



REQUEST FOR PROPOSALS
FOR
**Requirements Contract for
Towing and Storage Services of Evidence Vehicles**

PROPOSAL NUMBER: 9515
PROPOSAL SUBMISSION DEADLINE: (Prior to 3:00 p.m. ,February 11, 2020)
PROPOSAL CONTACT: Michael Brown
PURCHASING UNIT
Phone: (559) 621-1332
Email: Mike.Brown@Fresno.gov

CITY OF FRESNO
PROPOSAL SPECIFICATIONS
REQUEST FOR PROPOSALS
FOR
**Requirements Contract for
Towing and Storage Services of Evidence Vehicles**

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I - INTRODUCTION
- Notice Inviting Proposals
- Instructions to Proposers

NOTICE INVITING PROPOSALS

Sealed proposals or electronic proposals via Planet Bids will be received at the office of the Purchasing Manager of the City of Fresno, 2600 Fresno Street, Room 2156, Fresno, California 93721, all in accordance with the Specifications for:

**Requirements Contract for
Towing and Storage Services of Evidence Vehicles
REQUEST FOR PROPOSALS NO. 9515**

The City of Fresno is soliciting proposals for Towing and Storage Services of Evidence Vehicles.

The RFP forms and specifications may be obtained from the Office of the Purchasing Manager (phone 559 621-1332) via the City's web site: www.fresno.gov, *For Business* (to the right of the screen), *Bid Opportunities*.

Bids may be submitted electronically via Planet Bids or by paper only not via fax

Bid Proposal forms, Instructions to Bidders and copies of the plans and/or specifications can also be obtained at the Office of the Purchasing Manager.

Proposals are to be submitted at the Office of the Purchasing Manager of the City of Fresno, 2600 Fresno Street, Room 2156, Fresno, CA 93721 prior to the opening at 3 p.m. on Tuesday, February 11, 2020, at which time they will be publicly opened and recorded.

All proposals must be made on the proposal forms provided by the Purchasing Manager and must be accompanied by a deposit in the amount of **FIVE HUNDRED DOLLARS (\$500)** in the form of a Cashier's or Certified Check, an irrevocable letter of credit, or a certificate of deposit, or a bidder's bond of a corporate surety, authorized by the California Insurance Commissioner to do business in the State of California, payable and acceptable to the City of Fresno. All deposits will be held until a Contract has been executed with the successful Proposer or all proposals have been rejected.

The City of Fresno hereby notifies all Proposers that no person shall be excluded from participation in, denied any benefits of, or otherwise discriminated against in connection with the award and performance of any contract on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation or on any other basis prohibited by law.

A proposal conference will be held at 10:00 a.m. on **January 29, 2020**, at 2326 Fresno Street, Room 210, (PD Annex Building, 2nd Floor) Fresno, California. Prospective Proposers are encouraged to attend.

The meeting room is physically accessible. Services of an interpreter and additional accommodations such as assistive listening devices can be made available. Requests for accommodations should be made at least five working days but no later than 48 hours prior to the scheduled meeting/event. Please contact the Buyer listed on the cover at 559-621-1332 or mike.brown@fresno.gov.

The City of Fresno reserves the right to reject any and all proposals.

INSTRUCTIONS TO PROPOSERS

PART I. GENERAL

1. No proposal will be considered for award unless it is submitted on the proposal forms furnished by the Purchasing Manager, completely filled out, properly signed by the Proposer and delivered, under sealed cover plainly marked or filed electronically via Planet Bids:

Requirements Contract for Towing and Storage Services of Evidence Vehicles

REQUEST FOR PROPOSALS NO. 9515

at the Office of the Purchasing Manager, 2600 Fresno Street, Room 2156, Fresno, California, 93721, on or before the date and time specified in the Notice Inviting Proposals. The time clock in the Purchasing Unit will be the official clock for documenting the time of filing. Electronically filed is defined as by means of electronic equipment or devices.

In the event that both a paper and electronic bid for the same project are submitted, the City will use and accept the electronic version as the authorized submittal.

2. No proposal will be considered for award unless the Proposer has complied with the following:

Proposers must submit a deposit in the amount of **FIVE HUNDRED DOLLARS (\$500)** with their proposal in the form of a Certified or Cashier's Check, an irrevocable letter of credit, or a certificate of deposit, or a bidder's bond of a corporate surety, authorized by the California Insurance Commissioner to do business in the State of California, payable and acceptable to the City of Fresno. Such deposit shall be retained by the City of Fresno as a guarantee that the Proposer, if awarded all or part of the proposal, will, within fifteen calendar days from the date the Notice of Award is mailed to the Proposer, execute and return a Contract furnished by the City. All deposits will be returned when the Contract(s) has been executed for all items awarded, or if all proposals are rejected.

A proposal without a proper deposit will automatically be rejected.

3. The City will award a Contract or reject any or all proposals within the time stated in the Specifications, and no proposal may be withdrawn within that period of time. Any award of a Contract exceeding \$50,000, shall be subject to the approval of the City Council.

4. The City reserves the right to reject any and all proposals.

Submittal of Proposal

5. Each Proposer shall carefully examine each and every term of this Request for Proposal; and each Proposer shall judge all the circumstances and conditions affecting its proposal. Failure on the part of any Proposer to make such examination and to investigate thoroughly shall not be grounds for any declaration that the Proposer did not understand the conditions of this Request for Proposal.

6. The Proposer shall comply with any and all federal, state or local laws, now in effect or hereafter promulgated, which apply to the services and products herein specified.

7. Proposers will submit **an original and (4) copies of their proposal in a sealed envelope**, marked on the outside **RFP No. 9515, Towing and Storage Services of Evidence Vehicles** and will include the name of the Proposer and the date and time of proposal submittal deadline. If proposals submitted electronically, hard copies are not applicable.

8. This solicitation for proposals does not commit the City of Fresno to enter into a Contract or to pay any costs incurred in the preparation of responses to the request. The City of Fresno reserves the right to accept or reject any proposals, and to negotiate with any qualified source, or to cancel in part or in its entirety this Request for Proposals. It may accept the proposal that it considers to be in the interest of the City of Fresno, with or without negotiation.

9. The City reserves the right to waive any informality or minor irregularity when it is in the best interest of the City to do so, to negotiate for the modification of any proposal with mutual consent of the Proposer, to

re-advertise for proposals if desired, and to accept the proposal which in the judgment of the City, even though it does not offer the lowest cost, is nevertheless deemed to offer the best value for the public and City. Any proposal which is incomplete, conditional, obscure, or which contains irregularities of any kind, may be cause for rejection.

ACH Payment Initiative -Electronic Payment

Proposer shall provide complete and accurate billing invoices in order to receive payment. Billing invoices submitted must contain all information and supporting documentation required by the contract. Payment for invoices submitted by the proposer shall only be rendered electronically unless payment by paper check is expressly authorized by the Controller, in the Controller's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary City procedures and practices. The proposer shall comply with the Controller's procedures to authorize electronic payments. Proposer acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the Controller's electronic payment procedures, except where the Controller has expressly authorized payment by paper check as set forth above.

ADA

Accessibility Requirements: Supplier warrants that it complies with California and federal disabilities laws and regulations; and the Services will conform to the accessibility requirements of WCAG 2.0AA. Supplier agrees to promptly respond to and resolve any complaint regarding accessibility of its Services. The City may require bidder to comply with these accessibility requirements if they are awarded a contract.

Local Preference

10. Fresno Municipal Code Section 4-109, LOCAL PREFERENCE IN CONTRACTING FOR SERVICES, provides for a local preference. Portions pertinent to this Contract are paraphrased as follows:

Except for those contracts funded by the federal or state government when such funding would be jeopardized because of this preference, the City of Fresno shall, in contracting for professional services, other than consulting service, extend a five percent (5%) preference for a local firm in evaluating proposals for award. The amount of the preference shall be equal to the amount of the percentage applied to the lowest proposal price from a firm other than a local firm, if the Proposer submitting the lowest proposal price is not a local firm. The Proposer shall certify, under penalty of perjury, that the Proposer qualifies as a local firm. The preference is waived if the certification does not appear on the proposal.

"Local firm" shall mean a firm with a fixed primary or branch office within a twenty-five mile radius of Fresno City Hall, located at 2600 Fresno Street in the City of Fresno, and a majority of the work on the project will be performed by employees who are permanently assigned to such office prior to the city requesting proposals for the project and whose regular duties would include local work on other than city projects.

Proposers shall submit the form CERTIFICATION FOR LOCAL PREFERENCE with their proposal if they seek the benefit of local preference.

Public Records

11. The proposals received shall become the property of the City of Fresno and are subject to public disclosure. Those parts of a proposal which are defined by the Proposer as business or trade secrets as that term is defined in California Evidence Code, Section 3426.1, and are reasonably marked "Trade Secrets", "Confidential", or "Proprietary", and placed in a separate envelope shall only be disclosed to the public if such disclosure is required or permitted under the California Public Records Act or otherwise by law. Proposers who indiscriminately and without justification identify most, or all, of their proposal as exempt from disclosure

may be deemed non-responsive. Proposals, excluding confidential information, will be available for review after posting of staff recommendation.

Selection Process and Evaluation Criteria

12. Proposal Evaluation

The Selection Committee will review and evaluate all proposals after formal receipt. To receive proper consideration, the proposal must meet the requirements of these Specifications. The evaluation process will provide credit only for those capabilities and advantages which are clearly stated in the Proposer's written proposals. In other words, advantages which are not stated will not be considered in the evaluation process.

Proposers whose proposals include a failure to comply with or take exception to these Specifications may be considered nonresponsive and dropped from the evaluation process.

The Selection Committee will include at least one representative from a Department with no direct interest in the service(s) being requested by this Request for Proposals. The Committee may also include a representative from outside the City organization. It will be the responsibility of this committee to make recommendations advisory to City Manager and in accordance with the award criteria enumerated below.

The Selection Committee will evaluate the proposals on the following criteria:

- a. **Cost** as shown on the proposal form.
- b. **Ability** to meet the stated service requirements.
- c. **Past Performance and Experience** based on References and experience shown on "Statement of Qualifications and Experience."
- d. **Conformance** to the terms and conditions of the RFP.
- e. **Financial Stability** based on information provided in the Statement of Qualifications.
- f. **Other** related information.

The City reserves the right to accept or reject any or all proposals and may select, and negotiate with one or more Proposers concurrently, and enter into a Contract with such Proposer who is determined, by the City, to provide the services which are in the interest of the City. The City may agree to such terms and conditions as it may determine to be in its interest. The City may elect two providers. If the City elects to do so, a primary provider and a secondary provider will be specified.

13. The Selection Committee reserves the right to request additional information from Proposers, to negotiate terms and conditions of the Contract, to visit sites, to request demonstrations or oral presentations, or ask Proposers to appear before the Selection Committee to clarify points of their proposal.

14. Selection will be based on qualitative analysis and cost. Any award shall be on the basis of the criteria specified and made to the Proposer whose proposal is judged as providing the best value in meeting the interest of the City and the objectives of the project.

15. The City reserves the right to make the selection of a Proposer based on any or all factors of value, whether quantitatively identifiable or not, including, but not limited to, the anticipated initiative and ability of the Proposer to perform the services set forth herein.

Time to Award

16. The Proposer agrees that the City may have 120 days to accept or reject proposals. It is further understood that, if the Proposer to whom any award is made fails to enter into a Contract as provided in the Specifications, award may be made to another Proposer, who shall be bound to perform as if she/he had received the award in the first instance.

Contract Documents

17. The proposer shall submit the required contract documents in a form acceptable to the Purchasing Division 2600 Fresno ST. Room 2156 – Fresno, CA. 93721 within fifteen calendar days (except in the event in the event federal funding is applicable to the Contract, then ten working days) from the Notice of Award of

proposal. Failure to provide said documents within the designated period shall be sufficient cause to find the proposal non-responsive and move to award to the next proposer offering the next best value to the City.

Questions, Clarifications, and Concerns

18. The Specifications describing this project have been carefully prepared. Any questions or concerns relating to these Specifications shall be directed in writing to the Designated Procurement Specialist of the Purchasing Unit (see cover page) and may be submitted electronically by utilizing the Question and Answers field on Planet Bids.

Questions will be accepted only up to five working days prior to the proposal date to allow the City, if necessary, to issue an addendum to all proposers stating revisions, deletions, or additions to be made to the Specifications as a result of any questions. If questions arise after the deadline, please contact the Designated Procurement Specialist of the Purchasing Unit, but the City will not guarantee a response.

The City will not be responsible for verbal responses made by parties other than the Purchasing Manager or her/his designee.

Contacts with City Staff

19. Before an award is made, any contact with City staff, other than the Purchasing Manager or designee(s), without prior written authorization is strictly prohibited and may render the Proposer non-responsive.

Regulated Communications In City Procurement Process Ordinance

20. The Regulated Communications in City Procurement Process Ordinance (Article 6, Chapter 4 of the Fresno Municipal Code) became effective May 7, 2004. With certain specified exceptions, the Ordinance provides that no Respondent, Bidder, Proposer (as the case may be) shall initiate, engage in, or continue any communication to or with any City elected official concerning or touching upon any matter which is the subject of this competitive procurement process.

Any Respondent, Bidder, Proposer or elected official (as the case may be) who initiates, engages in, continues in, or receives any regulated communication shall file the written disclosure required by the Regulated Communications in City Procurement Process Ordinance.

