



Craig Carter  
Chief of Police  
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April 20, 2017

**REQUEST FOR PROPOSAL  
POLICE TOW, IMPOUND AND REFERRAL TOW SERVICES  
Notice to Bidders**

Notice is hereby given that the City of Escondido, hereinafter referred to as "City" is seeking proposals from qualified vendors to provide police tow, impound and referral tow services for the City on a rotational basis.

Proposal packets can be obtained at the City of Escondido City Clerk's office, located at 201 N. Broadway, Escondido, CA, 92025. Bidders shall provide one (1) original and five (5) copies of the proposal for the evaluation team to review. Proposal shall be in a sealed enveloped or package clearly marked "Request for Proposal #18-01-Towing and Impound Services." Proposals must be submitted to, and received by, the City of Escondido City Clerk's office, located at 201 N. Broadway, Escondido, CA, 92025, on or before the closing date and time. **Any proposals received after the closing date and time will be returned unopened to the bidder.**

**Closing Date and Time:**                      **May 18, 2017**                      **2:00 p.m.**

**No Public Opening:**                      There will be no public opening of the proposals.

Bidders shall thoroughly review this solicitation for defects and questionable material. Questions or comments concerning this RFP must be submitted solely via email to Lisa Rodelo, Project Manager at [lrodelo@escondido.org](mailto:lrodelo@escondido.org) no later than 2:00 p.m. on May 3, 2017. Emails must be clearly referenced as RFP#18-01, Towing and Impound Services. Any questions or comments received after May 3, 2017, will be disregarded. A summary of questions from prospective bidders and City responses will be posted by RFP number on the City's website at [www.escondido.org](http://www.escondido.org) by 2:00 p.m. on May 10, 2017.

Each proposal shall be in accordance with specifications, instructions, and information contained in this proposal package. The City reserves the right to accept or reject any or all proposals for any reason it deems necessary and to waive defects or irregularities in any proposal at its sole discretion. This Request for Proposal does not commit the City of Escondido to award a contract or to pay any costs incurred in the preparation of a response to this request.

Sincerely,

Craig Carter  
Chief of Police

### **Introduction**

The purpose of the Request for Proposal (RFP) is to enter into a contract with a towing service company that will provide the City with police tow, impound and referral tow services on a rotational basis. The services shall be performed in accordance with the enclosed Draft Tow Services Agreement listed as “**Exhibit A.**” The contract term is expected to be for a period of three (3) years, beginning July 1, 2017 and ending June 30, 2020. Upon satisfactory performance by the contractor and mutual agreement by both parties, the City has the option to renew the contract for three (3) additional one-year periods.

### **Background**

The City of Escondido encompasses 36.53 square miles and has a population of approximately 140,000 residents. Incorporated in 1888, Escondido is a full service city that employs the council/manager form of government. Escondido is located in northeastern San Diego County. Escondido is widely recognized as a leader for its community programs, financial management and economic development. Escondido is rich in cultural, economic and geographic diversity. Currently, the Police Department initiates approximately 2,900 police tows and impounds per fiscal year and approximately 450 referral tows per fiscal year.

The City shall evaluate only those responses to this Request for Proposals (RFP) that precisely conform to each of the requirements and submission formats described in this document. Responses deviating in any way from the requirements and submission formats may be declared non-responsive at the City's discretion.

### **Estimated RFP Schedule**

The following timeline is the City's best estimate for the RFP process and is not binding on the City.

<b>RFP released</b>	<b>April 20, 2017</b>
<b>Questions submitted via email to the city</b>	<b>May 3, 2017</b>
<b>City answers all questions submitted</b>	<b>May 10, 2017</b>
<b>Proposals due date</b>	<b>May 18, 2017</b>
<b>Site Inspections</b>	<b>Week of May 29, 2017</b>
<b>Contract Approval by City Council</b>	<b>June 28, 2017</b>

### **Scope of Work**

The scope of work describes the work to be performed by the contractor and is contained in "Attachment A".

### **Site Inspections of Towing Facilities**

Prior to contract award, the City will conduct on-site inspections of each bidder's business facilities.

### **Proposal Format**

Proposals shall be typed or word-processed and shall meet the following submission criteria:

- Font or type-face of not less than 11 points;
- Bound only by staples;
- Submitted under the signature of an individual authorized to bind the performance of the applicant.

### **Proposal Content**

Proposals must clearly and concisely state the following information, in order as listed below:

#### **Cover Letter:**

A cover letter introducing the company and the individual who will be the contact person. This letter shall briefly state the vendor's understanding of the work to be performed, and a description of how the company is qualified to perform this contract. The statement shall also confirm the vendor's understanding and agreement with no exceptions to the standards of conduct and operation including, but not limited to "referral tows", "on-demand tows", "Police Tows", "Impounds", and other provisions as defined in the Draft Tow Services Agreement in "Exhibit A"

#### **Contractor Background and Experience:**

1. Describe your company's experience in providing the type of services within the past 3 years that are similar to the Scope of Services delineated in this RFP. The Tow Company responding to this RFP must clearly demonstrate that it has been a corporation in good standing and has been in the towing and impound business for at least three (3) years and has record keeping systems in place, proper vehicle storage capacity and the required equipment consistent with contract requirements;
2. Company name, address, local phone number and storage (tow yard) physical location;
3. A brief company/corporate history;
4. Type of business (i.e., corporation, partnership, etc.);
5. Applicable corporate, partnership and/or shareholders' agreements including any amendments thereto and any other documents and/or state filings, that relate to the existence, good standing and ownership of the business described in number (1) above;
6. Names, addresses, phone numbers, positions and California Driver's License numbers for anyone in a key management position and all employees in the business;
7. Name and phone numbers of three corporate or agency references that can attest to the quality of services provided by the company;
8. Single local point-of-contact in authority for all issues, such as complaints, contract issues, etc., related to the provision of towing and impound services for the City. A list of each public and private agency your company currently contracts with to provide similar services, including a contact person for reference;

**Financial Stability:**

1. A copy of quarterly financial statements and cash flow statements (audited if available) for the company for the past two (2) years, including an annual report audited by a licensed CPA;
2. Pending litigations in which the business or its owners is/are a plaintiff or defendant;
3. A list of any active claims against any other public entity in San Diego County;
4. List all businesses for which you or your business manager have filed for bankruptcy protection while operating under a towing service contract.

**Project Plan:**

1. Describe the company's approach to fulfill the Scope of Work as defined in "Attachment A" and requirements of the Draft Service Agreement in "Exhibit A;"
2. Describe the company's policies and procedures for proper towing and impounding services;
3. Describe the company's standards for quality service;
4. Describe the company's policies and procedures for handling complaints from the public. Provide the number of complaints received from the public during the last year.

**Facilities and Equipment:**

1. Provide a list and a short description of the equipment proposed to be used in the performance of services including, but not limited to vehicles and radio equipment;
2. Describe the company's storage facilities to be utilized in the performance of services;
3. Provide detailed description of the facilities' security.

