

**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave. 7<sup>th</sup> floor  
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and**

**San Francisco AutoReturn  
for**

**Towing and Storage of Abandoned and Illegally Parked Vehicles**

**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave. 7<sup>th</sup> floor  
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and  
TEGSCO, LLC. dba San Francisco AutoReturn  
Contract No. SFMTA-CCO No. 15-1349**

This Agreement is made this first day of April, 2016, in the City and County of San Francisco, State of California, by and between TEGSCO, LLC, dba San Francisco AutoReturn, 2650 Bayshore Blvd, Daly City, CA, 94015, (“Contractor”) and City.

**Recitals**

- A.** WHEREAS, The City, through the San Francisco Municipal Transportation Agency (“SFMTA”), is responsible for maintaining clean, safe and functional streets for the public’s use, for maximizing the amount of on-street parking in the City and for managing traffic congestion.
- B.** WHEREAS, Efficiently controlling and removing illegally-parked and abandoned vehicles is critical to these three mandates.
- C.** WHEREAS, Contractor support is needed to perform these functions, and to conduct lien sale auctions for towed vehicles that have not been claimed by their owners; and
- D.** WHEREAS, The SFMTA issued a Request for Proposals (RFP) on June 26, 2015, and selected Contractor as the highest qualified proposer pursuant to the RFP; and
- E.** WHEREAS, The Local Business Entity (LBE) subcontracting participation requirement for this Agreement is 20%; and
- F.** WHEREAS, Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.

Now, THEREFORE, the parties agree as follows:

**1. Definitions**

The following definitions apply to this Agreement, including **Appendix A, “Statement of Services”**:

**1.1** “**Agreement**” or “**Contract**” means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements that are specifically incorporated into this Agreement by reference as provided herein.

- 1.2** “**CCO**” means SFMTA Contract Compliance Office.
- 1.3** “**City**” or “the City” means the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).
- 1.4** “**CMD**” means the Contract Monitoring Division of the City.
- 1.5** “**Contractor**” means TEGSCO, LLC., dba San Francisco AutoReturn, 2650 Bayshore Blvd, Daly City, CA, 94015.
- 1.6** “**C&P**” means SFMTA Contracts and Procurement.
- 1.7** “**Effective Date**” means the date upon which the City’s Controller certifies the availability of funds for this Agreement as provided in Section 3.1.
- 1.8** “**Long-term Storage Facility**” means the facility used by Contractor to store vehicles that were not claimed while stored at the Primary Storage Facility, and to conduct Lien Sales.
- 1.9** “**Mandatory City Requirements**” means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.
- 1.10** “**Party**” and “**Parties**” mean the City and Contractor either collectively or individually.
- 1.11** “**Primary Storage Facility**” means the facility where towed vehicles are deposited immediately after tow and stored until they are either claimed by the Customer or transferred to the Long-Term Storage Facility
- 1.12** “**Records**” mean the documents Contractor is required to create and maintain under this Agreement, including but not limited to: (1) complete and accurate books, accounts and documentation of financial transactions relating to all items of income received and expenses incurred in the performance of this Agreement; (2) documentation of all vehicles towed; (3) documentation of all vehicles stored; (4) documentation of all Claims; (5) all Monthly Management Reports and other reports Contractor is required to submit to City; (6) charts and diagrams of any property licensed to Contractor by City to fulfill the obligations of this Agreement; (7) other documents or reports as City may require Contractor to produce in the course of performing work under the Agreement and (8) the Records described in Section 13 of Appendix A.
- 1.13** “**Services**” means the work performed by Contractor under this Agreement as specifically described in the “Statement of Services” attached as

Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

**1.14** “San Francisco Municipal Transportation Agency” or “SFMTA” means the agency of the City with jurisdiction over all surface transportation in San Francisco.

## **2. Term of the Agreement**

**2.1** The term of this Agreement shall commence on the latter of: (i) April 1, 2016; or (ii) the Effective Date, and expire March 31, 2021, unless earlier terminated as otherwise provided herein.

**2.2** The City has the option to renew the Agreement for a period of up to five years. The City may extend this Agreement beyond the expiration date by exercising an option at the City’s sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.”

## **3. Financial Matters**

**3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City’s Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

*THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.*

**3.2 Guaranteed Maximum Costs.** The City’s payment obligation to Contractor cannot at any time exceed the amount certified by City’s Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the

Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

### **3.3 Compensation.**

**3.3.1 Payment.** Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in **Appendix B, "Calculation of Charges."** Compensation shall be made for Services identified in the invoice that the SFMTA's designee, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed \$65,400,000 (sixty five million, four hundred thousand dollars). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. In no event shall City be liable for interest or late charges for any late payments.

**3.3.2 Withhold Payments.** If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, other than those described in **Appendix C: "Schedule of Liquidated Damages,"** the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

**3.3.3 Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City to Contractor at the address specified in Section 11.1, "Notices to the Parties," or in such alternate manner as the Parties have mutually agreed upon in writing.

**3.3.4 LBE Payment.** Contractor must submit all required CMD payment forms to enable CCO to monitor Contractor's compliance with the LBE subcontracting commitments in this Agreement. Contractor shall pay its LBE subcontractors before three working days after receiving payment from SFMTA, except as otherwise authorized by the LBE Ordinance. The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required CMD payment forms. Failure to submit all required CMD payment forms with each payment request may result in the Controller withholding 20% of the payment due pursuant to that invoice until the required CMD payment forms are provided. Following SFMTA's payment of an invoice, Contractor has 10 calendar days to submit a CMD Form 9 Payment Affidavit verifying its payments to LBE subcontractors.

### **3.3.5 Getting Paid for Goods and/or Services from the City.**

**(a)** All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through Paymode-X, the City's third party service that provides Automated Clearing House (ACH) payments. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit [www.sfgov.org/ach](http://www.sfgov.org/ach).

**(b)** The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

**3.4 Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

**3.5 Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of

the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

#### **4. Services and Resources**

**4.1 Services Contractor Agrees to Perform.** Contractor agrees to perform the Services provided for in Appendix A.” Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Statement of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, “Modification of this Agreement.”

**4.2 Qualified Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor’s authorized subcontractors) to perform the Services. Contractor will comply with City’s reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City’s request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

**4.3 Designated Facilities.** Contractor shall perform the Services required under this Agreement at the Primary and Long-term Storage Facilities, which shall be located on premises designated by City

**4.3.1 Long-term Storage Facility.** As of the Effective Date of this Agreement, the City designates 2650 Bayshore Boulevard, Daly City, California as the site of the Long-term Storage Facility. Contractor shall operate the Long-term Storage Facility from 2560 Bayshore Boulevard in accordance with the terms and conditions of the Revocable License to Enter and Use Property at 2650 Bayshore Boulevard (“the 2650 Bayshore License”), which is attached hereto as Appendix D, and is incorporated by reference as though fully set forth herein. At any time during the Term of this Agreement, City may, at its sole and absolute discretion, designate a new facility to serve as the Long-term Storage Facility, and may require Contractor to relocate to that facility in accordance with the terms and conditions of the 2650 Bayshore License.

**4.3.2 Primary Storage Facility.** As of the Effective Date of this Agreement, the City designates 450 7th Street, San Francisco, California (the “7th St. Site”) as the site of the Primary Storage Facility. The parties acknowledge that Contractor currently occupies 450 7th Street on a month-to month basis under an SF Parking Airspace Lease with the State of California, acting by and through its Department of Transportation (“Caltrans”) dated January 6, 2015 (the “Contractor-Caltrans Lease”), for \$ 90,000 per month. The City agrees to reimburse Contractor on a monthly basis for the rent paid by Contractor to Caltrans under the Contractor-Caltrans Lease as long as the 7th St. Site is the designated site of the Primary Storage Facility. Contractor agrees it will not voluntarily terminate the Contractor-Caltrans

Lease, nor modify the rent payable under the Contractor-Caltrans Lease, without City's prior written consent as long as the 7th St. Site is the designated site of the Primary Storage Facility.

The parties acknowledge that if the Contractor-Caltrans Lease terminates, City may, in its sole discretion, enter into a lease with Caltrans for the 7th St. Site. Contractor agrees that upon execution of such a lease, Contractor shall execute a license agreement with City for the 7th St. Site that will be substantially similar to Appendix D, as modified to reflect the 7th St. Site, the requirements of any City lease with Caltrans, and any new license terms required under applicable laws, and Contractor will continue to operate the Primary Storage Facility from the 7th St. Site in accordance with the terms and conditions of such license.

**4.3.1** At any time during the Term of this Agreement, City may, at its sole and absolute discretion, designate a new facility that City in its sole and absolute discretion deems suitable to serve as the Primary Storage Facility, and City may require Contractor to relocate to that facility; provided that such relocation shall not materially interfere with Contractor's ability to meet its obligations under this Agreement. City shall pay for moving Contractor's equipment and personal property from the then-existing Primary Storage Facility to such new facility. Contractor shall execute a license agreement with City for the new facility that will be substantially similar to Appendix D, as modified to reflect the new facility, the requirements of any City lease for the new facility, and any new license terms required under applicable laws, and Contractor will operate the Primary Storage Facility from the new facility in accordance with the terms and conditions of such license.

**4.4 Subcontracting.** Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void. City's execution of this Agreement constitutes its approval of the subcontractors listed below.

**Towing subcontractors:**

1. Abram & Sons Towing\*
2. Atlas Towing\*
3. B&A Body Works\*
4. Bay Bridge Towing\*
5. Best Towing\*
6. Blue Water Towing
7. Charles Towing\*\*



8. Golden Gate Towing\*
9. Nelson's Towing\*
10. Sideline Towing\*\*

**Other subcontractors:**

1. Pat's Lien Service
2. Calbay Protective Services\*
3. Autotek Services
4. Jim Mulrooney (auctioneer)
5. Premier Locksmith

***\*LBE subcontractor***

***\*\*LBE subcontractor status pending***

**4.5 Independent Contractor; Payment of Employment Taxes and Other Expenses.**

**4.5.1 Independent Contractor.** For the purposes of this Article 4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon

request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**4.5.2 Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

**4.6 Assignment.** The services to be performed by Contractor are personal in character, and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

**4.7 Warranty.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to

ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

#### **4.8 Liquidated Damages.**

By entering into this Agreement, Contractor agrees that its failure to perform certain obligations under this Agreement in the manner and under the respective time limits specified in Appendix A will cause City to suffer actual damages that will be impractical or extremely difficult to determine. Contractor agrees that the amounts set out in Appendix C, the schedule of liquidated damages, are not penalties, but represent a fair and reasonable estimate of the loss that the City will incur by reason of Contractor's failure to perform, established in light of the circumstances existing at the time this Agreement was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor under this Agreement or any other contract between City and Contractor. Such deductions shall not be considered a penalty, but rather agreed upon monetary damages sustained by City because of Contractor's failure to perform in the manner and in the time fixed or such extensions of time permitted in writing by City. Failure by the City to impose liquidated damages for specified violations will not be a waiver of the right to enforce this Section, nor will it constitute a waiver of any other right of the City under this Agreement.

**4.9 Performance Surety Bond.** Upon the Effective Date of this Agreement, Contractor shall provide to the City, and shall maintain throughout the Term of this Agreement and for a period of at least ninety (90) days after expiration or termination of this Agreement, or until all of Contractor's obligations have been performed under this Agreement, whichever date is later, a performance guarantee of two million dollars (\$2,000,000), which shall consist of a Performance Surety Bond of two million dollars (\$2,000,000) in favor of the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency, guarantying the faithful performance by Contractor of this Agreement, of the 2650 Bayshore License, and of the covenants, terms and conditions of this Agreement and the 2650 Bayshore License, including all monetary obligations set forth herein, and including liquidated damages and any dishonesty on the part of Contractor.

The City may draw upon such Performance Surety Bond in circumstances which include, but are not limited to:

(a) To ensure regulatory compliance in the event that Contractor receives a notice of violation or other regulatory order from a governmental or regulatory agency with jurisdiction over Contractor's operations or the properties used by Contractor for the performance of this Agreement and Contractor does not achieve compliance with the notice of violation or order to the satisfaction of the issuing agency within the time specified by the agency, or by the City if the agency does not specify a timeframe.

(b) To reimburse the City for any fine or other charge assessed against the City related to any notice of violation or other regulatory order issued to Contractor.

(c) To reimburse the City for costs associated with City's environmental assessments or corrective action related to Contractor's violation of any of the requirements of Appendix D, the **2650 Bayshore License**, which may be performed at the City's sole discretion.

(d) To satisfy any overdue payment obligations owed by Contractor to City pursuant to Appendix D.

(e) To satisfy fines assessed by City against Contractor pursuant to Appendix D.

(f) To compensate City for losses or damage to property caused by Contractor.

The Performance Surety Bond required by this **Section 4.8** shall be issued on a form prescribed by City, which is attached hereto as Appendix E, and issued by a financial institution acceptable to the City in its sole discretion, which financial institution shall (a) be a bank, insurance or trust company doing business and having an office in the State of California, (b) have a combined capital and surplus of at least \$25,000,000, and (c) be subject to supervision or examination by federal or state authority. If Contractor defaults with respect to any provision of this Agreement, City may, but shall not be required to, make its demand under said Performance Surety Bond for all or any portion thereof, to compensate City for any loss or damage which City may have incurred by reason of Contractor's default or dishonesty, including (but not limited to) any claim for fines or liquidated damages; provided, however, that City shall present its written demand to said bank, insurance or trust company for payment under said Performance Surety Bond only after City first shall have made its demand for payment directly to Contractor, and five (5) full days have elapsed without Contractor having made payment to City.

**4.10 Expiration or Termination of Performance Surety Bond.** The term of the Performance Surety Bond shall apply for individual one-year periods, and may be extended by the insurance, bank or trust company by Continuation Certificate. The insurance, bank or trust company herein may, if it so elects, terminate its obligation under this Performance Surety Bond by serving at least forty five (45) days written notice of its intention to do so upon the SFMTA. In the event the City receives notice from the issuer of the Performance Surety Bond that the Performance Surety Bond will be terminated, not renewed or will otherwise be allowed to expire for any reason during the period from the commencement of the Term of this Agreement to ninety (90) days after the expiration or termination of this Agreement or the conclusion of all of Contractor's obligations under the Agreement, whichever occurs last, and Contractor

fails to provide the City with a replacement Performance Surety Bond (in a form and issued by a financial institution acceptable to the City) within ten (10) days following the City's receipt of such notice, such occurrence shall be an Event of Default as defined in **Section 8.2** of this Agreement. However, neither nonrenewal by the insurance, bank or trust company, nor the failure or inability of the Contractor to file a replacement bond in the event of nonrenewal, shall itself constitute a loss to the City recoverable under the Performance Surety Bond or any renewal or continuation thereof. Insurance, bank or trust company's liability under the Performance Surety Bond and all continuation certificates issued in connection therewith shall not be cumulative and shall in no event exceed the amount as set forth in the Performance Surety Bond or in any additions, riders, or endorsements properly issued by the insurance, bank or trust company as supplements thereto.

**4.11 Demands upon Performance Surety Bond.** City may use all or any portion of the Performance Surety Bond to compensate City for any loss or damage that it may have incurred by reason of Contractor's negligence or breach. Such loss or damage may include without limitation any damage to or restoration of the properties for which Contractor is responsible, and claims for fines and/or liquidated damages. Should the City terminate this Agreement due to a breach by Contractor, the City shall have the right to draw from the Performance Surety Bond those amounts necessary to pay any fees or other financial obligations under the Agreement and perform the towing and storage services described in this Agreement until such time as the City procures another contractor and the agreement between the City and that contractor becomes effective.

**4.12 Depletion of Performance Surety Bond.** If any portion of a Performance Surety Bond is used by City, Contractor shall provide written proof that the Performance Surety Bond has been restored to its initial value, which shall require a replacement Performance Surety Bond in the face amount of the required Performance Surety Bond. Contractor's failure to do so shall constitute an Event of Default as defined in **Section 8.2** of this Agreement.

**4.13 Dispute Resolution.** In the event that a dispute arises between the City and Contractor concerning the use or maintenance of the Performance Surety Bond, Contractor may appeal to the Director of Transportation within fourteen (14) days of demand on the Performance Surety Bond with evidence supporting Contractor's claim for relief from the demand on the Performance Surety Bond. The Director of Transportation will respond within fourteen (14) days. Any failure of the Director of Transportation to respond within fourteen (14) days shall be deemed a rejection of Contractor's claim for relief from the demand on the Performance Surety Bond. Contractor's claim for relief from demands on the Performance Bond and the Director of Transportation's response to such demand shall constitute the administrative review

and documentation of Contractor's claims described in Section 11.6.1 herein. a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the contracting officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. Each party reserves its remedies in equity and law. No decision by the City concerning the Performance Surety Bond shall prevent Contractor from seeking restoration of the funds by appropriate legal action.

**4.14 Maintenance Deposit.** Upon execution of this Agreement, Contractor shall deposit with City the amount of one hundred thousand dollars (\$100,000) as a maintenance deposit. These funds may be used by City as specified in Appendix D, including but not limited to when maintenance required by Appendix D is not done in a timely manner or in accordance with the standards of this Agreement. Contractor shall be responsible for replenishing this maintenance deposit fund to maintain a balance of one hundred thousand dollars (\$100,000) within fifteen (15) days of any date that the fund falls below the minimum balance. Failure to replenish the maintenance deposit fund for more than forty-five (45) days shall be an Event of Default under Section 8.2 of this Agreement. Any interest accrued and earned on the maintenance deposit fund shall be retained by City.

**4.15 Claims Fund.** Contractor shall at all times maintain a Claim fund for payment of Claims. Contractor shall maintain at least fifty-thousand dollars (\$50,000) in the Claim Fund at all times. Contractor shall be responsible for replenishing this Claims Fund to maintain a balance of fifty thousand dollars (\$50,000) within fifteen (15) days of any date that the fund falls below the minimum balance. Failure to replenish the Claims Fund for more than forty-five (45) days from the date that it falls below the minimum balance shall be an Event of Default under Section 8.2 of this Agreement.

**4.16 Environmental Oversight Deposit.** Upon the Effective Date of this Agreement, Contractor shall provide to the City, and shall maintain and replenish throughout the term of the property licenses set forth in Appendix D E of this Agreement and for a period of at least ninety (90) days after termination or expiration of those licenses, an Environmental Oversight Deposit in the amount of ten thousand dollars (\$10,000), which shall be deposited in an account specified by City. If Contractor receives a notice of violation or other regulatory order from a governmental or regulatory agency with jurisdiction over the designated facilities or its operations, and such notice is not cured within fourteen (14) days, the City may draw from this deposit to reimburse the City for staff costs incurred by the City while inspecting site conditions and enforcing and administering the Hazardous Materials provisions of the licenses. If Contractor receives a notice of violation or other regulatory order from a governmental or regulatory agency with jurisdiction over the site and or its operations, and such notice is cured within fourteen (14) days, the City may draw from this deposit in an amount not to

exceed \$500 to reimburse the City for staff costs incurred by the City. The City will submit an invoice to Contractor for any such costs, and Contractor will pay such invoiced amounts within thirty (30) days to replenish the Environmental Oversight Deposit. Contractor's failure to pay such costs within thirty (30) days, or to replenish the Environmental Oversight Deposit if drawn upon, will constitute an Event of Default under Section 8.2 of this Agreement.

## **5. Insurance and Indemnity**

### **5.1 Insurance.**

**5.1.1 Required Coverages.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages (such limits may be provided through a primary and excess policy):

**(a)** Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

**(b)** Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$5,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

**(c)** Commercial Automobile Liability Insurance with limits not less than \$5,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

**(d)** Garage-keeper's legal liability insurance with limits not less than \$5,000,000 for each Occurrence combined single limit for loss and damage to vehicles in Contractor's care, custody or control caused by fire, explosion, theft, riot, civil commotion, malicious mischief, vandalism or collision, with any deductible not to exceed \$25,000 for each Occurrence. Contractor may insure or self-insure loss of non-automobile property in the care, custody, or control of the garage keeper with a limit of \$5,000; and

**(e)** Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

**(i)** Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form;

**(ii)** Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

**(iii)** Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

**5.1.2** Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

**(a)** Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

**(b)** That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

**5.1.3** All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties." All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

**5.1.4** Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

**5.1.5** Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.



**5.1.6** Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

**5.1.7** The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

**5.1.8** If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

**5.2 Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which

obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

## **6. Liability of the Parties**

**6.1 Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT

**6.2 Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

**6.3 Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

## **7. Payment of Taxes**

**7.1** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

**7.2** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

**7.2.1** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

**7.2.2** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

**7.2.3** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

**7.2.4** Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

## **8. Termination and Default**

### **8.1 Termination for Convenience**

**8.1.1** City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective, which date shall be no less than 60 days after the date of the notice.

**8.1.2** Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

**(a)** Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by SFMTA.

**(b)** Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

**(c)** At SFMTA's direction, assigning to SFMTA any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, SFMTA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

**(d)** Subject to SFMTA's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

**(e)** Completing performance of any Services that SFMTA designates to be completed prior to the date of termination specified by SFMTA.

**(f)** Taking such action as may be necessary, or as the SFMTA may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which SFMTA has or may acquire an interest.

**8.1.3** Within 30 days after the specified termination date, Contractor shall submit to SFMTA an invoice, which shall set forth each of the following as a separate line item:

**(a)** The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services SFMTA has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

**(b)** A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of SFMTA, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

**(c)** The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the SFMTA or otherwise disposed of as directed by the SFMTA.

**(d)** A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to SFMTA, and any other appropriate credits to SFMTA against the cost of the Services or other work.

**8.1.4** In no event shall SFMTA be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by SFMTA, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

**8.1.5** In arriving at the amount due to Contractor under this Section, SFMTA may deduct: (i) all payments previously made by SFMTA for Services covered by Contractor's final invoice; (ii) any claim which SFMTA may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the SFMTA, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and SFMTA's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

**8.1.6** SFMTA's payment obligation under this Section shall survive termination of this Agreement.

**8.2 Termination for Default; Remedies.**

**8.2.1** Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

**(a)** Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims
4.5	Assignment
4.8	Performance Bond
4.13	Maintenance Deposit
4.14	Claims Fund
4.15	Environmental Oversight Deposit
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
10.4	Nondisclosure of Private, Proprietary or Confidential Information
10.10	Alcohol and Drug-Free Workplace
11.10	Compliance with Laws

**(b)** Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from to Contractor.

**(c)** Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

**(d)** A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

**8.2.2** On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

**8.2.3** All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

**8.2.4** Any notice of default must be sent by registered mail to the address set forth in Article 11.

**8.3 Non-Waiver of Rights.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**8.4 Rights and Duties upon Termination or Expiration.**

**8.4.1** This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services
3.4	Audit and Inspection of Records
3.5	Submitting False Claims
Article 5	Insurance and Indemnity
6.1	Liability of City
6.3	Liability for Incidental and Consequential Damages
Article 7	Payment of Taxes
8.1.6	Payment Obligation
9.1	Ownership of Results
9.2	Works for Hire
10.4	Nondisclosure of Private, Proprietary or Confidential Information
11.6	Dispute Resolution Procedure
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability

**8.4.2** Subject to the survival of the Sections identified in Section 8.4.1 above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

## 9. Rights In Deliverables

**9.1 Ownership of Results.** Any interest of Contractor or its Subcontractors, in the Records prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities. To the extent that the use of proprietary software or other proprietary information or intellectual property is required to access or utilize the data contained in the Records, or that Contractor holds particular work practices or methods to be proprietary, Contractor hereby grants the City a perpetual, royalty-free, nonexclusive, nontransferable, limited license, to use and reproduce said proprietary information or intellectual property, solely for City's internal purposes related to the towing, storage, and disposal of abandoned and illegally parked vehicles.

**9.2 Works for Hire.** Subject to the limited license set out in Section 24 above, any artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, source codes, or any other original works of authorship of Contractor that are not Records, are proprietary to Contractor and shall not be considered works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of Contractor.

## 10. Additional Requirements Incorporated by Reference

**10.1 Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at [www.sfgov.org](http://www.sfgov.org) under "Government."

**10.2 Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

**10.3 Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.



#### **10.4 Nondisclosure of Private, Proprietary or Confidential Information.**

**10.4.1** If this Agreement requires City to disclose “Private Information” to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

**10.4.2** In the performance of Services, Contractor may have access to City’s proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

#### **10.5 Nondiscrimination Requirements**

**10.5.1 Non Discrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

**10.5.2 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

**10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors for at least 20% of the Services except as otherwise authorized in writing by the Director of CMD. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor’s LBE subcontracting commitments.

**10.7 Minimum Compensation Ordinance.** Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

**10.8 Health Care Accountability Ordinance.** Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

**10.9 First Source Hiring Program.** Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

**10.10 Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701) [or California Drug-Free Workplace Act of 1990 Cal. Gov. Code, § 8350 et seq., if state funds involved].

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City

elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

## **10.12 Consideration of Criminal History in Hiring and Employment Decisions**

**10.12.1** Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

**10.12.2** The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

**10.13 Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San

Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

**10.13.1** Contractor shall comply with San Francisco Environment Code Chapter 8, which provides that except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products. Contractor is subject to the penalty and enforcement provisions of Chapter 8.

## **11. General Provisions**

**11.1 Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: Lorraine R. Fuqua  
Contract Administrator-Towing Agreement  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 3<sup>rd</sup> Floor  
San Francisco, CA 94103  
[lorraine.fuqua@sfmta.com](mailto:lorraine.fuqua@sfmta.com)

To Contractor: John Wicker  
CEO and President  
San Francisco AutoReturn  
2650 Bayshore Blvd.  
Daly City, CA 94014  
[jwicker@authoreturn.com](mailto:jwicker@authoreturn.com)

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

**11.2 Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

**11.3 Payment Card Industry (PCI) Requirements.** Contractors providing services and products that handle, transmit or store cardholder data, are subject to the following requirements:

**11.3.1** Applications shall be compliant with the Payment Application Data Security Standard (PA-DSS) and validated by a Payment Application Qualified Security Assessor (PA-QSA). A Contractor whose application has achieved PA-DSS certification must then be listed on the PCI Councils list of PA-DSS approved and validated payment applications.

**11.3.2** Gateway providers shall have appropriate Payment Card Industry Data Security Standards (PCI DSS) certification as service providers (<https://www.pcisecuritystandards.org/index.shtml>). Compliance with the PCI DSS shall be achieved through a third party audit process. The Contractor shall comply with Visa Cardholder Information Security Program (CISP) and MasterCard Site Data Protection (SDP) programs.

**11.3.3** For any Contractor that processes PIN Debit Cards, payment card devices supplied by Contractor shall be validated against the PCI Council PIN Transaction Security (PTS) program.

**11.3.4** For items 11.3.1 to 11.3.3 above, Contractor shall provide a letter from their qualified security assessor (QSA) affirming their compliance and current PCI or PTS compliance certificate.

**11.3.5** Contractor shall be responsible for furnishing the SFMTA with an updated PCI compliance certificate 30 calendar days prior to its expiration.

**11.3.6** Bank Accounts. Collections that represent funds belonging to the City and County of San Francisco shall be deposited, without detour to a third party's bank account, into a City and County of San Francisco bank account designated by the Office of the Treasurer and Tax Collector.