Any Respondent, Bidder, or Proposer violating the Regulated Communications in City Procurement Process Ordinance may be disqualified from participating in this procurement process and/or determined to be non-responsive. Additionally, the City may set aside the award of a contract, prior to its execution, to a party found to have violated the Ordinance.

Note: The full text of Fresno Municipal Code, Chapter 4, Article 6 may be viewed on the City's website at, <http://www.fresno.gov>. Under Government, "City Clerk" - Fresno Municipal Code- Or view the Fresno Municipal Code directly at: <http://www.municode.com/Resources/gateway.asp?pid=14478&sid=5>

Notification of Staff Determination

21. Once the City has reviewed and evaluated the proposals received and has determined for award the responsible proposal that provides the best value to the City, that determination will be posted on a public bulletin board outside the Purchasing Units Office and the City's website www.fresno.gov, reference link "*For Business*" (right hand side of screen), "*Bid Opportunities*," and "*Anticipated Award*." The bulletin board and website will generally be updated by Monday of each week, no later than 5 p.m. It is the sole responsibility of interested Proposers to seek this information from either of these sources.

For those Proposers that have concerns or rebuttal of any determination of non-responsiveness or non-responsibility about the Staff Determination, they will be given an opportunity to submit, in writing, within five days to the Purchasing Manager any concerns with the RFP process or Staff Determination. Such writing will be taken under consideration by the City Manager and may be acted upon within five days. If no action is taken within such five days, then there shall be no change in Staff Determination. The exercise of Proposer of its right to submit its written concerns shall be a condition precedent to seeking judicial review of any award of a contract hereunder.

Debarment

22. A Bidder may be debarred from bidding or proposing upon or being awarded any contract with the City, or from being a subcontractor or supplier at any tier upon such contract, in accordance with the procedures in Fresno Municipal Code Section 4-104 adopted by Council on May 17, 2018. The initial period of any such debarment shall not be less than one year and may be permanent depending on the violation. A Bidder may request a hearing, in accordance with Fresno Municipal Code Section 4-104, upon receipt of a notice of proposed debarment from the City Manager or designee. A copy of the ordinance may be obtained from the City Clerk's Office, 2600 Fresno Street, Fresno, California 93721.

Outreach To Small Business Enterprises In Subcontracting

23. The City of Fresno hereby notifies all Proposers that it is the City's policy to provide all small business enterprises, including minority, women, and disabled veteran business enterprises, equal access, and opportunity for participation in the performance of all construction contracts, professional service contracts, procurement of supplies, equipment and other services. Therefore, the City requests that a Proposer who intends to subcontract a portion of the work seek out small business enterprises that are potential subcontractors, suppliers, or consultants, and actively solicit their interest, capability, and prices.

II - PROPOSAL AND CONTRACT DOCUMENTS

Proposer's Name _____

CHECK LIST

Proposals shall be submitted in a three-ring binder, **one original and 4 copies**. (If submitted electronically, hard copies are not applicable). The total proposal packet must be sealed and clearly marked on the outside **RFP No. 9515 for Requirements Contract for Towing and Storage Services of Evidence Vehicles**.

Proposers are requested to submit this Checklist and the following information, providing the content in the sequence shown below. If documentation provided is incomplete, the Proposer may be considered non-responsive and ineligible for award of a Contract.

1. **COVER LETTER**, including company name, address, contact name, phone number and fax number. **(Provided by Proposer)**.

2. **PROPOSAL DEPOSIT** in the form of:

- | | |
|---|---|
| <input type="checkbox"/> Certified Check | <input type="checkbox"/> Proposer's Bond |
| <input type="checkbox"/> Cashier's Check | <input type="checkbox"/> Irrevocable Letter of Credit |
| <input type="checkbox"/> Certificate of Deposit | <input type="checkbox"/> Annual Bidder's Bond |

3. **COST PROPOSAL** (p. 12-14) (complete attached form)

4. **STATEMENT OF QUALIFICATIONS AND EXPERIENCE** (Provided by Proposer)

5. **CITY FORMS** (pp. 20-31) (complete/return attached forms)
STATEMENT INDICATING ACCEPTANCE OF INDEMNIFICATION AND INSURANCE REQUIREMENTS
CERTIFICATION FOR LOCAL PREFERENCE, if applicable
NON-COLLUSION AFFIDAVIT
ADDENDA AND PROPOSAL DEPOSIT

6. Signature page of all **ADDENDA** issued, Addendum No. ____ to _____.
(Enter numbers, if applicable).

7. Applicable X Not Applicable

AUDITED FINANCIAL STATEMENTS

8. **REFERENCES** (p. 19)

9. **PROPOSER QUESTIONNAIRE** (pp.15 - 18) (complete attached form)

10. **SIGNATURE PAGES** (pp. 33-34), including other document to authorize individual who signs proposal.

11. **ACH AUTHORIZATION AGREEMENT FORM**- Signature page of ACH payment. (Page 32)
Currently on file? Yes ____ No _____. If no, submit to Procurement Specialist.

(Submit with Proposal)

Proposer's Name _____

**Requirements Contract for
Towing and Storage Services of Evidence Vehicles**

REQUEST FOR PROPOSAL NO. 9515

INTRODUCTION

TO THE PURCHASING MANAGER, CITY OF FRESNO

COST PROPOSAL

Having carefully examined the Request for Proposal, attachments and related documents, the undersigned proposes and agrees to provide to the City of Fresno, in accordance with the Specifications annexed hereto and made a part thereof, the following services at the following rates:

FOR: Requirements Contract for Towing and Storage Services of Evidence Vehicles

SECTION I

| <u>ITEM</u> | <u>QUANTITY</u> | <u>DESCRIPTION OF WORK</u> | <u>UNIT COST</u> | <u>TOTAL</u> |
|-------------|-----------------|--|------------------|--------------|
| 1. | 150 | Light Duty Tow Rate (Up to 14,000 lbs. GVRW) | \$ ____ /Per Tow | \$ _____ |
| 2. | 5 | Medium Duty Tow Rate 14,001 - 19,501 lbs. GVWR) | \$ ____ /Per Tow | \$ _____ |
| 3. | 5 | Heavy Duty Tow Rate (19,502 - 33,000 lbs. GVWR) | \$ ____ /Per Tow | \$ _____ |
| 4. | 5 | Motorcycle Trailer Rate (This amount is charged in lieu of the Light Duty Tow Rate when a trailer is required to tow a motorcycle.) | \$ ____ /Per Tow | \$ _____ |

SECTION II

| <u>ITEM</u> | <u>QUANTITY</u> | <u>DESCRIPTION OF WORK</u> | <u>UNIT COST</u> | <u>TOTAL</u> |
|-------------|-----------------|---|------------------|--------------|
| 5. | 100 | Inside Storage for 1 to 30 days | \$ ____ /Per Day | \$ _____ |
| 6. | 125 | Inside Storage for 31 or more days. (Must be equal to or less or than the cost of item 5) | \$ ____ /Per Day | \$ _____ |
| 7. | 5 | Outside Storage for 1 to 30 days | \$ ____ /Per Day | \$ _____ |

CONTINUED

Proposer's Name _____

- 8. 5 Outside Storage for 31 or more days. (Must be equal to or less than the cost of item 7) \$_____/Per Day \$_____
- 9. 60 Locked and secured area inside facility. Operator must provide a locked and secured area within the inside of the secured facility for a full sized vehicle. \$_____/Per Day \$_____
- 10. 3 Vehicles in excess of 26,001 lbs. GVWR (No charge will be allowed for tow dolly) Outside Storage for 1 to 30 days \$_____/Per Day \$_____
- 11. 3 Vehicles in excess of 26,001 lbs. GVWR (No charge will be allowed for tow dolly) Outside Storage for 31 or more days (Must be equal to or less than the cost of item 9) \$_____/Per Day \$_____

SECTION III

| <u>ITEM</u> | <u>QTY</u> | <u>DESCRIPTION OF WORK</u> | <u>UNIT COST PER HOUR</u> |
|--------------------------|------------|--|---------------------------|
| 12. | 5 | Call-Out Post Storage Inspection of Vehicles stored within an un-staffed facility. Storage Facility must be available on a twenty-four (24) hour, seven (7) days a week basis. | \$_____/Per Hour \$_____ |
| 13. | 40 | "Unskilled Labor" for component removal or other work. | \$_____/Per Hour \$_____ |
| 14. | 5 | Out of town, Long-Haul Tow | \$_____/Per Mile \$_____ |
| TOTAL NET PROPOSAL PRICE | | | \$_____ |

The Total Amount of Proposal is _____ Dollars and _____ Cents.

The above amount shall include any and all applicable taxes.

The quantities listed on the proposal page(s) are estimates. The actual requirement of the City may be more or less than the quantities specified. The City will pay for only those items which it actually delivered or received during the term of the Contract.

The City reserves the right to reject any and all proposals.

Proposer's Name _____

SUBCONTRACTING

If there are certain vehicles you cannot tow (i.e., heavy equipment, tractor/trailer, etc.) and work to be done under this contract is to be subcontracted, list the Sub-contractor and give a detailed description of the work to be done. Please list type of tow you are unable to perform without subcontracting. If "NONE", please indicate such.

(Submit with Proposal.)

Proposer's Name: _____

PROPOSER QUALIFICATION QUESTIONNAIRE

FOR REQUEST FOR PROPOSALS FOR: Requirements Contract for Towing and Storage Services of Evidence Vehicles RFP # 9515

1. SELECTION PROCESS AND EVALUATION CRITERIA

Proposal Evaluation

The Selection Committee will review and evaluate all proposals after formal receipt. To receive proper consideration, the proposal must meet the requirements of these Specifications. The evaluation process will provide credit only for those capabilities and advantages which are clearly stated in the Proposer's written proposals. In other words, advantages which are not stated will not be considered in the evaluation process.

Proposers whose proposals include a significant failure to comply with these Specifications will be dropped from the evaluation process.

The Selection Committee will include at least one representative from a Department with no direct interest in the service(s) being requested by this Request for Proposals and a representative from the Purchasing Division. The Committee may also include a representative from outside the City organization. It will be the responsibility of this committee to make recommendations in accordance with the award criteria enumerated below.

The Selection Committee will evaluate the proposals on the following criteria:

- a. Ability to meet the stated service requirements.
- b. Past Performance and Experience (References)
- c. Conformance to the terms and conditions of the RFP.
- d. Cost as shown on the proposal form.
- e. Other related information.

The City reserves the right to accept or reject any or all proposals and may select, and negotiate with one or more Proposers concurrently, and enter into a Contract with such Proposer who is determined, by the City, to provide the services which are in the interest of the City. The City may agree to such terms and conditions as it may determine to be in its interest.

The Selection Committee reserves the right to request additional information from Proposers, to negotiate terms and conditions of the Contract, to visit sites, to request demonstrations or oral presentations, or ask Proposers to appear before the Selection Committee to clarify points of their proposal.

Selection will be based on qualitative analysis and cost. Any award shall be on the basis of the criteria specified and made to the Proposer whose proposal is judged as providing the best value in meeting the interest of the City and the objectives of the project.

The City reserves the right to make the selection of a Proposer based on any or all factors of value, whether quantitatively identifiable or not, including, but not limited to, the anticipated initiative and ability of the Proposer to perform the services set forth herein.

Contractor must bid and be able to perform all services required herein to remain eligible for an award of a contract. A **contractor** will be selected and will be offered all evidence vehicle tows and storage opportunities. The City may elect two providers. If the City elects to do so, a primary provider and a secondary provider will be specified.

2. EXPERIENCE AND QUALIFICATIONS

- 2.1. **Principals in the Firm.** Firm experience and track record in the last three years, with towing and storage services. (Provided by Proposer)
- 2.2. **A general business statement** of all the important business activities of the vendor's major business life. Statement should emphasize experience with towing and storage services. (Provided by Proposer)
- 2.3. **A minimum of Three business references each,** (preferably commercial accounts of current and discontinued customers) giving names, addresses, telephone numbers, and the nature and magnitude of business association in each instance. These references must be persons or firms with whom the Vendor has conducted business transactions during the past three years. (Complete page 19)
- 2.4. **Experience.** Provide a resume of the education and service experience for key personnel who will be involved in this service. (Provided by Proposer)
- 2.5. **Statement indicating acceptance of indemnification and insurance requirements** that will be included in the Contract of this Proposal. (Page 20)

TO: THE PURCHASING MANAGER OF THE CITY OF FRESNO

The undersigned Proposer submits the following information in accordance with the proposal Specifications:
(Use additional sheets as needed.)

1. a. Business Name (If using more than one business name, please list all names.):

b. Address: _____

Is your firm operating as a franchisee? Yes or No

If yes, list the franchiser, and number of years your business has been franchised:

2. Provide the names, titles, qualifications, years of experience, and years with your firm, for all key personnel in authority in your business, including the key personnel that will be involved in this project, and the extent to which they will be involved in the performance of this Contract.

3. How many years has your business been established? _____

How many years has your business been under your present name? _____

How many years under former names? (List name and number of years)

4. How many years has your business been providing services? _____

5. What other types of services does your business provide?

6. Do you have any affiliated companies? (If parent company, list subsidiaries and divisions. If subsidiary or division; name parent company, its principals, and their addresses):

Proposer's Name _____

7. Have there been any contract terminations for the services your firm performs before the fulfillment of the contract within the past three years? Yes or No

If so, list the date, client, and reason for termination below:

8. Provide an organization chart, indicating full-time personnel, job titles, locations, and whether each individual works out of an office or is in the field. Organization chart attached?

