AGREEMENT FOR ROTATING DISPATCH
OF VEHICLE TOWING AND STORAGE SERVICES

PREAMBLE

This Agreement made and entered into this ___ day of __________, by and between __________________________., herein after called “Service Provider,” and the City of West Linn, a municipal corporation of the State of Oregon, hereinafter called “City.”

WITNESSETH

The parties hereto mutually covenant and agree to and with each other as follows:

PURPOSE

The purpose of this Agreement is to set forth the terms and conditions under which City agrees to place Service Provider on its rotating tow list to provide police tows and non-preference tows within the City of West Linn. It is understood that there may exist competing towing service providers authorized by City to provide such tows and all such providers shall comply with the minimum standards of service set forth herein. Towing Service Providers who continuously maintain the standards set forth will be notified on a rotating basis so that each has the opportunity to share towing service demand that is required through the West Linn Police Department. Those towing Service Providers who do not continuously maintain the minimum standards set forth herein are not thereby precluded from operating within the City, but they may not participate in the call rotation established by the Police Department.

DEFINITIONS

City: Means the City of West Linn, it’s Police Department, its officers, agents, employees, Communications Center, and dispatch operators.

Description of Vehicle: Includes license number, issuing state, make, model year, body style, color and vehicle identification number.

Non-preference tow: Means a tow when the owner requests that a tow be ordered by law enforcement and neither the City nor the owner has a preference for which tow company responds.

Owner: When referring to the owner of a vehicle as defined in the ORS relating to towing, means the person entitled to possession of the vehicle and who is responsible for the vehicle. Typically, this is the person to whom the vehicle is registered.

Police Tow: Any tow or storage request by the Police Department.

Rotating tow list: Means a list of Service Providers eligible to provide Tow Services to be dispatched by Lake Oswego Communications on a rotating basis pursuant to this Agreement.

Service Provider: Means a person or entity authorized by City to participate in the City rotating tow list, including the Service Provider’s officers, employees and agents.
Towing Service: Means a tow requested by police personnel where the owner or driver has no preference, law enforcement denies the preference or police directs the location to which the vehicle is to be towed. Unless the context requires otherwise, "towing service" includes storage.

TERMS AND CONDITIONS

I. City:

A. Rotating Tow List. City shall maintain with Lake Oswego Communications a list of all tow Service Providers that have an Agreement with the City. Except as otherwise provided herein, City shall authorize dispatch of each such provider on a rotating basis. If the provider cannot provide service as required in a timely manner, then the next provider on the list shall be used.

B. Towing and storage of city vehicles. Nothing in this Agreement limits City's right to provide or arrange for towing or storage for city vehicles in any manner and at any time it so chooses.

C. Towing charges. City shall pay the towing charge on file with City pursuant to Section II H., for all vehicles directed by City to be towed to a City storage facility. Service Provider hereby assigns to City any rights it has to claim such fees from the vehicle owner or lien the vehicle.

D. Contractor shall permit Police Department to conduct, at no cost, one or more inspections per year of all its tow trucks, equipment, and storage areas. Such inspections may be without notice, during Contractor’s regular business hours.

E. The Chief of the Police Department may issue rules and directives not inconsistent with this Tow Agreement. Contractors shall be issued copies of these rules and directives, such rules and directives shall be incorporated into and become effective as part of this Tow Agreement.

II. Service Provider: Eligibility for placement on the rotating tow list is conditioned on Service Provider maintaining a current City of West Linn business license and continuously complying with the following:

A. Performance

1. Service Provider shall perform all tows and storage in accordance with the standards of performance prescribed herein and all applicable provisions of the then current Oregon Revised Statutes and Oregon Administrative Rules.

2. Service Provider shall perform all tows and storage in a safe manner and shall not cause damage to persons or property of others while providing towing or storage service pursuant to this Agreement.

3. Service Provider shall not interfere with or injure rights or obligation of any other Service Provider.
4. Service Provider shall not authorize or assign any towing or storage service to be performed under this Agreement to a third party without obtaining the prior written consent of the City.

5. At the direction of a police officer, Service Provider shall tow a vehicle to a City owned or operated storage lot. If a City storage lot is used Service Provider shall be entitled to towing fees only.