**Certification Form:**

1. A representative with authority to bind the company shall sign and return the "Authorized Company Representative Certification Form (enclosed);"

**Other Information:**

Additional information or data exceeding the minimum qualifications that the respondent would like the City to consider should be communicated at the end of the proposal.

**Proposal Submission Fee**

A fee of \$2,500.00 must accompany the proposal made payable to the City of Escondido. If a Tow Company is awarded a contract for a position on the Police Rotation, the fee will be applied to the first payment required under the future Agreement. If a Tow Company's proposal does not result in the award of a contract, the fee will be refunded in full within 45 days following the City's notice of decision not to award the contract. In calculating this fee, the City has determined Tow Companies that are awarded contracts on the Police Rotation will bear the expense of all investigations and evaluations that occur during the RFP process.

**Evaluation Process**

Proposals will be screened and evaluated by an Evaluation Team established by the Chief of Police to determine a firm's ability to meet or exceed the services required by the City. The evaluation process will include review of the proposal and site visits by the Escondido Police Departments Evaluation Team. Final recommendations from the Police Department will be subject to approval by the City Manager and City Council.

Each company will be evaluated and scored on several qualitative criteria. All rating criteria and company inspection criteria is described in the RFP and accompanying agreement.

A number of criteria will be evaluated on a “complies/does not comply” basis. Companies which comply with the threshold criteria are encouraged to provide comments on and shall also be evaluated on the following criteria:

- Company’s past performance including, but not limited to City’s past experience with Company’s contract performance;
- Prior responsiveness to the Police Department and community concerns;
- Company’s financial stability;
- Customer service and quality control standards;
- Company’s code violations including, but not limited to moving violations known to City’s Police Department;
- Other agency references for the Applicant;
- Complaints from the community regarding the Applicant;
- Project plan to fulfill the service required;
- Adequacy of equipment and facilities.

#### **Tow License Fee**

It is the intent of the City to collect a Tow License Fee from each firm, to be apportioned equally among qualified contractors desiring to tow police impounds and referrals. The fee is \$58,021 annually per vendor (calculation based on six vendors). The Tow License Fee is payable quarterly, on the first day of July, October, January and April.

#### **Communications with the City**

Communication with City employees other than the Project Manager is prohibited, and no City employee or representative other than the City’s Project Manager is authorized to provide any information or respond to any questions regarding this RFP. Prospective contractors may contact the Project Manager solely via e-mail.

#### **Right to Submitted Material**

This RFP does not commit the City of Escondido to award a contract, to pay any costs incurred in the preparation of a contract or proposal, or to procure or contract for, any services. The City reserves the right to accept or reject any or all proposals received as a result of this RFP, to negotiate with qualified vendors, or to amend, cancel (in part or in whole) this RFP if it is in the City’s best interest to do so. All proposals, reports and data submitted to the City shall become the property of the City of Escondido and may not be returned.

Authorized Company Representative Certification

In signing this Response to Request for Proposals below, the Tow Company and its representative express acceptance of all the requirements contained in this Request for Proposals and the accompanying Tow Services Agreement. Any proposed or intended exception or deviation from the requirements must be clearly identified and initialed by the Tow Company Representative in this Request for Qualification.

In signing below, I agree that I have reviewed the items completed by my Tow Company in this RFP and have reviewed and agree to all terms and conditions of the RFP. I agree that if there are any misrepresentations or false statements in the information submitted as part of this RFP, the City may reject this Proposal and elect not to consider my Tow Company for the Police Rotation.

I certify that I understand the RFP, which I sign as an authorized representative of the Tow Company listed below, and that all resolutions or other actions have been taken to enable me and the Tow Company to enter into this RFP and Agreement.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Representative's Signature  
(The above signature must be notarized)

\_\_\_\_\_  
Representative's Name (please print)

\_\_\_\_\_  
Representative's Title

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Tow Company Name, Address & Phone)



**CITY OF ESCONDIDO  
TOW SERVICES AGREEMENT DRAFT – EXHIBIT A**

This Agreement is made this as of July 1, 2017 between the CITY OF ESCONDIDO (“CITY”), a municipal corporation, in the County of San Diego, State of California, and \_\_\_\_\_ (“TOW COMPANY”).

NOW, THEREFORE, IT IS AGREED THAT:

1. Description of Services: TOW COMPANY will furnish all of the services described in Attachment A. Attachment A is incorporated by reference.
2. Compensation: The TOW COMPANY will pay the CITY an annual license fee of \$58,021 payable in four equal portions due on the first day of July, October, January and April during the term of this Agreement. The Compensation is calculated as the total licensing fee of \$348,125 for the program, divided by the total number of tow companies providing services. If the number of tow companies is reduced during the Term, the Compensation stated in this section shall be recalculated based on the foregoing formula at the time the number of tow companies is reduced.
3. Term and Time of Performance: This Agreement shall commence on July 1, 2017 and shall expire in three (3) years on June 30, 2020. This Agreement may be renewed for an additional three (3) year term upon mutual agreement by the City and the Tow Company.
4. Performance: TOW COMPANY must faithfully perform in a proficient manner, to the satisfaction of CITY, all the work or services provided in the Description of Services.
5. Insurance Requirements:
  - a. TOW COMPANY represents that it and its employees, agents, and sub-contractors will be protected at all times during the term of the Agreement by the following insurance coverage:
    1. General liability insurance with at least \$2 million combined single-limit coverage per occurrence for bodily injury and property damage;
    2. Automobile liability insurance of \$2 million combined single-limit per accident for bodily injury and property damage; and
    3. Workers’ compensation and employer’s liability insurance.
    4. Any additional insurance requirements in Attachment A.

- b. Each insurance policy required above must:
    1. Name CITY (which in this paragraph includes its officials, employees, and volunteers) specifically as an additional insured under the policy on a separate endorsement page, with the exception of the workers' compensation policy;
    2. Provide for written notice within 30 days or less of policy cancellation or termination;
    3. Provide coverage by a Best's A-V rated carrier or better, admitted in California; and
    4. Provide a service of suit endorsement for all carriers not admitted in California.
  - c. With respect to the workers' compensation and employers' liability insurance, Tow Company waives all rights of subrogation against CITY.
  - d. Any deductibles or self-insured retentions over \$5,000 must be declared to and approved by the CITY Attorney. At the option of the CITY Attorney, either: the TOW COMPANY shall reduce or eliminate such deductibles or self-insured retentions which apply to TOW COMPANY'S indemnity of CITY, its officials, employees, agents or volunteers; or the TOW COMPANY shall procure an additional letter of credit or bond guaranteeing such indemnity, to the satisfaction of the CITY Attorney.
  - e. TOW COMPANY agrees that approved insurance documents will be on file at the same time as the execution of the Agreement, and that proof of insurance will be provided on an annual basis throughout the term of this Agreement. Failure to maintain valid insurance, or to provide proof of insurance at the time of execution or on an annual basis, shall constitute a material breach of this Agreement.
6. Indemnification: TOW COMPANY (which in this paragraph 7 includes its agents, employees and subcontractors, if any) agrees to indemnify, defend, and hold harmless CITY from all claims, lawsuits, damages, judgments, loss, liability, costs or expenses, including attorneys' fees, for any of the following:
- a. Any personal injuries, property damage or death that TOW COMPANY may sustain while using CITY-controlled property or equipment, while participating in any activity sponsored by CITY, or from any dangerous condition of public property;
  - b. Any injury or death which results or increases by any action taken to medically treat any agent, employee, representative or subcontractor of TOW COMPANY; or