Yes or No

9. Does the proposer currently possess sufficient storage and inventory to meet the initial requirements (See Estimated Quantities for Section 1-2, pgs. 12-13 for this contract)?

Yes or No

If "Yes", describe the inventory, storage facility, and square footage; and if "No", describe how you will meet the initial requirements:

10. Describe how you will meet the requirement to provide services.

11. Outline your support services including establishing direct lines of communication between City technical staff and the manufacturers(s).

Proposer's Name _____

REFERENCES

Please list at least three references of similar size and type of services, including governmental agencies, if available.

1. AGENCY/COMPANY NAME: _____
 ADDRESS: _____
 CONTACT PERSON: _____ E-MAIL: _____
 PHONE NUMBER: _____ FAX NUMBER: _____
 LENGTH OF CONTRACT: _____ NUMBER OF YEARS: _____
 TYPE OF SERVICE PROVIDED: _____

2. AGENCY/COMPANY NAME: _____
 CONTACT PERSON: _____ E-MAIL: _____
 PHONE NUMBER: _____ FAX NUMBER: _____
 LENGTH OF CONTRACT: _____ NUMBER OF YEARS: _____
 TYPE OF SERVICE PROVIDED: _____

3. AGENCY/COMPANY NAME: _____
 ADDRESS: _____
 CONTACT PERSON: _____ E-MAIL: _____
 PHONE NUMBER: _____ FAX NUMBER: _____
 LENGTH OF CONTRACT: _____ NUMBER OF YEARS: _____
 TYPE OF SERVICE PROVIDED: _____

Proposer's Name _____

**STATEMENT OF ACCEPTANCE OF THE INDEMNIFICATION
AND INSURANCE REQUIREMENTS
Requirements Contract for
FOR: Towing and Storage for Evidence Vehicles**

The Proposer shall sign below that the Proposer accepts in whole the Indemnification and Insurance Requirements set forth in these Specifications. If the Proposer takes exception to some portions, those portions shall be listed here below and the Proposer shall sign that the Proposer accepts all portions of the requirements not listed.

Note: Any exceptions may render the proposal non-responsive.

- ACCEPT**
- DO NOT ACCEPT**

If "DO NOT ACCEPT" is checked, please list exceptions:

INSERT IF APPLICABLE

Signature of Authorized Person

Type or Print Name of Authorized Person

This Agreement including all attachments contains rules and regulations that a tow company agrees to comply with in order to participate in the Evidence Contract of the City of Fresno Police Department (FPD). Compliance with all of the terms and conditions of the Agreement is mandatory for tow companies participating in the Evidence Contract. A Tow Operator, by agreeing to participate in the Evidence Contract, is not acting as an agent for FPD or City when performing services under this Agreement.

1. Governing Law and Venue

This Agreement shall be governed by, and construed enforced in accordance with, the laws of the State of California excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be the City of Fresno, California.

2. Entire Agreement

This Agreement, its attachments and exhibits, when accepted by the Tow Operator either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Agreement between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on City unless authorized by City in writing.

3. Amendments

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on City unless authorized by City in writing.

4. Patent/Copyright Materials/Proprietary Infringement

Unless otherwise expressly provided in this Agreement, Tow Operator shall be solely responsible for a obtaining a license or other authorization to use any patented or copyrighted materials in the performance of this Agreement. Tow Operator warrants that any Software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Tow Operator agrees that, in accordance with the more specific requirement below, it shall indemnify, defend and hold City and City Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.

5. Non-Discrimination

In the performance of this Agreement, Tow Operator agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any Tow Operators to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Tow Operator acknowledges that a violation of this provision shall subject Tow Operator to all the penalties imposed for a violation of anti-discrimination law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.

6. Termination

In addition to any other remedies or rights it may have by law, City has the right to terminate this Agreement without penalty immediately with cause and either party may terminate after thirty days written notice without cause, unless otherwise specified. Cause shall be defined as any breach of agreement or any misrepresentation or fraud on the part of the Tow Operator. Exercise by City of its right to terminate the Agreement shall relieve City of all further obligation.

7. Consent to Breach Not Waiver

No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

8. Remedies Not Exclusive

The remedies for breach set forth in this Agreement are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Agreement does not preclude resort by either Party to any other remedies provided by law.

9. Independent Tow Operator

Tow Operator shall be considered an independent Tow Operator and neither Tow Operator, its employees nor anyone working under Tow Operator shall be considered an agent or an employee of City. Neither Tow Operator, its employees nor anyone working under Tow Operator, shall qualify for workers' compensation or other fringe benefits of any kind through City.

10. Performance

Tow Operator shall perform all work under this Agreement, taking necessary steps and precautions to perform the work to City's satisfaction. Tow Operator shall be responsible for the professional quality, technical assurance, timely completion, and coordination of all documentation and other goods/services furnished by Tow Operator under this Agreement. Tow Operator shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of City required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by sub-Tow Operators.

11. Bills and Liens

Tow Operator shall pay promptly all indebtedness for labor, materials, and equipment used in performance of the work. Tow Operator shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Tow Operator shall promptly procure its release and indemnify, defend, and hold City harmless and be responsible for payment of all costs, damages, penalties, and expenses related to or arising from or related thereto.

12. Change of Ownership

Tow Operator agrees that if there is a change or transfer in ownership of the Tow Operator's business prior to completion of this Agreement such change will terminate this Agreement. This includes but is not limited to; changes in Corporate Board Members, Managers, Directors, Treasurer, Trustees, etc. All changes or transfers to "immediate family" must be approved by the Chief of Police, or designee, prior to such change or transfer in order for the Tow Operator to remain on the tow services list. Final written approval or disapproval for the change or transfer in ownership or control will be given by the Chief of Police or designee. All "immediate family" members involved in the potential transfer and operation of the Tow Operator shall be required to undergo a background check, review, and "Livescan" fingerprint screening. The "immediate family" members involved in the change or transfer of ownership or control must also possess and keep current all licensing certificates and insurance as required in this Agreement. The "immediate family" members who will operate or otherwise be legally responsible for the Tow Operator will be required to execute a new TSA.

- A.) Tow Operator shall be directly involved in the day-to-day operations of their business and shall not be directly involved in the towing-related business of any other tow company on, or applicant.
- B.) If terminated or suspended, Tow Operator and/or owner at the time of the suspension or termination, shall not be eligible for an evidence vehicles for the duration of the suspension or termination. The provision applies to the Tow Operator working in any capacity within any tow business or operating any tow business and to the tow business even if operated under new ownership.

13. Force Majeure

Tow Operator shall not be in breach of this Agreement caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Tow Operator gives written notice of the cause of the delay to City within thirty-six (36) hours of the start of the delay and Tow Operator avails himself of any available remedies.

14. Confidentiality

Tow Operator agrees to maintain the confidentiality of all City and City-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Agreement. All such records and information shall be considered confidential and kept confidential by Tow Operator and Tow Operator's staff, agents and employees.

15. Compliance with Laws

Tow Operator represents and warrants that services to be provided under this Agreement shall fully comply, at Tow Operator's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by City in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by City. Tow Operator acknowledges that City is relying on Tow Operator to ensure such compliance. Tow Operator agrees that it shall defend, indemnify and hold City and City Indemnitees harmless from all liability, damages, costs, and expenses arising from or related to a violation of such laws.

16. Pricing

The Agreement price shall include full compensation for providing all required services in accordance with the Scope of Work attached to this Agreement, and no additional compensation will be allowed therefore, unless otherwise provided for in this Agreement.

17. Terms and Conditions

Tow Operator acknowledges that the undersigned has read and agrees to all terms and conditions included in this Agreement.

18. Severability

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

19. Calendar Days

Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

20. Attorney Fees

If either party is required to commence any proceeding or legal action to enforce any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable Attorney's fees and legal expenses.

21. Interpretation

This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Agreement by any other Party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Agreement.

22. Authority

The Parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

23. Employee Eligibility Verification

Tow Operator warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Agreement meet the citizenship or alien status requirement set forth in Federal statutes and regulations. Tow Operator shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. Tow Operator shall retain all such documentation for all covered employees for the period prescribed by the law. Tow Operator shall indemnify, defend with counsel approved in writing by City, and hold harmless, City, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Tow Operator or City or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.

24. Additional Terms and Conditions

- A.) **Term of Agreement:** This Agreement shall commence upon execution of all necessary signatures, and shall be valid for up to three years from that date, unless otherwise terminated by the City of Fresno.
- B.) **Fiscal Appropriations:** This Agreement is subject to and contingent upon applicable budgetary appropriations being made by the City for each year during the term of this Agreement. If such appropriations are not forthcoming, the Agreement will be terminated without penalty. Tow Operator acknowledges that funding or portions of funding for this Agreement may also be contingent upon the receipt of funds from, and/or appropriation of funds by City. If such funding and/or appropriations are not forthcoming, or are otherwise limited, City may immediately terminate or modify this Agreement without penalty.
- C.) **Conflict of Interest (Tow Operator):** Tow Operator shall exercise reasonable care and diligence to prevent any actions or conditions that result in a conflict with the best interest of City. This obligation shall apply to Tow Operator, Tow Operator's employees, agents, relatives, and third parties associated with accomplishing the work hereunder. Tow Operator's efforts shall include, but not be limited to, establishing precautions to prevent its employees or agents from making, receiving, providing, or offering gifts, entertainment, payments, loans, or other considerations which could be deemed to appear to influence individuals to act contrary to the best interest of City.
- D.) **Tow Operator Work Hours and Safety Standards:** Tow Operator shall ensure compliance with all safety and hourly requirements for employees, in accordance with federal, state, and City safety and health regulations and laws.
- E.) **Orderly Termination:** Upon termination or other expiration of this Agreement, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Agreement. In addition, each Party will assist the other Party in orderly termination of this Agreement and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.
- F.) **Recurement Costs:** In the case of default by Tow Operator, City may procure the service from other sources and, if the cost is higher, Tow Operator will be held responsible to pay City the difference between the Agreement cost and the price paid. City may make reasonable efforts to obtain the prevailing market price at the time such goods and services are rendered. This is in addition to any other remedies available under law.

- G.) **Authorization Warranty:** Tow Operator represents and warrants that the person executing this Agreement on behalf of and for Tow Operator is an authorized agent who has actual authority to bind Tow Operator to each and every term, condition, and obligation of this Agreement and that all requirements of Tow Operator have been fulfilled to provide such actual authority.
- H.) **Notices:** Any and all notices permitted or required to be given hereunder shall be deemed duly given (1) upon actual delivery, if delivery is by hand; or (2) upon delivery by the United States mail if delivery is by postage paid registered or certified return receipt requested mail; or (3) through electronic means such as, email or the Auto Return Software System.
- I.) **Data – Title to:** All materials, documents, data or information obtained from City data files or any City medium furnished to Tow Operator in the performance of this Agreement will at all times remain the property of City. Such data or information may not be used or copied for direct or indirect use by Tow Operator after completion or termination of this Agreement without the express written consent of City. All materials, documents, data or information, including copies, must be returned to City at the end of this Agreement.
- J.) **Usage:** No guarantee is given by City to Tow Operator regarding usage of this Agreement. Usage figures, if provided, are approximate, based upon the last usage. Tow Operator agrees to supply services and/or commodities requested, as needed by City, at prices listed in the Agreement, regardless of quantity requested.
- K.) **Tow Operator's Records:** Tow Operator shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by Tow Operator in accordance with generally accepted accounting principles. These records shall be stored at the Tow Operators place of business for a period of three (3) years after final payment is received by City.
- L.) **Audits/Inspections:** Tow Operator agrees to permit City's authorized representative (including auditors from a private auditing firm hired by City) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Tow Operator for the purpose of auditing or inspecting any aspect of performance under this Agreement. The inspection and/or audit will be confined to those matters connected with the performance of the Agreement including, but not limited to, the costs of administering the Agreement.

City reserves the right to audit and verify Tow Operator's records before or after final payment is made.

Tow Operator agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Agreement or by law. Tow Operator agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Tow Operator agrees to include a similar right to City to audit records and interview staff of any sub Tow Operator related to performance of this Agreement.

Should Tow Operator cease to exist as a legal entity, Tow Operator's records pertaining to this Agreement shall be forwarded to the Tow Coordinator.

25. Disputes-Agreement

- A.) The Parties shall deal in good faith and attempt to resolve potential disputes informally.
- 1.) Tow Operator shall submit to the Tow Coordinator a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Agreement, unless City, on its own initiative, has already rendered such a final decision.
 - 2.) Tow Operator's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Agreement, Tow Operator shall include with the demand a written statement signed by a senior official indicating the that demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Agreement adjustment for which Tow Operator believes City is liable.
- B.) Pending the final resolution of any dispute arising under, related to, or involving this Agreement, Tow Operator agrees to diligently proceed with the performance of this Agreement. Tow Operator's failure to diligently proceed shall be considered a material breach of this Agreement.

Any final decision of City shall be expressly identified as such, shall be in writing, and shall be signed by the City Hearing Administrative Officer. If City fails to render a decision within 90 days after receipt of Tow Operator's demand, it shall be deemed a final decision adverse to Tow Operator's contentions. City's final decision shall be conclusive and binding regarding the dispute unless Tow Operator commences action in a court of competent jurisdiction.