6. Continuously provide towing services when called on under this Agreement. Repeated failure to continuously maintain compliance with the terms of this Agreement and/or respond to tow dispatches as provided for herein may result in suspension or termination unless excused by City due to circumstances beyond the reasonable control of Service Provider. Service providers that do not continuously maintain compliance with this Agreement shall be notified of the particular deficiency and shall be removed from the rotation list if the deficiency is not corrected within the timeline established by the City.

7. Contractor shall train employees in the proper use of equipment necessary to clean up the usual debris at accident scenes, as required by ORS 822.225.

B. Equipment

1. Service Provider shall maintain at least two (2) tow trucks, which are rated by their manufacturer at not less than five (5) tons capacity and at least one (1) tow truck rated as a class C, dual axel tow truck with a twenty five (25) ton boom rating.

2. Except as modified by this Agreement, Service Provider agrees to continuously comply with the requirements set forth in ORS 822.200 – 822.215.

3. All tow trucks used for towing under this Agreement shall be equipped and maintained as follows:
   a) Clearly and permanently identified on each side with the Service Provider's name.
   b) Display at least one light mounted behind the cab of the tow truck, which is capable of illuminating the area of the tow under foggy or darkened conditions.
   c) Display a four-way flashing system, including one flashing amber light or other color prescribed by State law of not less than five inches in diameter.
   d) Be outfitted with a FCC licensed two-way radio pursuant to Part 93 FCC regulations (citizens band radios not acceptable.)
   e) Include no less than one fire extinguisher with an Underwriter’s Laboratory rating of at least 25B: C units, one broom, one shovel, and one container for debris.
   f) Carry equipment capable of providing polarity protected starting, tire changing equipment, and tow cable at least 100 ft. in length.
g) Be outfitted with a dolly for the purpose of towing motor vehicles where the use of such device is necessary to avoid damage to the towed vehicle on all trucks under 12,500 lbs. GVW, unless tow truck is a flat-bed style tow truck.

h) Be outfitted with all other equipment required by State and Federal law, including but not limited to special lighting requirements of ORS 816.280.

i) All tow trucks and equipment used shall be maintained in good working condition and shall be kept clean.

j) Service Provider shall have at least one special device designed for the proper towing or transporting of motorcycles.

C. Prohibitions

Neither Service Provider nor any of Service Provider’s employees or agents shall:

1. Make a false statement of a material fact, or omit disclosure of a material fact in the application for the approval by City of this Agreement or in connection with the performance thereof.

2. Monitor the police radio for profit or gain.

3. Solicit information as to accident locations by payment of any form of gratuity.

4. Solicit those at the scene of an accident. However, Service provider may render assistance without charge at the scene of an accident to clear a public street or highway, or provide other safety or humanitarian assistance.

5. Either expressly, by implication, or by any statement or action, make any false statement of representation or approval by any business or organization.

6. Require performance of repair work on a vehicle involved in an accident or breakdown in connection with providing towing service for such vehicle pursuant to this Agreement.

7. Make any repairs or alterations to a vehicle without first being authorized by the registered owner, an authorized insurance company, or their authorized agent. This shall not be construed to prohibit Service Provider from making emergency alterations necessary to permit the towing of such vehicle.

8. Tow a vehicle that is occupied by any person, except as specifically directed by a police officer.

9. Charge for service not performed or make duplicate charges for the same service or charge any fee in excess of those permitted by this Agreement or by law.

10. Use profane or obscene language offensive to any customer, motorist, or other person.
11. Be discourteous or abusive to any customer, motorist, or other person.

12. Remove parts, property, or any other thing from a vehicle except as permitted by under Property Inventory (below) or otherwise authorized City or by law.

13. Disclose to any person any information obtained from City that relates to the pursuit, apprehension, investigation or prosecution of any person or otherwise is considered highly confidential or sensitive.

14. Service Provider assumes sole responsibility when theft, disappearance of or damage to a vehicle or parts thereof occur after a vehicle has been taken under tow, except such items as the City takes into custody by removing said items from said vehicles in which case a receipt for said items shall be left in the vehicle by City’s police officer.