**11.4 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

**11.5 Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved as required under City law and under the

policy of the SFMTA Board of Directors. Contractor shall cooperate with the SFMTA to submit to the CCO any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

## **11.6 Dispute Resolution Procedure.**

**11.6.1 Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Contract Administrator a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the contracting officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

**11.6.2 Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

**11.7 Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**11.8 Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**11.9 Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

**11.10 Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**11.11 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**11.12 Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**11.13 Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated [Date of Proposal]. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

## **12. MacBride Principles And Signature**

**12.1 MacBride Principles -Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

## **13.**

### **13. Large Vehicle Driver Safety Training Requirements**

**13.1** Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those employees and subcontractors shall successfully complete either (a) the SFMTA's

Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at [www.SFMTA.com/largevehicletainingstandards](http://www.SFMTA.com/largevehicletainingstandards). This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

**13.2** By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <p>_____</p> <p>Edward D. Reiskin Director of Transportation</p> <p>AUTHORIZED BY:</p> <p>MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____</p> <p>Roberta Boomer, Secretary Board of Supervisors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____</p> <p>Clerk of the Board</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____</p> <p>Mariam M. Morley Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>TEGSCO, dba San Francisco AutoReturn</p> <p>_____</p> <p>John Wicker President and CEO</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Article 13: Large Vehicle Driver Safety Training Requirements.</p> <p>City vendor number: 66307</p>
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## **Appendices**

- A: Statement of Services
- B: Calculation of Charges
- C: Schedule of Liquidated Damages
- D: 2650 Bayshore License Agreement
- E: Performance Bond Template

# APPENDIX A – STATEMENT OF SERVICES

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## I. DEFINITIONS

<b>Administrative Hold</b>	A hold placed on a vehicle impounded by SFPD whereby vehicle may be released only upon written authorization by the SFPD's Traffic Administration Unit. Examples include suspended license, false tags, and expired registration.
<b>Auction or Lien Sale</b>	Sale held every other week (or less frequently as approved by the SFMTA) at which members of the public, licensed dismantlers, and licensed dealers purchase vehicles that have gone through the Lien process. There are three types of Auctions: Public, Dismantler and Title.
<b>Agreement or Contract</b>	The Agreement between the City and County of San Francisco, and TEGSCO, LLC dba San Francisco AutoReturn, SFMTA-CCO No. 2014-48 including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements that are specifically incorporated into the Agreement by reference as provided herein or in the Contract document.
<b>Central Dispatch Facility or Central Dispatch</b>	The location from which the Contractor's staff assigns tow requests to Tow Truck Operators.
<b>Citation</b>	A notice of violation, of the San Francisco Transportation Code or other applicable law, issued to a person or a vehicle by a Parking Control Officer employed by SFMTA Enforcement or a police officer employed by SFPD.
<b>Citation Management System</b>	SFMTA's citation processing management system (eTIMS) or any successor system(s) used by SFMTA for tracking tow requests and Citations.
<b>City</b>	The City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).
<b>Close Family Member</b>	Spouse, domestic partner, parent or child of the party referenced.
<b>Commute Tows</b>	Tows that are performed from commuter lanes to remove illegally-parked vehicles from traffic lanes during Peak Tow Hours.
<b>Complaint</b>	Any issue with service provided by the Contractor within the services of this Agreement that is communicated to the Contractor or the City by a Customer and which is not a Claim. This does not include issues reported to the Contractor by Customers that the Contractor is able to resolve to the satisfaction of the Customer through internal issue resolution procedures.
<b>Contractor</b>	TEGSCO, LLC., dba San Francisco AutoReturn, 2650 Bayshore Blvd, Daly City, CA, 94015



<b>Contract Administrator</b>	Designated SFMTA employee charged with oversight of the provisions of the Agreement.								
<b>Contract Monitor</b>	Designated SFMTA employee charged with oversight of the Contractor's operations under the terms of the Agreement.								
<b>Customer</b>	A person whose vehicle has been towed or a person who requests assistance that the Contractor is obligated to provide under the terms of the Agreement.								
<b>Customer Service Center (CSC)</b>	Portion of the Primary Storage Facility where Contractor's staff serves Customers seeking to retrieve their vehicles or obtain other assistance that is covered under the Agreement.								
<b>Department of Public Health of San Francisco (DPH)</b>	City agency authorized to request tows for the purpose of abating a nuisance.								
<b>Deficiency Claim</b>	A Claim filed against a registered vehicle owner equal to towing and storage charges, less any amount received from the sale of the vehicle, and which is subject to all rights and limitations set forth in California Civil Code § 3068.2 or any successor statute that creates, defines and limits City's right to such claim.								
<b>Delinquent Citation</b>	A Citation that was unpaid past the original due date for payment, upon which penalties for overdue payment have accrued, and which is not scheduled for administrative review or hearing by SFMTA.								
<b>Dropped Tow</b>	A vehicle, for which a tow is initiated, then left with the vehicle owner or operator, at the location at which the tow was initiated, upon the request of a Parking Control Officer or police officer.								
<b>Effective Date</b>	The date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1 of the Master Agreement.								
<b>Electronic Form</b>	A computerized form created by the TVMS system that enables the User to input information for processing, and, if applicable, results in a printable Adobe .PDF or equivalent document.								
<b>Enforcement</b>	Division of the SFMTA that cites the public for parking and transit violations, and assists the SFPD in traffic control.								
<b>Expedited Tow</b>	A tow request initiated by the Tow Desk or the SFPD that is necessary to ensure the safety of the PCO, police officer or public, or to eliminate an immediate hazard.								
<b>Gross Vehicle Weight Rating (GVWR)</b>	The weight of a towed vehicle. <table border="1" data-bbox="516 1633 1263 1822"> <tr> <td>Type</td> <td>Gross vehicle weight rating</td> </tr> <tr> <td>Light Duty</td> <td>0-10,000 lb. GVWR</td> </tr> <tr> <td>Medium Duty</td> <td>10,001 to 26,000 lb. GVWR</td> </tr> <tr> <td>Heavy Duty</td> <td>26,001 lb. and over GVWR</td> </tr> </table>	Type	Gross vehicle weight rating	Light Duty	0-10,000 lb. GVWR	Medium Duty	10,001 to 26,000 lb. GVWR	Heavy Duty	26,001 lb. and over GVWR
Type	Gross vehicle weight rating								
Light Duty	0-10,000 lb. GVWR								
Medium Duty	10,001 to 26,000 lb. GVWR								
Heavy Duty	26,001 lb. and over GVWR								
<b>Heavy Duty Tow</b>	Vehicle towed that weights more than 26,000 lbs.								

<b>Interactive Voice Response (IVR) System</b>	A telephone system that enables the Customer to access towing data in order to determine if their vehicle has been towed, and if so how to retrieve the vehicle.
<b>Investigative Hold</b>	A Police Hold imposed on an evidentiary vehicle for the purpose of criminal investigation, whereby vehicle may be released only upon electronic release within the TVMS or written authorization by the SFPD's Traffic Administration Unit. Examples include arrests, No ID and investigation of crime.
<b>Lien 1 Vehicle</b>	A low-value vehicle, including a vehicle valued at five hundred dollars (\$500) or less, in accordance with Vehicle Code § 22670 (requiring valuation of any vehicle towed by a public agency) and § 22851.2 (regarding vehicles valued at an amount not exceeding five hundred dollars (\$500) and not towed for being abandoned) or a vehicle valued at five hundred dollars (\$500) or less pursuant to § 22851.3 (regarding vehicles towed for being abandoned) and §§ 22851.6 - 22851.10 (regarding disposal procedures for low-value vehicles). If California law is amended subsequent to the Effective Date of this Agreement to change the dollar amounts that trigger requirements for low-value vehicles, this Agreement shall incorporate such amendments by reference as though fully set forth herein for the purpose of defining dollar-value thresholds and legally required procedures for handling and disposal of low-value vehicles.
<b>Lien 2 Vehicle</b>	A medium-value vehicle valued at more than five hundred dollars (\$500) and up to and including four thousand dollars (\$4,000) in accordance with Vehicle Code § 22670 (requiring valuation of any vehicle towed by a public agency), or over five hundred dollars (\$500) and up to and including four thousand dollars (\$4,000) for the purpose of Vehicle Code § 22851.3 (regarding vehicles towed for being abandoned), and California Civil Code §§ 3067-3075 (setting forth legally required procedures for Lien Sales of towed vehicles). If California law is amended subsequent to the Effective Date of this Agreement to change the dollar amounts which trigger requirements for medium-value vehicles, this Agreement shall incorporate such amendments by reference as though fully set forth herein for the purpose of defining dollar-value thresholds and legally required procedures for handling and disposal of medium-value vehicles.

<b>Lien 3 Vehicle</b>	A high-value vehicle valued at more than four thousand dollars (\$4,000), in accordance with Vehicle Code § 22670, requiring valuation of any vehicle towed by a public agency, and California Civil Code Sections 3067-3075, setting forth required procedures for Lien Sales of vehicles. If California Law amended subsequent to the Effective Date to change the dollar amounts which trigger requirements for high-value vehicles, this Agreement shall incorporate such amendments by reference as though fully set forth herein for the purpose of defining dollar-value thresholds and legally required procedures for handling and disposal of high-value vehicles.
<b>Lien Category</b>	The classification of a vehicle as a Lien 1, Lien 2 or Lien 3 Vehicle in accordance with its appraised value.
<b>Lien Sales</b>	The process of selling vehicles, in accordance with the Vehicle Code or other applicable law, that are not retrieved by their owners.
<b>Light Duty Tow</b>	Vehicle that weighs up to 10,000 lbs.
<b>Long-Term Storage Facility (LSF)</b>	Facility used by Contractor to store vehicles that were not claimed while stored at the Primary Storage Facility, and to conduct Lien Sales.
<b>Medium Duty Tow</b>	Vehicle that weighs between 10,001 and 26,000 lbs.
<b>Monetary Claim (Claim)</b>	A request for compensation for personal injury, loss from or damage to towed vehicle and/or personal property,
<b>No ID</b>	Vehicles are towed because there is no visible Vehicle Identification Number. Subject to examination by the SFPD.
<b>Non-Peak Tow Hours</b>	Monday through Friday 7:00 p.m. to 7:00 a.m. and 9:00 a.m. to 4:00 p.m., Saturday, Sunday, and City holidays.
<b>Notice to Proceed</b>	Letter from the SFMTA to the Contractor indicating the Effective Date of the Agreement.
<b>Parking Control Officer (PCO)</b>	Enforcement employee that cites for parking and transit violations and assists in mitigating traffic conditions.
<b>Peak Service Hours</b>	Monday through Friday, 7:00 a.m. to 8:00 p.m., excluding City holidays.
<b>Peak Tow Hours</b>	Commute hours, when traffic is likely to be heavy: Monday – Friday (excluding City holidays): 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m.
<b>Personal Property Release</b>	A document issued by the Contractor that allows a Customer to retrieve personal belongings from a towed vehicle under supervision of Contractor personnel.
<b>Police Hold</b>	A hold, either an Administrative Hold or an Investigative Hold, placed on a vehicle by the SFPD in writing which requires a vehicle to be processed in accordance with the Police Hold procedures specified in this Agreement.

<b>Primary Storage Facility (PSF)</b>	Facility where towed vehicles are deposited immediately after tow and stored until they are either claimed by the Customer or transferred to the Long-Term Storage Facility.
<b>Records</b>	The documents Contractor is required to create and maintain under this Agreement, including but not limited to: (1) complete and accurate books, accounts and documentation of financial transactions relating to all items of income received and expenses incurred in the performance of this Agreement; (2) documentation of all vehicles towed; (3) documentation of all vehicles stored; (4) documentation of all Claims; (5) all monthly management reports and other reports Contractor is required to submit to City; (6) charts and diagrams of any property licensed to Contractor by City to fulfill the obligations of this Agreement; (7) other documents or reports as City may require Contractor to produce in the course of performing work under the Agreement; and (8) the Records described in Section 13 of this Appendix A.
<b>San Francisco Recreation and Parks Department (RPD)</b>	City department that manages the City's parks and recreational facilities.
<b>San Francisco Municipal Transportation Agency (SFMTA)</b>	The agency of the City with jurisdiction over all surface transportation in San Francisco.
<b>San Francisco Police Department (SFPD)</b>	San Francisco's law enforcement agency that is authorized to request vehicle tows.
<b>Services</b>	The work performed by Contractor under this Agreement as specifically described in the "Statement of Services" attached as Appendix A, including all Services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.
<b>Special Event Tows</b>	Tows of vehicles parked in violation of temporary parking restrictions authorized by Veh. Code section 22651(m) and SF Transportation Code Section 3.4(c).
<b>Sweeps</b>	Special tows that are arranged in advance by an authorized City agency and require several tow trucks to be assigned to the detail.
<b>Tow Desk</b>	The location of SFMTA Enforcement staff that receives tow requests from the Enforcement Division and the SFPD.
<b>Tow Equipment</b>	Tow vehicles and all computer systems, communications devices, hand tools, electric tools and towing hardware, whether or not expressly listed in this Agreement that are necessary to perform towing Services to the standards of the towing industry and as set forth in this Agreement.

<b>Tow Firm</b>	Organization hired by the Contractor to provide tow trucks to tow vehicles as designated by an authorized agency.
<b>Tow Firm Fee</b>	Fee paid by the Contractor to Tow Firms for each vehicle towed.
<b>Tow Inventory Slip</b>	Form used to document towed vehicle information, including physical condition and towing authority.
<b>Tow Truck Operator (TTO)</b>	Drivers for Tow Firms.
<b>Towed Vehicle Management System (TVMS)</b>	Software system that supports the Contractor's dispatching, inventory, audit and customer service responsibilities for the term of the Agreement.
<b>User</b>	Person accessing the Towed Vehicle Management System.
<b>UTID</b>	SFPD vehicle classification that means that after examination of the vehicle no means of identification (e.g. VIN) could be found.
<b>Vehicle Identification Number (VIN)</b>	The distinguishing 17-digit number or other mark used for the purpose of uniquely identifying a vehicle or vehicle part, as further defined in Vehicle Code § 671.

## **II. SERVICE REQUIREMENTS**

### **A. City Agencies Authorized to Request Tows**

Currently, the City agencies designated to authorize tows from City streets, public property and private property are SFMTA, SFPD, DPH and RPD. The SFMTA, however, reserves the right to add additional City agencies to those authorized. All towing requests (except for Commute Tows, Special Event Tows and Regional Sweeps that are requested in the field) will be called in to the Tow Desk from designated City staff and forwarded to Central Dispatch for processing.

### **B. Adherence to Applicable State and Local Laws**

Notwithstanding any other provision of this Statement of Services, Contractor shall comply with all applicable local, state, and federal laws and regulations relevant to the performance of its duties under this Agreement, including but not limited to those governing the removal, storage, release, and Lien Sale of vehicles. Contractor must ensure that its employees and subcontractors are informed of the requirements of all such laws, in their current form and as they may be amended during the term of the Towing Agreement.

### **C. Hours of Service**

The Contractor shall operate and respond to all tow requests, and process intakes and releases of towed vehicles twenty-four (24) hours per day, 365 days per year in accordance with the standards specified in this Agreement.

### **D. Customer Payment of Fee**

The Contractor shall adhere to all requirements regarding payment processing as directed by the SFMTA and the City Treasurer's Office. See Section VII of this Appendix A for details.

### **E. Adequate Staffing**

1. The Contractor must provide staffing that is adequate to meet all service and performance requirements.
2. The Contractor shall seek the SFMTA's prior written approval before making any changes or substitutions to executive management or facilities management personnel. The SFMTA may request a change or reject any substitution. The Contractor must notify the SFMTA of any terminations or resignations by executive management or facilities management within five days of the occurrence.
3. If the SFMTA at any time reasonably determines that the Contractor is employing an insufficient number of employees, the Contractor shall hire such additional employees as the SFMTA determines is reasonably necessary to render the Services required under the Agreement.

### **F. Customer Service**

#### **1. General Requirements**

- a. The Contractor shall interact with Customers for the purpose of retrieving towed vehicles in person, by phone using an interactive telephone system, live operators and via website or other methods mutually agreed upon by SFMTA and Contractor.
- b. Contractor's personnel answering such phones shall be courteous, professional and provide complete information regarding the location of the vehicle, the method of securing its release, directions to the location from which to effect its release, documentation required, charges to be assessed (including required payment of parking Citations if five or more are delinquent) and terms of payment.
- c. The Contractor shall also provide Customers with accurate and timely information regarding their rights with respect to the towed vehicle under this Agreement and all applicable federal, state and local laws and regulations.
- d. All materials created by Contractor that are intended for use by Customers, whether in written, electronic or audio format, shall be made available in Spanish, spoken Cantonese and written Chinese. The Contractor shall also make best efforts to provide bilingual staff to assist Customers in Spanish and Cantonese, as well as Mandarin, Russian and Vietnamese.

## 2. Employee Training

- a. The Contractor shall, for new employees, schedule 16 hours of professional job training specializing in customer service that must be approved in advance of the training by the SFMTA. Training must take place ***within the first year after the date specified in the Notice to Proceed***, and must include all employees that have direct interaction with the public, including Tow Truck Operators. The Contractor shall require each employee to obtain a certificate of completion of this training, and shall submit the certificates to the SFMTA within 30 days of the first anniversary of the Notice to Proceed.
- b. The Contractor shall require all employees described above to take a minimum of four hours of SFMTA approved outside professional customer service "refresher" training annually for the remainder of the Contract term. The Contractor shall require certificates of completion for this training, and shall submit annually them to the SFMTA ***within 30 days of each subsequent anniversary of the date specified in the Notice to Proceed***.
- c. All training costs are the responsibility of the Contractor.

## 3. Electronic Customer Queue Management

The Contractor shall provide, subject to approval of the SFMTA, a "Take a Number" or other similar queueing system with an electronic message board and audio announcement to be used in the lobby during peak periods of activity to avoid extensive waiting in line by Customers and to communicate

procedures and documentation that might be required once called to the window. The queueing system shall be in place ***as of the date specified in the Notice to Proceed***

#### **4. Customer Calls**

##### **a. Telephone Operators**

- i. The Contractor shall provide a dedicated phone line and ensure that live telephone operators are available at all times, 24 hours a day, seven days a week, to respond to calls from the public about towed vehicles.
- ii. All calls shall be answered within 30 seconds and without a busy signal. Contractor's telephone system shall be set up to automatically roll to the next available operator when calls come in.
- iii. The Contractor shall ensure that within each calendar month at least 95% of Customers reach a live operator within three minutes of request; and that 98% of Customers reach an operator within five minutes of request, within a calendar month.

##### **b. Interactive Voice Response (IVR) System**

- i. The Contractor shall establish and maintain one customer service phone line with an IVR that the public may call for information regarding towed vehicles ***date specified in the Notice to Proceed***. This phone line shall be independent of the phone line used for requests for Dispatch Tows.
- ii. The computerized IVR and call distribution system to live operators must have sufficient lines, instruments, hardware, software, and overflow safeguards to meet the service requirements of this Agreement.
- iii. The Contractor's IVR shall have a menu selection that offers basic information to the public in English, Spanish, Cantonese (within 90 days of the date specified in the Notice to Proceed) and any additional languages that may, in the future, be required by City regulations. The IVR shall also have the ability to queue calls after the caller requests a live operator and have an alarm system to alert office staff if a call has been on hold for more than the approved time. The Contractor shall periodically check functionality and resolve performance issues with the IVR.
- iv. The Contractor shall, within 90 days of the date specified in the Notice to Proceed, create a computerized, voice prompted Customer service survey available as an option to all Customers. The Contractor shall ensure that Customers who participate in the survey remain anonymous. Following the interaction between Customers and the



Customer Service Center, Customers will be asked to rate the following:

- Was the agent polite, thorough and knowledgeable
- Was the Customer's question answered
- Was the Customer given clear instructions on how to retrieve a vehicle
- Was the Customer given appropriate information, including how to dispute a Citation at the SFMTA Review Center
- Was the Customer's call answered in a reasonable amount of time

v. The Contractor shall develop a script for approval by the SFMTA.

**c. Call Volume Reporting**

The Contractor shall provide a monthly summary report with the following elements:

- i. The total number of calls per hour,
- ii. Total number of calls each day,
- iii. The number of calls disconnected by the Customer requesting to speak with an agent before the call is answered.
- iv. Summary Chart showing the following:

	< 3 minutes	3-5 minutes	> than 5 minutes
Number of calls			
Percentage of calls			
Average wait time			
Average call (talk) time			

v. Detailed call listing showing call status, wait time, and call duration.

**d. Audio Recordings**

- i. The Contractor shall record all customer service calls, and indicate to the Customer that their call is being monitored for quality assurance.
- ii. The Contractor shall maintain such audio recordings for a minimum of 120 days.
- iii. Upon the SFMTA's request, the Contractor shall provide SFMTA access to the audio recordings within 48 hours for the purpose of reviewing or copying the recordings.

## **5. Window Staff**

- a. During Peak Service Hours, the Contractor will have a sufficient number of trained staff at the Customer Service Center to open up to six windows to the public. Windows shall be opened as necessary to meet required service levels.
- b. Wait time in the CSC lobby shall be no longer than ten minutes unless all six windows are open.
- c. All window staff shall also be available to answer calls from the public when not attending to a Customer in person.
- d. The Contractor shall submit a monthly report that shows window staffing patterns and average wait times.
- e. The Contractor shall ensure that all Customer transactions involving waivers/vouchers/adjustments are reviewed and validated by the customer service manager and documented in the Towed Vehicle Management System (TVMS).

## **6. Other Required Customer Service Staffing**

- a. The Contractor shall have available at least one customer service manager (or supervisor of sufficient authority and training) to handle Customer questions and unusual matters.
- b. The customer service manager shall be available in addition to required window and other management staff and shall not be included in the count of trained staff present at the CSC.
- c. The customer service manager (or supervisor of sufficient authority and training) shall be present during Peak Service Hours.

## **7. Dissemination of Customer Information Requirements**

### **a. Facilities**

Documents containing the following information shall be printed in at least 12-point font type and shall be posted by the Contractor at each storage Facility in a conspicuous location easily visible to the public. The signage, including languages required, wording, size of letters, and methods of display shall be approved by the SFMTA in advance of posting:

- i. The schedule of all City-approved towing, storage and additional charges as specified in this RFP.
- ii. An explanation of the conditions under which, and the procedure by which, a tow hearing may be requested from the SFMTA.
- iii. Notices informing the public of their Vehicle impound rights and obligations pursuant to California Vehicle Code Section 22852.
- iv. Procedure for filing a Claim for damages incurred to the vehicle or contents thereof as a result of the tow or storage of the vehicle.

- v. The name and address of the Contractor's insurance broker handling the insurance coverage required by the Agreement.
- vi. Notice that a complete copy of the towing Agreement is available for review onsite, can be downloaded from the Contractor's website, or may be obtained at a cost of \$0.10 per page.
- vii. An explanation of the procedure by which all unclaimed vehicles are sold at Auction, including the location of such Auctions and publications in which such Auctions are advertised and stating that all in attendance at such Auction shall have an equal opportunity to bid.

**b. Customer Invoices**

All Customer invoices shall have printed the following:

- An itemized listing of all applicable fees, fines and other charges
- All waivers and waiver amounts granted, if applicable
- Instructions for requesting a tow hearing, including location of hearings.
- Instructions to provide Customer feedback.

**8. Customer Service Website**

- a. The Contractor shall create and maintain a website ***by the date specified in the Notice to Proceed*** that provides general information to the Customer as follows:
  - i. The status and location of a specific towed vehicle
  - ii. The total itemized cost of retrieving the Towed vehicle, including Citations and/or booting fees where applicable, upon integration with the City's designated Citation Management System
  - iii. Any holds that have been assigned to the vehicle, and
  - iv. The allowable methods of payment to retrieve the vehicle.
- b. The Contractor's website shall be available 24 hours a day, 365 days per year. Internet site maintenance and down-time should be scheduled between the hours of 12:00 a.m. and 6:00 a.m., except as otherwise necessary.
- c. The Contractor shall periodically update the website as needed to incorporate upgrades that enhance the User experience as they become available.
- d. The website shall provide a customer service survey option, subject to SFMTA approval.

**9. Commitments to City Support**

- a. The Contractor shall provide a contact list for key management personnel responsible for supporting Services under this Agreement.

- b. Contractor shall provide a contact number for those situations requiring a response within 15 minutes of inquiry.

#### **10. Customer Service Plan**

The Contractor shall create a Customer Service Plan as part of the Operations Manual ***within 90 days of the Notice to Proceed***. Details on plan requirements are in Section VI of this appendix.

## **G. Dispatching Requirements and Equipment Needs**

### **1. GPS Equipment**

- a. The Contractor must require all Tow Firms used to provide Services under this Agreement be equipped with a functional global positioning tracking system (GPS) ***as of the date specified in the Notice to Proceed.***
- b. The GPS device must allow the Contractor and designated SFMTA employees to accurately track the location of the tow vehicle operators.
- c. If the selected GPS device does not meet the SFMTA's reasonable expectations based on the GPS standards set forth in the RFP, the City reserves the right to require an alternate device be used, including one that is affixed to the tow truck.

### **2. GPS Software**

- a. The Contractor shall acquire and maintain all necessary software licenses for this GPS tracking system. The Contractor shall provide to SFMTA, at the Contractor's sole cost, access to the GPS tracking system using an internet based interface or client-server application that can operate on the City's WAN.
- b. The Contractor shall install and configure GPS software, provide training at their own cost to both staff and City for the use of the software, and support all activities related to the City's use of the GPS tracking system.
- c. The Contractor shall record the arrival time of Tow Truck Operators to the requested tow location through the GPS system and shall compare the time recorded to the time the Tow Truck Operator records their arrival through the TVMS. The Contractor shall ensure that at least 95% of the GPS-recorded arrival locations and the Tow Vehicle Operator locations are identical.

### **3. Equipment**

#### **a. Tow Trucks**

- i. The Contractor shall have tow trucks capable of handling light, medium and heavy-duty tows available to tow all vehicles ordered by a designated City agency to be removed from any public street or highway within the City.
- ii. Tow trucks shall be in good operating condition, equipped and prepared to provide expeditious movement of vehicles in all circumstances, including a) light, medium and heavy duty vehicles; b) towing with dollies or flatbeds; c) towing motorcycles; d) towing from off-road areas; e) towing in garages, both underground and multiple story; f) recovery Services; g) towing of vehicles involved in collisions; and h) towing of vehicles with anti-theft locking devices.

- iii. All tow trucks used in the performance of the Agreement's towing Services shall be well-maintained and clean on the interior and exterior.
- iv. The Contractor shall be in compliance with all California Vehicle Code requirements pertaining to the operation and maintenance of tow trucks and operation of its business, including all auxiliary equipment specified on the California Highway Patrol Form number 234 "Annual Tow Truck Inspection Report".
- v. All Tow Truck Operators shall be fully trained on how to use the equipment, how to properly and safely, without damage to the vehicle, tow a vehicle and how to enter all types of vehicles when they are locked and access is needed in order to tow.

**b. Wireless Communication Devices for Tow Truck Operators**

- i. **As of the *date specified in the Notice to Proceed***, the Contractor shall provide a list of approved wireless communications devices (e.g. smart phones) to each Tow Truck Operator that shall be used as digital, hands-free communication between Contractor's Central Dispatch and the operators.
- ii. The Contractor shall be responsible for all costs associated with all wireless communications devices that are issued to the City.
- iii. The TVMS and associated wireless communications equipment shall have the functionality to do the following:
  - Electronically send tow requests to the Tow Truck Operators.
  - Automatically select the tow vehicle operator assigned for the tow based on proximity and electronically route the request to the Tow Truck Operator.
  - Allow Tow Truck Operators to acknowledge receipt of the tow request and ETA, which in turn shall be electronically-transmitted through the TVMS so that both the SFMTA's Tow Desk and Contractor's Dispatch Center are informed that the Tow Truck Operator is in route to the tow.
  - Transmittal of arrival time: The Tow Truck Operator shall have the ability to transmit their arrival at the scene of a tow through their wireless communication device.

**c. Land Lines**

In addition to transmitting tow requests, acknowledgement of receipt of request and ETA data between the Tow Desk and Central dispatch through the TVMS, the Contractor shall provide a dedicated telephone land line to be available for communication between Central Dispatch and the SFMTA Tow Desk.



#### d. Backup Communications Devices

The Contractor shall provide the SFMTA with a minimum of two portable communications devices to be used as an emergency communications method or an alternative mutually agreed upon by the parties **as of the date specified in the Notice to Proceed.**

### H. Tow Types and Required Response Times

#### 1. Routine Towing Requests

- a. The Contractor shall dispatch Tow Truck Operators from its Central Dispatch Facility. The Contractor shall provide dispatch staff to receive tow requests 24 hours per day, 365 days per year, including holidays.
- b. During Peak Tow Hours, a dispatch supervisor must be on duty to direct staff and address any issues or escalations raised by the SFMTA that relate to a tow request.
- c. The Contractor shall respond to requests for Light and Medium Duty Tows with the appropriate equipment to the designated point of tow **within 35 minutes** during Peak Tow Hours and **within 25 minutes** during Non-Peak Tow Hours, or no later than **10 minutes** prior to the time designated for initiation of a pre-scheduled tow. The Contractor shall respond within the applicable time limit for at least 90% of the Light and Medium Duty Tows that are requested within a calendar month. Average response time shall be no greater than 22 minutes for each calendar month.
- d. The Contractor shall respond to Heavy Duty Tows with the appropriate equipment to the designated point of tow within 90 minutes. The Contractor shall respond within the applicable time limit for 90% of Heavy Duty Tow requests within SFMTA's fiscal year.
- e. Contractor shall provide an updated estimated time of arrival to the Tow Desk five minutes before response time deadline for no fewer than 98% of late tows within one calendar month.
- f. At all times, the Contract must ensure that:
  - i. Tow requests from SFMTA's Tow Desk are answered *within 30 seconds* or less for 95% of the requests for tows and *within 90 seconds* for 98% of requests within a calendar month.
  - ii. The Contractor's Central Dispatch must assign a tow request to a Tow Firm **within five minutes** or directly to a Tow Truck Operator **within ten minutes 98% of the time within one calendar month**. This time is included with the maximum response time for Tow Truck Operators during Peak Tow Hours and Non-Peak Hours.
- g. The Contractor shall submit to the SFMTA a monthly report that shows response times for Tow Desk requests.