26. Breach of Agreement

The failure of the Tow Operator to comply with any of the provisions, covenants or conditions of this Agreement shall be a material breach of this Agreement. In such event the City may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Agreement undertake any of the individual actions or any combination of the following actions:

- 1.) Afford the Tow Operator written notice of the breach and ten calendar days or such shorter time that may be specified in this Agreement within which to cure the breach;
- 2.) Suspend;
- 3.) Terminate the Agreement immediately, without any penalty.

SPECIAL CONDITIONS

REQUIREMENTS CONTRACT FOR: TOWING and STORAGE SERVICES of EVIDENCE VEHICLES

TERM OF CONTRACTS: The evidence Contract shall be in effect for three years from the date of the Notice to Proceed. The Contract may be extended, with the mutual consent of both parties, for two (2) one year increments with price increases/decreases in accordance with the provisions set forth herein, all other terms and conditions specified herein remaining the same. If either the City or Contractor elects not to extend the Contract, or upon expiration of the final one-year extension term, the contractor shall aid the City in continuing, uninterrupted, the requirements of the contract, by continuing to perform on a temporary basis, when specifically requested to do so in writing by the Purchasing Manager, for a specified term not to exceed twelve months. Such continuance shall be subject to price increases/decreases in accordance with the provisions set forth herein, and all other terms and conditions remaining the same as if the contract had been extended for such a temporary period by an amendment thereto.

PRICING CONDITIONS: For the first thirty-six (36) months of the Contract, pricing will be fixed at the proposal pricing. Sixty days prior to the third anniversary date of the Contract, the Contractor may submit proposed pricing revisions for the following contract term, which will be subject to negotiation by the City at the City's discretion. The Purchasing Manager of the City of Fresno shall be the authorized City agent in any such negotiation. The Contractor must provide adequate documentation to substantiate any request for price increase. Any increase in unit price for any item included in this contract shall not exceed, unless otherwise approved by the Purchasing Manager, the percent change for the following consumer's price index, as published by the Bureau of Labor Statistics: All Urban Consumers, San Francisco-Oakland-San Jose, CA (Series Id: CUURA422SAT, CUUSA422SAT). In the event that the Index drops, the Contractor shall pass on to the City an equivalent reduction pricing. The basis of the index shall be established as the last available month at the date of the Notice to Proceed, a copy of which will be mailed with the Notice.

If, during the course of this contract, the Supplier's selling price of any of the item(s) bid, is below the contract bid price, the City will receive the lowest pricing.

TERMINATION FOR CONVENIENCE:

The City reserves the right to terminate this Contract upon 60 days written notice to the Contractor. In the event of such termination, the Contractor shall be paid for satisfactory service performed to the date of termination.

(Submit with Proposal, if applicable)

Proposer's Name _____

**CERTIFICATION FOR LOCAL PREFERENCE
Requirements Contract for
FOR: Towing and Storage Services of Evidence Vehicles**

We certify that we qualify as a local business pursuant to Fresno Municipal Code Section 4-109.

Location of Business:
(Please provide street address, no PO Box)

Primary Office
Branch Office
(Please mark as applicable)

Address: _____

Phone: _____

The undersigned Proposer hereby declares under penalty of perjury under the laws of the State of California that the information contained on this CERTIFICATION FOR LOCAL PREFERENCE is correct and complete.

The above Statement is part of the proposal. Signing this proposal on the signature page thereof shall also constitute signature of this Certification.

Proposers are cautioned that making a false certification may subject the certifier to criminal prosecution.

(Submit with Proposal)

Proposer's Name _____

**NON-COLLUSION AFFIDAVIT
Requirements Contract for
FOR: Towing and Storage Services of Evidence Vehicles**

Proposer declares under penalty of perjury under the laws of the State of California that this proposal is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation; that such proposal is genuine and not collusive or sham; that said Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham proposal and has not directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to put in a sham proposal, or that anyone shall refrain from submitting a proposal; that said Proposer has not in any manner directly or indirectly sought by agreement, communication, or conference with anyone to fix the proposal price of said Proposer or of any other Proposer, or to fix any overhead, profit, or cost element of such proposal price, or of that of any other Proposer, or to secure any advantage against the public body awarding the Contract of anyone interested in the proposed Contract; that all statements contained in such proposal are true, and further, that said Proposer has not directly or indirectly submitted his proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid and will not pay any fee in connection therewith, to any corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof, or to any other individual except to any person or persons as have a partnership or other financial interest with said Proposer in this general business.

The above Non-Collusion Affidavit is part of the proposal. Signing this proposal on the signature page thereof shall also constitute signature of this Non-Collusion Affidavit.

Proposers are cautioned that making a false certification may subject the certifier to criminal prosecution.

(Submit with Proposal)

Proposer's Name _____

ADDENDA

The City makes a concentrated effort to ensure any addenda issued relating to these Specifications are distributed to all interested parties. It shall be the Proposer's responsibility to inquire as to whether any addenda to the Specifications have been issued. Upon issuance by the City, all addenda are part of the proposal. Signing the proposal on the signature page thereof shall also constitute signature on all addenda.

TIME PERIOD TO AWARD/REJECT

The undersigned Proposer agrees that the City may have **120 DAYS** from the date proposals are opened to accept or reject proposals. It is further understood that, if the Proposer to whom any award is made fails to enter into a Contract as provided in the Specifications, award may be made to another Proposer, who shall be bound to perform as if she/he had received the award in the first instance.

(Submit with Proposal)

Proposer's Name _____

PROPOSAL DEPOSIT

Accompanying this proposal is a Proposal Deposit in the amount of **Five Hundred dollars (\$500.00)** in form of:

- Certified Check
- Bidder's Bond
- Cashier's Check
- Irrevocable Letter of Credit
- Certificate of Deposit
- Annual Bidder's Bond

which is deposited by the undersigned Proposer with the City of Fresno as a guarantee that the Proposer, if awarded all or part of the Contract, will, within fifteen calendar days from the date the Notice of Award is mailed to the Proposer, execute and return a Contract furnished by the City.

Such Deposit is made with the understanding that failure to execute such Contract will result in damage to the City, that the amount of such damage would be difficult to determine and that in the event of such default said Deposit shall become the property of the City; or, if a Bidder's Bond is deposited, the amount of the obligation thereof, but not more than the above stated amount, shall thereupon be due and payable to the City of Fresno as liquidated damages for such default, payment of said amount to be the joint and several obligation of the Proposer and the corporate surety.

BUSINESS LOCATION

- The undersigned Proposer does not maintain a place of business in the City of Fresno.
- The undersigned Proposer maintains a place of business in the City of Fresno
at: _____, Fresno, CA _____

BUSINESS LICENSE

- The undersigned Proposer has a current City of Fresno Business License and the number is _____.

If the successful bidder does not have a City of Fresno Business License, he/she shall obtain such a license prior to the issuance of a Notice to Proceed for the Work and maintain in effect throughout the term of this Contract.

(Submit with Proposal)

Initial: _____

**CITY OF FRESNO
FINANCE DEPARTMENT
ACCOUNTS PAYABLE SECTION**

AUTHORIZATION AGREEMENT FOR DIRECT PAYMENTS (ACH CREDITS)

Company Name _____ Contact Email Address _____
(Required)

Contact Name _____ Telephone Number _____

The City of Fresno, Finance Department, (FINANCE DEPARTMENT), is authorized to initiate credit entries to the company above, (COMPANY), in the account below at the depository financial institution named below, (DEPOSITORY), and to credit the same to such account. Company acknowledges that the origination of ACH transactions to its account must comply with the provisions of U.S. law.

Depository Name _____ Branch _____

City _____ State _____ Zip Code _____

Routing Number _____ Account Number _____

ACH Authorization Agreement Form already on file with City.

This authorization is to remain in full force and effect until FINANCE DEPARTMENT has received written notification of its termination. The FINANCE DEPARTMENT and DEPOSITORY have a reasonable time to process the termination.

Name(s) _____
(Please print)

Signature _____ Date _____

Title _____

SIGNATURE PAGE

By my signature on this proposal I certify, under penalty of perjury under the laws of the State of California, that the statements contained in this proposal are true and correct.

PROPOSAL SUBMITTED BY:

(Please follow the instructions for each line, as explained below.)

(1) _____ () _____ () _____
Firm Phone Fax

(2) _____
(Corp) (Individual) (Partner) (Other)

(3) _____
Business Address

City State Zip Code

(4) By: _____
Signature of Authorized Person

Type or Print Name of Authorized Person and Title

Federal Tax I.D. No.: _____ Date: _____

INSTRUCTIONS FOR SIGNATURE PAGE

LINE 1: The name of the Bidder must be the same as that under which a license is issued, if a license is required. If the Bidder is a corporation, enter the exact name of the corporation under which it is incorporated; if Bidder is an individual, enter name; if Bidder is an individual operating under a trade name, enter name and dba (trade name in full); if a partnership, enter the correct trade style of the partnership; if a joint venture, enter exact names of entities joining in the venture.

LINE 2: Identify here the character of the name shown under (1), i.e., corporation (including state of incorporation), individual, partnership, or joint venture.

LINE 3: Enter the address to which all communications and notices regarding the Bid Proposal and any Contract awarded thereunder are to be addressed.

LINE 4: (a) If the Bidder is a corporation, the Bid Proposal must be signed by an officer or employee authorized to sign Contracts on behalf of the corporation evidenced by inclusion of one of the following certified by the secretary of the corporation, authorizing the officer or employee to sign contracts (sample certification attached): a copy of the Articles of Incorporation, a copy of the Bylaws, a copy of the Board Resolution or Minutes authorizing the officer or employee to sign Contracts.

(b) If Bidder is an individual, he/she must sign the Bid Proposal, or if the Bid Proposal is signed by an employee or agent on behalf of the Bidder, a copy of a power of attorney must be on file with the City of Fresno prior to the time set for the opening of the bids or must be submitted with the Bid Proposal.

(c) If the Bidder is a partnership, the Bid Proposal must be signed by all general partners; or by a general partner(s) authorized to sign Contracts on behalf of the partnership evidenced by inclusion of either a copy of the Partnership Agreement or a recorded Statement of Partnership.

(d) If the Bidder is a joint venture, the Bid Proposal must be signed by all joint venturers; or by a joint venturer(s) authorized to sign Contracts on behalf of the joint venture evidenced by inclusion of either a copy of the Joint Venture Agreement or a recorded Statement of Joint Venture; and if the joint venturer(s) is a corporation or a partnership signing on behalf of the Joint Venture, then Paragraphs (a) and c) above apply respectively.

Where Bidder is a partnership or a corporation, the names of all other general partners, or the names of the president and secretary of the corporation, and their business addresses must be typewritten below:

| NAME | ADDRESS |
|------|---------|
| | |
| | |
| | |

NOTE: All addresses must be complete with street number, City, State, and Zip Code.

SAMPLE CERTIFICATION

I, _____, certify that I am the secretary
Name
of the corporation named herein; that _____ who signed this
Name
Bid Proposal on behalf of the corporation, was then _____ of
Title
said corporation; that said Bid Proposal is within the scope of its corporate powers and was duly signed for
and on behalf of said corporation by authority of its governing body, as evidenced by the attached true and
correct copy of the _____.
Name of Corporate Document

By: _____

Name: _____

Title: Secretary

Date: _____

SAMPLE
SERVICE CONTRACT

THIS CONTRACT is made and entered into by and between the CITY OF FRESNO, a California municipal corporation (City), and [Contractor Name], [Legal Identity] (Consultant), as follows:

1. **CONTRACT DOCUMENTS.** The "Notice Inviting Proposals," "Instructions to Proposers," "Proposal" and the "Specifications" including "General Conditions," "Special Conditions," "Federal Conditions", "Functional Specifications" and "Technical Requirements" for the following: [Title and Request for Proposals No.] copies of which are annexed hereto, together with all the documents specifically referred to in said annexed documents, including the Performance Bond, if required, are hereby incorporated into and made a part of this Contract, and shall be known as the Contract Documents.

2. **PRICE.** For the monetary consideration of [WRITTEN \$ AMOUNT] DOLLARS AND [WRITTEN CENTS AMOUNT] CENTS (\$[Dollar amount: e.g. \$5,000]), as set forth in the Proposal, Consultant promises and agrees to perform or cause to be performed, in a good and workmanlike manner, and to the satisfaction of the City, and in strict accordance with the Specifications, all of the work as set forth in the Contract Documents.

3. **PAYMENT.** The City accepts the Consultant's Proposal as stated and agrees to pay the consideration stated, at the times, in the amounts, and under the conditions specified in the Contract Documents. The Consultant agrees to accept electronic payment from the City.

4. **INDEMNIFICATION.** To the furthest extent allowed by law, including but not limited to California Civil Code section 2782, the Consultant shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including, but not limited to personal injury, death at any time and property damage) and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, its principals, officers, employees, agents, or volunteers in the performance of this Agreement.

If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall require each subcontractor to indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Contract.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties have executed this Contract on the day and year here below written, of which the date of execution by the City shall be subsequent to that of the Consultant's, and this Contract shall be binding and effective upon execution by both parties.