D. DISPATCHING PROCEDURE and RESPONSE TIME

1. Service Provider shall respond to all tow requests dispatched under this Agreement and shall be available to provide towing and/or storage service twenty-four (24) hours a day, seven days a week, 365/6 days a year.

2. Except non-hazardous or non-urgent vehicle tows, as determined by the City, a tow vehicle shall arrive prepared to provide service at the scene not more than twenty (20) minutes after dispatch. Heavy-duty wreckers shall be allowed a longer time in which to respond, but shall arrive expeditiously. When City designates a tow request as non-hazardous or non-urgent, Service Provider shall have twenty-four (24) hours from the time of dispatch to tow the vehicle.

3. Service Provider shall immediately inform City through Lake Oswego Communications if Service Provider is, for any reason, unable to respond to a tow request or unable to respond within the required time.

4. If Service Provider fails to arrive at the tow site within the times set forth above, the City may, at its option, cancel the dispatch and direct Lake Oswego communications to dispatch the next provider on the rotation. Service Provider shall promptly notify dispatcher if circumstances arise which prevent Service Provider’s timely arrival at the tow site. City shall not be responsible for towing or other charges resulting from Service Provider’s failure to arrive at the service scene in a timely manner when City has authorized dispatched an alternate towing Service Provider.

5. After arrival at the tow site, Service Provider shall proceed to perform the tow and render any necessary service in a proper and expeditious manner. Service Provider shall comply with directions from City, such as for control of the scene of the incident.

6. Service Provider may decline to remain on the scene or conduct a tow if, in Service Provider’s opinion, conditions at the tow site warrant police supervision and such supervision is unavailable despite Service Provider’s request. Service Provider shall immediately notify the City, through the dispatcher, in the event Service Provider is unable to perform a tow.

7. When performing a tow, the Contractor shall be responsible for cleanup of an accident scene, as provided by ORS 822.225, after consulting the investigating police officer.
8. West Linn Communications shall maintain a list of all tow service providers that have a contractual relationship with the City and shall notify each provider on a rotating basis which service is requested for non-preference private tows. Service providers that do not continuously maintain compliance with the terms of this Agreement shall be notified of the particular deficiency and shall be removed from the rotation list if the deficiency is not corrected.

E. NOTIFICATIONS AND RECORDS REQUIREMENTS

Service Provider shall make and maintain records of the following for three years:

1. Description of all vehicles towed as defined in this Agreement.
2. Locations from which all vehicles are towed.
3. Locations to which all vehicles are towed and name of all vehicle operators making the tows.
4. Times all dispatch calls are received and all arrival times of equipment at service locations.
5. Reasons for the towing of each vehicle.
6. The physical release of each vehicle to its owner or the owner’s agent.
7. An inventory of property within each vehicle as specified under the heading of Property Inventory below.
8. Provide City with a monthly statement including a description of all vehicles towed pursuant to this Agreement and the storage or release status of each vehicle.

F. PROPERTY INVENTORY

1. Service Provider shall document the condition of the vehicle as it existed at the time of the tow.
2. Service Provider shall inventory and safeguard all property of apparent, significant value in plain view inside of the towed vehicle.
3. Service Provider may remove property from a vehicle to a place of safekeeping to protect such property from theft or loss and Service Provider may remove a mechanical part, such as a battery or distributor rotor, from the vehicle if deemed necessary to prevent the unauthorized removal of the vehicle. In all cases, Service Provider shall make an inventory of the property or parts removed and a copy of such inventory shall be furnished to any persons seeking to redeem the vehicle or property. Removed property shall be returned to the owner or the owner’s agent immediately upon request. Any parts removed must be returned and reinstalled at Service Provider’s expense at the time the vehicle is redeemed.
4. City may seize or take custody of personal property associated with the vehicle as provided by law. City shall provide Service Provider with a receipt therefore.
G. STORAGE

All storage facilities shall be in conformance with the zoning requirements of all applicable governments and capable of accommodating vehicles as follows:

1. All storage areas shall be adequately protected against unauthorized entry.

2. Service Provider shall have inside storage available for at least one vehicle.

3. Service Provider shall have outside storage available for at least twenty vehicles.

4. Outside storage areas shall be lighted and shall be fenced to a minimum of seven feet. Fencing shall be maintained in safe and good working order.