## **2. Expedited Tows**

Contractor shall prioritize Expedited Tow requests above all other tow requests so response time is minimized.

## **3. Commute Tows, Special Event Tows and Regional Sweeps**

- a. The Contractor shall participate in Commute Tows, Special Event Tows and Sweeps requested by SFMTA or SFPD as a part of its regular towing Services.
- b. The SFMTA will provide a schedule of Commute Tows, with times for Tow Truck Operators to arrive, locations, and number of trucks required at the time of the Notice to Proceed. The SFMTA will communicate any modifications to the Commute Tow schedule to the Contractor at least 24 hours in advance of the change.
- c. The City will notify the Contractor at least 48 hours in advance of the date of a Special Event or Sweep, and shall inform the Contractor of the number of tow trucks required, the location, and the time the Tow Truck Operators should arrive. The City will notify the Contractor of any Modifications to scheduled Special Events or Sweeps at least 24 hours in advance.
- d. The SFMTA will provide the Contractor with a schedule of annual Special Events, which may include parades, marathons and other events. Commercial or residential moves that require vehicles to be towed will be handled as Routine Tow requests unless SFMTA staff designates that the request rises to the level of an Expedited Tow.
- e. The SFMTA requests that the Contractor make every effort to assist, but will not hold the Contractor responsible for Special Event or Sweep tow requests that occur less than 48 hours before the Special Event or Sweep, or to modifications to Commute Tows, Special Events or Sweeps that are given with less than 24 hours' notice.
- f. Tow Truck Operators may leave the location of any Commute Tow, Special Event Tow or Sweep if no PCO arrives after 15 minutes of the scheduled start time.

## **4. City-Owned Vehicles**

- a. At the request of the SFMTA or the SFPD, the Contractor shall remove at no cost to the agency any disabled vehicle owned by the agency or render road service, limited to starting stalled vehicles and changing flat tires.
- b. The Contractor shall respond to Peak Tow Hour requests for City-owned vehicles within 35 minutes, and shall respond within 25 minutes for Non-Peak Tow Hour requests for City-owned vehicles.
- c. The Contractor must absorb the costs of this service, and is prohibited from passing the cost onto Tow firms or Tow Truck Operators.

## **5. Relocation Tows**

At the request of an authorized City agency, pursuant to Vehicle Code § 22654(e) relating to authorization for moving a vehicle otherwise lawfully parked, the Contractor shall relocate vehicles as directed.

## **6. Extended Delay in Tow Response**

The Contractor shall not, except in the case of unavoidable delay, exceed 120 minutes for Light or Medium tow service types during Peak Tow Hours within the City.

## **7. Tows Requested Outside the Boundaries of the City**

For tows requested by the City outside the boundaries of the City and County of San Francisco, the Contractor will make its best effort to respond to the tow location within four hours, and shall respond within eight hours unless approved in writing by the SFMTA.

## **8. Reporting Requirements**

- a. The Contractor shall submit a monthly report to the SFMTA that summarizes the categories of tows as described in this section H, the number of tows in each category, and response times for each tow.
- b. The Contractor shall also track and report monthly the number of tows by violation category where applicable, using categories provided by the SFMTA.

## **I. Vehicle Intake Procedures**

### **1. Towed Vehicle Data**

- a. The Contractor shall ensure that a record of each dispatched tow request is created in the TVMS **within five minutes** of receiving the request.
- b. The record of the tow itself must be created in the TVMS **within 15 minutes** of the vehicle's arrival at the Primary Storage Facility.
- c. The Contractor must meet these timing requirements **in 95% of all tows within any given month**.

### **2. Vehicle Identification Number (VIN)**

- a. The Contractor shall visually inspect any vehicle for which a lien is requested to confirm and record the VIN of a towed vehicle, and include the VIN in its lien request to the DMV. The lien request must be filed **between three to seven days of vehicle tow**. Exceptions to the obligation to confirm and record the VIN include:
  - i. Vehicles subject to SFPD Investigative Holds.
  - ii. Vehicles identified as No ID vehicles that require SFPD inspection.
  - iii. Other cases of extenuating circumstances as approved by the SFMTA.
- b. Contractor shall notify the SFPD **within 24 hours** of becoming aware of any vehicle in its possession for which the license plate and the VIN do not match.

### 3. Personal Property

- a. The Contractor shall not enter into any vehicle designated as an SFPD hold for retrieval and recording of any personal property without written authorization of the SFPD.
- b. During intake inspection, personal property in the vehicle of more than \$250 that is visible from the exterior of the vehicle without opening any locked compartment shall be inventoried and as part of the inventory, the Contractor shall record whether or not the vehicle has a locked storage compartment.
- c. This information shall be recorded in the TVMS system and the vehicle inventory forms shall be kept on file or in electronic form. The Contractor, SFMTA, DPH and SFPD shall endeavor to keep the vehicle locked to the maximum extent possible during the towing and storage process.
- d. The Contractor may remove and separately store personal property from the vehicle for security or other reasons, as necessary.

### 4. Digital Photo Recording

- a. Tow Truck Operators shall photograph any damage observed on a vehicle to be towed prior to handling the vehicle. These photos shall be made available, within 8 hours, through the TVMS.
- b. The Contractor shall have cameras at both the Primary and Long Term Storage Facilities and shall take photos of all four sides of the exterior of each vehicle the first time that it is brought into any designated Facility.
- c. These images shall be stored electronically for one year and in a manner that allows prompt retrieval **within one business day** of an authorized City agency's request.
- d. The SFMTA agrees that the requirements of this may be satisfied by extracting still images from continuous video footage.

### 5. Procedures for Vehicles Impounded by the SFPD

#### a. SFPD Investigative Holds

- i. The SFPD may designate any vehicle for which it has made a Tow Request as an Investigative Hold vehicle. Investigative Hold vehicles shall be stored in a segregated, secure area, located in designated areas of the Primary and Long-Term Storage facilities.
- ii. No person shall be allowed access to an Investigative Hold vehicle or retrieve personal property from such vehicle without written authorization from the SFPD.
- iii. If the SFPD designates an Investigative Hold vehicle as an evidentiary vehicle at the time of the Tow Request, the Contractor shall ensure that the towing and storage of the vehicle is conducted in accordance with any standards for handling and preservation of evidence provided to Contractor by the SFPD.

- iv. The Contractor shall maintain the Investigative Hold areas in a manner which ensures its ability to locate vehicles requested by SFPD within one hour of SFPD's request.
- v. The Contractor shall submit a Police Department Procedures Plan to the City describing in detail how it will process Investigative Hold vehicles to meet service requirements specified in this Agreement.

**b. No ID Vehicles**

- i. The Contractor shall impound all vehicles with no visible VIN under a "No ID" number and shall be designated as a vehicle subject to Investigative Hold and held for inspection by the SFPD Auto Detail regardless of which City agency initiated the Tow Request.
- ii. The Contractor shall include No ID vehicles in regular reports to the SFPD of Police Hold vehicles as specified in Section V of this Appendix A.
- iii. The Contractor shall keep No ID vehicles within the No ID area (excluding oversized vehicles); with the exception that Contractor shall move a No ID vehicle out of the No ID area within twenty-four (24) hours of receiving a request to do so by the SFPD.
- iv. If a VIN is found following inspection by the SFPD, the Contractor shall follow applicable Lien Sale provisions of the Vehicle Code for processing that vehicle. Otherwise, Contractor shall designate the vehicle as an "Unable to Identify" or "UTID" vehicle and, after receipt of a written release by the SFPD (DMV Form 462, "Public agency Authorization of Disposal of Vehicle" or successor form), such UTID vehicle shall be disposed of as required by the Vehicle Code and in accordance with instructions on DMV Form 462 or successor form.
- v. The Contractor shall allow SFPD personnel with written authorization from the Chief of Police to remove parts from any No ID vehicle, except as prohibited in the SFPD approved Police Procedures Plan.

**c. Documentation Requirement for SFPD Released Vehicles**

- i. The Contractor shall not release or allow parts to be removed from Police Hold vehicles without a release authorization from the SFPD.
- ii. The SFPD will provide the Contractor a standard form to be used for all release authorizations and a list of individuals authorized to provide vehicle and Personal Property Releases.
- iii. Any Electronic Forms shall be capable of being printed in an Adobe .PDF or equivalent format.
- iv. The Contractor shall inform the Customer that release of a vehicle subject to Police Hold may only be obtained by going to the SFPD Traffic Administration Unit at 850 Bryant Street, Room 154, to request that the vehicle be released.

**d. Recovered Stolen Vehicles**

- i. Recovered stolen vehicles may be released from any district police station with presentation of the appropriate SFPD release form or as otherwise specified by SFPD.
- ii. The Contractor shall cooperate with City in the coordination of electronic information between DMV and City, between City agencies, and between Contractor and City for the purpose of early identification of stolen vehicles and prompt notification of the owner.
- iii. Procedures for waivers and reimbursement of towing and storage fees for stolen vehicles are described in Section VII of this Appendix A.

**e. Reporting of Police Investigative Holds**

- i. The Contractor shall submit to the SFPD a weekly report listing all Investigative Hold vehicles that are currently being stored by the Contractor in accordance with the requirements of Section V of this Appendix A, delivered to the person designated by the SFPD as the inspector in charge of auto Investigative Holds.
- ii. The Contractor shall issue reports to SFPD personnel designated by the Chief of Police in writing, the Director of SFMTA or her or his designee, and the SFMTA Contract Monitor upon occurrence of the following events:
  - A "350 vehicle warning" notice on each day that the number of Investigative Hold vehicles stored by Contractor exceeds 350 vehicles; and
  - An inventory report of Investigative Hold vehicles on each day that the number of Investigative Hold vehicles stored by Contractor exceeds 375 vehicles.

**f. Police Administrative Hold Procedures**

**i. Designation**

The SFPD may designate a vehicle as an Administrative Hold vehicle. The Contractor shall identify and track Administrative Holds as either "STOP" holds or "Traffic Administration" holds. Vehicles subject to Administrative Hold by the SFPD or the SFMTA shall not be processed or otherwise treated as Investigative Hold vehicles.

**ii. Release Restrictions**

- The Contractor shall not release SFPD Administrative Hold vehicles that are impounded in accordance with the provisions of the Vehicle Code, including Administrative Holds resulting from the SFPD's STOP Program, until receipt of a written authorization for the release by the SFPD.
- The Contractor may proceed with the Lien Sale of the vehicle in accordance with all applicable Lien Sale requirements, without written

SFPD release authorization. SFPD STOP Administrative Hold vehicles must be held for at least 30 days prior to Lien Sale.

## **J. Vehicle Release Procedures**

### **1. Improper Disposal of Vehicles**

- a. If, in violation of applicable law or this Agreement, the Contractor releases, sells, disposes of, or otherwise loses possession of or is unable to locate any vehicle that it has towed under this Agreement, notwithstanding any other criminal or civil penalties levied by a court of law, the Contractor ***shall have 60 days to resolve*** any Claim filed by the vehicle owner for the loss of the vehicle.
- b. The Contractor must notify the SFMTA within 72 hours of any incidents regarding loss of a towed vehicle due to any of the circumstances above.

### **2. Conditions for Dropped Tow Designation**

Tow Truck Operator will conduct a Dropped Tow if the vehicle owner or operator claims the vehicle before one or more of the following has occurred:

- a. All required paperwork or electronic Records are complete
- b. The Tow Truck Operator has completely attached the Tow Equipment to the vehicle
- c. The tow truck is in the lane of traffic and ready to drive to the appropriate storage facility.

### **3. Compensation for Dropped Tows**

- a. The Contractor shall compensate the Tow Truck Operator 25% of the base Tow Firm Fee (applicable to Light Duty, Medium Duty, or Heavy Duty tow fees) the Tow Truck Operator would have received had the tow been completed.
- b. The following conditions must be met to qualify for compensation of the Dropped Tow fee:
  - i. The Tow Truck Operator or Tow Equipment makes contact with the vehicle
  - ii. The Parking Control Officer must have been present before the Tow Truck Operator or Tow Equipment makes contact with the vehicle
  - iii. The Parking Control Officer or police officer has requested a dropped tow
- c. The Contractor and SFMTA shall develop a mutually agreed system to track and monitor dropped tows.
- d. The Contractor shall include in its monthly operational report all vehicle drops.

### **4. Release Regulations**

Towed vehicles shall be released by the Contractor from impoundment in accordance with the California Vehicle Code, and in accordance with such rules and regulations implemented by authorized City agencies to the extent they are consistent with the Vehicle Code.

## **5. Release Process**

When a Customer arrives at the Customer Service Center to retrieve their vehicle:

- a. The Contractor shall identify the requested vehicle by license number, Vehicle Identification Number, vehicle make, date and location of tow or from other information provided by the Customer.
- b. The Customer will be required to provide evidence satisfactory to the Contractor's personnel that she/he is the person entitled to receive the vehicle. This shall include, but is not limited to, a key to the vehicle and a valid operator's license.
- c. The Contractor shall verify that the requested vehicle is registered as defined by California law by reviewing registration tag.
- d. When the Contractor's personnel is satisfied that the Customer is entitled to the vehicle, the Contractor shall record the identity of the person, the number and expiration date of the operator's license, and collect applicable fees. The Contractor shall then release the vehicle to the Customer within one hour of the time the Customer begins the release procedure.
- e. If the vehicle is stored at the Long-Term Storage Facility, transportation to that location will be provided by the Contractor at no charge to the Customer during Long-Term Storage Facility business hours, or the vehicle shall be delivered to the Customer Service Center within one hour of payment of fees associated with vehicle tow.
- f. The Contractor shall collect from the Customer not more than one Transfer Fee.
- g. The SFMTA may require Contractor to verify valid insurance prior to vehicle release.

## **6. Release Exceptions**

- a. In the event that the SFPD has identified, in writing or via a City-approved electronic means, a vehicle as having a Police Hold, the Contractor shall not release the vehicle without written or electronic authorization from the SFPD.
- b. The Contractor shall NOT return/release a vehicle if the vehicle has five or more delinquent parking violations listed in the SFMTA computer database (scofflaw) until those Citations are paid. Delinquent violations are those Citations that have not been paid and are not scheduled for administrative review or hearing by the SFMTA.

- c. The Contractor shall determine Citation status through authorized access to the SFMTA's Citation Management System.
- d. The Contractor shall refer the Customer to the SFMTA Customer service center, at 11 South Van Ness Avenue, if the Customer wishes to dispute a Citation.
- e. If the Customer wishes to pay the Citations not required for release of a vehicle, the Contractor shall accept payment, record the payment immediately in the SFMTA's Citation Management System and release the vehicle as described above.

## **7. Personal Property Releases**

- a. A Personal Property Release allows the Customer to enter the vehicle, with the supervision of the Contractor, to obtain property from the towed vehicle.
- b. The Contractor's supervision shall include preparing a written inventory of the items removed by the Customer. However, the Contractor has no responsibility for assisting the Customer to remove personal property from the vehicle.
- c. The Contractor shall require the Customer to sign the inventory statement listing the item(s) they removed from the vehicle, and shall file the Personal Property Release data collected in the TVMS system or in a paper file with a file name cross referencing the Tow Request ID in the TVMS.
- d. The Contractor shall only release personal property found within any vehicle in its custody when it is satisfied that the Customer is entitled to access the vehicle and only if its contents and the vehicle is not subject to a Police Hold.

## **8. Valuation of Vehicles**

### **a. Lien**

- i. The Contractor shall have each impounded vehicle assigned a lien category (Lien 1, Lien 2 or Lien 3 Vehicle) during vehicle intake, but in no event, later than 72 hours after the vehicle's initial arrival at a designated intake Facility. The Contractor shall assign a Lien Category by accurately assessing the monetary value of each vehicle under penalty of perjury as required by California Vehicle Code Section 22670(b).
- ii. The Contractor shall comply with all state and local laws and regulations applicable to notice and conduct of Lien Sales of vehicles, including, but not limited to California Civil Code §§ 3068-3074 and Division 11, Chapter 10, Article 2 of the Vehicle Code (§§ 22650 et seq.), and any successor statutes.



- iii. The Contractor shall make a diligent effort to locate and contact the owner and any lienholder(s) for each impounded vehicle, in accordance with all state and local laws and regulations.
- iv. The Contractor or its designee shall request vehicle ownership information from the DMV for all vehicles stored at least 72 hours, and shall, whenever ownership information is available, send lien notices to registered owners, lien holders and legal owners identified by the DMV between three and seven days from the date that the vehicle was towed.
- v. If the Contractor is able to ascertain the identity of the owner of the vehicle and fails to send notice under this section within seven days of the date that the vehicle was towed, the Contractor shall waive storage fees for the vehicle for the eighth day of storage through the lien start date.
- vi. The Contractor shall use an electronic means of communicating its requests for vehicle license and ownership information to, and of receiving responsive information from the DMV. Exceptions to the deadlines for providing prompt notice of storage to vehicle owners pursuant to this Section include:
  - Vehicles subject to Investigative Holds.  
Ownership information for these vehicles should be requested and notices sent within 48 hours after the hold is released by the SFPD, and storage charges shall begin to accrue as of the date of the release of the hold.
  - Vehicles identified as No ID vehicles pursuant to Section II.1.5.b of this Appendix A.  
Ownership information for these vehicles should be requested and notices sent within 48 hours after vehicle identification has been provided by SFPD.
  - Vehicles with out-of-state license plates for which the DMV does not have ownership information. Lien notices for these vehicles must be sent to DMV in accordance with the requirements of the Vehicle Code.
- vii. The form of notice sent to registered owners, lien holders and legal owners shall be subject to Vehicle Code, Civil Code, and DMV requirements and prior approval by City. Lien sale notices shall include a statement that failure to Claim a vehicle is not sufficient to avoid towing and storage costs in excess of the vehicle's sale price, and that, with the exception of Lien 1 Vehicles, such towing and storage charges in excess of the vehicle's sale price may be subject to collection.
- viii. Lien sale notices shall also include the following information:

*“If your vehicle is sold at Auction, you may be entitled to any proceeds that exceed the amount of any applicable City fees, and the amount of any unpaid parking Citations on the vehicle. The City is required to send the excess proceeds to the California Department of Motor Vehicles to be deposited in the Motor Vehicle Account in the State Transportation Fund. If you do not claim the excess proceeds within three years of the date that the money is deposited into the Motor Vehicle Account, you may forfeit your right to the money under California Civil Code Section 3073. In order to find out if your car sold for more than our lien amount, you may contact the Lien Sale Unit at the Department of Motor Vehicles at the following address: California Department of Motor Vehicles, Lien Sale Unit, P.O. Box 932317, Sacramento, CA 94232-3170. Or, you may call the Lien Sale Unit at the following telephone number: 1-916-657-7976.”*

- ix. The Contractor shall provide a bi-weekly Lien Sale report to SFMTA that must include the VIN, license plate number, year and model of each vehicle sold at Auction, the Lien classification of the car, the starting bid amount, the actual sale amount, and a detailed description of the distribution of deficiency or excess proceeds amounts.
- x. The Contractor shall not sell Lien 1 vehicles at the public Auction. All Lien 1 vehicles shall be sold to dismantlers.
- xi. The Contractor shall create a Vehicle Valuation Plan as part of the Operations Manual elements **within 60 days of the date specified in the Notice to Proceed.**

**b. Lien Sale/Auction Procedures**

- i. The Contractor shall track lien-related dates, and process the official lien notification paperwork as required for Lien Sales by applicable law in the state of California.
- ii. The Contractor's Lien Sale notice for Lien 2 and Lien 3 vehicles shall include the specific date that the vehicle is scheduled to be sold at Auction. Contractor may use this date to calculate the amount of storage charges due.
- iii. The Contractor shall not process the Bill of Sale and the Certificate of Lien Sale until the Auction sale date and shall include on these forms the name of the buyer and the purchase price of the vehicle.
- iv. Unless the SFMTA has given prior written approval to suspend a scheduled Lien Sale. The Contractor shall conduct Lien Sales at least every other week for vehicles that have been cleared for sale after the lien process is complete.
- v. The day of the week for these Auctions is subject to approval by SFMTA. Currently the SFMTA has approved Wednesday as a regularly scheduled Auction day.

- vi. After the Contractor initiates the lien process for a vehicle with the DMV, Contractor's valuation and classification of the vehicle shall be subject to later adjustment only as directed by or with the approval of the SFMTA's designated personnel.
- vii. In no event shall any impounded vehicle be pulled from a pending Auction for the purpose of reclassifying the vehicle after the Auction has begun. Changes to this policy require written approval from the SFMTA.
- viii. The Contractor is required to send the excess proceeds to the California Department of Motor Vehicles to be deposited in the Motor Vehicle Account in the State Transportation Fund.
- ix. Vehicles upon which the Contractor issues lien holds shall be stored primarily at the Long-Term Storage Facility. With the exception of Lien 3 Vehicles, which must be held for ten days after the actual date of sale pursuant to Civil Code Section 3071(k), all vehicles that are Auctioned or sold for dismantling shall be removed from the PSF or LSF within one week after the date of sale. Lien 3 Vehicles shall be removed from the PSF or LSF within 14 days of the date of sale.

**c. Deficiency Claims**

- i. Upon request of the SFMTA, the Contractor shall file Deficiency Claims under California Civil Code § 3068.1, for any fees still owed by the Customer after the Lien sale of vehicles listed as Lien 2 or Lien 3. Before attempting collection of the Deficiency Claim, the Contractor shall send a notice to the registered owner of the amount of the Deficiency Claim, the basis of charges, including the dates and amounts of towing and storage fees, the make, model and license number of the vehicle that is the basis for the Claim, and the amount of the debt, including the amount that is offset by money recovered from the sale or salvage of the vehicle. Documentation of any amounts received by the Contractor on behalf of the City for the sale or salvage of the vehicle shall be included with such notice.
- ii. In the event that SFMTA approves the Contractor using a third-party vendor to provide collection Services on behalf of the City for these Deficiency Claims, the Contractor shall contractually require the third-party vendor to meet the Lien Sale notice requirements of this Section II.J.7. The form of such notice, whether sent by the Contractor or by a third-party vendor, shall be subject to prior approval by City.
- iii. Any amounts incurred to perform these collections will be reimbursed to the Contractor by the SFMTA and all amounts collected will be paid by the Contractor to the SFMTA.

**d. Disposal of Unsold Vehicles**

At least once every other week Contractor shall remove all sold Lien 1 vehicles from the Long-term Secondary Facility.

**e. Records of Vehicle Auction Purchasers**

- i. The Contractor shall require all persons who desire to purchase vehicles at Auction to pre-register. The Contractor shall require all registrants to provide photo identification with current address. Contractor shall maintain Records of each purchaser's name and address.
- ii. The Contractor shall maintain Records of each purchaser's name and address. The information shall be maintained in TVMS and shall be linked to the vehicle purchased.

**f. Vehicle Sales to Certain Individuals Prohibited**

- i. The Contractor shall not knowingly sell vehicles at Auction to any individuals meeting the following criteria (collectively, "Restricted Auction Participants"):
  - The Contract Monitor and any Close Family Member of the Contract Monitor;
  - The Contractor's employees and any Close Family Member of the Contractor's employees;
  - Any individual designated to provide auditing Services under the Agreement as described; and
  - Any person who is acting or has acted within the previous three years as the Contractor's vehicle Auctioneer, and any Close Family Member of a person who is acting or has acted within the past three years as Contractor's vehicle Auctioneer.
- ii. The Contractor may develop lists of Auction participants who demonstrate a tendency to purchase and subsequently abandon vehicles purchased at Auction on public or private property, and may prohibit such persons and any other persons who are known to have engaged in illegal conduct or conduct prohibited by this Agreement before, during or after an Auction from submitting bids.
- iii. The Contractor must obtain and verify a list of the Restricted Auction Participants at the time of any changes to the current employee list, the Auctioneer and/or the individuals designated to provide auditing Services under the Agreement.
- iv. The Contractor must establish a clear employment policy that prohibits employees and their Close Family Members from making purchases of vehicles at Contractor's Auctions. The policy must be included in Contractor's employee policies manual, and all new employees are required to review and acknowledge acceptance of the employee policies manual at the time of employment.
- v. The Contractor must act immediately to initiate termination proceedings for any employee found to have violated this policy and

must immediately notify the City if it has actual knowledge or suspicion of any employee violating this policy.

- vi. On at least a quarterly basis, The SFMTA may conduct an audit of the of the Restricted Auction Participants list, using the most current list and a random sample set of vehicles sold through the Auction during the given evaluation period, to determine if any vehicle sales within the sample are prohibited under this Section II(J)(7)(f). The Contractor shall provide the necessary tools to facilitate an auditable process.

## **K. Monetary Claims and Service Complaints Tracking**

### **1. Monetary Claims Procedure**

- a. The Contractor shall establish a procedure by which Customers whose vehicles have been towed and/or stored may file a monetary Claim against the Contractor.
- b. The Contractor shall respond to all Monetary Claims ***within 14 days of receipt of the Claim***, either to accept, deny or request further information for investigation.
- c. The Contractor shall in all cases endeavor to resolve Claims fairly and expeditiously. The Contractor must resolve all accepted Claims ***within six months*** of receipt unless:
  - i. Such Claim is abandoned by the Customer's failure to respond to Contractor's communication for a period of one calendar month, or
  - ii. The Claimant files a court action involving the subject of the Claim.
- d. The Contractor shall designate a Claims manager who shall supervise the Contractor's Claims procedures and shall be available during regular business hours to discuss Claims with Customers in person or by telephone.
- e. The Contractor shall maintain electronic Records and an audit trail of all Claims filed and of all correspondence with Customers, including but not limited to denials of Claims, settlement offers and amounts paid on Claims. Records shall be kept for the term of the Agreement, including any extensions.
- f. The Contractor also shall retain any supporting documents submitted with a Claim in accordance with record retention requirements of this Agreement. The Contractor shall respond to City requests to review Records related to Claims within seven days of request.
- g. The Contractor shall track Claims using both paper forms and electronic Records. Using electronic Records, the Contractor shall provide the City with supplemental, specialized reports regarding any Claim upon request within seven days of request.

### **2. Status Reports of Monetary Claims**

The Contractor shall submit a monthly Monetary Claims Status Report that contains the following information:

- a. Claim tracking number
- b. Name of Customer filing Claim
- c. Date Claim received
- d. Name of Contractor employee who processed Claim
- e. Brief description of Claim
- f. Estimated value of Claim, when available
- g. Verified amount of Claim
- h. Status of Claim
- i. Average time between receipt of Claim and resolution of Claim
- j. Brief description of Claim resolution
- k. Date of resolution of Claim

**3. Service Complaint Procedure**

- a. The Contractor shall establish a procedure by which Customers may submit service Complaints about the Contractor's performance of the Services under this Agreement.
- b. The Contractor shall respond to all Service Complaints, regardless of origin (by mail, phone, in person or via the internet) within seven days of receipt of the Complaint.
- c. The Contractor shall make available to Customers a service Complaint form that includes a self-addressed, pre-paid postage envelope.
- d. The Contractor's Complaint procedure shall allow service Complaints to be submitted by mail, fax or internet, and shall allow Customers to request a Complaint form by telephone, fax, in person or by email.
- e. The Contractor shall record the name, telephone number, and address of each complainant and the details of each service Complaint.