- c. Any claim of liability arising out of the negligence or any acts or omissions of any agent, employee, representative or subcontractor of TOW COMPANY in the performance of this Agreement.
7. Assignment, Delegation, Subcontracting: The services of TOW COMPANY are personal to CITY, and TOW COMPANY may not assign, delegate, or subcontract any interest in this Agreement without written approval from CITY. A controlling interest in the TOW COMPANY may not be sold to, merged with, or dissolved into another company or legal entity without the advance written approval of CITY, which shall not be unreasonably withheld.
8. Independent Contractor: TOW COMPANY is CITY's independent contractor, and no express or implied agency or employment relationship is created by this Agreement. TOW COMPANY'S agents, employees, and representatives shall not be entitled to any benefits to which CITY employees are entitled.
9. Merger Clause: This Agreement and its Attachments, if any, are the entire understanding of the parties, and there are no other terms or conditions, written or oral, controlling this matter. In the event of any conflict between the provisions of this Agreement and any of its Attachments, the provisions of this Agreement must prevail.
10. Anti-Waiver Clause: None of the provisions in this Agreement will be waived by CITY because of previous failure to insist upon strict performance, nor will any provision be waived because any other provision has been waived by CITY, in whole or in part.
11. Severability: The invalidity in whole or in part of any provision of this Agreement will not void or affect the validity of any other provisions of this Agreement.
12. Choice of Law: This Agreement is governed by the laws of the State of California. Venue for all actions arising from this Agreement must be exclusively in the Superior Court of California, County of San Diego, North County Judicial Division, located in Vista, California.
13. Multiple Copies of Agreement/Counterparts: Multiple copies and/or counterparts of this Agreement may be executed, including duplication by photocopy or by computerized scanning device. Each duplicate will be deemed an original with the same effect as if all the signatures were on the same instrument. However, the parties agree that the Agreement on file in the office of the Escondido City Clerk is the copy of the Agreement that shall take precedence should any differences exist among copies or counterparts of the document.
14. Provisions Cumulative: The foregoing provisions are cumulative and are in addition to, and not in limitation of, any other rights or remedies available to CITY.
15. Notices to Parties: Any statements, communications or notices to be provided pursuant to this Agreement must be sent to the attention of the persons indicated below. Each party agrees to promptly send notice of any changes of this information to the other party:

TOW COMPANY:

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CITY:

Escondido Police & Fire Headquarters  
1163 North Centre City Parkway  
Escondido, CA 92026  
Attn: Tow Coordinator  
760-839-4792

16. Business License: The TOW COMPANY will be required to obtain a City of Escondido Business License prior to execution of this Agreement.
17. E-Verify Participation: TOW COMPANY agrees to enroll in and begin use of the United States Department of Homeland Security's ("DHS") E-Verify program ("E-Verify") within thirty (30) days of the execution of this Agreement to confirm employment eligibility of all of TOW COMPANY'S potential new hires. TOW COMPANY agrees and understands that E-Verify enrollment requires TOW COMPANY to sign a Memorandum of Understanding ("MOU") with DHS which provides the E-Verify terms of use. Any violation of the MOU by TOW COMPANY is grounds for DHS' termination of TOW COMPANY'S participation in the E-Verify program. Any such termination by DHS shall constitute grounds for CITY'S immediate termination of this Agreement.
18. Performance Bond: TOW COMPANY must post a performance bond, with a company approved by CITY, in the amount of \$25,000, renewable each year, to assure TOW COMPANY's faithful performance of the terms and conditions of this Agreement and any subsequent agreement to provide services for CITY. This may take the form of a bond executed by a surety company authorized to do business in the state of California, an endorsed Certificate of Deposit, or a money order or certified check drawn on a solvent bank subject to the satisfaction of CITY's City Attorney.
19. Termination of Agreement by the City:
  - a. If the City determines that the TOW COMPANY has failed to fulfill in a timely and proper manner TOW COMPANY's obligations under this Agreement, or that the TOW COMPANY violated any of the covenants, agreements or stipulations of this Agreement, thCITY may terminate this Agreement immediately. TOW COMPANY shall be entitled to receive just and equitable compensation for any work satisfactorily completed up to the effective date of termination, not to exceed the amounts payable hereunder, and less any damages caused CITY by TOW COMPANY's breach. b. The CITY may terminate the Agreement without cause at any time by providing at least sixty (60) days advance written notice prior to termination. If the Agreement is terminated by CITY as provided in this paragraph, TOW COMPANY shall be entitled to receive just and equitable compensation for any satisfactory work completed up to the effective date of such termination, but shall not be entitled to receive compensation for damages, lost profits, or other expectation interests.

20. Termination of Agreement by TOW COMPANY: TOW COMPANY may terminate this Agreement without cause by providing at least ninety (90) days advance written notice to CITY and TOW COMPANY shall forfeit the entirety of the license fees paid prior to the termination. TOW COMPANY agrees that CITY reserves the right to add a new company to provide services if any tow company terminates pursuant to the provisions of this paragraph.
21. Tow Company Errors and Omissions: In the event that CITY determines that the TOW COMPANY's negligence, errors, or omissions in the performance of work under this Agreement has resulted in expense to CITY greater than would have resulted if there were no such negligence, errors, omissions, TOW COMPANY shall reimburse CITY for additional expenses incurred by the CITY. Nothing herein is intended to limit CITY's rights under other provisions of this agreement.
22. Ownership, Publication, Reproduction and Use of Material: All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems and any other materials or properties produced under this Agreement shall be the sole and exclusive property of CITY. No such materials or properties produced in whole or in part under such an agreement shall be subject to private use, copyrights or patent rights by TOW COMPANY in the United States or in any other country without the express written consent of CITY. CITY shall have unrestricted authority to publish, disclose (except as may be limited by the provisions of the Public Records Act), distribute, and otherwise use, copyright or patent, in whole or in part, any such reports, studies, data, statistics, forms or other materials or properties produced under such an agreement.
23. Tow Company Not Authorized to Represent CITY: Unless specifically authorized in writing by CITY, TOW COMPANY shall have no authority to act as CITY's agent to bind CITY to any contractual agreements whatsoever.
24. Promise Not to Acquire Conflicting Interests: Regardless of whether TOW COMPANY is designated as an FPPC Filer under the California Government Code, TOW COMPANY further warrants and represents that TOW COMPANY will not acquire, obtain, or assume an economic interest during the term of this Agreement which would constitute a conflict of interest as prohibited by the Political Reform Act.
25. Duty to Advise of Conflicting Interests: Regardless of whether TOW COMPANY is designated as an FPPC Filer under the California Government Code, TOW COMPANY further warrants and represents that the TOW COMPANY will immediately advise CITY if TOW COMPANY learns of an economic interest of TOW COMPANY which may result in a conflict of interest for the purpose of the Political Reform Act, and regulations promulgated there under. If necessary, CITY will provide a referral to independent legal counsel who can assist the TOW COMPANY with determinations regarding possible conflicts of interest.