5. Outside storage areas shall be subject to Service Provider’s exclusive control.

6. Service Provider shall provide City a complete description of all designated storage facilities, including locations, capacity, and identity of ownership; no change in designated storage facilities, as described herein, shall be permitted without prior written notice to City from the Service Provider.

7. Facilities shall be in sufficient number and conveniently located to the city limits of West Linn, so as to permit City, or those it may authorize access to stored vehicles, and to keep the cost of tows to a minimum.

8. Service Provider shall provide an attendant for each storage facility accessible by telephone 24 hours a day, seven days a week, and 365/6 days a year. The attendant shall be available at the storage facility within one hour of notification that a vehicle is to be released or that a claimant entitled to delivery is present at the facility for release of a vehicle.

9. Towed vehicles shall be released by the Service Provider to persons authorized to take delivery only upon confirmation by City that no official hold exists for its retention and an official release is presented.

10. Service Provider shall post a clearly visible sign at its storage facility including the following information:

   a) Company name.

   b) Telephone number for after-hours information.

   c) Regular business hours.

H. RATE SCHEDULE; PAYMENT AND COLLECTION

1. Rates charged for towing and storage under this Agreement are to be set by the Service Provider. Service Provider shall supply the City with a current copy of its rate schedule every July 1st, of each year and within 10 days of any change. Provided, however, that the contract amount shall not exceed the maximum rates listed in the Schedule of Rates approved by the Clackamas County Sheriff’s Official tow contract for vehicle towing and storage services.
2. Towing and storage charges for privately owned vehicles are the responsibility of the owner or authorized claimant of such vehicle, and collection therefore will be solely within the determination and control of Service Provider. City is neither guarantor nor surety for any private person to receive services under this Agreement, nor for Service Provider to receive payment for such services. Service Providers recourse for payment shall be as provided by law.

I. INSURANCE

Service Provider shall maintain in full force and effect for the term of this Agreement at the Service Provider’s expense, a general liability policy and automobile liability insurance policy protecting the Service Provider, and City, including their respective officers, employees and agents for any and all claims or damages relating to this MOU or the provision of services hereunder in a form satisfactory to City. The policy(s) shall be written on a comprehensive form including broad form property damage, on an occurrence basis. The deductible shall not exceed $5,000. The policies shall provide coverage in the following amounts or the then current limits of the Oregon Tort Claims Act, whichever is greater:

1. $2,000,000 each occurrence;

2. $2,000,000 general aggregate;

3. $2,000,000 combined single limit automobile liability for owned, non-owned and hired vehicles. The policy(s) shall be without prejudice to coverage otherwise existing. They will name the City of West Linn, its officer’s employees and agents as additional insured. The policy(s) will include a cross-liability or separation of insureds endorsement. The policies shall provide for notice to City in the event of suspension, cancellation, termination or substantial modification.

III. General Terms and Conditions.

A. Term. This Agreement shall be effective on the date last executed and shall continue for a period of two years from the date of execution. This Agreement expires on the last day of the two year term, unless either party provides written notice of termination. Passage of the Agreement’s expiration date shall not extinguish or prejudice the City’s right to enforce this agreement with respect to any default or defect in performance that has not been cured.

B. Termination or Suspension

1. a. Parties’ Right to Terminate for Convenience. This Agreement may be terminated at any time by mutual written consent of the parties.

b. City’s Right to Terminate for Convenience. City may, at its sole discretion, terminate this Agreement, in whole or in part, upon 10 days’ notice to Contractor.

2. For Cause: City may terminate or suspend this Agreement for cause if Service Provider fails to fully comply with the provisions of this MOU, including applicable state laws and administrative rules. Except as provided below, Service Provider shall be entitled to 10 days' notice and opportunity to cure. Failure to cure or arrange for a cure to City's reasonable
satisfaction within the 10 day's or such longer period as City may authorize in its discretion shall result in termination or suspension.