**4. Status Reports of Service Complaints**

- a. The Contractor shall maintain a Service Complaint summary in a form acceptable to the SFMTA that contains the following information:
  - i. Complaint tracking number
  - ii. Name of Customer/complainant
  - iii. Date Complaint received
  - iv. Name of Contractor employee who processed Complaint
  - v. Brief description of Complaint
  - vi. Status of Complaint

- vii. Brief description of Complaint resolution
- viii. Date of resolution of Complaint
- b. The Contractor also shall retain any supporting documents submitted with a Complaint in accordance with record retention requirements of this Agreement. The Contractor shall respond to City requests to review Records related to Complaints ***within seven days of request.***
- c. The Contractor shall track Complaints using both paper forms and electronic Records. Using electronic Records, the Contractor shall provide the City with supplemental, specialized reports regarding any Complaint upon request ***within seven days of request.***

#### **5. City Controller's Audits**

- a. SFMTA reserves the right to perform compliance or financial audits during the term of the Contract through the Controller's Audit Division or by an auditing firm approved by the SFMTA Controller's Audit Division and the SFMTA. The audit report may include but are not limited to the following:
  - i. All monies collected by the Contractor under the Contract
  - ii. A review of all Auction procedures, including compliance with the legal and contractual requirements for the Lien Sale process
  - iii. Procedures to determine compliance with all requirements of the Agreement.
- b. The Contractor shall also provide SFMTA with a copy of any DMV reports or audits of the Contractor's practices or performance of its responsibilities under Contract that are in the Contractor's possession. If such reports are not in the Contractor's possession, the Contractor shall sign a waiver authorizing DMV to share any such reports with SFMTA.

#### **6. Acceptance of Parking Citation Payments**

- a. The Contractor shall accept payment of parking Citations at the Primary Storage Facility's CSC during business hours by any Customer regardless of whether the Customer's vehicle has been towed.
- b. As a condition of release of a towed vehicle, the Contractor shall require payment of all delinquent parking violations on the vehicle if there are five or more delinquent violations assigned to the vehicle (scofflaw).
- c. The Contractor shall deposit all monies collected for parking Citation payments in the SFMTA's account designated by the SFMTA's controller, the next business day. The Contractor shall assume all responsibility for any shortages on monies collected for parking Citation payments.
- d. The Contractor shall utilize the SFMTA Citation Management System to determine open Citations and the amount due on each and shall post payments on an on-line basis to the SFMTA's system 24-hours per day, seven days per week.

- e. The Contractor shall pay for hardware, connections and any other costs associated with making the connection to SFMTA's Citation Management System.



### III. STAFFING

#### A. Tow Firm/Tow Truck Operator Procedures

##### 1. Subcontracting

The Contractor may subcontract with one or more Tow Firms for the provision of towing Services to Contractor in accordance with the Agreement. The Contractor shall submit a list of subcontractors ***within 30 days of the date specified in the Notice to Proceed***. The Contractor must notify the SFMTA of any modifications to the submitted subcontractor list.

##### 2. Vehicle Signage

- a. All tow vehicles used for providing towing Services must bear a sign stating the Contractor's name (above), the Tow Firm's trade name (below), and the Contractor's address and telephone number, all in characters at least 1½ inches high on both tow truck doors.
- b. All tow trucks shall bear an identifying number in characters at least 3 inches high on both sides of the vehicle. Detachable signs may not be used for this purpose.

##### 3. Tow Firm Subcontracting Agreements

- a. Electronic copies of all signed Agreements entered into by the Contractor with Tow Firms shall be available to the ***SFMTA within seven days of signing***.
- b. The Contractor shall include current documentation of required proof of insurance for each Tow Firm and licenses for operators used by each Tow Firm.
- c. The Contractor is responsible for keeping the SFMTA up-to-date with the Tow Firms used in performance of the Agreement, including new contracts, the addition or release of any Tow Firm, or renaming of any Tow Firm.

##### 4. Licenses and Permits

- a. The Contractor shall have and maintain at all times valid licenses and permits and shall require the same of any Tow Firms.
- b. The Contractor shall, at a minimum, audit annually all Tow Firms to ensure that all licenses and permits are up to date and valid, and maintain a current file for the Contract Monitor to review and approve. The SFMTA shall reserve the right to direct the Contractor to perform more frequent audits.
- c. The Contractor is responsible for any and all Claims arising out of the failure to maintain current permits and licenses.

## **5. Operator Staffing**

- a. The procedures and regulations set forth in Articles 30 and 30.1 of the San Francisco Police Code shall apply to all subcontracting Tow Truck Operators and Tow Firms conducting any tow Services under the Agreement.
- b. The Contractor shall require that all Tow Firms and Tow Truck Operators used in the performance of the Agreement to have a valid tow permit license issued by the SFPD.

## **6. Uniforms**

All subcontractor personnel who have regular, continuous contact with members of the public shall be neat in appearance and courteous to the public.

- a. All Tow Truck Operators must display photo ID badges at all times when on duty. The form and design of the photo ID badges must be approved by the City.
- b. All Tow Truck Operators must wear at all times a standard colored shirt with the name of the employee affixed to right or left side of the shirt. The Contractor or subcontractor's company name shall be displayed on the opposite side of the shirt and/or jacket.

## **B. Vehicle Auctioneer**

### **1. Rotation Requirements**

- a. The Contractor shall hire the Services of independent Auctioneers at their own expense.
- b. The Contractor shall rotate a full-time Auctioneer at least once per year except with the SFMTA's prior written approval. The Contractor may propose an alternate model of rotation, but any alternate rotation models are subject to written approval of the SFMTA.
- c. Upon the Contractor's request, and with prior written approval by the SFMTA, an individual who has served as a full-time Auctioneer in the past, but not within the preceding year, may again act as a full-time Auctioneer.
- d. A full-time Auctioneer is defined as one who has performed more than 50% of the Auctions within a given Contract year.
- e. The Contractor shall keep Records of Auctioneer rotation and shall produce those Records within 48 hours of a request from the SFMTA.

### **2. Information Provided to Auctioneer**

- a. Auctions shall be held at least every other week, for a minimum total of 26 Auctions annually. The Contractor shall notify the Auctioneer of the day of regularly scheduled Auctions. The Contractor also shall notify the

Auctioneer a minimum of three days before any additional Auctions shall take place.

- b. The Contractor shall provide the Auctioneer a report of all vehicles being auctioned, which shall include at a minimum the vehicle makes, models, and the minimum asking price as determined by Contractor ("Auctioneer Report").

**c. Violations**

- 1. Any Auctioneer who knowingly has accepted bids on Lien Sale vehicles in violation of this Agreement, or who conducts an Auction that in any way benefits the Auctioneer's own financial interests or the financial interests of any Close Family Member, shall be immediately disqualified from conducting any future Auctions.
- 2. The Contractor must act immediately to dismiss an Auctioneer if it has actual knowledge of any conduct on the part of the Auctioneer that is prohibited under this Section, and must immediately notify the SFMTA if it has actual knowledge or suspicion of any conduct on the part of the Auctioneer that is prohibited under this Section.

## **IV. TOWED VEHICLE MANAGEMENT SOFTWARE (TVMS)**

### **A. Data Availability**

1. The Contractor shall provide SFMTA with, and maintain real-time access to, its database of towed vehicles at all times through a web-based system. On-line access shall be available to SFMTA-designated departments and staff.
2. The Contractor shall ensure that data stored in the TVMS is available on a read-only basis that allows the SFMTA and the Contractor to search for vehicles by license number and VIN number, although the Contractor is welcome to add other means of searching for vehicles.
3. The Contractor's database shall not under any circumstances be maintained using proprietary software that will prevent data analysis/extraction using Excel or comparable software.
4. The Contractor's TVMS must be operational and available at least 98% of the time for any individual calendar month, except in case of failure of third-party providers of electrical power, internet access, cellular communications to provide service.

### **B. Communications**

1. The Contractor's system shall store towed vehicle information that includes but is not limited to the following:
  - a. VIN
  - b. Vehicle license plate number and state of origin
  - c. Vehicle make
  - d. Vehicle model
  - e. Vehicle color
  - f. Location of tow (street and cross street)
  - g. Tow date and time
  - h. Tow equipment used
  - i. Reason for tow
  - j. Time of arrival at the storage Facility
  - k. Date and time of transfer between storage facilities
  - l. Dispatcher ID#
  - m. Tow Truck Operator ID#
  - n. Final disposition of vehicle (released or sold)
  - o. Notes Section (Comments added by customer service representatives from conversations with vehicle owner, lien holder, insurance agent, or any other applicable party).

2. The Contractor shall send towed vehicle information collected on every vehicle towed by each responding Tow Truck Operator in real-time to the TVMS using a wireless communications device. Commute Tows, Special Event Tows, and Regional Sweeps information shall be sent once the tow truck arrives at the appropriate Facility, until enhancements enable Tow Truck Operators to initiate TVMS tow Records from the field.
3. The Contractor shall train employees and Tow Truck Operators on the procedure for inputting the information on towed vehicles. This initial communication will create a new record indexed to the unique, system-generated field in the TVMS for each tow request.

#### **C. User Identification and Permissions**

1. The initial User identification for City employees and other authorized representatives and type of access granted, and any changes must be approved by the SFMTA.
2. The Contractor shall maintain a complete list of Users and associated permissions
3. The User list shall identify the following:
  - a. Name of User
  - b. User's e-mail address
  - c. Agency of User (applicable to City employees and authorized representatives)
  - d. Permissions, including read only, money handling functions, financial adjustment authority, override authority

#### **D. Links to SFPD**

1. ***Within 90 days of Agreement by the Contractor and City on an interface design and joint project plan***, the Contractor shall integrate the TVMS to the SFPD's Computer-Aided Dispatch (CAD) system so that officers can input tow information from the police cars using the CAD.
2. In addition, the Contractor shall, upon the request of the City, determine if it is possible to integrate the TVMS with the California Law Enforcement Telecommunication System (CLETS) to facilitate automated reporting of non-consent tows to Department of Justice system,
3. The integration shall be configured so that no restricted information is available to anyone outside the SFPD.

#### **E. Links to Handheld Citation Issuance Devices**

***Within 90 days of Agreement by the Contractor and City on an interface design and joint project plan***, the Contractor shall integrate the TVMS to the SFMTA's handheld Citation issuance devices.

#### **F. Electronic Storing and Retrieval of Tow Inventory Slips**

1. The Contractor shall electronically scan and file Tow Inventory Slips of all vehicles being towed and cross-reference the scanned slip to the tow record in the TVMS.
2. The Contractor shall ensure that Tow Inventory Slips are scanned and entered into the TVMS system as soon as the vehicle is delivered to the PSF or the LSF, and never more than eight hours after a vehicle is towed.
3. Contractor shall ensure that the City has remote electronic access to Tow Inventory Slip information at all times.
4. The Contractor shall retain electronic copies of all tow slips on file for the term of the Agreement. At the end of the Agreement, the SFMTA will indicate what tow slips need to be transferred based on the agency's document retention requirements.

#### **G. Electronic Storing and Retrieval of Waiver/Reimbursement Forms**

1. The Contractor shall scan all manually-written reimbursement forms and store the forms as an electronically scanned image, cross-referenced to the tow record in the TVMS.
2. The Contractor shall ensure that the SFMTA has remote electronic access to waiver/reimbursement data at all times

#### **H. Electronic Form**

1. Upon request of the SFMTA, and with approval of the SFPD, the Contractor shall develop an Electronic Form for SFMTA and SFPD staff to enter waiver information into the TVMS system. An Adobe .PDF or equivalent copy shall be auto-populated and made available through the TVMS for each applicable tow. The Electronic Form will act as a replacement for the current paper waiver forms.
2. The TVMS shall allow the SFPD and SFMTA to enter waiver instructions. The TVMS shall automatically apply any fee reductions based on waiver instructions provided. Only designated Contractor staff shall complete a Customer invoice.

#### **I. Vehicle Inventory**

1. ***As of the date specified in the Notice to Proceed***, the Contractor shall maintain an electronic vehicle inventory and vehicle locator system at both the Primary and Long-Term Storage Facilities throughout the term of this Agreement, and any extension(s) thereof, in a manner that is satisfactory to the SFMTA.
2. The Contractor's system must be capable of providing electronically to the SFMTA a daily record containing information including tow date, VIN (if available), vehicle make, model, year, and registered owner of all vehicles and the location of all vehicles both at the time of tow and at any point after the vehicle has been towed.

3. The Contractor shall provide a daily vehicle intake report to authorized City agencies through the TVMS system.

#### **J. Customer Invoices**

1. The Contractor shall maintain uniquely numbered invoices of each transaction involving the removal, impoundment, and disposition of all vehicles towed pursuant to the Agreement.
2. Contractor's invoices shall contain the following information: a) date and time an authorized City agency contacts Contractor to request the tow; b) date, time and location of tow and identity of Tow Car Operator; c) make, model, year, vehicle license number and VIN of vehicle towed; d) name and address of registered owner of vehicle towed; e) inclusive dates of and itemized charges for impoundment; and f) date and manner of vehicle disposition and income received therefrom.
3. Electronic Records of all invoices shall be stored in a manner approved by the SFMTA. The SFMTA shall have the ability to review copies of all invoices through the TVMS upon request.
4. The TVMS shall have the ability to separate electronic authorization of waivers by the SFPD or SFMTA from the Contractor's processing of those waivers.

#### **K. Integration of Towing Software with Citation Management System (CMS)**

1. ***Within 90 days of Agreement by the Contractor and City on an interface design and joint project plan***, the Contractor shall create an interface between its TVMS and the City's CMS so that Records on each towed vehicle are created in the City's CMS in real-time as the tows occur.
2. Contractor shall ensure that towed vehicle Records in the TVMS are updated in the City's CMS in real-time for any data element that is shared by the CMS and the TVMS.
3. The Contractor must provide City with vehicle intake information to update the CMS within one hour of the intake of the vehicle.
4. The Contractor must enter all vehicle release information into the CMS within twenty-four hours of release of the vehicle.
5. If the vehicle's identifying information cannot be matched between the CMS and the TVMS, the Contractor shall report the discrepancy to SFMTA within 72 hours.
6. At any time during the term of this Agreement the SFMTA may elect to eliminate the use of the City's CMS for entering and tracking towed and impounded vehicles. Should the SFMTA eliminate the data entry of new tow information into the CMS, the interface requirements of this Section would no longer apply. Instead, the sole record of towed and impounded vehicles would be the Contractor's TVMS system, and the City would have the right to audit this data at any time using reasonable auditing methods.

7. If a record of towed and impounded vehicles is no longer maintained in CMS, the Contractor would be required, on a daily basis, to provide the City with a list, in an electronic format that is approved by the City, of all vehicles that are currently impounded.



## **V. STORAGE AND CUSTOMER SERVICE FACILITIES**

### **A. Facilities Provided**

Contractor shall perform the Services required under this Appendix A at the Primary and Long-term Storage Facilities, which shall be located on premises designated by City in accordance with Section 4.1 of the Towing Agreement. The Contractor shall be required to use the Primary Storage Facility for the short-term storage of vehicles towed because they are illegally parked. The Contractor shall use the Long-Term Storage Facility for both the long-term storage of towed and abandoned vehicles that are unclaimed by vehicle owners, and for hosting Auctions of vehicles that are subject to Lien Sale. The Contractor is responsible to keep all open areas on the properties where storage facilities are located maintained in a clean, secure, neat, and visually presentable manner

### **B. Facility Relocation or Consolidation**

In accordance with the terms of Section 4.1 of the Towing Agreement, the SFMTA reserves the right to designate a new site for the Primary Storage Facility and/or the Long-term Storage Facility in lieu of the sites designated in Section 4.1 as of the Effective Date of the Towing Agreement.

### **C. Electronic Security Systems**

1. The Contractor shall purchase, install and maintain a camera-based security system that can be accessed remotely for the customer service areas, SFPD's Crime Scene Investigation Unit (CSI) bays, all towed vehicle storage areas of the Primary Storage Facility, and the customer service, towed and investigative vehicle storage, and Auction areas of the Long-term Storage Facility.
2. The Contractor's system must have the capacity to allow designated City staff access to camera views at both facilities.
3. The Contractor's system must be reviewed and approved by the SFMTA prior to acceptance.
4. Upon termination of the Agreement, the SFMTA will determine the disposition of the security equipment and will either negotiate purchase of the equipment from the Contractor or will instruct the Contractor to remove all equipment.

### **D. Licenses for Occupancy**

The SFMTA shall grant the Contractor two licenses, one for each Facility, permitting the Contractor to occupy and use each property to perform the operations described herein, subject to the Contractor's compliance with the terms and conditions of the Agreement and license. These licenses will be appendices to the Agreement.

### **E. Vehicle Dismantling/Crushing Prohibition**

The Contractor is prohibited from dismantling or crushing vehicles or removing vehicle fluids at either Facility, except as needed to comply with applicable environmental regulations to be identified in the license for each Facility.

## **F. Maintenance of Facilities**

The Contractor is responsible for ongoing maintenance of all property and equipment within both Facilities, including equipment used by the SFPD as referred to in items G and H of this Section

## **G. Primary Storage Facility**

### **1. Components**

The Primary Storage Facility, currently located at 450 – 7<sup>th</sup> Street, consists of the Customer Service Center, short-term parking lot and a segregated, gated area for the SFPD’s Crime Scene Investigation unit.

### **2. Time Constraints**

- a. The Contractor shall store all towed vehicles that are normally claimed by their owners within 48 hours after being towed, including all towaway and driveway tows, at the PSF.
- b. Vehicles shall be moved to the Long-term Storage Facility per a schedule approved by the SFMTA. Initiation of the vehicle release process shall begin at the Primary Storage Facility.

### **3. Sales Prohibition**

No sales of vehicles or parts shall be conducted at the Primary Storage Facility.

### **4. Customer Service Center**

At the CSC, Customers may recover vehicles in person, and may pay towing and storage charges, Citation fees, boot fees, and other applicable fees, and/or process any documentation required for vehicle release.

### **5. SFPD Investigative Vehicle Work and Storage Areas**

- a. The SFPD currently has indoor space for investigative work done by the Crime Scene Investigation Unit, consisting of two bays and an office, and outdoor space to store investigative vehicles, consisting of covered space for 12 vehicles and additional 38 spaces.
- b. ***Within 60 days of the date specified in the Notice to Proceed***, the Contractor shall obtain a quote, subject to SFMTA approval, for the work necessary to upgrade the current workspace as follows:
  - i. Remove six current non-working hydraulic vehicle lifts (three in each bay).
  - ii. Replace with one electronic vehicle lift in one bay, and one electronic lift and one motorcycle lift in the second bay.
  - iii. Replace current fencing for investigative vehicle storage with aluminum fencing to prevent view of the stored investigative vehicles.

- iv. Upgrade lighting within the bays to allow for detailed examination of vehicles on lifts.
- v. Install in storage space and bays camera surveillance equipment that saves footage for up to 120 days and can be viewed upon request by the SFPD.
- vi. Contractor shall submit all bills for upgrading the CSI bays and fencing to the City for reimbursement.

## **H. Long Term Storage Facility (LSF)**

### **1. Components**

The LSF currently consists of two customer service areas (one for vehicle retrieval and one for Auction-related Services), Contractor office space, an Auction area, and SFPD hold areas (indoor and outdoor) with office space, and long-term vehicle storage space.

### **2. Business Hours**

The Primary Storage Facility shall be open for business 24 hours per day, 7 days per week, including holidays. The Long-Term Storage Facility shall be open for business from 8 a.m. to 5 p.m. Monday through Friday and 8 a.m. to noon on Saturday. However, vehicles stored in the Long-Term Storage Facility must be available for release or transport to the Primary Storage Facility at any time in compliance with the release requirements stated herein.

### **3. Lease Obligations to Owner of Facility**

The Contractor must sign a license with SFMTA for each Facility that includes Contractor's agreement to assume all responsibilities for and be bound by all covenants, terms, and conditions of the SFMTA's lease agreement each Facility.

### **4. SFPD Requirements**

- a. The SFPD hold and No ID examination areas are as follows:
  - i. Indoor space for at least twenty-five (25) No ID vehicles.
  - ii. One vehicle lift and one motorcycle lift.
  - iii. Secured indoor space for at least 100 Investigative Hold vehicles.
  - iv. Secured outdoor space for at least 175 Investigative Hold vehicles.
- b. No person shall be allowed access to an Investigative Hold vehicle or retrieve personal property from such vehicle without written authorization from the SFPD.
- c. If the SFPD designates an Investigative Hold vehicle as an evidentiary vehicle at the time of the tow request, the Contractor shall ensure that the towing and storage of the vehicle is conducted in accordance with any standards for handling and preservation of evidence provided to Contractor by the SFPD in writing.

- d. The Contractor shall maintain the Investigative Hold areas in a manner which ensures its ability to locate vehicles requested by SFPD within one hour of SFPD's request. The Contractor may, from time to time, request training for Tow Truck Operators and employees for the handling of evidentiary vehicles from the SFPD.

**I. Additional Requirements for Both Facilities**

1. The Contractor must comply with all federal, State and local laws, and safety regulations applicable to its proposed use.
2. The Contractor shall ensure that all areas, including those servicing Customers for vehicle pick up and Auction activities are clean and well maintained.
3. The Contractor shall meet all onsite environmental requirements for handling and storage of hazardous materials.
4. The Contractor shall be responsible for existing gate and fencing maintenance.
5. The Contractor shall repair any damage to the existing pavement on Facility property during the normal course of business.
6. The Contractor shall maintain adequate lighting for indoor and nighttime safety of employees and Customers.
7. The Contractor shall ensure adequate drop off-space so that tow and transport trucks can quickly and efficiently load and unload on the property. No loading, unloading, parking or storage of vehicles shall be permitted on the surrounding public streets or right of ways.
8. The Contractor is prohibited from selling vehicle parts at the Facility.

**J. Reconfiguring SFPD Areas**

Any modifications to the configuration at the PSF and LSF must be approved, in advance and in writing, by the City.

**K. Right to Inspect**

Any authorized representative of the SFMTA has the right to inspect the Contractor's Primary and Long-Term Storage Facilities at all times for the purpose of evaluating the Contractor's performance. SFMTA officials and inspectors may conduct periodic site visits at any time to inspect for permit conformance and customer service standards, or to respond to Customer Complaints. Contractor must provide the SFMTA with unrestricted access to the Primary and Long-Term Storage Facilities.

## **VI. REPORTING**

- A.** The Contractor shall provide SFMTA the ability to access static reports via a real-time, web-based reporting system.
- B.** The Contractor's reporting system shall also allow for on-demand, ad hoc requests and system monitoring.
- C.** The Contractor shall be prepared to assist the SFMTA in responding to requests for tow-related information from the public and to produce request reports within 48 hours of the request unless otherwise specified.
- D.** The TVMS must have the ability to generate predefined reports, including but not limited to the following:

### **1. Daily Reports**

Tow Activity

### **2. Weekdays**

- a.** Citations
- b.** Holds – Daily
- c.** Holds – in excess of 350
- d.** Payment Details
- e.** Receipt Fee Items
- f.** Tow Response – Daily
- g.** Unreleased Vehicles

### **3. Weekly**

Holds - Active

### **4. Monthly Reports**

- a.** Auctioneer
- b.** Claims
- c.** Complaints
- d.** DBE
- e.** Dropped Tows - Monthly
- f.** Financial and Operational Summary
- g.** Released Vehicles
- h.** Sales - Deficiency
- i.** Sales - Excess
- j.** Service - Call Center
- k.** Service - In-Person
- l.** Sold Vehicles
- m.** Sold Vehicles - Buyers
- n.** Special Event Tows - Monthly
- o.** Staffing Levels
- p.** Stolen Vehicles - Monthly
- q.** Stored Vehicles

- r. Survey
  - s. Tow Activity - Monthly
  - t. Tow Response - Monthly
  - u. Transfers – Monthly
- 5. Quarterly**  
Subcontractor Performance
- 6. Fiscal Year**
- a. Abandoned Vehicle Abatement
  - b. Dropped Tows
  - c. Revenue by Agency
  - d. Special Event Tows
  - e. Stolen Vehicles
  - f. Tow Activity - Equipment Type
  - g. Transfers
- 7. Special – every 20 minutes or as needed**  
Scheduled Tows – Towaway
- 8. Upon update or as needed**
- a. Management Contact List
  - b. List of Subcontractors

## **VII. Operations Manual**

- A.** The Contractor shall update and submit the plans listed below for SFMTA approval within 90 days of the date specified in the Notice to Proceed. The SFMTA will provide edits within 90 days of the receipt of all plans. The SFMTA reserves the right to request additional updates for one or all plans as needed.
- B.** The Contractor is responsible for maintaining an Operations Manual consisting of plans for various Services to be provided under this Agreement.
- C.** The Operations Manual shall include the following plans:
  - 1.** Customer Service Plan
  - 2.** Policy and Procedures Plan
  - 3.** Auctioneer Staffing Plan
  - 4.** SFPD Procedures Plan
  - 5.** Public Auction Plan
  - 6.** Monetary Claims Processing Plan
  - 7.** Customer Service Complaint and Response Procedures Plan
  - 8.** Adjustment Procedures, Reconciliation, and Oversight Plan
  - 9.** Security and Personal Property Plan
  - 10.** Vehicle Valuation Standards Plan
  - 11.** Facilities Management and Maintenance Plan
    - a.** Pollution prevention
    - b.** Preventative maintenance.
    - c.** Ensuring the acceptable condition of the premises if Contractor vacates the Facility.
    - d.** Safety, (including fire prevention regulations from the San Francisco Fire Department, and training for surveillance of the premises.
    - e.** Plans for future tenant Improvements.
    - f.** Outreach to residents in the immediate vicinity (Bayshore).

## **VIII. FEES, DEPOSITS, AND HANDLING OF MONIES**

### **A. Contractor Fees to the SFMTA**

The Contractor shall submit monthly invoices to the SFMTA for fees as outlined in Appendix B – Calculation of Charges.

### **B. Fees Collected on behalf of the SFMTA**

The Contractor shall collect all fees due on a particular vehicle prior to the release of the vehicle, except where specifically noted.

#### **1. Administrative Towing and Storage Fees**

The Contractor shall collect SFMTA administrative, towing and storage fees for all vehicles recovered by the vehicle owner. The amount of these fees is subject to change in accordance with the provisions of San Francisco Transportation Code § 305.

#### **2. Citation and Boot Fees**

- a. The Contractor shall collect payments of Citation and boot fees from Customers with towed vehicles and from members of the public whose vehicles have not been towed, in accordance with all requirements set forth in this Agreement.
- b. Before releasing a towed vehicle that has five or more delinquent Citations, Contractor must collect payment for all delinquent Citations before releasing the vehicle. When a towed vehicle has fewer than five delinquent Citations, Contractor may accept payment for any delinquent or non-delinquent Citations that the Customer wishes to pay. Payment of Citations is not required for a Customer to secure vehicle release if the vehicle has fewer than five delinquent Citations.

#### **3. SFPD Traffic Offender's Fee**

The Contractor shall collect all Traffic Offender's Fees and provide a monthly report of Traffic Offender Fee amounts for the SFMTA.

### **C. Waiver Protocol**

1. The Contractor shall accept waivers issued only by the SFMTA and SFPD with documented (electronic or written) approval by authorized personnel as provided by the SFMTA.
2. Application of waivers to Customer invoices must be processed by Customer Service Center staff only, and must be reviewed by the Customer Service Center's manager (or equivalent).
3. In the event that:
  - a. The SFMTA or the SFPD determines pursuant to a post-storage hearing as required by Vehicle Code § 22852 that the towing, storage, transfer, lien and/or other fees shall be waived for a vehicle, or



- b. SFMTA or the SFPD otherwise determines that the fees for the towing, storage, transfer, lien and/or other fees shall be waived for a vehicle pursuant to Section 303(b) of the Transportation Code,

No such fees shall be charged to the owner or operator of such vehicle. The Contractor shall ensure valid approval of the waiver is received and maintained, and that all transactions are auditable.

4. Failure to adhere to waiver protocol in this section may result in the SFMTA deducting the waiver amount from monthly billings paid to the Contractor.
5. Reimbursements

In the event that the owner or operator of a vehicle has paid for towing, storage, transfer, lien and/or other fees and the City subsequently decides to reimburse the towing, storage, transfer, lien and/or other fees, then Contractor shall direct the Customer to the SFMTA Customer Service Center at 11 South Van Ness Avenue and the City will reimburse the owner or operator in full the amounts previously paid to Contractor for such vehicle, or as directed by the SFMTA.

#### **D. Deposit Requirements**

1. The Contractor shall have effective controls to accurately collect and safeguard funds and demonstrate an adequate separation of duties.
2. Except as otherwise specified herein, the Contractor shall deposit all funds collected under this Section VIII within 24 hours of receipt into an account specified by the City, Monday through Friday, not including weekends and holidays.
3. Any funds with a deadline for deposit that falls on a weekend or a holiday shall be deposited no later than the next business day.
4. All funds due to the SFMTA under this Section shall be paid by the Contractor without prior demand by the SFMTA and without any deduction, setoff, or counterclaim whatsoever, except as expressly provided herein.