26. Specific Warranties Against Economic Interests: TOW COMPANY warrants and represents that neither TOW COMPANY, nor TOW COMPANY's immediate family members, nor TOW COMPANY's employees or agents presently have any interest, directly or indirectly, whatsoever in any property which may be the subject matter of CITY-initiated towing and impound services.

(Continued on following signature page)

IN WITNESS WHEREOF, the parties below are authorized to act on behalf of their organizations, and have executed this Agreement as of the date set forth below.

CITY OF ESCONDIDO

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

\_\_\_\_\_  
Sam Abed  
Mayor

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

\_\_\_\_\_  
Diane Halverson  
City Clerk

\_\_\_\_\_  
\_\_\_\_\_

(Tow Company name and address)

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

\_\_\_\_\_  
(Tow Company signature)

\_\_\_\_\_  
Title

*(The above signature must be notarized)*

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY  
JEFFREY R. EPP, City Attorney

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

THE CITY OF ESCONDIDO DOES NOT DISCRIMINATE AGAINST QUALIFIED PERSONS WITH DISABILITIES.

Attachment A  
Description of Services

1. Tow Services. TOW COMPANY will provide tow services as described herein. The right of any individual involved in a non-criminal traffic collision to call the tow company of their own choosing shall not be infringed upon except in those cases where an unnecessary delay in removing the motor vehicle will, in the opinion of the investigating Peace Officer, diminish public safety or in cases where the individual is incapacitated and unable to make a decision.
2. Rotation. CITY will establish a weekly rotation of companies providing tow services ("Rotation"). Each tow company participating will receive allocations of like periods in sequence in accordance with a schedule developed by the CITY.
3. Tow License Fee. CITY shall retain the right to impose alternative forms of taxes and/or fees in the event that the tow license fees are no longer assessable due to a subsequent change in federal, state or local law.
4. Definitions.
  - a. "Case Numbers" means case numbers assigned by the CITY when a tow is initiated by the Police Department.
  - b. "Manager" means an employee or an Owner of TOW COMPANY that manages operations and is invested with a certain amount of discretion and independent judgment.
  - c. "Owner" means any person owning a controlling interest in TOW COMPANY.
  - d. "Operator" means an Owner or employees of TOW COMPANY whom operate a tow truck.
  - e. "Police Initiated Tows" means the towing of vehicles at the direction of the Police Department where the consent of the vehicle owner to tow the vehicle is not required under existing law, including the towing of motor vehicles which are illegally parked, abandoned, are evidence of a crime, or are otherwise subject to the authority of the Police Department.
  - f. "Referral Tows" means the towing of a vehicle by the Police Department at the request of the vehicle owner.
  - g. "Securely Transport" means making sure that the vehicle's front wheels are secured on a wheel lift correctly and/or all four (4) tires are chained/secured on a car carrier.
  - h. "Tow Truck Inspection Guide" shall mean the Tow Truck Inspection Guide CHP 234B.

5. Tow Company Requirements.

- a. TOW COMPANY shall comply with all provisions of the California Labor Code, and all applicable federal, state, and local laws.
- b. TOW COMPANY shall be responsible for all acts of their employees while those employees are performing services for CITY.
- c. TOW COMPANY shall have a minimum of three (3) verifiable year's for-hire towing experience in order to qualify for the Rotation. Either an owner or a full time Manager continually employed by TOW COMPANY must possess three (3) verifiable years for-hire tow experience, as an owner, principal or full time Manager. Verification of eligibility shall be determined by the CITY. A change in Manager shall suspend the Agreement until a subsequent Manager is hired and the CITY verifies the Manager's prior for-hire towing experience.
- d. TOW COMPANY shall require all new owners, Operators and Manager's involved in the physical act of providing towing services be fingerprinted (via Live Scan) for the purpose of a criminal background check.
- e. TOW COMPANY shall notify the CITY immediately upon a Manager's or Operator's separation from the company.
- f. Any TOW COMPANY Owner, Manager or Operator who separates from the TOW COMPANY, in excess of one year, shall be fingerprinted for the purposes of conducting a criminal history regardless of prior criminal history clearances.
- g. TOW COMPANY shall maintain a current list of Operators.
- h. TOW COMPANY shall have a Carrier Identification (CA) number and a valid Motor Carrier Property (MCP) permit. The MCP documentation shall be provided to the CITY. Expiration of a TOW COMPANY'S MCP and/or suspension of the MCP pursuant to Section 34623 CVC, shall result in the immediate suspension of the TOW COMPANY, as well as additional disciplinary action which may be imposed by the CITY.
- i. TOW COMPANY and its employees are independent contractors and are not agents or employees of CITY. It is acknowledged that an Operator's performance and demeanor may reflect either positively or negatively on CITY. Accordingly, TOW COMPANY employees must refrain from acts of misconduct including but not limited to:
  1. Rude or discourteous behavior;
  2. Lack of service or refusal to provide service to the public;
  3. Any act of sexual harassment or sexual impropriety;

4. Unsafe driving practices; and
  5. Exhibiting any objective symptoms of alcohol or drug intoxication or abuse.
  6. Failure to report any violation of the terms of the Agreement.
- f. TOW COMPANY shall ensure Operators responding to calls for service are competent and have completed all training programs required in Section 7 below.
  - g. TOW COMPANY shall maintain enrollment in a controlled substance and alcohol testing (CSAT) program and shall ensure each Operator participates in the program. TOW COMPANY shall notify CITY if an Operator receives a positive result on any substance abuse or alcohol testing.
  - h. TOW COMPANY shall notify the CITY of any arrest and/or conviction of an Operator, Manager or owner prior to the beginning of the next on duty Rotation. Failure to make notification may be cause for disciplinary action.
  - i. TOW COMPANY shall provide Operators with uniform attire that consists, at a minimum, of a collared shirt. The collared shirt shall conspicuously identify the TOW COMPANY. Additionally, the shirt shall have the first initial and last name of the Operator embroidered above the right breast pocket. The company-issued uniform shall be kept clean and in good repair.
  - j. TOW COMPANY must establish a training policy and procedures for Operators that encounter vehicles with potential blood borne pathogens. This includes a checklist of equipment to be on each tow truck and at the storage facility.
  - k. TOW COMPANY shall courteously provide any information required by claimant to effect the release of the impounded vehicle including: confirming that a particular vehicle is in TOW COMPANY's possession, directions to the location of the vehicle, the method of securing its release, documentation required, applicable charges and fees required to be paid and terms of payment.
  - l. TOW COMPANY shall efficiently process claimants' requests so that legitimate and appropriate requests for the release of stored or impounded vehicles are completed within one (1) hour of the time a claimant arrives at the TOW COMPANY's business office/storage yard.
  - m. All invoices for towing and impounds shall be clearly itemized by charge or fee type and must include Case Numbers to track billing. Disputes



associated with Police Initiated Tows that cannot be satisfactorily resolved by the parties involved shall be adjudicated by CITY. At times there will be releases stating "Bill at CITY Rate." TOW COMPANY agrees that this CITY Rate is one-half of the tow rate plus \$2 per day for storage.