CITY OF FRESNO,
A California municipal corporation

[CONSULTANT NAME],
[Legal Identity]

By: _____
[Name]
[Title]

By: _____

Name: _____

Dated: _____

Title: _____

(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____

By: _____
Date

Name: _____

Senior Deputy City Attorney

Title: _____

(If corporation or LLC., CFO, Treasurer,
Secretary or Assistant Secretary)

ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

REVIEWED BY:

By: _____
Date

Deputy

Addresses:

CITY:
City of Fresno
Attention: [Name]
[Title]
[Street Address]
Fresno, CA [Zip]
Phone: (559) [#]
FAX: (559) [#]

CONSULTANT:
[Consultant Name]
Attention: [Name]
[Title]
[Street Address]
[City, State Zip]
Phone: [area code and #]
FAX: [area code and #]

B-Serv Contract Consult 02-08-18

III - GENERAL CONDITIONS

GENERAL CONDITIONS

1. **DEFINITIONS:** Wherever used in the Specifications, including the Instructions to Proposers, the proposal, or any of the Contract Documents, the following words shall have the meaning herein given, unless the context requires a different meaning.

- (a) "City" and "City of Fresno" shall each mean the City of Fresno, CA, unless otherwise indicated.
- (b) "City Manager" shall mean the City Manager of the City of Fresno.
- (c) "Contract" and "Contract Documents" shall each mean and refer to these Specifications, including the Instructions to Proposers, the proposal and any addenda thereto, the Contract and all City of Fresno specifications, and other papers and documents incorporated by reference into or otherwise referred to in any of the foregoing documents, whether or not attached thereto.
- (d) "Contractor" shall mean each person or entity awarded a Contract hereunder and named or to be named in the Contract with the City of Fresno to furnish the goods or services, or both, to be furnished under the Contract.
- (e) "Council" and "City Council" shall each mean the Council of the City of Fresno.
- (f) "Proposer" shall mean each person or entity submitting a proposal, whether or not such person or entity shall become a Contractor by virtue of award of a Contract by the City.
- (g) "Purchasing Manager" shall mean the Purchasing Manager of the City of Fresno.
- (h) "Specifications" shall mean the Contract Documents.

2. **DELIVERY OF SERVICES:** If Contractor is delayed providing services by (i) any acts or omissions of City or its employees, or others acting under authority of City by contract or otherwise, (ii) acts of God which Contractor could not reasonably have foreseen and provided for, (iii) illegal strikes, boycotts or like illegal obstructive action by employee or labor organizations, or (iv) any illegal general lockouts or other defensive action by employers, whether general or by organizations of employers; Contractor shall have no claim for damages against City for any such cause of delay, but shall be entitled to an extension of time as will reasonably compensate Contractor for actual loss of time occasioned thereby. Contractor may apply to the City Manager for such extension. However, no such extension of time shall be granted unless Contractor shall have notified the Purchasing Manager, in writing, within one week after the commencement or occurrence of the condition or event which is expected to cause a delay in delivery, of such condition or event and the actual or estimated number of days of delay anticipated on account thereof. The decision of the City Manager as to the number of additional days, if any, to be allowed for completion of delivery on account of such condition or event, will be given in writing to Contractor.

3. **TERMINATION FOR CONVENIENCE:** The City reserves the right to terminate this Contract for any reason, upon 60 days written notice to the Contractor. In the event of such termination, the Contractor shall be paid for satisfactory service performed to the date of termination.

4. **TERMINATION FOR CAUSE:**

- a. If the Contractor shall fail to complete delivery, within the time or times specified herein, of all or any part of the materials, equipment, supplies or services to be provided under the Contract, the City Manager of the City of Fresno or designee, acting for and on behalf of the City, may at any time after the expiration of the time for cure, terminate the Contract as to the whole thereof, or in the event partial delivery has been made and accepted, as to such of the items or service to be furnished which have not been delivered or accepted prior to such termination.

b. The City may terminate this Contract if the Contractor materially breaches any of its obligations under this Contract and fails to commence and diligently pursue reasonable efforts to cure such breach within fifteen days after written notice by the City specifically describing the breach.

c. Such termination shall be effective upon receipt by Contractor of written notice of termination from said City Manager or designee, which notice shall be deemed to have been received by Contractor, if mailed by certified mail, within forty-eight hours to Contractor's address as contained in the proposal to the City or, if personally delivered, upon the delivery thereof to Contractor, the authorized representative of Contractor, or to the Contractor's said address.

5. **CONTRACT DOCUMENTS:** Upon award of the Contract, the Contractor shall execute and submit all required documents to the Purchasing Manager, 2600 Fresno Street,, Fresno, California 93721, in a form acceptable to the City of Fresno within fifteen calendar days from the date of Notice of Award. Failure to provide said documents within the designated period shall be sufficient cause to forfeit the proposal deposit and initiate a City departmental recommendation for City to award the Contract to another Proposer.

6. **PERFORMANCE BOND:** Throughout the life of this Contract, the Contractor shall pay for and maintain in full force and effect a "Faithful Performance Bond" from a corporate surety, admitted by the California Insurance Commissioner to do business in the State of California, in the amount of **\$N/A**. If applicable, this bond is to be renewed annually.

7. **INSURANCE REQUIREMENTS**

(a) Throughout the life of this Agreement, CONTRACTOR shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or designee at any time and in its sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, CONTRACTOR or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONTRACTOR shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONTRACTOR of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by CONTRACTOR shall not be deemed to release or diminish the liability of CONTRACTOR, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONTRACTOR, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for “bodily injury,” “property damage” and “personal and advertising injury” with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under “Minimum Limits of Insurance.”
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents, and volunteers are to be listed as additional insureds.
3. Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.

MINIMUM LIMITS OF INSURANCE

CONTRACTOR shall procure and maintain for the duration of the contract insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. COMMERCIAL GENERAL LIABILITY
 - (i) \$1,000,000 per occurrence for bodily injury and property damage;
 - (ii) \$1,000,000 per occurrence for personal and advertising injury;
 - (iii) \$2,000,000 aggregate for products and completed operations; and,
 - (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.
2. GARAGEKEEPERS LEGAL LIABILITY insurance which shall include coverage for vehicles in the care, custody, and control of the Tow Operator with limits of liability of not less than \$500,000 per occurrence for property damage.
3. COMMERCIAL AUTOMOBILE LIABILITY
\$1,000,000 per accident for bodily injury and property damage.
4. ON-HOOK/CARGO insurance which shall include coverage for vehicles in tow with limits of liability based on the size of the tow truck, which are as follows:
 - (i) Class A tow truck.....\$120,000
 - (ii) Class B tow truck.....\$120,000
 - (iii) Class C tow truck.....\$200,000
 - (iv) Class D tow truck.....\$300,000
5. WORKERS' COMPENSATION insurance as required under the California Labor Code and EMPLOYERS' LIABILITY insurance with minimum limits of \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

UMBRELLA OR EXCESS INSURANCE

In the event CONTRACTOR purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

CONTRACTOR shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONTRACTOR shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or designee. At the option of the CITY'S Risk Manager or designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or
- (ii) CONTRACTOR shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

- (i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty calendar days written notice has been given to CITY, except ten days for nonpayment of premium. CONTRACTOR is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONTRACTOR shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CONTRACTOR shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen calendar days prior to the expiration date of the expiring policy.
- (ii) The Commercial General, Garagekeepers Legal Liability and Automobile Liability insurance policies shall be written on an occurrence form.
- (iii) The Commercial General, Garagekeepers Legal Liability and Automobile Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured.
- (iv) All such policies of insurance shall be endorsed so the CONTRACTORS' insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. If CONTRACTOR maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by CONTRACTOR.
- (v) All above, including the Commercial General, Garagekeepers Legal Liability and Automobile Liability policies shall contain a waiver of subrogation as respects to CITY.
- (vi) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
- (vii) For any claims related to this Agreement, CONTRACTOR'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers,

officials, agents, employees and volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.

- (viii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.

PROVIDING OF DOCUMENTS - CONTRACTOR shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein **All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or designee prior to CITY'S execution of the Agreement and before work commences.** All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, CONTRACTOR shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of CONTRACTOR shall also be required to provide all documents noted herein.

SUBCONTRACTORS If Tow Operator should subcontract all or any portion of the work to be performed, Tow Operator shall require each subcontractor to provide insurance protection in favor of the City, its officer, officials, employees, agents and authorized volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors certificates and endorsements shall be on file with the Tow Operator and City prior to the commencement of any work by the subcontractor.

Bidders who plan to participate repeatedly in City bids are encouraged to submit annual insurance certificates at time of bid which will remain on file in the Purchasing Division.

8. **INDEMNIFICATION:** To the furthest extent allowed by law, CONTRACTOR shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, CONTRACTOR or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. CONTRACTOR'S obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers.

If CONTRACTOR should subcontract all or any portion of the work to be performed under this Agreement, CONTRACTOR shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

9. **PRECEDENCE OF CONTRACT DOCUMENTS:** The order of precedence of documents shall be: (1) Rules and Regulations of Federal Agencies relating to the source of funds for this project; (2) Supplemental Agreements, Change Orders, or Contract the one dated later having precedence over another dated earlier; (3) Special Conditions; (4) General Conditions; (5) Scope of Work.

Whenever any conflict appears in any portion of the Contract, it shall be resolved by application of the order precedence.

10. FEDERAL IMMIGRATION REFORM AND CONTROL ACT OF 1986: As a material part of any contract for a City of Fresno project, every Contractor who has employees who will work on a City of Fresno project, is required to comply with all of the provisions of the Federal Immigration Reform and Control Act of 1986 (P.L. 99-603, 100 Stat. 3359). This requirement includes compliance with all of the employee documentation provisions. Furthermore, the Contractor will make any employee documentation required to comply with the Act immediately available to the City upon its request for each individual employee working on a City of Fresno project.

11. WORKMANSHIP GUARANTY: The workmanship of the services to be performed for the City by the Contractor will be in accord with the Specifications, and where not specified, in accord with generally accepted standards.

12. ALTERATION OF TERMS: No alterations or variations of the terms of this Contract shall be valid unless made in writing and signed by both parties.

13. CONTRACT CHANGES: No changes or modifications to the Contract shall be made unless agreed to and signed by both parties. No prior, current or post award verbal agreement or agreements with any officer, agent or employee of the City shall affect or modify any terms or obligations of these Specifications or any Contract resulting from this procurement.

14. AMENDMENTS: The City of Fresno reserves the right to add, modify, or delete items from the Contract including Special Conditions or Scope of Work. Any changes shall be made only by means of a formal amendment signed by both the City and Contractor.

15. ASSIGNMENT: The Contract is personal to the Contractor and there shall be no assignment, transfer, sale, or subcontracting by the Contractor of its rights or obligations under the Contract without the prior written approval of the City. Any attempted assignment, transfer, sale, or subcontracting by the Contractor, its successors, or assigns, shall be null and void unless approved in writing by the City.

16. TERMINATION BY CITY FOR NON-APPROPRIATION: In the event of non-appropriation relating to the Contract, City shall have the right to terminate the Contract at the end of any fiscal year of City, in the manner and subject to the terms specified in this paragraph. City shall endeavor to give written notice of such termination not less than 60 days prior to the end of such fiscal year, and shall notify Contractor of any anticipated termination. For purposes of this paragraph, "fiscal year" shall mean the twelve month fiscal period of City which commences on July 1 in every year and ends on the following June 30. For purposes of this paragraph, "non-appropriation" shall mean the failure of the City or City's governing body to appropriate money for any fiscal year of City sufficient for the continued performance of the Contract by City.

17. INDEPENDENT CONTRACTOR: In the furnishing of the services provided for herein, the Contractor is acting as an independent contractor. Neither the Contractor, nor any of its officers, associates, agents or employees shall be deemed an employee, joint venturer, partner, or agent of the City for any purpose. However, the City shall retain the right to verify that the Contractor is performing its respective obligations in accordance with the terms of the Contract.

Because of its status as an independent contractor, Contractor and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City employees. Contractor shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, Contractor shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of Contractor's employees, including, without

limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, Contractor may be providing services to others unrelated to City or to this Agreement.

18. GOVERNING LAW AND VENUE: The Contract shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of the Contract and any rights and duties thereunder shall be Fresno County, California.

19. COMPLIANCE WITH LAW: In providing the services required under the Contract, Contractor shall at all times comply with all applicable laws of the United States, the State of California and the City of Fresno, and with all applicable regulations promulgated by Federal, State, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of the Contract.

20. SEVERABILITY: The provisions of the Contract are severable. The invalidity, or unenforceability of any one provision in the Contract shall not affect the other provisions.

21. INTERPRETATION: The Contractor acknowledges that the Contract in its final form is the result of the combined efforts of the parties and that, should any provision of the Contract be found to be ambiguous in any way, such ambiguity shall not be resolved by construing the Contract in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

22. ATTORNEY'S FEES: If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of the Contract, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

23. EXHIBITS: Each exhibit and attachment referenced in the Contract is, by the reference, incorporated into and made a part of the Contract.

24. MAINTENANCE OF RECORDS: Records of Contractor pertaining to the services hereunder shall be kept on a generally recognized accounting basis and shall be available to City or its authorized representatives upon request during regular business hours throughout the life of the Contract and for a period of three years after final payment and for the period of time required by law. In addition, all books, documents, papers, and records of Contractor pertaining to the Contract shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This section shall survive expiration or termination of the Contract.

25. RECYCLING: In the event Contractor maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, Contractor at its sole cost and expense shall:

- (i) After award, immediately establish and maintain a viable and ongoing recycling program, approved by the City's Solid Waste Management Division, for each office and facility. Literature describing City recycling programs is available from City's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.

(ii) Immediately contact the Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.