#### **1. Deposit of Funds Collected**

- a. The Contractor shall accept the following payment methods:

- i. **Cash:**

- The Contractor shall reconcile all cash receipts on the following business day from the date collected. The Contractor shall deposit all revenue into the SFMTA's designated account on the following business day from the date collected.
- In the event that the Contractor fails to deposit cash revenues, on the following business day from the date collected, the Contractor shall reimburse the SFMTA for the loss of interest for every calendar day that the deposit is delayed.

- The Contractor may be excused from this provision in cases where delay occurred outside of the Contractor's control (e.g. natural disaster, power loss, armored service pick up failure, etc.).
- The Contractor shall notify the SFMTA in writing when this occurs; describing any conditions that it alleges will excuse its performance.
- All cash receiving and reconciliation operations shall be performed under camera surveillance. SFMTA shall have access to a "live" view of such surveillance. The Contractor shall keep an electronic copy of all procedures recorded for a minimum of 90 days. These recordings shall be made available to the SFMTA within one business day of the SFMTA's request.
- All collected funds shall be shipped from Contractor's Facility via armored transport vehicle.

**ii. Debit and Credit Cards**

- The Contractor shall accept debit and credit cards approved by the City, including Discover, Visa, and Master Card. The City currently does not accept AMEX or other cards.
- The City will supply the Contractor with credit card processing terminals and equipment. The Contractor is strictly prohibited from using any credit card processing terminal or equipment not provided by the City.
- The Contractor shall route all credit card payments to the City's merchant account processor, currently Bank of America Merchant Services (BAMS).
- The Contractor shall accept in-person credit card transactions only. The SFMTA reserves the right to approve in writing alternative methods of accepting credit card payments, including online or Interactive Voice Response (IVR) transactions. The Contractor is strictly prohibited from accepting any credit card payments through a method that is not authorized by the City, including fax payments.
- The City shall designate the gateway provider and reserves the right to change the gateway provider at any time during the term of the Agreement and the SFMTA may assume costs for gateway fees directly.
- Upon notification, the Contractor shall transition to the provider chosen by the City and will negotiate the transition period and charges associated with a change of gateway provider.

**iii. Checks**

- The Contractor shall accept checks, with the exception of foreign checks; no foreign checks shall be accepted. All check payments

shall be routed to the City's designated account (currently with Bank of America Merchant Systems (BAMS)).

- The City will supply and set up all the necessary check scanning and verification equipment and terminals. The Contractor is strictly prohibited from accepting any remotely created checks, faxed checks, or check payments thru a scanner not provided by the City or via other means not approved by the City.
- The Contractor shall meet all the preferred technical requirements set forth by the City and BAMS.

#### **E. Record Keeping**

1. The Contractor shall maintain, in accordance with generally accepted accounting principles, complete and accurate books of accounts and Records relating to all items of income received and expenses incurred in the performance of this Agreement.
2. Such books of accounts shall be maintained at the site approved by the SFMTA and in compliance with San Francisco Administrative Code Section 67.29-7(c).

#### **F. Payment Shortages**

1. Should the Contractor fail to collect all amounts due from a Customer, the Contractor shall pay the SFMTA any amounts not collected as required herein. The Contractor shall follow any procedures required by the SFMTA to report overages or shortages. The SFMTA shall deduct, any payment shortages from any monies due to the Contractor,.
2. Exceptions to this requirement are; 1) failure is caused solely by the negligence of SFMTA, 2) a failure of the Citation Management System, or 3) failure because vehicle sold at Auction and sale price insufficient to pay all accrued City fees.
3. The Contractor shall inform the Customer that in lieu of providing payment for fees, they have the option to surrender title to their vehicle to City to stop the accrual of storage fees and mitigate the total fees due. The Contractor must provide clear documentation of the following:
  - a. Date of transfer
  - b. Estimated Lien valuation (i.e. Lien 1, Lien 2 or Lien 3)
  - c. Receipt of the following title transfer documents:
    - i. Certificate of Title (signed by registered owner and legal owner)
    - ii. Application of Duplicate Certificate of Title with current registration (for California only)
    - iii. Bill of Sale
    - iv. Lien Satisfied (this is required if the legal owner has not signed over title)

d. A written statement that the Customer signs stating as follows:

*"I acknowledge that abandoning my vehicle or surrendering the certificate of title does not relieve me of any fees owed for towing, storage, or Citations in excess of the vehicle sale price, and that the remaining balance of fees owed for towing, storage, or Citations, if any, may be subject to collections."*

4. The Contractor shall submit documentation forms for surrender of title to the SFMTA for review and approval prior to distributing to the public.
5. All documentation shall be scanned and electronically attached to the Customer's towed vehicle file for future reference purposes.

**IX. Department Liaison**

In performing the Services provided for in this Agreement, Contractor's liaison with the **SFMTA** will be **David Rosales, Senior Administrative Analyst and Towing Contract Monitor**.

## Appendix B Calculation of Charges

At the beginning of each calendar month of service, Contractor shall provide an invoice to the SFMTA for the monthly management fee for the same service month in the amount of \$665,356. Payment of the invoice shall not be made until after the service month is complete.

Within 10 days after the end of each calendar month of service, Contractor shall provide an invoice to the SFMTA for Services completed in the immediately preceding month for the following per-unit fees:

<u>Fee Type</u>	<u>Fee Amount</u>
Tow fee (per vehicle towed)	\$66.55
Dolly/flatbed fee (per vehicle)	\$40.63
Transfer fee (per vehicle transferred to LSF)	\$31.05
Lien processing fee (per vehicle)	\$15.72
Auction fee (per vehicle sold)	\$73.59
Dropped Tow fee (per vehicle)	\$14.51

Each year, on the first calendar day of the month following the anniversary of the Effective Date of the Agreement, fees listed in this Appendix B shall be adjusted: 1) in direct proportion to the percentage increase in the current Consumer Price Index for Urban Wage Earners for the San Francisco Bay Area ("CPI") for the month immediately preceding the applicable anniversary date ("Current Index") over the CPI for the month of March 2016 ("Base Index"), or 2) by 3%, whichever is lower. If the Current Index has increased over the Base Index, the adjusted fee amount shall be calculated by multiplying the current fee amount by a fraction, the numerator of which is the Current Index and the denominator of which is the Base Index, as follows:

$$\frac{\text{current index}}{\text{base index}} \times \text{current fee amount} = \text{adjusted fee amount}$$

**APPENDIX C**  
**LIQUIDATED DAMAGES**

**I. DEFINITIONS:**

"Failure" or "Fail" shall refer to functionality described under the third column heading "Description of Failure" that falls short of the specified "Threshold for LD Assessment", located in the fourth column. The following items are excluded from the definition of Failure:

1. Unavoidable delays.
2. Failures that are solely caused by the negligent actions or inactions of SFMTA/ City departments or its contractors or subcontractors.
3. Failure of third-party providers of electrical power, internet access or cellular communications.

**II. LIQUIDATED DAMAGES:**

The SFMTA may deduct a sum representing the liquidated damages assessed from any money due to Contractor under this Agreement. Should an assessment take place, the SFMTA will send written notification to the Contractor for its information. Excess liquidated damages (over a monthly cap) will be carried over to the following month.

If two or more Failures are determined for a particular event, the Contractor will be charged for the Failure with the highest assessment.

Where, under the provisions below, SFMTA is required to issue a written warning after the first Failure to the Contractor prior to assessment of liquidated damages, the Contractor's obligation to repair, replace, correct, adjust, or modify a Failure shall not commence until the date SFMTA issues such written warning. The written warning shall include a reasonable description of the nature of the Failure as known to SFMTA at the time. Any extensions to the cure period must be authorized by the SFMTA in writing.

Where, under the provisions below, SFMTA is not required to issue a written warning to Contractor prior to assessment of liquidated damages, SFMTA, as soon as practicable after the Failure, will send a written notice of assessment to Contractor, setting forth a reasonable description of the nature of the Failure, as known to SFMTA at the time, and the amount of the assessment.

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
<b>Appendix A - Section II: Service Requirements</b>					
1	II.F.2.a	The Contractor Fails to provide 16 hours of completed employee customer service training for all employees including subcontractors that interact with the public.	The Contractor does not submit the required training completion certificates within 30 days of the first anniversary of the date specified in the Notice to Proceed.	The SFMTA will issue a written warning. The Contractor shall have one month to cure. If no cure, the assessment will be \$225 per week until certificates are received.	Verification by Certificates
2	II.F.2.b	The Contractor Fails to provide annually four hours of completed customer service “refresher” training to its employees in each subsequent contract year.	The Contractor does not submit the required training completion certificates annually within 30 days of each subsequent anniversary of the date specified in the Notice to Proceed.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure. If no cure, the assessment will be \$225, per week until certificates are received. Additional Failures will be assessed at \$225 for each occurrence the Failure occurs, with no written warning.	Verification by Certificate
3	II.F.3.a	The Contractor Fails to provide an electronic queueing system for the Customer Service Center.	Queueing system is not in place by the date specified in the Notice to Proceed.	The SFMTA will issue a written warning. The Contractor shall have one week to cure. If no cure, the assessment will be \$225 per week until system is in place and fully functional.	Written confirmation and demonstration
4	II.F.4.a	The Contractor Fails to provide a dedicated telephone land line to the SFMTA Tow Desk.	Land line not provided as of the date specified in the Notice to Proceed.	The SFMTA will issue a written warning. The Contractor shall have one week to cure. If no cure, the assessment will be \$225 per week until the phone line is available and fully functional.	Verification with Tow Desk



Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
5	II.F.4.a.iii	The Contractor does not provide sufficient telephone operators to service Customers.	Less than 95% of Customers reach a live operator within three minutes of request; and less than 98% of Customers reach an operator within five minutes of request, within a calendar month.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure by meeting the requirement in the next monthly report. If the Failure is not cured, the assessment will be \$225. Any further Failures, after the first occurrence, will be assessed at \$225 for each month the Failure occurs, with no written warning.	Call Volume Report
6	II.F.4.b.i	The Contractor Fails to establish and maintain one customer service phone line with an Interactive Voice Response (IVR) system that the public may call for information regarding towed vehicles	IVR system is not in place by the date specified in the Notice to Proceed.	The SFMTA will issue a written warning. The Contractor shall have one week to cure. If the Failure is not cured, the assessment will be \$225 per week until system is in place.	Call number
7	II.F.4.d.ii	The Contractor Fails to keep time-stamped audio recordings for the length of time required.	Audio recordings for the previous 120 days prior to request are not available.	The SFMTA will issue a written warning for the first occurrence. Should the Failure occur a second time, the assessment will be \$600. Further Failures will be assessed at \$600 per occurrence, with no written warning.	Spot check by requesting audio

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
8	II.F.4.d.iii	The Contractor Fails to provide time stamped audio recordings to the SFMTA within the time required.	Audio recording is not received by the SFMTA within 48 hours of a request.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one day (not including weekends and holidays) to cure. If no cure, the assessment will be \$600, with an additional \$225 per week not received. Further Failures will have no written warning, and will be assessed at \$600 with an additional \$225 per week not received ,	Spot check by requesting audio
9	II.F.5.a	During Peak Tow Hours, the Contractor will have a sufficient number of trained staff at the Customer Service Center to open up to six windows to the public	Less than six trained staff available to open windows to the public during Peak Tow Hours once or more within one calendar month, unless approved in writing by the SFMTA.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure by meeting the requirement in the next month. If no cure, the assessment will be \$225. Further Failures will be assessed at \$225 for each month the Failure occurs, with no written warning.	Spot Check or Video Review.
10	II.F.5.b	The Contractor Fails to provide window service to Customers within the time required.	Wait for service is longer than ten minutes once or more within a calendar month, unless all six service windows are open.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure by meeting the requirement in the next monthly report. If no cure, the assessment will be \$225. Further Failures will be assessed at \$225 for each month the Failure occurs, with no written warning.	Customer Queue Report/ Spot Checking

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
11	II.F.6.c-d	The Contractor Fails to provide a customer service manager (or authorized supervisor) as required.	No one available during Peak Service Hours  Or  Customer service manager does not attend to line when more than eight people are queued.	The SFMTA will issue a warning for the first occurrence. Further Failures will be assessed at \$600 per occurrence, with no written warning.	Customer complaint to SFMTA and/or spot checking
12	II.F.7	The Contractor Fails to provide required posting or receipt information.	Contractor does not make available to Customers all posting and/or receipt information as described in Appendix A – Scope of Work Sections referenced in column 1.	The SFMTA will issue a warning for the first occurrence. Further Failures will be assessed at \$225 per occurrence, with no written warning.	Customer complaint to SFMTA and/or spot checking
13	II.F.8	The Contractor Fails to create and maintain a website that provides general information to the Customer within the time required.	Website, as specified in scope of work is not available as of the date specified in the Notice to Proceed.	The SFMTA will issue a written warning. The Contractor shall have one week to cure. If no cure, the assessment will be \$225 per week until the website is in place and fully functional.	Written Verification and SFMTA attempts to access website
14	II.G.1.a	The Contractor Fails to provide a Global Positioning Tracking System (GPS) within the time required.	GPS is not operational as of the date specified in the Notice to Proceed.	The SFMTA will issue a written warning. The Contractor shall have one week to cure. If no cure, the assessment will be \$225 per week until system is in place and fully functional.	Written verification/ SFMTA accesses GPS software

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
15	II.G.2.c	The Contractor Fails to ensure that GPS recorded arrival location and the tow vehicle operator location are identical for 95% of the tows during a calendar month.	Less than 95% of GPS recorded arrival location and tow vehicle operator location are identical during a calendar month.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure by meeting the requirement in the next monthly report. If no cure, the assessment will be \$600. Further Failures will be assessed at \$600 for each month the Failure occurs, with no written warning.	GPS Tracking Report and Vehicle Intake Report
16	II.G.3.b.1	The Contractor Fails to provide a list of approved wireless handheld communications devices to Tow Truck Operators within the time required.	List not issued as of the date specified in the Notice to Proceed.	The SFMTA will issue a written warning. The Contractor shall have one week to cure. If no cure, the assessment will be \$225 per week until devices are distributed to all Tow Truck Operators.	Written confirmation that handhelds were distributed/confirm with Enforcement.
17	II.H.1.c	The Contractor Fails to respond to light and medium duty tow requests, with the appropriate equipment to the designated point of tow, within the applicable time limit for 90% of the requested tows.	No response within 35 minutes during Peak Towing Hours, within 25 minutes at any other time or within 10 minutes of the time designated for initiating a pre-scheduled tow with one calendar month; once or more during one calendar month	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure by meeting the requirement in the next monthly report. If no cure, the assessment will be \$600. Further Failures will be assessed at \$600 for each month, with no written warning.	Tow Response Report/Enforcement Notification
18	II.H.1.c	The Contractor fails to maintain an average response time to tow requests, with the appropriate equipment to the designated point of tow	The average response time is greater than an average of 22 minutes within one calendar month.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure by meeting the requirement in the next monthly report. If no cure, the assessment will be \$600. Further Failures will be assessed at \$600 for each month, with no written warning.	Tow Response Report/Enforcement Notification

<b>Item #</b>	<b>Section</b>	<b>Description of Failure</b>	<b>Threshold for LD Assessment</b>	<b>Potential Assessment</b>	<b>Mechanism for Review</b>
19	II.H.1.d	The Contractor Fails to respond, to heavy duty tow requests, with the appropriate equipment to the designated point of tow within the applicable time limit.	Failure to respond to at least 90% of heavy duty tow requests within 90 minutes for both Peak and Non-Peak Tow times within one fiscal year.	No warning letter will be issued. Assessment will be \$600 per incident.	Tow Response Report/Enforcement Notification
20	II.H1.e	The Contractor fails to provide notification to the Tow Desk if a late arrival time is anticipated.	Failure to provide electronic notification of an updated arrival time five minutes before response time deadline for late arrivals for at least 98% of late tows within one calendar month.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure by meeting the requirement in the next monthly report. If no cure, the assessment will be \$600. Further Failures will be assessed at \$600 for each month the Failure occurs, with no written warning.	Tow Response Report/Enforcement Notification
21	II.H.1.e.i	The Contractor Fails to respond to tow requests from SFMTA's Tow Desk.	Failure to respond within 30 seconds or less for at least 95% of the requests, and failure to respond within 90 seconds for at least 98% of requests within one calendar month.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure by meeting the requirement in the next monthly report. If no cure, the assessment will be \$225. Further Failures will be assessed at \$225 for each month, with no written warning.	Tow Desk Notification/ Tow Response Report
22	II.H.1.e.ii	The Contractor's Central Dispatch Fails to assign a tow request within the time required.	Failure to assign a Request to a Tow Firm within five minutes, or directly to a Tow Truck Operator within ten minutes of receipt of request from the SFMTA's Tow Desk, at least 98% of the time within one calendar month.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure by meeting the requirement in the next monthly report. If no cure, the assessment will be \$225. Further Failures will be assessed at \$225 for each month, with no written warning.	Tow Desk Notification/ Tow Response Report

<b>Item #</b>	<b>Section</b>	<b>Description of Failure</b>	<b>Threshold for LD Assessment</b>	<b>Potential Assessment</b>	<b>Mechanism for Review</b>
23	II.H.2.a	The Contractor Fails to prioritize Expedited Tow requests above all other tow requests.	An expedited tow request not given priority.	the SFMTA will issue a written warning for the first occurrence. Further Failures will be assessed at \$600 for each occurrence with no written warning.	Enforcement or SFPD Notifications
24	II.H.4.b	The Contractor Fails to respond to Peak Tow Hour requests for City-owned vehicles within 35 minutes, and to Non-Peak Tow Hour requests for City-owned vehicles within 25 minutes	Contractor shall respond within the designated times for no fewer than 95% of requests within one calendar month.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure by meeting the requirement in the next monthly report. If no cure, the assessment will be \$600. Further Failures will be assessed at \$600for each month, with no written warning.	Tow Response Report/Enforcement Notification
25	II.H.6	The Contractor Fails to provide tow service for light and medium tow requests during Peak Tow Hours, within 120 minutes, resulting in an extended delay.	Tow not provided within 120 minutes.	The SFMTA will issue a written warning for the first occurrence. Future occurrences result in an assessment of \$600 per incident.	Enforcement or SFPD notification or periodic check by Contract Monitor.

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
26	II.1.1.a-c	The Contractor Fails to meet timing requirements for tow request and tow completion input into the TVMS within the required time or percentage minimum.	<p><b>a.</b> A record of each dispatched tow request must be is created in the TVMS within five minutes of receiving the request.</p> <p><b>b.</b> Record of the tow completion must be created in the TVMS within 15 minutes of the vehicle arriving at the Primary Storage Facility.</p> <p><b>c.</b> These requirements must be met in 95% of all tows within a calendar month.</p>	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure by meeting the requirement in the next monthly report. If no cure, the assessment will be \$225. Further Failures will be assessed at \$225 for each month, with no written warning.	Vehicle Intake Report (modified for monthly summary)
27	II.1.2.b	The Contractor Fails to provide the DMV with VIN data and to request vehicle ownership information.	More than 24 hours elapse after receiving notification from DMV of VIN and license plate mismatch before alerting SFPD.	The SFMTA will issue a written warning for the first occurrence. Further Failures will be assessed at \$600 per occurrence, with no written warning.	Spot check/Waiver Report
28	II.1.4.a	The Contractor fails to photograph any damage observed on a vehicle prior to handling the vehicle.	Photo(s) not available .	The SFMTA will issue a written warning for the first occurrence. Further Failures will be assessed at \$225 per occurrence, with no written warning.	Notification from Agency requesting image or Contract Monitor

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
29	II.I.4.b.c	The Contractor Fails to provide electronically-stored images within the time requested.	Images not provided within one business day of an authorized City agency's request.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one day (excluding weekends and holidays) to cure. \$600, with an additional \$225 per week not received. Further Failures will have no written warning, and will be assessed at \$600 with an additional \$225 per week not received , with no written warning.	Notification from Agency requesting image
30	II.I.5.g.i	The Contractor Fails to have electronic vehicle inventory and vehicle locator systems at both Primary and Long-Term Storage Facilities.	System is not operational as of the date specified in the Notice to Proceed	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one week to cure. If no cure, the assessment will be \$225 per week until system is in place and fully functional.	Notification by Contract Monitor
31	II.J.1.a-b	The Contractor releases, sells disposes or otherwise loses possession of or is unable to locate a towed vehicle, and the Customer files a Claim against the Contractor.	<p><b>a.</b> The Contractor does not resolve the Claim within 60 days of initiation by the Customer; or.</p> <p><b>b.</b> The Contractor does not notify the SFMTA within 72 hours when a vehicle loss occurs due to the circumstance referenced occurs.</p>	No warning letter will be issued. Assessment will be \$1,200 per incident.	Monthly Monetary Claims report; Customer complaint
32	II.J.4.e	The Contractor Fails to retrieve a vehicle for an authorized Customer from the Long-Term Storage Facility (LSF) within the time required.	A vehicle is not returned to Customer(s) within one hour after the Customer(s) pays the fees required for vehicle release.	The SFMTA will issue a written warning for the first occurrence. The second Failure will be assessed at \$600. Further Failures will be assessed at \$600, with no written warning.	Customer Complaint and SFMTA verification



Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
33	II.J.5.a	The Contractor releases a vehicle on Police Hold without written or electronic authorization (through the TVMS) from the SFPD.	No threshold.	No warning letter will be issued. Assessment will be \$1,200 per incident.	SFPD notification/Vehicle Release Report
34	II.J.5.b	The Contractor releases a vehicle with five or more unpaid citations (scofflaw).	No threshold.	No warning letter will be issued. Assessment will be \$1,200 per incident.	Citation/Hearing compliant/Vehicle Release Report
35	II.J.6.d	The Contractor releases personal items from a vehicle on Police Hold.	No threshold.	No warning letter will be issued. Assessment will be \$1,200 per incident.	Customer notification
36	II.J.7.f.i	The Contractor sells vehicle(s) to an individual prohibited by the City from purchasing vehicles at Auction.	No threshold.	No warning letter will be issued. Assessment will be \$1,200 per incident.	SFPD notification
37	II.J.7.f.vi	The Contractor Fails to support the Contract Monitor with quarterly audit of Auctions.	No threshold.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have until the next audit period to cure. If no cure, the assessment will be \$1,200. Further Failures will be assessed at \$1,200, with no written warning.	Written verification/request to review audit
38	II.K.1.b	The Contractor Fails to respond to and resolve Customer's Monetary Claim within the time required.	Does not respond to a Claim within 14 days of receipt, and/or does not resolve a claim within six months of receipt.	\$600 per incident. The SFMTA will issue a written warning for the first occurrence. Further Failures will be assessed at \$600 per occurrence, with no written warning.	Customer notification/Claim/Complaint Report
39	II.K.3.b	The Contractor Fails to respond to Customer's Service Complaint within the time required.	Does not respond to a Service Complaint within seven days receipt.	\$600 per incident. The SFMTA will issue a written warning for the first occurrence. Further Failures will be assessed at \$600 per occurrence, with no written warning.	Customer notification/Claim/Complaint Report

**Section III: Staffing**

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
40	III.A.2	The Contractor Fails to apply appropriate signage to tow trucks as described in this section.	No threshold.	The SFMTA will issue a written warning for the first occurrence. Further Failures will be assessed at \$225 per occurrence, with no written warning.	Customer complaint or SFMTA staff observation.
41	III.A.3.a.b	The Contractor Fails to make available electronic copies of all Tow Firm subcontractor agreements to the SFMTA	Tow Firm agreement or insurance copies are not made electronically available to the SFMTA within seven days of signed agreement.	The SFMTA will issue a written warning for the first occurrence. Further Failures will be assessed at \$225 per occurrence, with no written warning.	Periodic audit by Contract Monitor.
42	II.A.5.b	The Contractor Fails to make available electronically annual confirmation of the validity of Tow Firm and Tow Truck Operator licenses and permits.	Annual confirmation is not made available to the Contract Monitor.	The SFMTA will issue a written warning for the first occurrence. Further Failures will be assessed at \$225 per week until compliance.	Periodic audit by Contract Monitor
43	III.B.1	The Contractor Fails to rotate auctioneers annually or as mutually agreed by the SFMTA and Contractor.	No threshold.	No warning letter will be issued. Assessment will be \$600 per incident.	Periodic audit by Contract Monitor
<b>Section IV: TVMS</b>					
44	IV.A.4	TVMS availability	The Contractor's TVMS System is not operational or available at least 98% of the time within a given calendar month, except in the case of an Unavoidable Delay	The SFMTA will issue a written warning for the first occurrence. For all future Failures, the assessment will be \$1,200 per incident.	Notification from Enforcement, or any SFMTA staff requiring access to the TVMS.
45	IV.C.1	The Contractor Fails to integrate the TVMS to the SFPD's CAD system.	Integration not complete within 90 days of agreement by the Contractor and City on an interface design and joint project plan	The SFMTA will issue a written warning. The contractor shall have one week to cure. If no cure, the assessment will be \$225 per week until the system is in place.	Notification by SFPD or Contract Monitor.

<b>Item #</b>	<b>Section</b>	<b>Description of Failure</b>	<b>Threshold for LD Assessment</b>	<b>Potential Assessment</b>	<b>Mechanism for Review</b>
46	IV.E	The Contractor fails to integrate the TVMS to the SFMTA's handheld citation issuance devices.	Integration not complete within 90 days of agreement by the Contractor and City on an interface design and joint project plan	The SFMTA will issue a written warning. The contractor shall have one week to cure. If no cure, the assessment will be \$225 per week until the system is in place.	Notification by SFPD or Contract Monitor.
47	IV.D.2	The Contractor Fails to electronically scan and file tow inventory slips and cross-reference the scanned slip to the matching TVMS record of tow in a timely manner.	Process not complete within eight hours of vehicle arriving at the towing facility.	The SFMTA will issue a written warning for the first occurrence. For all future Failures, the assessment will be \$225 per incident.	Notification by Customer or SFMTA staff when looking for towed vehicle data.
48	IV.I.1	The Contractor Fails to integrate its TVMS system with the SFMTA's citation processing system.	TVMS is not integrated within 90 days of agreement between the Contractor and the SFMTA on an interface design and joint project plan.	The SFMTA will issue a written warning. . The Contractor shall have one week to cure. If no cure, the assessment will be \$225 per week until devices are distributed to Tow Truck Operators.	Written confirmation/verification by checking system
<b>Section VI. Operations Manual</b>					
49	VI.	The Contractor Fails to provide any plan element draft required for the Operations Manual, as described in Appendix A Section VI.	Plan element is not provided within 60 days of the Notice to Proceed.	The SFMTA will issue a written warning. The Contractor shall have one week to cure. If no cure, the assessment will be \$600 per week the plan element draft is received.	Notification by Contract Monitor
<b>Section VII. Fees, Deposits and Handling of Monies</b>					
50	VII.4.	The Contractor fails to administer waiver and reimbursement policies as described in the Transportation Code, Division II, Section 305.	None.	There will be no written warning. The Assessment will be the amount waived, reimbursed incorrectly or in violation of SFMTA policies, plus \$1,200 per incident.	Notification by Contract Monitor.

**APPENDIX D**  
**TO THE TOWING AGREEMENT**  
**BY AND BETWEEN**  
**THE CITY AND COUNTY OF SAN FRANCISCO**  
**AND**  
**TEGSCO LLC., dba SAN FRANCISCO AUTORETURN**  
**Granting a Revocable License for the Use of Certain Property**

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**APPENDIX D**  
**TO THE TOWING AGREEMENT**  
**BY AND BETWEEN**  
**THE CITY AND COUNTY OF SAN FRANCISCO**  
**AND**  
**TEGSCO LLC., dba SAN FRANCISCO AUTORETURN**

**REVOCABLE LICENSE TO ENTER AND USE PROPERTY**

THIS REVOCABLE LICENSE TO ENTER AND USE PROPERTY ("License"), between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA"), and TEGSCO, LLC, a California limited liability company dba San Francisco AutoReturn ("Licensee"), and dated as of April 1, 2016, is Appendix D to the Agreement for Towing, Storage and Disposal of Abandoned and Illegally Parked Vehicles between City and Licensee, dated for convenience as April 1, 2016 (the "Towing Agreement"), which is incorporated herein by reference as if fully set forth herein.