- o. TOW COMPANY employees shall not be offered nor accept gratuities pursuant to CVC Section 12110(a).
- p. The CITY may inspect all TOW COMPANY records relating to compliance with this Agreement without notice during normal business hours. TOW COMPANY shall permit the CITY to make copies of business records at their place of business or remove business records for the purpose of reproduction. The CITY shall provide a receipt for any record(s) removed from the place of business.
- q. TOW COMPANY shall maintain business records for a period of three (3) years, plus the current term of this Agreement and make them available for inspection.

6. Charges and Fees.

- a. TOW COMPANY shall be authorized to, and responsible for, collecting applicable towing and impound charges prior to releasing a vehicle.
- b. Attachment 1 provides a complete schedule of the maximum charges and fees that contracted TOW COMPANY is authorized to collect from consumers for towing/storage and referral services rendered under the Agreement. Rates may be reviewed annually by CITY for possible changes to the rates on the fee schedule.
- c. Attachment 1 shall be posted in a conspicuous place at all locations where TOW COMPANY does business and in every tow truck for consumer viewing. This posting shall also include all instructions necessary for consumers to affect an after-hours vehicle release.

7. Tow Truck Operators.

- a. Operators shall be at least 18 years old and shall possess the proper class of license and endorsements for the towed and towing vehicle.
- b. Operators shall have on their person a CITY issued identification badge at all times when performing a service required under this agreement. The identification badge shall bear the Operator's name and picture. Each Operator will have a training and background check completed by the City of Escondido Police Department prior to issuance of a badge.
- c. Operators shall be properly trained and qualified to perform all work undertaken by or assigned to them. TOW COMPANY shall develop a base line Operator qualification sheet for new Operators. The

qualification sheet shall be completed prior to the Operator going into service alone. Each Operator must initially complete a certified California Tow Truck Association (CTTA) course or equivalent (not AAA) and must submit certification of training every five (5) years. TOW COMPANY must provide CITY with all current training received by each Operator.

- d. All Operators and Managers shall enroll and successfully complete the Pull Notice Program through the Department of Motor Vehicles. Enrollment of Operators is the responsibility of TOW COMPANY and must occur before an Operator may receive a CITY issued identification badge. Pull Notices shall be kept on file and be made available upon request of the CITY.
  - e. Each medium/heavy duty Operator must initially complete a certified California Tow Truck Association (CTTA), WreckMasters or equivalent course (not AAA) certifying them as a medium or heavy duty tow truck Operator and must submit certification of training every five (5) years. Medical exam must be kept current according to DMV standards in order to operate a medium or heavy duty tow truck.
  - f. Operators must wear their respective uniform and a CITY issued identification badge. Non-employees of TOW COMPANY may not respond to a CITY call for service under this Agreement.
  - g. Operators shall maintain a professional standard of personal appearance and hygiene and shall wear appropriate personal protective and safety equipment.
8. Tow Trucks. TOW COMPANY shall maintain all applicable and valid permits for each tow truck in service. TOW COMPANY must maintain documentation on file that demonstrates that all tow trucks in its fleet have passed a California Highway Patrol (CHP) tow truck safety inspection in the last twelve months. Copies of the inspection sheets must be provided to the CITY within five days of the inspection.
- a. Tow trucks not passing inspections or meeting the requirements of this Agreement will immediately be removed from Rotation. Tow trucks will return to Rotation once they have passed a re-inspection by the original inspecting agency.
  - b. TOW COMPANY must own and operate a minimum of five trucks including:
    - 1. Two (2) Class A Wheel lifts rated at 14,500 Gross Vehicle Weight (GVW) with twin cable hydraulic boom rated at one (1) ton or greater;
    - 2. Two (2) Rollback rated at 19,501 GVW;
    - 3. One (1) Medium Duty Wheel lift with a GVWR of at least 33,000 pounds with twin cable hydraulic boom rated at one (1) ton or greater. The truck shall be equipped with air brakes and a tractor protection valve or device, and be capable of providing and maintaining

continuous air to the towed vehicle. All Class B tow trucks with a GVWR of less than 33,000 pounds currently approved by CHP and owned by the same TOW COMPANY shall remain on the rotation tow list until June 30, 2015.

4. TOW COMPANY may maintain a three-axle tow truck with a GVWR of at least 52,000 pounds. The truck shall be equipped with air brakes and must be capable of providing and maintaining continuous air to the towed vehicle.
  5. Tow trucks demonstrating a functional equivalency to any or all of the requirements listed above may be substituted upon receipt of written approval by CITY.
- c. Each truck shall have a maximum 8,000 pound capacity winch that is power driven by power takeoff from transmission, in both directions, and equipped with safety dogs or an adequate braking system. Winches must be fitted with a minimum of 100 feet of cable for recovery tasks. Roll back car carriers must be fitted with a minimum of 50 feet of cable.
  - d. Each truck shall be equipped with lighting systems as required by California Vehicle Code (CVC) Sections 24605, 24606 and 25253. Additionally, trucks shall be equipped with utility lamp lighting systems that comply with CVC Section 25110.
  - e. TOW COMPANY shall maintain three (3) sets of dollies for use by tow trucks providing services to CITY. CITY requires that each tow truck carry its own set of dollies. TOW COMPANY shall have a front wheel motorcycle dolly that must be stored at their yard and not off-site.
  - f. Additional Equipment. Tow trucks must be equipped with the miscellaneous equipment required by CVC Section 27700 and have on file a current Tow Truck Inspection Guide certificate of compliance issued by the California Highway Patrol. Each truck must also be equipped with red flares, lanterns or reflectors, hand tools (screw drivers, pliers, ratchet and sockets, crescent wrenches and metric and standard lug wrenches), bolt cutters, six foot crowbar, rope, broom, shovel, dustpan, fire extinguisher (dry chemical type), utility flood lamps, portable red taillights and stoplight for towed vehicles, equipment for opening locked vehicles, safety snubber chains and a trash can with absorbent material (i.e. Socks, pads, organic material) and a miscellaneous accident debris box. Hand tools shall remain with each authorized Tow Truck and not be dependent on Operator's personal tool box. Equipment shall not be borrowed from another truck in order to pass inspection.
  - g. Safety Chains: Safety chains shall be rated at no less than the rating specified by the original equipment manufacturer. Two safety chains shall be used for each vehicle being towed. The safety chains will be securely affixed to the bed frame or wrecker boom, independent of the towing sling, bar, hitch, wheel lift, or under-lift towing equipment. The towed

vehicle shall be secured to the towing equipment independent of the safety chains by either two chains or two straps. Vehicles being transported on slide back carriers shall be secured by four tie down chains or straps independent of the winch or loading cable. All safety connections and attachments shall have a positive means, of sufficient strength, to ensure that the safety connection or attachment cannot become disengaged while in transit.

