amendment to the Contract Analyst by October 31, 2010 at (623) 847-5317

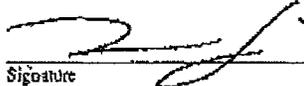
In witness whereof, the parties hereto have executed this Amendment to be effective the date first written above.

By: Brian Guzzi, C.P.M., Buyer, City of Glendale; 623-930-2863.

ALL OTHER PROVISIONS OF THE CONTRACT SHALL REMAIN IN THEIR ENTIRETY.

Contractor hereby acknowledges receipt of an agreement with the addendum. A signed copy must be filed with the Glendale Materials Management Office. Please provide current information if address has changed.

DV Towing
Ph: 623-516-8700
Fax: 623-582-1012

 10/6/10
Signature Date

NATHAN LARKIN Director
Typed/Printed Name and Title

TOWING AGREEMENT
AMENDMENT NO. 2

This Amendment to Towing Agreement is made this 30th day of December, 2011, by and between the City of Glendale, an Arizona municipal corporation ("City") and DV Towing, LLC, an Arizona limited liability company, authorized to do business in Arizona ("Contractor").

RECITALS

- A. City and Contractor previously entered into a Towing Agreement, Contract No. C-6266, dated November 27, 2007, ("Agreement"); and
- B. City and Contractor entered into a Settlement Agreement dated February 23, 2009 and extended the term of the Agreement through December 31, 2010 and provided for two additional one-year renewals;
- C. City and Contractor previously renewed the Agreement for a one-year period from January 1, 2011 to December 31, 2011 pursuant to Contract Amendment No. One (1) dated October 6, 2010;
- D. City and Contractor wish to renew the Agreement for an additional one-year period, subject to and strictly in accordance with the terms of this Amendment.

AGREEMENT

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Contractor hereby agree as follows:

- 1. **Recitals.** The recitals set forth above are not merely recitals, but form an integral part of this Amendment.
- 2. **Term.** The term of the Agreement is renewed for a one-year period from January 1, 2012 to December 31, 2012.
- 3. **Ratification of Agreement.** City and Contractor hereby agree that except as expressly provided herein, the provisions of the Agreement shall be, and remain in full force and effect and that if any provision of this Amendment conflicts with the Agreement, then the provisions of this Amendment shall prevail.

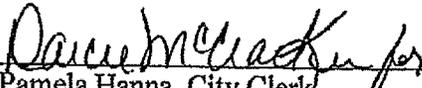
[Signatures to appear on following page.]

CITY OF GLENDALE, an Arizona
municipal corporation



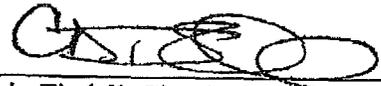
Ed Beasley, City Manager

ATTEST:



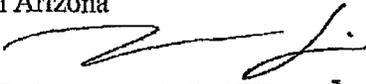
Pamela Hanna, City Clerk (SEAL)

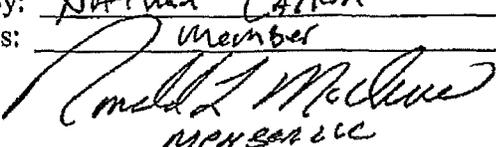
APPROVED AS TO FORM:



Craig Tindall, City Attorney

DV TOWING, LLC, an Arizona limited
liability company, authorized to do business
in Arizona



By: Nathan Larkin
Its: Member


Pamela McQuinn
MEMBER LLC