**RECITALS**

This License is made with reference to the following facts:

City and Licensee are parties to the Towing Agreement for the towing and storage of abandoned and illegally parked vehicles.

City leases that certain real property commonly known as 2650 Bayshore Boulevard, Daly City, California (the "Property") from Prologis, L.P., a Delaware limited partnership ("Prologis") pursuant to an Industrial Lease between City and Prologis dated as of October 29, 2012, a copy of which is attached to this License as Attachment 1 (the "Lease").

As part of the Towing Agreement, City wishes to grant Licensee a license to use a portion of the Property shown on Attachment 2 (the "Premises") pursuant to a revocable license between Licensee and City.

Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**AGREEMENT**

**BASIC LICENSE INFORMATION**

The following is a summary of Basic License information (the "Basic License Information"). Each item below shall be deemed to incorporate all of the terms in this License pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this License, the more specific provision shall control.

<b>Licensor:</b>	CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION
<b>Licensee:</b>	TEGSCO, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY D.B.A. SAN FRANCISCO AUTORETURN

APPENDIXD: 2650 Bayshore Boulevard License

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<b>Property (Section 2.1):</b>	That certain real property commonly known as 2650 Bayshore Boulevard, Daly City, California, as fully described in Exhibit A to the Lease (the "Property").
<b>Building (Section 2.1):</b>	The building located on the Property.
<b>Premises (Section 2.1):</b>	The portions of the Property and Building depicted on <u>Attachment 2</u> and comprised of approximately 330,771 square feet
<b>Term (Section 4):</b>	Commencement Date: April 1, 2016. Expiration Date: March 31, 2021, subject to any extension pursuant to <u>Section 4.1.2</u> or any earlier termination of this License pursuant to the terms hereof.
<b>Rent:</b>	No rent is required for Licensee's use of the Premises pursuant to this License.
<b>Permitted Use (Section 6.1):</b>	Parking space for the storage and transfer of vehicles, public lien sale auctions and office space for the administration of Licensee's operations under the Towing Agreement.
<b>Utilities and Services (Section 10):</b>	Obtained and paid by Licensee at its sole cost, provided that Licensee shall reimburse City pursuant to <u>Section 10</u> for the gas and electricity utilities provided by City to the Premises.
<b>Security (Section 6.5):</b>	Licensee shall be solely responsible for the security of the Premises.
<b>Security Deposit (Section 17.4):</b>	Provided under Sections 4.9 and 4.14 of the Towing Agreement.
<b>Environmental Oversight Deposit (Section 24.11):</b>	Provided under Section 4.16 of the Towing Agreement
<b>Notices to the Parties: (Section 25.1)</b>	Any notice, demand, consent or approval required under this License must be sent by first class certified U.S. mail with return receipt requested, or by overnight courier, return receipt requested, with postage pre-paid. All other written communications, unless otherwise indicated elsewhere in this License, may be by first class U.S. mail, by email, or by facsimile. All communications related to this License shall be addressed as follows:
<b>To Licensee:</b>	San Francisco AutoReturn 2650 Bayshore Blvd. Daly City, CA 94014 jwicker@authoreturn.com C/O John Wicker, CEO and President

**To City:**

City and County of San Francisco  
Attention: Lorraine Fuqua  
1 South Van Ness Avenue, Third Floor  
San Francisco, CA 94102  
telephone: 415-701-4678  
facsimile: 415-701-4736  
Email: lorraine.fuqua@sfmta.com

**PREMISES**

**License Premises.**

City confers to Licensee a revocable, personal, non-exclusive and non-possessory privilege to enter upon and use those certain premises identified in the Basic License Information and shown on Attachment 2, attached hereto and incorporated by reference as though fully set forth herein (collectively, the "Premises"), for the limited purpose and subject to the terms, conditions and restrictions set forth below. This License gives Licensee a license only, revocable at any time at the will of City, and notwithstanding anything to the contrary herein, this License does not constitute a grant by City of any ownership, leasehold, easement or other property interest or estate whatsoever in the Premises, or any portion thereof. The privilege given to Licensee under this License is effective only insofar as the rights of City in the Premises are concerned, and Licensee shall obtain any further permission necessary because of any other existing rights affecting the Premises. The area of the Premises specified in the Basic License Information shall be conclusive for all purposes hereof. The Premises shall include the land upon which the Premises is located and all other improvements on and appurtenances to such land.

City may, at City's sole and absolute discretion, relocate Licensee from any portion or all of the Premises to another location on the Property or other City property that City in its sole and absolute discretion deems suitable for the uses permitted hereunder; provided that such relocation shall not materially interfere with Licensee's ability to meet its obligations under the Towing Agreement. City shall arrange and pay for moving Licensee's equipment and personal property from the Premises to such new space. Once City completes such move, Licensee shall commence its Towing Agreement operations at the new space and the new location shall become part or all of the Premises hereunder. Licensee shall enter into any amendment requested by City to reflect such new location.

City may, at City's sole and absolute discretion, modify the original configuration of the Premises; provided that such modification shall not materially interfere with Licensee's ability to meet its obligations under the Towing Agreement, unless such modification is required under the Lease.

Licensee acknowledges that the interest of City in the Premises is limited to those rights conveyed to City pursuant to the Lease. Licensee hereby agrees to assume all responsibility for and be bound by all covenants, terms and conditions made by or applicable to City under the Lease, and shall not take any actions that would cause the City to be in default under the Lease. In the event there are any inconsistencies between the provisions of this License and the Lease, the provisions of the Lease shall govern Licensee's use of the Premises hereunder.

**Subordinate to Lease.** This License is expressly made subject and subordinate to all the terms, covenants and conditions of the Lease, which are incorporated herein by reference (collectively, the "Lease Terms"). Licensee agrees to use the Premises in accordance with the Lease Terms and not take or fail to take any act that City would be required to not take or take under the Lease to comply with the Lease Terms.

**Performance of Lease Obligations.** Licensee further agrees to assume the obligation for performance of all City's obligations under the Lease with respect to the Premises, except as may be specifically modified by this License and excluding City's obligation to pay rent to Prologis under the Lease.

**Amendments to Lease.** Licensee agrees that City shall have the right to enter into amendments or modifications to the Lease without Licensee's prior written consent; provided, however, that if such proposed amendment or modification would materially affect Licensee's rights under this License, Licensee shall not be subject to such amendment or modification unless it consents to be subject thereto in writing. In the event Licensee fails within fifteen (15) business days to respond in writing to City's written request for such consent, then Licensee shall be deemed without further notice to have consented to City's request for consent.

**Contact with Prologis.** Licensee has no authority to contact Prologis or make any agreement with Prologis concerning the Premises or the Lease without City's prior written consent, and Licensee shall make payments of any charges payable by Licensee under this License only to City.

**Prologis Duties.** The Lease describes Prologis' duties with respect to the Property. City is not obligated to perform such Prologis' duties. If Prologis fails to perform its duties, Licensee shall provide notice to City. In no event shall City incur any liability, or otherwise be responsible, nor shall there be any set-off, deduction or abatement of any amounts owed by Licensee to City pursuant to this License arising from Prologis' failure to comply with its duties.

**Termination of Lease.** If the Lease is terminated for any reason during the Term, this License shall automatically terminate as of such Lease termination date.

**Termination of 2014 License.** Immediately prior to the commencement of this License, Licensee occupied the Premises pursuant to Amended and Restated Revocable License to Enter and Use Property between City and Licensee dated as of May 1, 2014, as amended by a First Amendment dated as of August 1, 2015 (as amended, the "2014 License"). City and Licensee agree that Licensee's right to occupy the Premises under the 2014 License automatically terminated as of the Commencement Date.

## **INSPECTION OF PROPERTY; AS IS CONDITION**

**Inspection of Premises.** Licensee represents and warrants that Licensee has conducted a thorough and diligent inspection and investigation of the Property and the suitability of the Premises for Licensee's intended use, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them. Licensee is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises is suitable for its operations and intended uses. Licensee further represents and warrants that Licensee has occupied the Premises since May 1, 2013.

**As Is Condition.** WITHOUT WAIVING ANY OF LICENSEE'S RIGHTS ESTABLISHED IN SECTIONS 0 AND 24.8 BELOW, LICENSEE ACKNOWLEDGES AND AGREES THAT THE PREMISES ARE BEING LICENSED AND HAVE BEEN ACCEPTED IN THEIR "AS IS" AND "WITH ALL FAULTS" CONDITION, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LAWS, RULES AND ORDINANCES GOVERNING THEIR USE, OCCUPANCY AND POSSESSION. LICENSEE ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS AGENTS HAVE MADE, AND CITY HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE RENTABLE AREA OF THE PREMISES, THE PHYSICAL, SEISMOLOGICAL OR ENVIRONMENTAL CONDITION OF THE PREMISES OR THE PROPERTY, THE PRESENT OR FUTURE SUITABILITY OF

THE PREMISES FOR LICENSEE'S BUSINESS, OR ANY OTHER MATTER WHATSOEVER RELATING TO THE PREMISES, INCLUDING, WITHOUT LIMITATION, AND IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**Accessibility Inspection Disclosure.** Licensee is hereby advised that the Premises have not been inspected by a Certified Access Specialist under California Civil Code Section 1938.

## LICENSE TERM

### Term.

The privilege given to Licensee pursuant to this License is temporary only and shall commence upon the Commencement Date (as described in the Basic License Information) and shall terminate on March 31, 2021, subject to extension pursuant to Section 4.1.2, or the date of earlier termination of this License pursuant to the terms of this License or the Towing Agreement (the "Expiration Date"). Without limiting any of its rights hereunder, City may at its sole option freely revoke this License at any time, without cause and without any obligation to pay any consideration to Licensee. Licensee acknowledges its receipt, acceptance and continued use of the Premises since May 1, 2013.

The original term of the Towing Agreement ends on March 31, 2021, subject to City's right to extend such term by up to five (5) years. If City extends the term of the Towing Agreement pursuant to Section 2.2 of the Towing Agreement, the term of this License shall be automatically extended to be the last day of the Towing Agreement term, and the word "Term" as used herein shall refer to the original five (5) year term and any extended term resulting from City's extension of the term of the Towing Agreement.

**Early Termination.** Without limiting any of its rights hereunder, City may at its sole option freely terminate this License as to all or a portion of the Premises without cause and without any obligation to pay any consideration to Licensee. In the event that City terminates this License as to a portion of the Premises under this Section, Licensee shall be solely responsible for all costs associated with such modifications or reconfiguration that City in its sole discretion deems necessary, including all costs incurred to relocate the operations, Premises, fences, gates, lights, driveways, and other improvements; provided, however, that City shall make good faith efforts to reach an agreement with Licensee regarding the nature and extent of such necessary modifications or reconfiguration.

## FEES AND CHARGES

**Rent.** Licensee shall pay no rent to City for use of the Premises pursuant to this License; provided, however, that Licensee shall make the payments otherwise owed by Licensee to City pursuant to this License, including, but not limited to, any amounts owed to City pursuant to Sections 6.6, 9.1, 10.2, 17.3, and 24.11 of this License.

**Late Charges.** Notwithstanding that Licensee will pay no rent, Licensee is obligated to make other payments to City pursuant to this License. If Licensee fails to pay all or any portion of any payment to be made by Licensee to City pursuant to this License within five (5) days following the due date for such payment, such unpaid amount shall be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by City and Licensee, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Licensee, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and shall be paid to City together with such unpaid amount.

**Default Interest.** Any payment to be made by Licensee to City pursuant to this License, if not paid within five (5) days following the due date, shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under law. However, interest shall not be payable on late charges incurred by Licensee nor on any amounts on which late charges are paid by Licensee to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Licensee.

**Deduction from Amounts Due.** In the event Licensee fails to pay any payment due hereunder for more than ten (10) days following the due date, City may deduct and withhold the amount of such payment, together with the amount of applicable late charges and default interest as provided herein, from any monies in City's possession due Licensee pursuant to the Towing Agreement.

## **USE OF PREMISES**

**Permitted Use.** Licensee shall use and continuously occupy the Premises during the Term solely for temporary storage and transfer of vehicles, public lien sale auctions and related office use as necessary to meet its obligations under the Towing Agreement and for such other uses, if any, as may be specified in the Basic License Information, all to the extent permitted under the Lease Terms. Licensee shall not use the Premises for any other purpose without the prior written approval of City, including, without limitation, the following: (a) crushing or dismantling; (b) maintenance or fueling of vehicles, except as otherwise may be permitted under the Maintenance Plan (as defined in Section 22); (c) selling vehicle parts from the Premises; (d) parking or storage of vehicles not covered under the Towing Agreement; or (e) parking for Licensee's employees, without the prior written approval of City and subject to availability of space necessary to fully perform Licensee's obligations under the Towing Agreement. All available space for vehicle parking shall be used for the purposes set forth in the Towing Agreement, except as otherwise expressly approved by City pursuant to this License. The washing of vehicles shall be with cleansing agents that are bio-degradable and non-toxic, and shall be in compliance with the Maintenance Plan. No advertising or signage may be placed in or about the Premises without the prior written permission of City.

**Use of Equipment and Machinery.** Licensee shall have the right to place on the Premises all necessary equipment and machinery in connection with the permitted use of the Premises. It is understood and agreed that City is not responsible for loss of or damage to any Licensee-owned equipment herein involved, unless caused by the sole negligence of City's officers, agents, and employees.

**Limitation to Described Purpose.** Licensee may occupy and use the Premises solely for the purpose of fulfilling its obligations under the Towing Agreement to store and auction any vehicles towed pursuant to the terms of the Towing Agreement, and for incidental purposes related thereto. Adequate drop-off space must be provided so that tow and transport trucks can load and unload on the Premises. No loading, unloading, queuing, parking or storage of vehicles will be permitted on any remaining portion of the Property or any public streets or rights-of-way adjacent to the Property. All storage activities authorized by this License shall be restricted to the designated enclosed and visually screened area. Any use of the Premises by Licensee shall be subject to the requirements of the Maintenance Plan.

**No Unlawful Uses, Nuisances or Waste.** Without limiting the foregoing, Licensee shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Licensee shall take all precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises. Licensee shall not conduct any business, place any sales

display, or advertise in any manner in areas outside the Premises or on or about the Property without the prior written permission of City.

**Security.** Licensee shall at all times provide security at a level acceptable to the City to protect the Premises and all vehicles stored therein, and the persons and property of owners of towed vehicles, against damage, injury, theft or other loss.

**Fines.** Without limiting City's other rights and remedies set forth in this License, if Licensee violates any of the following provisions governing its use of the Premises contained in this License or the Towing Agreement, City may impose a fine of \$300 per day during which Licensee is in violation of any of the specified provisions: Sections 2, 6, 7, 8, 11, 19, 22, and 24 of this License; and Sections 4.9 through 4.16 of the Towing Agreement. City may also impose this fine for Licensee's failure to submit any documents, reports or other items as and when required by any provision of this License.

The fines described in this Section 6.6 shall run from the date of City's notice to Licensee of the violation and shall continue until the violation is cured. All such accrued amounts under this Section shall be payable to City on the first day of each month during the period that such fines accrue by wire transfer to a bank account specified by City in writing unless otherwise specified herein. City shall have the same remedies for a default in the payment of any such amounts as for a default in the payment of Base Fee. The parties agree that the charges described above represent a fair and reasonable estimate of the administrative cost and expense which City will incur due to such violations by reason of its inspections, issuance of charges and other costs.

If City initiates notice of a fine under this Section, Licensee may appeal such charge to SFMTA's Director of Transportation within fourteen (14) days of the notice with evidence supporting Licensee's claim for relief from the fine imposed. SFMTA's Director of Transportation will respond within fourteen (14) days. Any failure of SFMTA's Director of Transportation to respond within the fourteen (14) day period shall be deemed a rejection of Licensee's claim for relief from the disputed fine. The provisions of Section 11.6.1 of the Towing Agreement shall not apply to fines imposed under this Section.

City's right to impose the foregoing fines shall be in addition to and not in lieu of any and all other rights under this License or at law or in equity; provided, however, that City agrees that there is an Event of Default (as defined in Section 17 of this License), it will no longer impose any new fine with respect to such Event of Default. City shall have no obligation to Licensee to impose fines on or otherwise take action against any other person.

## **ALTERATIONS**

**Licensee's Alterations.** Licensee shall not make, nor cause or suffer to be made, any alterations, installations, improvements, or additions to any improvements or to the Premises (including demolition or removal), installations, additions or improvements to the Premises, including but not limited to the installation of any appurtenances or trade fixtures affixed to the Premises, constructed by or on behalf of Licensee pursuant to the Towing Agreement, or any trailers, signs, roads, trails, driveways, parking areas, curbs, walks fences walls, stairs, poles, plantings or landscaping, (collectively, "Improvements" or Alterations," which words are interchangeable as used in this License) without first obtaining City's written approval and any required approvals of regulatory agencies having jurisdiction over the Premises. All Alterations shall be done at Licensee's expense in accordance with plans and specifications approved by City, only by duly licensed and bonded contractors or mechanics approved by City, and subject to any conditions that City may reasonably impose. City may require Licensee, at Licensee's expense, to obtain the prior written approval of City's Arts Commission with respect to any Alterations, to the extent the Arts Commission has jurisdiction over the design of such proposed alterations under City's Charter Section 5.103. All Alterations shall be subject to the following conditions:

All Alterations shall be constructed in a good and worker like manner and in compliance with all applicable building, zoning and other laws, and in compliance with the terms of and the conditions imposed in any regulatory approval;

All Alterations shall be performed with reasonable dispatch, delays beyond the reasonable control of Licensee excepted; and

At the completion of the construction of the Alterations, Licensee shall furnish one (1) set of "as-built" drawings of the same made on or to the Premises. Unless otherwise stated as a condition of the regulatory approval, this requirement may be fulfilled by the submittal after completion of the Alterations of a hand-corrected copy of the approved permit drawing(s).

**Title to Improvements.** Except for Licensee's Personal Property (as defined in Section 7.3), or as may be specifically provided to the contrary in approved plans, all Alterations, equipment, or other property attached or affixed to or installed in the Premises at the Commencement Date or, by Licensee with the advance approval of City during the Term, shall, at City's sole discretion, remain City's property without compensation to Licensee or be removed at the termination of this License. Licensee may not remove any such Alterations at any time during or after the Term unless City so requests pursuant to Section 23 (Surrender of Premises), below.

**Licensee's Personal Property.** All furniture, trade fixtures, office equipment and articles of movable personal property installed in the Premises by or for the account of Licensee, without expense to City, and that can be removed without structural or other damage to the Premises (collectively, "Licensee's Personal Property") shall be and remain Licensee's property. Licensee may remove Licensee's Personal Property at any time during the Term, subject to the provisions of Section 23 (Surrender of Premises), below. Licensee shall pay any taxes or other impositions levied or assessed upon Licensee's Personal Property, at least ten (10) days prior to delinquency, and shall deliver satisfactory evidence of such payment to City upon request.

**City's Alterations of the Building and Building Systems.** City reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas of the Premises or any other part of the Building or the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical and communications systems located at the Premises ("Building Systems"), provided that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for the Permitted Use set forth in Section 6.1 (Permitted Use) unless otherwise required under the Lease.

**Removal of Alterations.** At City's election made in accordance with this Section 7.5, Licensee shall be obligated at its own expense to remove and relocate or demolish and remove (as Licensee may choose) any or all Alterations which Licensee has made to the Premises, including without limitation all telephone wiring and equipment installed by Licensee. Licensee shall repair, at its own expense, in good worker like fashion any damage occasioned thereby.

**Notice of Removal.** Prior to the termination of this License, City shall give written notice to Licensee specifying the Alterations or portions thereof that Licensee shall be required to remove and relocate or demolish and remove from the Premises, in accordance with this Section 7.5 (herein "Notice of Removal"). If termination is the result of loss or destruction of the Premises or any improvements thereon, City shall deliver said Notice of Removal to Licensee within a reasonable time after the loss or destruction. If Licensee fails to complete such demolition or removal on or before the termination of this License, City may perform such removal or demolition at Licensee's expense, and Licensee shall reimburse City upon demand therefor.

**Removal of Non-Permitted Improvements.** If Licensee constructs any Alterations to the Premises without City's prior written consent or without complying with this Section 7, then,

in addition to any other remedy available to City, City may require Licensee to remove, at Licensee's expense, any or all such Alterations and to repair, at Licensee's expense and in good workerlike fashion, any damage occasioned thereby. Licensee shall pay any special inspection fees required by the City of Daly City for inspecting any Alterations performed by or for Licensee without required permits.

**Alterations Not Subject to Removal.** In conjunction with a request to make an Alteration under Section 7.1 above, Licensee may submit a request for a City determination of whether a proposed Alteration would or would not be required to be removed upon expiration or termination of this License. Licensee acknowledges that such a determination will be based, in part, on whether Prologis would require the removal of the proposed Alteration upon expiration or termination of the Lease. This Section 7.5.3 shall not apply to Alterations that are required by any regulatory authority to conform the Premises or any building thereon to a requirement of statute, ordinance or regulation.

## **REPAIRS AND MAINTENANCE**

**Licensee's Repairs.** Licensee shall maintain, at its sole expense, the Premises in good repair and working order and in a clean, secure, safe and sanitary condition. Licensee shall promptly make all repairs and replacements: (a) at its sole expense, (b) by licensed contractors or qualified mechanics approved by City, (c) so that the same shall be at least equal in quality, value and utility to the original work or installation, (d) in a manner and using equipment and materials that will not interfere with or impair the use or occupation of the Premises, and I in accordance with the Lease and all applicable laws, rules and regulations (collectively, "Applicable Law"). Licensee hereby waives all rights to make repairs at City's expense under Sections 1941 and 1942 of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect.

**Removal of Refuse.** All refuse, including tires, non-salvageable vehicle parts and litter, shall be removed from the Premises on a regular basis by an authorized refuse collection company. All trash areas shall be effectively screened from view and maintained in orderly manner. All trash and refuse containers shall be maintained in approved enclosures.

**Storm Water Pollution Prevention.** Licensee agrees to effect mechanisms to control stormwater pollution at the Premises to the reasonable satisfaction of City, which mechanism may include (by way of example and not limitation) good housekeeping and materials management practices, preventing run-on and run-off from materials storage areas, maintenance areas, or areas where contaminants may be present, installation and maintenance of catchments or absorbent pads in stormwater drains located at or servicing the Premises, or other pollution prevention practices appropriate to the facility and operations. Documentation of Licensee's pollution prevention practices shall be provided as part of the Maintenance Plan. Licensee shall comply with all stormwater pollution control regulations applicable to the Property, and shall prepare and submit all stormwater permit applications and stormwater pollution control plans required for the Premises under any Applicable Law.

**Repair of Any Damage.** In the event that damage to any of the improvements to the Premises which are Licensee's obligation to maintain by reason of ordinary wear and tear or deterioration results in such improvements not meeting the standard of maintenance required by City for such uses as Licensee is making of the Premises, then Licensee shall have the independent responsibility for, and shall promptly undertake such maintenance or repair and complete the same with due diligence. If Licensee fails to do so after reasonable notice in writing from City, then in addition to any other remedy available to City, City may make such maintenance or repairs and Licensee shall reimburse City therefor. The City, in its sole discretion, may obtain reimbursement for damages from the Security Deposit. Should the City



obtain reimbursement for damages from the Security Deposit, Licensee shall promptly restore the Security Deposit to its original amount.

## **LIENS AND ENCUMBRANCES**

**Liens.** Licensee shall keep the Premises and the rest of the Property free from any liens arising out of any work performed, material furnished or obligations incurred by or for Licensee. In the event Licensee does not, within twenty (20) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have, in addition to all other remedies, the right, but not the obligation, to cause the lien to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses reasonably incurred by it in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Licensee within thirty (30) days of demand by City. City shall have the right to post on the Premises any notices that City may deem proper for the protection of City, the Premises from mechanics' and materialmen's liens. Licensee shall give to City at least fifteen (15) days' prior written notice of commencement of any repair or construction on the Premises.

**Encumbrances.** Licensee shall not create, permit or suffer any liens or encumbrances affecting any portion of the Premises, the Property or City's interest therein or under this License.

## **UTILITIES AND SERVICES**

**Utilities and Services.** Sewer, water, janitor service, telecommunications services and any other utilities (other than gas and electricity) or services shall be acquired and paid by Licensee, including the initial hook up to said utilities and services. City shall provide electricity and gas to the Premises, and on a quarterly basis, Licensee shall reimburse City in an amount equal to the lesser of (i) \$3,000 per month, and (ii) fifty-nine and one-half percent (59.5%) of the gas and electricity charges incurred by City for the Property during such month. Licensee shall deliver such quarterly utility reimbursements to City within thirty (30) days of receiving City's invoice therefor, which shall include reasonable evidence of the gas and electricity charges incurred by City for the Property. If the Commencement Date occurs on a day other than the first day of a quarterly period, then the utility reimbursement to City for such fractional quarterly period shall be prorated based on a ninety (90) day quarter.

**Utility Maintenance.** Licensee shall be obligated, at its sole cost and expense, to repair and maintain in good operating condition all utilities located within the Premises and all utilities installed by Licensee (whether within or outside the Premises). If Licensee requests City to perform such maintenance or repair, whether emergency or routine, City may charge Licensee for the cost of the work performed at the then prevailing standard rates, and Licensee agrees to pay said charges to City promptly upon billing. Licensee shall pay for repair of utilities located outside the Premises (regardless of who installed the same) which are damaged by or adversely affected by Licensee's use of such utility and shall be responsible for all damages, liabilities and claims arising therefrom. The parties agree that any and all utility improvements shall become part of the realty and are not trade fixtures.

**Mandatory or Voluntary Restrictions.** In the event any law, ordinance, code or governmental or regulatory guideline imposes mandatory or voluntary controls on City or the Property or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this License, or in the event City is required or elects to make alterations to any part of the Building in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall in no event entitle Licensee to any damages, relieve Licensee of the obligation to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Licensee.

City shall have the right at any time to install a water meter in the Premises or otherwise to measure the amount of water consumed on the Premises, and the cost of such meter or other corrective measures and the installation and maintenance thereof shall be paid for by Licensee.

**Interruption of Services.** City's obligation to provide gas and electricity for the Premises are subject to Applicable Law (including the rules or actions of the public utility company furnishing the utility or service) and shutdowns for maintenance and repairs, for security purposes, or due to strikes, lockouts, labor disputes, fire or other casualty, acts of God, or other causes beyond the control of City. If there is an interruption in, or failure or inability to provide any gas or electricity for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Licensee, constructive or otherwise, relieve Licensee of any of its obligations under this License (except to the extent Licensee cannot reasonably perform such obligations due to such interruption, failure or inability) or impose upon City any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Licensee.

## **COMPLIANCE WITH LAWS AND RISK MANAGEMENT REQUIREMENTS**

### **Compliance with Laws.**

Licensee shall promptly comply, at its sole expense, with all present or future laws, judicial decisions, orders, regulations and requirements of all governmental authorities relating to the Premises or the use or occupancy thereof, whether in effect at the time of the execution of this License or adopted at any time thereafter and whether or not within the present contemplation of the parties.

Licensee further understands and agrees that it is Licensee's obligation, at its sole cost, to cause the Premises and Licensee's uses thereof to be conducted in compliance with the Americans with Disabilities Act, 42 U.S.C.A. §§ 12101 et seq. and any other disability access laws, rules, and regulations. Licensee shall not be required to make any structural alterations in order to comply with such laws unless such alterations shall be occasioned, in whole or in part, directly or indirectly, by Licensee's Alterations, Licensee's manner of using the Premises, or any act or omission of Licensee, its Agents or Invitees. Any Alteration made by or on behalf of Licensee pursuant to the provisions of this Section shall comply with the provisions of Section 8.1 (Licensee's Repairs), above.

Licensee shall comply with all Fire Code requirements in its use and occupancy of the Premises.

The parties acknowledge and agree that Licensee's obligation to comply with all laws as provided herein is a material part of the bargained for consideration under this License. Licensee's obligation under this Section shall include, without limitation, the responsibility of Licensee to comply with Applicable Law by making substantial or structural repairs and modifications to the Premises (including any of Licensee's Alterations), regardless of, among other factors, the relationship of the cost of curative action to the fee under this License, the relative benefit of the repairs to Licensee or City and the degree to which the curative action may interfere with Licensee's use or enjoyment of the Premises. This section shall not apply to any non-compliance with laws relating to changes in use or configuration of the Premises requested by City.