- h. Identification: Each truck responding to requests for Police Initiated Tows shall, on both sides of the vehicle, conspicuously bear the company name, local address and local phone number(s) in lettering that complies with CVC Section 27907.
  - i. Radio Communications: Each truck responding to requests for Police Initiated Tows shall be equipped with radio communications equipment capable of effecting two-way radio communications between the truck and the TOW COMPANY's dispatching operation. Citizens band radios shall not be used to meet this requirement.
  - j. Inspection Guide: TOW COMPANY must provide a completed Tow Truck Inspection Guide completed by the California Highway Patrol or authorized CITY official for each tow truck.
  - k. Each tow truck responding to a request for Police Initiated Tows shall be well maintained and clean on the exterior and interior and should reflect a professional image.
9. Vehicle Storage & Office Hours. Each TOW COMPANY must have and maintain exclusive use of a storage yard and business office facility. The business office and storage facility must be located in the same location, be a reasonable distance from public transportation, and be within CITY limits. No secondary yards will be allowed for storage. All business records of the TOW COMPANY relating to the awarded contract shall be maintained at the business office location and should include the length of time the storage yard and business office has been operational at that location.
- a. TOW COMPANY'S place of business shall have a sign which clearly identifies it to the public as a tow service. Business hours shall be posted in plain view to the public. Place of business shall be sufficiently staffed to allow customers to talk face-to-face with a TOW COMPANY'S owner, Manager or employee during normal business hours.
  - b. TOW COMPANY shall keep business hours from at least 8 a.m. to 5 p.m., Monday through Friday, except for the following state recognized holidays: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, 4<sup>th</sup> of July, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving Day and Christmas Day.

- c. Offices staffed with only one employee may be closed for one hour at lunch. A sign shall be posted which reflects a lunch closure and a phone number where a request by a vehicle's owner/agent shall result in an immediate response to release property or a vehicle.
  
- d. Storage facilities must comply with the following:
  - 1. Minimum Storage Space: The storage yard must be a minimum of twenty thousand (20,000) square feet to accommodate one hundred twenty (120) vehicles. This space is exclusive of other storage areas the tow company utilizes for storage of vehicles that are not Police Initiated Tows.
    - i. TOW COMPANY must have secured inside storage capable of storing four full sized vehicles or pickup trucks, two of which must be independently secured (i.e. Sea-Containers or similar facility) capable of being locked and that are not accessible to employees of TOW COMPANY and the public.
    - ii. The storage yard must be completely enclosed with a six (6) foot high security fence with poles that are no further apart than eight (8) feet wide and embedded in concrete. Construction of the fence and gates must be of sufficient construction to prevent entry into the storage area of unauthorized persons or vehicles.
    - iii. Vehicles and their contents must be kept safe from pilfering in the storage lot and must be screened from view from street level. All vehicles towed or stored pursuant to this Agreement must be kept within the confines of the storage lot.
  - 2. The storage yard should be comprised of a surface that remains free from mud, pools of water, debris or other elements that would be harmful to stored vehicles or persons viewing the vehicles. Examples of an acceptable surface would be concrete, asphaltic concrete, or a similarly durable surface.
  - 3. Examination/Hazardous Waste Areas: Within the storage lot there must be two designated areas that are paved and sealed adequately to prevent runoff and/or percolation of liquid waste, on which to inspect and store vehicles leaking fluids.
    - i. The first area will be at least four hundred (400) square feet and sufficient to place two vehicles perpendicular to each other for inspection and/or overhead photography. This area must be flat.

- ii. The second area shall be at least six hundred (600) square feet and sufficient to hold six (6) vehicles at any one time. The second area shall not be used for general vehicle storage, but left open for immediate use for vehicles leaking fluids.
      - iii. TOW COMPANY shall have on file a written policy and method of hazardous waste recovery and disposition approved by the Escondido Fire Department.
      - iv. The tow yard shall have available a forklift capable of lifting and positioning vehicles onto the inspection pad, and/or in the Sea-Containers.
    - 4. There must be adequate lighting, and all yard and office construction must comply with applicable laws including, but not limited to, building codes, fire codes and zoning regulations. The following minimum lighting standards per 10,000 square feet apply unless local zoning or other regulations dictate increased or diminished lighting requirements:
      - i. Four (4) 300 Watt incandescent medium-wide flood lights;
      - ii. Three (3) 300 Watt quartz halogen lights;
      - iii. Two (2) 100-Watt high-pressure sodium lights;
      - iv. Additional storage space must be lighted at the above ratio. Storage yards with less than 10,000 square feet must meet the above minimums. TOW COMPANY must meet all municipal code requirements for lighting.
    - 5. The storage yard shall have commercial grade 24 hour video surveillance coverage of all storage areas and access points, shall retain 60 days of video and shall have a commercial alarm system.
10. Stored Vehicles.
- a. During regular business hours, TOW COMPANY shall, except as restrained in paragraph 10.b. below, make vehicles stored at the request of CITY available to the vehicle's registered owner or a person who can be verified to be the registered owner's agent, for the purpose of removing property from the vehicle. TOW COMPANY must also allow insurance agents, insurance adjusters, or representatives of an automotive repair business access for the purpose of estimating or appraising damages. An employee of TOW COMPANY shall escort and be on scene during the removal of property or during an insurance inspection.

- b. Vehicles impounded by CITY for investigative purposes shall be held separately in a secured non-public area on TOW COMPANY's property until the vehicle is released by order of the CITY. Any property or other contents of such vehicles shall not be removed by any person other than a Peace Officer or Evidence Technician employed by CITY. Property removed from such vehicles shall be recorded as removed on the content inventory and the content inventory dated and signed by a representative of TOW COMPANY and the Peace Officer or Evidence Technician removing such property.
  
11. Response Times. TOW COMPANY shall respond to calls 24 hours per day, seven days per week and must respond to calls for service from within the City limits (unless there is a request for a medium or heavy duty truck that has to respond from a greater distance). The responding tow truck must arrive with the appropriate equipment at the requested location within the City of Escondido within 30 minutes and daily response time shall average twenty (20) minutes or less. CITY shall identify the appropriate equipment during the initial call for service. Response time is computed from the time the police dispatcher notifies TOW COMPANY until the tow truck arrives on scene. TOW COMPANY may inform the police dispatcher within five minutes of the initial call for service if, for any reason, it cannot respond within the required 30 minute limit. If notified within five minutes of the originating request for service, dispatcher will contact the next TOW COMPANY on the rotation. Unless TOW COMPANY contacts the police dispatcher within five minutes to waive the call for service, a failure to respond to a towing call within 30 minutes or to exceeding the 20 minute average response time for any day, shall be grounds for disciplinary action.
  