(iii) Cooperate with and demonstrate to the satisfaction of City's Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

26. **NOTICES:** Any notice required or intended to be given to either party under the terms of this Contract shall be in writing and shall be deemed to be duly given if delivered personally or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of the Proposal in the case of the Contractor and at the address in the Special Conditions for mailing of invoices in the case of City, or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

27. **BINDING:** Subject to Section 15 of these General Conditions, once this Contract is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

28. **WAIVER:** The waiver by either party of a breach by the other of any provision of this Contract shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Contract. No provisions of this Contract may be waived unless in writing and signed by all parties to this Contract. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

29. **CUMULATIVE REMEDIES:** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

30. **NO THIRD PARTY BENEFICIARIES:** The rights, interests, duties and obligations defined within this Contract are intended for the specific parties hereto as identified in the preamble of this Contract. Notwithstanding anything stated to the contrary in this Contract, it is not intended that any rights or interests in this Contract benefit or flow to the interest of any third parties.

31. **EXTENT OF AGREEMENT:** Each party acknowledges that they have read and fully understand the contents of this Contract. This Contract represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be modified only by written instrument duly authorized and executed by both City and Contractor.

32. **HEADINGS:** The section headings in this Contract are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Contract.

IV. SPECIAL CONDITIONS

PAYMENT: The Proposer shall invoice the City of Fresno in order to initiate the payment process. Invoices shall conspicuously display the City's purchase order number and shall be submitted to:

ATTENTION:
City of Fresno
Fresno Police Department - Business Office
Attn: Rosemary Hernandez
2323 Mariposa
Fresno, Ca 93727

Contractor hereby agrees not to assign the payment of any monies due Contractor from City under the terms of this Contract to any other individual(s), corporation(s) or entity(ies). City retains the right to pay any and all monies due Contractor directly to Contractor.

V - SCOPE OF WORK

ATTACHMENT A SCOPE OF WORK

1. Scope of Work

Tow Operators shall perform the towing, and storage of vehicles as directed by the City, and in addition, such other services as provided in this Scope of Work, and shall provide necessary storage facility, tow vehicles, labor, materials, equipment, machinery, and tools. The Tow Operator shall comply with all State laws and regulations, applicable to tow units and impound, towing, storage, selling or junking of vehicles. Tow operators must follow all guidelines set forth by equipment manufactures recommendations as to their use and care of all towing related equipment. All permits and licensing fees as specified under California Vehicle Code (CVC) 34620 and California Vehicle Code 34334 shall be in full force and effect at all times during this Agreement. Any violation of this section will be considered a material breach of the Agreement and may result in immediate termination of this Agreement.

2. Towing Services and Duties

It shall be the duty of the Tow Operator, when so directed by the City, to provide prompt tow service for vehicles which are taken into custody by the City. It shall also be the duty to provide for the safety and security of those vehicles and the contents thereof. These duties are inherent to the job.

The City will designate one (1) company for evidence impound tows/storage.

If terminated or suspended, Tow Operator and/or owner at the time of the suspension or termination, shall not be eligible for any evidence vehicles for the duration of the suspension or termination. The provision applies to the Tow Operator working in any capacity within any tow business or operating any tow business and to the tow business even if operated under new ownership.

Tow Operator shall not share equipment with any other tow company, excluding equipment which may be unavailable due to repairs or when there is a need for equipment replacement and written notice has been obtained from FPD.

3. Signage

The storage yard or business office shall have a sign that clearly identifies it to the public as a towing service. The sign shall have letters that are clearly visible to the public from the street and must be visible at night. All storage facilities must be accessible to City personnel 24 hours per day and 7 days per week. The Tow Operator will provide customer service between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday for the release of vehicles.

4. Response Time

Tow Operator shall respond to calls 24 hours a day, seven days a week, within the maximum response time limits as established by the Chief of Police or designee. A reasonable response time is 30 minutes or less, except during peak hours of 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., (Monday through Friday), when the required response time will be extended to 45 minutes or less. Tow Operator shall respond with a tow truck of the class required to tow the vehicle specified by the Auto Return System.

5. Non-Response

This section is designed to ensure that Tow Operators respond to a tow when requested by the City. A Non Response in violation of this contract occurs when a Tow Operator fails to accept a call in Auto Return, fail/refuse to respond or declines a City requested tow.

The Tow Operator shall update the Auto Return System at the time of dispatch to a tow rotation request. If the Tow Operator is either unable to respond or unable to meet the maximum response

time, the tow operator shall immediately update the Auto Return System accordingly. If, after accepting the call, the Tow Operator is unable to respond or will be delayed in responding, the Tow Operator shall immediately update the Auto Return system accordingly.

Each non-response will be immediately documented in the Auto Return System. Each non-response will be logged by the Auto Return System and reviewed by the City on a case by case basis

Non Responses, determined to be the fault of the Tow Operator, will be handled as outlined in Section 30 Minor Violations.

6.Storage Responsibilities

It shall be the duty of the Tow Operator to provide impound and other storage service for all evidence vehicles as directed by the City. The Tow Operator shall be responsible for all evidence vehicles, accessories and equipment thereon and all personal property therein stored by Tow Operator. It shall be the Tow Operators' duty to protect such stored vehicles, accessories, equipment, and property against all loss or damage by fire, theft or other causes. The Tow Operator will have available for review by City personnel, all permits and proof of compliance to all local zoning, special use, conditional use and special requirements, laws and regulation. It is the responsibility of the Tow Operator to ensure vehicles are stored in a secured facility.

Tow Operator must have security cameras, and a secured locked Bay for the Detectives to conduct their investigation. The locked storage should be able to accommodate three vehicles.

7.Size and Location of Storage Facility

All vehicles towed as a result of action taken by the City will be stored at the Tow Operator's principal place of business unless directed otherwise by the City's Tow Coordinator. Vehicles stored at an unauthorized storage facility will be considered a breach of this Agreement.

The tow yard shall be located within the City of Fresno's "Metropolitan Area." Metropolitan area is defined as within the borders of Copper Avenue to the north, American Avenue to the south, DeWolf Avenue to the east, and Chateau Fresno to the west. If the tow facility is located outside the City of Fresno, the tow operator is required to provide written proof that the yard is in compliance with the authorizing jurisdiction. All current tow yards contracted with the City of Fresno shall be in compliance with the current Development and Resource Management Department's Policy and Procedure C-002. Any new tow yards would follow FMC 15-2765 Land Use Regulations, Towing and Impound, Vehicle Impound Yard, and Transit Storage requirements. The storage facility and business office will be located at the primary storage yard and shall be maintained in a functional shall have a telephone, on-site fax machine and the necessary computer equipment to properly run Auto Return software and to send and receive email., clean and orderly fashion. The facility Tow Operator will be required to ensure: the yard is illuminated during darkness, with security type lighting, to such a degree that visual observation of the entire yard may be accomplished at all times, and must have security cameras.

Tow Operator shall be responsible for the security of vehicles and property at the place of storage. Tow Operator is responsible for the reasonable care, custody, and control of any property contained in towed or stored vehicles. The Tow Operator shall not remove personal property from a stored vehicle. Personal property is considered to be items which are not affixed to vehicle. If the registered owner removes personal property from a stored vehicle, the Tow Operator will maintain documentation of such and will require a signed receipt from the registered owner for property released. The Tow Operator shall immediately notify the City if any contraband, weapons, or hazardous materials are found in the vehicle(s).

Tow Operators will ensure anyone with access to their facility will be authorized under the terms of this agreement as outlined in Section 11. Any independent contractor requiring temporary access to the towing facility, such as utilities workers, landscapers, etc., must be monitored or supervised at all times.

8. Enclosed Facility

The Tow Operator may maintain, without charge to the City, separate, secure, and enclosed garage facilities no less than 1,000 square feet of clean working space. The facility must be constructed to include a roof and at least four walls of substantial design to withstand the elements and protect the vehicles from the weather. The facility should have a concrete floor and sufficient lighting. This inside facility must be located at the Tow Operator's primary storage yard.

9. Auto Return Requirements

Tow Operator shall utilize the most recent, updated, and upgraded Auto Return software program, to dispatch and track, via a web-based Internet connection. Tow Operators will be required to enter the towed vehicle information as instructed by the City. At no time will a vehicle be released, subject to lien, or junked from impound without all required data fields being entered into the Auto Return system by the Tow Operator. The Tow Operator shall clearly identify and enter into Auto Return the name of the person to whom the vehicle was actually released. All City tow requests shall be made utilizing this program. Failure at any time to have the Auto Return program in full operation shall cause the immediate removal of the Tow Operator from the tow rotation and be grounds for immediate termination by City. Tow Operator must enter into a separate agreement, or license for the Auto Return software program with the owner of that proprietary software. The City shall not provide the Auto Return software program, any licensing or sub-licensing thereof or any intermediary services for the procurement by Tow Operator of the Auto Return software program. This Agreement shall not be executed by the City until Tow Operator has demonstrated to the City's satisfaction compliance with the requirements set forth herein. Tow Operator shall be liable for all fees, charges, prices, rates, and service charges required from Auto Return. Auto Return shall be utilized in "real time" and all entries should reflect as such. Invoices shall be used from Auto Return when releasing vehicles and be pursuant to section 22651.07 of the CVC. The only Tow Operator personnel authorized to utilize and access Auto Return are those that have fully complied with the provisions set forth in Section 11, "Tow Operator Personnel" of this Agreement. If the Tow Operator is not in FULL compliance with the above stated requirement, the Tow Operator will be removed from the City towing rotation. In the event that Auto Return fails to provide software services, or the City elects to utilize a new software provider, the Tow Operator will be required to use the replacement towing software system. If that occurs, all references to Auto Return in this Agreement shall instead be interpreted as references to the new software program.

10. Official Notification by City Regarding Tow

Official notification by City regarding tow services is considered any form of written, email, verbal instructions, or notifications received from an authorized City employee or electronic notice from the Auto Return program. If the Tow Operator receives verbal instructions or notifications from a City employee the Tow Operator must respond to City, by 5:00 p.m. (PST) on the next business day.

11. Tow Operator Personnel

A) Professional Conduct

The Tow Operator shall perform the services required of it in an ethical, orderly manner, endeavoring to obtain and keep the confidence of the public. The City reserves the right to cancel any City tow including the right to cancel an individual tow assignment, if in the opinion of the City the Tow Operator is exhibiting unprofessional conduct. At no time will the Tow Operator or its agent or any employee of the Tow Operator exhibit any unprofessional conduct including but not limited to:

- Rude or discourteous behavior to include insults that would aggravate, disturb, or frustrate a person of reasonable sensibilities
- Using profanity, foul, or abusive language

- Manifesting an uncooperative or angry demeanor
- Performing acts of vandalism
- Failing to respond to questions in a courteous and professional manner
- Acting in a disrespectful manner with any City employee, or with any member of the public
- Intentionally misrepresenting rates or tow procedures
- Any Tow Operator appearing at a scene with the odor of an alcoholic beverage on their breath and may be required to submit to a breath test upon request
- Disconnecting phone calls for public inquiries regarding a tow
- Failure to provide timely information or documents in response to a public or City inquiry
- Tow Operator is likely to damage the vehicle for which the tow service was called
- Destruction or damaging of evidence
- Failure to comply with the reasonable request of a member of the public
- Failure to release vehicle in a timely manner
- Failure to make appointment for release of vehicle during evening or weekend hours
- Failure to promptly be on site at time of appointment for release of vehicle during evening or weekend hours
- Impeding an investigation
- Wording, designs, photos, gestures, or anything that could be considered offensive or obscene to the general public shall be displayed or published by the Tow Operators on social media.
- Any other conduct which the City deems unprofessional

If the Tow Operator is found to be in violation of the professional conduct clause, the City may cancel the Tow Operator and request the next Tow Operator in rotation. Any such behavior as set forth above may be considered a major violation and result in immediate suspension or termination by the City.

B) Personnel Appearance

Tow Operators shall be required to furnish their employees with a distinctive company uniform. Each uniform shall have the firm's name, as well as the employee's name, in a conspicuous place. The tow company's name and driver's first name shall be clearly visible at all times; meaning that protective or inclement weather outer garments must meet this standard. Each employee shall have sufficient uniforms so as to maintain a neat, clean appearance at all times. Minimum requirements for uniforms include a shirt, long pants, and appropriate safety shoes. All drivers shall be in uniform before any towing or service operation begins. Dress standards are required in order to project a professional and positive image to the public.

Drivers shall wear safety vests or reflectorized clothing that conforms to Occupational Safety and Health Administration (OSHA) requirements. Alternatively, the OSHA safety requirements may be incorporated into the uniform, jacket, or rain gear, as long as these items are worn as the outermost garment.

All employees must be neat, clean, and well-groomed in appearance. In order to ensure a professional appearance, all tattoos must be concealed by operators while working. Personnel will be required to conceal any tattoos with gloves, collars, long sleeves, or by

other means acceptable to the City. Facial tattoos of any variety are not permitted. No facial piercings, ear gauges, or visible ear holes in the lobes of the ear caused by the use of gauges shall be worn while on duty.

C) Unlawful Activity

The Tow Operator or its employees shall not be involved, nor shall the Tow Operator or its employees become involved in any agreement or activity whether verbal, written or conveyed in any other manner, any activity or business venture which may be construed as unlawful. If the City deems the involvement to be unlawful, the City may immediately terminate this Agreement.

The Tow Operator shall not provide any direct or indirect commission, gift or any compensation to any person or public or private entity, in consideration of arranging or requesting the services of a tow truck as provided in section 12110 of the CVC.