### **Regulatory Approvals.**

**Responsible Party.** Licensee understands and agrees that Licensee's use of the Premises and construction of any Alterations permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Licensee shall be solely responsible for obtaining any and all such regulatory approvals. Licensee shall not seek any regulatory approval without first obtaining the written consent of

City hereunder. Licensee shall bear all costs associated with applying for and obtaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval, other than any conditions that may arise out of Hazardous Materials in, on, or under any part of the Building or other portion of the Premises that were present immediately prior to May 1, 2013, to the extent that such regulatory conditions relate to property conditions existing at such time, and except to the extent that the regulatory conditions relate to Licensee's exacerbation of any pre-existing condition; provided, however, that City shall not be required to engage in any work or incur any costs necessary to secure any regulatory approval or satisfy any condition imposed by a regulatory agency. Any fines or penalties levied as a result of Licensee's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Licensee, and City shall have no liability, monetary or otherwise, for any such fines or penalties. As defined in Section 18.2 herein, Licensee shall Indemnify City and the other Indemnified Parties hereunder against all Losses arising in connection with Licensee's failure to obtain or comply with the terms and conditions of any regulatory approval.

**City Acting as Leasehold Owner of Real Property.** Licensee further understands and agrees that City is entering into this License in its capacity as a leasehold owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this License shall limit in any way Licensee's obligation to obtain any required approvals from City departments, boards, agencies, or commissions having jurisdiction over the Premises or Licensee's activities at the Premises. By entering into this License, City is in no way modifying or limiting Licensee's obligation to cause the Premises to be used and occupied in accordance with all Applicable Law, as provided further above.

**Compliance with City's Risk Management Requirements.** Licensee shall not do anything, or permit anything to be done, in or about the Premises which would be prohibited by or increase the rates under a standard form fire insurance policy or subject City to potential premises liability. Licensee shall faithfully observe, at its expense, any and all requirements of City's Risk Manager with respect to Licensee's use and occupancy of the Premises, so long as such requirements do not unreasonably interfere with Licensee's use of the Premises.

## **SUBORDINATION**

This License is and shall be subordinate to the Lease (including Prologis' rights and City's obligations thereunder) and any reciprocal easement agreement, ground lease, facilities lease or other underlying leases or licenses and the lien of any mortgage or deed of trust, that may now exist or hereafter be executed affecting the Property, or any part thereof, or City's interest therein. Notwithstanding the foregoing, City or the holder shall have the right to subordinate any such interests to this License. Licensee agrees, however, to execute and deliver, upon demand by City and in the form requested by City, any additional documents evidencing the priority or subordination of this License.

## **INABILITY TO PERFORM**

If City is unable to perform or is delayed in performing any of City's obligations under this License, by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials or by any other reason beyond City's reasonable control, no such inability or delay shall constitute an actual or constructive eviction, in whole or in part, or entitle Licensee to any abatement or diminution of fee or relieve Licensee from any of its obligations under this License, or impose any liability upon City or its Agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference with Licensee's business or use and occupancy or quiet enjoyment of the Premises or any loss or damage occasioned thereby. Licensee hereby waives and releases any right to

terminate this License under Section 1932, subdivision 1 of the California Civil Code or any similar law, statute or ordinance now or hereafter in effect.

## **DAMAGE AND DESTRUCTION**

If all or any portion of the Premises is damaged by fire or other casualty, City shall have no obligation to repair the Premises. City shall provide Licensee with a copy of the notice City receives from Prologis of Prologis' estimated time to restore such damage (the "Prologis Repair Notice") within ten (10) days of City's receipt of the Prologis Repair Notice. If the restoration time set forth in the Prologis Repair Notice (the "Repair Period") is estimated to exceed two hundred ten (210) days, City shall have the right to terminate this License by delivering written notice of such termination to Licensee within thirty (30) days of City's delivery of the Prologis Repair Notice to Licensee, in which event this License shall terminate as of the date specified in such termination notice.

If at any time during the last twelve (12) months of the Term of this License all or any portion of the Premises is damaged or destroyed, then Licensee may terminate this License by giving written notice to City of its election to do so within thirty (30) days after the date of the occurrence of such damage; provided, however, Licensee may terminate only if such damage or destruction substantially impairs its use or occupancy of the Premises for general office purposes. The effective date of termination shall be specified in the notice of termination, which date shall not be more than thirty (30) days from the date of the notice.

**City Repairs.** Notwithstanding anything to the contrary in this License, City shall have no obligation to repair the Premises in the event the damage or destruction, and in no event shall City be required to repair any damage to Licensee's Personal Property or any paneling, decorations, railings, floor coverings, or any Alterations installed or made on the Premises by or at the expense of Licensee.

**Termination by City.** In the event the Premises are substantially damaged or destroyed, Prologis intends to restore the Premises pursuant to the Lease, and City intends to use the restored Premises for public purposes inconsistent with this License, City may terminate this License upon written notice to Licensee.

**Licensee Waiver.** City and Licensee intend that the provisions of this Section govern fully in the event of any damage or destruction and accordingly, City and Licensee each hereby waives the provisions of Section 1932, subdivision 2, Section 1933, subdivision 4, Section 1941, and Section 1942 of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect, to the extent such provisions apply.

## **EMINENT DOMAIN**

### **Definitions.**

"Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

"Date of Taking" means the earlier of (i) the date upon which title to the portion of the Premises taken passes to and vests in the condemner or (ii) the date on which Licensee is dispossessed.

"Award" means all compensation, sums or anything of value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

**General.** If during the Term there is any Taking of all or any part of the Premises or any interest in this License, the rights and obligations of Licensee shall be determined pursuant to

this Section. City and Licensee intend that the provisions hereof govern fully Licensee's rights in the event of a Taking and accordingly, Licensee hereby waives any right to terminate this License in whole or in part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

**Total Taking; Automatic Termination.** If there is a total Taking of the Premises, then this License shall terminate as of the Date of Taking.

**Partial Taking; Election to Terminate.**

If there is a Taking of any portion (but less than all) of the Premises, then this License shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises unsuitable for continued use by Licensee for the permitted uses described in Section 6.1, (B) the condition rendering the Premises unsuitable either is not curable or is curable but neither City nor Prologis is willing or able to cure such condition, and (C) Licensee elects to terminate; or (ii) if City elects to terminate.

If Licensee elects to terminate under the provisions of this Section 15, Licensee shall do so by giving written notice to the City before or within thirty (30) days after the Date of Taking, and thereafter this License shall terminate upon the later of the thirtieth (30<sup>th</sup>) day after such written notice is given or the Date of Taking.

**License Fee: Award.** Upon termination of this License pursuant to an election under Section 15.4 above, then City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of Licensee's interest under this License), and Licensee shall have no claim against City for the value of any unexpired term of this License, provided that Licensee may make a separate claim for compensation, and Licensee shall receive any Award made specifically to Licensee, for Licensee's relocation expenses or the interruption of or damage to Licensee's business or damage to Licensee's Personal Property.

**Partial Taking; Continuation of License.** If there is a partial Taking of the Premises under circumstances where this License is not terminated in its entirety under Section 15.4 above, then this License shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the License interest created by this License), and Licensee shall have no claim against City for the value of any unexpired term of this License, provided that Licensee may make a separate claim for compensation, and Licensee shall receive any Award made specifically to Licensee, for Licensee's relocation expenses or the interruption of or damage to Licensee's business or damage to Licensee's Personal Property.

**Temporary Takings.** Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of one hundred eighty (180) consecutive days, this License shall remain unaffected thereby, and Licensee shall continue to pay all fees and to perform all of the terms, conditions and covenants of this License. In the event of such temporary Taking, Licensee shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total fee owing by Licensee for the period of the Taking, and City shall be entitled to receive the balance of any Award.

**ASSIGNMENT AND SUBLETTING**

Licensee shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Licensee), voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer (collectively, "Assignment") any part of its

interest in or rights with respect to the Premises, or permit any portion of the Premises to be occupied by anyone other than itself, or sublet or license any portion of the Premises (collectively, "Subletting"), without City's prior written consent in each instance.

## **DEFAULT; REMEDIES**

**Events of Default.** Any of the following shall constitute an event of default by Licensee hereunder (each, an "Event of Default"):

A failure to pay any amount payable under this License when due, and such failure continues for three (3) days after the date of written notice by City. However, City shall not be required to provide such notice with respect to more than two delinquencies and any such failure by Licensee after Licensee has received two (2) such notices shall constitute a default by Licensee hereunder without any further action by City or opportunity of Licensee to cure except as may be required by Section 1161 of the California Code of Civil Procedure.

A failure to comply with any other covenant, condition or representation under this License and such failure continues for fifteen (15) days after the date of written notice by City, provided that if such default is not capable of cure within such fifteen (15) day period, Licensee shall have a reasonable period to complete such cure if Licensee promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from City. City shall not be required to provide such notice with respect to more than two defaults and after the second notice any subsequent failure by Licensee shall constitute an Event of Default;

A vacation or abandonment of the Premises for a continuous period in excess of five (5) business days;

An uncured event of default under the Towing Agreement;

An appointment of a receiver to take possession of all or substantially all of the assets of Licensee, or an assignment by Licensee for the benefit of creditors, or any action taken or suffered by Licensee under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days; or

Licensee's failure to pay City for its staff costs incurred as a result of a notice of violation or other regulatory order to Licensee pursuant to Section 24.10 of this License within thirty (30) days, or to replenish the Security Deposit or the Environmental Oversight Deposit (as defined in Section 24.11 of this License) if drawn upon.

**City Rights Upon Default.** Upon the occurrence of an Event of Default by Licensee, City shall have the right to terminate the License in addition to the following rights and all other rights and remedies available to City at law or in equity:

The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Licensee's right to possession of the Premises. City's efforts to mitigate the damages caused by Licensee's breach of this License shall not waive City's rights to recover damages upon termination.

The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), allowing City to continue this License in effect and to enforce all its rights and remedies under this License for so long as City does not terminate Licensee's right to possession, if Licensee has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Licensee's right of possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under

this License; withholding consent to an Assignment or Sublicense, or terminating an Assignment or Sublicense, if the withholding or termination does not violate the rights of Licensee specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet or license the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent or fee and upon such other terms as City may in its sole discretion deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting or sublicensing, Licensee shall be liable for any amounts due hereunder, as well as the cost of such subletting or sublicensing and such alterations and repairs incurred by City and the amount, if any, by which fee owing hereunder for the period of such subletting or sublicensing (to the extent such period does not exceed the Term) exceeds the amount to be paid as rent or fee for the Premises for such period pursuant to such subletting or sublicensing. No action taken by City pursuant to this subsection shall be deemed a waiver of any default by Licensee, or to limit City's right to terminate this License at any time.

The right to have a receiver appointed for Licensee upon application by City to take possession of the Premises and to apply any fees or rental collected from the Premises and to exercise all other rights and remedies granted to City pursuant to this License.

**City's Right to Cure Licensee's Defaults.** If Licensee defaults in the performance of any of its obligations under this License, then City may, at its sole option, remedy such default for Licensee's account and at Licensee's expense by providing Licensee with three (3) days' prior written or oral notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City). Such action by City shall not be construed as a waiver of such default or any rights or remedies of City, and nothing herein shall imply any duty of City to do any act that Licensee is obligated to perform. Licensee shall pay to City upon demand, all reasonable costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. Licensee's obligations under this Section shall survive the termination of this License.

**Security Deposit.** On or before the Commencement Date, Licensee shall provide to the City, and shall maintain throughout the term of this License and for a period of at least ninety (90) days after the Expiration Date, a security deposit as follows (collectively, the "Security Deposit") as security for the faithful performance of all terms, covenants and conditions of this License and the Towing Agreement: (i) the Performance Bond described in Section 14.9 of the Towing Agreement and (ii) the Maintenance Deposit described in Section 14.14 of the Towing Agreement. Licensee agrees that City may (but shall not be required to) apply the Security Deposit in whole or in part to remedy any damage to the Premises or the Improvements (if any) caused by Licensee, its Agents or Invitees, or any failure of Licensee to perform any other terms, covenants or conditions contained in this License, without waiving any of City's other rights and remedies hereunder or at Law or in equity. City's obligations with respect to the Security Deposit are solely that of debtor and not trustee. The amount of the Security Deposit shall not be deemed to limit Licensee's liability for the performance of any of its obligations under this License.

## **WAIVER OF CLAIMS; INDEMNIFICATION**

**Limitation on City's Liability: Waiver of Claims.** Except for any Pre-2013 Conditions (as defined in Section 24.3) or Non-Licensee Hazardous Materials (as defined in Section 24.8), City shall not be responsible for or liable to Licensee, and Licensee hereby assumes the risk of, and waives and releases City and its Agents from all Claims (as defined below) for, any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises or any part of the Building adjacent to or connected with the Premises which are not occupied by

City, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective Building Systems, (v) Building defects, and (vi) any other acts, omissions or causes. Nothing herein shall relieve City from liability caused solely and directly by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages.

**Licensee's Indemnity.** Except for any Pre-2013 Conditions or Non-Licensee Hazardous Materials, Licensee, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless ("Indemnify") the City and County of San Francisco, including, but not limited to, all of its boards; commissions, departments, agencies and other subdivisions, and Prologis, and all of their Agents, and their respective heirs, legal representatives, successors and assigns (individually and collectively, the "Indemnified Parties"), and each of them, from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind (collectively, "Claims"), incurred in connection with or arising in whole or in part from: (a) any accident, injury to or death of a person, including, without limitation, employees of Licensee, or loss of or damage to property, howsoever or by whomsoever caused, occurring in or about the Property; (b) any default by Licensee in the observation or performance of any of the terms, covenants or conditions of this License to be observed or performed on Licensee's part; (c) the use or occupancy or manner of use or occupancy of the Premises by Licensee, its Agents or Invitees or any person or entity claiming through or under any of them; (d) the condition of the Premises; (e) any construction or other work undertaken by Licensee on the Premises whether before or during the Term of this License; or (f) any acts, omissions or negligence of Licensee, its Agents or Invitees, in, on or about the Premises or the Property, all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under any Applicable Law in effect on or validly retroactive to the date of this License and further except only such Claims as are caused exclusively by the willful misconduct or gross negligence of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and the Indemnified Party's costs of investigating any Claim. Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Licensee by an Indemnified Party and continues at all times thereafter. Licensee's obligations under this Section shall survive the termination of the License.

## INSURANCE

**Licensee's Insurance.** Licensee, at its sole cost, shall procure and keep in effect at all times during the Term insurance for the Premises in the form and amounts and under the terms and conditions specified in the Article 5 of the Towing Agreement (Insurance and Indemnity).

**Licensee's Personal Property.** Licensee shall be responsible, at its expense, for separately insuring Licensee's Personal Property.

**City's Self Insurance.** Licensee acknowledges that City self-insures against casualty, property damage and public liability risks and agrees that City may at its sole election, but shall not be required to, carry any third party insurance with respect to the Premises or otherwise.

**Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, to the extent permitted by Licensee's policies of insurance and any third party insurance that City elects to carry with respect to the Premises, City and Licensee each hereby waive any right of recovery



against the other party and against any other party maintaining a policy of insurance covering the Premises or the contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises carried by Licensee does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Licensee shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against City or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

## **ACCESS BY CITY**

City reserves for itself and any of its designated Agents, the right to enter the Premises at all reasonable times, with or without advance notice, including, without limitation, in order to (i) oversee or inspect Licensee's operations or conduct any business with Licensee; (ii) show the Premises to prospective Licensees or other interested parties, to post notices of non-responsibility, to conduct any environmental audit of Licensee's use of the Premises, to repair, alter or improve any part of the Building, Building Systems or the Premises, and for any other lawful purpose; or (iii) whenever City believes that emergency access is required. City shall have the right to use any means that it deems proper to open doors in an emergency in order to obtain access to any part of the Premises, and any such entry shall not be construed or deemed to be a forcible or unlawful entry into or a detainer of, the Premises, or an eviction, actual or constructive, of Licensee from the Premises or any portion thereof. Licensee shall not alter any lock or install any new or additional locking devices without the prior written consent of City. City shall at all times have a key with which to unlock all locks installed in the Premises (excluding Licensee's vaults, safes or special security areas, if any, designated by Licensee in writing to City).

## **LICENSEE'S CERTIFICATES**

Licensee, at any time, and from time to time upon not less than ten (10) days' prior notice from City, shall execute and deliver to City or to any party designated by City a certificate stating: (a) that Licensee has accepted the Premises, (b) the Commencement Date and Expiration Date of this License, (c) that this License is unmodified and in full force and effect (or, if there have been modifications, that the License is in full force and effect as modified and stating the modifications), (d) whether or not there are then existing any defenses against the enforcement of any of Licensee's obligations hereunder (and if so, specifying the same), (e) whether or not there are any defaults then existing under this License (and if so specifying the same), (f) the dates, if any, to which any amounts owing under this License have been paid, and (g) any other information that may be required.

## **PREMISES MAINTENANCE REQUIREMENTS**

The "Maintenance Plan" shall mean the Maintenance Plan that is a portion of the Approved Operations Manual required under Section VII of Appendix A of the Towing Agreement. Licensee shall faithfully comply with the Maintenance Plan, and any violation of the Maintenance Plan shall be a violation of this Section 22. The Maintenance Plan shall include, at a minimum, the elements described in this Section 22.

**Maintenance of Pavement.** Licensee shall maintain the pavement in the Premises in good condition, including the vehicle and parts storage area, in order to prevent Releases of Hazardous Materials (as those terms are defined below) into or onto the Premises, the remainder of the Property, or the environment. Licensee shall inspect the pavement at least quarterly and shall record in written form the dates and times of such inspections, the name or names of the persons conducting the inspections, and any damage discovered to the pavement and its location.

Licensee shall promptly repair any cracked or broken pavement and shall report such damage and repair to City. City shall have the right to enter and inspect the Premises from time to time to ensure Licensee's compliance with the terms of this License, including, without limitation, this Section 22.1 and Section 22.2 below.

- (a) Licensee must furnish at its own cost sealed concrete pads and hazardous waste containment systems for removing and storing residual fluids and batteries from vehicles;
- (b) Licensee shall clean up and remove all leaked or spilled fluids immediately upon discovery or upon notice by City in accordance with the Maintenance Plan.
- (c) Licensee shall only store vehicles and parts in areas with pavement in good condition. Draining must take place on a sealed concrete pad with a containment system to collect residual fluids.
- (d) Licensee must ensure that paving, including maintenance and repair, shall protect existing or future groundwater monitoring wells on the Premises.

**Plan and Reporting.** In addition to the requirements in Section 22.1 above, the Maintenance Plan shall provide for ongoing inspection, spill and drip response procedures, a maintenance schedule for pavement maintenance and repair of cracks and other identified deficiencies, staff training protocols, and supervised video or photo documentation of initial surface conditions and exit surface conditions. In addition to pavement maintenance, the Maintenance Plan shall include other property management protocols, including but not limited to, maintenance of fencing, lighting, signage and permanent or temporary buildings. The Maintenance Plan shall also include a reporting schedule, with submittal of reports at least quarterly, documenting maintenance performed. Such reports shall include the following information:

- (a) An initial survey of pavement condition as of May 1, 2013;
- (b) Surface type and surface conditions at time of repair, including photographs of pre- and post-repair conditions;
- (c) Repair procedure performed;
- (d) Cost of repairs performed; and
- (e) A final survey of pavement condition at the time of termination of Term.

## **SURRENDER OF PREMISES**

Upon the Expiration Date or other termination of the Term of this License, Licensee shall immediately peaceably quit and surrender to City the Premises together with all Alterations approved by City in good order and condition, free of debris and any Hazardous Materials deposited on the Premises and in the condition it was in as of May 1, 2013, except for normal wear and tear after Licensee's having made the last necessary repair required on its part under this License, and further except for any portion of the Premises condemned and any damage and destruction for which Licensee is not responsible hereunder. The Premises shall be surrendered free and clear of all liens and encumbrances other than liens and encumbrances existing as of the May 1, 2013, and any other encumbrances created by City.

Immediately before the Expiration Date or other termination of this License, Licensee shall remove all of Licensee's Personal Property as provided in this License, and repair any damage resulting from the removal. Notwithstanding anything to the contrary in this License, City can elect at any time prior to the Expiration Date or within thirty (30) days after termination of this License, to require Licensee to remove, at Licensee's sole expense, all or part of Licensee's

Alterations or other improvements or equipment constructed or installed by or at the expense of Licensee, or any vehicles that City may in its sole and absolute discretion authorize to be stored on the Premises after termination of this License, together with any Hazardous Materials contained within such vehicles.

Licensee shall promptly remove such items and shall repair, at its expense, any damage to the Premises resulting from the performance of its removal obligations pursuant to this Section. Licensee's obligations under this Section shall survive the Expiration Date or other termination of this License. Any items of Licensee's Personal Property remaining in the Premises after the Expiration Date or sooner termination of this License may, at City's option, be deemed abandoned and disposed of in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by law. Any expenses or costs incurred by City to discharge liens, remove Licensee's Personal Property or Alterations, or repair any damage for which Licensee is responsible shall be charged against Licensee's Security Deposit.

Concurrently with the surrender of the Premises, Licensee shall, if requested by City, execute, acknowledge and deliver to any instrument reasonably requested by City to evidence or otherwise effect the termination of Licensee's interest to the Premises and to effect such transfer or vesting of title to the Alterations or equipment which remain part of the Premises.

## **HAZARDOUS MATERIALS**

**Definitions.** As used herein, the following terms shall have the meanings set forth below:

**"Environmental Laws"** shall mean any present or future federal, state, local or administrative law, rule, regulation, order or requirement relating to Hazardous Material (including, without limitation, their generation, use, handling, transportation, production, disposal, discharge or storage), or to health and safety, industrial hygiene or the environment, including, without limitation, soil, air and groundwater conditions, including without limitation Article 21 of the San Francisco Health Code.

**"Hazardous Material"** shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health, welfare or safety or to the environment. Hazardous Material includes, without limitation, any material or substance listed or defined as a "hazardous substance", or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to the Carpenter-Presley-Tanner Hazardous Substance Account Act, as amended, (Cal. Health & Safety Code Sections 25300 et seq.) or pursuant to the Hazardous Waste Control Law, as amended, (Cal. Health & Safety Code Sections 25100 et seq.) or pursuant to the Porter-Cologne Water Quality Control Act, as amended, (Cal. Water Code Sections 13000 et seq.) or pursuant to Section 25501(o) of the California Health and Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

**"Indemnify"** shall mean, whenever any provision of this Section 24 requires a person or entity (the "Indemnitor") to Indemnify any other entity or person (the "Indemnitee"), the Indemnitor shall be obligated to defend, indemnify, hold harmless and protect the Indemnitee, its officers, employees, agents, stockholders, constituent partners, and members of its boards and commissions harmless from and against any and all Losses arising directly or indirectly, in whole or in part, out of the act, omission, event, occurrence or condition with respect to which the Indemnitor is required to Indemnify such Indemnitee, whether such act, omission, event, occurrence or condition is caused by the Indemnitor or its agents, employees or contractors, or by any third party or any natural cause, foreseen or unforeseen; provided that no Indemnitor shall be obligated to Indemnify any Indemnitee against any Loss from the negligence or intentional

wrongful acts or omissions of such Indemnatee, or such Indemnatee's agents, employees or contractors. If a Loss is attributable partially to the negligent or intentionally wrongful acts or omissions of the Indemnatee (or its agents, employees or contractors), such Indemnatee shall be entitled to Indemnification for that part of the Loss not attributable to such Indemnatee's (or its agents, employees or contractors) negligent or intentionally wrongful acts or omissions.

**"Investigate and Remediate"** (also **"Investigation"** and **"Remediation"**) shall mean the undertaking of any activities to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises or surrounding property or that has been, is being or threaten to be Released into the environment, and to clean up, remove, contain, treat, stabilize, monitor or otherwise control such Hazardous Material.

**"Losses"** shall mean any and all claims, demands, losses, damages, liens, liabilities, injuries, deaths, penalties, fines, lawsuits and other proceedings, judgments and awards rendered therein, and costs and expenses, including, but not limited to, reasonable attorneys' fees.

**"Release"** when used with respect to Hazardous Material shall include any actual, threatened or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Premises, or in, on, under or about any other part of the Premises or into the environment.

**No Hazardous Materials.** Licensee covenants and agrees that neither Licensee nor any of its Agents, Employees or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated, processed, produced, packaged, treated, emitted, discharged or disposed of in, on or about the Premises, or transported to or from the Premises without (i) the prior written consent of City, which consent shall not be unreasonably withheld so long as Licensee demonstrates to City's reasonable satisfaction that such Hazardous Material is necessary to Licensee's business, will be handled in a manner which strictly complies with all Environmental Laws and will not materially increase the risk of fire or other casualty to the Premises, and (ii) the prior written consent of Prologis. City and Licensee understand that the vehicles transported to and stored at the Property will contain and may partially consist of Hazardous Materials. Licensee shall immediately notify City if and when Licensee learns or has reason to believe a Release of Hazardous Material on or about any part of the Premises or the remainder of the Property has occurred that may require any Investigation or Remediation. Licensee shall not be responsible for the safe handling of Hazardous Materials introduced on the remainder of the Property during the Term of the Towing Agreement by City or its Agents.

Without limiting any other obligation of Licensee, if acts or omissions of Licensee results in any Hazardous Materials Release or contamination of the Premises, Licensee shall, at its sole expense, promptly take all action that is necessary to return the Premises to the condition existing prior to the introduction of such Hazardous Material in, on, under or about the Premises; provided that City approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions could not potentially have any material adverse effect upon the Premises.

**Licensee's Environmental Indemnity.** If Licensee breaches any of its obligations contained in this Section 24, or, if any act, omission or negligence of Licensee, its Agents, Employees or Invitees, results in any Release of Hazardous Material in, on or under any part of the Premises, or the remainder of the Property or the Building, then, Licensee shall, on behalf of itself and its successors and assigns, Indemnify the City from and against all Claims (including, without limitation, claims for injury to or death of a person, damages, liabilities, losses, judgments, penalties, fines, regulatory or administrative actions, damages for decrease in value of the Premises or the remainder of the Building or the Property, the loss or restriction of the use of rentable or usable space or of any amenity of the Premises, or the remainder of the Building or the Property, damages arising from any adverse impact on marketing of any such space,

restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or groundwater in, on or under the Premises, the remainder of the Property, or in any Improvements, and sums paid in settlement of claims, attorneys' fees, consultants' fees and experts' fees and costs) arising during or after the Term of the Towing Agreement and relating to such breach or Release. The foregoing Indemnity includes, without limitation, costs incurred in connection with activities undertaken to Investigate and Remediate any Release of Hazardous Material, and to restore the Premises or the remainder of the Building or Property to their prior condition. This indemnification of City by Licensee includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal or restoration work requested by Prologis or required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or groundwater in, on or under the Premises, the remainder of the Property or in any Alterations. Licensee's obligations hereunder shall survive the termination of this License. Licensee's obligations under this Section do not include an indemnity for Claims arising as a result of Hazardous Materials (or other conditions alleged to be in violation of any Environmental Law) in, on, or under any part of the Premises or the remainder of the Building or Property that were present prior to May 1, 2013, or to the extent that such Claims relate to conditions existing prior to May 1, 2013 (collectively, any "Pre-2013 Conditions"), except to the extent that Licensee exacerbates any Pre-2013 Condition or introduces such Hazardous Materials or conditions. In the event any action or proceeding is brought against City by reason of a claim arising out of any Loss, Claim, injury or damage suffered on or about the Premises or the remainder of the Building or the Property for which Licensee has Indemnified the City and upon written notice from the City, Licensee shall at its sole expense answer and otherwise defend such action or proceeding using counsel approved in writing by the City. City shall have the right, exercised in its sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the City in connection with this License or the Premises or the remainder of the Building or Property. The provisions of this paragraph shall survive the termination of this License with respect to any Loss occurring prior to or upon termination. Licensee and City shall afford each other a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material.

**Compliance with Environmental Laws.** In addition to its obligations under Section 11 above, and without limiting any such obligations or the foregoing, Licensee shall comply with the following requirements or more stringent requirements in any Environmental Laws:

Any Hazardous Materials found and identified as such in the towed vehicles which are not typically part of a towed vehicle, will be removed from the vehicle to an appropriate storage location within 72 hours.