3. Termination or suspension for breach shall be effective immediately if the City determines that the breach constitutes a risk to the safety of persons or property (including but not limited to failure to carry current insurance conforming to this Agreement); the breach is the same or similar to a breach occurring within the 90 days preceding or City concludes that the Service Provider is unwilling or unable to maintain compliance with this Agreement based on Service Provider's history of non-compliance.

4. Service Provider may contest a suspension or termination for breach by filing an appeal with the City Manager no later than 10 days after the effective date of the suspension or termination. The appeal shall include a brief summary of the reasons for contesting the suspension or termination and any supporting documentation. The City Manager or designee (who shall not have been involved in the decision to terminate or suspend) shall conduct an informal hearing within five calendar days of receipt of appeal. The City Manager or designee shall within five days of the hearing issue a written decision affirming, reversing or modifying the suspension or termination with a brief explanation for the decision.

C. Remedies. The sole and exclusive remedy for a breach of this Agreement shall be suspension, termination or reinstatement. Each party expressly waives and releases the other for any claims for damages arising under this Agreement. Nothing in this paragraph shall govern the obligations of the parties, including payment of compensation, pursuant to the hold harmless, defense and indemnification obligations set forth below. A Service Provider that has been terminated for breach may not apply for a new Agreement or reinstatement for a period of one-year from the date of such termination.

D. Indemnification. Service Provider shall hold harmless, indemnify and defend the City, its officers, employees and agents for any and all claims, damages, losses or expenses, including but not limited to reasonable attorney fees, arising out of or resulting from Service Provider's performance or failure to perform each and every obligation of this Agreement, including but not limited to failure to comply with any applicable state law or administrative rule. This obligation shall survive termination.

E. Non-discrimination. No person shall be denied or subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of race, color, religion, gender, sexual orientation, national origin, disability, age, veteran's status or marital status. Any violation of this provision shall be considered a material defect and shall be grounds for cancellation, termination or suspension in whole or in part by the City.

F. Time is of the Essence/Force Majeure. Time is of the essence of each and every obligation herein. Neither City nor Service Provider shall responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond the party's reasonable control. The parties shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

G. City Ordinances or Regulations. City retains the right to adopt and enforce ordinances, rules or regulations governing towing, storage and related matters. Unless agreed
otherwise by City all such provisions shall be deemed included herein, subject to Service Provider's right to terminate this Agreement for other than breach.

H. **Public Contracting.** To the extent applicable, the provisions of Oregon law governing public contract are applicable and incorporated herein by reference including but not limited to: a. ORS 279.314, concerning payment of claims by public officers; b. ORS 279.316, concerning hours of labor; and c. ORS 279.320, concerning payment for medical care.

I. **Laws and regulations.** Except as provided by an law or regulation, nothing herein be construed as conflicting with any applicable federal, state or local law or regulation. In the event of such conflict, the conflicting provision of this Agreement shall be modified so as to not conflict or be unenforceable.

J. **Relationship of the parties.** Nothing in this Agreement constitutes or creates an agency, joint-venture, partnership or similar relationship between the parties. Service Provider is providing services to the Owner subject to regulation under this Agreement. Except as regulated in this Agreement or as necessary for law enforcement purposes or control of City right of way (such as control of the incident scene) City does not control the manner or means of service.

K. **Integration:** THIS AGREEMENT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OR PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.
By: ______________________________
Name: ___________________________
Title: ____________________________
Date: ____________________________

Business Address:
_________________________________
_________________________________

Business Address:
1800 8th Avenue
West Linn, Oregon 97068

Individual SS # or
Employer ID # _________________

Check One:

Sole Proprietor ______
Partnership ______
Corporation ______

Note: The individual signing on behalf of Service Provider hereby certified and swears under penalty of perjury: (a) the number shown on this form is Service Provider’s correct taxpayer identification; (b) Service Provider is not subject to backup withholding because (i) Service Provider is exempt from backup withholding, (ii) Service Provider has not been notified by the IRS that Service Provider is subject to backup withholding as a result of a failure to report all interests or dividends, or (iii) the IRS has notified Service Provider that Service Provider is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Service Provider, s/he has authority and knowledge regarding Service Provider’s payment of taxes, and to the best of her/his knowledge, Service Provider is not in violation of any Oregon Tax laws, (d) the information provided by Service Provider to City is true and accurate.