12. On-Scene Duties. Upon arriving on-scene to remove any of the vehicles, TOW COMPANY's Operators shall report to the Peace Officer in charge and discharge their duties in accordance with the following conditions:
  - a. Operators shall make every reasonable effort to comply with direction provided by the officer-in-charge.
  - b. Operators shall always wear their reflective safety vest. An Operator arriving at the scene, providing service or towing a vehicle must display an oscillating, flashing or rotating amber light. No other color may be used. The emergency light must be discernible from the front and back of the truck for at least 500 feet.
  - c. Operators shall be responsible for verifying the peace officer's damage assessment for each vehicle towed as a police impound, and shall sign the CHP 180 form.
  - d. Operators shall be responsible for removing and appropriately disposing of collision-related debris from the public right-of-way at the time of the tow to ensure public safety. Additionally, if manual street sweeping is needed, TOW COMPANY is to provide this service.

- e. Operators may make any emergency alterations reasonably required to safely move and/or tow vehicles.
  - f. Operators shall carry and provide Customer Satisfaction/Complaint Forms to customers upon request.
  - g. Operators shall not photograph or otherwise electronically record any accident or crime scene without the expressed permission of the CITY.
  - h. After removing a vehicle from the public right-of-way or private property, Operators shall securely transport that vehicle.
13. Collateral Services.
- a. TOW COMPANY shall, at the request of CITY, move, tow away and impound motor vehicles which are, under the authority of the California Vehicle Code or Escondido Municipal Code, declared by CITY to be: illegally parked, abandoned, involved in a traffic collision and constitute an obstruction of traffic, involve Operator negligence, we impounded pursuant to a lawful arrest and/or have some other evidentiary value
  - b. The Operator engaged to remove a disabled vehicle from the scene of an accident shall remove all liquid, glass and debris deposited upon the roadway as a result of the incident involving the disabled vehicle that is to be towed.
  - c. CITY may occasionally require the removal of inoperable CITY vehicles within CITY limits and tow such vehicles to the appropriate CITY facility. Such services will be provided by TOW COMPANY at no charge for vehicles similar to a one-ton pickup and smaller. TOW COMPANY shall charge CITY a fixed rate for larger vehicles, as determined by the Escondido City Council.
  - d. TOW COMPANY, at CITY's request, shall remove and impound up to 10 vehicles per week from private property or from the public right-of-way, which are declared abandoned by CITY. Such services will be provided at no cost to CITY. CITY will make reasonable attempts to remove abandoned vehicles during the hours of 6:00 a.m. – 10:00 p.m.
  - e. TOW COMPANY shall respond to a non-injury accident scene to clean-up debris from the vehicles on scene.
14. Reporting Requirements.
- a. TOW COMPANY shall keep and maintain records of each vehicle towed at the request of the CITY for the duration of the contract period. These records shall be recorded on a monthly rotation report ("Monthly Report") in a form and manner approved by the CITY.



- b. CITY shall have the right to inspect and audit, without prior notification, TOW COMPANY records at reasonable times during normal working hours to determine compliance with these record-keeping requirements.
  - c. TOW COMPANY shall submit the Monthly Reports to the CITY no later than the fifteenth day of each month. Monthly Reports shall cover services rendered during the preceding month. Vehicles being held over from the previous month must be included on the Monthly Report as part of the inventory until such time as the vehicle is subject to a lien, released or junked.
  - d. TOW COMPANY shall submit a quarterly financial report to the CITY on October 1<sup>st</sup>, January 1<sup>st</sup>, April 1<sup>st</sup> and July 1<sup>st</sup> of each quarter through the term of the Agreement (“Quarterly Report”). The report submitted on July 15<sup>th</sup> each year shall also include an annual summary of all items reported for the previous fiscal year. Quarterly Reports must be in a computer-generated format acceptable to CITY.
15. Audit and Inspection of Records. TOW COMPANY shall, during normal business hours, make all records, equipment and storage facilities available for periodic, unscheduled inspection by CITY. Records shall include TOW COMPANY’s financial statements.
16. Negligent Vehicle Impound Program (NVIP) Fees. The CITY will be responsible for collection of NVIP fees.
17. Insurance. In addition to the insurance requirements addressed separately in this Agreement, TOW COMPANY shall maintain minimum insurance at the following levels:
- a. Uninsured Motorist – Legal minimum, combined single limit.
  - b. On-hook Coverage / Cargo – Insuring the vehicle in tow with limits based on the size of the tow truck.
    - 1. Class A tow truck - \$50,000,
    - 2. Class B tow truck - \$ 100,000,
    - 3. Class C tow truck - \$ 200,000,
    - 4. Class D tow truck - \$ 250,000.
  - c. Garage Liability – Includes premises and operations. Coverage for bodily injury and property damage with a combined single limit of not less than \$500,000.
  - d. Garage Keeper’s Liability – Shall be the same as on-hook coverage for vehicles in the care, custody and control of the TOW COMPANY in the storage yard.

- e. Minimum Level of Financial Responsibility (as required by Section 34631.5 CVC) – Bodily injury and property damage with a combined single limit of not less than \$750,000 for Class A tow trucks. The combined limits for Classes B and C shall not be less than \$1,000,000. These minimum standards are to include non-owned and hired auto coverage.
18. Impounded Vehicles.
- a. TOW COMPANY shall provide vehicle release services on a twenty-four-hours-a-day, seven-days-per-week basis. Any vehicle release effected outside the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday (including legal holidays), is subject to the after-hours release fee contained in the CITY Council approved Fee Schedule.
  - b. TOW COMPANY shall not release any vehicle impounded as the result of a Police Initiated Tow unless the claimant presents a valid, CITY-issued Vehicle Release Form, current registration, proof of insurance and an Impound Vehicle Payment Receipt. The CITY will determine which impounded vehicles require such releases. TOW COMPANY is responsible and liable for the release of any vehicle without a Vehicle Release Form. All vehicle lien sales must fully comply with California Civil Code Section 3072, and this agreement. In addition to any other provision of state or local law, TOW COMPANY agrees to comply with the following the lien sale of any vehicle:
    - 1. Remove and destroy the vehicles' license plates by cutting them in two pieces.
    - 2. Within five (5) days of the sale, submit a completed "Notice of Release of Liability" form to the Department of Motor Vehicles.
    - 3. Within ten (10) days of the sale, submit the two pieces of the destroyed plates to the CITY along with the copy of the "Notice of Release of Liability" form for each destroyed plate.
  - c. If TOW COMPANY fails to perform any provision of paragraph 17.b. above, TOW COMPANY shall be liable to CITY in the amount of \$500 per violation.
  - d. Repair and Alteration of Impounded Vehicles. TOW COMPANY shall not make any repairs or alterations of vehicles in their possession without the express written authorization of the vehicle's registered owner, the registered owner's insurance carrier or a verifiable agent of the owner or insurance carrier unless necessary to tow the vehicle.
  - e. Damage to Vehicle While in TOW COMPANY's Possession. CITY will provide a California Highway Patrol 180 Impound and Storage forms to Operators for police tows and impounds. TOW COMPANY shall be responsible for any damage occurring to the vehicle while in its sole possession and, therefore, damage not recorded on the CHP 180

damage assessment will be considered TOW COMPANY's responsibility. TOW COMPANY shall indemnify CITY for any and claims or lawsuits pertaining to damage which occurs to the vehicle after TOW COMPANY has arrived at the scene, or which occurs during Referral Tows.