No Hazardous Materials shall be voluntarily or involuntarily disposed of onto or into the ground or into the sewer system.

In no event shall Hazardous Waste (as defined by Title 22 of the California Code of Regulations, as amended) accumulate on the Premises for longer than 90 days. Drums used to store Hazardous Materials shall not be stacked more than two drums high. City will not consider fluids that are normally contained within a vehicle to be Hazardous Wastes so long as they remain contained within the vehicle.

Licensee shall store all Hazardous Materials above ground, not in underground storage tanks.

An emergency response plan, emergency response employee training plan and an inventory of Hazardous Materials stored at the Premises by or for Licensee shall be provided to City.

**Information Requests.** City may from time to time request, and Licensee shall be obligated to provide, information reasonably adequate for City to determine that any and all Hazardous Materials are being handled in a manner which complies with all Environmental Laws.

**Damaged Vehicles.** Licensee shall inspect all vehicles before storing them on the Premises to make a good faith effort to determine that vehicles are not leaking fluids, including but not limited to gasoline, battery acid, oil, transmission and transfer case fluids, brake and clutch fluids, and coolant. Licensee shall secure vehicles that have been severely damaged due to collision or vandalism so that parts do not fall off and fluids do not leak. Leaking vehicles shall be drained of the leaking fluid on a sealed cement pad, which Licensee shall maintain free of build-up of Hazardous Materials. Licensee shall immediately clean-up and remove all leaked or spilled fluids, whether within or outside of sealed or contained areas. Licensee shall treat all such fluids and used cleaning materials as hazardous waste and shall dispose of them in accordance with Environmental Laws and Section 24.3 above. Parts that have fallen off a vehicle shall be placed inside the vehicle in a manner that minimizes damage to the vehicle. Licensee shall not be deemed an owner or operator of any damaged vehicle, but shall be deemed the owner of any fluids that leak from such damaged vehicles on or about the Premises.

**Fire Prevention Measures.** Licensee shall comply with the following fire prevention measures.

Welding and torch cutting shall be in conformance with the Daly City Fire Code.

No smoking will be allowed in the Premises except in designated areas consistent with Applicable Law.

No crushing, burning of wrecked or discarded motor vehicles or waste materials shall be allowed.

Motor vehicles, parts of motor vehicles, junk, waste, or other materials shall not be stored, displayed, or kept in a manner that could hinder or endanger firefighting efforts and operations.

One or more aisles, at least 30 inches wide (or any greater width required under Applicable Law), must be maintained in the area where vehicles are stored, to permit access by the Daly City Fire Department to all parts of the vehicle storage area. Entrances and exits to the area shall be at least 15 feet in width (or any greater width required under Applicable Law).

**Requirement to Remove.** Prior to termination of this License or during the Term if required by a governmental agency, Licensee, at its sole cost and expense, shall remove any and all Hazardous Materials introduced in, on, under or about the Premises by Licensee, its Agents or Invitees during the Term or during any prior time in which Licensee occupied the Premises. Licensee shall not be obligated to remove any Hazardous Material introduced onto the Premises before, during, or after the Term of the Towing Agreement by (1) City or its officers, directors, employees, or Agents or (2) any prior occupants, tenants, property owners, individuals, corporations or entities (collectively, any "Non-Licensee Hazardous Material"). If Licensee demonstrates its compliance with the property maintenance requirements of this License, the Maintenance Plan described in Section 22 above, there shall be a rebuttable presumption that any Hazardous Materials in, on, under or about the Premises were not introduced by Licensee, its Agents or Invitees. However, if Licensee does not demonstrate its compliance with the property maintenance requirements of this License or of the Maintenance Plan, then there shall be a rebuttable presumption that such Hazardous Materials are Licensee's responsibility to the extent

that the presence of such Hazardous Materials bear a reasonable causal relationship to Licensee's non-compliance in their composition and location.

Prior to the termination of this License, at Licensee's expense, City and Licensee shall conduct a joint inspection of the Premises for the purpose of identifying Hazardous Materials on the Premises which can be determined to have been introduced by the Licensee and which Licensee is therefore required to remove. City's failure to conduct an inspection or to detect conditions if an inspection is conducted shall not be deemed to be a release of any liability for environmental conditions subsequently determined to be Licensee's responsibility.

#### **Licensee's Environmental Condition Notification Requirements.**

**Notification of Any Release or Discharge.** Licensee shall notify City in writing as required in the Maintenance Plan if Licensee learns or has reason to believe that a Release of any Hazardous Materials on or about any part of the Premises has occurred, whether or not the Release is in quantities that under any law would require the reporting of such Release to a governmental or regulatory agency.

**Notification of Any Notice, Investigation, or Claim.** Licensee shall also immediately notify City in writing of, and shall contemporaneously provide City with a copy of:

- (a) Any written notice of Release of Hazardous Materials on the Premises that is provided by Licensee or any subtenant or other occupant of the Premises to a governmental or regulatory agency;
- (b) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that is received by Licensee or any subtenant or other occupant of the Premises from any governmental or regulatory agency;
- (c) Any inquiry, investigation, enforcement, cleanup, removal or other action that is instituted or threatened by a governmental or regulatory agency against Licensee or subtenant or other occupant of the Premises and that relates to the Release of Hazardous Materials on or from the Premises;
- (d) Any claim that is instituted or threatened by any third party against Licensee or any subtenant or other occupant of the Premises and that relates to any Release of Hazardous Materials on or from the Premises; and
- (e) Any notice of the loss of any environmental operating permit by Licensee or any subtenant or other occupant of the Premises.

#### **Notification of Regulatory Actions.**

- (a) Licensee shall immediately notify City in writing of any inspection by any governmental or regulatory agency with jurisdiction over Hazardous Materials and shall provide City with a copy of any inspection record, correspondence, reports and related materials from or to the agency.
- (b) Licensee must notify City of any meeting, whether conducted face-to-face or telephonically, between Licensee and any regulatory agency regarding an environmental regulatory action. City will be entitled to participate in any such meetings at its sole election.
- (c) Licensee must notify City of any environmental regulatory agency's issuance of an environmental regulatory approval. Licensee's notice to

City must state the issuing entity, the environmental regulatory approval identification number, and the date of issuance and expiration of the environmental regulatory approval. In addition, Licensee must provide City with a list of any environmental regulatory approval, plan or procedure required to be prepared and/or filed with any regulatory agency for operations on the Property, including a "Spill Pollution Control and Countermeasure Plan." Licensee must provide City with copies of any of the documents within the scope of this Section upon City's request.

- (d) Licensee must provide City with copies of all communications with regulatory agencies and all non-privileged communications with other persons regarding potential or actual Hazardous Materials Claims arising from Licensee's or its Agents' or Invitees' operations at the Property. Upon City's request, Licensee must provide City with a log of all communications withheld under a claim of privilege that specifies the parties to and subject of each withheld communication.
- (e) City may from time to time request, and Licensee will be obligated to provide, information reasonably adequate for City to determine that any and all Hazardous Materials are being handled in a manner that complies with all Environmental Laws.

**Use of Security Deposit.** If Licensee receives a notice of violation or other regulatory order from a governmental or regulatory agency with jurisdiction over the Premises and or its operations and Licensee does not achieve compliance with the notice of violation or order to the satisfaction of the issuing agency within the time specified by the agency or by the City if the agency does not specify a timeframe, the City may draw upon the Security Deposit for purposes of ensuring regulatory compliance. In addition, the City may draw upon the Security Deposit in order to reimburse the City for any fine or other charge assessed against the City related to any notice of violation or other regulatory order issued to Licensee. The City may also draw upon the Security Deposit in order to reimburse the City for costs associated with City's environmental assessments or corrective action, which may be performed at the City's sole discretion.

**Environmental Oversight Deposit.** Upon execution of the Towing Agreement, Licensee shall provide to the City, and shall maintain and replenish throughout the Term of this License and for a period of at least ninety (90) days after expiration of this License, an "Environmental Oversight Deposit" in the amount of \$10,000, which shall be deposited in an account specified and held by City, as security for the faithful performance of all of the terms, covenants and conditions of this Section. If Licensee receives a notice of violation or other regulatory order from a governmental or regulatory agency with jurisdiction over the Premises and or its operations and such notice is not cured within fourteen (14) days, the City may (but shall not be required to) apply draw from the Environmental Oversight Deposit to reimburse the City for staff costs incurred by the City while inspecting site conditions and enforcing and administering the Hazardous Materials provisions of the License. If Licensee receives a notice of violation or other regulatory order from a governmental or regulatory agency with jurisdiction over the Premises and or its operations, and such notice is cured within fourteen (14) days, the City may draw from the Environmental Oversight Deposit in an amount not to exceed \$500 to reimburse the City for staff costs incurred by the City. City will submit an invoice to Licensee for any such costs, and Licensee will pay such invoiced amounts within thirty (30) days to replenish the Environmental Oversight Deposit. Licensee's failure to pay such costs within thirty (30) days, or to replenish the Environmental Oversight Deposit if drawn upon, will constitute an Event of Default.



Any City withdrawal of funds from the Environmental Oversight Deposit pursuant to this Section shall be without waiving any of City's other rights and remedies hereunder or at law or in equity. Licensee agrees that City's obligations with respect to the Environmental Oversight Deposit are solely that of debtor and not trustee. City shall not be required to keep the Environmental Oversight Deposit separate from its general funds, and Licensee shall not be entitled to any interest on the Environmental Oversight Deposit. The amount of the Environmental Oversight Deposit shall not be deemed to limit Licensee's liability for the failure to comply with any of its Hazardous Materials provisions under this License.

**Hazardous Substance Disclosure.** California law requires landlords to disclose to tenants the presence or potential presence of certain hazardous materials and hazardous substances prior to lease. Accordingly, Licensee is hereby advised that occupation of the Premises may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, asbestos, PCBs, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. Further, there were and may be Hazardous Materials located on the Premises, which are described in that certain Phase I Environmental Site Assessment prepared by URS Corporation Americas, dated July 29, 2011, and the memorandum from Robert Begley, of City's Department of Public Works, to Kerstin Magary, of SFMTA, dated May 11, 2012 (collectively, the "Environmental Reports"). Licensee acknowledges that copies of the Environmental Reports have been provided to it.

By execution of this License, Licensee agrees that the Environmental Reports, notices and warnings set forth in this Section 24 have been provided pursuant to California Health and Safety Code Sections 25359.7 and related statutes. City agrees to provide additional information that comes into its possession regarding hazardous substances on the Premises upon request of Licensee.

## GENERAL PROVISIONS

**Notices.** Any notice, demand, consent or approval required under this License shall be effective only if in writing and given by delivering the notice in person or by sending it first-class certified mail with a return receipt requested or by overnight courier, return receipt requested, with postage prepaid, to: (a) Licensee (i) at the Premises, or (ii) at any place where Licensee or any Agent of Licensee may be found if sent subsequent to Licensee's vacating, abandoning or surrendering the Premises; or (b) City at City's address set forth in the Basic License Information; or (c) to such other address as either City or Licensee may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of such notices, demands, consents or approvals may also be given by telefacsimile to the telephone number set forth in the Basic License Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile. All other written communications may be by first class U.S. mail, postage pre-paid, by email or by facsimile addressed with the contact information set forth in the Basic License Information.

**No Implied Waiver.** No failure by City to insist upon the strict performance of any obligation of Licensee under this License or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of any other amounts owing under this License during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this License. No express written waiver of any default or the performance of any provision hereof

shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. Any consent by City hereunder shall not relieve Licensee of any obligation to secure the consent of City in any other or future instance under the terms of this License.

**Amendments.** Neither this License nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by both parties hereto.

**Authority.** Each of the persons executing this License on behalf of Licensee does hereby covenant and warrant that Licensee is a duly authorized and existing entity, that Licensee has and is qualified to do business in California, that Licensee has full right and authority to enter into this License, and that each and all of the persons signing on behalf of Licensee are authorized to do so. Upon City's request, Licensee shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

**Parties and Their Agents; Approvals..** The words "City" and "Licensee" as used herein shall include the plural as well as the singular. If there is more than one Licensee, the obligations and liabilities under this License imposed on Licensee shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party, and the term "Invitees" when used with respect to Licensee shall include the clients, customers, invitees, guests, licensees, assignees or sublicensees of Licensee. All approvals, consents or other determinations permitted or required by City hereunder shall be made by or through SFMTA unless otherwise provided in this License, subject to Applicable Law.

#### **Interpretation of License.**

The captions preceding the articles and sections of this License and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this License.

This License has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this License.

Provisions in this License relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day.

Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this License, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

Any capitalized term used herein shall be interpreted in accordance with the definition set forth in this License. If the capitalized term is not defined in this License, it shall be interpreted in accordance with the definition set forth in the Towing Agreement or the Lease.

Any inconsistency between this License, the Towing Agreement, and the Lease with respect to Licensee's performance of its obligations under the Towing Agreement shall be resolved by giving precedence in the following order: (a) the Towing Agreement; (b) the Lease; (c) this License.

**Successors and Assigns.** Subject to the provisions of this License relating to Assignment and subletting, the terms, covenants and conditions contained in this License shall bind and inure to the benefit of City and Licensee and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by City named herein (or by any subsequent Licensor) of its interest in the Premises as owner or lessee, including any transfer by operation of law, City (or any subsequent Licensor) shall be relieved from all subsequent obligations and liabilities arising under this License subsequent to such sale, assignment or transfer.

**Severability.** If any provision of this License or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this License shall be valid and be enforceable to the fullest extent permitted by law.

**Governing Law.** This License shall be construed and enforced in accordance with the laws of the State of California.

**Entire Agreement.** This License, together with all exhibits hereto, which are made a part of this License, and the Towing Agreement, constitute the entire agreement between City and Licensee about the subject matters hereof and may not be modified except by an instrument in writing signed by the party to be charged. In the event of any conflict between the terms of the Towing Agreement and the terms of this License with respect to Licensee's activities and obligations at the Premises, the terms of the License shall control. All prior written or oral negotiations, understandings and agreements are merged herein. The parties further intend that this License shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this License. Licensee hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises or this License except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Licensee by implication or otherwise unless expressly set forth herein.

**Attorneys' Fees.** In the event that either City or Licensee fails to perform any of its obligations under this License or in the event a dispute arises concerning the meaning or interpretation of any provision of this License, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this License, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

**Holding Over.** Should Licensee hold over without City's consent, such holding over shall not be deemed to extend the Term or renew this License, but such term thereafter shall continue as a month-to-month occupancy. Such occupancy shall be on all the terms and conditions set forth in this License; provided that on or before the first day of each month of such month-to-month occupancy, Licensee shall pay to City rent (the "Holdover Fee") equal to the rent paid by City under the Lease for such month, multiplied by a fraction with a numerator of the square footage of the Premises and the denominator of the square footage of the premises leased by City under the Lease. Licensee shall pay the Holdover Fee to City without prior demand and without any deduction, setoff or counterclaim whatsoever. The Holdover Fee shall be paid by wire transfer to the account designated by City in writing. If the first or last day of

such month-to-month occupancy occurs on a day other than the first day of a calendar month, then the Holdover Fee for such fractional month shall be prorated based on a thirty (30) day month.

All other payments shall continue under the terms of this License. In addition, Licensee shall be liable for all damages incurred by City as a result of such holding over. No holding over by Licensee, whether with or without consent of City, shall operate to extend this License except as otherwise expressly provided, and this Section shall not be construed as consent for Licensee to retain possession of the Premises beyond such month to month holdover occupancy. For purposes of this Section, "possession of the Premises" shall continue until, among other things, Licensee has delivered all keys to the Premises to City, has fully vacated the Premises, and completely fulfilled all obligations required of it upon termination of the License as set forth in this License, including, without limitation, those concerning the condition and repair of the Premises.

**Time of Essence.** Time is of the essence with respect to all provisions of this License in which a definite time for performance is specified.

**Cumulative Remedies.** All rights and remedies of either party hereto set forth in this License shall be cumulative, except as may otherwise be provided herein.

**Provisions of License Surviving Termination.** Termination of this License shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this License. This Section and the following Sections of this License shall survive termination or expiration of this License: Sections 2.1.4, 5, 6.6, 7, 12, 14, 17.2, 17.3, 18.1, 18.2, 23, 24.1, 24.2, 24.3, 24.5, 24.8, 24.9, 24.10, 24.11, 25.6, 25.7, 25.8, 25.9, 25.10, 25.11, 25.12, 25.14, 25.22, 25.26, 25.31.

**Signs.** Licensee agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Building or from the exterior of the Premises without City's prior written consent, which City may withhold or grant in its sole discretion.

**Relationship of the Parties.** City is not, and none of the provisions in this License shall be deemed to render City, a partner in Licensee's business, or joint venturer or member in any joint enterprise with Licensee. Neither party shall act as the agent of the other party in any respect hereunder. This License is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

**Light and Air.** Licensee covenants and agrees that no diminution of light, air or view by any structure that may hereafter be erected (whether or not by City) shall result in any liability of City to Licensee or in any other way affect this License or Licensee's obligations hereunder.

**No Recording.** Licensee shall not record this License or any memorandum hereof in the public records.

**Drug-Free Workplace.** Licensee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Licensee agrees that any violation of this prohibition by Licensee, its Agents or assigns shall be deemed a material breach of this License.

**Public Transit Information.** Licensee shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Licensee employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent

or proximate to the Premises and encouraging use of such facilities, all at Licensee's sole expense.

**Taxes, Assessments, Licenses, Permit Fees and Liens.** (a) Licensee recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee may be subject to the payment of property taxes levied on such interest. (b) Licensee agrees to pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the License interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Licensee's usage of the Premises that may be imposed upon Licensee by law, all of which shall be paid when the same become due and payable and before delinquency. (c) Licensee agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Licensee, if so desiring, may have reasonable opportunity to contest the validity of the same.

**Wages and Working Conditions.** Licensee agrees that any person performing labor in connection with any Alteration that is a "public work" as defined under San Francisco Administrative Code Section 6.22(E) or California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) and that Licensee provides under this License shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco County. Licensee shall include in any contract for construction of such Alterations a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Licensee shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Premises.

#### **Non-Discrimination in City Contracts and Benefits Ordinance..**

**Covenant Not to Discriminate.** In the performance of this License, Licensee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome, HIV status (AIDS/HIV status), weight, height, association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter against any employee of, any City employee working with, or applicant for employment with such contractor and shall require such contractor to include a similar provision in all subcontracts executed or amended thereunder.

**Subcontracts.** Licensee shall include in all assignment, subleases or other subcontracts relating to the Premises a non-discrimination clause applicable to such assignee, sublicensee or other subcontractor in substantially the form of subsection (a) above. In addition, Licensee shall incorporate by reference in all assignments, subleases, and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all assignees, sublicensees and other subcontractors to comply with such provisions. Licensee's failure to comply with the obligations in this subsection shall constitute a material breach of this License.

**Non-Discrimination in Benefits.** Licensee does not as of the date of this License and will not during the Term, in any of its operations in San Francisco, where the work is being performed for the City, or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or

membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

**CMD Form.** As a condition to this License, Licensee shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division.

**Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the License of City property are incorporated in this Section 25.24 by reference and made a part of this License as though fully set forth herein. Licensee shall comply fully with and be bound by all of the provisions that apply to this License under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Licensee understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this License may be assessed against Licensee and/or deducted from any payments due Licensee.

**Non-Liability of City Officials, Employees and Agents.** No elective or appointive board, commission, member, officer, employee or other Agent of City shall be, personally liable to Licensee, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Licensee, its successors and assigns, or for any obligation of City under this License.

**No Relocation Assistance: Waiver of Claims.** Licensee acknowledges that it will not be a displaced person at the time this License is terminated or expires by its own terms, and Licensee fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this License with respect to a Taking.

**MacBride Principles - Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this License. By signing this License, Licensee confirms that Licensee has read and understood that City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

**Tropical Hardwood and Virgin Redwood Ban.** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Licensee shall not provide any items to the construction of Alterations, or otherwise in the performance of this License which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Licensee fails to comply in good faith with any of the provisions of Chapter 8 of the

San Francisco Environment Code, Licensee shall be liable for liquidated damages for each violation in any amount equal to Licensee's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

**Pesticide Prohibition.** Licensee shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Licensee to submit an integrated pest management ("IPM") plan to SFMTA that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Licensee may need to apply to the Premises during the terms of this License, (b) describes the steps Licensee will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as the Licensee's primary IPM contact person with the City. In addition, Licensee shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

**First Source Hiring Ordinance.** The City has adopted a First Source Hiring Ordinance, San Francisco Administrative Code, Chapter 83, which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Licensee shall comply with the requirements of the First Source Agreement between Licensee and City's First Source Hiring Administration contained in Section 10.9 of the Agreement for Towing and Storage of Abandoned and Illegally Parked Vehicles.

**Sunshine Ordinance.** In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, Licensees' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

**Conflicts of Interest.** Through its execution of this License, Licensee acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Licensee becomes aware of any such fact during the Term, Licensee shall immediately notify the City.

**Charter Provisions.** This License is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

**Prohibition of Cigarette or Tobacco Advertising.** Licensee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

**Prohibition of Alcoholic Beverage Advertising.** Licensee acknowledges and agrees that no advertising or sale of alcoholic beverages is allowed on the Premises. For purposes of

this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

**Requiring Health Benefits for Covered Employees.** Unless exempt, Licensee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this License as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this License shall have the meanings assigned to such terms in Chapter 12Q.

For each Covered Employee, Licensee shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Licensee chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

Notwithstanding the above, if the Licensee is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Subsection 25.36.1 above.

Licensee's failure to comply with the HCAO shall constitute a material breach of this License. City shall notify Licensee if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this License for violating the HCAO, Licensee fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Licensee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

Any Subcontract entered into by Licensee shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Licensee shall notify City when it enters into such a Subcontract and shall certify to the City that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Licensee shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Licensee based on the Subcontractor's failure to comply, provided that City has first provided Licensee with notice and an opportunity to obtain a cure of the violation.

Licensee shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Licensee's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

Licensee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

Licensee shall keep itself informed of the current requirements of the HCAO.

Licensee shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Sublicensees, as applicable.



Licensee shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) business days to respond.

City may conduct random audits of Licensee to ascertain its compliance with HCAO. Licensee agrees to cooperate with City when it conducts such audits.

If Licensee is exempt from the HCAO when this License is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000), but Licensee later enters into an agreement or agreements that cause Licensee's aggregate amount of all agreements with City to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Licensee and City to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

**Notification of Limitations on Contributions.** Through its execution of this License, Licensee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City, whenever such transaction would require approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six (6) months after the date the contract is approved. Licensee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Licensee further acknowledges that the prohibition on contributions applies to each Licensee; each member of Licensee's board of directors, and Licensee's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Licensee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Licensee. Additionally, Licensee acknowledges that Licensee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Licensee further agrees to provide to City the name of each person, entity or committee described above.

**Preservative-Treated Wood Containing Arsenic.** Licensee may not purchase preservative-treated wood products containing arsenic in the performance of this License unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Licensee may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Licensee from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

**Resource Efficient City Buildings.** Licensee acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to the environmental design and construction of buildings owned or leased by City. Licensee hereby agrees that it shall comply with all applicable provisions of such code sections.

**Food Service Waste Reduction.** Licensee agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this License as though fully set forth herein. This provision is a material term of this License. By entering into this License, Licensee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Licensee agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time of the Commencement Date. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Licensee's failure to comply with this provision.

### **Criminal History Inquiries for Employment.**

Unless exempt, Licensee agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "Chapter 12 T"), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of Licensee who would be or are performing work at the Premises.

Licensee shall incorporate by reference the provisions of Chapter 12T in all sublicenses of some or all of the Premises, and shall require all sublicenses to comply with such provisions. Licensee's failure to comply with the obligations in this subsection shall constitute a material breach of the License Agreement.

Licensee and sublicenses shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

Licensee and sublicenses shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Licensee and sublicenses shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

Licensee and sublicenses shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Licensee and sublicenses will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

Licensee and sublicenses shall post the notice prepared by the Office of Labor Standards Enforcement ("OLSE"), available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

Licensee and sublicensees understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T or this Permit, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of the License Agreement.

If Licensee has any questions about the applicability of Chapter 12T, it may contact the SFMTA for additional information. SFMTA may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

**Bottled Drinking Water.** Unless exempt, Licensee agrees to comply fully with and be bound by all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and implementing regulations provided therein, as the same may be amended from time to time. The provisions of Chapter 24 are incorporated herein by reference and made a part of the License as though fully set forth.

**Non-Liability of City Officials, Employees and Agents.** No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Agreement.

**Drug-Free Workplace.** Licensee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Licensee agrees that any violation of this prohibition by Licensee, its Agents or assigns shall be deemed a material breach of this License.

**Counterparts.** This License may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**Effective Date.** This License shall be effective as of the Commencement Date.

**Cooperative Drafting.** This License has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the License reviewed and revised by legal counsel. No party shall be considered the drafter of this License, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this License.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LICENSE, LICENSEE ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LICENSE UNLESS AND UNTIL THE BOARD OF DIRECTORS OF CITY'S MUNICIPAL TRANSPORTATION AGENCY SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THE TOWING AMENDMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED IN THIS LICENSE. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LICENSE SHALL BE NULL AND VOID IF THE BOARD OF DIRECTORS OF CITY'S MUNICIPAL TRANSPORTATION AGENCY DO NOT APPROVE THE TOWING AMENDMENT AND THIS LICENSE IN ITS RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS LICENSE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

**IN WITNESS WHEREOF**, the parties hereto have executed this License on the day first mentioned above.

**CITY:** CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation, acting by and through its  
Municipal Transportation Agency

By: \_\_\_\_\_  
Edward D. Reiskin  
Director of Transportation

Date: \_\_\_\_\_

San Francisco Municipal Transportation Agency  
Board of Directors  
Resolution No: \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Attest:

\_\_\_\_\_  
Secretary, SFMTA Board of Directors

Approved as to Form:

Dennis J. Herrera, City Attorney

By: \_\_\_\_\_  
Mariam Morley Deputy City Attorney

**LICENSEE:** TEGSCO, LLC, a California limited liability  
company d.b.a. San Francisco AutoReturn

By: \_\_\_\_\_  
John Wicker, President and CEO

Date:

## Appendix E

### Performance Bond Template

# PERFORMANCE BOND

**KNOW ALL MEN BY THESE PRESENTS**, that WHEREAS, The Municipal Transportation Agency of the City and County of San Francisco, State of California, by Resolution No. XX-XXX, passed \_\_\_\_\_ has awarded to TEGSCO, LLC, dba San Francisco AutoReturn., hereinafter designated as the "Principal", Contract No. **SFMTA-XXXX-XX** (the "Contract").

**WHEREAS**, said Principal is required under the terms of said Contract to furnish a bond for the faithful performance of said Contract (the "Bond");

**NOW, THEREFORE**, we the Principal and \_\_\_\_\_, as Surety, are firmly bound unto the City and County of San Francisco ("City") in the penal sum of

TWO MILLION AND \*\*\*00/100 Dollars (\$2,000,000) lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents for a performance bond. The conditions of this obligation is such that if the said Principal does well and faithfully performs all the conditions and covenants of said Contract, according to the true intent and meaning thereof, upon its part to be kept and performed, then the above obligation is to be null and void, otherwise to remain in full force and effect.

**THE CONDITION OF THIS OBLIGATION IS SUCH**, that if the above bounden Principal, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the said Contract, including the provisions for liquidated damages in the said Contract, any changes, additions or alterations thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City and County of San Francisco, its officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same and no inadvertent overpayment of progress payments shall in any way affect its obligations on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the specifications or of any inadvertent overpayment of progress payments.

**IN WITNESS WHEREOF**, the above-bounden parties have executed this instrument under their seal this \_\_\_\_day of \_\_\_\_\_, **2016**, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

**PRINCIPAL**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**SURETY**

By: \_\_\_\_\_

\_\_\_\_\_  
See Attached

Its: \_\_\_\_\_

**NOTE: Signature of Sureties must be acknowledged by a Notary Public**

Date: \_\_\_\_\_

**CITY**

By: \_\_\_\_\_

**Benjamin Rosenfield, Controller**

Date: \_\_\_\_\_

Approved as to form:  
**Dennis J. Herrera**  
City Attorney

By: \_\_\_\_\_

**Mariam M. Morley**  
Deputy City Attorney