No Tow Operator will be involved or solicit any compensation of any kind including but not limited to involvement with any other company or business that might result in income or consideration as a result of any activity initiated by the City.

An example of such a prohibited involvement could include but is not limited to: financial reimbursement by auto-body repair business for referrals, or towing directly from the scene of a collision to the auto-body shop without prior unsolicited approval or request by the registered owner, driver or insurance company representative of the damaged vehicle; kickback to or from a security company or homeowner's association for "finding" or towing a vehicle from a location, whether private property, public, off street parking facility or a public roadway. Violation of this provision shall be grounds for immediate termination by City, without penalty.

D) Personnel Licenses

Tow Operators providing services under this Agreement, including tow truck drivers, dispatchers and other office personnel, will have sufficient knowledge, experience and capability to ensure safe and proper discharge of their service responsibilities. It will be the responsibility of the Tow Operator to ensure that all of its personnel will be properly licensed in accordance with sections 12500, 12520, and 12804.9 of the CVC. All tow truck drivers and tow truck operators shall be enrolled in the "Pull Notice" program as defined in CVC section 1808.1 et seq.. Drivers must complete a CHP approved Tow Operator Course every five (5) years and copies of completion of the course shall be sent to the City. All Tow Operators and personnel shall have no criminal record which would preclude them from being placed in a position of trust while in the service of a law enforcement agency or any crime listed below under the heading of "Criminal Record."

E) Fingerprints

All owners and employees who have not previously submitted their "LiveScan" fingerprint samples shall submit their "LiveScan" fingerprint samples, at their own expense, through the City prior to being awarded this Agreement, for the purposes of verifying their criminal history with the Department of Justice.

Failure to provide information regarding the identity of the owner, employee, or anyone else with a financial interest in the Tow Operator will result in termination of this Agreement. The Tow Operator will provide the City with information regarding any change in employee status immediately and update Auto Return to reflect such changes. Failure to comply may result in further disciplinary action, and will be considered a breach of this Agreement.

After execution of this Agreement, no person shall be employed by the Tow Operator or perform any service under this Agreement until the background record check and "LiveScan" is completed and approved by the City and said employee has received their identification badge from the City.

Any employee of the Tow Operator that has left employment with said Tow Operator and returned and been rehired must complete an additional background check before performing services pursuant to this Agreement.

F) Criminal Record

A conviction of anyone with a financial interest in the Tow Operator, or any employee of the Tow Operator, including but not limited to any of the following offenses, may be cause for denial of application or termination of this Agreement:

- Any crimes listed in California Penal Code section 290
- DUI-Within 5 years of the Date of Fingerprinting
- Vehicle theft
- Fraud
- Stolen Property
- Crimes of Violence
- Any crime relating to narcotics or any controlled substance
- Any other crimes enumerated in CVC section 2432.3
- Actively on parole or on any form of probation
- Crime of moral turpitude
- Sex, Arson, Narcotics Registrant
- Other felony conviction

The City is not required to provide any reason, rationale or factual information in the event it elects to deny application or remove any of Tow Operator's personnel from providing services for the City under this Agreement. Tow driver or employee applicants denied under this section may appeal to the Chief of Police or designee. All decisions by the Chief of Police, or designee, are final.

In the event the Tow Operator or employee is convicted or is under investigation, the Tow Operator may be given the opportunity to replace that employee without prejudice to the Agreement. Nothing shall prohibit the City from removing, suspending or terminating the Agreement. It will be the responsibility of the Tow Operator to provide the City with updated information regarding any illegal activity, arrest(s) or conviction of any Tow Operator and/or employee. For the purpose of this section, any conviction or plea of guilty or no contest, even to any lesser-included offense, are considered convictions. Failure to provide information regarding the identity of the employee, or anyone else with a financial interest in the Tow Operator will result in termination of the Agreement. Failure to provide information to the City of any information regarding the conviction of any of the above crimes may also result in termination of the Agreement.

G) Identification Badges

Each tow truck driver or employee of the Tow Operator shall wear, in plain view an identification badge, authorized and issued by the City to that employee, while on any call for service where the City is involved. If a tow truck driver responds to a scene without an authorized name badge, the tow truck driver will be dismissed from the scene and the next Tow Operator in rotation will be called. Failure to carry an identification badge will be considered a violation as stated in Section 27, "Disciplinary Action," of this

Agreement. The purpose of these badges will be to identify those employees of the Tow Operator who have been fingerprinted by the City and have passed the record check by the Department of Justice.

All identification badges are the property of the City and will be returned by the Tow Operator to the City within forty-eight (48) hours of an employee's separation. Tow Operator will provide a current list of all employees whether full-time, part-time, or volunteer to the Fresno Police Department Tow Unit. Anytime there are any changes to this employee list, the City is to be notified by the next business day and provided with an updated and current list.

12. Tow Operator Licensing and Certification

All licensing and certifications required by Federal, State and local authorities shall be maintained current and valid at all times as required in CVC sections: 34507.5, 34600 et seq., 34620, and 12111, and sections 7231 et seq., of the California Revenue and Taxation Code. Failure to have any required license or certification, including any driver who fails to have an appropriate class of license, may be grounds for immediate termination by the City without penalty.

13. Inspection

All real property and improvements thereon, and all vehicle facilities, equipment and materials used by the Tow Operator in the performance of the services required herein shall be open to inspection by the City or its authorized representative, and will be subject to no less than one annual inspection. Additional inspections may be conducted without notice during normal business hours. Inspections may include, but are not limited to, all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, tax records and other papers or property of Tow Operator for the purpose of auditing or inspecting any aspect of performance directly related to this Agreement. In the event that the City determines that the real property and improvements thereon are insufficient, derelict or fail to meet the requirements as called out in this Agreement, this Agreement may be terminated by City immediately, without penalty.

14. Vehicle and Equipment Inspections

Tow vehicles will be maintained in compliance with sections 24605, 25253, 25300, 27700 and 27907 of the CVC.

Effective January 1, 2016 all tow companies are required to be in compliance with the CHP Basic Inspection of Terminals (BIT) Program

All tow trucks used in City tows will be subject to a yearly inspection. This does not preclude the City from conducting random inspections throughout the year.

15. Vehicle Identification

Tow vehicles shall display identification signs in compliance with section 27907 of the CVC. The Tow Operator shall not display any sign or advertising material that indicates that his tow vehicles are an official police service of the City.

16. Charges and Fees to be collected from Registered Owners

All rates and charges shall be conspicuously posted in the office and in all tow vehicles. These rates shall quote complete charges and fees with no additional fees to be added at a later date. These rates will be available for review by City personnel and/or the person for who tow service is provided. All fees collected shall be itemized and invoiced in Auto Return in accordance to section 22651.07 of the CVC. It will be the Tow Operator's responsibility to collect his bill for service, and the City will not be responsible in any way for these charges.

Storage fees will be calculated on the calendar day except the first 24-hours which is counted as a single day in accordance with California Civil Code (CCC) 3068.1. All fees listed on the Auto Return invoice will be received in the form of major credit card, debit card, or cash. All fees collected, both City and Tow Operator fees, must be invoiced through the Auto Return system prior to release and at the time of payment. No credit card fees will be charged pursuant to CVC section 22651.1 and CCC section 1748.1 for any portion of the fees. The City reserves the right to change all payment methods during the term of this agreement.

17. Lien Fees

At no time shall the City be charged a lien fee on a towed or impounded vehicle. No lien shall be attached to any vehicle that has been impounded by the City until after seventy-two (72) hours from the time of storage as listed in the Auto Return system have passed pursuant to section 22851.12 of the CVC. All lien transactions to include proceeds from all sales, scrapped/salvaged vehicles, etc., must be entered into the Auto Return system by Tow Operator as outlined in Section 9 of Attachment A. Vehicles sold at lien sale shall abide by all laws relating to lien sales. A vehicle held in impound by the City for thirty days, shall not be sold at lien until such time as is considered reasonable to allow the registered owner time to pay for and pick up the vehicle before it is sold at lien, but under no circumstances before the thirty-fifth (35th) day after storage.

The Tow Operator shall abide by all applicable statutes and ordinances concerning disposal of unclaimed vehicles, including but not necessarily limited to CVC sections 22670; 22851; 22851.1; 22851.2; 22851.3; 22851.4; 22851.6; 22851.8; 22851.10, 22851.12 and 22852.5.

As described in CVC section 22856, liability for despoliation of evidence shall not arise against the Tow Operator that sells any vehicle at, or disposes of any vehicle after, a lien sale, as long as the Tow Operator can show written proof that he was notified in writing by the City that the vehicle would not be needed as evidence in a legal action. This proof may exist in the form of an official release in the Auto Return System or any other written conveyance signed by a member of the City prior to the official, written release of the vehicle.

18. Reasonableness and Validity of Towing and Storage Fees

Towing and storage fees charged to the registered owner or any other person for response to calls originating from the City shall be reasonable and not in excess of those rates charged for similar services provided in response to requests initiated by any other public agency or private person. During the term of this agreement, the City shall utilize the California Highway Patrol published towing and storage fees and shall adjust rates within thirty days of CHP publication of new rates.

19. Towing Charges

All tows performed under this Agreement will be included in the flat rate charge. No additional charges shall be charged without prior approval from the City and written notice is provided in the Auto Return System. Any unapproved charges received outside the Auto Return System will result in immediate termination of this Agreement and removal from the rotation list.

The Tow Operator shall base towing charges upon the class of vehicle being towed regardless of the class of the truck used, except when vehicle recovery operations require a larger class truck. The Tow Operator may refer to the tow truck classes and weight ratings as defined in Section 20.

20. Tow Truck Requirements and Classifications

A) Tow Truck Requirements

To participate on the City's tow rotation, a Tow Operator must have a minimum of one (1) flatbed or rollback carrier of at least 26,000 lbs. GVWR, with dual rear wheels and the ability to tow two (2) vehicles, or a vehicle and/or a trailer. The flatbed or rollback carrier shall carry a minimum of fifty (50) feet of cable and all required safety equipment. All tow vehicles must have two-way communication capabilities and the ability to communicate and connect with the Auto Return System at all times. The Tow Operator shall have equipment capable of towing from off-road areas, towing from underground facilities, and recovery services. Unless otherwise specified by the City, all Tow Operators shall respond to a tow service request with a flatbed or rollback truck as specified above. At the discretion of the tow operator, a wrecker may be used to respond to a tow service request. The wrecker must meet the Class A- Light Duty classification as outlined in Tow Truck Classifications. The wrecker must have an adjustable boom with at least five tons of lifting capacity. If for any reason the Tow Operator is unable to complete the tow service request with the wrecker, the Tow Operator will not be placed back on the top of the rotation list and a new Tow Operator will receive the tow service request.

A 3-axle or 25-ton truck is not required equipment. However, Tow Operators that possess this equipment will be placed on a heavy-duty tow rotation list.

All trucks must have the required emergency lighting, portable stop and tail lamps, a broom, shovel, fire extinguisher (rating 4-B, C), a utility light, reflective triangles, a large pry-bar, covered trash cans with approved absorbent, rags, unlocking equipment, dollies (boom trucks), chains, and/or tie downs.

Wheel lift trucks will maintain at least 100 feet of cable and all safety equipment as required by the manufacturer.

Tow vehicles must have a cable winch of sufficient size and capacity to retrieve vehicles that have gone off traveled portions of roadways into inundated areas or other inaccessible locations. Winches must have visible ID tags designating the model, make, serial number, and rated capacity. All vehicles will be secured with a four point harness.

B) Tow Truck Classifications

The City of Fresno recognizes the four (4) classes of tow trucks defined by the California Highway Patrol. Below listed are the specifications for each class.

- 1) Class A – Light Duty
 - a. An operator should maintain a minimum of one tow truck which has a manufacturer's GVWR of at least 14,100 pounds.
- 2) Class B – Medium Duty
 - a. An operator should maintain a minimum of one tow truck with a GVWR of at least 33,000 pounds. The tow truck shall be equipped with air brakes and a tractor protection valve or device, and be capable of providing and maintaining continuous air to the towed vehicle.
- 3) Class C- Heavy Duty
 - a. An operator should maintain at least one three axle tow truck with a GVWR of at least 52,000 pounds. The truck shall be equipped with air brakes and must be capable of providing and maintaining continuous air to the towed vehicle.

- 4) Class D- Super Heavy Duty
 - a. An operator should maintain at least one three-axle tow truck with a GVWR of at least 54,000 pounds. The truck shall be equipped with air brakes and must be capable of providing and maintaining continuous air to the towed vehicle.

21. Service Call Rotation and Fees

The City shall establish a separate rotation list for Tow Operators willing to respond to service requests (out of gas, lockouts, tire changes, etc.) This contract only pertains to towing and storage services of evidence vehicles.

22. Gate Fees:

No gate fees may be charged to the City. City employees shall be granted access to an evidence impound vehicle for the purpose of their investigation. Access shall be given within a one hour time period.

23. Administrative/Franchise Fees

California law authorizes the recovery of funds required to enforce certain provisions of the CVC and promote traffic safety on public roadways. This authorization falls under CVC section 22850.5 and further authorized by City resolutions. These resolutions are open to public view at the City and/or City offices and are on file with the City's Traffic Bureau. The Tow Operator will collect fees on the behalf of the City from the registered owner, legal owner, or agent of an impounded car.