- f. Loss of Property While in TOW COMPANY's Possession. TOW COMPANY shall be responsible for all property belonging to that vehicle as identified by the content inventory and the CHP 180 form. Loss of property which occurs after TOW COMPANY has arrived at the scene, or which occurs during Referral Tows will be the sole and undisputed responsibility of TOW COMPANY.

19. Complaint Procedure.

- a. All Customer Satisfaction/Complaint Forms as well as any other verbal or written complaints received by TOW COMPANY or initiated by CITY will be forwarded to the Traffic Sergeant of the Escondido Police Department Traffic Bureau and shall be investigated in a fair and impartial manner.
- b. The Traffic Sergeant or his/her designee will review, investigate, and adjudicate all complaints regarding Police Initiated Tows, related disputes, and customer complaints regarding the quality of service being provided by TOW COMPANY as measured by compliance with the terms and conditions of this Agreement, when appropriate.
  - 1. TOW COMPANY shall cooperate with the Escondido Police Department investigators during the course of an investigation. Should the filing of criminal charges be a possibility, the Escondido Police Department shall conduct the investigation to conclusion or assist the lead investigating agency and request prosecution if warranted.
  - 2. At the conclusion of the investigation of the complaint, applicable parties will be notified in writing of the outcome and any disciplinary action to be taken, notwithstanding any limitations on the release of such information pursuant to California Penal Code sections §§ 832.5, 832.7, and 832.8, *et seq.* and California Evidence Code §§ 1043 through 1047.

20. Disciplinary Action. The CITY's Chief of Police may take disciplinary action against a TOW COMPANY for violations of this Agreement. TOW COMPANY agrees that failure by the any member of their respective organization, or their agent, to comply with the terms and conditions of this Agreement shall be cause for disciplinary action. Violations of this Agreement will be investigated and a disposition determined by the Chief of Police or his/her designee.

- a. The following will be used as a guide for action against an Operator for minor violations investigated and verified as true:
  - 1. 1<sup>st</sup> Violation - Written Reprimand

2. 2<sup>nd</sup> Violation Within 12 Consecutive Months – 1 to 30 day rotation suspension
  3. 3<sup>rd</sup> Violation Within 12 Consecutive Months – 1 to 60 day rotation suspension
  4. 4<sup>th</sup> Violation Within 12 Consecutive Months – 1 to 90 day rotation suspension or termination for cause.
- b. CITY's Chief of Police may suspend any Operator or TOW COMPANY if in his or her judgment the Operator or TOW COMPANY's conduct poses a danger to public safety, or there is evidence of criminal conduct, or if such conduct constitutes a gross violation of the terms and conditions of this Agreement. The suspension would remain in effect until the investigation is completed and a final disposition is reached. Dispositions may include termination of Agreement.
  - c. A violation of the GVWR and/or safe loading requirements of a tow truck may be cause for disciplinary action. This includes exceeding the tow truck's GVWR, front axle weight rating (FAWR), rear axle weight rating (RAWR), maximum tire weight ratings, or not maintaining 50 percent of the tow truck's laden front axle weight on the front axle when in tow.
  - d. Any conviction of an employee of the TOW COMPANY involving a stolen or embezzled vehicle, fraud related to the towing business, stolen or embezzled property, a crime of violence, a drug-related offense, felony driving while under the influence of alcohol or drugs, misdemeanor driving while under the influence of alcohol or drugs, or moral turpitude shall be cause for suspension or removal of an an employee, or denial of an Operator's application, or termination of the Agreement.
  - e. A TOW COMPANY shall satisfy a court order mandating reimbursement to the vehicle or property owner for the damage or loss which occurred while the vehicle was in the TOW COMPANY'S possession.
  - f. A violation of the equipment requirement, related to safety, shall be cause for immediate suspension. The suspension shall remain in effect until the suspension period is completed and the CITY has inspected the equipment and concluded the TOW COMPANY is in compliance.
  - g. Any unsatisfactory terminal evaluation rating issued by the Motor Carrier Safety Unit (MCSU) shall be cause for suspension. The suspension shall remain in effect until proof of a satisfactory compliance rating from the MCSU has been provided to the CITY.
  - h. Allowing an incompetent Operator to respond to a call shall be cause for disciplinary action of the TOW COMPANY.
21. Appeals. All actions involving this Agreement may be appealed to CITY's Chief of Police within ten (10) business days of written notification of disciplinary action. If requested, CITY shall schedule a hearing as soon as practical. When an appeal is filed, CITY shall make a determination whether to stay any disciplinary action based on the issues, facts and severity of the underlying violation. The

hearing shall be conducted by the Chief of Police or his designee and the TOW COMPANY shall be entitled to present testimony and all relevant facts. Except for rules of privilege or other constitutional rights, the California rules of evidence may be used when considering introduction of any evidence. The decision of CITY's Chief of Police may be appealed to the CITY's City Manager within ten (10) business days after written notification of the decision of CITY's Chief of Police. The City Manager or his designee may schedule a second hearing or may review the administrative record before reaching a decision. The decision of CITY's City Manager is final, and there is no further administrative remedy available. Failure to file a written appeal within ten days of notification, shall constitute a waiver of all appeal rights and the decision is final.

22. CITY Department Errors and Omissions. When any vehicle has been ordered towed by CITY and it is established that the tow was in error through a mistake of fact, TOW COMPANY shall release the vehicle to its registered owner or another legitimate claimant at no cost. If an error by CITY results in a vehicle being stored longer than it can reasonably be determined that it should have been, TOW COMPANY shall release the vehicle to the claimant, and bill the claimant only those storage charges that would have accrued if no error had occurred. In the case of erroneous towing, TOW COMPANY shall charge CITY 50% of the Basic Tow rate. In the case of erroneous extended storage, TOW COMPANY shall charge CITY \$2.00 per day for storage charges beyond the claimant's responsibility. However, if CITY can reasonably establish that the circumstances resulting in the error were beyond the control of CITY, neither CITY nor the claimant shall be liable for such charges.