A City administrative / franchise fee will be charged for the release of a vehicle that has been impounded by the City. Fees will be established by an independent consulting firm to determine the City's costs associated with impounding vehicles in accordance with CVC sections 22850.5 and 12110(b). All vehicles impounded will be charged an administrative / franchise fee for the release of the vehicle. This fee will be established and attached to each vehicle in the Auto Return System. The City's administrative fees will be collected at the time of the release by the Tow Operator. The Tow Operator will pay the City's franchise fees equivalent to the City's administrative fees for every vehicle that is not picked up by the owner or agent. The Tow Operator will pay the City's administrative / franchise fees for every City vehicle that was towed during the preceding month and will pay the City no later than 12:00 p.m. on the 15th of the following month, regardless of the disposition of the vehicle. In the event that the 15th of the month falls on one of the State recognized holidays listed in Section 22 above, or a weekend, the City's administrative/franchise fee must be paid by 12:00 p.m. on the following business day. Tow Operators who fail to submit the City's administrative / franchise fees to the City by the 15th day of each month will be immediately removed from the rotation until all fees are received, and will be subject to appropriate disciplinary action and civil recourse. The City will keep a strict accounting of these fees through the Auto Return System and frequent audits will take place to ensure accurate and timely payment of collected City administrative/franchise fees. The fee will be listed as an item on the owner's/agent's Auto Return contractor invoice.

24. Unauthorized Release

Unauthorized release of an impounded vehicle, not officially released by the City, and determined to be the fault of the Tow Operator, will result in the issuance of a major violation as set forth in this Agreement. The determination of such fault will be the responsibility of the City.

25. Release of Multi-Day Impounds

A vehicle impounded with a multiple day hold may only be released prior to the impound period with written authorization by the City in the Auto Return System. The Auto Return System will automatically schedule the release of an impounded vehicle.

26. Release of Vehicles

Vehicles may only be released through the Auto Return System. Once the Auto Return System authorizes the release of a stored or impounded vehicle, it is the Tow Operator's responsibility for the vehicle's release. The Tow Operator is hereby granted authority to release to the registered owner, legal owner, or authorized representative, pursuant to section 22850.3 of the CVC. At the time of release, the Tow Operator shall have the registered owner, legal owner, or authorized representative taking possession of the vehicle sign a release indicating that they are properly licensed and insured to drive a motor vehicle.

27. Disciplinary Action

The Chief of Police, or designee, shall take disciplinary action against Tow Operators for violations investigated and sustained. Unless otherwise noted, the Chief of Police, or designee, will determine the period of suspension, and shall retain discretion regarding the length of any suspension imposed pursuant to the terms and conditions of this Agreement. The City shall retain record of violations for at least the term of this Agreement.

In the case of suspension or termination, all vehicles then in storage at the time of the suspension or termination remain protected under this Agreement as City's impounds and the Tow Operator is so bound. The City will have the option to remove and/or transfer stored vehicles.

28. Major violations

Major violations include any chargeable offense under Federal, State, Local Law, and significant violations of this Agreement. Such violations shall result in suspension or immediate termination of this Agreement. The Chief of Police, or designee, reserves the right to impose longer periods of suspensions or immediate termination, if deemed appropriate in its sole discretion. The Chief of Police, or designee, reserves the right to remove a Tow Operator from the tow rotation during the investigation of a major violation. A reinstatement from suspension for a major violation will result in a five hundred dollar (\$500.00) fee. Suspension will not be lifted until the reinstatement fee is received by the Chief of Police or designee. In addition, a major violation may also result in the Tow Operator's employee being removed from participation in this Agreement. Examples of major violations include, but are not limited to:

- Physical assault, against public and/or law enforcement
- Verbal abuse against public and/or law enforcement
- Resisting arrest
- Tow Truck Driver under the influence of alcohol or drugs
- Charging rates that exceed the contracted rate
- Vehicle released without authorization
- Unauthorized access to storage yard
- Theft
- Mishandling of vehicles stored as evidence
- Unauthorized driver responding to call
- Failure to provide information or change of status on any Tow Operator employee or volunteer
- Substantiated private party impound complaints
- Any Felony/Misdemeanor arrest

- Refusal to take a rotational tow
- Failure to utilize the Auto Return System for all City towing related matters
- Repeated late or nonpayment of City administrative/franchise fees
- Failure to properly secure storage yard
- Failure to obey a lawful order by law enforcement
- Failure to pay fines

29. Termination and Suspension

If terminated or suspended, Tow Operator and/or owner at the time of the suspension or termination, shall not be eligible for a rotation listing for the duration of the suspension or termination. This provision applies to the Tow Operator working in any capacity within any tow business or operating any tow business and to the tow business even if operated under new ownership.

30. Minor violations

Minor violations will be given to the Tow Operator in the form of a documented reprimand for the first violation. The second violation will be in the form of a documented reprimand and a three hundred dollar (\$300.00) fine payable no later than five business days from receipt of documented reprimand. The third minor violation in a one year period will be treated as a major violation, and the Tow Operator may be suspended or terminated from this Agreement. A reinstatement from suspension will result in a five hundred dollar (\$500.00) fine. Suspension will not be lifted until the reinstatement fine is received by the Chief of Police or designee. Examples of minor violations include, but are not limited to:

- Late payment of City administrative/franchise fees
- Tow truck drivers not wearing City issued I.D. cards/ proper uniform
- Unauthorized arrival time in excess of thirty (30) minutes, or forty-five (45) minutes during peak hours
- Non Response
- Unauthorized ride-a-long
- Failure to respond to customers' needs
- Failure to maintain proper equipment
- Failure to clean up at a collision scene
- Vehicle code infractions
- Other violations of this Agreement not considered a major violation by the Chief of Police or designee.
- Inaccurate billing of evidentiary vehicles (i.e. double billing, billing after released, etc.), fined per vehicle/ inaccuracy.

31. Hearing/Appeal

Tow Operator must have a legal existing interest in the tow operation or entitlement subject to the City order, citation, decision or determination to have standing to appeal a decision by the Chief of Police or designee. An appeal that fails to identify the appellant's standing may be rejected as defective.

In the event FPD serves Tow Operator with disciplinary action amounting to anything less than a suspension resulting from a minor violation, the Tow Operator may request a hearing within fifteen calendar days by submitting an appeal in writing to the Chief of Police, or designee, through the Tow Unit.

In the event FPD serves Tow Operator with disciplinary action amounting to a suspension or termination for a major violation, the Tow Operator may request a hearing within fifteen calendar days by submitting an appeal in writing to the Chief of Police, or designee, through the Tow Unit. Upon receipt of a written request for an appeal, and at the discretion of the

Chief of Police, or designee, the Tow Operator may be allowed to continue evidentiary tows until the final disposition of the appellate hearing.

In the event FPD serves Tow Operator with disciplinary action amounting to a termination of this contract, the Tow Operator may request a hearing within fifteen calendar days by submitting an appeal in writing to the Administrative Hearing Officer by way of the City Manager's Office. The written appeal shall be in compliance with FMC sections 1-407 and 9-1712. Notwithstanding any provision within Chapter 1, Article 4 of the FMC, any person who appeals a suspension in excess of thirty days, or a termination of this contract shall not be entitled to placement on the Tow Rotation List or to participate in tows until such time as any appeal hearing has been concluded and the Administrative Hearing Officer finds that no grounds for a suspension in excess of thirty days, or a termination of this contract has been established. Tow Operator's remedy shall be limited to reinstatement and no other compensation or consideration will be allowed.

TECHNICAL CONDITIONS
GENERAL

It is the purpose and intent of these Specifications to describe the minimum requirements for the above project. All items not specifically mentioned which are required to complete the service shall be included in the unit proposal price. Services performed, and materials used, shall conform in quality of material and workmanship to current industry standards.

The unit price(s) proposal shall include all costs of labor, equipment, and materials necessary for the furnishing of the complete service in accordance with the specifications for the City of Fresno for all work listed in the proposal items.

Tow Operator shall respond to calls 24 hours a day, seven days a week, within the maximum response time limits as established by the Chief of Police or designee. A reasonable response time is 30 minutes or less, except during peak hours of 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., (Monday through Friday), when the required response time will be extended to 45 minutes or less. Tow Operator shall respond with a tow truck of the class required to tow the vehicle specified by the Auto Return System.

It shall be the duty of the Tow Operator to provide impound and other storage service for all vehicles as directed by the City. The Tow Operator shall be responsible for all vehicles, accessories and equipment thereon and all personal property therein stored by Tow Operator. It shall be the Tow Operators' duty to protect such stored vehicles, accessories, equipment, and property/evidence against all loss or damage by fire, theft or other causes, have security cameras installed, and a separate secured Bay for the Detectives to conduct their investigations.

Tow Operator shall be responsible for the security of vehicles and property at the place of storage. At a minimum, a 6 foot fence or enclosed secured area for outside storage. An inside storage facility, minimum room for 125 vehicles, shall be provided. All tow yards located with the City of Fresno shall be in compliance with the FMC, current Directors Class #208 and shall follow the current Development and Resource Management Department's Policy and Procedure C-002. If the tow facility is located outside the City of Fresno, the tow operator is required to provide written proof that the yard is in compliance with the authorizing jurisdiction. Tow Operator is responsible for the reasonable care, custody, and control of any property contained in towed or stored vehicles. The storage facility and business office shall be maintained in a functional, clean, and orderly fashion. The facility shall have a telephone, on-site fax machine and the necessary computer equipment to properly run DTS software and to send and receive email.

All vehicles towed as a result of action taken by the City will be stored at the Tow Operator's principal place of business unless directed otherwise by the City. Vehicles stored at an auxiliary storage facility, will be considered a breach of Agreement. The Tow Operator shall not remove personal property from a stored vehicle.

Tow Operator shall utilize the most recent, updated, and upgraded Auto Return software program, to dispatch and track, via a web-based Internet connection. Tow Operators will be required to enter the towed vehicle information as instructed by the City. This information must be entered into the Auto Return System by the Tow Operator before the 24 hour storage clock will start. Once the required information is entered into Auto Return, the Auto Return system will then automatically start the 24 hour storage timer. At no time will a vehicle be released, leaned or junked from impound without all required data fields being entered into the Auto Return system by the Tow Operator. All City tow requests shall be made utilizing this program. Failure at any time to have the Auto Return program in full operation shall cause for immediate termination by City.

Vehicles may only be released through the Auto Return System. Once the Auto Return System authorizes the release of an evidence vehicle, it is the Tow Operators responsibility for the vehicle's release. The Tow Operator is hereby granted authority to release to the registered owner, legal owner, or authorized representative, pursuant to section 22850.3 of the California Vehicle Code

The Fresno City Police Department is financially responsible for towing, recovery, and storage charges incurred when vehicles and property are impounded as evidence for a victim of a crime.

The registered owner is financially responsible for all storage charges incurred from the time of vehicle release by Fresno Police Department when it is impounded for evidence against an accused. In this instance, contract rates do not apply.

Tow truck drivers shall be properly licensed in accordance with Section 12804.9 of the California Vehicle Code. Tow vehicles shall be manufacturer-rated at a minimum of 14,000 GVWR. Each vehicle shall be maintained in compliance with the provisions of Sections 24605, 25253, 25300, 27700, and 27907 of the California Vehicle Code.

The Contractor shall not hook up or remove any vehicle prior to instructions from The Fresno Police Department or its designated representative.

In the event the Contractor(s) cannot respond promptly to a call for services, and are temporarily unable to perform as required by the contract, the City of Fresno reserves the right to procure services from other sources.

The Contractor shall bear total responsibility for all vehicles placed in his care, custody, and control from the moment of contact with said vehicles.

If the Contractor does not have Heavy Duty equipment, they may sub-contract the job at their expense. The Contractor is still required to bid on the Heavy Duty rate whether or not they possess this equipment.

Quantities are estimated for bid purposes only. The City may require more or less than quantities listed.

Explanations of Bid Items

Items 1- 4:

Contractor must respond to within one (1) hour of call from the Fresno Police dispatcher.

Quantities are estimated for bid purposes only. The City may require more or less than quantities listed.

Items 5 and 6

Inside secure storage is defined as a building with four solid walls and solid roof. Secure area will have lockable entry and exit doors.

If Contractor shares storage area (property) with other business(s), the Fresno Police Department storage will be secured and separate from said business(s).

Access to vehicles will be limited to authorize personnel only.

Items 7, 8, 10, and 11

Outside secure storage is defined as an entire circumference of area fenced. Secure area will have a lockable entry and exit gate.

If Contractor shares storage area (property) with other business(s), the Fresno Police Department storage will be secured and separate from said business(s).

Access to vehicles will be limited to authorize personnel only.

Contractor will ensure that stored vehicles will be protected from long term effects of weather.

Item 9

To preserve the evidence and chain of custody this storage area is to be under the sole control of Fresno Police Department Members when in use by the Department. Area shall be secured by a Fresno Police Department lock. Area may be used for other purposes when not required by the Department but must be made available to the Department within one hour of when requested. This area should be large enough to store two regular size vehicles while allowing enough room for police personnel to process the vehicle. Once processed, the vehicle will be moved to the appropriate designated storage.

Item 12

The Fresno City Police Department reserves the right to inspect vehicles upon request to Contractor's representative. Facility must be available to the Fresno City Police Department on a 24 hour, 7 days per week basis. Contractor's representative must respond to facility with-in two (2) Hours of the Police Departments call.

Item 13

To provide "unskilled labor" if the Fresno Police Department needs the Tow Yard to remove an engine, transmission, or other components. This service would be during normal business hours.

Item 14

Out of Town (Long Haul Tow) is defined as any vehicle towed outside the County of Fresno boundaries.